10-18-85
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federal register

Friday
October 18, 1985

Briefings on How To Use the Federal Register—
For information on briefings in Atlanta, GA, see announcement on the inside cover of this issue.

Selected Subjects

Accounting
Energy Department

Air Carriers
Federal Aviation Administration

Animal Diseases
Animal and Plant Health Inspection Service

Animal Drugs
Food and Drug Administration

Arms and Munitions
Alcohol, Tobacco and Firearms Bureau

Aviation Safety
Federal Aviation Administration

Education
Veterans Administration

Hazardous Waste
Environmental Protection Agency

Medicaid
Health Care Financing Administration

Migrant Labor
Wage and Hour Division

Natural Gas
Federal Energy Regulatory Commission

Navigation (Water)
Engineers Corps

CONTINUED INSIDE

Selected Subjects

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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.

How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

Organization and Functions (Government Agencies)
Nuclear Regulatory Commission

Prescription Drugs
Drug Enforcement Administration

Privacy
Army Department

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2 1/2 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: Nov. 21; at 1 pm.
Nov. 22; at 9 am. (identical session)

WHERE: Room LP-7,
Richard B. Russell Federal Building,
75 Spring Street, SW., Atlanta, GA.

RESERVATIONS: Deborah Hogan,
Atlanta Federal Information Center.
Before Nov. 12: 404-221-2170
On or after Nov. 12: 404-331-2170

FUTURE WORKSHOPS: Additional workshops are scheduled bimonthly in Washington and on an annual basis in Federal regional cities. The January 1986 Washington, D.C. workshop will include facilities for the hearing impaired. Dates and locations will be announced later.

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Presidential Documents

Title 3—

The President

Proclamation 5390 of October 15, 1985

National Forest Products Week, 1985

By the President of the United States of America

A Proclamation

From the dense stands of hardwoods in New England to the towering redwoods of California, America has been blessed with an abundance of forestland. There is much to praise in the beauty of our forests and much to be thankful for. John Muir once said of the forests of America that they "must have been a great delight to God; for they were the best He ever planted." They are also a great boon to man. Besides their beauty, they act as protectors of our drinking water and wildlife and provide us with abundant opportunities for recreation. They bring us cooling shade in summer and break the icy winter winds.

America's forests also are an unparalleled resource. For the past three centuries they have contributed greatly to the economic and social development of our Nation. From our forests come the lumber we use to build our houses and the paper for the books, magazines, and newspapers we read. Though we may sometimes overlook the fact in this age of technological breakthroughs, wood is an enduring and invaluable part of our everyday lives.

The Pennsylvania Dutch have a saying: "We don't inherit the land from our ancestors, we borrow it from our children." That is a profound insight we cannot afford to ignore. Fortunately, Americans have proven time and again that we see ourselves as the stewards of this abundant land of ours. We well understand that we cannot take our forests for granted. From the time of Gifford Pinchot, the Nation's first American-born trained forester, Americans have sought and found ways to insure the health and improve the management of our forests. Today, we have reached a point where the growth of our forests exceeds the harvest. This has come about thanks to the continuing efforts of our Nation's forestry and natural resource schools, hundreds of trained foresters, and other resource specialists, working with private firms and local, State, and Federal agencies such as the United States Forest Service.

Through the success of sustained-yield forestry, Americans can enjoy the splendor of our Nation's woodlands, as well as benefit from an abundant supply of the numerous products that come from trees. The forests provide jobs for millions of people, and they afford a healthy environment for the many who take to the woods in their leisure time. Even though forests provide us with a variety of products today, we will still have—thanks to proper management—millions of acres of forest as a living legacy for generations to come.

To promote greater awareness and appreciation of the manifold benefits of our forest resources to our economy and the world economy, the Congress, by Public Law 86–753 (36 U.S.C. 163), has designated the week beginning on the third Sunday in October of each year as National Forest Products Week.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the week beginning October 20, 1985, as National Forest Products Week and request that all Americans express their appreciation for the Nation's forests through suitable activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, 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 tenth.

Ronald Reagan

[FR Doc. 85-25027
Filed 10-16-85; 4:20 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5391 of October 15, 1985

Veterans Day, 1985

By the President of the United States of America

A Proclamation

Veterans Day is a special day for all Americans. It is a time to reflect on the many sacrifices and the great achievements of the brave men and women who have defended our freedom, and to salute them for their loyal and valiant service.

The blessings of liberty which our ancestors secured for us, and which we still enjoy, are ours only because, in each generation, there have been men and women willing to bear the hardships and sacrifices of serving in the military forces we need to preserve our freedom.

These fine men and women have not sought glory for themselves, but peace and freedom for all. They exemplify the spirit that has preserved us as a great Nation, and they deserve our recognition for everything they have done. With a spirit of pride and gratitude, we honor and remember our veterans today.

I urge all Americans to recognize the valor and sacrifice of our veterans through appropriate public ceremonies and private prayers. I urge the families and friends of our sick and disabled veterans to visit them and extend to them a grateful Nation's promise that they will not be forgotten. I ask all Americans, whether or not a family member or friend is a veteran, to find ways to pay a special sign of respect to a veteran in their community on this day.

I also call upon Federal, State, and local government officials to display the flag of the United States and to encourage and participate in patriotic activities throughout the country. I invite the business community, churches, schools, unions, civic and fraternal organizations, and the media to support the national observance with suitable commemorative expressions and programs.

In order that we may pay meaningful tribute to those men and women who proudly served in our Armed Forces, Congress has provided (5 U.S.C. 6103(a)) that November 11 shall be set aside each year as a legal public holiday to honor America's veterans.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby invite the American people to join with me in a fitting salute on Veterans Day, 1985, Monday, November 11, 1985. Let us resolve anew to keep faith with those whose love of country has placed their names on a well-deserved roll of honor.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, 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 tenth.

Ronald Reagan

[FR Doc. 85-25028
Filed 10-16-85; 4:21 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5392 of October 15, 1985

Operation: Care and Share, 1985

By the President of the United States of America

A Proclamation

Since the days of our Founding Fathers, the American people have banded together to meet the needs of their communities. This spirit of neighbor helping neighbor is one of the Nation's finest traditions. Generosity and awareness of community needs are traits that have kept our country strong. Voluntary service remains as important today as it was in earlier decades, and personal involvement lends a warmth to giving and sharing that no government or institution by itself can.

During the holiday season, I call upon all Americans to join in partnership with others to help provide food for those who are in need. The agriculture and food industries, churches, civic and fraternal organizations, corporations, and nonprofit groups can each play a vital role in reaching out to their fellow Americans. Let the caring and sharing that stems from private sector initiatives reach out across this great land of ours like the warming rays of dawn and bring to all the blessings of compassion and goodwill, to those who give as much as to those who receive.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim the forthcoming holiday season to be a time in which partnerships are forged under OPERATION: Care and Share. Further, I proclaim that November 25, 1985, should be a day upon which each of us should focus upon our fellow citizens and collect and distribute food to those in need.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of October, 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 tenth.

Ronald Reagan

[FR Doc. 85-25029
Filed 10-16-85; 4:22 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 5393 of October 16, 1985

World Food Day, 1985

By the President of the United States of America

A Proclamation

One of the most encouraging results of World Food Day, which the Food and Agriculture Organization (FAO) of the United Nations inaugurated in 1980, has been the rising tempo of public interest in the world food situation. Last year in the United States alone, millions of people in more than 3,000 communities participated in a wide variety of World Food Day activities.

Yet even this great outpouring paled before the American response to the terrible famine in Africa, especially in Ethiopia and Sudan.

For many years, the United States has shared its agricultural abundance and technical expertise with nations in need. We have led the effort to alleviate world hunger. Yet it is clear that charitable assistance in the form of emergency food deliveries, no matter how extensive, treats only the symptoms of malnourishment, not the causes.

The persistent problem of underfed people has deep roots that unfortunately are too often nourished by government policies that discourage economic growth and progress, put obstacles in the way of international trade, and inhibit a free market system. Governments dictate urban food prices at the expense of farmer income, and the farmer's judgement on the type of crops to plant and harvest is ignored.

Although some American farmers have recently suffered economic reverses, this Nation has not wavered in its commitment to aid the developing nations of the world to improve their agricultural methods and to provide food relief during emergencies. Our assistance has paid dividends to the recipient countries. Since 1954, when the Eisenhower Food For Peace program was adopted by the United States, food production per person has increased an average of 21 percent in the developing countries. Food consumption in the same areas has increased an average of 7.5 percent per person since 1963. We are especially proud that America has taken the lead in the promotion and distribution of oral rehydration therapy. This simple technology saved the lives of half a million children around the world last year.

In recognition of the continuing problem and of the need to continue focusing public awareness on means to alleviate world hunger, the Congress, by Senate Joint Resolution 72, has designated October 16, 1985, as "World Food Day" and authorized and requested the President to issue a proclamation in observance of that day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 16, 1985, as World Food Day, and I call upon the people of the United States to observe that day with appropriate activities to explore ways in which our Nation can further contribute to the elimination of hunger in the world.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of October, 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 tenth.

Ronald Reagan

[FR Doc. 85-25030
Filed 10-16-85; 4:23 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 85

[Docket No. 85-101]

Official Pseudorabies Tests

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the pseudorabies regulations by adding the Enzym-Linked Immunosorbent Assay (ELISA) test to the list of official tests for pseudorabies. It has been determined that this action is warranted in order to provide an additional official test for pseudorabies.

EFFECTIVE DATE: November 18, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. L. W. Schnurrenberger, Special Diseases Staff, VS, APHIS, USDA, Room 822, Federal Building, 6505 Belcrest Road, Hyattsville, MD 29782, 301-436-8438.

SUPPLEMENTARY INFORMATION:

Background

In a document published in the Federal Register on August 20, 1985 (50 FR 33548-33549), the Department proposed to amend the regulations in 9 CFR Part 85 (referred to below as the regulations), which govern the interstate movement of swine and other livestock (cattle, sheep, goats) in order to help prevent the spread of pseudorabies. It was proposed to amend § 85.1(q) of the regulations by adding the Enzyme-Linked Immunosorbent Assay (ELISA) test as an official pseudorabies test. Official pseudorabies tests are used under certain circumstances for determining the pseudorabies status of livestock. Also, the regulations provide for testing negative by an official pseudorabies test as a condition for allowing certain interstate movements of swine. The document of August 20, 1985, invited the submission of written comments on or before September 19, 1985. Three comments were received. All of them were in favor of the proposed rule. Based on the rationale set forth in the proposal, the regulations are amended as proposed.

Executive Order and Regulatory Flexibility Act

This rule has been reviewed in conformance with Executive Order 12291 and has been determined to be not a "major rule." The Department has determined that this rule will not have an effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

As a result of the adoption of this rule, the regulations provide for the use of an additional official pseudorabies test as an option for use in determining whether an animal is infected with the disease. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 9 CFR Part 85

Animal diseases, Livestock and livestock products, Quarantine, Pseudorabies, Transportation.

PART 85—PSEUDORABIES

Accordingly, 9 CFR Part 85 is amended as follows:

1. The authority citation for Part 85 continues to read as follows:

Authority: 21 U.S.C. 111, 112, 113, 115, 117, 120, 121, 123-126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 85.1 [Amended]

2. In § 85.1, paragraph (q) is amended by changing "Test.[2]" to "Test; and 4. Enzyme-Linked Immunosorbent Assay (ELISA) Test.[2]"

Done at Washington, D.C., this 15th day of October, 1985.

Gerald J. Fichtner,
Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85-24850 Filed 10-17-85; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 1

Statement of Organization and General Information

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to grant additional rulemaking authority ot its Executive Director for Operations. This amendment affects internal agency produre and practice and will not affect NRC applicants, licensees, or the public.

EFFECTIVE DATE: October 18, 1985.

FOR FURTHER INFORMATION CONTACT: Trip Rothschild, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (202) 634-1465.

SUPPLEMENTARY INFORMATION: Under the Commission's current regulations, 10 CFR 1.40(d), limitations are placed on the authority of the Executive Director for Operations (EDO) to promulgate rules. For example, the EDO may not promulgate proposed or final rules in the following areas: 10 CFR Parts O (Conduct of Employees), 2 (Rules of Practice for Domestic Licensing Proceedings), 7 (Advisory Committees), 8 (Interpretations), 9, Subpart C, (Government in the Sunshine Act

Regulations), and 110 (Export and Import of Nuclear Equipment and Materials). The Commission is revising its regulations to delegate additional rulemaking authority to the EDO.

The EDO is being given authority to issue rules under 10 CFR Parts 0, 2, and 110 which do not raise significant questions of policy. This means that the EDO will be able to promulgate rules which do not involve a major change in existing Commission policy, do not present a major new issue, will not result in a major commitment of resources by a class of licensees or are corrective in nature. This includes the promulgation of rules in final form if no significant adverse comments or questions have been received on the notice of proposed rulemaking and no substantial changes in text are indicated.[1]

The EDO is also being given authority to promulgate certain rules under 10 CFR Parts 7, 8, and 9, Subpart C, although that authority will not be as extensive as the EDO's authority regarding other sections of NRC regulations. The EDO is being authorized to issue proposed and final rules under 10 CFR Parts 7, 8, and 9, Subpart C, that are corrective or of a nonpolicy nature. Any changes to those Parts that raise policy questions, however minor, must be issued by the Commission.

Because this is a rule of agency organization, procedure and practice issued pursuant to 5 U.S.C. 553(b)(A), advance notice and opportunity to comment are not required. Because these amendments relate solely to practice, advance notice of the promulgation of this rule is unnecessary and, therefore, good cause exists for making the amendments effective upon publication in the Federal Register. Because this revision is not a rule requiring notice of proposed rulemaking under 5 U.S.C. 553, the provision of 5 U.S.C. 603 requiring a regulatory flexibility analysis does not apply.

[1] When the Commission first published 10 CFR 1.40(d) on July 18, 1977, the EDO was authorized, among other things, to issue "amendments of regulations in final form, if no significant adverse comments or questions have been received on the notice of proposed rulemaking and no substantial changes in text are indicated." 10 CFR 1.40(d) (1978 ed.) When § 1.40(d) was subsequently amended on March 19, 1982, the Commission stated that it was delegating additional rulemaking authority to the EDO. Although the quoted language was not expressly retained in the final rule, it was inherent in the expansion of the EDO's rulemaking authority to include promulgation of proposed and final rules not raising significant questions of policy.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

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

List of Subjects in 10 CFR Part 1

Organization and functions.

For the reason set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendments to 10 CFR Part 1.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85-256, 71 Stat. 579, Pub. L. 95-209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, and 209, 88 Stat. 1242, 1244, 1245, 1246 and 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

Sec. 1.40(g) also issued under secs. 132, 135, 96 Stat. 2230, 2232 (42 U.S.C. 10152, 10155).

2. Section 1.40(d)(2) is revised to read as follows:

§ 1.40 Office of the Executive Director for Operations.

* * * * *

(d) * * *

(2) The delegated authority in paragraph (d)(1) of this section does not extend to (i) the promulgation of proposed or final rules involving significant questions of policy or (ii) the promulgation of proposed or final rules in the following 10 CFR Parts except for proposed or final rules in these Parts that do not raise policy issues or are of a corrective nature: 10 CFR Parts 7—Advisory Committees, 8—Interpretations, and 9, Subpart C,—Government in the Sunshine Act Regulations.

* * * * *

Dated at Washington, DC this 11th day of October 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-24944 Filed 10-17-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-48-AD; Amdt. 39-5153]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires inspection of the pylon inboard and outboard midspar attach fitting lugs or spring beam aft lugs, as appropriate, for cracks on certain Boeing Model 747 series airplanes. This action is prompted by the recent report of failure of both inboard midspar fitting lugs of one inboard pylon. This action is necessary since this condition, if not corrected could result in separation of the engine from the airplane.

EFFECTIVE DATE: November 24, 1985.

ADDRESSES: The service bulletin specified in this AD may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Owen E. Schrader, Airframe Branch, ANM-120S; telephone (206) 431-2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive to require inspection for and subsequent repair of cracked structure was published in the Federal Register on June 4, 1985 (50 FR 23435). The comment period for the proposal closed on July 29, 1985.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

The only comments received were from the Air Transport Association of America (ATA), summarizing the comments of three airlines. The commenter requested that the repeat inspection interval of 3000 flight hours be changed to 3000 flights; this change would be in agreement with the manufacturer's service bulletin. The FAA concurs, as this was an editing error. Paragraph B. of the final rule has been revised to remove the word "hours."

The commenter also requested that the cost analysis be clarified to indicate the basis of the labor estimate, and to include costs related to terminating action. Since this AD does not require replacement of the parts, unless they are cracked, or the installation of the new bushings that provide terminating action, the costs shown in the cost analysis portion of the preamble to the Notice related only to the initial compliance requirements. Upon consideration of this point, the cost analysis section has been revised to specify initial compliance.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes noted above.

It is estimated that 160 airplanes of U.S. registry will be affected by this AD, that it would take approximately 56 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $358,400 for the initial compliance with the AD.

For the reason discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, certificated in any categories, listed in Boeing Service Bulletin 747–54–2100 dated June 20, 1983. To prevent failure of the pylon midspar fitting lugs or spring beam aft lugs, as appropriate, accomplish the following, unless already accomplished:

A. Perform an ultrasonic inspection of the inboard and outboard midspar fitting lugs or spring beam aft lugs of each pylon for cracks in accordance with Boeing Service Bulletin 747–54–2100 dated June 20, 1983, or later FAA-approved revisions, in accordance with the following schedule:

1. On airplanes that have accumulated less than 30,000 flight hours as of the effective date of this AD, inspect within 18 months after the effective date of this AD or prior to the accumulation of 25,000 flight hours, whichever occurs later.

2. On airplanes that have accumulated 30,000 to 40,000 flight hours as of the effective date of this AD, inspect within 12 months after the effective date of this AD.

3. On airplanes that have accumulated over 40,000 flight hours as of the effective date of this AD, inspect within 6 months after the effective date of this AD.

4. On airplanes that have had replacement of the midspar fitting or its lug bushings, or the spring beam or its aft lug bushings, inspect these lugs within 18 months after the effective date of this AD or within 25,000 flight hours after such replacement, whichever occurs later.

B. Repeat the inspection required by paragraph A., above, at intervals not to exceed 3,000 flights.

C. If any cracking is found in the lugs, replace the affected midspar fitting or spring beam prior to further flight.

D. Installation of new bushings of the new design in accordance with Boeing Service Bulletin 747–54–2100, dated June 20, 1983, or later FAA-approved revisions, is terminating action for this AD.

Note.—Compliance with this AD does not terminate the inspection requirements of the Supplemental Structural Inspection Document (SSID) Airworthiness Directive 84–21–02 (Amdt. No. 39–4936; 49 FR 44890), if applicable.

E. Upon the request of an operator, an FAA Principal Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period, if the request contains substantiating data to justify the change for that operator.

F. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this proposal who have not already received these documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124–2207. These documents also may be examined at the FAA, Northwest Mountain Region 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on October 10, 1985.

This Amendment becomes effective November 24, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85–24819 Filed 10–17–85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85–CE–20–AD; Amdt. 39–5125]

Airworthiness Directives; Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of final rule.

SUMMARY: This action corrects Airworthiness Directive (AD) 85–17–07, Amendment 39–5125 (50 FR 25253), applicable to Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A airplanes. This correction is necessary because an error was made in the serial number effectivity statement of the AD when it was published in the Federal Register.

EFFECTIVE DATE: October 23, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas W. Haig, Aerospace Engineer, FAA, ACE–120W, 1801 Airport Road, Wichita, Kansas 67209; Telephone (316) 946–4409.

SUPPLEMENTARY INFORMATION: Subsequent to the issuance of AD 85–17–07, Amendment 39–5125 (50 FR 25253), applicable to Cessna Models U206F, U206G, TU206F, TU206G, 207, T207, 207A, and T207A airplanes, the FAA found that an error had been made in the serial number effectivity statement of the AD when it was published in the Federal Register. Therefore, action is taken herein to make this correction. Since this action is required to ensure all affected airplanes are correctly referenced and included in the AD, notice and procedure hereon are unnecessary and contrary to the public interest, and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By correcting the following AD:

In FR Doc. 85–14527 (50 FR 25253), appearing in the **Federal Register** of June 18, 1985, make the following correction:

Correct the applicability statement to read as follows:

"**Cessna:** Applies to the following Cessna airplanes certificated in any category:

Model	Serial No.
U206F/TU206F	S/N U20601701 thru U20603521.
U206G/TU206G	S/N U20603522 thru U20604649.
207/T207	S/N 20700001 thru 20700362.
207A/T207A	S/N 20700363 thru 20700767".

Issued in Kansas City, Missouri, on October 8, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85–24824 Filed 10–17–85; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 85–CE–11–AD; Amdt. 39–5158]

Airworthiness Directives; Fairchild Aircraft Corporation Models SA226–T, SA226–AT, SA226T(B), SA226–TC, SA227–AC, SA227–AT and SA227–TT Airplanes

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

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) that requires additional inspections and recalibration of certain components critical to the Stall Avoidance System (SAS) on Fairchild Aircraft Corporation Models SA226–T, SA226–AT, SA–226T(B), SA226–TC, SA227–AC, SA227–AT and SA227–TT airplanes. Instances have occurred involving unwarranted actuation of the SAS control stick pusher mechanism at low altitudes. This AD will assure proper operation of the SAS and the stall warning horn, and thereby preclude loss of airplane control due to an unwarranted actuation of the SAS.

DATES: *Effective Date:* November 22, 1985.

Compliance: As prescribed in body of AD.

ADDRESSES: The service bulletins applicable to this AD may be obtained from Fairchild Aircraft Corporation, P.O. Box 32586, San Antonio, Texas 78284. A copy of this information is also contained in the Rules Docket, FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. San Lovell, Systems Engineer, Airplane Certification Branch, ASW–150, Southwest Regional Office, Fort Worth, Texas 76101; Telephone (817) 877–2448.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD requiring inspection and recalibration programs for the SAS on Fairchild Aircraft Corporation Models SA226–T, SA226–AT, SA–226T(B), SA226–TC, SA227–AC, SA227–AT, and SA227–TT airplanes was published in the **Federal Register** on April 26, 1985 (50 FR 16511). The proposal was prompted by 16 reports of unwarranted actuation of the SAS over a 5-year period. An additional 133 Malfunction or Defect (M or D) Reports were filed reporting various malfunctions with the SAS system. The majority of the 149 reports were a result of a lack of calibration of critical systems components. In addition, proper operation of the stall warning horn is dependent upon a properly calibrated SAS system. Should such an unwarranted actuation occur during takeoff or landing, where the airplane is at a low altitude, an accident or incident could result.

Further, the National Transportation Safety Board (NTSB) issued a Safety Recommendation (A–84–66) as a result of investigating one incident and receiving a report of another incident involving an unwarranted actuation of the SAS on certain Fairchild Model SA226 and SA227 airplanes. They recommended that the FAA review the design, installation, and maintenance requirements for the SAS to verify system reliability and maintainability and take action as needed to preclude unwarranted actuation of the system that could present hazards to the airplane.

There are two systems presently being used on the above airplanes, the Rosemount and Conrac Systems. The Rosemont system was used in the earlier production airplanes and was replaced in later production airplanes by the Conrac system.

An evaluation of the design, installation, maintenance, and field data regarding these systems disclosed that lack of calibration may have caused the majority of the problems experienced in the field. An established periodic inspection and calibration procedure could have prevented many of the problems that were reported.

Since the condition described herein is likely to exist or develop in other Fairchild Models SA226 and SA227 airplanes, the FAA proposed an AD which would require inspection and modification of the SAS in accordance with existing manufacturer's service bulletins.

Interested persons have been afforded an opportunity to comment on the proposal. Eight commenters submitted comments regarding the proposed AD. Three commenters agreed that maintenance and calibration procedures should be imposed on the SAS to assure proper operation. Five commenters agreed that problems have existed with the SAS but maintained that their self-imposed programs provided adequate control of the maintenance and calibration of the SAS.

The individual comments and the FAA responses to these are as follows:

One commenter in agreement with the proposed AD recommended a placard be installed to warn pilots while at low altitude. The existing Airplane Flight Manuals provide the flight crew with adequate instructions should the SAS malfunction and since these operating limitations are unchanged by this AD it is believed additional cockpit placards are not warranted. Therefore, this proposal will not be changed as suggested.

Two commenters opposed the proposed AD on the grounds that the action was unnecessary. One of these commenters further stated that there was not a safety problem. The FAA initiated the proposal after evaluating the operation and maintenance of the SAS. In addition to an inadvertent stick push actuation, if the system is not properly maintained, the stall warning horn and the stick pusher may not actuate at the proper time when there is an actual need. The proposed AD addresses this safety problem.

Three commenters opposed the proposed AD because these actions are predominantly maintenance and calibration actions and as such, the proposal is a misuse of the AD system. The FAA does agree that normally, maintenance AD's are not issued. The FAA further agrees that the proposed AD actions essentially maintenance actions. However, the FAA has determined that they are critical maintenance actions, essential to safe operation of the aircraft, and therefore, warrant special mandatory procedures and attention through application of the AD process. In further support of this special attention, one commenter stated that aircraft are being operated without proper calibration and some with system breakers pulled. This AD will add the proper impetus to the calibration and maintenance of the SAS.

Two commenters stated that the proposed AD would require excessive flight-test time. The FAA agrees that flight tests are required when calibration is performed on the Rosemount System, however, for airplanes that have the Conrac system or the Conrac STC installed, a calibration unit is available that will allow the system to be calibrated without a flight test. Therefore, the proposal will not be changed in light of these comments.

Four commenters objected to the proposed AD because it would require excessive tear down for maintenance and inspection. Also, one commenter objected because the criteria for acceptance is not clear. These same commenters expressed concern with two specific areas, the angle of attack (AOA) vane on the Rosemount system, and the servo pusher on the Rosemount and Conrac systems. The FAA has determined that a visual inspection is the only feasible way that the condition of the AOA mechanism can be determined. In addition, after reviewing sections of the referenced service bulletins pertaining to the servo pusher, the FAA determined that the service bulletins needed to specify accept-reject criteria servo testing. Subsequent to the issuance of this proposal an electrical test has been developed by the manufacturer that can provide data to determine the condition of the unit. As a result, the service bulletins have been revised to provide clearcut accept-reject criteria, incorporation of the electrical test and deletion of the requirement for overhaul of the servo at specific intervals. The FAA has determined that the frequency of the test will provide confidence that the system is operational at all times in addition to reducing the cost of the AD by $138 per airplane or a reduction of $80,316 for the fleet. Also, due to the complexity of the repairs, setup, and tests necessary to provide adequate control of the servo, the overhaul must be accomplished at an FAA approved repair facility. The AD has been changed to reflect these actions.

Three commenters stated that the proposed AD would be economically burdensome. The FAA has determined that the SAS is necessary to assure safe flight under certain operational conditions and that correct operation of the SAS is a safety requirement for proper operation of the aircraft. All operators that commenter on the AD stated that the SAS would perform satisfactorily if calibrated and maintained properly. Many of the items in the AD are included in existing maintenance programs developed by these commenters. This provides evidence that the operators who commented recognize that the system requires maintenance and calibration. In the proposal the FAA utilized the specific maintenance procedures recommended by the component manufacturer to assure proper operation of each component. If subsequent service data justifies a change in the manufacturer's suggested maintenance actions, the FAA will review that data and take appropriate actions accordingly.

In accordance with the preceding discussions, the proposal is adopted with the changes indicated.

The FAA has determined that this proposed regulation involves approximately 582 airplanes. The estimated average cost of compliance with one cycle of the AD is $832 per airplane or actual one cycle fleet cost of $484,224. Therefore, I certify that this action: (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) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft, Safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the FAR as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Fairchild Aircraft Corporation: Applies to Models SA226–T (S/N T201 thru T275, T277 thru T291), SA226–AT (S/N AT001 thru AT419, AT003E, AT038E, AT062E, AT064E), SA226–TC (S/N TC201 thru TC419, TC208E, TC211E, TC211EE, TC211EEE, TC211EEEE, TC222E, TC227E, TC228E, TC229E, TC234E, TC237E, TC238E, TC239E, TC331E, TC334E), SA226–T(B) (S/N T(B)276, T(B)292 thru T(B)417, T(B)303E), SA227–AC (S/N AC406, AC415, AC416, AC420 thru AC601, AC603), SA227–TT (S/N TT421 thru TT541), SA227–AT (S/N AT423 thru AT585) airplanes certificated in any category.

Compliance: Required within 100 hours' time-in-service after the effective date of this AD unless previously accomplished and thereafter as indicated below:

To assure proper operation of the Stall Avoidance System (SAS) system, accomplish the following:

(a) Except as noted in paragraph (b) of this AD, modify and/or inspect the applicable airplanes in accordance with the manufacturer's service bulletins, at the initial and repetitive time-in-service intervals, as specified for the model and serial numbered airplanes, set forth in Table 1 below:

TABLE 1

Model and Serial No.	Fairchild Service Bulletin	Compliance interval, Hrs—time in service
SA226–T:		
T201 thru T275, T277 thru T291	226–A27–024	One time only.
	226–A27–028	One time only.
	226–27–038	
	Para. 2.A	200.
	Para. 2.B	500.
	Para. 2.C	500.
	Para. 2.D	800.
SA226–AT:		
AT001 thru AT073, AT003E, AT038E, AT062E, AT064E	226–A27–024	One time only.
	226–27–038	

TABLE 1—Continued

Model and Serial No.	Fairchild Service Bulletin	Compliance interval, Hrs—time in service
	Para. 2.A	200.
	Para. 2.B	500.
	Para. 2.C	500.
	Para. 2.D	800.
AT074 thru AT419	226-27-038	
	Para. 2.A	200.
	Para. 2.B	500.
	Para. 2.C	500.
	Para. 2.D	800.
SA226-TC:		
TC201 thru TC314, TC208E, TC211E, TC211EE, TC211EEE, TC211EEEE, TC222E, TC227E, TC228E, TC229E, TC234E, TC237E, TC238E, TC239E.	226-A27-024	One time only.
	226-27-038	
	Para. 2.A	200.
	Para. 2.B	500.
	Para. 2.C	500.
	Para. 2.D	800.
TC315 thru TC419, TC331E, TC334E	226-27-038	
	Para. 2.A	200.
	Para. 2.B	500.
	Para. 2.C	500.
	Para. 2.D	800.
SA226-T(B):		
T(B)276, T(B)292 thru T(B)391	226-A27-028	One time only.
	226-A27-033	One time only.
	226-27-037	
	Para. 2.A	200.
	Para. 2.B	500.
	Para. 2.C	2,000.
T(B)392 thru T(B)417, T(B)303E	226-A27-033	One time only.
	226-27-037	
	Para. 2.A	200.
	Para. 2.B	500.
	Para. 2.C	2,000.
SA227-AC:		
AC420 thru AC551	227-A27-004	One time only.
	227-27-006	
	Para. 2.A	200.
	Para. 2.B	500.
	Para. 2.C	2,000.
AC406, AC415, AC416, AC552 thru AC601, AC603	227-27-006	
	Para. 2.A	200.
	Para. 2.B	500.
	Para. 2.C	2,000.
SA227-TT:		
TT421 thru TT526, TT528, TT530 thru TT534	227-A27-004	One time only.
	227-27-006	
	Para. 2.A	200.
	Para. 2.B	500.
	Para. 2.C	2,000.
TT527, TT529, TT535 thru TT541	227-A27-004	One time only.
SA227-AT:		
AT423 thru AT549	227-A27-004	One time only.
	227-27-006	
	Para. 2.A	200.
	Para. 2.B	500.
	Para. 2.C	2,000.
AT550 thru AT585	227-27-006	
	Para. 2.A	200.
	Para. 2.B	500.
	Para. 2.C	2,000.

(b) Modify and/or inspect those Model SA226 and SA227 series airplanes which are equipped with the Conrac SAS system (per STC SA4725SW) in accordance with Table 2 below:

TABLE 2

Model	Fairchild service bulletin	Compliance interval, Hrs—time in service
Any applicable Model SA226 and SA227 airplanes incorporating STC SA4725SW	226-27-037	
	Para. 2.A	200.
	Para. 2.B	500.
	Para. 2.C	2,000.

Note 1.—The current issue date and subject matter of the Service Bulletins specified in Table 1 are as follows:

(1) 226-A27-024—"Flight controls—Elevator", dated 11/13/79.

(2) 226-A27-028—"Flight controls—Rudder and Elevator," dated 12/11/80.

(3) 226-A27-033—"Flight controls—Elevator", dated 12/03/82, Revised 01/06/83.

(4) 226-A27-004—"Flight controls—Elevators," dated 12/03/82, Revised 01/06/83.

(5) 226-27-037—"Conrac SAS System—Inspection and Recalibration", dated 02/15/85, Revised 09/16/85.

(6) 226-27-038—"Rosemount SAS System—Inspection and Recalibration", dated 02/15/85, Revised 09/16/85.

(7) 226-27-006—"Conrac SAS System—Inspection and Recalibrations", dated 02/15/85, Revised 09/16/85.

(c) If the inspections specified in paragraphs (a) and (b) of this AD necessitate replacement of the servo pusher, the replacement unit must be one that is either new, overhauled, or meets the limits of the electrical test specified in the above revised service bulletins.

(d) An equivalent method of compliance with this AD may be used if approved by the Manager, Airplane Certification Branch, ASW-150, FAA, Southwest Regional Office, Fort Worth, Texas 76101. All persons affected by this directive may obtain copies of the documents referred to herein upon request to the Fairchild Aircraft Corporation, Post Office Box 32586, San Antonio, Texas 78284, or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective on November 22, 1985.

Issued in Kansas City, Missouri, on October 8, 1985.

Edwin S. Harris,

Director, Central Region.

[FR Doc. 85-24825 Filed 10-17-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-27-AD; Amdt. 39-5155]

Airworthiness Directives; Lockheed-California Company Model L-1011-385 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires periodic holding torque checks on the slat asymmetry brakes on Lockheed-California Company Model L-1011-385 series airplanes. This AD is required because a reduction in the restraining torque capacity due to inherent brake degradation may preclude locking the slats in their proper position, which may result in loss of control of the airplane.

DATE: Effective November 24, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. 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. Augusto Coo, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION: A proposal to add a new airworthiness directive (AD) to require periodic holding torque checks on the slat asymmetry brakes on Lockheed-California Company Model L-1011-385 series airplanes was published as a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on April 8, 1985 (50 FR 13813). The comment period for the proposal closed May 28, 1985.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received. Five comments were received.

One commenter suggested that for clarity, phrases such as "1500 to 2400 inch-pounds" should be changed to "1500 inch-pounds or more but less than 2400 inch-pounds". The FAA agrees, and has made all the changes accordingly.

One commenter suggested that the requirements of proposed paragraphs A. and B., which are applicable to P/N 672157-115 or prior part number brakes, should be revised to allow an initial functional test within 1400 flight hours after the effective date of the proposed rule, or 3000 flight hours from the last test, whichever is later. The commenter claimed that the proposed requirement to test within 300 flight hours would result in undue flight disruptions. The FAA has determined that since the testing intervals of 3000 flight hours in paragraph A. and 4000 flight hours in paragraphs B. and D. were proposed to coincide with the repetitive test criteria recommended in the Maintenance Review Board (MRB) document and Lockheed's Service Bulletins, no undue hardships will be imposed on an operator who has been adhering to these recommendations.

The requirement to inspect within 300 flight hours after the effective date will be applicable only to those who have not been periodically testing their slat asymmetry brakes. The FAA has determined that the hazards associated with brakes that have not been periodically tested are sufficient to warrant a requirement to test within 300 flight hours after the effective date of this AD.

One commenter suggested that, like brakes subject to paragraph A., brakes subject to paragraph B., for which the holding torque measures between 1300 and 1700 inch-pounds, should be permitted to be flown up to 500 flight hours after the deficient brake is found. The FAA agrees, and has revised the final rule accordingly.

One commenter objected to paragraph C., which mandates the replacement of P/N 672157-113 or prior part number brakes, on the grounds that the required functional test would provide adequate assurance of safety. The FAA disagrees because a majority of the P/N 672157-113 or prior part number slat asymmetry brakes in service incorporate brake linings that are not in compliance with the approved qualification test specification. Therefore, there is insufficient test data to confirm that these linings comply with all of the equipment specification requirements. The specification includes testing at altitude, temperature, and humidity for all flight conditions. The on-ground repetitive functional test alone does not confirm that these requirements have been met.

Two commenters proposed that paragraph D.(2), wherein the holding torque minimum requirement for the repetitive functional test of the P/N 672157-117 or later part number is 1700 inch-pounds, should be reduced to 1500 inch-pounds. This would allow for deterioration in service, as the 1700 inch-pounds or more holding torque is applicable only to newly installed brakes. The FAA agrees, and has revised the final rule accordingly.

Two commenters suggested that the installation of P/N 672157-117 or later part number brake assembly should be acceptable as terminating action for the requirements of the proposed AD. The FAA disagrees; the 4000 flight hour interval for the repetitive functional test requirement is contained in the MRB document and Lockheed's Service Bulletin 093-27-274, and there is not enough service data to warrant either an increase of the inspection interval or elimination of the inspection requirement. Due to the critical function that the slat asymmetry brake assembly performs, when needed, the FAA considers it necessary to require the repetitive functional test.

One commenter suggested that paragraph D.(3) be deleted, i.e., the 500 flight hours "grace period" afforded the P/N 672157-115 or prior part number brakes need not be applied to the P/N 672157-117 or later part number brakes. Since this proposed change would be beyond the scope of this Notice of Proposed Rulemaking, the FAA is unable to delete this paragraph. However, the FAA may consider future rulemaking to address this suggestion.

It is estimated that 142 airplanes of U.S. registry will be affected by this AD. It will require approximately 6 manhours to perform the functional test and approximately 10 manhours to install the replacement part; the average labor charge is $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $90,880.

After careful review of the available data, including the comments noted above, the FAA has determined that sufficient evidence exists in the public interest in aviation safety to adopt the rule with the changes previously mentioned.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Model L-1011 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Section 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new AD:

Lockheed-California Company: Applies to Lockheed Model L-1011-385 series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished. To detect inadequate holding torque on slat asymmetry brakes installed on both LH and RH wings and to take corrective action, accomplish the following:

A. On aircraft having P/N 672157-115 or prior part number brakes:

(1) Conduct a functional test of each P/N 672157-115 or prior part number slat control system brake assembly within 300 flight hours after the effective date of this AD, or 3000 flight hours from the last test, whichever is later. Thereafter, conduct the same test at intervals not to exceed 3000 flight hours from the last test.

(2) If the left and right slat asymmetry brake holding torque measures 1500 inch-pounds or more, but less than 2400 inch-pounds, the airplane may continue in service.

(3) If the left or right slat asymmetry brake holding torque measures less than 1500 inch-pounds, but more than 1300 inch-pounds, the aircraft may be flown in that condition for the time necessary to replace the brake assembly, but not more than 500 flight hours from the time the deficient brake was found.

(4) If the left or right slat asymmetry brake holding torque measures less than 1300 inch-pounds, prior to further flight, replace the brake asembly with one having a holding torque of 1700 inch-pounds or more, but less than 2400 inch-pounds.

B. The following alternate procedure may be applied to P/N 672157-115 or prior part number brakes:

(1) Conduct a functional test within 300 flight hours after the effective date of this AD, or 4000 flight hours from the last test, whichever is later, if the last test substantiated that the brake holding torque was at least 1700 inch-pounds. Thereafter, conduct the same test at intervals not to exceed 4000 flight hours from the last test.

(2) If the left and right asymmetry brake holding torque measures 1700 inch-pounds or more, but less than 2400 inch-pounds, the airplane may continue in service.

(3) If the left or right slat asymmetry brake holding torque measures less than 1700 inch-pounds, but more than 1300 inch-pounds, the aircraft may be flown in that condition for the time necessary to replace the brake assembly, but not more than 500 flight hours from the time the deficient brake was found.

(4) If the left or right slat asymmetry brake holding torque measures less than 1300 inch-pounds, prior to further flight, replace the brake assembly with one having a holding torque of 1700 inch-pounds or more, but less than 2400 inch-pounds.

C. Replace P/N 672157-113 or prior part number brakes with P/N 672157-115 or later part number brakes within one year after the effective date of this AD.

D. On aircraft having P/N 671157-117 (with "lip seal" instead of "O-ring" seal) or later part number brakes:

(1) Conduct a functional test of each P/N 672157-117 or later part number brake assembly within 300 flight hours after the effective date of this AD, or 4000 flight hours from the last test, whichever is later. Thereafter, conduct the same test at intervals not to exceed 4000 flight hours from the last test.

(2) If the left and right asymmetry brake holding torque measures 1500 inch-pounds or more, but less than 2400 inch-pounds, the airplane may continue in service.

(3) If the left or right slat asymmetry brake holding torque measures less than 1500 inch-pounds, but more than 1300 inch-pounds, the aircraft may be flown in that condition for the time necessary to replace the brake assembly, but not more than 500 flight hours from the time the deficient brake was found.

(4) If the left or right slat asymmetry brake holding torque measures less than 1300 inch-pounds, prior to further flight, replace the brake assembly with one having 1700 inch-pounds or more, but less than 2400 inch-pounds of holding torque.

E. Alternative means of compliance with this AD which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplanes to a base for accomplishment of tests or modifications required by this AD.

Note.—Instructions to accomplish these tests and modifications are found in these Lockheed Service Bulletins:

(1) S/B 093-27-216, Revision 2, dated July 19, 1983, or later when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

(2) S/B 093-27-269, dated July 19, 1983, or later when approved by Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

(3) S/B 093-27-274, dated July 19, 1983, or later when approved by Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Dept. 63-11, U-33, B-1. These documents 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.

This amendment becomes effective November 24, 1985.

Issued in Seattle, Washington, on October 10, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-24823 Filed 10-17-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-140-AD; Amdt. 39-5156]

Airworthiness Directives; Lockheed Models 382, 382B/E/F/G Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that requires inspection and removal, as necessary, of certain Holex fire extinguisher cartridges (squibs) used in the fire extinguishers installed on Lockheed Models 382 and 382B/E/F/G series airplanes. The AD is necessary because some of the squibs may indicate electrical resistance beyond acceptable limits which could prevent the squib from discharging, when required, to extinguish an engine fire.

EFFECTIVE DATE: November 24, 1985.

ADDRESSES: The service bulletin applicable to this AD may be obtained from Lockheed-Georgia Company, Field Service Office, 86 South Cobb Drive, Marietta, Georgia 30063. It may be examined at FAA, Central Region, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia, or FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Arthur W. Nelson, ACE-140A, Atlanta Aircraft Certification Office, FAA, Central Region, 1075 Inner Loop Road, College Park, Georgia 30337; telephone (404) 763-7435.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring inspection and/or replacement of certain Holex fire extinguisher squibs on Lockheed Models 382 and 382 B/E/F/G series airplanes was published in the **Federal Register** on March 26, 1985 (50 FR 11891).

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments or objections were received.

After careful review of the available data, the FAA has determined that air safety and the public interest required the adoption of the rule as proposed.

The Lockheed-Georgia Company has accomplished the service bulletin requirements (and the requirements of this AD) on four airplanes prior to delivery, and on five undelivered airplanes. There remain twenty-two airplanes of U.S. registry which may be affected by this AD. It is estimated that the inspection of the two squibs per airplane would require 3 manhours to accomplish; replacement of the squibs, if necessary, would require 2 manhours to accomplish; and labor costs would be approximately $40 per manhour. Based on these figures, the total cost impact of this AD on U.S. operators would be $8,800.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Lockheed Models 382 or 382B/E/F/G series airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Lockheed: Applies to Lockheed Models 382, 382B, 382E, 382F, and 382G series Hercules airplanes with Lockheed serial numbers 4134, 4147, 4208, 4248, 4250, 4299, 4300, 4301, 4303, 4362, 4383, 4384, 4388, 4391, 4472, 4477, 4558, 4561, 4565, 4586, 4590 and 4763.

Caution: The fire extinguisher squibs are similar to a pistol cartridge. The squibs contain an explosive charge which could cause injury or death if accidentally fired. Do not expose squibs to heat or an electric current or strike or drop squibs. Failure to comply may result in serious injury or death to personnel.

Compliance is required within 30 days after the effective date of this AD, unless already accomplished.

To preclude misfiring of fire extinguisher systems, accomplish the following:

A. Inspect each fire extinguisher squib (two per airplane) in accordance with Lockheed Alert Service Bulletin A382-26-4 dated October 4, 1984, to determine part number and loading date. Squibs having Holex part number 4199-1 (Lockheed number 695679-15), and having a loading date of 1/84, must be replaced with a serviceable squib prior to further flight, except as provided in paragraph B., below.

B. If a serviceable replacement squib is not available, a part number 4199-1 squib having a loading date of 1/84 may be used during the interim, provided the following is accomplished:

(1) Make a resistance measurement of the squib in accordance with applicable maintenance instructions of Lockheed Alert Service Bulletin A382-26-4, dated October 4, 1984, before the aircraft is returned to service, and every 30 days thereafter, until an acceptable replacement squib has been installed or until the squib reaches its life limit, whichever occurs first.

(2) Ensure that the resistance measurement is, and remains at each 30 day check, within the tolerances specified in the applicable maintenance instructions referred to in Lockheed Alert Service Bulletin A382-26-4, dated October 4, 1984.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

D. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Atlanta Aircraft Certification Office, FAA, Central Region.

All persons affected by this proposal who have not already received the applicable service bulletin from the manufacturer may obtain copies upon request to Lockheed-Georgia Company, Field Service Office, 86 South Cobb Drive, Marietta, Georgia 30063. These documents may be examined at FAA, Central Region, Atlanta Aircraft Certification Office, 1075 Inner Loop Road, College Park, Georgia, or FAA Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington.

This Amendment becomes effective on November 24, 1985.

Issued in Seattle, Washington, on October 10, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-24821 Filed 10-17-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-105-AD; Admt. 39-5157]

Airworthiness Directives; McDonnell Douglas Model DC-10-10, -15, -30, -40, and KC-10A (Military) Series Airplanes, Fuselage Numbers 1 Through 388

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires periodic inspections and replacement, as necessary, of both forward and aft engine mount bolts on certain DC-10 airplanes. This action is prompted by a recent report of loose engine mount bolts. This condition, if not corrected, could result in the loss of an engine during flight.

EFFECTIVE DATE: November 4, 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 may also 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. Augusto U. Coo, Aerospace Engineer, Airframe Branch, ANM-121L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2824.

SUPPLEMENTARY INFORMATION: On October 5, 1983, Douglas Aircraft Company issued Service Bulletin 71-133 after two operators had reported finding a total of fifty-five engine mount bolts below the minimum torque specification for tightness on sixty-seven airplanes inspected. The service bulletin recommends replacement of bolts with bolts that have a lockwire hole in the bolt head, installation of tabs with a lockwire hole, and installation of lockwires. Revision 3 of the same bulletin was issued on July 17, 1985. In September 1985, during a visual inspection of Engine Number 3, an operator discovered a half inch gap between the engine forward mount and the pylon engine mount pad. Investigation revealed the gap was caused by the loosening of two mount bolts due to degraded torque values. There were two other engine inspections recently where small gaps were found in the same location. None of these loose bolts had the lockwire installed. As a result of these discoveries, McDonnell Douglas issued DC-10 Alert Service Bulletin A71-133, dated September 20, 1985, recommending the inspection of the engine-to-plyon forward and aft mount for proper clamping, and the inspection of mount bolts for proper torque. It also recommends visual inspection of mount bolts every 90 days to verify torque stripe alignment and immediate replacement of bolts found to be loose. If not corrected, this condition could allow bolts to separate from nuts, resulting in disengagement of the engine mount and loss of the engine.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires inspections and modification, if necessary, of engine-to-pylon forward and aft mounts.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon 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).

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, the Federal Aviation Administration amends §39.13 of Part 39 of the Federal Aviation Regulation as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10, -15, -30, -40, and KC-10A (Military) series airplanes, Fuselage Numbers 1 through 388, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of engine as a result of loose engine mount bolts, accomplish the following:

A. Within 30 days after the effective date of this AD, inspect the engine-to-pylon forward and aft mount for proper clamping and inspect engine mount bolts in accordance with Accomplishment Instructions in McDonnell Douglas DC-10 Alert Service Bulletin A71-133, dated September 20, 1985, or later FAA-approved revision. For newly installed engines, the inital inspection may be 90 days from the date of installation or 30 days after the effective date of this AD whichever is later.

B. If a gap greater than .002 inch is found, before further flight, remove and replace bolts and nuts in accordance with Accomplishment Instructions in McDonnell Douglas DC-10 Alert Service Bulletin A71-133, dated September 20, 1985, or later FAA-approved revision.

C. For mounts with no gap larger than .002 inch or for mounts with bolts and nuts replaced in accordance with paragraph B., above, ensure that bolts are torqued within proper limits and that torque stripes are painted. Conduct an inspection for torque stripe alignment and take corrective action, as necessary, at intervals not to exceed 90 days, in accordance with Accomplishment Instructions of McDonnell Douglas DC-10 Alert Service Bulletin A71-133, dated September 20, 1985, or later FAA-approved revision.

D. The repetitive inspections required by paragraph C., above, may be discontinued after the engine-to-pylon forward and aft mounts are modified in accordance with McDonnell Douglas DC-10 Service Bulletin 71-133, Revision 3, dated July 17, 1985, or later FAA-approved revision.

E. Alternate means of compliance with this AD which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a base for accomplishment of inspections required by this AD.

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 November 4, 1985.

Issued in Seattle, Washington, on October 10, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-24820 Filed 10-17-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-104-AD; Amdt. 39-5154]

Airworthiness Directives; McDonnell Douglas Model DC-10-10, -15, -30, and KC-10A (Military) Series Airplanes, and Airbus Industrie Model A300 Series Airplanes Equipped With Walter Kidde Fire Extinguishing Containers, P/N 895240

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires inspection for date of manufacture or rework of Walter Kidde disc assemblies (P/N 844103) installed in Walter Kidde fire extinguishers (P/N 895240) which are installed in the engine compartments of McDonnell Douglas

Model DC-10-10, -15, -30, and KC-10A (Military) series airplanes, and Airbus Industrie Model A300 series airplanes; it requires replacement of certain of these units with a serviceable part and prohibits their installation. This action is prompted by a report from the manufacturer that one lot, No. 006, containing 206 parts, was manufactured to temporarily revised specifications, which have since been changed. It has been determined that these parts do not perform properly when needed. This action is necessary to minimize the potential of inadequate disc rupture when the cartridge in the fire extinguishing container is activated, which would prevent discharge of the extinguishing agent.

DATE: Effective November 4, 1985.

Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable services 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 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. Roy McKinnon, Aerospace Engineer, Propulsion Branch, ANM-141L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2835.

SUPPLEMENTARY INFORMATION: Walter Kidde Corporation, the manufacturer of fire extinguisher disc assembly part number (P/N) 844103, has determined that 206 parts contained in Lot No. 006 were formed at a reduced pressure and were not annealed. The manufacturer has stated that these discs might not rupture properly when the cartridge is activated because they are thicker than their specification allows. These discs were manufactured from June 20, 1985, through September 6, 1985. It has been determined that the fire extinguisher containers in the engine compartments of McDonnell Douglas DC-10 series airplanes and Airbus A300 series airplanes may be equipped with these units.

McDonnell Douglas has issued Alert Service Bulletin A26-41, dated September 5, 1985, recommending inspection and return of all fire extinguisher containers (Walter Kidde P/N 895240) replaced since June 20, 1985; all spare containers manufactured or reworked from June 30, 1985, through December 31, 1985; and all spare disc assemblies (Walter Kidde P/N 844103), Lot No. 006, manufactured from June 20, 1985, through September 6, 1985.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD requires inspection and replacement, if necessary, of fire extinguishing containers, Walter Kidde (P/N 895240, and disc assemblies, Walter Kidde P/N 844103.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon 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).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulation as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10, -15, -30, and KC-10A (Military) series airplanes, and to Airbus Industrie Model A300 series airplanes, certificated in any category, equipped with Walter Kidde fire extinguishing containers, part number (P/N) 985240.

Compliance required as indicated unless previously accomplished.

To preclude potential failures of fire extinguishing containers, P/N 895240, to discharge on command, accomplish the following unless already accomplished:

A. Within fifteen (15) days after the effective date of this AD, if both fire extinguisher containers in any one engine position have been replaced since June 20, 1985, determine the date of manufacture or rework of each fire extinguisher container (Walter Kidde P/N 985240) in accordance with McDonnell Douglas DC-10 Alert Service Bulletin A26-41, dated September 5, 1985, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

B. If any one fire extinguisher container (Walter Kidde P/N 895240) has been replaced since June 20, 1985, accomplish the determination specified in paragraph A., above, within thirty (30) days after the effective date of this AD.

C. If the determination made pursuant to paragraph A. or B., above, establishes that any fire extinguisher container (Walter Kidde P/N 895240) was manufactured or reworked between June 20, 1985, and December 31, 1985, and there is not a "-R" after the serial number of the fire extinguisher container, before further flight, remove the fire extinguisher container and replace it with a serviceable unit, unless it is determined that the container was manufactured or reworked using a disc from other than Lot Number 006.

D. After effective date of this AD, no fire extinguisher container, (Walter Kidde P/N 895240), manufactured or reworked between June 20, 1985, and December 31, 1985, may be installed unless there is a "-R" after the serial number of the fire extinguisher container.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

F. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

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 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 November 4, 1985.

Issued in Seattle, Washington, on October 10, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-24822 Filed 10-17-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436, 440, And 455

[Docket No. 85N-0173]

Antibiotic Drugs; Sterile Ticarcillin Disodium and Clavulanate Potassium; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the final rule that amended the antibiotic drug regulations to provide for the inclusion of accepted standards for a new antibiotic drug, sterile ticarcillin disodium and clavulanate potassium. This document corrects editorial errors.

EFFECTIVE DATE: October 18, 1985.

FOR FURTHER INFORMATION CONTACT: Joan M. Eckert, Center for Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-19673 appearing on page 33516 in the issue for Tuesday, August 20, 1985, § 440.290b *Sterile ticarcillin disodium and clavulanate potassium* is corrected as follows:.

1. On Page 33518, in the second column, the first sentence in paragraph (b)(1) is corrected to read as follows: "Determine micrograms of ticarcillin per milligram of sample and milligrams of both ticarcillin and clavulanic acid per container."

2. On page 33519, in the first column, the last two sentences in paragraph (b)(1)(ii)(*b*)(*2*) are corrected by changing the word "milligrams" to read "milligrams."

Dated October 9, 1985.

Daniel L. Michels,

Director, Office of Compliance, Center for Drugs and Biologics.

[FR Doc. 85-24832 Filed 10-17-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Pyrantel Tartrate

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed for The Ohio Farmers Grain and Supply Association, providing for the use of a 48-gram-per-pound pyrantel tartrate premix in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are subsequently used to make complete swine feeds.

EFFECTIVE DATE: October 18, 1985.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: The Ohio Farmers Grain and Supply Association, P.O. Box M, Fostoria, OH 44830, is sponsor of NADA 138-940 submitted on its behalf by Pfizer, Inc. The NADA provides for use of a 48-gram-per-pound pyrantel tartrate premix in making 9.6- and 19.2-gram-per-pound pyrantel tartrate intermediate premixes. The intermediate premixes are for making complete swine feeds used for aid in prevention of migration and establishment, and for removal and control of large roundworm (*Ascaris suum*) infections; and for aid in prevention of establishment and for removal and control of nodular worm (*Oesophagostomum* spp.) infections.

The NADA is approved and the regulations are amended to reflect this approval. The basis for approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.24(d)(1)(i) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. In § 558.485 by adding new paragraph (a)(24) to read as follows:

§ 558.485 Pyrantel tartrate.

(a) * * *

(24) To 026439: 9.6 and 19.2 grams per pound, paragraph (e)(1) through (3) of this section.

* * * * *

Dated: October 4, 1985.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 85-24833 Filed 10-17-85; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Parts 1000 and 1040

[Docket No. 80N-0364]

Laser Products; Amendments to Performance Standard

Correction

In FR Doc. 85-19518, beginning on page 33682 in the issue of Tuesday, August 20, 1985, make the following corrections:

1. On page 33683, in the first column, the twelfth line of the last complete paragraph should read "function, e.g., to produce a light show,".

2. On page 33684, in the first column, the third line of the paragraph designated "8." should read "agency should qualify the term".

3. On page 33697, in the third column, in §1040.10, the last line of paragraph (e)(3)(iii) should read "aperture stop (cm^{-2})."

4. On page 33698, in the first column, in §1040.10, the date which appears at the beginning of the eleventh line of paragraph (f)(5)(iii) should read "August 20, 1986."

5. On the same page in the third column, in §1040.10, date which appears in the second and third lines of paragraph (f)(10) should read "August 20, 1986."

6. On the page 33701, in the first column, in §1040.10, the seventh line of paragraph (g)(10) should read "If the size, configuration, design, or".

7. On the same page, in the middle column, in §1040.10, the seventh line of paragraph (h)(1)(i) should read "in Tables I, II-A, II, III-A, III-B, and VI of".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 47

[T.D. ATF-215]

Importation of Articles on the United States Munitions Import List

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: On December 6, 1984, the Department of State published a final rule (49 FR 47682 (1984)) revising the International Traffic in Arms Regulations (ITAR). This final rule conforms the regulations in 27 CFR Part 47 to the revised ITAR and improves the regulatory scheme established under the Arms Export Control Act of 1976 to control the import of defense articles and defense services. This final rule also implements U.N. Security Council Resolution 558 and Executive Order 12532 (50 FR 36861 (1985)) regarding certain imports from South Africa.

DATE: This final rule is effective retroactive to October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Lonnie Muncy or Teri Byers, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20226, ATTN: Firearms and Explosives Imports Branch, Telephone No. (202) 566-7151.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11958 of January 18, 1977, as amended (42 FR 4311 (1977)) delegated authority to control exports of defense articles and defense services to the Secretary of State. The above Executive Order also delegated to the Secretary of the Treasury the authority to control the import of defense articles and services.

On January 25, 1974, 27 CFR Part 47 was published in its current form (39 FR 3251 (1974)). Since that time there has been no substantial revision to Part 47. On December 14, 1980, the Office of Munitions Control, Department of State, published a proposed comprehensive revision of the International Traffic in Arms Regulations (ITAR), issued under the Arms Export Control Act of 1976 (45 FR 83970 (1980)). On December 6, 1984, the Department of State published a final rule effective January 1, 1985, revising the ITAR (49 FR 47682 (1985)) which is codified at 22 CFR Parts 121-130. Pursuant to § 47.55, ATF is guided by the views of the Departments of State and Defense on matters affecting world peace, and the external security and foreign policy of the United States. After consultation with the Departments of State and Defense, the provisions of 27 CFR Part 47 are revised to conform to the State Department ITAR and Executive Order 12532 (50 FR 36861 (1985)).

Editorial Changes. Throughout the document we have amended all references to "26 CFR" to reflect "27 CFR" and "sec. 414 of the Mutual Security Act of 1954" to reflect "Sec. 38, Arms Export Control Act of 1976". Additionally, all references pertaining to the Canal Zone have been deleted as the Canal Zone is no longer under the jurisdiction of the United States pursuant to the Panama Canal Treaty of 1977.

Revision of the U.S. Munitions Import List. The defense articles controlled under Part 47 are known as the U.S. Munitions Import List. This List is an expurgated list of the articles controlled under the ITAR and known as the U.S. Munitions List. The organization of the U.S. Munitions Import List has basically stayed the same. The modifications which are made simplify and modernize the terminology in the various categories. Notable additions to the list are "combat shotguns" and "insurgency-counterinsurgency" type firearms having special military application in Category I. Muzzle-loading (blackpowder) firearms and bayonets have been deleted from Category I.

Procedures for becoming a Registered Importer. The procedures to register as an importer have not changed. However, the fees have been increased to conform to the fees charged to register as a manufacturer or exporter under the ITAR. This fee increase is the first since 1969. Additionally, refunds will be considered at the written request of the importer prior to the beginning of any year for which a refund is claimed.

Procedures for Filing ATF Form 6A. The procedures for filing ATF Form 6A, Release and Receipt of Firearms, Ammunition and Implements of War, are changed to require that the U.S. Customs officer and the importer return a copy to the address specified on the form instead of to the Regional Director (Compliance).

Restrictive Countries. The Department of State revised the list of countries or areas for which licenses and other approvals for shipments of defense articles and services will be denied. The list of countries or areas for which import restrictions apply in § 47.52 has been revised to conform to the Department of State list. Additionally, the U.S. maintains an arms embargo against South Africa pursuant to United Nations Security Council Resolution 418 of November 4, 1977. Exports of items covered by this embargo are consequently prohibited by the Department of State pursuant to the International Traffic in Arms Regulations (22 CFR 126.1). On December 13, 1984, the United States voted in favor of Security Council Resolution 558 regarding the import of arms, ammunition, and military vehicles produced in South Africa. The Department of State has confirmed that imports covered by this embargo which are subject to the import jurisdiction of the Office of Munitions Control (e.g., temporary imports) are also prohibited pursuant to 22 CFR 126.1. In addition, on September 9, 1985, the President signed Executive Order 12532 prohibiting trade and certain other transactions involving South Africa. Category XXII has been added to restrict the importation of defense articles, and technical data relating to defense articles, from South Africa. Finally, the United Nations import embargo on materials originating in Southern Rhodesia is no longer in force, and consequently an import embargo on items originating in Southern Rhodesia contained in § 47.52(c) is repealed.

Exemptions from Canada. The import permit exemption for articles in Categories I, II, III and IV coming from Canada has been eliminated. Import permits for these articles (except for certain components, parts and accessories) are required under Parts 178 and 179. This change will eliminate the inconsistency between the regulations and the confusion as to which components, parts and accessories require an import permit.

Administrative Procedure Act

Under § 47.54, the functions conferred under section 38 of the Arms Export Control Act of 1976 are excluded from the operation of Chapter 5 (Administrative Procedure) of Title 5, United States Code, with respect to Rule Making and Adjudicating. Such functions are concerned with "a military or foreign affairs function of the United States." Accordingly, this regulation may be adopted without prior publication of a notice of proposed rulemaking or opportunity for hearing.

Drafting Information

The principal authors of this final rule are Lonnie Muncy and Teri Byers, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 47

Administrative practice and procedures, Arms control, Arms and munitions, Authority delegations, Customs duties and inspection, Imports, Penalties, Reporting requirements.

Compliance with Executive Order 12291

This document is not subject to Executive Order 12291 of February 17, 1981 (46 FR 13193 (1981)) because it concerns a military or foreign affairs function of the United States.

Paperwork Reduction Act

The requirements to collect information contained in this final rule have been reviewed and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C., Chapter 35.

Forms

This chart displays the control numbers assigned to information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511.

Section where identified	Current OMB control No.
§ 47.32(a)	1512-0021
§ 47.32(b)	1512-0021
§ 47.33	1512-0021
§ 47.42	1512-0017
§ 47.45	1512-0019
§ 47.51	0625-0064

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required for this final rule under 5 U.S.C. 553(b), the provisions of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1165, 5 U.S.C. 601 et seq.) relating to the preparation of a regulatory flexibility analysis are not applicable to this final rule.

Authority and Issuance

Paragraph 1. The authority citation for Part 47 continues to read as follows:

Authority: Section 38, Pub. L. 94–329, 90 Stat. 744 (22 U.S.C. 2778); 44 U.S.C. 3504(h).

§ 47.1 [Amended]

Par. 2. Section 47.1 is amended by replacing "section 414 of the Mutual Security Act of 1954" with "Section 38, Arms Export Control Act of 1976".

Par. 3. Section 47.2 is revised by deleting paragraph (b) pertaining to the Panama Canal Zone, and redesignating paragraphs (c) and (d) as (b) and (c); deleting from paragraph (c) the phrase ". . . coming into the Panama Canal Zone and to importations of all List articles . . .", and adding the words "U.S. Munitions Import" before the word "List" in the second sentence of paragraph (c); in paragraph (d) replacing "the Mutual Security Act of 1954" with "Section 38, Arms Export Control Act of 1976"; and replacing "26 CFR" with "27 CFR" in all paragraphs. The section is revised to read as follows:

§ 47.2 Relation to other laws and regulations.

(a) All of those items on the U.S. Munitions Import List (see § 47.21) which are "firearms" or "ammunition" as defined in 18 U.S.C. 921(a) are subject to the interstate and foreign commerce controls contained in Chapter 44 of Title 18 U.S.C. and 27 CFR Part 178 and if they are "firearms" within the definition set out in 26 U.S.C. 5845(a) are also subject to the provisions of 27 CFR Part 179. Any person engaged in the business of importing firearms or ammunition as defined in 18 U.S.C. 921(a) must obtain a license under the provisions of 27 CFR Part 178, and if he imports firearms which fall within the definition of 26 U.S.C. 5845(a) must also register and pay special tax pursuant to the provisions of 27 CFR Part 179. Such licensing, registration and special tax requirements are in addition to registration under Subpart D of this part.

(b) The permit procedures of Subpart E of this part are applicable to all importations of articles on the U.S. Munitions Import List not subject to controls under 27 CFR Part 178 or 179. U.S. Munitions Import List articles subject to controls under 27 CFR Part 178 or 27 CFR Part 179 are subject to the import permit procedures of those regulations if imported into the United States (within the meaning of 27 CFR Parts 178 and 179).

(c) Articles on the U.S. Munitions Import List imported for the United States or any State or political subdivision thereof are exempt from the import controls of 27 CFR Part 178 but are not exempt from control under Section 38, Arms Export Control Act of 1976, unless imported by the United States or any agency thereof. All such importations not imported by the United States or any agency thereof shall be subject to the import permit procedures of Subpart E of this part.

Par. 4. Section 47.11 is amended by adding the definitions of "Defense articles" and Defense services" and by revising the terms "Firearms" and "United States" to read as follows:

§ 47.11 Meaning of terms.

* * * * *

Defense articles. Any item designated in § 47.21 or § 47.22. This term includes models, mockups, and other such items which reveal technical data directly relating to § 47.21 or § 47.22. For purposes of Category XXII, any item enumerated on the U.S. Munitions List (22 CFR Part 121).

Defense services. (a) the furnishing of assistance, including training, to foreign persons in the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles, whether in the United States or abroad; or

(b) the furnishing to foreign persons of any technical data, whether in the United States or abroad.

* * * * *

Firearms. a weapon, and all components and parts therefor, not over .50 caliber which will or is designed to or may be readily converted to expel a projectile by the action of an explosive, but shall not include BB and pellet guns, and muzzle loading (black powder) firearms (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) or firearms covered by Category I(a) established to have been manufactured in or before 1898.

* * * * *

United States. When used in the geographical sense, includes the several States, the Commonwealth of Puerto Rico, the insular possessions of the United States, the District of Columbia, and any territory over which the United States exercises any powers of administration, legislation, and jurisdiction.

* * * * *

Par. 7. Section 47.21 is revised to read as follows:

§ 47.21 The U.S. Munitions Import List.

The U.S. Munitions List compiled by the Department of State, Office of Munitions Control, and published at 22 CFR 121.1, with the deletions indicated, has been adopted as an enumeration of the defense articles subject to controls under this part. The expurgated list, set out below, shall, for the purposes of this part, be known as the U.S. Munitions Import List:

The U.S. Munitions Import List

Category I—Firearms

(a) Nonautomatic and semiautomatic firearms, to caliber .50 inclusive, combat shotguns, and shotguns with barrels less than 18 inches in length, and all components and parts for such firearms.

(b) Automatic firearms and all components and parts for such firearms to caliber .50 inclusive.

(c) Insurgency-counterinsurgency type firearms of other weapons having a special military application (e.g. close assault weapons systems) regardless of caliber and all components and parts for such firearms.

(d) Firearms silencers and suppressors, including flash suppressors.

(e) Riflescopes manufactured to military specifications and specifically designed or modified components therefor.

Note: Rifles, carbines, revolvers, and pistols, to caliber .50 inclusive, combat shotguns, and shotguns with barrels less than 18 inches in length are included under Category I(a). Machineguns, submachineguns, machine pistols and fully automatic rifles to caliber .50 inclusive are included under Category I(b).

Category II—Artillery Projectors

(a) Guns over caliber .50, howitzers, mortars, and recoilless rifles.

(b) Military flamethrowers and projectors.

(c) Components, parts, accessories, and attachments for the articles in paragraphs (a) and (b) of this category, including but not limited to mounts and carriages for these articles.

Category III—Ammunition

(a) Ammunition for the arms in Categories I and II of this section.

(b) Components, parts, accessories, and attachments for articles in paragraph (a) of this category, including but not limited to cartridge cases, powder bags, bullets, jackets, cores, shells (excluding shotgun shells), projectiles, boosters, fuzes and components therefor, primers, and other detonating devices for such ammunition.

(c) Ammunition belting and linking machines.

(d) Ammunition manufacturing machines and ammunition loading machines (except handloading ones).

Note: Cartridge and shell casings are included under Category III unless, prior to their importation, they have been rendered useless beyond the possibility of restoration for use as a cartridge or shell casing by means of heating, flame treatment, mangling, crushing, cutting, or popping.

Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines

(a) Rockets (including but not limited to meteorological and other sounding rockets), bombs, grenades, torpedoes, depth charges, land and naval mines, as well as launchers for such defense articles, and demolition blocks and blasting caps.

(b) Launch vehicles and missile and anti-missile systems including but not limited to guided, tactical and strategic missiles, launchers, and systems.

(c) Apparatus, devices, and materials for the handling, control, activation, monitoring, detection, protection, discharge, or detonation of the articles in paragraphs (a) and (b) of this category. Articles in this category include, but are not limited to, the following: Fuses and components for the items in this category, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, guidance system equipment and parts, launching racks and projectors, pistols (exploders), igniters, fuze arming devices, intervalometers, guided missile launchers and specialized handling equipment, and hardened missile launching facilities.

(d) Missile and space vehicle powerplants.

(e) Military explosive excavating devices.

(f) Ablative materials fabricated or semifabricated from advanced composites (*e.g.*, silica, graphite, carbon, carbon/carbon, and boron filaments) for the articles in this category that are derived directly from or specifically developed or modified for defense articles.

(g) Non/nuclear warheads for rockets and guided missiles.

(h) All specifically designed components or modified components, parts, accessories, attachments, and associated equipment for the articles in this category.

Note: Military demolition blocks and blasting caps referred to in Category IV(a) do not include the following articles:

(a) Electric squibs.

(b) No. 6 and No. 8 blasting caps, including electric ones.

(c) Delay electric blasting caps (including No. 6 and No. 8 millisecond ones).

(d) Seismograph electric blasting caps (including SSS, Static-Master, Vibrocap SR, and SEISMO SR).

(e) Oil well perforating devices.

Note: Category V of "Munitions List" deleted as inapplicable to imports.

Category VI—Vessels of War and Special Naval Equipment

(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels and service craft, experimental types of naval ships and any vessels specifically designed or modified for military purposes.

(b) Turrets and gun mounts, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments, and accessories specifically designed or modified for combatant vessels.

(c) Mine sweeping equipment, components, parts, attachments and accessories specifically designed or modified therefor.

(d) Harbor entrance detection devices (magnetic, pressure, and acoustic ones) and controls and components therefor.

(e) Naval nuclear propulsion plants, their land prototypes and special facilities for their construction, support and maintenance. This includes any machinery, device, component, or equipment specifically developed or designed or modified for use in such plants or facilities.

Note: The term "vessels of war" includes, but is not limited to the following:

(a) Combatant vessels:

(1) Warships (including nuclear-powered versions):

(i) Aircraft carriers (CV, CVN)

(ii) Battleships (BB)

(iii) Cruisers (CA, CG, CGN)

(iv) Destroyers (DD, DDG)

(v) Frigates (FF, FFG)

(vi) Submarines (SS, SSN, SSBN, SSG, SSAG).

(2) Other Combatant Classifications:

(i) Patrol Combatants (PC, PHM)

(ii) Amphibious Helicopter/Landing Craft Carriers (LHA, LPD, LPH)

(iii) Amphibious Landing Craft Carriers (LKA, LPA, LSD, LST)

(iv) Amphibious Command Ships (LCC)

(v) Mine Warfare Ships (MSO).

(b) Auxiliaries:

(1) Mobile Logistics Support:

(i) Under way Replenishment (AD, AF, AFS, AO, AOE, AOR)

(ii) Material Support (AD, AR, AS).

(2) Support Ships:

(i) Fleet Support Ships (ARS, ASR, ATA, ATF, ATS)

(ii) Other Auxiliaries (AG, AGDS, AGF, AGM, AGOR, AGOS, AGS, AH, AK, AKR, AOG, AOT, AP, APB, ARC, ARL, AVM, AVT).

(c) Combatant Craft:

(1) Patrol Craft:

(i) Coastal Patrol Combatants (PB, PCF, PCH, PTF)

(ii) River, Roadstead Craft (ATC, PBR).

(2) Amphibious Warfare Craft:

(i) Landing Craft (AALC, LCAC, LCM, LCPL, LCPR, LCU, LWT, SLWT)

(ii) Special Warfare Craft (LSSC, MSSC, SDV, SWCL, SWCM).

(3) Mine Warfare Craft:

(i) Mine Countermeasures Craft (MSB, MSD, MSI, MSM, MSR).

(d) Support and Service Craft:

(1) Tugs (YTB, YTL, YTM)

(2) Tankers (YO, YOG, YW)

(3) Lighters (YC, YCF, YCV, YF, YFN, YFNB, YFNX, YFR, YFRN, YFU, YG, YGN, YOGN, YON, YOS, YSR, YWN)

(4) Floating Dry Docks (AFDB, AFDL, AFDM, ARD, ARDM, YFD)

(5) Miscellaneous (APL, DSRV, DSV, IX, NR, YAG, YD, YDT, YFB, YFND, YEP, YFRT, YHLC, YM, YNG, YP, YPD, YR, YRB, YRBN, YRDH, YRDM, YRR, YRST, YSD).

(e) Coast Guard Patrol and Service Vessels and Craft:

(1) Coast Guard Cutters (CGC, WHEC, WMEC)

(2) Partol Craft (WPB)

(3) Icebreakers (WAGB)

(4) Oceanography Vessels (WAGO)

(5) Special Vessels (WIX)

(6) Buoy Tenders (WLB, WLM, WLI, WLR, WLIC)

(7) Tugs (WYTM, WYTL)

(8) Light Ships (WLV).

Category VII—Tanks and Military Vehicles

(a) Military type armed or armored vehicles, military railway trains, and vehicles specifically designed or modified to accommodate mountings for arms or other specialized military equipment or fitted with such items.

(b) Military tanks, combat engineer vehicles, bridge launching vehicles, halftracks and gun carriers.

(c) Self-propelled guns and howitzers.

Note: Category VII (d) and (e) of "Munitions List" deleted as inapplicable to imports.

(f) Amphibious vehicles.

(g) Engines specifically designed or modified for the vehicles in paragraphs (a), (b), (c), and (f) of this category.

(h) All specifically designed or modified components and parts, accessories, attachments, and associated equipment for the articles in this category, including but not limited to military bridging and deep water fording kits.

Note: An "amphibious vehicle" in Category VII(f) is an automotive vehicle or chassis which embodies all-wheel drive, which is equipped to meet special military requirements, and which has sealed electrical systems and adaptation features for deep water fording.

Category VIII—Aircraft, Spacecraft, and Associated Equipment

(a) Aircraft, including but not limited to helicopters, non-expansive balloons, drones and lighter-than-air aircraft, which are specifically designed, modified, or equipped for military purposes. This includes but is not limited to the following military purposes: gunnery, bombing, rocket or missile launching, electronic and other surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel dropping, airborne warning and control, and military training.

Note: Category VIII (b) through (j) and Categories IX, X, XI, XII and XIII of "Munitions List" deleted as inapplicable to imports.

Note: In Category VIII, "aircraft" means aircraft designed, modified, or equipped for a military purpose, including aircraft described as "demilitarized." All aircraft bearing an original military designation are included in Category VIII. However, the following aircraft are not so included so long as they have not been specifically equipped, reequipped, or modified for military operations:

(a) Cargo aircraft bearing "C" designations and numbered C-45 through C-118 inclusive, and C-121 through C-125 inclusive, and C-131, using reciprocating engines only.

(b) Trainer aircraft bearing "T" designations and using reciprocating engines or turboprop engines with less than 600 horsepower (s.h.p.).

(c) Utility aircraft bearing "U" designations and using reciprocating engines only.

(d) All liaison aircraft bearing an "L" designation.

(e) All observation aircraft bearing "O" designations and using reciprocating engines.

Category XIV—Toxicological Agents and Equipment and Radiological Equipment

(a) Chemical agents, including but not limited to lung irritants, vesicants, lachrymators, and tear gases (except tear gas formulations containing 1% or less CN or CS), sternutators and irritant smoke, and nerve gases and incapacitating agents.

(b) Biological agents.

(c) Equipment for dissemination, detection, and identification of, and defense against, the articles in paragraphs (a) and (b) of this category.

(d) Nuclear radiation detection and measuring devices manufactured to military specification.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this category.

Note: A chemical agent in Category XIV(a) is a substance having military application which by its ordinary and direct chemical action produces a powerful physiological effect. The term "chemical agent" includes, but is not limited to, the following chemical compounds:

(a) Lung irritants:

(1) Diphenylcyanoarsine (DC).

(2) Fluorine (but not fluorene).

(3) Trichloronitro methane (chloropicrin PS).

(b) Vesicants:

(1) B-Chlorovinyldichloroarsine (Lewisite, L).

(2) Bis(dichlorethyl) sulphide (Mustard Gas, HD or H).

(3) Ethyldichloroarsine (ED).

(4) Methyldichloroarsine (MD).

(c) Lachrymators and tear gases:

(1) A-Brombenzyl cyanide (BBC).

(2) Chloroacetophenone (CN).

(3) Dibromodimethyl ether.

(4) Dichlorodimethyl ether (ClCi).

(5) Ethyldibromoarsine.

(6) Phenylcarbylamine chloride.

(7) Tear gas solutions (CNB and CNS).

(8) Tear gas orthochlorobenzalmalononitrile (CS).

(d) Sternutators and irritant smokes:

(1) Diphenylamine chloroarsine (Adamsite, DM).

(2) Diphenylchloroarsine (BA).

(3) Liquid pepper.

(e) Nerve agents, gases, and aerosols. These are toxic compounds which affect the nervous system, such as:

(1) Dimethylaminoethoxycyanophosphine oxide (GA).

(2) Methylisopropoxyfluorophosphine oxide (GB).

(3) Methylpinacolyloxyfluoriphosphine oxide (GD).

(f) Antiplant chemicals, such as: Butyl 2-chloro-4-fluorophenoxyacetate (LNF).

Category XV—(Reserved)

Category XVI—Nuclear Weapons Design and Test Equipment

(a) Any article, material, equipment, or device, which is specifically designed or modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices.

(b) Any article, material, equipment, or device, which is specifically designed or modified for use in the devising, carrying out, or evaluating of nuclear weapons tests or any other nuclear explosions, except such items as are in normal commercial use for other purposes.

Note: Categories XVII, XVIII, and XIX of "Munitions List" deleted as inapplicable to imports.

Category XX—Submersible Vessels, Oceanographic and Associated Equipment

(a) Submersible vessels, manned and unmanned, designed or modified for military purposes or having independent capability to maneuver vertically or horizontally at depths below 1,000 feet, or powered by nuclear propulsion plants.

(b) Submersible vessels, manned or unmanned, designed or modified in whole or in part from technology developed by or for the U.S. Armed Forces.

(c) Any of the articles in Category VI and elsewhere in this part specifically designed or modified for use with submersible vessels, and oceanographic or associated equipment assigned a military designation.

(d) Equipment, components, parts, accessories, and attachments specifically designed for any of the articles in paragraphs (a) and (b) of this category.

Category XXI—Miscellaneous Articles

Any article not specifically enumerated in the other categories of the U.S. Munitions List which has substantial military applicability and which has been specifically designed or modified for military purposes. The decision on whether any article may be included in this category shall be made by the Director, Office of Munitions Control, Department of State, with the concurrence of the Department of Defense.

Category XXII—South Africa

(a) Defense articles enumerated on the U.S. Munitions List (22 CFR Part 121).

(b) Technical data relating to defense articles enumerated on the U.S. Munitions List.

Note: This category is applicable only to South Africa.

Note: "Technical data" means, for purposes of this category:

(1) Classified information relating to defense articles and defense services;

(2) Information covered by an invention secrecy order;

(3) Information which is directly related to the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles. This includes, for example, information in the form of blueprints, drawings, photographs, plans, instructions, computer software and documentation. This also includes information which advances the state of the art of articles on the U.S. Munitions List. This does not include information concerning general scientific, mathematical or engineering principles.

Par. 6. Section 47.22 is revised by changing the definition of forgings, castings, and machined bodies. The section is revised to read as follows:

§ 47.22 Forgings, castings, and machined bodies.

Articles on the U.S. Munitions Import List include articles in a partially completed state (such as forgings, castings, extrusions, and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles. If the end-item is an article on the U.S. Munitions Import List, (including components, accessories, attachments and parts) then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to the controls of this part, except for such items as are in normal commercial use.

§ 47.31 [Amended]

Par. 7. Section 47.31 is amended by replacing "Import List" with "U.S. Munitions Import List".

Par. 8. Section 47.32 is revised to change the heading of the section; to increase the registration fees in paragraph (b); to amend the procedures for refund of fees paid, and replace "Imports List" with "U.S. Munitions Import List" in paragraph (c); and to add the Office of Management and Budget control number for Form 4587 at the end of the section.

Section 47.32 is amended by revising paragraphs (b) and (c) and adding the OMB control number to the end of the section to read as follows:

§ 47.32 Application for registration and refund of fee.

* * * * *

(b) Registration may be effected for periods of from 1 to 5 years at the option of the registrant by identifying on Form 4587 the period of registration desired. The registration fees are as follows:

1 year	$250
2 years	500
3 years	700
4 years	850
5 years	1,000

(c) Fees paid in advance for whole future years of a multiple year registration will be refunded upon request if the registrant ceases to engage in importing articles on the U.S. Munitions Import List. A request for a refund must be submitted to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Attention: Firearms and Explosives Imports Branch, prior to the beginning of any year for which a refund is claimed.

(Approved by the Office of Management and Budget under control number 1512-0021)

Par. 9. Section 47.33 is amended to add the Office of Management and Budget control number for Form 4587 at the end of the section to read as follows:

§ 47.33 Notification of changes in information furnished by registrants.

* * * * *

(Approved by the Office of Management and Budget under control number 1512-0021)

§ 47.34 [Amended]

Par. 10. Section 47.34 is amended by replacing "26 CFR" with "27 CFR" in paragraph (a); and replacing "Import List" with "U.S. Munitions Import List" in paragraph (b).

Par. 11. The heading of Subpart E is revised by replacing "Importations Other Than Those Subject to Import Controls Under 26 CFR Parts 178 and 179" with "Permits". The subpart heading is revised to read as follows:

* * * * *

Subpart E—Permits

* * * * *

Par. 12. Section 47.41 is revised by deleting paragraph (b) pertaining to the Panama Canal Zone and redesignating paragraphs (c) and (d) as (b) and (c); replacing "26 CFR" with "27 CFR", and replacing "Imports List" with "U.S. Munitions Import List" in paragraphs (a) through (c); and adding additional categories which are not exempt from import controls in paragraph (c). The section is revised to read as follows:

§ 47.41 Permit requirement.

(a) Articles on the U.S. Munitions Import List not subject to import control under 27 CFR Parts 178 and 179 shall not be imported into the United States except pursuant to a permit under this subpart issued by the Director.

(b) Articles on the U.S. Munitions Import List intended for the United States or any State or political subdivision thereof, or the District of Columbia, which are exempt from import controls of 27 CFR 178.115 shall not be imported into the United States, except by the United States or agency thereof, without first obtaining a permit issued by the Director under this subpart.

(c) A permit is not required for the importation of (1) the U.S. Munitions Import List articles from Canada not subject to the import controls of 27 CFR Part 178 or 179, except articles enumerated in Categories I, II, III, IV, VI(e), VIII(a), XVI, and XX; and nuclear weapons strategic delivery systems and all specifically designed components, parts, accessories, attachments, and associated equipment thereof (see Category XXI); or (2) minor components and parts for Category I(a) firearms, except barrels, cylinders, receivers (frames) or complete breech mechanisms, when the total value does not exceed $500 wholesale in any single transaction.

Par. 13. Section 47.42 is revised by adding the phrase "Part I" after the phrase "Form 6"; and to add the Office of Management and Budget control number for Form 6 Part I at the end of the section. The section is revised to read as follows:

§ 47.42 Application for permit.

Persons required to obtain a permit as provided in § 47.41 shall file a Form 6 Part I, in triplicate, with the Director. On approval of the application by the Director, he will return the original to the applicant. Such approved application will serve as the permit.

(Approved by the Office of Management and Budget under control number 1512-0017)

§ 47.44 [Amended]

Par. 14. Section 47.44(a) is amended by replacing "section 414 of the Mutual Security Act of 1954" with "Section 38, Arms Export Control Act of 1976".

Par. 15. Section 47.45 is revised to change the procedure for filing Form 6A with the Director; replacing "regional regulatory administrator" with "Director"; and to add the Office of Management and Budget control number for Form 6A at the end of the section. The section is revised to read as follows:

§ 47.45 Importation.

(a) Articles subject to the import permit procedures of this subpart imported into the United States may be released from Customs custody to the person authorized to import same upon his showing that he has a permit from the Director for the importation of the article or articles to be released. In obtaining the release from Customs custody of an article imported pursuant to permit, the permit holder shall prepare Form 6A, in duplicate, and furnish the original and copy to the Customs officer releasing the article. The Customs officer shall, after certification, forward the original Form 6A to the address specified on the form.

(b) Within 15 days of the date of their release from Customs custody, the importer of the articles released shall forward to the address specified on the form a copy of Form 6A on which shall be reported any error or discrepancy appearing on the Form 6A certified by Customs. (Approved by the Office of Management and Budget under control number 1512-0019)

§ 47.46 [Amended]

Par. 16. Section 47.46 is amended to add the phrase "under this part" at the end of the first sentence.

Par. 17. Section 47.51 is revised to replace "Form FC-826/ATF 4522" with "Form ITA-645P/ATF-4522/DSP53"; replace "Import List" with "U.S. Munitions Import List"; replace "Delivery Verification (Form FC-908)" with "Delivery Verification Certificate

(U.S. Department of Commerce Form ITA-647P)"; and to add the Office of Management and Budget control number for Form 4522 at the end of the section. The section is revised to read as follows:

§ 47.51 Import certification and delivery verification.

Pursuant to agreement with the United States, certain foreign countries are entitled to request certification of legality of importation of articles on the U.S. Munitions Import List. Upon request of a foreign government, the Director will certify the importation, on Form ITA-645P/ATF-4522/DSP53, for the U.S. importer. Normally, the U.S. importer will submit this form to the Director at the time he applies for an import permit. This document will serve as evidence to the government of the exporting company that the U.S. importer has complied with import regulations of the U.S. Government and is prohibited from diverting, transshipping, or reexporting the material described therein without the approval of the U.S. Government. Foreign governments may also require documentation attesting to the delivery of the material into the United States. When such delivery certification is requested by a foreign government, the U.S. importer may obtain directly from the U.S. District Director of Customs the authenticated Delivery Verification Certificate (U.S. Department of Commerce Form ITA-647P) for this purpose.

(Approved by the Office of Management and Budget under control number 0625-0064)

Par. 18. Section 47.52 is revised to reflect the addition and deletion of certain restrictive countries in paragraph (a) and to revise paragraph (b) and (c).

Section 47.52 is amended by revising paragraphs (a)-(c) to read as follows:

§ 47.52 Import restrictions applicable to certain countries.

(a) It is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services originating in certain countries or areas. This policy also applies to imports from these countries or areas. This policy applies to Albania, Bulgaria, Cuba, Czechoslovakia, East Germany, Estonia, Hungary, Kampuchea, Latvia, Lithuania, North Korea, Outer Mongolia, Poland, Rumania, the Soviet Union and Vietnam. This policy applies to countries or areas with respect to which the United States maintains an arms embargo. It also applies when an import would not be in furtherance of world peace and the security and foreign policy of the United States.

(b) A defense article authorized for importation under this part may not be shipped on a vessel, aircraft or other means or conveyance which is owned or operated by, or leased to or from, any of the countries or areas covered by paragraph (a) of this section.

(c) In accordance with United Nations Security Council Resolution 558 of December 13, 1984, and Executive Order 12532 of September 9, 1985, it is the policy of the United States to deny licenses and other approvals with respect to defense articles, and technical data relating to defense articles, from South Africa.

* * * * *

§ 47.53 [Amended]

Par. 19. Section 47.53(b) is amended to replace "Import List" with "U.S. Munitions Import List".

§ 47.54 [Amended]

Par. 20. Section 47.54 is amended to replace "section 414 of the Mutual Security Act of 1954" with "Section 38, Arms Export Control Act of 1976".

§ 47.56 [Amended]

Par. 21. Section 47.56 is amended to replace "26 CFR" with "27 CFR", and "Import List" with "U.S. Munitions Import List".

§ 47.61 [Amended]

Par. 22. Section 47.61 is amended to replace "Import List" with "U.S. Munitions Import List" in paragraphs (a) and (b); and to increase the fine from "$25,000" to "$100,000" in paragraph (c).

§ 47.62 [Amended]

Par. 23. Section 47.62 is amended to increase the fine from "$25,000" to "$100,000".

§ 47.63 [Amended]

Par. 24. Section 47.63 is amended to replace "Import List" with "U.S. Munitions Import List" and to add a citation to the source reference at the end of the section to read as follows: "(18 U.S.C. 545)".

Signed: October 7, 1985.

Stephen E. Higgins,

Director.

Approved: October 9, 1985.

David D. Queen,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-24719 Filed 10-17-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 500

Migrant and Seasonal Agricultural Worker Protection Regulations; Issuance of Farm Labor Contractor Certificates of Registration by States

AGENCY: Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: This is a procedural amendment authorizing the State of New Jersey by agreement with the Department of Labor to issue Farm Labor Contractor Certificates of Registration and Farm Labor Contractor Employee Certificates of Registration in compliance with the Migrant and Seasonal Agricultural Worker Protection Act and regulations issued thereunder. This document lists the State of New Jersey as authorized to issue farm labor contractor certificates of registration and farm labor contractor employee certificates of registration.

EFFECTIVE DATE: October 18, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8305.

SUPPLEMENTARY INFORMATION: The Migrant and Seasonal Agricultural Worker Protection Act authorizes the Secretary to enter into agreements with Federal and State agencies to utilize their facilities and services, and to delegate to such agencies certain authority, other than rulemaking, as the Secretary deems necessary in carrying out the provisions of the Act. Under this authority the State of New Jersey has entered into an agreement with the Department of Labor to continue to receive, handle, and process applications and issue certificates of registration under the Migrant and Seasonal Agricultural Worker Protection Act. The State of New Jersey previously performed these functions under an agreement which had been entered into pursuant to the Farm Labor Contractor Registration Act, as amended. The Farm Labor Contractor Registration Act was repealed and replaced by the Migrant and Seasonal Agricultural Worker Protection Act, effective April 14, 1983.

This document incorporates into the existing regulations these delegated functions of the Secretary to the State of New Jersey and lists the State as being authorized to issue farm labor contractor certificates of registration and farm labor contractor employee certificates of registration under the Migrant and Seasonal Agricultural Worker Protection Act which are entitled to the same recognition in all states as if they had been issued by the Department of Labor.

The authority conferred by section 513 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1863) requires the issuance of regulations which authorize the Department to enter into agreements with states to carry out delegated functions, such as the issuance of certificates of registration on behalf of the Secretary. These regulations were issued in final form on August 12, 1983 (FR 36761 *et seq.*) and appear at 29 CFR 500.155 through 500.162. Agreements entered into pursuant to this authority are effective upon execution and notice to the public thereof is required. The State of New Jersey has executed such agreement, effective April 30, 1985 and notice is hereby given.

This finding is made because the agreement with the State of New Jersey became effective upon its execution (April 30, 1985) and affects only the procedural processing of certificates of registration.

Executive Order 12291

The Department has determined that the amendment is procedural in character and announces an agreement between a State and the Department of Labor. Therefore, this rule is not classified as a "major rule" under Executive Order 12291 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b) the requirements of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

This document was prepared under the direction and control of Herbert J. Cohen, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, Department of Labor.

Publication in Final

The Department of Labor has determined, pursuant to 5 U.S.C. 553(b)(B), that good cause exists for waiving public comment on this procedural amendment to the regulation because such comment is unnecessary. This finding is made because section 513 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1863) and the regulations issued thereunder at 29 CFR 500.155 through 500.162 authorize the Secretary to enter into agreements with State agencies to use their facilities and services to perform functions delegated to them by the Secretary as may be useful in carrying out this Act. Such agreements are effective upon their execution as noted above and merely require notice of such execution.

Effective Date

The Department has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. Therefore, this amendment shall be effective October 18, 1985.

Paperwork Reduction Act

As the incorporation of the agreement with the State of New Jersey requires the collection of no additional information, additional approval of the Office of Management and Budget is not required. See 44 U.S.C. 3501 *et seq.*

List of Subjects in 29 CFR Part 500

Administrative practice and procedure, Agriculture, Aliens, Carpools, Farmers, Health, Housing, Housing standards, Immigration, Insurance, Investigations, Labor, Manpower training programs, Migrant worker, Migrant labor, Motor carriers, Motor vehicle safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Safety, Transportation, Wages.

For reasons set out in the preamble, Part 500 of Chapter V of Title 29 of the Code of Federal Regulations is amended as set forth below:

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION

1. The authority citation for Part 500 continues to read as follows:

Authority: Pub. L. 97-470, 96 Stat. 2583 (29 U.S.C. 1801-1872) and Secretary's Order No. 6-84, 49 FR 32473.

2. Section 500.160 is amended by revising paragraph (a) to read as follows:

§ 500.160 Approved State plans.

(a) The Secretary, in accordance with the authority referred to in § 500.155 of this part, has delegated the following functions to the States listed herein below:

State	Function
Florida	Receive, handle, process applications and issue certificates of registration.
New Jersey	Receive, handle, process applications and issue certificates of registration.
Virginia	Receive, handle, process applications and issue certificates of registration.

Signed at Washington, DC, this 10th day of October, 1985.

Susan R. Meisinger,

Deputy Under Secretary, Employment Standards Administration.

Herbert J. Cohen,

Deputy Administrator, Wage and Hour Division, Employment Standards Administration.

[FR Doc. 85-24938 Filed 10-17-85; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 505

[Army Reg. 340-21]

Privacy Act of 1974, as Amended: Army Privacy Act Program

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This final rule revises Army Regulation 340-21, The Army Privacy Program, the Army implementation of the Privacy Act of 1974 (Pub. L. 93-579), Part 505 of 32 CFR. The revision is necessary to bring Army rules for compliance with the Act up-to-date, and incorporates changes occasioned by DOD Directive 5400.11, June 9, 1982, and DOD Regulation 5400.11-R, August 31, 1983, the Department of Defense Privacy Program.

EFFECTIVE DATE: October 18, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Edgington, Headquarters, Department of the Army, Office of The Assistant Chief of Staff for Information Management (DAIM-RMS-S), 2461 Eisenhower Avenue, Alexandria, Virginia 22331-0301. 703-325-6163.

SUPPLEMENTARY INFORMATION: On October 17, 1984, the Department of the Army published for comment in the **Federal Register** (49 FR 40589) proposed revisions which were required to update Army rules concerning the administration of the Privacy Act. Interested persons were invited to submit comments on the proposed changes by November 1, 1984. No comments were received.

Minor textual changes of an editorial nature have been made to improve clarity and readability, and to reflect realignment of staff responsibilities.

The Department of the Army has determined that this revision is not a major rule as defined by Executive Order 12291, is not subject to the relevant provisions of the Regulatory Flexibility Act of 1980 (Pub. L. 90-354) and does not contain reporting or recordkeeping requirements under the criteria of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly, Part 505 of 32 CFR is revised to read as follows:

PART 505—THE ARMY PRIVACY PROGRAM

Sec.
505.1 General information.
505.2 Individual rights of access and amendment.
505.3 Disclosure of personal information to other agencies and third parties.
505.4 Recordkeeping requirements Under the Privacy Act.
505.5 Exemptions.
Appendix A—Example System of Records Notice
Appendix B—Example of Report for New System of Records
Appendix C—Provisions of the Privacy Act from which a General or Specific Exemption may be Claimed
Appendix D—Glossary of Terms

Authority: 5 U.S.C. 552a (Pub. L. 93-579); DoD Directive 5400.11, June 9, 1982; and DoD Regulation 5400.11-R, August 31, 1983.

§ 505.1 General information.

(a) *Purpose.* This regulation sets forth policies and procedures that govern personal information kept by the Department of the Army in systems of records.

(b) *References*—(1) *Required publications.* (i) AR 195-2, Criminal Investigation Activities. (Cited in § 505.2(j))

(ii) AR 340-17, Release of Information and Records from Army Files. (Cited in §§ 505.2(h) and 505.4(d))

(iii) AR 430-21-8, The Army Privacy Program; System Notices and Exemption Rules for Civilian Personnel Functions. (Cited in § 505.2(i))

(iv) AR 380-380, Automated System Security. (Cited in § 505.4(d) and (f))

(2) *Related publications.* (A related publication is merely a source of additional information. The user does not have to read it to understand this regulation.)

(i) DOD Directive 5400.11, DOD Privacy Program.

(ii) DOD Regulation 5400.11-R, DOD Privacy Program.

(iii) Treasury Fiscal Requirements Manual. This publication can be obtained from The Treasury Department, 15th and Pennsylvania Ave., NW, Washington, DC 20220

(c) *Explanation of abbreviations and terms.* Abbreviations and special terms used in this regulation are explained in the glossary.

(d) *Responsibilities.* (1) The Assistant Chief of Staff for Information Management (ACISM) is responsible for issuing policy and guidance for the Army Privacy Program in consultation with the Army General Counsel.

(2) Heads of Army Staff agencies, field operating agencies, major Army commands (MACOMS), and subordinate commands are responsible for supervision and execution of the privacy program in functional areas and activities under their command.

(3) Heads of Joint Service agencies or commands for which the Army is the Executive Agent, or otherwise has responsibility for providing fiscal, logistical, or administrative support, will adhere to the policies and procedures in this regulation.

(4) Commander, Army and Air Force Exchange Service (AAFES), is responsible for the supervision and execution of the privacy program within that command pursuant to this regulation.

(e) *Policy.* Army Policy concerning the privacy rights of individuals and the Army's responsibilities for compliance with operational requirements established by the Privacy Act are as follows:

(1) Protect, as required by the Privacy Act of 1974 (5 U.S.C. 552a), as amended, the privacy of individuals from unwarranted intrusion. Individuals covered by this protection are living citizens of the United States and aliens lawfully admitted for permanent residence.

(2) Collect only the personal information about an individual that is legally authorized and necessary to support Army operations. Disclose this information only as authorized by the Privacy Act and this regulation.

(3) Keep only personal information that is timely, accurate, complete, and relevant to the purpose for which it was collected.

(4) Safeguard personal information to prevent unauthorized use, access, disclosure, alteration, or destruction.

(5) Let individuals know what records the Army keeps on them and let them review or get copies of these records, subject to exemptions authorized by law and approved by the Secretary of the Army. (See § 505.5.)

(6) Permit individuals to amend records about themselves contained in Army systems of records, which they can prove are factually in error, not up-to-date, not complete, or not relevant.

(7) Allow individuals to ask for an administrative review or decisions that deny them access to or the right to amend their records.

(8) Maintain only information about an individual that is relevant and necessary for Army purposes required to be accomplished by statute or Executive Order.

(9) Act on all requests promptly, accurately, and fairly.

(f) *Authority.* The Privacy Act of 1974 (5 U.S.C. 552a), as amended, is the statutory basis for the Army Privacy Program. With in the Department of Defense, the Act is implemented by DOD Directive 5400.11 and DOD 5400.11-R. The Act Assigns—

(1) Overall Government-wide responsibilities for implementation to the Office of Management and Budget.

(2) Specific responsibilities to the Office of Personnel Management and the General Services Administration.

(g) *Access and Amendment Refusal Authority (AARA).* Each Access and Amendment Refusal Authority is responsible for action on requests for access to or amendment of, records referred to them under this regulation. The officials listed below are the sole Access and Amendment Refusal Authorities for records in their functional areas:

(1) The Assistant Chief of Staff for Information Management: For DOD Dependent School student transcripts; and records not within the jurisdiction of another AARA.

(2) The Administrative Assistant to the Secretary of the Army: For records of the Secretariat and its serviced activities, as well as those records requiring the personal attention of the Secretary of the Army.

(3) The President or Executive Secretary of Boards, councils, and similar bodies established by the Department of the Army to consider

personnel matters, excluding the Army Board of Correction of Military Records.

(4) Chief of Chaplains: For ecclesiastical records.

(5) Chief of Engineers: For records pertaining to civil works, including litigation; military construction; engineer procurement; other engineering matters not under the purview of another AARA; ecology; and contractor qualifications.

(6) Comptroller of the Army: For financial records.

(7) Deputy Chief of Staff for Personnel: For personnel records of current Federal civilian employees and active and former non-appropriated fund employees (except those in the Army and Air Force Exchange Service); military police records; prisoner confinement and correctional records; safety records; and alcohol and drug abuse treatment records. (Requests from former civilian employees to amend a record in an OPM system of records such as the Official Personnel Folder should be sent to the Office Personnel Management, Assistant Director for Workforce Information, Compliance and Investigations Group, 1900 E Street, NW., Washington, DC 20415-0001.)

(8) The Inspector General: For IG investigative records.

(9) The Judge Advocate General: For legal records for which responsible.

(10) The Surgeon General: For medical records, except those properly part of the Official Personnel Folder (OPM/GOVT-1 system of records).

(11) Commander, Army and Air Force Exchange Service: For records pertaining to employees, patrons, and other matters which are the responsibility of the Exchange Service.

(12) Commander, US Army Criminal Investigation Command: For criminal investigation reports and military police reports included therein.

(13) Commander, US Army Intelligence and Security Command: For intelligence and security investigative records.

(14) Commander, US Army Materiel Command: For records of Army contractor personnel, exclusive of those in paragraph (f)(5) of this section.

(15) Commander, US Army Military Personnel Center: For personnel and personnel related records of active duty Army members.

(16) Commander, Military Traffic Management Command: For transportation records.

(17) Chief, National Guard Bureau: For personnel records of the Army National Guard.

(18) Chief, Army Reserve: For personnel records of Army retired, separated and reserve military members.

(h) *DA Privacy Review Board.* The DA Privacy Review Board acts on behalf of the Secretary of the Army in deciding appeals from refusal of the appropriate Access and Amendment Refusal Authority to amend records. Board membership is comprised of the Administrative Assistant to the Secretary of the Army, The Assistant Chief of Staff for Information Management, and The Judge Advocate General or their representatives. The AARA may serve as a non-voting member when the Board considers matters in the AARA's area of functional specialization. The Assistant Chief of Staff for Information Management chairs the Board and provides the Recording Secretary.

(i) *Privacy Official.* (1) Heads of Army Staff agencies and commanders of major Army commands and subordinate commands and activities will designate a privacy official who will serve as a staff adviser on privacy matters. This function will not be assigned below battalion level.

(2) The privacy official will ensure that (i) requests are processed promptly and responsively, (ii) records subject to the Privacy Act in his/her command/agency are described properly by a published system notice, (iii) privacy statements are included on forms and questionnaires that seek personnel information from an individual, and (iv) procedures are in place to meet reporting requirements.

§ 505.2 Individual rights of access and amendment.

(a) *Access under the Privacy Act.* Upon a written or oral request, an individual or his/her designated agent or legal guardian will be granted access to a record pertaining to that individual, maintained in a system of records, unless the record is subject to an exemption and the system manager has invoked the exemption (see § 505.5), or the record is information compiled in reasonable anticipation of a civil action or proceeding. The requester does not have to state a reason or otherwise justify the need to gain access. Nor can an individual be denied access solely because he/she refused to provide his/her Social Security Number unless the Social Security Number was required for access by statute or regulation adopted prior to January 1, 1975. The request should be submitted to the custodian of the record.

(b) *Notifying the individual.* The custodian of the record will acknowledge requests for access within 10 work days of receipt. Records will be provided within 30 days, excluding Saturdays, Sundays, and legal public holidays.

(c) *Relationship between the Privacy Act and the Freedom of Information Act.* A Privacy Act request for access to records should be processed also as a Freedom of Information Act request. If all or any portion of the requested material is to be denied, it must be considered under the substantive provisions of both the Privacy Act and the Freedom of Information Act. Any withholding of information must be justified by asserting a legally applicable exemption in each Act.

(d) *Functional requests.* If an individual asks for his/her record and does not cite, or reasonably imply, either the Privacy Act or the Freedom of Information Act, and another prescribing directive authorizes release, the records should be released under that directive. Examples of functional requests are military members asking to see their Military Personnel Records Jacket, or civilian employees asking to see their Official Personnel Folder.

(e) *Medical records.* If it is determined that releasing medical information to the data subject could have an adverse affect on the mental or physical health of that individual, the requester should be asked to name a physician to receive the record. The data subject's failure to designate a physician is not a denial under the Privacy Act and cannot be appealed.

(f) *Third party information.* Third party information pertaining to the data subject may not be deleted from a record when the data subject requests access to the record unless there is an established exemption (see § 505.5(d)). However, personal data such as SSN and home address of third parties in the data subject's record normally do not pertain to the data subject and therefore may be withheld. Information about the relationship between the data subject and the third party would normally be disclosed as pertaining to the data subject.

(g) *Referral of records.* Requests for access to Army systems of records containing records that originated with other DOD Components or Federal agencies which claimed exemptions for them will be coordinated with or referred to the originator for release determination. The requester will be notified of the referral.

(h) *Fees.* Requesters will be charged only for the reproduction of requested documents. Normally, there will be no charge for the first copy of a record provided to the individual whose record it is. Thereafter, fees will be computed as set forth in AR 340–17.

(i) *Denial of access.* (1) The only officials authorized to deny a request from a data subject for records in a system of records pertaining to that individual are the appropriate Access and Amendment Refusal Authorities (see § 505.1(f)), or the Secretary of the Army, acting through the General Counsel. Denial is appropriate only if the record:

(i) Was compiled in reasonable anticipation of a civil action or proceeding, or

(ii) Is properly exempted by the Secretary of the Army from the disclosure provisions of the Privacy Act (see § 505.5), there is a legitimate governmental purpose for invoking the exemption, and it is not required to be disclosed under the Freedom of Information Act.

(2) Requests for records recommended to be denied will be forwarded to the appropriate AARA within 5 work days of receipt, together with the request, disputed records, and justification for withholding. The requester will be notified of the referral.

(3) Within the 30 work day period (see § 505.2(b)), the AARA will give the following information to the requester in writing if the decision is to deny the request for access:

(i) Official's name, position title, and business address;

(ii) Date of the denial;

(iii) Reasons for the denial, including citation of appropriate section(s) of the Privacy Act and this regulation;

(iv) The opportunity for further review of the denial by the General Counsel, Office, Secretary of the Army, The Pentagon, Washington, DC 20310, through the AARA within 60 calendar days. (For denials made by the Army when the record is maintained in one of OPM's government-wide systems of records, notices for which are described at Appendix B, AR 340–21–8, an individual's request for further review must be addressed to the Assistant Director for Agency Compliance and Evaluation, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–0001.)

(j) *Amendment of records.* (1) Individuals may request the amendment of their records, in writing, when such records are believed to be inaccurate as a matter of fact rather than judgment, irrelevant, untimely, or incomplete.

(2) The amendment procedures are not intended to permit challenge to a record that records an event that actually occurred nor are they designed to permit collateral attack upon that which has been the subject of a judicial or quasi-judicial action. Consideration of request for an amendment would be appropriate if it can be shown that circumstances leading up to the event that is recorded on the document were challenged through administrative procedures and found to be inaccurately described, that the document is not identical to the individual's copy, or that the document was not constructed in accordance with the applicable recordkeeping requirements prescribed. For example, the amendment provisions do not allow an individual to challenge the merits of an adverse action. However, if the form that documents the adverse action contains an error on the fact of the record (e.g., the individual's name is misspelled, an improper date of birth or SSN was recorded), the amendment procedures may be used to request correction of the record.

(3) US Army Criminal Investigations Command reports of investigation (records in system notices AO501.08e Informant Register, AO508.11b Criminal Information Reports and Cross Index Card Files, and AO508.25a Index to Criminal Investigative Case Files) have been exempted from the amendment provisions of the Privacy Act. Requests to amend these reports will be considered under AR 195–2 by the Commander, US Army Criminal Investigations Command, action by the Commander, US Army Criminal Investigation Commander will constitute final action on behalf of the Secretary of the Army under that regulation.

(4) Records accessioned into the National Archives are exempted from the Privacy Act provision allowing individuals to request amendment of records. Most provisions of the Privacy Act apply only to those systems of records which are under the legal control of the originating agency; e.g., an agency's current operating files or records stored at a Federal records center.

(k) *Procedures.* (1) Requests to amend a record should be addressed to the custodian or system manager of that record. The request must reasonably describe the record to be amended and the changes sought (i.e., deletion, addition, amendment). The burden of proof rests with the requester; therefore, the alteration of evidence presented to courts, boards, and other official proceedings is not permitted. (An individual acting for the requester must supply a written consent signed by the requester.)

(2) The custodian or system manager will acknowledge the request within 10 work days and make final response within 30 work days.

(3) The record for which amendment is sought must be reviewed by the proper system manager or custodian for accuracy, relevance, timeliness, and completeness so as to assure fairness to the individual in any determination made about that individual on the basis of that record.

(4) If the amendment is proper, the custodian or system manager will physically amend the record by adding or deleting information, or destroying the record or a portion of it, and notify the requester of such action.

(5) If the amendment is not justified, the request and all relevant documents, including the reasons for not amending, will be forwarded to the appropriate AARA within 5 work days and the requester so notified.

(6) The AARA, on the basis of the evidence, either will amend the record and notify the requester and the custodian of that decision, or will deny the request and inform the requester:

(i) Of reasons for not amending; and

(ii) Of his/her right to seek further review by the DA Privacy Review Board (through the AARA).

(7) On receipt of an appeal from a denial to amend, the AARA will append any additional records or background information that substantiates the refusal or renders the case complete and, within 5 work days of receipt, forward the appeal to the DA Privacy Review Board.

(8) The DA Privacy Review Board, on behalf of the Secretary of the Army, will complete action on a request for further review within 30 work days of its receipt by the AARA. The General Counsel may authorize an additional 30 days when unusual circumstances and good cause so warrant. The Board may seek additional information, including the appellant's official file, if deemed relevant and necessary to deciding the appeal.

(i) If the Board determines that amendment is justified, it will amend the record and notify the requester, the AARA, the custodian of the record, and any prior recipients of the record.

(ii) If the Board denies the request, it will obtain the General Counsel's concurrence. Response to the appellant will include reasons for denial and the appellant's right to file a statement of disagreement with the Board's action and to seek judicial review of the Army's refusal to amend.

(9) Statements of disagreement will be an integral part of the record to which it pertains so the fact that the record is disputed is apparent to anyone who may have access to, use of, or need to disclose from it. The disclosing authority

may include a brief summary of the Board's reasons for not amending the disputed record. The summary will be limited to the reasons stated to the individual by the Board.

(l) *Privacy case files.* Whenever an individual submits a Privacy Act request, a case file will be established; see system notice AO240.01DAAG. In no instance will the individual's request and Army actions thereon be included in the individual's personnel file. The case file will comprise the request for access/amendment, grants, refusals, coordination action, and related papers. This file will not be used to make any determinations about the individuals.

§ 505.3 Disclosure of personal information to other agencies and third parties.

(a) *Disclosure without consent.* The Army is prohibited from disclosing a record from a system of records without obtaining the prior written consent of the data subject, except when disclosure is:

(1) To those officers and employees of the Department of Defense who have a need for the record in the performance of their duties;

(2) Required under the Freedom of Information Act (see § 505.3(c) for information normally releasable);

(3) Permitted by a routine use that has been published in the **Federal Register**;

(4) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to Title 13 of the United States Code;

(5) To a recipient who has provided the Army with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record that has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for determination of such value by the Administrator of the General Services Administration (GSA), or designee. (Records sent to Federal Records Centers for storage remain under Army control; these transfers are not disclosures and do not therefore need an accounting.)

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Army element which maintains the record. The request must specify the particular portion desired and the law enforcement activity for which the record is sought;

(8) To a person pursuant to a showing of compelling circumstances affecting the health and safety of an individual. Upon such disclosure, notification will be transmitted to the last known address of such individual;

(9) To either House of Congress, or to a committee or subcommittee to the extent that the subject matter falls within the jurisdiction of the committee or subcommittee;

(10) To the Comptroller General, or any authorized representative in the course of the performance of the duties of the General Accounting Office;

(11) Pursuant to the order signed by a judge of a court of competent jurisidiction. (Reasonable efforts must be made to notify the individual if the legal process is a matter of public record); or

(12) To a consumer reporting agency in accordance with section 3(d) of the Federal Claims Collection Act of 1966 (originally codified at 31 U.S.C. 952(d); recodified at 31 U.S.C. 3711(f), the name, address, SSN, other information identifying the individual; amount, status, and history of the claim, and the agency or program under which the case arose may be disclosed in this instance.

(b) *Blanket routine use disclosures.* In addition to the routine uses in each system notice, the following blanket routine uses apply to all records from systems of records maintained by the Army except those which state othewise.

(1) *Law enforcement.* Relevant records maintained to carry out Army functions may be referred to Federal, State, local, or foreign law enforcement agencies if the record indicates a violation or potential violation of law. The agency to which the records are referred must be the appropriate agency charged with the responsibility of investigating or prosecuting the violation or charges, with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

(2) *Disclosure when requesting information.* A record may be disclosed to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, to obtain information relevant to an Army decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(3) *Disclosure of requested information.* If the information is relevant and necessary to the requesting agency's decision, a record may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

(4) *Congressional inquiries.* Disclosure from a system of records maintained by the Army may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

(5) *Private relief legislation.* Relevant information in all systems of records of the Department of Defense published on or before August 22, 1975, will be disclosed to the Office of Management and Budget (OMB) review of private relief legislation as set forth in OMB Circular A-19 at any stage of the legislative coordination and clearance process.

(6) *Disclosures required by international agreements.* A record may be disclosed to foreign law enforcement, security, investigatory, or administrative authorities. These disclosures are in compliance with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of DOD military and civilian personnel.

(7) *Disclosure to State and local taxing authorities.* Any information normally contained in Internal Revenue Service Form W-2 which is maintained in a record from a system of records of the Army may be disclosed to State and local taxing authorities with which the Secretary of the Treasury has entered into agreements under 5 U.S.C., sections 5516, 5517, and 5520 only to those State and local taxing authorities for which an employee or military member is or was subject to tax regardless of whether tax is or was withheld. This routine use complies with Treasury Fiscal Requirements Manual, Sec. 5060.

(8) *Disclosures to the Office of Personnel Management.* A record may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized

government-wide personnel management functions and studies.

(9) *Disclosure to National Archives and Records Administration.* A record may be disclosed to the National Archives and Records Administration in records management inspections conducted under authority of Title 44 U.S.C., sections 2904 and 2906.

(10) *Disclosure to the Department of Justice for Litigation.* A record may be disclosed as a routine use to any component of the Department of Justice, when

(i) The agency, or any component thereof; or

(ii) Any employee of the agency in his or her official capacity; or

(iii) Any employee of the agency in his or her individual capacity where the Department of Justice has agreed to represent the employee; or

(iv) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

(11) *Disclosure for Agency use in Litigation.* A record may be disclosed in a proceeding before a court or adjudicative body before which the agency is authorized to appear, when

(i) The agency, or any component thereof; or

(ii) Any employee of the agency in his or her official capacity; or

(iii) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(iv) The United States, where the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the agency determines that use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the records to the Department of Justice is a use of the information contained in the records that is compatible with the purpose for which the records were collected."

(c) *Disclosure to third parties.* Personal information which may be disclosed under the Freedom of Information Act:

(1) On military personnel: Name, rank, date of rank, gross salary, present and past duty assignments, future assignments that are officially established, office or duty telephone number, source of commission, promotion sequence number, awards and decorations, military and civilian educational level, duty status at any given time.

(2) On civilian employees: Name, present and past position titles, grades, salaries, duty stations that include office or duty telephone numbers. However, disclosure of this information will not be made where the information requested is a list of present or past position titles, grades, salaries, and/or duty stations and, as such, is:

(i) Selected to constitute a clearly unwarranted invasion of personal privacy. For example, the nature of the request calls for a response that would reveal more about the employee than the five enumerated items;

(ii) Would be protected from mandatory disclosure under an exemption of the Freedom of Information Act.

(iii) In addition to the information in § 505.3(c)(2) above, the following information may be made available to a prospective employer of a current or former Army employee: Tenure of employment, civil service status, length of service in the Army and the Government and, date and reason for separation shown on the Notification of Personnel Action, SF 50.

(d) *Accounting of disclosure.* (1) An accounting of disclosure is required whenever a record from an Army system of records is disclosed to someone other than the data subject, except when that record:

(i) Is disclosed to officials within the Department of Defense who have a need for it in the performance of official business;

(ii) Is required to be disclosed under the Freedom of Information Act.

(2) Since the characteristics of records maintained within the Army vary widely, no uniform method for keeping the disclosure of accounting is prescribed. For most paper records, the accounting may be affixed to the record being disclosed. It must be a written record and consist of:

(i) Description of the record disclosed;

(ii) Name, position title, and address of the person to whom disclosure was made;

(iii) Date, method, and purpose of the disclosure; and

(iv) Name and position title of the person making the disclosure.

(3) Purpose of the accounting of disclosure is to enable an individual:

(i) To ascertain those persons/agencies that have received information about the individual, and

(iii) To provide a basis for informing recipients of subsequent amendments or statements of dispute concerning the record.

(4) When an individual requests such an accounting, the system manager or designee shall respond within 10 work days and inform the individual of the items in § 505.3(d)(2) above.

(5) The only basis for not furnishing the data subject an accounting of disclosures are if disclosure was made for law enforcement purposes under 5 U.S.C. 552a(b)(7), or the disclosure was from a system of records for which an exemption from 5 U.S.C. 552a(c)(3) has been claimed (see Appendix C to this part).

§ 505.4 Record-keeping requirements under the Privacy Act.

(a) Systems of records. (1) Notices of all Army systems of records are required by the Act to be published in the **Federal Register**. An example is at Appendix A to this part. When new systems are established, or major changes occur in existing systems, which meet the criteria of OMB Guidelines summarized at § 505.4(f)(2), advance notice is required to be furnished OMB and the Congress before the system or proposed changes become operational.

(2) Uncirculated personal notes, papers and records which are retained at the author's discretion and over which the Army exercises no control or dominion are not considered Army records within the meaning of the Privacy Act. Individuals who maintain such notes must restrict their use of memory aids. Disclosure from personal notes, either intentional or through carelessness, remove the information from the category of memory aids and the notes then become subject to the provisions of the Act.

(3) Only personal information as is relevant and necessary to accomplish a purpose or mission of the Army, required by Federal statue or Executive Order of the President, will be maintained in Army systems of records. Statutory authority, or regulatory authority to establish and maintain a system of records does not convey unlimited authority to collect and maintain all information which may be useful or convenient. The authority is limited to relevant and necessary information.

(4) Except for statistical records, most records could be used to determine an individual's rights, benefits, or

privileges. To ensure accuracy, personal information to be included in a system of records will be collected directly from the individual if possible. Collection of information from third parties should be limited to verifying information for security or employment suitability or obtaining performance data or opinion-type evaluations.

(b) *Privacy Act Statement.* Whenever personal information is requested from an individual that will become part of system of records retreived by reference to the individual's names or other personal identifier, the individual will be furnished a Privacy Act Statement. This is to ensure that individuals know why the information is collected so they can make an informed decision on whether or not to furnish it. As a minimum, the Privacy Act Statement will include the following information in language that is explicit and easily understood and not so lengthy as to deter an individual from reading it:

(1) Cite the specific statute or Executive Order, including a brief title or subject, that authorizes the Army to collect the personal information requested. Inform the individual whether or not a response is mandatory or voluntary, and any possible consequences of failing to respond.

(2) Cite the principal purpose(s) for which the information will be used; and

(3) Cite the probable routine uses for which the information may be used.

This may be a summary of information published in the applicable system notice. The above information normally should be printed on the form used to record the information. In certain instances, it may be printed in a public notice in a conspicuous location such as check-cashing facilities; however, if the individual requests a copy of its contents, it must be provided.

(c) *Social Security Number (SSN).* Executive Order 9397 authorizes the Department of the Army to use the SSN as a system of identifying Army members and employees. Once a military member or civilian employee of the Department of the Army has disclosed his/her SSN for purposes of establishing personnel, financial, or medical records upon entry into Army service or employment, the SSN becomes his/her identification number. No other use of this number is authorized. Therefore, whether the SSN alone is requested from the individual, or the SSN together with other personal information, the Privacy Act Statement must make clear that disclosure of the number is voluntary. If the individual refuses to disclose his/her SSN, the Army activity must be prepared to identify the individual by alternate means.

(d) *Safeguarding personal information.* (1) The Privacy Act requires establishment of appropriate administrative, technical, and physical safeguards to ensure the security and confidentialty of records and to protect against any threats or hazards to the subjects security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness.

(2) At each location, and for each system of records, an official will be designated to safeguard the information in that system. Consideration must be given to sensitivity of the data, need for accuracy and reliability in operations, general security of the area, cost of safeguards, etc. See AR 380–380.

(3) Ordinarily, personal information must be afforded at least the protection required for information designated "For Official Use Only" (see Chapter IV, AR 340–17). Privacy Act data will be afforded reasonable safeguards to prevent inadvertent or unauthorized disclosure of record content during processing, storage, transmission, and disposal.

(4) No comparisons of Army records systems with systems of other Federal or commerical agencies (known as "matching" or "computer matching" programs) will be accomplished without prior approval of the Assistant Chief of Staff for Information Managment (DAIM–RMS–S), Alex, VA 22331–0301.

(e) First Amendment rights. No record describing how an individual exercises rights guaranteed by the First Amendment will be kept unless expressly authorized by Federal statue, by the individual about whom the record pertains, or unless pertinent to and within the scope of an authorized law enforcement activity. Exercise of these rights includes, but is not limited to, religious and political beliefs, freedom of speech and the press, and the right of assembly and to petition.

(f) *System notice.* (1) The Army publishes in the **Federal Register** a notice describing each system of records for which it is responsible. A notice contains:

(i) Name and location(s) of the records;

(ii) Categories of individuals on whom records are maintained;

(iii) Categories of records in the sytem;

(iv) Authority (statutory or Executive Order) authorizing the system;

(v) Purpose(s) of the system;

(vi) Routine uses of the records, including the categories of users and the purposes of such uses;

(vii) Policies and practices for storing, retrieving, accessing, retaining, and disposing of the records;

(viii) Position title and business address of the responsible official;

(ix) Procedures an individual must follow to learn if a system of records contains a record about the individual;

(x) Procedures an individual must follow to gain access to a record about that individual in a system of records, to contest contents, and to appeal initial determinations;

(xi) Categories of sources of records in the system;

(xii) Exemptions from the Privacy Act claimed for the system. (See example notice at Appendix A to this part.)

(2) New, or altered, systems which meet the requirements below, require a report to the Congress and the Office of Management and Budget. A new system is one for which no system notice is published in the **Federal Register**. An altered system is one that:

(i) Increases or changes the number or types of individuals on whom records are kept so that it significantly alters the character and purpose of the system of records.

(ii) Expands the types of categories of information maintained.

(iii) Alters the manner in which records are organized, indexed, or retrieved so as to change the nature or scope of those records.

(iv) Alters the purposes for which the information is used, or adds a routine use that is not compatible with the purpose for which the system is maintained.

(v) Changes the equipment configuration on which the system is operated so as to create potential for either greater or easier access.

(3) Report of a new or altered system must be sent to HQDA (DAIM-RMS-S) at least 120 days before the system or changes become operational, and include a narrative statement and supporting documentation.

(i) The narrative statement must contain the following items:

(A) System identification and name:

(B) Responsible official;

(C) Purpose(s) of the system, or nature of changes proposed (if an altered system);

(D) Authority for the system;

(E) Number (or estimate) of individuals on whom records will be kept;

(F) Information of First Amendment activities;

(G) Measure to assure information accuracy;

(H) Other measures to assure system security; (Automated systems require risk assessment under AR 380–380.)

(I) Relations to State/local government activities. (See example at Appendix B to this part.)

(4) Supporting documentation consists of system notice for the proposed new or altered system, and proposed exemption rule, if applicable.

(g) *Reporting requirements.* (1) The annual report required by the Act, as amended by Pub. L. 97–375, 96 Stat. 1821, focuses on two primary areas:

(i) Information describing the exercise of individuals' rights of access to and amendment of records.

(ii) Changes in, or additions to, systems of records.

(2) Specific reporting requirements will be disseminated each year by The Assistant Chief of Staff for Information Management (DAIM-RMS–S) in a letter to reporting elements.

(h) *Rules of conduct.* System managers will ensure that all personnel, including government contractors or their employees, who are involved in the design, development, operation, maintenance, or control of any system of records, are informed of all requirements to protect the privacy of individuals who are subjects of the records.

(i) *Judicial sanctions.* The Privacy Act has both civil remedies and criminal penalties for violations of its provisions:

(1) Civil remedies: An individual may file a civil suit against the Army if Army personnel fail to comply with the Privacy Act.

(2) Criminal penalties: A member or employee of the Army may be guilty of a misdemeanor and fined not more than $5,000 for willfully:

(i) Maintaining a system of records without first meeting the public notice requirements of publishing in the **Federal Register**;

(ii) Disclosing individually identifiable personal information to one not entitled to have it;

(iii) Asking for or getting another's record under false pretense.

§ 505.5 Exemption.

(a) *Exempting systems of records.* The Secretary of the Army may exempt Army systems of records from certain requirements of the Privacy Act. There are two kinds of exemptions: General and specific. The general exemption relieves systems of records from most requirements of the Act; the specific exemptions from only a few. See Appendix C to this part.

(b) *General exemptions.* Only Army activities actually engaged in the enforcement of criminal laws as their primary function may claim the general exemption. To qualify for this exemption, a system must consist of:

(1) Information compiled to identify individual criminals and alleged criminals, which consists only of identifying data and arrest records; type and disposition of charges; sentencing, confinement, and release records; and parole and probation status;

(2) Information compiled for the purpose of criminal investigation including efforts to prevent, reduce, or control crime and reports of informants and investigators associated with an identifiable individual; or

(3) Reports identifiable to an individual, compile at any stage of the process of enforcement of the criminal laws, from arrest or indictment through release from supervision.

(c). *Specific exemptions.* The Secretary of the Army has exempted all properly classified information and a few systems of records that have the following kinds of information, from certain parts of the Privacy Act. The Privacy Act exemption cite appears in parentheses after each category.

(1) Classified information in every Army system of records. This exemption is not limited to the systems listed in § 505.5(d). Before denying as individual access to classified information, the Access and Amendment Refusal Authority must make sure that it was properly classified under the standards of Executive Orders 11652, 12065, or 12356 and that it must remain so in the interest of national defense of foreign policy. 5 U.S.C. 552a(k)(1).

(2) Investigatory data for law enforcement purposes (other than that claimed under the general exemption). However, if this information has been used to deny someone a right, privilege or benefit to which the individual is entitled by Federal law, it must be released, unless doing so would reveal the identity of a confidential source. (5 U.S.C. 552a(k)(2).)

(3) Records maintained in connection with providing protective services to the President of the United States or other individuals protected pursuant to Title 18 U.S.C., section 3056. (5 U.S.C. 552a(k)(3).)

(4) Statistical data required by statute and used only for statistical purposes and not to make decisions on the rights, benefits, or entitlements of individuals, except for census records which may be disclosed under Title 13 U.S.C., section 8. (5 U.S.C. 552a(k)(4).)

(5) Data compiled to determine suitability, eligibility, or qualifications for Federal service, Federal contracts, or access to classified information. This information may be withheld only to the extent that disclosure would reveal the identify of a confidential source. (5 U.S.C. 552a(k)(5).)

(6) Testing material used to determine if a person is qualified for appointment or promotion in the Federal service. This information may be withheld only if disclosure would compromise the objectivity or fairness of the examination process. (5 U.S.C. 552a(k)(6).)

(7) Information to determine promotion potential in the Armed Forces. Information may be withheld, but only to the extent that disclosure would reveal the identity of a confidential source. (5 U.S.C. 552a(k)(7).)

(d) *Procedures.* When a system manager seeks an exemption for a system of records, the following information will be furnished HQDA (DAIM-RMS–S), Alexandria, VA 22331–0301: applicable system notice, exemptions sought, and justification. After appropriate staffing and approval by the Secretary of the Army, a proposed rule will be published in the **Federal Register**, followed, by a final rule 30 days later. No exemption may be invoked until these steps have been completed.

(e) *Exempt Army records.* The following records are exempt from certain parts of the Privacy Act:

a. ID–A0224.04DAIG.

(1) SYSNAME—Inspector General Investigative Files.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(k) (2) or (5) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (d), (e)(4)(G), (e)(4)(H), and (f).

(3) AUTHORITY—4 U.S.C. 552a(k) (2) and (5).

(4) REASONS—Selected portions and/or records in this system are compiled for the purposes of enforcing civil, criminal, or military law, including executive orders or regulations validly adopted pursuant to law. Granting individuals access to information collected and maintained in these files could interfere with enforcement proceedings; deprive a person of a right to fair trial or an impartial adjudication or be prejudicial to the conduct of administrative action affecting rights, benefits, or privileges of individuals, constitute an unwarranted invasion of personal privacy; disclose the identity of a confidential source; disclose nonroutine investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel; violate statutes which authorize or require certain information to be withheld from the public such as: Trade or financial information, technical data, National Security Agency information, or information relating to inventions. Exemption from access necessarily includes exemption from the other requirements.

b. ID-A0224.05DAIG.

(1) SYSNAME—Inspector General Action Request/Complaint Files.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(k) (2) or (5) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (d), (e)(4)(G), (e)(4)(H), and (f).

(3) AUTHORITY—5 U.S.C. 552a(k) (2) and (5).

(4) REASONS—Selected portions and/or records in this system are compiled for the purposes of enforcing civil, criminal, or military law, including Executive Orders or regulations validly adopted pursuant to law. Granting individuals access to information collected and maintained in these files could interfere with enforcement proceedings; deprive a person of a right to fair trail or an impartial ajudication or be prejudicial to the conduct of administrative action affecting rights, benefits, or privileges of individuals; constitute an unwarranted invasion of personnel privacy; disclose the identity of a confidential source; disclose nonroutine investigative techniques and procedures, or endanger the life or physical safety of law enforcement personnel; violate statutes which authorize or require certain information, to be withheld from the public such as: Trade or financial information, technical data, National Security Agency information, or information relating to inventions. Exemption from access necessarily includes exemption from the other requirements.

c. ID-A0239.01DAAG.

(1) SYSNAME—Request for Information Files.

(2) EXEMPTION—Portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f) and (g). Portions of the system maintained by offices of Initial Denying Authorities which do not have a law enforcement mission and which fall within 5 U.S.C. 552a(k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

(3) AUTHORITY—5 U.S.C. 552a(j)(2) and (k)(1) through (k)(7).

(4) REASONS—This system of records is maintained solely for the purpose of administering the Freedom of Information Act and processing routine requests for information. To insure an accurate and complete file on each case, it is sometimes necessary to include copies of records which have been the subject of a Freedom of Information Act request. This situation applies principally to cases in which an individual has been denied access and/or amendment of personal records under an exemption authorized by Title 5 U.S.C., section 552. The same justification for the original denial would apply to denial of access to copies maintained in the Freedom of Information Act file. It should be emphasized that the majority of records in this system are available on request to the individual and that all records are used solely to process requests. This file is not used to make any other determinations on the rights, benefits or privileges of individuals.

d. ID-A0240.01DAAG.

(1) SYSNAME—Privacy Act Cast Files.

(2) EXEMPTIONS—Portions of this system which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g). Portions of this system maintained by the DA Privacy Review Board and those Access and Amendment Refusal Authorities which do not have a law enforcement mission and which fall within 5 U.S.C. 552a(k)(1) through (k)(7) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3)(d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

(3) AUTHORITY—5 U.S.C. 552a(j)(2) and (k)(7).

(4) REASONS—This system of records is maintained solely for the purpose of administering the Privacy Act of 1974. To insure accurate and complete file on each case, it is sometimes necessary to include copies of records which have been the subject of a Privacy Act request. This situation applies principally to cases in which an individual has been denied access and/or amendment of personal records under an exemption authorized by Title 5 U.S.C., section 552a. The same justification for the original denial would apply to a denial of access and/or amendment of copies maintained in the Privacy Act Case File. It should be emphasized that the majority of records in this system are available on request to the individual and that all records are used solely to administer Privacy Act requests. This file is not used to make any other determination on the rights, benefits or privileges of individuals.

e. ID-A0241.01HQDA.

(1) SYSNAME—HQDA Correspondence and Control/Central File System.

(2) EXEMPTION—Portions of this system of records which fall within 5 U.S.C. 552a(k) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

(3) AUTHORITY—5 U.S.C. 552a(k)(1) through (k)(7).

(4) REASONS—Documents are generated by other elements of the Army or are received from other agencies and individuals. Because of the broad scope of the contents of this system and since the introduction of documents is largely unregulatable, specific portions or documents that may require an exemption cannot be predetermined. Therefore, and to the extent that such material is received and maintained, selected individual documents may be exempted from disclosure under any of the provisions of sections (k)(1) through (k)(7) of Title 5 U.S.C. 552a.

f. ID-A0401.08DAJA.

(1) SYSNAME—Prosecutorial Files.

(2) EXEMPTION—Portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

(3) AUTHORITY—5 U.S.C. 552a(j)(2).

(4) REASON—From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f) and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from other requirements.

From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

g. ID-A0402.01aDAJA.

(1) SYSNAME—General Legal Files.

(2) EXEMPTION—Those portions of this system of records falling within 5 U.S.C. 552a(k) (1), (2), (5), (6), and (7) may be exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(1), and (f).

(3) AUTHORITY—5 U.S.C. 552a(k) (1), (2), (5), (6), and (7).

(4) REASONS—Various records from other exempted systems of records are sometimes submitted for legal review or other action. A copy of such records may be permanently incorporated into the General Legal Files system of records as evidence of the facts upon which a legal opinion or review was based. Exemption of the General Legal Files system of records is necessary in order to ensure that such records continue to receive the same protection afforded them by exemptions granted to the systems of records in which they were originally filed.

h. ID-A0404.02DAJA.

(1) SYSNAME—Courts-Martial Files.

(2) EXEMPTION—All portions of this system which fall under Title 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. 552a: (d)(2), (d)(4), (e)(2), (e)(3), (e)(4)(H), and (g).

(3) AUTHORITY—Title 5 U.S.C. 552a(j)(2).

(4) REASONS—Courts-martial files are exempt because a large body of existing criminal law governs trials by court-martial to the exclusion of the Privacy Act. The Congress recognized the judicial nature of court-martial proceedings and exempted them from the Administrative Procedures Act by specifically excluding them from the definition of the term "agency" (Title 5 U.S.C. 551(1)(f). Substantive and procedural law applicable in trials by court-martial is set forth in the Constitution, the Uniform Code of Military Justice (UCMJ) Manual for Courts-Martial, United States, 1969 (Revised edition), and the decisions of the U.S. Court of Military Appeals and Courts of Military Review. The right of the accused not to be compelled to be a witness against himself and the need to obtain accurate and reliable information with regard to criminal misconduct necessitate the collection of information from sources other than the individual accused.

(a) Advising the accused or any other witness of the authority for collection of the information, the purpose for which it is to be used, whether disclosure is voluntary or mandatory, and the effects on the individual of not providing the information would unnecesarily disrupt and confuse court-martial preceedings. It is the responsibility of the investigating officer or military judge to determine what information will be considered as evidence. In making the determination, the individual's rights are weighed against the accused's right to fair trial. The determination is final for the moment and the witness' failure to comply with the decision would delay the proceeding and may result in prosecution of the witness for wrongful refusal to testify.

(b) In a trial by court-martial, the accused has a unique opportunity to assure that the record is accurate, relevant, timely, and complete as it is made. He has the right to be present and the trial, to be represented by counsel at general and special courts-martial, and to consult with counsel in summary courts-martial, to review and challenge all information before it is introduced into evidence, to cross-examine all witnesses against him, to present evidence in his behalf and in general and special courts-martial, to review and comment upon the record for trial before it is authenticated. Procedures for correction of the record and controlled by paragraphs 82, 86, and 95, Manual for Courts-Martial, 1969 (Revised edition). After completion of appellate review, the record may not be amended. Article 76 of the Uniform Code of Military Justice (10 U.S.C. 876) provides that the proceedings, findings and sentences of courts-martial as approved, reviewed or affirmed are final and conclusive and binding upon all departments, courts, agencies, and of the United States subject only to action upon a petition for new trial (Article 73, UCMJ), action by the Secretary concerned (Article 74, UCMJ), and the authority of the President.

i. ID-A0501.08eUSACIDC.

(1) SYSNAME—Informant Register.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(5), (e)(8), (f), and (g).

(3) AUTHORITY—5 U.S.C. 552a(j)(2).

(4) REASONS—(a) from subsection (c)(3) because release of accounting of disclosures would provide the informant with significant information concerning the nature of a particular investigation, the internal methods and techniques involved in criminal investigation, and the investigative agencies (state, local or foreign) involved in a particular case resulting in a serious compromise of the criminal law enforcement processes.

(b) From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because disclosure of portions of the information in this system of records would seriously impair the prudent and efficient handling of these uniquely functioning individuals; hamper the inclusion of comments and evaluations concerning the performance qualification, character, identity, and propensities of the informant; and prematurely compromise criminal investigations which either concern the conduct of the informant himself or investigations wherein he/she is intergrally or only peripherally involved. Additionally, the exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records and civil liability predicated upon agency compliance with specific provisions of the Privacy Act.

(c) From subsection (d), (e)(4)(G), (e)(4)(H), and (f) are also necessary to protect the security of information properly classified in the interest of national defense and foreign policy.

(d) From subsection (e)(1) because the nature of the criminal investigative function creates unique problems in prescribing what information concerning informants is relevant or necessary. Due to close liaison and existing relationships with other Federal, state, local and foreign law enforcement agencies, information about informats may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the USACIDC and other agencies. Additionally, the failure to maintain all known information about informants could affect the effective utilization of the individual and substantially increase the operational hazards incumbent in the employment of an informant in very compromising and sensitive situations.

(e) From subsection (e)(2) because collecting information from the information would potentially thwart both the crminal investigtive process and the required management control over these individuals by appraising the informant of investigations or management actions concerning his involvement in criminal activity or with USACIDC personnel.

(f) From subsection (e)(3) because supplying an informant with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the informant, and render ineffectual investigative techniques and methods utilized by USACIDC in the performance of its criminal law enforcement duties.

(e) From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to type of records maintained an necessity for rapid information retrieval and dissemination. Also, in the collection of information about informants, it is impossible to determine what information is then accurate, relevant, timely and complete. With the passage of time, seemingly irrevelant or untimely information may acquire new significance as further investigation or contact brings new details to light. In the criminal investigative process, accuracy and relevance of information concerning informants can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting information relating to informant's actions and would impede the development of criminal intelligence necessary for effective law enforcement.

(h) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

j. ID-A0501. 10DAMI.

(1) SYSNAME—Counterintelligence Research File System (CIRFS).

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(k) (1), (2), or (5) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(3) AUTHORITY—5 U.S.C. 552a(k) (1), (2) and (5).

(4) REASON—Information in the files is obtained from overt and sensitive intelligence sources, and contains information classified in the interest of national security under the provisions of EO 12356 and predecessor orders. The system contains investigatory material compiled for law enforcement purposes as well as for determining the suitability for employment or military service and thus will also require the protection of confidential sources. Information may reflect the efforts of hostile intelligence services in the collection effort against the US Army.

Additionally, the following factors are at issue in disclosure of data from this system of records: Release of exempted information would endanger the safety of sources involved in intelligence programs; release would invade the privacy of those individuals involved in intelligence programs; release would compromise and thus negate specialized techniques used to support intelligence programs; and release would interfere with and negate the orderly conduct of intelligence operations. Exemption from the remaining provisions is predicated upon the exemption from disclosure or upon the need for conducting complete and proper investigations.

k. ID-A0502.03DAMI.

(1) SYSNAME—Intelligence Collection Files.

(2) EXCEPTION—All portions of this system of records which fall within 5 U.S.C. 552a(k) (1), (2) or (5) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (d)(e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(3) AUTHORITY—5 U.S.C. 552a(k) (1), (2), and (5).

(4) REASONS—Executive Order 12356 and predecessor orders provide for the protection of some official information and material which, because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be subject to some constraints for the security of our Nation, and the safety of our people and our Allies. To protect against actions hostile to the United States, of both overt and covert nature, it is essential that such official information and material be given only limited dissemination. This exemption is also essential to protect the privacy and personal safety of the sources involved. It is vital to the conduct of secure operations under Director, Central Intelligence Directives 4 and 5 and Defense Intelligence Agency Manual 58-11.

Additionally, the disclosure of data within this system of records is exempt to the extent the disclosure of such data would reveal the identity of sources who furnished information to the Government under an express or implied promise that source identities would be held in confidence. These assurances are essential to the frank and candid disclosure of information which is essential to the investigative purpose. Confidence in the integrity of government assurances must be maintained or the investigative process will be severely damaged. Exemption from the other requirements is premised on and follows from the rationale which requires exemption from access.

l. ID-A0502.03bDAMI.

(1) SYSNAME—Technical Surveillance Index.

(2) EXEMPTION—All portions of this system of records which falls within 5 U.S.C. 552a(k) (1), (2), or (5) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

(3) AUTHORITY—5 U.S.C. 552a(k) (1), (2), or (5).

(4) REASONS—The material contained in this record system contains data concerning sensitive sources and operational methods whose dissemination must be strictly controlled because of national security intelligence considerations. Disclosure of documents or the disclosure accounting record may compromise the effectiveness of the operation, and negate specialized techniques used to support intelligence or criminal investigative programs, or otherwise interfere with the orderly conduct of intelligence operations or criminal investigations.

m. ID-A05002.10aDAMI.

(1) SYSNAME—USAINTA Investigative File System.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(k) (1), (2), or (5) are exempt from the following provisions of Title 5 U.S.C., section 552a: (d), (e)(4)(G), (e)(4)(H), and (e)(4)(I).

(3) AUTHORITY—5 U.S.C. 552a(k) (1), (2), and (5).

(4) REASONS—Executive Order 12356 and predecessor orders provide for the protection of some official information and material which, because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be subject to some constraints for the security of our Nation and the safety of our people and our Allies. To protect against actions hostile to the United States, of both overt and covert nature, it is essential that such official information and material be given only limited dissemination. Additionally, in the conduct of such operations which produce these records, at times the methods and arrangements with our Allies pertinent to the conduct of intelligence operations are relevant to this issue of national security interests and must be safeguarded. Further, the disclosure of unclassified data within this record system is exempt only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express or implied promise that the identity of the source would be held in confidence. These assurances are essential to the frank and candid disclosure of information which is essential to the purposes of these investigations. Confidence in the integrity of the Government's assurances must be maintained or the investigative process will be severely damaged. Exemption from the other requirements is premised on and follows from the rationale which requires exemption from access.

n. ID-A0593.03aDAMI.

(1) SYSNAME—Department of the Army Operational Support Activities Files.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(k) (1), (2), or (5) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(3) AUTHORITY—5 U.S.C. 552a(k) (1), (2), and (5).

(4) REASONS—Executive Order 12356 and predecessor orders provide for the protection of official information and material which, because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be limited in its accessibility. To protect against hostile actions, both overt and covert, it is essential that such official information and material be given only limited dissemination. Additionally, the following factors are at issue in disclosure of data from this system of records: Release of exempted information would endanger the safety of sources involved in intelligence programs; release would invade the privacy of those individuals involved in intelligence programs; release would compromise and thus negate specialized techniques used to support intelligence programs; and release would interfere with and negate the oderly conduct of intelligence operations. Exemption from the other provisions is premised on and follows the rationale which exempts access to this system of records.

o. ID-A0503.06aDAMI.

(1) SYSNAME—Counterintelligence Operations File.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(k) (1), (2), or (5) are exempt from provisions of Title 5 U.S.C., section 552a: (c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(I), and (f).

(3) AUTHORITY—5 U.S.C. 552a(k) (1), (2), and (5).

(4) REASONS—Executive Order 12356 and predecessor orders provide for the protection of official information and material which, because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be limited in its accessibility. To protect against hostile actions, both overt and covert, it is essential that such official information and material be given only limited dissemination. Additionally, the following factors are at issue in disclosure of data from this system of records: Release of exempted information would endanger the safety of sources involved in intelligence programs; release would invade the privacy of those individuals involved in intelligence programs; release would compromise and thus negate specialized techniques used in support of intelligence programs; and release would interfere with and negate the oderly conduct of intelligence operations. Relevant to the above considerations, exemption is necessary from the requirements to provide an individual an accounting of disclosures and to inform an individual whether a record exists on him within this system of records, during the period in which an investigative interest and activity remains concerning that individual. This is necessary to avoid disclosure of the existence of on-going law enforcement investigations and compromise of the purposes and objectives for such on-going investigations. Further, the disclosure of data within this record system is exempt to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express or implied promise that the identity of the source would be held in confidence. These assurances are essential to the frank and candid disclosure of information which is essential to the purposes of these investigations. Confidence in the integrity of the Government's assurances must be maintained or the investigative process will be severely damaged. The exemption of an individual's right of access to records on him in this system of records and the reasons therefor necessitate and provide the rationale for the exemption of this system of records from the requirements of record amendment and other cited provisions. Maintaining information which is strictly relevant to law enforcement purposes may result in exclusion of seemingly irrelevant data of significant value in determining the qualifications and

suitability of individuals for Federal civilian employment, military service, Federal contracts or access to classified information.

p. ID–A0506.01fDAMI.

(1) SYSNAME—Personnel Security Clearance Information Files.

(2) EXEMPTION—All portions of this system which fall within 5 U.S.C. 552a (k) (1), (2), or (5) are exemptions from the following provisions of Title 5 U.S.C., section 552a: (d), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f).

(3) AUTHORITY—5 U.S.C. 552a(k) (1), (2), and (5).

(4) REASONS—Material contained in this record which is properly and currently classified under the Executive Order 12356 and predecessor orders includes data concerning sensitive source and operational methods whose dissemination must be strictly controlled because of its relationship to national security intelligence considerations. Additionally, in the conduct of operations which produce these records, at times the methods and arrangements with our Allies pertinent to the conduct of intelligence operations are relevant to this issue of national security interests and must be safeguarded. Further, the disclosure of unclassified data within this record system is exempt only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of 5 U.S.C. 552a, under an implied promise that the identity of the source would be held in confidence. These assurances are essential to the purposes of these investigations. Confidence in the integrity of the Government's assurance must be maintained or the investigative process will be severely damaged. Exemption from access necessarily includes exemption from the other requirements.

q. ID–A0508.07USACIDIC.

(1) SYSNAME—Criminal Investigation Accreditation Files.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(k) (2), (5), or (7) are exempt from the following provisions of Title 5 U.S.C., section 552A: (d), (e)(1), (e)(1), (e)(4)(G), (e)(4)(H), and (f).

(3) AUTHORITY—5 U.S.C. 552a(k) (2), (5), and (7).

(4) REASONS—From subsections (d), (e)(4)(G), (e)(4)(H), and (f) because disclosure of portions of the information in this system of records would seriously impair the selection and management of these uniquely functioning individuals; hamper the inclusion of comments, reports and evaluations concerning the performance, qualifications, character, action and propensities of the agent; and prematurely compromise investigations with either concern the conduct of the agent himself or investigations wherein he or she is integrally or only peripherally involved. Additionally, the exemption from access necessarily includes exemptions from the amendment and the agency procedures which would otherwise be required to process these types of requests.

From subsection (e)(1) because the failure to maintain all known information about agents could affect the effective utilization of the individual and substantially increase the operational hazards incumbent in the employment of agents in very compromising and sensitive situations.

2. ID–A0508.11aUSACIDC.

(1) SYSNAME—Criminal Investigations and Crime Laboratory Files.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

(3) AUTHORITY—5 U.S.C. 552(j)(2).

(4) REASONS—(a) From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning coordinated investigative effort and techniques and the nature of the investigation, resulting in a serious impediment to criminal law enforcement activities or the compromise of properly classified material.

(b) From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because access might compromise on-going investigations, reveal classified information, investigatory techniques or the identity of confidential informants, or invade the privacy of persons who provide information in connection with a particular investigation. The exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records, and civil liability predicated upon agency compliance with those specific provisions of the Privacy Act. The exemptio from access necessarily includes exemption from other requirements.

(c) From subsection (e)(1) because the nature of the investigative function creates unique problems in prescribed specific perimeters in a particular case as to what information is relevant or necessary. Also, due to close liaisons and working relationships with other Federal, state, local, and foreign law enforcement agencies, information may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the USACIDC and other agencies.

(d) From subsection (e)(2) because collecting information from the subject of criminal investigations would thwart the investigative process by placing the subject of the investigation on notice thereof.

(e) From subsection (e)(3) because supplying an individual with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the individual queried, and render ineffectual investigation techniques and methods utilized by USACIDC in the performance of their criminal law enforcement duties.

(f) From subsection (e)(5) because this requirment would unduly hamper the criminal investigative process due to the great volume of records maintained and the necessity for rapid information retrieval and dissemination. Also, in the collection of information for law enforcement purposes, it is impossible to determine what information is then accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. In the criminal investigation process, accuracy and relevance of information can only be determine in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(g) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

s. ID—AO508.11bUSACID.

(1) SYSNAME—Criminal Information Reports and Cross Index Card Files.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

(3) AUTHORITY—5 U.S.C. 552a(j)(2).

(4) REASONS—(a) From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning coordinated investigative effort and techniques and the nature of the investigation, resulting in a serious impediment to criminal law enforcement activities or the compromise of properly classified material.

(b) From subsections (c)(4), (d), (e)(4)(G), (e), (4)(H), (f), and (g) because access might compromise on-going investigations, reveal investigatory techniques and the identity of confidential informants, and invade the privacy of persons who provide information in connection with a particular investigation. The exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records, and civil liability predicated upon agency compliance with those specific provisions of the Privacy Act. In addition, subsections (d), (e)(4)(G), (e)(4)(H), and (f) are necessary to protect the security of information properly classified in the intent of national and foreign policy.

(c) From subsection (e)(1) because the nature of the criminal investigative function creates unique problems in prescribing specific perimeters in a particular case what information is relevant or necessary. Also, due to close liaison and working relationships with other Federal, state, local and foreign law enforcement agencies, information may be received which may be received which may relate to a case then under the investigative jurisdiction of another Government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the USACDIC and other agencies.

(d) From subsection (e)(2) because collecting information from the subject of criminal investigation would thwart the investigative process by placing the subject of the investigation on notice thereof.

(e) From subsection (e)(3) because supplying an individual with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the individuals queried and render ineffectual investigative techniques and methods utilized by USACIDC in the performance of their criminal law enforcement duties.

(f) From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to the great volume of records maintained and the necessity for rapid information retrieval and dissemination. Also, in the collection of information for law enforcement purposes, it is impossible to determine what information is then accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light. In the criminal investigative process, accuracy and relevance of information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(g) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

t. ID—AO508.16DAPE.

(1) SYSNAME—Absentee Case Files.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

(3) AUTHORITY—5 U.S.C. 552a(j)(2).

(4) REASONS—(a) From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f) and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

(b) From subsection (c)(3) because of the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(c) From subsection (e)(2) because in a criminal or other law enforcement investigation, they require that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

(d) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(e) From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and be revealing investigative techniques, procedures or evidence.

u. ID-A0508.24aDAPE.

(1) SYSNAME—Serious Incident Reporting Files.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (E)(4)(H), (e)(8), (f), and (g).

(3) AUTHORITY—5 U.S.C. 552a(j)(2).

(4) REASONS—(a) From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

(b) From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(c) From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

(d) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reval the identity of witnesses or confidential informants.

(e) From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

v. ID-A0508.25aUSACIDC.

(1) SYSNAME—Index to Criminal Investigative Case Files.

(2) EXEMPTION—All portions of this system of records which fall with 5 U.S.C. 552a(j)(2) are exempt from the following provisions of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

(3) AUTHORITY—5 U.S.C. 552a(j)(2).

(4) REASONS—(a) From subsection (c)(3) because the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning coordinated investigative effort and techniques and the nature of the investigation, resulting in a serious impediment to criminal law enforcement activities or the compromise of properly classified material.

(b) From subsection (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because access might compromise on-going investigations, reveal investigatory techniques and the identify of confidential informants, and invade the privacy of persons who provide information in connection with a particular investigation. The exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records, and civil liability predicated upon agency compliance with those specific provisions of the Privacy Act. In addition, subsection (d), (e)(4)(G), (e)(4)(H), and (f) are necessary to protect the security of information properly classified in the interest of national and foreign policy.

(c) From subsection (e)(1) because the nature of the criminal invetigative function creates unique problems in prescribing specific perimeters in a particular case what information is relevant or necessary. Also, due to close liaison and working relationships with other Federal, state, local and foreign law enforcement agencies, information may be received which may relate to a case then under the investigative jurisdiction of another government agency but it is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of both the USACIDC and other agencies.

(d) From subsection (e)(2) because collecting information from the subject of criminal investigations would thwart the investigative process by placing the subject of the investigation on notice thereof.

(e) From subsection (e)(3) because supplying an individual with a form containing the information specified could result in the compromise of an investigation, tend to inhibit the cooperation of the individuals queried, and render ineffectual investigative techniques and methods utilized by USACIDC in the performance of their criminal law enforcement duties.

(f) From subsection (e)(5) because this requirement would unduly hamper the criminal investigative process due to the great volume of records maintained and the necessity for rapid information retrieval and dissemination. Also, in the collection of information for law enforcement purposes, it is impossible to determine what information is then accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability of trained investigators to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement.

(g) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to criminal law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

w. ID-A0509.08DAPE.

(1) SYSNAME—Registration and Permit Files.

(2) EXEMPTION—This system of records insofar as it contains information falling within 5 U.S.C. 552a(k)(2) is exempted from the release of accounting of disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation thus resulting in a serious impediment to criminal law enforcement investigations, activities or the compromise of properly classified material.

x. ID-A0509.10DAPE.

(1) SYSNAME—Law Enforcement: Offense Reporting System (MPMIS).

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (C)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

(3) AUTHORITY—5 U.S.C. 552a(j)(2).

(4) REASONS—(a) From subsection (c)(4), (d)(e)(4)(G), (e)(4)(H), (e)(8), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

(b) From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigation.

(c) From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

(d) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it would compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(e) From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures, or evidence.

y. ID-A0509.18bDAPE.

(1) SYSNAME—Expelled or Barred Person Files.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

(3) AUTHORITY— 5U.S.C. 552a(j)(2).

(4) REASONS—(a) From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f) and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, and the nature and disposition of charges; and jeopardize the safety and well-being of informants, witnesses and their families, law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation.

(b) From subsection (c)(3) because the release of accounting would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(c) From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

(d) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(e) From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques procedures or evidence.

z. ID-A0509.19DAPE.

(1) SYSNAME—Military Police Investigator Certification Files.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(k) (2), (5), or (7) are exempt from the following provisions of Title 5 U.S.C., section 552a: (d), (e)(4)(G), (e)(4)(H), and (f) because disclosure of portions of the information in this system of records would seriously impair the selection and management of these uniquely functioning individuals; hamper the inclusion of comments, reports and evaluations concerning the performance, qualifications, character, actions and propensities of the agent; and prematurely compromise investigations which either concern the conduct of the agent himself or investigations wherein he or she is integrally or only peripherally involved. Additionally, the exemption from access necessarily includes exemptions from the amendment and the agency procedures which would otherwise be required to process these types of requests.

aa. ID-A0509.21DAPE.

(1) SYSNAME—Local Criminal Information Files.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

(3) AUTHORITY—5 U.S.C. 552a(j)(2).

(4) REASONS—(a) From subsections (c)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well-being of informants, witnesses and their

families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources and methods used by this component and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

(b) From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(c) From subsection (e)(2) because, in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

(d) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(e) From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

ab. 3.—A0511.05DAPE.

(1) SYSNAME—Traffic Law Enforcement/ Vehicle Registration System: MPMIS.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C., section 552a: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(8), (f), and (g).

(3) AUTHORITY—5 U.S.C. 552a(j)(2).

(4) REASONS—(a) From subsections (c)(4), (d), (e)(4)(G), (e)(4)(H), (f), and (g) because granting individuals access to information collected and maintained by this component relating to the enforcement of laws could interfere with proper investigations and the orderly administration of justice. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. Exemption from access necessarily includes exemption from the other requirements.

(b) From subsection (c)(3) because the release of accounting of disclosure would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement investigations.

(c) From subsection (e)(2) because in a criminal or other law enforcement investigation, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of the investigation and thereby present a serious impediment to effective law enforcement.

(d) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(e) From subsection (e)(8) because compliance with this provision would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures or evidence.

ac. 4.

(1) SYSNAME—Enlistment Eligibility Files.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(k)(5) are exempt from the following provisions of Title 5 U.S.C. section 552a: (d).

(3) AUTHORITY—5 U.S.C. 552a(k)(5).

(4) REASONS—It is imperative that the confidential nature of evaluations and investigatory material on applicants applying for enlistment furnished to the US Army Recruiting Command under an express promise of confidentiality, be maintained to insure the candid presentation of information necessary in determinations of enlistment and suitability for enlistment into the United States Army.

ad. ID-A0702.08aDASG.

(1) SYSNAME—Army Medical Procurement Applicant Files.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 522a(k)(5) are exempt from the following provisions of Title 5 U.S.C., section 552a: (d)

(3) AUTHORITY—5 U.S.C. 552a(k)(5).

(4) REASONS—It is imperative that the confidential nature of evaluation investigatory material on applicants furnished to the Army Medical Procurement Program under an express promise of confidentiality, be maintained to ensure that candid presentation of information necessary in determinations involving selection for AMEDD training programs and for suitability for commissioned service and future promotion.

ae. ID-A0704.10bMEPCOM.

(1) SYSNAME—ASVAB Institutional Test Scoring and Reporting System.

(2) EXEMPTION—All portions of this system which fall within 5 U.S.C. 552a(k)(6) are exempt from the following provision of Title 5 U.S.C., section 552a: (d).

(3) AUTHORITY—5 U.S.C. 552a(k)(6).

(4) REASONS—Exemption is needed for the portion of records which pertains to individual item response on tests, to preclude compromise of scoring keys.

af. ID-A0709.01aDAPE.

(1) SYSNAME—United States Military Academy Candidate Files.

(2) EXEMPTION—All portions of this system which fall within 5 U.S.C. 552a (k) (5), (6), or (7) are exempt from the following provisions of Title 5 U.S.C., section 552a: (d).

(3) AUTHORITY—5 U.S.C. 552a(:k) (5), (6), and (7).

(4) REASONS—(a) From subsection (d) because access might reveal investigatory and testing techniques. The exemption from access necessarily includes exemption from amendment, certain agency requirements relating to access and amendment of records, and civil liability predicated upon agency compliance with those specific provisions of the Privacy Act.

(b) Exemption is necessary to protect the identity of individuals who furnished information to the United States Military Academy which is used in determining suitability, eligibility, or qualifications for military service and which was provided under an express promise of confidentiality.

(c) Exemption is needed for the portion of records compiled within the Academy which pertain to testing or examination material used to rate individual qualifications, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

(d) Exemption is required for evaluation material used by the Academy in determining potential for promotion in the Armed Services, to protect the identity of a source who furnished information to the Academy under an express promise of confidentiality.

ag. ID-A0709.03DAPE.

(1) SYSNAME—U.S. Military Academy Personnel Cadet Records.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(k) (5) or (7) are exempt from the following provisions of Title 5 U.S.C., section 552a: (d).

(3) AUTHORITY—5 U.S.C. 552a(k) (5) and (7).

(4) REASONS—It is imperative that the confidential nature of evaluation and investigatory material on candidates, cadets, and graduates, furnished to the United States Military Academy under promise of confidentiality be maintained to insure the candid presentation of information necessary in determinations involving admissions to the Military Academy and suitability for commissioned service and future promotion.

ah. ID-A0713-09aTRADOC.

(1) SYSNAME—Skill Qualification Test.

(2) EXEMPTION—All portions of this system which fall under 5 U.S.C. 552a(k)(6) are exempt from the following provisions of Title 5 U.S.C., section 552a: (d).

(3) AUTHORITY—5 U.S.C. 552a(k)(6).

(4) REASONS—An exemption is required for those portions of the Skill Qualification Test system pertaining to individual item responses and scoring keys to prelude compromise of the test and to insure fairness and objectivity of the evaluation system.

ai. ID-A0720.04DAPE.

(1) SYSNAME—Army Correctional System: Correctional Treatment Records.

(2) EXEMPTION—All portions of this system of records which fall within 5 U.S.C. 552a(j)(2) are exempt from the following provisions of Title 5 U.S.C. section., 552a: (c)(3), (c)(4), (d), (e)(3), (e)(4)(G), (e)(4)(H), (e)(5), (e)(8), (f), and (g).

(3) AUTHORITY—5 U.S.C. 552a(j)(2).

(4) REASONS—Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with the orderly administration of justice. Disclosure of this information could jeopardize the safety and well-being of information sources, correctional supervisors and other confinement facility administrators. Disclosure of the information could also result in the invasion of privacy of persons who provide information used in developing individual treatment programs. Further, disclosure could result in a deterioration of a prisoner's self-image and adversely affect meaningful relationships between a prisoner and his counselor or supervisor. These factors are, or course, essential to the rehabilitative process. Exemption from the remaining provisions is predicated upon the exemption from disclosure or upon the need for proper functioning of correctional programs.

aj. ID-A0917.10DASG.

(1) SYSNAME—Family Advocacy Case Management Files.

(2) EXEMPTION—All portions of this system which fall within 5 U.S.C. 552a(k) (2) and (5) are exempt from the following provisions of title 5 U.S.C., section 552a: (d).

(3) AUTHORITY—5 U.S.C. 552a(k) (2) and (5).

(4) REASONS—Exemptions are needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information and to protect such sources from embarrassment or recriminations as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. In the case of spouse abuse, it is important to protect the privacy of spouses seeking treatment.

Additionally, granting individuals access to information relating to criminal and civil law enforcement could interfere with on-going investigations and the orderly administration of justice in that it could result in the concealment, alteration, destruction, or fabrication of information, could hamper the identification of offenders or alleged offenders, and the disposition of charges, and could jeopardize the safety and well-being of parents, children, and abused spouses.

ak. ID-A1012.01DAPE.

(1) SYSNAME—Applicants/Students, US Military Academy Prep School.

(2) EXEMPTION—Parts of this system which fall within 5 U.S.C. 552a(k)(5) and (7) are exempt from subsection (d) of Title 5 U.S.C., section 552a.

(3) AUTHORITY—5 U.S.C. 552a(k)(5) and (7).

(4) REASONS—It is imperative that the confidential nature of evaluation material on individuals, furnished to the US Military Academy Preparatory School under an express promise of confidentiality, be maintained to ensure the candid presentation of information necessary in determinations involving admission to or retention at the United States Military Academy and suitability for commissioned military service.

(e) Exempt OPM records. Three Office of Personnel Management systems of records apply to Army employees, except for nonappropriated fund employees. These systems, the specific exemptions determined to be necessary and proper, the records exempted, provisions of the Privacy Act from which exempted, and justification are set forth below:

(1) Personnel Investigations Records (OPM/CENTRAL-9). All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k) (1), (2), (3), (5), and (6) is exempt from the requirements of 5 U.S.C. 552a (c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records.

The specific applicability of the exemptions to this system and the reasons for the exemptions are as follows:

(i) Personnel investigations may obtain from another Federal agency properly classified information which pertains to national defense and foreign policy. Application of exemption (k)(1) may be necessary to preclude the data subject's access to and amendment of such classified information under 5 U.S.C. 552a(d).

(ii) Personnel investigations may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), e.g., investigations into the administration of the merit system. Application of exemption (k)(2) may be necessary to preclude the data subject's access to or amendment of such records, under 552a(c)(3) and (d).

(iii) Personnel investigations may obtain from another Federal agency information that relates to providing protective services to the President of the United States or other individuals pursuant to section 3056 of title 18. Application of exemption (k)(3) may be necessary to preclude the data subject's access to and amendment of such records under 5 U.S.C. 552a(d).

(iv) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c) (3) and (4). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject, and access to and amendment of records.

These exemptions are claimed because this system contains investigatory material compiled solely for the purpose of determining suitability, eligibility, and qualifications for Federal civilian employment. To the extent that the disclosure of material would reveal the identity of source who furnished information to the Government under an express promise that the identity of the source would held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to or amendment of the record, or access to the accounting of disclosures of the record.

(v) All material and information in the records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or exemption process.

(2) Recruiting, Examining, and Placement Records (OPM/GOVT-5).

(i) All information about individuals in these records that meets the criteria stated in 5 U.S.C. 552a(k)(5) is exempt from the requirements of 5 U.S.C. 552a(c)(3) and (d). These provisions of the Privacy Act relate to making accountings of disclosures available to the data subject and access to and amendment of records. These exemptions are claimed because this system contains investigative material compiled solely for the purpose of determining the appropriateness of a request for approval of an objection to an eligible's qualification for employment in the Federal service. To the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, the application of exemption (k)(5) will be required to honor such a promise should the data subject request access to the accounting of disclosures of the record.

(ii) All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) are exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of records by the subject. The exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualification for appointment or promotion in the Federal service and access to or amendment of this information by the data subject would compromise the objectivity and fairness of the testing or examining process.

(3) Personnel Research Test Validation Records (OPM/GOVT-6). All material and information in these records that meets the criteria stated in 5 U.S.C. 552a(k)(6) is exempt from the requirements of 5 U.S.C. 552a(d), relating to access to and amendment of the records by the data subject. This exemption is claimed because portions of this system relate to testing or examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. Access to or amendment of this information by the data subject would compromise the objectivity

and fairness of the testing or examination process.

Appendix A—Example of System of Records Notice

A0319.01DACA

System name:

Out-of-Service Accounts Receivables.

System location:

US Army Finance and Accounting Center, Ft Benjamin Harrison, IN 46249.

Categories of individuals covered by the system:

Separated and retired military/civilian personnel and others indebted to the US Army.

Categories of records in the system:

Records of current and former military members and civilian employees' pay accounts showing entitlements, deductions, payments made, and any indebtedness resulting from deductions and payments exceeding entitlements. These records include, but are not limited to:

a. Individual military pay records, substantiating documents such as military pay orders, pay adjustment authorizations, military master pay account printouts from the Joint Uniform Military Pay System (JUMPS), records of travel payments, financial record data folders, miscellaneous vouchers, personal financial records, credit reports, promissory notes, individual financial statements, and correspondence;

b. Application for waiver of erroneous payments or for remission of indebtedness with supporting documents, including, but not limited to statements of financial status (personal income and expenses), statements of commanders and/or accounting and finance officers, correspondence with members and employees;

c. Claims of individuals requesting additional payments for service rendered with supporting documents including, but not limited to, time and attendance reports, leave and earnings statements, travel orders and/or vouchers, and correspondence with members and employees;

d. Delinquent accounts receivable from field accounting and finance officers including, but not limited to, returned checks, medical services billings, collection records, and summaries of the Army Criminal Investigations Command and/or Federal Bureau of Investigation reports;

e. Reports from probate courts regarding estates of deceased debtors;

f. Reports from bankruptcy courts regarding claims of the United States against debtors.

Authority for maintenance of the system:

31 U.S.C., section 3711; 10 U.S.C., section 2774; and 12 U.S.C., section 1715.

Purpose:

To process, monitor, and post-audit accounts receivable, to administer the Federal Claims Collection Act, and to answer inquiries pertaining thereto.

Routine users of records maintained in the system, including categories of users and the purposes of such uses:

Information may be disclosed to:

US Department of Justice/US Attorneys: For legal action and/or final disposition of the debt claims. The litigation briefs (comprehensive, written referral recommendations) will restructure the entire scope of the collection cases.

Internal Revenue Service: To obtain locator status for delinquent accounts receivables; (Automated controls exist to preclude redisclosure of solicited IRS address data); and/or to report write-off amounts as taxable income as pertains to amounts compromised and accounts barred from litigation due to age.

Private Collection Agencies: For collection action when the Army has exhausted its internal collection efforts.

Disclosure to Consumer Reporting Agencies:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) when an individual is responsible for a debt to the US Army, provided the debt has been validated, is overdue, and the debtor has been advised of the disclosure and his rights to dispute, appeal or review the claim; and/or whenever a financial status report is requested for use in the administration of the Federal Claims Collection Act. Claims of the United States may be compromised, terminated or suspended when warranted by information collected.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper records in collection file folders and bulk storage; card files, computer magnetic tapes and printouts; microfiche.

Retrievability:

By Social Security Number, name, and substantiating document number; conventional indexing is used to retrieve data.

Safeguards:

The US Army Finance and Accounting Center employs security guards. An employee badge and visitor registration system is in effect. Hard copy records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Computerized records are accessed by custodian of the records system and by persons responsible for servicing the record system in the performance of their official duties. Certifying finance and accounting officers of debts have access to debt information to confirm if the debt is valid and collection action is to be continued. Computer equipment and files are located in a separate secured area.

Retention and disposal:

Individual military pay records and accounts receivables are converted to microfiche and retained for 6 years. Destruction is by shredding. Retention periods for other records vary according to category, but total retention does not exceed 56 years; these records are sent to the Federal Records Center, General Services Administration at Dayton, Ohio; destruction is by burning or salvage as waste paper.

System manager(s) and address:

Commander, US Army Finance and Accounting Center Indianapolis, IN 46249.

Notification procedure:

Individuals desiring to know whether this system of records contains information about them should contact the System Manager, ATTN: FINCP-F, furnishing full name, Social Security Number, and military status or other information verifiable from the record itself.

Record access procedures:

Individuals seeking access to records in this system pertaining to them should submit a written request as indicated in "Notification procedure" and furnish information required therein.

Contesting record procedures:

The Army's rules for access to records and for contesting and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

Record source categories:

Information is received from Department of Defense staff and field installations, Social Security Administration, Treasury Department, financial organizations, and automated system interface.

Systems exempted from certain provisions of the act:

None.

Appendix B—Example of Report for New System of Records

Narrative Statement

1. *System Identification and Name:* A0404.02DAJA, Courts-Martial Files.

2. *Responsible Official:* Mr. James D. Kemper, US Army Legal Services Agency, Office of The Judge Advocate General, Room 204B, Nassif Building, Falls Church, VA 22041.

3. *Purpose of the System:* Records of trial by court-martial are necessary for the purpose of legal review and final action in court-martial cases. After completion of appellate review, they protect each accused against a subsequent trial for the same offense(s).

4. *Authority for the System:* Title 10 U.S.C., Chapter 47, Section 865 states that, in the case of a general court-martial or when sentence that includes a bad conduct discharge is approved by the convening authority in a special court-martial, the record will be sent to The Judge Advocate General. All other special and summary court-martial records will be reviewed by a Judge Advocate.

5. *Number (or estimate) of individuals on whom records will be maintained:* Approximately 7,000,000.

6. *Information on First Amendment Activities:* The system contains no information on First Amendment activities per se; however, the system may include records of trial in which the charged misconduct was an activity arguably protected by the First Amendment.

7. *Measures to Assure Information Accuracy:* In a trial by court-martial, the accused has a unique opportunity to assure that his record is accurate, relevant, timely, and complete as it is made. He has the right to be present at trial, to be represented by counsel in general and special courts-martial and to consult with counsel prior to a summary courts-martial to review and challenge all information before it is introduced into evidence, to cross-examine all witnesses against him, to present evidence in his behalf, and in general and special courts-martial, to review and comment upon the record of trial before the convening authority's action.

8. *Other Measures to Assure System Security:* As courts-martial records reflect criminal proceedings ordinarily open to the public, copies are normally releasable to the public pursuant to the Freedom of Information Act. However, access to the original records is limited to authorized individuals. Security measures consist of standard physical security devices and civilian and military guards.

9. *Relationship to State/Local Government Activities:* None.

10. *Supporting Documentation:* Proposed system notice and proposed exemption rule are at Encl 1 and 2 respectively.

Appendix C—Provisions of the Privacy Act from which a General or Specific Exemption May Be Claimed

Exemption		Section of the Privacy Act
(j)(2)	(k)(l-7)	
No	No	(b)(1) Disclosures within the Department of Defense.
No	No	(2) Disclosures to the public.
No	No	(3) Disclosures for a "Routine Use."
No	No	(4) Disclosures to the Bureau of Census.
No	No	(5) Disclosures for statistical research and reporting.
No	No	(6) Disclosures to the National Archives.
No	No	(7) Disclosures for law enforcement purposes.
No	No	(8) Disclosures under emergency circumstances.
No	No	(9) Disclosures to the Congress.
No	No	(10) Disclosures to the General Accounting Office.
No	No	(11) Disclosures pursuant to court orders.
No	No	(12) Disclosure to consumer reporting agencies.
No	No	(c)(1) Making disclosure accountings.
No	No	(2) Retaining disclosure accountings.
Yes	Yes	(c)(3) Making disclosure accounting available to the individual.
Yes	No	(c)(4) Informing prior recipients of corrections.
Yes	Yes	(d)(1) Individual access to records.
Yes	Yes	(2) Amending records.
Yes	Yes	(3) Review of the Component's refusal to amend a record.
Yes	Yes	(4) Disclosure of disputed information.
Yes	Yes	(5) Access to information compiled in anticipation of civil action.
Yes	Yes	(e)(1) Restrictions on collecting information.
Yes	No	(e)(2) Collecting directly from the individual.
Yes	No	(3) Informing individuals from whom information is requested.
No	No	(e)(4)(A) Describing the name and location of the system.
No	No	(B) Discribing categories of individuals.
No	No	(C) Describing categories of records.
No	No	(D) Describing routine uses.
No	No	(E) Describing records management policies and practices.
No	No	(F) Identifying responsible officials.
Yes	Yes	(e)(4)(G) Procedures for determining if a system contains a record on an individual.
Yes	Yes	(H) Procedures for gaining access.
Yes	Yes	(I) Describing categories of information sources.
Yes	No	(e)(5) Standards of accuracy.
No	No	(e)(6) Validating records before disclosure.
No	No	(e)(7) Records of First Amendment activities.
No	No	(e)(8) Notification of disclosure under compulsory legal process.
No	No	(e)(9) Rules of conduct.
No	No	(e)(10) Administrative, technical and physical safeguards.
No	No	(11) Notice for new and revised routine uses.
Yes	Yes	(f)(1) Rules for determining if an individual is subject of a record.
Yes	Yes	(f)(2) Rules for handling access requests.
Yes	Yes	(f)(3) Rules for granting access.
Yes	Yes	(f)(4) Rules for amending records.
Yes	Yes	(f)(5) Rules regarding fees.
Yes	No	(g)(1) Basis for civil action.
Yes	No	(g)(2) Basis for judicial review and remedies for refusal to amend.
Yes	No	(g)(3) Basis for judicial review and remedies for denial of access.
Yes	No	(g)(4) Basis for judicial review and remedies for other failure to comply.
Yes	No	(g)(5) Jurisdiction and time limits.
Yes	No	(h) Rights of legal guardians.
No	No	(i)(1) Criminal penalties for unauthorized disclosure.
No	No	(2) Criminal penalties for failure to publish.
No	No	(3) Criminal penalties for obtaining records under false pretenses.
Yes	No	(j) Rulemaking requirement.
N/A	No	(j)(1) General exemption for the Central Intelligence Agency.
N/A	No	(j)(2) General exemption for criminal law enforcement records.
Yes	N/A	(k)(1) Exemption for classified material.
N/A	N/A	(k)(2) Exemption for law enforcement material.
Yes	N/A	(k)(3) Exemption for records pertaining to Presidential protection.
Yes	N/A	(k)(4) Exemption for statistical records.
Yes	N/A	(k)(5) Exemption for investigatory material compiled for determining suitability for employment or service.
Yes	N/A	(k)(6) Exemption for testing or examination material.
Yes	N/A	(k)(7) Exemption for promotion evaluation materials used by the Armed Forces.
Yes	No	(l)(1) Records stored in GSA records centers.
Yes	No	(l)(2) Records archived before September 27, 1975.
Yes	No	(l)(3) Records archived on or after September 27, 1975.
Yes	No	(m) Applicability to government contractors.
Yes	No	(n) Mailing lists.
Yes	No	(o) Reports on new systems.
Yes	No	(p) Annual report.

Appendix D—Glossary of Terms

Section I

Abbreviations

AAFES

Army and Air Force Exchange Service

AARA

Access and Amendment Refusal Authority

ACSIM

Assistant Chief of Staff for Information Management

DA

Department of the Army

DOD

Department of Defense

GAO

General Accounting Office

GSA

General Services Administration

JUMPS

Joint uniform military pay system

MACOM

Major Army command

MPMIS

Military Police management information system

NARS

National Archives and Records Service

NGB

National Guard Bureau

OMB

Office of Management and Budget

OPM

Office of Personnel Management

SSN

Social Security Number

TAG

The Adjutant General

TIG

The Inspector General

TJAG

The Judge Advocate General

USACIDC

U.S. Army Criminal Investigation Command

Section II

Terms

Access

The review of a record or obtaining a copy of a record or parts thereof in a system of records.

Agency

The DOD is a single agency for the purpose of disclosing records subject to The Privacy Act of 1974. For other purposes, including access, amendment, appeals from denials of access or amendment, exempting systems of records, and record-keeping for release to non-DOD agencies, the DA is an agency.

Access and Amendment Refusal Authority

The Army Staff agency head or major Army commander designated sole authority by this regulation to deny access to, or refuse amendment of, records in his or her assigned area or functional specialization.

Confidential source

A person or organization that has furnished information to the Federal Government under an express promise that its identity would be withheld, or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

Data subject

The individual about whom the Army is maintaining information in a system of records.

Disclosure

The furnishing of information about an individual by any means, to an organization, Government agency, or to an individual who is not the subject of the record, the subject's designated agent or legal guardian. Within the context of the Privacy Act and this regulation, this term applies only to personal information that is a part of a system of records.

Individual

A living citizen of the United States or an alien admitted for permanent residence. The Privacy Act rights of an individual may be exercised by the parent or legal guardian of a minor or an incompetent. (The Privacy Act confers no rights on deceased persons, nor may their next-of-kin exercise any rights for them.)

Maintain

Collect, use, maintain, or disseminate.

Official use

Any action by a member or employee of DOD that is prescribed or authorized by law or a regulation and is intended to perform a mission or function of the Department.

Personal information

Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

Privacy Act request

A request from an individual for information about the existence of, or for access to or amendment of, a record about him or her that is in a system of records. The request must cite or implicitly refer to the Privacy Act.

Record

Any item, collection, or grouping of information about an individual that—

a. Is kept by the Government including, but not limited to, an individual's home address, home telephone number, SSN, education, financial transactions, medical history, and criminal or employment history.

b. Contains an individual's name, identifying number, symbol, or other individual identifier such as a finger, voice print, or a photograph.

Routine use

Disclosure of a record outside DOD without the consent of the subject individual for a use that is compatible with the purpose for which the information was collected and maintained by DA. The routine use must be included in the published system notice for the system of records involved.

Statistical record

A record maintained only for statistical research or reporting purposes and not used in whole or in part in making determinations about specific individuals.

System manager

The official responsible for policies and procedures for operating and safeguarding a system or records. This official is located normally at Headquarters, DA.

System of records

A group of records under the control of DA from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all systems of records must be published in the **Federal Register**. (A grouping or files series of records arranged chronologically or subjectively that is not retrieved by individual identifier is not a system of records, even though individual information could be retrieved by such an identifier, such as through a paper-by-paper search.)

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

October 10, 1985.

[FR Doc. 85-24740 Filed 10-17-85; 8:45 am]

BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-9-FRL-2913-1]

Nevada; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination on the State of Nevada's Application for Final Authorization.

SUMMARY: The State of Nevada has applied for final authorization under the authority of the Resource Conservation and Recovery Act (RCRA). EPA has reviewed the State of Nevada's application and has reached a final determination that Nevada's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State of Nevada to operate its program, subject the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) (HSWA).

EFFECTIVE DATE: Final authorization for the State of Nevada shall be effective at 10:00 A.M. on November 1, 1985.

FOR FURTHER INFORMATION CONTACT: Gary Lance, Project Officer, State Programs Section (T-2-1), U.S. EPA Region 9, 215 Fremont Street, San Francisco, California 94105, (415) 974-8125.

SUPPLEMENTARY INFORMATION:

Background

Section 3006 of the Resource Conservation and Recovery Act (RCRA) allows EPA to authorize State hazardous waste programs to operate in lieu of the Federal hazardous waste program. To qualify for Final Authorization, a State's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal and other state programs, and (3) provide for adequate enforcement (Section 3006(b) of 42 U.S.C. 6926(c)).

On May 1, 1985, the State of Nevada submitted a complete application to obtain Final Authorization to administer the RCRA program. On August 19, 1985, EPA published a tentative decision announcing that the State's hazardous waste program would satisfy all of the requirements necessary for Final Authorization. Further background information appeared in EPA's tentative determination (Vol. 50, No. 160, FR 33359, August 19, 1985). Along with the tentative determination, EPA announced the availability of the State's application for public comment and a hearing was scheduled. The public hearing was not held as scheduled on September 30, 1985 since neither EPA nor the State received a significant interest in holding the hearing. Therefore, EPA has determined that the State's hazardous waste program satisfies all necessary requirements for Final Authorization.

Nevada is not authorized by the Federal government to operate the RCRA program on Indian Lands and this authority will remain with EPA.

Decision

I conclude that the State's application for Final Authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, the State of Nevada is granted Final Authorization to operate its hazardous waste program subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984) (HSWA). The State of Nevada now has the responsibility for permitting treatment, storage and disposal facilities within its border and for carrying out other aspects of the RCRA program, subject to the HSWA. The State of Nevada also has the primary enforcement responsibility, although EPA maintains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA) amending RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the U.S. EPA. The Federal requirements no longer applied in the authorized State, and the U.S. EPA could not issue permits for any facilities the State was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent authority within specified timeframes. New Federal requirements did not take effect in the authorized State until the State adopted those requirement as State law.

In contrast, under the newly enacted section 3006(g) of RCRA, 42 U.S.C. 6926(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time they take effect in non-authorized States. The U.S. EPA is directed to carry out those requirements and prohibitions in authorized States, including the issuance of full or partial permits, until the State is granted authorization to do so. Thus, while States must still adopt HSWA provisions as State law to retain final authorization, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Nevada after final authorization. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. If the HSWA related requirements are more stringent than Nevada's, the U.S. EPA will administer and enforce those portions of the HSWA in Nevada until the State receives authorization to do so. Among other things, this will entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once Nevada is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal provision. Until that time, the State will assist the U.S. EPA's implementation of the HSWA under a Cooperative Agreement.

Any State requirement that is more stringent than a HSWA provision also remains in effect; thus, regulated handlers must comply with the more stringent State requirements. Nevada is not being authorized for any requirement implementing the HSWA.

Compliance With Executive Order 12291

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

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Nevada's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any burdens on small entities. This rule therefore, does not require a regulatory flexibility analysis.

Authority

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: September 24, 1985.

Judith E. Ayres,

Regional Administrator.

[FR Doc. 85-24894 Filed 10-17-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 716

[OPTS-84019; FRL-2905-1]

Health and Safety Data Reporting Period Terminations

Correction

In FR Doc. 85-23261 beginning on page 39667 in the issue of Monday, September 30, 1985, make the following correction: On page 39668, in the second column, in the first complete paragraph, the last line should read "date.".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 79-184]

Authorization of CC Facilities To Meet North Atlantic Telecommunications Needs During the 1985-95 Period

AGENCY: Federal Communications Commission.

ACTION: Report and Order; Correction.

SUMMARY: This Erratum to the Commission's Second Report and Order in CC Docket No. 79-184 clarifies that decision by adding language explicitly authorizing the U.S. international carriers to activate their previously authorized U.S.-Europe circuits in North Atlantic facilities (50 FR 34813, August 28, 1985) in accordance with the circuit distribution policies adopted in the Second Report and Order.

FOR FURTHER INFORMATION CONTACT: Robert E. Gosse, International Policy Division, Common Carrier Bureau, Federal Communications Commission, Washington, DC 20554, (202) 632-4047.

Erratum

In the Matter of Inquiry into the policies to be followed in the authorization of common carrier facilities to meet North Atlantic Telecommunications needs during the 1985-1995 period, CC Docket No. 79-184.

Released: October 8, 1985.

The Commission's Second Report and Order in CC Docket No. 79-184, FCC 85-456, released August 22, 1985, is clarified by adding the following paragraph:

78. It is further ordered that the U.S. international carriers are authorized to

activate their previously authorized U.S.-CEPT circuits in North Atlantic facilities in accordance with the circuit distribution guidelines adopted herein.

Existing paragraphs 78 and 79 of the Second Report and Order are renumbered 79 and 80, respectively.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-24839 Filed 10-17-85; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 50, No. 202
Friday, October 18, 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 JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1306

Changes in Protocol Requirements for Researchers and Prescription Requirements for Practitioners

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) has published elsewhere in this issue of the **Federal Register** a notice of proposed rulemaking to reschedule U.S. Food and Drug Administration approved drug products which consist of dronabinol in sesame oil and encapsulated in soft gelatin capsules from Schedule I to Schedule II of the Controlled Substances Act (CSA). Dronabinol is the synthetic equivalent of the isomer of delta-9-tetrahydrocannabinol which is the principal psychoactive substance in *Cannabis sativa L.*, marijuana.

In order to conform with the U.S obligations under the Convention on Psychotropic Substances 1971 as required by the CSA, as amended by the Psychotropic Substance Act (Pub. L. 95–633), this rule will impose additional controls on the prescribing, administering, dispensing, and the conducting of research with Schedule II dronabinol products than those required for other Schedule II controlled substances.

DATE: Comments and objections must be received on or before November 18, 1985.

ADDRESS: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

FOR FURTHER INFORMATION CONTACT: G. Thomas Gitchel, Chief, Diversion Operations Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633–1216.

SUPPLEMENTARY INFORMATION:

List of Subjects

21 CFR Part 1301

Administrative practice and procedures, Drug traffic control, Security measures.

21 CFR Part 1306

Drug traffic control, Prescription drugs.

On May 31, 1985, the U.S. Food and Drug Administration (FDA) of the Department of Health and Human Services approved the new drug application for the product, Marinol Capsules, which was submitted by Unimed Incorporated. The product contains specified quantities of dronabinol in sesame oil and encapsuled in round soft gelatin capsules. Dronabinol is the U.S. Adopted Name (USAN) for the substance (6a*R–trans*)-6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6*H*-dibenzo[*b,d*]pyran-1-ol or (−)-delta-9-(trans)-tetrahydrocannabinol, the principal psychoactive substance in *Cannabis sativa L.*, marijuana. The medical indication for which the product was approved for marketing is the treatment of the nausea and vomiting associated with cancer chemotherapy in patients who have failed to respond adequately to conventional antiemetic treatments.

Delta-9-tetrahydrocannabinol, its salts, stereochemical variants and salts of the stereochemical variants are listed in Schedule I of the Convention on Psychotropic Substances 1971. The United States is a party to that international convention pursuant to the Psychotropic Substances Act of 1978 (Pub. L. 95–633, November 10, 1978). The Attorney General is responsible for carrying out certain of the U.S. obligations under the convention (see the Comprehensive Drug Abuse Prevention and Control Act of 1970 as amended, 21 U.S.C. 801 et seq.).

Article 7 of the convention reads as follows:

Special Provisions Regarding Substances in Schedule I

In respect to substances in Schedule I, the Parties shall:

(a) Prohibit all use except for scientific and very limited medical purposes by duly authorized persons, in medical or scientific establishments which are directly under the control of their Governments or specifically approved by them;

(b) Require that manufacture, trade, distribution and possession be under a special license or prior authorization;

(c) Provide for close supervision of the activities and acts mentioned in paragraphs (a) and (b);

(d) Restrict the amount supplied to a duly authorized person to the quantity required for his authorized purposes;

(e) Require that persons performing medical or scientific functions keep records concerning the acquisition of the substances and the details of their use, such records to be preserved for at least two-years after the last use recorded therein; and

(f) Prohibit export and import except when both the exporter and importer are the competent authorities or agencies of the exporting and importing country or region, respectively, or other persons or enterprises which are specifically authorized by the competent authorities of their country or region for the purpose. The requirements of paragraph 1 of article 12 for export and import authorizations for substances in Schedule II shall also apply to substances in Schedule I.

In enacting the Psychotropic Substances Act of 1978, the Congress mandated that, consistent with the U.S. obligations under the convention, control of psychotropic substances is to be accomplished in a manner which will not unduly restrict the availability of psychotropic substances for useful and legitimate medical and scientific purposes. The abuse of marijuana in the United States is widespread and represents a serious threat to the public health and safety. Marijuana is a Schedule I substance under the Controlled Substances Act (CSA) [see 21 U.S.C. 812(c) Schedule I(c)(10) and 21 CFR 1308.11(d)(13)]. Dronabinol, an isomer of tetrahydrocannabinol (THC), is the synthetic equivalent of the primary psychoactive substance in marijuana and possesses a similarly great abuse potential. Dronabinol, like marijuana, is a Schedule I substance [see 21 U.S.C. 812(c) Schedule I(c)(17) and 21 CFR 1308.11(d)(21)]. Effective control of dronabinol drug products is essential.

The Administrator of the Drug Enforcement Administration (DEA) determined that the obligations under the convention and the Comprehensive

Drug Abuse Prevention and Control Act of 1970, as amended, could be met if FDA approved products were rescheduled from Schedule I to Schedule II and if the use of the rescheduled products was restricted to the FDA approved indications. DEA now possesses an effective means of preventing diversion by revoking the registration of any practitioner who diverts controlled substances [see 21 U.S.C. 823(f)]. This sanction, in addition to other criminal or civil sanctions provided by law, can be invoked in any case in which dronabinol products are diverted. Registrants desiring to conduct research with FDA approved drug products or desiring to treat patients for any indication not currently approved by the FDA, will be required to file a protocol as required for research with Schedule I controlled substances. DEA will submit all protocols to the FDA for that agency's medical and scientific review and will notify the registrant of the outcome of the review. This will ensure that ethical medical treatment and research will not be impeded.

In order to conform with the requirements of the Controlled Substances Act and the Convention on Psychotropic Substances 1971 and in order to ensure that a drug product which has been approved by the FDA can be marketed, amendments are proposed to portions of Part 1301 of Title 21 of the Code of Federal Regulations pertaining to research protocols and portions of Part 1306 of Title 21 of the Code of Federal Regulations pertaining to the prescribing of controlled substances. Amendments to § 1301.33 will require that a research protocol be submitted prior to research being conducted with Schedule II dronabinol products. The amendments to §§ 1306.04 and 1306.11 will restrict the prescribing, administering and dispensing of Schedule II dronabinol products to FDA approved indications for use. The indication for use that has been approved, to date, is the treatment of nausea and vomiting associated with cancer chemotherapy in patients who have failed to respond adequately to conventional antiemetic treatments. Any other prescribing, administering or dispensing of FDA approved dronabinol drug products will be in violation of the Controlled Substances Act, 21 U.S.C. 801–904. the dronabinol drug product that has been approved, to date, consists of specified quantities of dronabinol in sesame oil and encapsulated in soft gelatin capsules. The Administrator of DEA has published elsewhere in this issue of the Federal Register a notice of proposed rulemaking to reschedule that product from Schedule I to Schedule II.

Pursuant to the authority vested in the Attorney General by 21 U.S.C. 821 and 871(b) as delegated to the Administrator of the Drug Enforcement Administration and redelegated to the Deputy Assistant Administrator, Office of Diversion Control by 28 CFR 0.100 and 0.104, it is hereby proposed that 21 CFR Parts 1301 and 1306 be amended as follows:

PART 1301—[AMENDED]

1. The authority citation for 21 CFR Part 1301 continues to read as follows:

Authority: 21 U.S.C. 821, 822, 823, 824, 871(b), 875, 877.

2. 21 CFR 1301.33 is amended by adding new paragraph (e) to read as follows:

§ 1301.33 Research protocols.

* * * * *

(e) In the event a researcher or practitioner who is authorized to conduct research with Schedule II substances desires to conduct research with Schedule II dronabinol products, a research protocol is required. The protocol must be approved prior to the initiation of the research. The protocol shall contain the information required of a Schedule I protocol listed in 21 CFR 1301.33(a)(1) thru 1301.33(a)(2)(vi). The protocol shall be submitted in triplicate by registered mail, return receipt requested, to Drug Enforcement Administration, Diversion Operations Section, 1405 I Street, NW., Washington DC 20537. The Drug Enforcement Administration will forward the protocol to the Food and Drug Administration for review of its medical and scientific merits. The Drug Enforcement Administration will notify the researcher in writing of the outcome of the review. The research can proceed after notification of a favorable review. In the event a researcher desires to make significant changes to research being conducted, including increasing the quantity of controlled substance to be used or conducting research beyond the variations provided in the previously accepted protocol, the researcher shall submit three copies of the supplemental protocol in the same manner as outlined in this section for original protocols. The changes in the research may be initiated upon written notification from the Drug Enforcement Administration of acceptance of the supplemental protocol.

PART 1306—[AMENDED]

1. The authority citation for 21 CFR Part 1306 is revised to read as follows:

Authority: 21 U.S.C. 821, 829, 871(b).

2. 21 CFR 1306.04 is amended by adding a new paragraph (d) to read as follows:

§ 1306.04 Purpose of issue of prescription.

* * * * *

(d) Any order purporting to be a prescription for a Schedule II dronabinol product not issued for indications approved by the Food and Drug Administration, is not a prescription within the meaning and intent of the Act (21 U.S.C. 829). Any person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances. Nothing in this section shall be deemed to prohibit the prescribing of dronabinol products approved by the Food and Drug Administration, for other than indications for use approved by the Food and Drug Administration by a researcher or registered practitioner conducting research, provided that the research is conducted in accordance with the research protocol provisions of 21 CFR 1301.33.

3. 21 CFR 1306.11 is amended by redesignating the existing paragraph (d) as paragraph (e) and by adding a new paragraph (d), to read as follows:

§ 1306.11 Requirement of prescription

* * * * *

(d) An individual practitioner or institutional practitioner may not administer or dispense Schedule II dronabinol products unless such administering or dispensing is for indications for use approved by the Food and Drug Administration. Any person knowingly administering or dispensing Schedule II dronabinol products contrary to this section shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances. Nothing in this section shall be deemed to prohibit the administering or dispensing of Schedule II dronabinol products, for other than indications for use approved by the Food and Drug Administration, by a researcher or registered practitioner conducting research, provided that the research is conducted in accordance with the research protocol provisions of 21 CFR § 1301.33.

* * * * *

Regulatory Flexibility and Executive Order 12291

The Deputy Assistant Administrator hereby certifies that this proposal will have no significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. A small percentage of registered practitioners will be dispensing Food and Drug Administration approved drug products which consist of dronabinol in sesame oil and encapsulated in soft gelatin capsules due to the limited medical indication for such products.

Pursuant to section 3(c) 3 and 3(e)(B) of Executive Order 12291 (46 FR 13193), this proposed action has been submitted for review by the Office of Management and Budget, and approval of that Office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, et seq.

Dated: October 1, 1985.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 85-24908 Filed 10-17-85; 8:45 am]

BILLING CODE 4410-09-M

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21 CFR Part 1308

Schedules of Controlled Substances; Rescheduling of Synthetic Dronabinol in Sesame Oil and Encapsulated in Soft Gelatin Capsules From Schedule I to Schedule II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) issues this notice of proposed rulemaking to remove drug products which consist of dronabinol in sesame oil and encapsulated in soft gelatin capsules from Schedule I and place them into Schedule II of the Controlled Substances Act (CSA), 21 U.S.C. 801, et seq. Dronabinol in the synthetic equivalent of the isomer of delta-9-tetrahydrocannebinol which is the principal pyschoactive substance in *Cannabis sativa L.*, marijuana. This action follows the Administrator's review of the CSA, the Controlled Substances Import and Export Act, the Convention on Psychotropic Substances 1971, the Assistant Secretary for Health's recommendation and the Food and Drug Administration's (FDA) approval for marketing of Marinol Capsules. This rule will require that the manufacture, distribution, dispensing, security, registration, record keeping, reporting, inventory, exportation and importation of a drug product which consists of dronabinol in sesame oil and encapsulated in soft gelatin capsules be subject to controls for Schedule II substances. Additional controls necessitated by the listing of delta-9-tetrahydrocannabinol in Schedule I of the Convention on Psychotropic Substances 1971 are addressed in a separate notice published elsewhere in this issue of the **Federal Register**. The proposed rule is intended to affect the CSA schedule of pharmaceutical products approved for marketing by the FDA, and is not intended to affect the Schedule I status of any other substance, mixture or preparation which is currently included in 21 CFR 1308.11(d)(21), Tetrahydrocannabinols.

DATE: Comments and objections must be received on or before November 18, 1985.

ADDRESS: Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 1308

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

On May 31, 1985, the Food and Drug Administration (FDA) approved the new drug application for the product, Marinol Capsules, which was submitted by Unimed Incorporated. The product contains specified quantities of dronabinol in sesame oil and encapsulated in round soft gelatin capsules. Dronabinol is the U.S. Adopted Name (USAN) for the substance (6a*R*-*trans*)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6*H*-dibenzo[*b,d*]pyran-1-ol or (-)-delta-9-(trans)-tetrahydroncannabinol, the principal psychoactive substance in *Cannabis sativa L.*, marijuana. The drug product is approved for the treatment of the nausea and vomiting associated with cancer chemotherapy in patients who have failed to respond adequately to conventional anitemetic treatments.

Dronabinol is an isomer of D^1 cis or trans tetrahydrocannabinol. Accordingly, dronabinol and any material, compound, mixture or preparation which contains any quantity of dronabinol are Schedule I substances [see 21 CFR 1308.11(d)(21)]. Thus, Marinol Capsules, the FDA approved drug product, cannot be legally marketed until it is rescheduled.

By letter of August 16, 1982, the Assistant Secretary for Health notified the then Acting Administrator of his scheduling recommendations relative to tetrahydrocannabinol (THC) pursuant to 21 U.S.C. 811(b). The Assistant Secretary recommended that THC remain in Schedule I of the CSA but that it be rescheduled to Schedule II if a new drug application was approved by FDA. (The Assistant Secretary's submission described THC as (-)-delta-9-(trans)-tetrahydrocannabinol, which has since been named dronabinol and is contained in Marinol Capsules.) These recommendations were based on the FDA's consideration of the eight factors and scheduling criterial listed in 21 U.S.C. 811(c) and 812(b).

Dela-9-tetrahydrocannabinol, its salts, stereochemical variants and salts of the stereochemnical variants are listed in Schedule I of the Convention on Psychotropic Substances 1971. The United States is a party to that international convention pursuant to the Psychotropic Substances Act of 1978 (Pub. L. 95-633, November 10, 1978). The Attorney General is responsible for carrying out certain of the United States obligations under this convention.

Article 7 of the convention reads as follows:

Special Provisions Regarding Substances in Schedule I

In respect to substances in Schedule I, the Parties shall:

(a) Prohibit all use except for scientific and very limited medical purposes by duly authorized persons, in medical or scientific establishments which are directly under the control of their Governments or specifically approved by them;

(b) Require that manufacture, trade, distribution and possession be under special license or prior authorization;

(c) Provide for close supervision of the activities and acts mentioned in paragraphs (a) and (b);

(d) Restrict the amount supplied to a duly authorized person to the quantity required for his authorized purpose;

(e) Require that persons performing medical or scientific functions keep records concerning the acquisition of the substances and the details of their use, such record to be preserved for a least two years after the last use recorded therein; and

(f) Prohibit export and import except when both the exporter and importer are the competent authorities or agencies of the exporting and importing country or region, respectively, or other persons or enterprises which are specifically authorized by the competent authorites of their country or region for the purpose. The requirements of paragraph 1 of article 12 for export and import authorizations for substances in Schedule II shall also apply to substances in Schedule I.

The CSA requires compliance with the U.S. obligations under the international drug control treaties and mandates effective controls against the diversion of controlled substances into other than legitimate medical and scientific channels while enabling medical practitioners and their patients to obtain medically approved and necessary controlled substances. The Administrator has determined that domestic and international obligations will be satisfied by the transfer of the FDA approved product from Schedule I to Schedule II of the CSA and by the retention of all other forms of THC in Schedule I. In addition to the requirements associated with Schedule II substances, the Administrator has determined that the obligations associated with article 7 of the convention require strict adherence to the FDA approved indication for use of the product and limitation of export of the product to that between competent authorities or agencies of countries or regions. To insure compliance with these obligations, changes in the protocol requirements for researchers and prescription requirements for practitioners are proposed in a Notice published elsewhere in this issue of the Federal Register. Further, the Administration has determined that the description of the Schedule II substance must be such that identification of the material will not create an undue burden for those who are responsible for enforcing the CSA and the laws of the several states.

Based upon the investigations and review of the Drug Enforcement Administration with attention to the U.S. obligations under the Convention on Psychotropic Substances 1971 and relying on the sceintific and medical evaluation and recommendation of the Assistant Secretary for Health of the Department of Health and Human Services in accordance with 21 U.S.C. 811(b), and the Food and Drug Administration approval of a new drug application for Marinol Capsules, the Administrator of the Drug Enforcement Administration, pursuant to the provisions of 21 U.S.C. 811(a), finds that:

1. Dronabinol (synthetic) in seasame oil and encapsulated in soft gelatin capsules in a U.S. Food and Drug Administration approved drug product has a high potential for abuse;

2. Dronabinol (synthetic) in seseme oil and encapsulated in soft gelatin capsules in a U.S. Food and Drug Administration approved drug product has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions; and,

3. Dronabinol (synthetic) in seasame oil and encapsulated in soft gelatin capsules in a U.S. Food and Drug Administration approved drug product may lead to severe psychological or physical dependence.

Pursuant to the authority vested in the Attorney General by section 201(a) of the CSA [21 U.S.C. 811(a)], as redelegated to the Administrator of the Drug Enforcement Administration by 28 CFR 0.100, and for the reasons set forth above, the Administrator hereby proposes to amend 21 CFR 1308.11 and 1308.12 as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. 21 CFR 1308.11(d)(21) is revised to read as follows:

§ 1308.11 Sechedule I.

* * * * *

(d) *Hallucinogenic substances.* * * *

(21) Tetrahydrocannabinols........................7370

Synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis* sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

Δ^1 cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.

Δ^6 cis or trans tetrahydrocannabinol, and their optical isomers.

$\Delta^{3,4}$ cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)

* * * * *

3. 21 CFR 1308.12 is amended by redesignating the existing paragraph (f) as paragraph (g) and by adding a new paragraph (f), reading as follows:

§ 1308.12 Schedule II.

* * * * *

(f) *Hallucinogenic substances.*

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product........................ 7369

[Some other names for dronabinol: (6a*R*-*trans*)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6*H*-dibenzo[*b,d*]pyran-1-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol]

* * * * *

All interested persons are invited to submit their comments or objections in writing regarding this proposal. If a person believes that one or more issues raised warrant a hearing, that person should so state and summarize the reasons for this belief. Comments and objections should be submitted in quintuplicate to the Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

In the event that comments or objections to this proposal raise one or more issues which warrant a hearing, the Administrator will publish in the Federal Register an order for a public hearing which will summarize the issues to be heard and set the time for the hearing that will not be less than 30 days after the date of the order.

Regulatory Flexibility and Executive Order 12291

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the rescheduling of formulations containing dronabinol, as proposed herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–345, September 19, 1980). The proposed action will allow the marketing of a drug product which was recently approved by the FDA.

In accordance with the provisions of 21 U.S.C. 811(a), this proposal to reschedule certain drug products which contain synthetic dronabinol from Schedule I to Schedule II is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and as such have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

Dated: October 11, 1985.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 85–24907 Filed 10–17–85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[LR-289-82]

Returns Required on Magnetic Media 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 returns required to be filed on magnetic media.

DATES: The public hearing will be held on Wednesday, December 18, 1985, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Wednesday, December 4, 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, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, ATTN: CC:LR:T (LR-289-82), Washington, DC 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, DC. 20224 or telephone 202-566-3935 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 6011 of the Internal Revenue Code of 1954. The proposed regulations appeared in the Federal Register for Wednesday, September 18, 1985 (50 FR 37871).

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 Wednesday, December 4, 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. 85-24903 Filed 10-17-85; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Part 402

Water-Resources Research Program and the Water-Resources Technology Development Program

AGENCY: U.S. Geological Survey, Interior.

ACTION: Proposed rule.

SUMMARY: The purpose of this action is to establish procedures that will enable the Department of the Interior to meet its responsibilities in administering the Water-Resources Research Program and the Water-Resources Technology Development Program authorized by the Water Resources Research Act of 1984, sections 105 and 106 (Pub. L. 98-242, 42 U.S.C. 10304 and 10305). The proposed rule primarily addresses the location of the administrative responsibility within the Department of the Interior; cost-sharing requirements and evaluation processes required by the Act; and, application and reporting procedures. The rulemaking action is intended to provide clear and consistent administrative direction in conducting the program.

DATES: Comments must be received on or before December 17, 1985.

ADDRESSES: Comments should be addressed to the Chief Hydrologist, U.S. Geological Survey, 426 National Center, Reston, Virginia 22092.

FOR FURTHER INFORMATION CONTACT: Melvin Lew, (703) 860-7324.

SUPPLEMENTARY INFORMATION:

Background

The Water Resources Research Act of 1984 (Pub. L. 98-242), authorized the Water-Resources Research Program and the Water-Resources Technology Development Program and repealed the Water Research and Development Act of 1978 (Pub. L. 95-467). The 1978 Act was administered by the Office of Water Research and Technology (OWRT) until it was abolished in 1982. OWRT functions relating to the water research and development, saline water research and development, and technology transfer activities authorized under the 1978 Act were transferred at that time to the Bureau of Reclamation. With the passage of the 1984 Act, Congress authorized the Water-Resources Research Program and the Water-Resources Technology Development Program and included specific language calling for rules and regulations to be promulgated pursuant to the new legislation. Secretarial Order 3106 designated the U.S. Geological Survey as the administrator of the Water Resources Research Act of 1984 and transferred from the Bureau of Reclamation to the Geological Survey the past water-research and development activities authorized by Pub. L. 95-467 for closeout. This proposed action confirms the Department of the Interior's intention to maintain administrative continuity for the program within the Geological Survey. The proposed new rule governing the Water-Resources Research Program and the Water-Resources Technology Development Program is placed in Title 30, Chapter IV, for consistency with placement of all regulations relating to programs of the Geological Survey.

Required Analyses

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, and, therefore, a regulatory impact analysis is not required. Enactment of new regulations to administer the Water-Resources Research Program and the Water-Resources Technology Development Program will have an estimated economic iumpact of significantly less than $100 million. Additionally, this action is not expected to increase costs or prices of goods and services in the private sector or have any other adverse economic impacts which require a regulatory impact analysis under the provisions of the Executive Order.

The majority of participants in the Water-Resources Research Program and Water-Resources Technology

Development Program would be from nonprofit educational institutions. Therefore, it has been determined that the proposed regulations do not have a significant economic impact on a substantial number of small entities and a regulatory flexibility analysis is not required.

The administrative procedures proposed in this action have no potential for significant environmental impact and are categorically excluded from the requirements for compliance with the National Environmental Policy Act of 1969, as amended (Pub. L. 91–190, 83 Stat. 852).

Paperwork Reduction Act of 1980

Information collection requirements contained in §§ 402.10, 402.11, and 402.15 have been sent to the Office of Management and Budget (OMB) for approval as required by 44 U.S.C. 3501 *et seq*. The collection of this information will not be required until it has been approved by OMB. Comments concerning information collection requirements only should be addressed to the Office of Management and Budget, New Executive Office Building, Room 3208, 17th Street and Pennsylvania Avenue NW., Washington, DC 20503, Attention: Desk Officer, Department of the Interior.

The public is invited to participate in this proposed rulemaking by submitting written comments, suggestions, or objections to the address identified in the addresses section of this preamble. Persons submitting comments should include their name, the specific section of the proposal to which each comment applies, and the reasons for the comment.

The principal author of this proposed rule is Melvin Lew of the Water Resources Division, U.S. Geological Survey.

The Catalog of Federal Domestic Assistance programs to be affected are No. 15.806 for the Water-Resources Research Program and No. 15.807 for the Water-Resources Technology Development Program.

List of Subjects in 30 CFR Part 402

Water resources, Research grant programs—natural resources, Government contracts, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, it is proposed to amend Chapter IV of Tilte 30 of the Code of Federal Regulations by adding Part 402 to read as follows:

PART 402—WATER-RESOURCES RESEARCH PROGRAM AND THE WATER-RESOURCES TECHNOLOGY DEVELOPMENT PROGRAM

Subpart A—General

Sec.
402.1 Purpose.
402.2 Delegation of authority.
402.3 Definitions.
402.4–402.5 [Reserved].

Subpart B—Description of water-resources programs

402.6 Water-Resources Reserch Program.
402.7 Water-Resources Technology Development Program.
402.8–402.9 [Reserved].

Subpart C—Application, evaluation, and management procedures

402.10 Research project applications.
402.11 Technology development project applications.
402.12 Application evaluation.
402.13 Program management.
402.14 [Reserved].

Subpart D—Reporting

402.15 Reporting procedures.
402.16–402.20 [Reserved].

Authority: Secs. 105 and 106, Pub. L. 98–242, 98 Stat. 97 (42 U.S.C. 10304 and 10305).

Subpart A—General

§ 402.1 Purpose.

The regulations in this part are issued pursuant to Title I of the Water Resources Research Act of 1984 (Pub. L. 98–242, 98 Stat. 97) which authorizes appropriations to, and confers authority upon, the Secretary of the Interior to promote a national program of water-resources research and technology development.

§ 402.2 Delegation of authority.

The Water-Resources Research Program and the Water-Resources Technology Development Program, as authorized by section 105 and 106 of the Act (42 U.S.C. 10304 and 10305), have been established as components of the U.S. Geological Survey (USGS). The Secretary of the Interior has delegated to the Director of the USGS authority to take actions and make the determination that, under the Act, are the responsibility of the Secretary.

§ 402.3 Definitions.

"Act" means the Water Resources Research Act of 1984 (Pub. L. 98–242, 98 Stat. 97).

"Contract" means a mutually binding legal relationship obligating the seller to furnish supplies or services for the direct benefit or use of the USGS.

"Grant" means an agreement between USGS and a grantee whereby the USGS provides funds to carry out defined projects awarded on a competitive basis to recipients who submit specific individual applications in the form and at the times indicated by the USGS.

§ 402.4–402.5 [Reserved]

Subpart B—Description of Water-resources programs

§ 402.6 Water resources research program.

(a) Subject to the availability of appropriated funds, the Water-Resources Research Program will provide support, in the form of a dollar-for-dollar matching grant, to educational institutions, private foundations, private firms, individuals, and agencies of local or State governments for research concerning any aspect of a water-resource related problem deemed to be in the national interest. Grants may be awarded on other than a dollar-for-dollar matching basis in cases where the USGS determines that research on a high priority subject is of a basic nature that otherwise would not be undertaken.

(b) The types of research to be undertaken under this program shall include:

(1) Aspects of the hydrologic cycle;

(2) Supply and demand for water;

(3) Demineralization of saline and other impaired waters;

(4) Conservation and best use of available supplies of water and methods of increasing such supplies;

(5) Water reuse;

(6) Depletion and degradation of ground-water supplies;

(7) Impovements in the productivity of water when used for agricultural, municipal, and commercial purposes; and

(8) The economic, legal, engineering, social, recreational, biological, geographic, ecological, and other aspects of water problems.

§ 402.7 Water-resources technology development program.

(a) Subject to the availability of appropriated funds, the Water-Resources Technology Development Program will provide funds in the form of grants, or cooperative agreements or contracts to educational institutions, private firms, private foundations, individuals, and agencies of local or State governments for technology development concerning any aspect of water-related technology deemed to be of State, regional, and national importance, including technology associated with improvement of waters of impaired quality and the operation of test facilities. The types of technology development to be undertaken under this program shall include items 1 through 8 of § 402.6(b)

(b) The USGS may establish any condition for the matching of funds by the recipient of any grant or contract under the technology development program which the USGS considers to be in the best interest of the Nation.

§ 402.8–402.9 [Reserved]

Subpart C—Application, evaluation, and management procedures

§ 402.10 Research project applications.

(a) Only those applications for grants that are in response to and meet the guidelines of specific USGS announcements will be considered for funding.

(b) The USGS program announcements will identify priorities, matching requirements, particular areas of interest, criteria for evaluation, OMB regulations as appropriate, assurances, closing date, and proposal submittal instructions. Program announcements may also include criteria for high priority subjects of a basic nature that may be funded on other than a dollar-for-dollar matching basis. Program announcements will be distributed to names on the current USGS mailing list for the Water-Resources Research Program's announcements. Requests for placement on the current USGS mailing list should be addressed to the Branch of Procurement and Contracts, U.S. Geological Survey, 205C National Center, Reston, Virginia 22092.

(c) Notification of the availability of the program announcement will be published in the Commerce Business Daily and/or **Federal Register.**

(d) The application for funds must be signed by an individual or official authorized to commit the applicant to the proposal and it must contain:

(1) A Standard Form 424 "Federal Assistance," sections I and II completed by applicant, will be used as the cover sheet for each proposal.

(2) A project summary of no more than one typed, single-spaced page providing the following specific information:

(i) Identification of the water or water-related problems and problem solution approach;

(ii) Identification of the proposed scientific contribution to the problem solution;

(iii) Concise definition of the specific objectives of the project;

(iv) Identification of the approach to be used to accomplish the work; and

(v) Identification of potential users of the proposed work.

(3) Narrative information as specified in the published program announcement on the project title, project objectives, background information, research tasks, methodology to conduct the research task, the relevancy of the proposed project to water-resources problems, qualifications of the principal investigator and organization, and proposed budget.

§ 402.11 Technology development project applications.

(a) In such cases that the USGS would be required to purchase or lease property or services for the direct benefit or use of the Federal Government, a contract document will be utilized. A solicitation for sealed bids or competitive proposals that identifies, in accordance with the Federal Acquisition Regulations, the scope of work, general information and instructions, technical and cost evaluation criteria, technical instructions and information, representations and certifications, and general provisions, will be provided to interested parties. Notification of the availability of any contract solicitation will be published in the Commerce Business Daily.

(b) Advancement of the state-of-the-art of water-related technology will be supported in the form of a grant. Program announcements and applications will be governed by the same procedures provided in § 402.10.

§ 402.12 Application evaluation.

(a) *Grants.* (1) Each grant application will receive technical evaluations from Government and/or non-Government scientific or engineering personnel. Utilizing the criteria for evaluation identified in the applicable announcement, each reviewer will assign a technical score.

(2) Grant applications with low technical ratings will be screened out and the remaining grant applications will be rank ordered by review panels.

(3) USGS program officials, utilizing their judgment as to program needs, responsiveness to published priorities, and level of available Federal funds, will compile a single, consolidated rank ordered list of the grant applications. The appropriate USGS procurement office will then commence procedures for negotiations and awards.

(b) *Contracts.* Proposals for contract awards will be evaluated by a USGS panel. Contracts will be awarded according to procedures in the Federal Acquisition Regulations.

§ 402.13 Program management.

(a) After the conclusion of negotiations, USGS will transmit to the grantee or contractor an award document. This document will identify the terms and conditions of the award and incorporate the application and assurances.

(b) Acceptance of the award document certifies the grantee's or contractor's assurance that the project will be administered in accordance with the following regulations, policies, and guidelines as appropriate.

(1) OMB Circular A–88, Revised, "Indirect Cost Rates, Audit, and Audit Followup at Educational Institutions;"

(2) OMB Circular A–21, Revised, "Cost Principles for Educational institutions—Codified in Federal Acquisition Regulations;"

(3) OMB Circular A–110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations;"

(4) OMB Circular A–87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local, and Federally Recognized Indian Tribal Governments;"

(5) OMB Circular A–102, Revised, "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;"

(6) OMB Circular A–122, "Cost Principles for Nonprofit Organizations;"

(7) OMB Circular A–67, "Coordination of Federal Activities in the Acquisition of Certain Water Data; and

(8) Federal Acquisition Regulations Subchapter E, "General Contracting Requirements," Part 31, "Contract Cost Principles and Procedures," Subpart 2, "Contracts with Commercial Organizations."

§ 402.14 [Reserved]

Subpart D—Reporting

§ 402.15 Reporting procedures.

(a) Grantees or contractors will be required to submit the following technical reports to the USGS address identified under the terms and conditions of each award.

(1) Quarterly Technical Progress Report. This report shall include all work accomplished, results achieved, and any changes that affect the project's scope of work, time schedule, and personnel assignments.

(2) Draft Technical Completion Report. The draft report will be required for review prior to submission of the final technical completion report.

(3) Final Technical Completion Report. The final report and a camera-ready copy shall be submitted to the USGS prior to the expiration date of the award and shall include a summary of all work accomplished, results achieved, conclusions, and recommendations. The

camera-ready copy shall be prepared in a manner suitable for reproduction by a photographic process. Format will be specified in the terms and conditions of the award.

(b) Grantees or contractors will be required to submit financial and closeout reports identified under the terms and conditions of each award. These reports will be in accordance with applicable OMB Circulars A-102 and A-110 and the Federal Acquisition Regulations.

§§ 402.16-402.20 [Reserved]

Dated September 12, 1985.

Robert N. Broadbent,

Assistant Secretary for Water and Science.

[FR Doc. 85-24700 Filed 10-17-85; 8:45 am]

BILLING CODE 4310-31-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 207

Naval Restricted Area in the Atlantic Ocean Near Port Everglades, FL

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Navy has requested the Corps of Engineers revise and expand an existing naval restricted area located in the Atlantic Ocean south from the Port Everglades entrance channel, Broward County, Florida. If established, the revised restricted area will prohibit anchoring by certain vessels in the designated area for the protection of the Navy's submarine cables. There are no restrictions on vessels otherwise using the area.

DATE: Comments must be submitted on or before November 18, 1985.

ADDRESS: HQDA, DAEN-CWO-N, Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Lonnie Shepardson at (904) 791-1677 or Mr. Ralph Eppard at (202) 272-0199.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities, the Department of the Army has promulgated regulations in 33 CFR 207.171f which governs the use, administration, and navigation of a naval restricted area in the Atlantic Ocean near Ft. Lauderdale, Florida. The Navy has requested the restricted area be enlarged to the south and the prohibition on anchoring within the entire area be changed from "ocean-going vessels or any vessel with draft in excess of 12 feet . . ." to "ocean-going vessels and/or any vessel with an anchor weight of 100 lbs. or more and/or an anchor winch pull capacity of 300 lbs. or more . . . ." We are also taking this opportunity to change the title of the Naval Command enforcing these regulations. A drawing showing the existing restricted area and the proposed expanded restricted area may be obtained by calling either number listed under "FOR FURTHER INFORMATION CONTACT."

Note.—This proposed regulation is issued with respect to a military function of the Defense Department, is not a major rule within the meaning of Executive Order 12291, and accordingly, the provisions of Executive Order 12291 do not apply. The Corps of Engineers also certifies that this regulation would not have a significant economic impact on a substantial number of entities and thus does not require preparation of regulatory flexibility analysis.

List of Subjects in 33 CFR Part 207

Navigation, Navigation (water), Water transportation, Waterways.

Accordingly, 33 CFR 207.171f is amended as follows:

PART 207—[AMENDED]

1. The authority for Part 207 continues to read as follows:

Authority: 40 Stat. 266; 33 U.S.C. 1.

2. Section 207.171f is revised to read as follows:

§ 207.171f Atlantic Ocean near Port Everglades, Fla.; naval restricted area.

(a) *The area.* Beginning at a point located at latitude 26°05'30" N.—longitude 80°03'30" W.; proceed west to latitude 26°05'30" N.—longtitude 80°06'30" W.; Thence, southerly to latitude 26°03'00" N.—longitude 80°06'42" W.; Thence, east to latitude 26°03'00" N.—longitude 80°05'44" W.; Thence, south to latitude 26°01'36" N.—longitude 80°05'44" W.; Thence, east to latitude 26°01'36" N.—longitude 80°03'30" W.; Thence, north to the point of beginning.

(b) *The regulations.* (1) Anchoring of ocean-going vessels and/or any vessel with an anchor weight of 100 pounds or more and/or an anchor winch pull capacity of 300 pounds or more shall be prohibited in the above described area.

(2) The regulations of this section shall be enforced by the Officer-in-Charge of the Naval Surface Weapons Center, Ft. Lauderdale Facility, Florida, and such agencies as he/she may designate.

Dated: October 2, 1985.

Dennis J. York,

Colonel, Corps of Engineers, Executive Director of Civil Works.

[FR Doc. 85-24862 Filed 10-17-85; 8:45 am]

BILLING CODE 3710-08-M

VETERANS ADMINISTRATION

38 CFR Part 21

Veterans Education; Measurement of Undergraduate Courses

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: At present, Title 38 of the Code of Federal Regulations permits the VA to measure, in a number of ways, undergraduate courses which have fewer than one 50-minute class sessions per week per hour of credit. One of these ways requires the VA to estimate the quality of the course. The VA does not believe it should be estimating the quality of courses for measurement purposes. This proposal rescinds the portion of the regulations which permits the agency to do so.

DATES: Comments must be received on or before November 15, 1985.

ADDRESSES: Send written comments 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 a.m. to 4:30 p.m., Monday through Friday (except holidays) until December 2, 1985.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Department of Veterans Benefits (202) 389-2092.

SUPPLEMENTARY INFORMATION: This proposal amends 38 CFR 21.4272 in order to eliminate the portion which permits the VA to assess the quality of an undergraduate course before determining how it would measure it. Measurement of courses as full-time, three-quarter time, etc., affects a veteran's monthly rate of educational assistance allowance.

This provision has the potential of requiring huge amounts of information collection. The VA has determined that the possible occasional overpayment or underpayment to a veteran is not worth the potential cost to the public of the potential information collection.

Furthermore, the VA does not think that it is its proper function to evaluate the quality of a college course. That is better left to the State approving agencies when considering whether to approve the course for VA training.

The VA has determined that this regulation is not a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The proposal will not cause a major increase in costs or prices for anyone. It will have no 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 Administrator of Veterans Affairs certifies that this amended regulation, if promulgated, 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), the proposed amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604. This certification can be made because this proposal removes a potential, but not an actual, information collection burden from schools, since the VA has never implemented this authority. Any economic impact it may have on small entities would be favorable, but not economically significant.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this regulation are 64.111, 64.117, and 64.120.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: September 20, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 21—[AMENDED]

38 CFR Part 21, VOCATIONAL REHABILITATION AND EDUCATION, is amended by revising § 21.4272(f)(2) introductory text and (f)(2)(i) to read as follows:

§ 21.4272 Collegiate undergraduate, credit-hour basis.

* * * * *

(f) *Course measurement, insufficient standard class sessions.* * * *

* * * * *

(2) When a course includes one or more weeks with more than one regularly scheduled class for every 2 credit hours, but less than one regularly scheduled class session for each credit hour,—

(i) The VA will determine training time for those weeks by using the table in § 21.4270(b) without adjustment when the published accrediting standards of the accrediting agency that accredits the course or the educational institution offering the course permit a class session which is somewhat shorter than that stated in § 21.4200(g) while requiring an overall level of educational pursuit that approximates the level required by courses offered on a standard quarter- or semester-hour basis. (38 U.S.C. 1788(b))

* * * * *

[FR Doc. 85-24643 Filed 10-17-85; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 442

[BPO-045-P]

Medicaid Program; FFP for Services of Long-Term Care Facilities

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule would clarify policy on Federal financial participation (FFP) in State Medicaid payments to a long-term care (LTC) facility after the State agency has terminated the provider agreement or failed to renew the agreement when it expires.

These amendments are necessary to establish Medicaid policy that is consistent with sound administrative practice. Clear policy will ensure uniform understanding and application by all Medicaid agencies.

DATE: Consideration will be given to comments mailed by December 17, 1985.

ADDRESS: Address comments in writing to: Administrator, Health Care Financing Administration, Department of Health and Human Services, ATTENTION: BPO-045-P, P.O. Box 26676, Baltimore, Maryland 21207.

In commenting, please refer to file code BPO-45-P.

If you prefer, you may deliver your comments to Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC, or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Comments will be available for public inspection as they are received, beginning approximately three weeks after publication, in Room 309-G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (202-245-7890).

Because we receive many comments, we cannot respond to them individually. However, when we publish the final rule, we will consider the comments and respond to the significant ones in the preamble to that rule.

FOR FURTHER INFORMATION CONTACT: Gilda Martin (301) 597-1399.

SUPPLEMENTARY INFORMATION:

Background

Statutory Provisions

Title XIX of the Social Security Act (the Act) provides for FFP in State Medicaid payments to any LTC facility that has a valid provider agreement in effect. In order to have a provider agreement, the facility must be certified by the State survey agency as meeting the Federal requirements for participation in the program. (These provisions are in 42 CFR 440.40(a)(1)(ii), 440.150(a)(2), and 442.30 of the Medicaid rules.)

Medicaid agreements with skilled nursing facilities (SNFs) and intermediate care facilities (ICFs) are limited to terms of not more than 12 months by § 442.15 of the Medicaid rules. These time-limited agreements, which contain an expiration date, may be terminated or not renewed, as explained below.

1. An agreement may be terminated before the expiration date, in any of the following circumstances:

- The State survey agency certifies that the facility no longer meets the requirements for participation in the program.
- HCFA terminates the Medicare agreement with a SNF that participated in both programs.
- HCFA, in validating State survey agency determinations (under sections 1902(a)(33)(B) and 1910(c) of the Act), finds that a SNF or ICF does not meet the requirements for participation and specifies a termination date.

2. The agency may decide not to renew an agreement that has continued in effect until its expiration date, if the State survey agency finds that it cannot certify the facility as continuing to be in compliance with the Federal requirements.

Section 1902(a)(33)(B) of the Act (commonly referred to as the "look-behind" provision) authorizes the Secretary to make an independent determination with respect to a facility's compliance with the Federal requirements for participation in the program. However, that provision does not override the State's authority to terminate a provider agreement. In other words, if, during the HCFA "look-behind" process, the State decides to terminate the agreement, it may do so.

FFP Rules

As a basic rule, FFP is not available in State Medicaid payments made to a facility after its provider agreement has been terminated or has expired and not been renewed. As an exception to the basic rule, FFP may, on an individual patient basis, be continued for up to 30 days after termination or expiration, in order to allow time for transfer of residents to other facilities or to alternate care (§ 441.11 of the Medicaid rules). A related rule, in § 442.16, provides that the Medicaid agency may extend a provider agreement for up to 2 months beyond its original expiration date if the State survey agency gives it written notice, before the agreement expires, that—

- Extension will not jeopardize patients' health and safety; and
- Extension is necessary either to prevent irreparable harm to the facility or hardship to the residents, or because it is impracticable to determine, before the expiration date, whether the facility meets the requirements for participation.

(Since the agreement would continue in effect, continuation of FFP for the period of up to 2 months does not contravene the basic rule.)

FFP During Appeals

Under § 431.153 of the Medicaid regulations, the Medicaid agency is required to provide an evidentiary hearing when it terminates or does not renew a facility's agreement. The agency has a choice of providing this hearing before or after the effective date of termination or expiration. Furthermore, if the agency elects the second option, it must complete the hearing within 120 days after date of termination or expiration. (If the State elects the second option, § 431.154 requires that it must offer an informal reconsideration before the effective date of the State's action.) Those rules do not speak to FFP during appeals. However, a Program Regulation Guide (MSA-PRG-11) issued on December 20, 1971, did address the issue. MSA-PRG-11 amended the Medicaid Manual. The amendment reiterated the basic rule to deny FFP during appeals after termination, but permitted FFP to continue when State law provided for the continued validity of the agreement during appeal, or the facility was upheld on appeal and State law provided for retroactive reinstatement of the facility.

Problems have arisen because either State law or State court orders have required Medicaid agencies to continue payments to facilities for long periods of time pending action on administrative or judicial appeals, and State claims for FFP in such payments have been disallowed by HCFA. (In some recorded instances appeals have lasted up to 7 years.) The Departmental Grants Appeal Board (the Board) has ruled that the provisions of MSA-PRG-11 apply to State court orders, and that, under 42 CFR 431.250(b)(2), FFP is available in expenditures that are for sevices provided within the scope of the Federal Medicaid program and are made under a State court order. However, the Board has also held that the "within the scope of the Medicaid program" language limits FFP under MSA-PRG-11 to 12 months after the termination or expiration date of the agreement (since 12 months was the maximum term for an agreement with a SNF or ICF), or the date of the next survey, whichever is earlier.

The proposed regulations will replace MSA-PRG-11, ensure uniform understanding and application, reduce the need for litigation before the Board and the courts, and facilitate the processing of Medicaid claims.

Proposed Policy

We propose to rescind MSA-PRG-11 and to conform Medicaid policy to Medicare policy. This means that FFP would not be available in Medicaid payments for services furnished by a long-term care facility after the date the facility's provider agreement is terminated or expires. This policy would apply even if State law or Federal or State court orders require the State to continue payments to the facility after that date.

The proposed change would not affect FFP under §§ 441.11 and 442.16 of the Medicaid rules, which allow continued FFP for up to 30 days for transfer of patients, and permit a single 2-month extension if the specified conditions are met.

Recent amendments to section 1903(g) of the Medicaid law specify that the Secretary has the responsibility of ensuring that the standards governing the provision of care in SNFs and ICFs under the Medicaid program are adequate to protect the health and safety of residents. Accordingly, we do not believe it proper to reimburse States for payments to LTC facilities when the State's own survey agency has determined that the facility does not meet the conditions for participation.

In response to previous proposed rules, States have commented that since Federal rules require States to grant an appeal when they terminate or do not renew a provider agreement, the rules should also provide for FFP during the appeals process. Since States know in advance when a provider agreement will be terminated, or when it will not be renewed, we believe they can adequately protect themselves against loss of FFP during provider appeals. They can do so by ensuring that the appeals required by 42 CFR Part 431, Subpart D of the Medicaid rules are provided in a timely manner. Availability of FFP for longer periods of time could, we believe, prove to be a disincentive for prompt correction of deficiencies.

MSA-PRG-11 is the sole basis for continuing FFP after a facility's provider agreement has been terminated or has expired and not been renewed. Accordingly, revocation of MSA-PRG-11 is the only action required to restore the full effect of the basic rule: No FFP in State Medicaid payments for services furnished by a facility that does not have in effect a valid provider agreement. Nevertheless, to preclude any possible misunderstanding, we would add new §§ 442.40 and 442.42—

- To specify that FFP is not available during appeals that are initiated or continued after termination or expiration;
- To set forth the circumstances under which FFP is available in a retroactive agreement issued by the State agency as a result of a decision favorable to the facility.
- To make clear that court-ordered extension of a provider agreement will no longer constitute a basis for FFP.

If a facility were upheld on administrative or judical appeal, and the State issued a retroactive agreement effective in accordance with § 442.13, we would ordinarily match payments made on or after the retroactive effective date unless HCFA determined, in accordance with § 442.30 of the Medicaid rules, that the new agreement was not valid evidence that the facility had been certified by the State survey agency as meeting the requirements for participation. Under § 442.30, a provider agreement is generally considered evidence that the facility meets the requirements. However, that section also provides that the agreement is not valid evidence if HCFA finds that—

- The survey agency fails to meet some or all of the rules regarding:

(1) Application of appropriate standards;

(2) Procedures for certification;

(3) Functions the survey agency must perform in evaluating and acting on information about the facility and inspecting the facility; and

(4) Use of the Federally prescribed survey forms, methods, and procedures; or

• The terms and conditions of the agreement itself fail to meet the applicable Federal requirements. (This is a determination that the agreement is not evidence that the facility does meet the requirements. It is not a basis for termination, but only for denial of FFP.) Under the latter circumstance, FFP is not available even if the State issued the retroactive agreement as a result of an administrative hearing decision favorable to the facility, or under a court order.

As indicated above, the proposed policy does not affect FFP under §§ 441.11 and 442.16 of the Medicaid rules. The provisions of these two regulations also ensure that the Medicaid recipient will not be adversely affected by the cutoff of FFP. The first section provides for the continuation of FFP to a terminated facility for up to 30 days to permit the orderly transfer of patients to another facility on alternative care. The second section permits an extension of the provider agreement for up to 2 months, if the Medicaid agency receives from the survey agency a written notice that—

• Extension will not jeopardize the patients' health and safety; and

• Is needed to prevent irreparable harm to the facility or hardship to the recipient.

Other Changes

As indicated above, § 442.16 provides for extension of an agreement for up to 2 months after the expiration date, under specified circumstances. We believe the rule is quite clear. Nevertheless, since at least one State has interpreted the rule as permitting multiple 2-month extensions, we propose to revise the section to specify that it permits a single period of up to 2 months from the original expiration date specified in the agreement. This has always been our interpretation of the rule, and we find no reasonable basis for interpreting that it permits multiple extensions.

We would revoke MSA-PRG-11 when we publish these regulations as final.

Impact Analysis

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in that Order. In addition, the Regulatory Flexibility Act (Pub. L. 96-354) requires us to prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. Under both the Executive Order and the Regulatory Flexibility Act (RFA), such analyses must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize the burden or otherwise ensure that the regulations are cost-effective.

A. Executive Order 12291

As noted earlier in this preamble, we anticipate several program benefits from this proposed change to current policy. First, we believe that, by discontinuing FFP when the provider agreement is terminated or not renewed, we would encourage more prompt resolution of appeals at the State level and more timely removal of beneficiaries from substandard facilities. We believe that discontinuing FFP in these cases would result roughly in annual Federal savings of about $5 million. This estimate assumes that by not continuing FFP for up to the maximum duration of 12 months (as required by Board interpretation), we would reduce the amount paid as the Federal share of State payments to substandard facilities. However, affected States would then incur some annual increased cost based on the assumption that State law or State or Federal courts would require, in some cases, continued payment by the State even though the provider agreement was terminated and FFP is discontinued.

Second, we expect that, with our policy stated more clearly, we would ensure uniform understanding and application among States and providers and reduce the need for litigation before the Board and the courts. This would lessen the demands on the limited number of staff assigned currently to process disallowances and respond to litigative actions. Third, we anticipate that clarification of policy will facilitate the processing of Medicaid claims so that the workload would be reduced and we would be more consistent in our payment of State claims for SNF and ICF services. Finally, we would ensure that we do not continue to share in payments to facilities that have serious deficiencies.

It is clear that by not continuing FFP for up to the maximum duration of 12 months (as required by Board interpretation), we will significantly reduce the amount paid as the Federal share of State payments to substandard facilities.

A second budget consideration relates to transfer of recipients to another facility when a provider agreement is terminated or not renewed. In this situation, we might pay more or less FFP, depending on the per diem rate in the two facilities. However, since our data indicate that not many transfers are made as a result of termination or nonrenewal of provider agreements, we do not expect such transfers to have significant budget impact.

Since the current amount of Federal funds involved in pending cases is less than $100 million, we have determined that the annual economic effect of this proposal does not meet the threshold criteria of the Executive Order. Therefore, a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

The primary effect of this proposed rule is to limit the duration of FFP payments to States. States are not considered small entities and, therefore, are not subject to the Regulatory Flexibility Act analyses requirements. There may, of course, be some indirect impact on providers whose agreements are terminated or not renewed. However, the impact on the facilities would not be the result of these rules but rather of State action to terminate or not renew those agreements.

Accordingly, the Secretary certifies, under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) that this proposed rule will not have a significant impact on a substantial number of small entities. Thus, a regulatory flexibility analysis is not required.

List of Subjects in 42 CFR Part 442

Certification of Intermediate Care Facilities (ICFs), Certification of Skilled Nursing Facilities (SNFs), Contracts (Agreements), Disabled, Grant-in-Aid program—health, Health facilities, Health professions, Health records, Information (Disclosure), Medicaid, Mental health centers, Nursing homes, Nutrition, Privacy, Safety.

42 CFR Part 442 is amended as set forth below:

PART 442—STANDARDS FOR PAYMENT FOR SKILLED NURSING AND INTERMEDIATE CARE FACILITY SERVICES

The authority citation for Part 442 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

Subpart B—Provider Agreements

Subpart B is amended as set forth below:

1. In § 442.16, the introductory statement is revised to make clear that only one extension is permitted, to read as follows:

§ 442.16 Extension of agreement.

A Medicaid agency may extend a provider agreement for a single period of up to 2 months beyond the original expiration date specified in the agreement if it receives written notice from the survey agency, before the expiration date of the agreement, that extension will not jeopardize the patients' health and safety, and—

2. New §§ 442.40 and 442.42 are added, to read as follows:

§ 442.40 Availability of FFP during appeals.

(a) *Definitions.*

As used in this section—*"Effective date of expiration"* means the date of expiration originally specified in the provider agreement, or the later date specified if the agreement is extended under § 442.16; and *"Effective date of termination"* means a date earlier than the expiration date, set by the Medicaid agency when continuing participation until the expiration date is not justified, because the facility no longer meets the requirements for participation.

(b) *Rules.* (1) Except as provided in § 441.11(b) of this chapter, FFP in payments to a SNF or ICF ends on the effective date of termination of the facility's provider agreement, or if the agreement is not terminated, on the effective date of expiration.

(2) If State law, or a Federal or State court order or injunction requires the agency either to extend the agreement, or to continue payments to the facility, or both, FFP is not available in payments made after the effective date of termination or expiration as defined in paragraph (a) of this section

§ 442.42 FFP under a retroactive provider agreement following appeal.

(a) *Basic rule.* Except as specified in paragraph (b) of this section, if a SNF or ICF is upheld on appeal from termination or nonrenewal of a provider agreement, and the State issues a retroactive agreement, FFP is available beginning with the retroactive effective date, which must be determined in accordance with § 442.13.

(b) *Exception.* This rule does not apply if HCFA determines, under § 442.30, that the agreement is not valid evidence that the facility meets the requirements for participation. This exclusion applies even if the State issues the new agreement as the result of an administrative hearing decision favorable to the facility or under a Federal or State court order.

(Catalog of Federal Domestic Assistance Program No. 13.713, Medical Assistance Programs.)

Dated: April 29, 1985.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: August 21, 1985.

Margaret M. Heckler,

Secretary.

[FR Doc. 85-24849 Filed 10-17-85; 8:45 am]

BILLING CODE 4120-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Adminstration

49 CFR Part 571

[Docket No. 84-12; Notice 2]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of termination of rulemaking.

SUMMARY: This notice terminates rulemaking which would have amended Motor Vehicle Safety Standard No. 108 to allow clearance and identification lamps to flash when the hazard warning system is operating. A proposal implementing the grant of a petition for rulemaking submitted by Lewis S. Hollins was published on October 25, 1984. Comments opposed the proposal on the grounds that no benefits to safety would accrue, and that the potential would exist for a degradation of safety.

FOR FURTHER INFORMATION CONTACT: Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-426-2153).

SUPPLEMENTARY INFORMATION: Paragraph S4.6 of 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment,* in effect requires identification and clearance lamps to be steady burning when activated. The same paragraph requires hazard warning signals to flash when in use. Lewis S. Hollins of Great Neck, N.Y. petitioned the agency:

> To require an improved hazard warning system on those commercial vehicles equipped with clearance/marker and identification lights so that when the hazard warning system is in operation, the said clearance/marker and identification lights are synchronized to flash intermittently and simultaneously with the flashing of the front (left & right) and rear (left & right) turn signal lights.

In Mr. Hollins' opinion, such an amendment would make disabled vehicles more readily visible under adverse road conditions such as dips in the road, in inclement weather, and under conditions of reduced light because of competition from other lighting sources.

The agency reviewed the petition and Standard No. 108. All motor vehicles, except passenger cars, whose overall width is 80 inches or more, must be equipped with clearance lamps, to indicate the overall width, and with identification lamps, to indicate the presence of a large vehicle in the roadway. Each such vehicle must also be equipped with a hazard warning system, which operates through the turn signal lamps. Under paragraph S4.6, the hazard warning system must flash when activated but lamps such as clearance and identification lamps are required to be steady-burning in use.

NHTSA has long been concerned with the conspicuity of large vehicles, and was interested in the views of Mr. Hollins; accordingly, it granted his petition and published a Notice of Proposed Rulemaking on October 25, 1984 (49 FR 42965). There was an intuitive appeal to his argument, though he submitted no data showing that the current hazard warning system is inadequate in the situations he has discussed. Unstated in the petition, and unknown to NHTSA, was the effect upon the battery of a vehicle that might occur if the clearance and identification lamps were included in the operation of the hazard warning system. The agency especially invited comments on the issues of possible safety improvement or degradation through incorporation of the lamps into the hazard warning system, and the possible effects on the electrical system. NHTSA did not believe that sufficient safety reasons compelled mandating such a system, but tentatively concluded that it could be offered as a manufacturer's option. It therefore proposed that means could be provided to flash identification and clearance lamps with hazard warning system lamps.

Comments were received from 17 sources including vehicle manufacturers, lighting equipment manufacturers, motor vehicle and motor vehicle equipment trade associations, the California Highway Patrol, and the National Transportation Safety Board. Only two commenters, Chrysler Corporation and

Abex Corporation, supported the petition. Fourteen commenters opposed it. The remaining commenter asked for a clarification.

NHTSA first asked whether the proposal would enhance the conspicuity of large vehicles. Affirmative responses were provided by Chrysler and Abex; the former, however, also suggesting that NHTSA give special note to comments of heavy truck manufacturers and users who had had more experience than Chrysler with larger vehicles. Freightliner, the only manufacturer of large vehicles to comment on this aspect of the proposal, argued that it would be premature for the agency to adopt the proposal absent final results from ongoing agency research devoted to conspicuity of large vehicles. American Trucking Associations commented that the petition presented no data to demonstrate the effectiveness of the proposed system. Truck Trailer Manufacturers Association stated that it was questionable whether the proposed system would add to a trailer's conspicuity. Motor Vehicle Manufacturers Association commented that any enhanced conspicuity would occur only under conditions of reduced visibility and not under ordinary daylight conditions. Grote, a manufacturer of lighting equipment, stated that clearance lamps and turn signal lamps are frequently combined on large vehicles and that in simultaneous operation the 2 or 3 candlepower filament of the former would be overcome by the 32 candlepower output of the turn signal. This would result in no appreciable increase in light output, hence the system would do nothing to increase vehicle conspicuity. California Highway Patrol submitted that too many flashing lights on a vehicle can be disconcerting to approaching drivers and could actually result in an increase in roadside rear-end collisions.

NHTSA's second concern was the possible negative effects upon safety, such as detrimental effects upon battery life, wiring systems, and compatibility between truck tractors and trailers. There was agreement from the commenters that there would be a draw upon the current but disagreement as to its effect. In the opinion of one commenter, Fixible Corporation, the lack of suitable heavy duty turn signal flasher units is already a problem, which would only be exacerbated by implementation of the proposal. The ultimate result could be flasher failure at the very time the warning is needed. International Harvester supported the present standardization of trailer wiring, and believed that the proposed system would dictate a change to the tractor wiring, disturbing the compatibility that presently exists. With the proposed system, there would be a 7-pin electrical connector on the tractor and an 8-pin one on the trailer. Tractors and trailers could not be interchanged and would be restricted to specific combinations. This would not be practicable for the trucking industry. A similar comment was filed by Theurer, Inc.

NHTSA also asked for comments on the possible costs involved in implementing the proposal. No specific cost estimates were forthcoming, though there were general comments that the system would not be cost effective.

Finally, NHTSA was interested in whether the proposed system should be required, or simply allowed as an option under Standard No. 108. Ford Motor Co. and Freightliner Corp. opposed the system, even on an optional basis, arguing that it would create confusion in the absence of all vehicles being so equipped.

The consensus of the comments, with which the agency concurs, was that there is insufficient justification for proceeding with further rulemaking on the proposed system. No demonstrable benefits to safety were shown, and there are problems that might occur resulting in a degradation to safety. The agency therefore has decided to terminate rulemaking in this docket without further action.

The engineer and attorney primarily responsible for this notice are Kevin Cavey and Taylor Vinson, respectively.

(Secs. 103, 119, Pub. L. 89-563; 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Date issued: October 11, 1985.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 85-24891 Filed 10-17-85; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearings and Reopening of Comment Period on Proposed Endangered Status for Abutilon menziesii (ko' oloa 'ula), Hibiscadelphus distans (Kauai hau kuahiwi), Mezoneuron kavaiense (uhiuhi), and Scaevola coriacea (dwarf naupaka)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule: notice of public hearings and reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that three public hearings will be held on the proposed determination of endangered status for *Abutilon menziesii* (ko' oloa 'ula), *Hibiscadelphus distans* (Kauai hau kuahiwi), *Mezoneuron kavaiense* (uhiuhi), and *Scaevola coriacea* (dwarf naupaka) and that the comment period on these proposals is reopened. The hearings and the reopening of the comment period will allow comments on this proposal to be submitted from all interested parties.

DATES: The hearings are scheduled as follows:

1. November 4, 1985, 7:00-9:00 p.m., Kona, Hawaii. This hearing will be for the *Mezoneuron kavaiense*.

2. November 5, 1985, 7:00-9:00 p.m., Maui, Hawaii. This hearing will be for *Abutilon menziesii* and *Scaevola coriacea*.

3. November 7, 1985, 7:00-9:00 p.m., Kauai, Hawaii. This hearing will be for *Hibiscadelphus distans* and *Mezoneuron kavaiense*.

The comment periods, which originally closed on September 6, 1985 (*Abutilon menziesii, Hibiscadelphus distans*, and *Scaevola coriacea*) and October 4, 1985 (*Mezoneuron kavaiense*) will not close December 9, 1985.

ADDRESSES: The hearings will be held at the following locations:

1. November 4, 1985: Kailua-Kona Library, 75-138 Hualalai Road, Kailua, Kona.

2. November 5, 1985: Kahului Library, 90 School Street, Kahului, Maui, Hawaii.

3. November 7, 1985: Kauai Regional Library-Lihu, 4344 Hardy, Lihu, Kauai, Hawaii.

Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah St., Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

FOR FURTHER INFORMATION CONTACT: Mr. Ernie Kosaka, Project Leader, Office of Environmental Services, U.S. Fish and Wildlife Service, 300 Ala Moana Blvd., Room 6307, Honolulu, Hawaii 96850 (808/546-7530).

SUPPLEMENTARY INFORMATION:

Background

Abutilon menziesii was first collected by Dr. Archibald Menzies while in Hawaii with Capt. George Vancouver aboard the "Discovery" in 1790–1794. In 1865, B.C. Seemann found Menzies' collection in the British Museum of Natural History, London. This plant is known from only three small populations located on the islands of Lanai, Maui, and Oahu, in the State of Hawaii. A proposal of endangered status for *Abutilon menziesii* was published in the **Federal Register** (50 FR 28876) on July 16, 1985.

Hibiscadelphus distans was discovered by L. Earl Bishop and Derral Herbst in 1972 and later described them (Bishop and Herbst, 1973). It was at one time more abundant and more widely distributed, but only 10 individuals are presently known to exist. It occurs on State-owned land within the Pu'u Ka Pele Forest Preserve, Koai'e Valley, Waimea Canyon, Island of Kauai, Hawaii. A proposal of endangered status for *Hibiscadelphus distans* was published in the **Federal Register** (50 FR 28873) on July 16, 1985.

Mezoneuron kavaiense is an endemic Hawaiian tree, well known to natives, who used its strong, dark, heavy wood for spears and fishing implements, the species remained uncollected by botanists until 1865. Historically known to have occurred on the islands of Hawaii, Oahu, Maui and Kauai, this species has declined to only 3 populations, totaling fewer than 50 individuals, located on the slopes of Hualalai, North Kona, Hawaii; in the Waianae Mountains, Oahu; and in the Waimea Canyon in western Kauai. The Hawaii population occurs on the Pu'uwa'awa'a Ranch, State-owned land, and on private land owned by the Bernice P. Bishop Estate. These lands are leased as cattle pasture. A proposal of endangered status for *Mezoneuron kavaiense* was published in the **Federal Register** (50 FR 31632) on August 5, 1985

Scaevola coriacea is a sparsely branched, prostrate shrub found in close proximity to the ocean. It was first collected by David Nelson in 1779, and later described by T. Nuttall (1843), based on specimens collected on "Atooi" (Kauai) in 1835. Historically, populations of *Scaevola coriacea* were present on all the major Hawaiian islands, with Maui supporting the most extensive populations. Presently, only four small populations remain in Maui County, Hawaii: Waiehu Point, West Maui; Kaupo, East Maui; on the islet of Moke'ehia, off West Maui; and on the islet of Mokuho'oniki, east of Molokai. A proposal of endangered status for *Scaevola coriacea* was published in the **Federal Register** (50 FR 28878) on July 16, 1985.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. On August 22, 1985, a request for a public hearing on *Hibiscadelphus distans* was received from George R. Ariyoshi, Governor, State of Hawaii. After coordinating with Mr. Ariyoshi, the Service decided to hold hearings for all four species, and has scheduled them as follows: 1) November 4, 1985—Kailua-Kona Library, 75–138 Hualalai Road, Kailua, Kona, Hawaii from 7:00–9:00 p.m. (*Mezoneuron Kavaiense*); 2) November 5, 1985—Kahului Library, 90 School Street, Kahului, Maui, Hawaii from 7:00–9:00 p.m. (*Abutilon menziesii* and *Scaevola coriacea*); 3) November 7, 1985—Kauai Regional Library-Lihu, 4344 Hardy, Lihu, Kauai, Hawaii from 7:00–9:00 p.m. (*Hibiscadelphus distans* and *Mezoneuron kavaiense*). Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes, if the number of parties present that evening necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

The comment periods originally closed on September 6, 1985 for *Abutilon menziesii*, *Hibiscadelphus distans*, and *Scaevola coriacea* and October 4, 1985 for *Mezoneuron kavaiense*). In order to accommodate the hearings, the Service reopens the public comment period. Written comments may now be submitted for all proposals until December 9, 1985, to the Service office in the Addresses section.

The primary author of this notice is Ms. Carolyn Bohan, U.S. Fish and Wildlife Service, 500 N.E. Multnomah St., Suite 1692, Portland, Oregon 97232 (503/231-6131 or FTS 429-6131).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: October 11, 1985.

David F. Riley,

Acting Regional Director.

[FR Doc. 85–24970 Filed 10–17–85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 202
Friday, October 18, 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

Determination of Import Quotas on Sugar for Quota Year 1986 and Modification of the Quota Period

Correction

In FR Doc. 85-22347 beginning on page 37887 in the issue of Wednesday, September 18, 1985, make the following corrections:

On page 37888, first column, in the second complete paragraph, fifth line, "1,772,000" should have read "1,722,000". Also in the same column ninth line from the bottom, "1,772,000" should have read "1,722,000".

BILLING CODE 1505-01-M

Member of Performance Review Boards

AGENCY: U.S. Department of Agriculture.

ACTION: Notice.

SUMMARY: This document cancels the list of Performance Review Board members published June 18, 1984, 49 FR 24910, as amended November 21, 1984, 49 FR 45889; March 14, 1985, 50 FR 10292; June 14, 1985, 50 FR 24922; and July 15, 1985, 50 FR 28601, and gives notice of new Performance Review Board members.

EFFECTIVE DATE: Upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Fran Lopes, Chief, Employment and Executive Resources Staff, Office of Personnel, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250, (202/447-2830).

The membership of the U.S. Department of Agriculture's Performance Review Boards include:

Daniel G. Amstutz
Thomas J. Army
Lawrence Bembry
Orville G. Bentley
John Bode
Roger K. Bottrell
Galen S. Bridge
Robert W. Bueley
W. Scott Burke
Dwight O. Calhoun
Richard J. Cannon
Mary O. Carter
Kenneth C. Clayton
Denzil O. Clegg
Samuel J. Cornelius
Sonia F. Crow
Louis G. Davis
Stephen B. Dewhurst
John E. Ford
Harvey L. Ford
Richard L. Fowler
John J. Franke, Jr.
David Galliart
Lou Gast
James W. Glosser
Richard Goldberg
John Graziano
Charles L. Grizzle
Eddie F. Kimbrell
Kathleen Lawrence
Ray Lett
James O. Lee, Jr.
Douglas MacCleery
William T. Manley
Leo V. Mayer
Daniel G. McPherson
Jerome Miles
Wilmer D. Mizell
Peter C. Myers
Frank Naylor
John R. Norton
Daniel Oliver
John T. Reeves
William L. Rice
William J. Riley, Jr.
F. Dale Roberton
Thomas E. Rockenbaugh
Ava D. Rodgers
George Rossmiller
Randall M. Russell
Keith R. Shea
Robert E. Sherman
Richart Siegel
Larry B. Slage
S. Scott Steele
Robert L. Thompson
Alan T. Tracy
Ray F. Voelkel
Lawrence Wachs
Ewen Wilson
Larry Wilson, Jr.

Alternates:

Leon Anderson
Gerald Bange
Harris Blake
John Bottum
Angelena Bracht
Charles Brader
Robert L. Buchanan
Charles Bucy
Charles Caudill
Karen Darling
Rosina Decrest
Ronald Engel
Claude Gifford
John Golden
Milton J. Hertz
Paul Howard
Ernest Koening
Joseph Leo
Leslie Malone
George Marienthal
John Mirankowski
David Neverman
Donald Olsen
Raymond Pugh
Jeffrey Rush
James L. Smith
James Springfield
Jacqueline Sutton
William Tallent
David Unger
Glen Vandenberg

Dated: October 11, 1985.

John R. Block,

Secretary of Agriculture.

[FR Doc. 24851 Filed 10-17-85; 8:45 am]

BILLING CODE 3410-96-M

Forest Service

Colville National Forest; Grazing Advisory Board Meeting

The Colville National Forest Grazing Advisory Board will meet at 1 p.m. on November 26, 1985 at the Federal Building conference room, 695 South Main, Colville, Washington. The purpose of this meeting is to discuss range allotment management planning, and range betterment projects.

The meeting is open to the public. Persons who wish to attend should notify Gary Oliverson, Colville National Forest, 695 South Main, Colville, WA 99114. Written statements may be filed with the committee before or after the meeting.

Dated: October 2, 1985.

William D. Shenk,

Forest Supervisor.

[FR Doc. 85-24942 Filed 10-17-85; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 36-85]

Foreign-Trade Zone 111—JFK Airport, NY; Application for Subzone Sweater Manufacturing Plant of Jack Young Associates Inc., Queens, NY

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of New York, grantee of Foreign-Trade Zone 111, requesting special-purpose subzone status for the sweater manufacturing plant of Jack Young Associates, Inc. in New York City, within the New York Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on September 25, 1985.

The plant is located at 119-20 Merrick Blvd., St. Albans (Queens), New York. The 50,000-square foot facility is used to produce sweaters under military contracts and for commercial sales. Subzone status is being requested only for the firm's export operations, which will involve the purchase of British wollen yarn for the manufacture of sweaters for overseas sales.

Zone procedures will allow the company to avoid duty payments on the foreign yarn used in the exported sweaters, helping it become more competitive with foreign producers.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Samuel H. Banks, Area Director, U.S. Customs Service, New York Region, Cargo Building 80, Jamaica, NY 11430; and Colonel F.H. Griffis, District Engineer, U.S. Army Engineer District New York, 26 Federal Plaza, New York, NY 10278.

Comments concerning the proposed subzone are invited in writing from interested parties. They should be addressed to the board's Executive Secretary at the address below and postmarked on or before November 15, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Federal Office Bldg., Room 3718, 26 Federal Plaza, New York NY 10278

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania, NW., Washington, DC 20230

Dated: October 15 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-24912 Filed 9-17-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-307-502]

Postponement of Final Antidumping Duty Determination; Certain Circular Welded Carbon Steel Line Pipe From Venezuela

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the respondent in this investigation to postpone the final determiantion, as permitted in section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)(2)(A)). Based on this request, we are postponing our final determination as to whether sales of certain circular welded carbon steel line pipe (line pipe) from Venezuela have occurred at less than fair value until not later than December 26, 1985.

EFFECTIVE DATE: October 18, 1985.

FOR FURTHER INFORMATION CONTACT: Raymond Busen, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-2830.

SUPPLEMENTARY INFORMATION: On March 27, 1985, we published a notice in the **Federal Register** (50 FR 12067) that we were initiating, under section 732(b) of the Act, (19 U.S.C. 1673a(b)), an antidumping duty investigation to determine whether line pipe from Venezuela was being, or was likely to be, sold at less than fair value. On April 15, 1985, the International Trade Commission determined that there is a reasonable indication that imports of line pipe are materially injuring a U.S. industry. On August 13, 1985, we published a preliminary determination of sales at less than fair value with respect to this merchandise (50 FR 32607). The notice stated that if the investigation proceeded, normally, we would make our final determination by October 21, 1985. Pursuant to section 735(a)(2)(A) of the Act, the respondent requested an extension of the final determination date until not later than 135 days after the date of publication of the preliminary determination. The respondent is qualified to make such a request because it accounts for a significant proportion of the exports of the merchandise. If an exporter who accounts for a significant proportion of exports of the merchandise under investigation properly requests an extension after an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request. Accordingly, we are granting the request and postponing our final determination until not later than December 26, 1985.

This notice is published pursuant to section 735(d) of the Act.

The United States International Trade Commission is being advised of this postponement, in accordance with section 735(d) of the Act.

Comments

In order to have any comments considered for our final determination, parties must submit them by November 18, 1985. All written views should be filed at the U.S. Department of Commerce, Room B099, 14th Street and Constitution Avenue, NW., Washington, DC 20230, in at least 10 copies.

Dated: October 11, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-24913 Filed 10-17-85; 8:45 am]

BILLING CODE 3510-DS-M

University of Arizona; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 240 of the Trade and Tariff Act of 1984 which pertains solely to the application described below. 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, DC.

Applicant: University of Arizona, Tucson, AZ 85721. Instrument: Submillimeter Telescope and associated equipment. Manufacturer: Max Planck Institute for Radioastronomy, West Germany. Intended use: See notice at 50 FR 36643.

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 an accuracy of 18 μm, a diffraction-limited beamwidth throughout the region of use, a half power beamwidth of 9 arcseconds at the shortest operating wavelength (~ 350 μm) and of 25 arcseconds at one millimeter. The capabilities of the foreign instrument described above are pertinent to the applicant's intended purpose. We know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 85-24844 Filed 10-17-85; 8:45 am]

BILLING CODE 3510-DS-M

University of California, San Diego; 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, DC.

Docket No.: 85-168. Applicant: University of California, San Diego, La Jolla, CA 92093. Instrument: Rotating Anode X-ray Generator, Model RU-200H. Manufacturer: Rigaku, Japan. Intended use: See notice at 50 FR 23171.

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 high power density (12 kilowatts per square millimeter) and a small focal spot size (0.1 x 1.0 millimeters). The National Institutes of Health advises in its memorandum dated August 13, 1985 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,

Director, Statutory Import Programs Staff.

[FR Doc. 85-24845 Filed 10-17-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Gulf of Mexico/South Atlantic Fishery Management Councils; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting at its offices, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL, October 18, 1985, from 9 a.m. to approximately noon, of its Special Mackerel Scientific and Statistical Committee (SSC) members, in conjunction with the Chairman of the South Atlantic Fishery Management Council's SSC and the Chairman of the Stock Assessment Group to review individual comments. For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, FL 33609; telephone: (813) 228-2815.

Dated: October 10, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-24899 Filed 10-17-85; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in the Federative Republic of Brazil Under a New Bilateral Agreement

October 15, 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 October 21, 1985. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

The Governments of the United States and the Federative Republic of Brazil exchanged notes dated August 7, and August 29, 1985 on a new Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement dating from April 1, 1985 and extending through March 31, 1988. The new agreement establishes an aggregate specific limit and within the aggregate, specific limits for textiles and textile products in Categories 300/301, 310/318, 313, 315, 317, 319, 334/335, 336, 337, 338/339, 347/348, 350, 352, 359/659, 361, 363, 369pt. (dish towels in T.S.U.S.A. numbers 366.1820, 366.1840, 366.2120, 366.2140, 366.2420 and 366.2440), 445/446, 604, 614, 638/639, 647/648, 666, and 669pt. (polypropylene bags in T.S.U.S.A. number 385.5300), produce or manufactured in Brazil and exported during the first agreement year which began on April 1, 1985 and extends through March 31, 1986. The new agreement includes sublimits for corduroy coats and trousers in Category 334/335 and 347/348 amounting to 20 percent of the overall limits established for each of these categores. Category 604 which is currently embargoed will not reopen under the new agreement limit because of charges that will be made to account for previous overshipments.

The new agreement also cancels and supersedes calls made in 1985 under Article 3 of the Arrangement Regarding International Trade in Textiles, which concern Categories 315, 317pt. (sateen fabric only), 335, 337, 338/339, 350, 361, 363, 604pt. (acrylic spun yarn only) and 648.

The letter which follows this notice directs the Commissioner of Customs to control imports in the aforementioned aggregate and specific limits during the agreement year which began on April 1, 1985. The limits have not been adjusted to account for any imports exported on and after April 1, 1985. As the data become available, such charges will be made.

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), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Texile Agreements.

October 15, 1985

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive of March 27, 1985 concerning man-made fiber textiles in Category 604pt.; produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1985.

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 Textile Agreement of August 7 and August 29, 1985, between the Governments of the United States and the Federative Republic of Brazil; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 21, 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 Brazil and exported during the twelve-month period which began on April 1, 1985 and extends through March 31, 1986, in excess of the restraint limits indicated below:

Category	12-Mo Restraint Limit [1]
300-369, 400-469, and 600-670.	240,000,000 square yards equivalent.

Category	12-Mo Restraint Limit [1]
300/301	8,383,217 pounds.
310/318	3,000,000 square yards.
313	30,000,000 square yards.
315	13,500,000 square yards.
317	12,250,000 square yards.
319	10,000,000 square yards.
334/335	68,000 dozen of which not more than 13,600 dozen shall be in T.S.U.S.A. numbers 376.4610, 379.4650, 383.3405, 383.3420, 383.3435, 383.3453, 383.3460, 382.3470, 383.3472, and 383.3474.
336	35,000 dozen.
337	98,000 dozen.
338/339	525,000 dozen.
347/348	450,000 dozen of which not more than 90,000 dozen shall be in T.S.U.S.A. numbers 379.0642, 379.6230, 379.6260, 383.0622, 383.0624, 383.0626, 383.0629, 383.4753, 383.4754 and 383.4756.
350	60,000 dozen.
352	350,000 dozen.
359/659	5,500,000 pounds.
361	450,000 numbers.
363	13,500,000 numbers.
369pt.[2]	600,000 pounds.
445/446	64,000 dozen.
604	450,000 pounds.
614	5,000,00 square yards.
638/639	200,000 dozen.
647/648	450,000 dozen.
666	1,600,000 pounds.
669pt.[3]	2,000,000 pounds.

[1] The restraint limits have not been adjusted to account for any imports exported after March 31, 1985.

[2] In Category 369, only T.S.U.S.A. numbers 366.1620, 366.1840, 366.2120, 366.2140, 366.2420 and 366.2440.

[3] In Category 669, only T.S.U.S.A. numbers 385.5300.

In carrying out this directive, entries of textile products in the foregoing categories, except Categories 310/318, 315, 334/335, 336, 337, 352, 359/659, 445/446, 638/639, 647/648, 666 and 669pt [3], produced or manufactured in Brazil, which have been exported to the United States during the agreement year which began on April 1, 1984 and extended through March 31, 1985, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during that period. If the limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter. Textile products in Categories 310/318, 315, 334/335, 336, 337, 352, 359/659, 445/446, 638/639, 647/648, 666 and 669pt.[3] which have been exported to the United States prior to April 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 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The limits set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of August 7 and August 29, 1985 between the Governments of the United States and the Federativa Republic of Brazil which provide, in part, that: (1) Special limits may be exceeded by designated percentages; (2) specific limits may be increased by carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate future adjustments under the foregoing provisions of the bilateral 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), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

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 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-24848 Filed 10-17-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting an Import Limit for Certain Man-Made Fiber Apparel Products From the Republic of the Philippines

October 15, 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 October 21, 1985. For further information contact Jane Corwin, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated December 21, 1984 (48 FR 50231) established limits for certain specified categories of cotton, wool, and man-made fiber textile products, including Category 433 (men's and boys' wool suit-type coats), produced or manufactured in the Philippines and exported during the agreement year which began on January 1, 1985. At the request of the Government of the Republic of the Philippines, special carryforward in the amount of 375 dozen is being applied to the restraint limit for Category 433, increasing it from 3,618 dozen to 3,993 dozen for 1985. The 1986 limit for Category 433 will be adjusted to account for carryforward used in the current year.

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), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Philippines and exported during 1985.[1]

Effective on October 21, 1985, paragraph 1 of the directive of December 21, 1984 is hereby further amended to include an adjusted restraint limit for Category 433 of 3,993 dozen.[2]

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 (a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 85-24846 Filed 10-17-85; 8:45 am]

BILLING CODE 3510-DR-M

Adjusting Import Restraints Limits for Certain Cotton, Wool, and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

Correction

In FR Doc. 85-23994 beginning on page 40989 in the issue of Tuesday, October 8, 1985, make the following corrections:

On page 40989, third column, in the table, under the heading for "Categories", in the last three entries, "669" should have read "670".

BILLING CODE 1505-01-M

[1] The agreement, provides, in part, that: (1) specific limits may be exceeded during the agreement year by designated percentages; (2) specific limits may be adjusted for carryover and carryforward; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The restraint limit has not been adjusted to reflect any imports exported after December 1984.

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meetings

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92–463, as amended by section 5 of Pub. L. 94–409, notice is hereby given that closed meetings of a panel of the DIA Scientific Advisory Committee have been scheduled as follows.

DATES: November 12 and December 11, 1985—9:00 a.m. to 5:00 p.m. each day.

ADDRESS: The DIAC, Bolling AFB, D.C.

FOR FURTHER INFORMATION CONTACT: Lt Col Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373–4930).

SUPPLEMENTARY INFORMATION: The entire meetings are devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on Microelectronics and Computers.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

October 15, 1985.

[FR Doc. 85–24856 Filed 10–17–85; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on On-Site Inspection; Advisory Committee Meetings

SUMMARY: The Defense Science Board Task Force on Imprecisely Located Targets will meet in closed session on 20–21 November 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 of 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. 552b(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.

October 15, 1985.

[FR Doc. 85–24855 Filed 10–17–85; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Manasquan Reservoir System, Monmouth County, New Jersey

This document is being prepared in conjunction with processing a Department of the Army permit application under the statutory authority of section 10 of the River and Harbor Act of 1899 and section 404 of the Clean Water Act.

AGENCY: Philadelphia District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The proposed action evaluates the need for, and alternative methods of, providing an additional water supply to Monmouth and northern Ocean Counties, New Jersey. The need for an additional supply is based upon the increasing demand for water, and the significant lowering of groundwater levels in the principal aquifers supplying groundwater to the region. It is apparent that the current rate of groundwater withdrawal can not be sustained without the serious threat of aquifer contamination by salt water.

The State of New Jersey has developed new Water Supply Management regulations which have designated critical areas and proposed the reduction of groundwater withdrawals. This plan anticipates the need for additional surface water supplies in the area of the proposed project.

The proposed Manasquan Reservoir System entails diversion of Manasquan River water through an intake facility located approximately nine miles upstreams of the confluence of the Manasquan River and the Atlantic Ocean, to the Manasquan Reservoir which would be located off the main stem of the Manasquan River. The reservoir would be connected to the intake facility by a pipeline. Reservoir construction requires placement of an earthen dam across a non-navigable tributary of the Manasquan River. The impoundment would be 740 acres in size and would have a maximum capacity of four billion gallons. The reservoir would store water when river flows are high and provide water when river flows are low. Water would be purified at a treatment plant located near the intake facility, and distributed to existing water purveyors through a system of new transmission lines. The safe, dependable yield of the proposed Manasquan Reservoir System is estimated to be 30 million gallons per day.

2. Alternatives to be considered include:

A. No action
B. Conservation measures
C. Water supply development on other rivers within the project vicinity
D. Withdrawing water from the Manasquan River without reservoir construction
E. Reservoir construction on the main stem of the Manasquan River
F. The proposed action

3. The applicant, the New Jersey Water Supply Authority, has expended considerable effort in soliciting input from the public. This has involved the organization of a citizens advisory board that has met numerous times to discuss every aspect of the project. In addition to these meetings, several public information meetings have been held. Several scoping/preapplication meetings have been held with agency participation from the New Jersey Department of Environmental Protection, the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the U.S. Environmental Protection Agency.

Significant issues and concerns to be addressed include:

A. Reduced flows within the Manasquan River
B. Alteration of aquatic and wetland habitats downstream of the proposed intake facility
C. Alteration of aquatic and wetland habitats along Timber Swamp Brook, the proposed reservoir location
D. Fish and wildlife habitat impacts
E. The effect of nearby hazardous waste sites and point source discharges on water quality
F. Mitigation plans

4. It is anticipated that further scoping meetings will be unnecessary. A public hearing will be held after the issuance of the DEIS.

5. The DEIS is scheduled to be released for public comment in January 1986.

ADDRESS: Questions about the proposed action and DEIS can be answered by:

Mr. Jerry J. Pasquale, (Telephone No. 215-597-6840), Environmental Resources Branch, U.S. Army Corps of Engineers, Philadelphia District, Custom House, 2d & Chestnut Streets, Philadelphia, Pennsylvania 19106-2991.

Dated: October 9, 1985.

Ralph V. Locurcio,

Lieutenant Colonel, Corps of Engineers, District Engineer.

[FR Doc. 85-24929 Filed 10-17-85; 8:45 am]

BILLING CODE 3710-GR-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the export of 7,500 kilograms of uranium, containing 255 kilograms of uranium-235 (3.4% enrichment) for re-enrichment to a maximum of 4.0% in the isotope uranium-235, at COGEMA, Pierelatte, France. The material is to be returned to the United States for use as working stock for the Westinghouse nuclear fuel fabrication facility, Columbia, South Carolina. This subsequent arrangement is to be carried out under the above-mentioned agreement in accordance with section 402.(A) of the Nuclear Non-Proliferation Act of 1978 (42 U.S.C. 2152a).

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: October 11, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-24890 Filed 10-17-85; 8:45 am]

BILLING CODE 6450-01-M

Atomic Energy Agreements; Proposed Subsequent Arrangement; International Atomic Energy Agency

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Application of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreement involves approval of the following sale:

Contract Number S-IA-139, for the sale of approximately 4 grams of uranium-236 to the IAEA Safeguards Analytical Laboratory, Seibersdorf, Austria, for use in safeguards verification measurements.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice. For the Department of Energy.

Dated: October 11, 1985.

George J. Bradley, Jr.,

Acting Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 85-24888 Filed 10-17-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP85-122-002]

Colorado Interstate Gas Co.; Tariff Filing

October 9, 1985.

Take notice that on October 1, 1985, Colorado Interstate Gas Company (CIG) filed the following tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2:

Second Replacement Twenty-Second Revised Sheet No. 7
Second Replacement Twenty-Third Revised Sheet No. 8
Second Replacement First Revised Sheet No. 33E
Second Replacement First Revised Sheet No. 33G
Second Replacement Fourth Revised Sheet No. 187
Second Replacement Second Revised Sheet No. 212
Second Replacement Third Revised Sheet No. 463
Second Replacement First Revised Sheet No. 517A
Second Replacement Third Revised Sheet No. 544
Second Replacement First Revised Sheet No. 593A
Second Replacement Second Revised Sheet No. 625
Second Replacement Second Revised Sheet No. 662
Second Replacement Second Revised Sheet No. 674
Second Replacement First Revised Sheet No. 697
Second Replacement First Revised Sheet No. 774
Second Replacement Original Revised Sheet No. 801A
Second Replacement First Revised Sheet No. 828
Second Replacement First Revised Sheet No. 862

The proposed effective date for these sheets is September 28, 1985.

CIG states that these sheets are filed pursuant to Ordering Paragraph (D) of the Federal Energy Regulatory Commission's (Commission) order issued April 22, 1985. CIG further states that the tariff sheets incorporate all revisions previously submitted on September 6, 1985. In addition, CIG has modified Schedule 1, page 1 of 1, to reflect the peak day volume allocation factors as they were in CIG's Docket No. RP85-122 filed on March 28, 1985, and accepted by the Commission on April 22, 1985. CIG has also reflected the peak day volume nominations included in Docket No. CP85-381 approved by the Commission on September 26, 1985.

CIG requested any waivers of the Commission's regulations as may be necessary for acceptance of the filing. CIG has mailed copies of this filing to all the persons on the service list in Docket No. RP85-122.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 17, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24873 Filed 10-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-11-000]

Commet Resources, Inc.; Application for Blanket Certificate of Public Convenience and Necessity, for an Order Permitting and Approving Abandonment and Pre-Granted Abandonment, and for Expedited Consideration

October 11, 1985.

Take notice that on October 4, 1985, Commet Resources, Inc. (Commet) filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), provisions of 18 CFR Parts 154 and 157, and Rule 801 of the Commission's Rules of Practice and Procedure seeking a blanket certificate of public convenience and necessity, authorizing: (1) Sales for resale of natural gas in interstate commerce by Commet, and by reseller/agents who may purchase such gas from Commet for resale under the proposed program; (2) Sales for resale of natural gas in interstate commerce by producers, with Commet acting as their marketing agent; (3) Blanket partial abandonment and pre-granted abandonment of certain sales of natural gas; (4) Transportation under section 7(c) of the NGA and the Commission's regulations promulgated thereunder; (5) Pre-granted abandonment of such transportation by interstate pipelines; and (6) Waiver of the system supply requirement contained in Part 284 of the Commission's regulations, all as more fully described in the Application which is on file with the Commission and open for public inspection. The Applicant also requests that said blanket authorization be made effective on or before November 1, 1985, and, to that end, waives its right to a hearing pursuant to the "shortened procedures" addressed at 18 CFR 385.801.

Commet states that, based on its experience in the spot market and information obtained through other special marketing programs, the blanket authority requested is consistent with the Commission's rules and regulations (including proposed rules and regulations), and is necessary to be compatible with the spot market. Further, Commet states, absent said blanket authorization, and in the event that such authorization is not granted in a final rule issued in Docket No. RM85-1-000 (NOPR), "Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol," producers and marketing agent/resellers will be unable to make spot sales of price-regulated gas on a self-implementing basis and will be unable to arrange the transportation of much of the subject gas on an expedited basis.

Specifically, Commet requests that the Commission authorize it, effective at the earliest possible date, and, in any case, by November 1, 1985:

(1) To make sales for resale in interstate commerce of natural gas for which the maximum lawful price is higher than the NGPA section 109 price, and for which NGA sales authority is required;

(2) To temporarily abandon sales for resale of such gas for which the maximum lawful price is higher than the section 109 price and which were previously certificated by the Commission, to the extent that such gas is released by interstate, intrastate or "Hinshaw" pipelines or local distribution companies to producers for resale on the spot market, either by Commet, or by producers through Commet, with Commet acting as their agent;

(3) To abandon (pre-granted abandonment) any sale for resale in interstate commerce authorized pursuant to the blanket certificate issued herein;

(4) To have any such gas transported in interstate commerce on a self-implementing basis by any transporter to any purchaser of such gas;

(5) To have natural gas which is no longer subject to the Commission's NGA sales authority transported to purchasers;

(6) To abandon (*i.e.*, pre-granted abandonment of) such transportation; and

(7) Waiver of the "system supply" requirement contained at 18 CFR 284.122 and 284.222, which waiver will allow transportation by intrastate and "Hinshaw" pipelines under section 311 of the NGPA and transportation of gas purchased by end-users. In addition, Commet requests that certain restrictions currently applicable to existing special marketing programs, such as restrictions on eligible markets and contract commitment dates, not apply to the instant authorization.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said Application should, on or before October 21, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing, must file a motion to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24874 Filed 10-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-23-000, 001]

Eastern Shore Natural Gas Co.; Tariff Filing

October 10, 1985.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) on October 7, 1985 tendered for filing the following revised tariff sheets to Original Volume No. 1 of Eastern Shore's FERC Gas Tariff:

To Be Effective November 1, 1985

Thirtieth Revised Sheet No. 5
Thirtieth Revised Sheet No. 6
Thirtieth Revised Sheet No. 7
Thirtieth Revised Sheet No. 10
Thirtieth Revised Sheet No. 11
Thirtieth Revised Sheet No. 12
Seventh Revised Sheet No. 13
First Revised Sheet No. 14

Eastern Shore states that the purpose of the filing is to reflect (1) a Purchased Gas Cost Current Adjustment, (2) a Demand Charge Adjustment, (3) a Deferred Gas Cost Adjustment, and (4) to report the Projected Incremental Pricing Surcharges. This filing is being made in accordance with sections 20, 21, and 23 of Eastern Shore's FERC Gas Tariff.

Eastern Shore states that copies of the filing have been mailed to each of its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825

North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 21, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24875 Filed 10-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL85-46-000]

EUA Power Corp.; Order Initiating Expedited Hearing, Granting Interventions, and Denying in Part and Granting in Part Motions

Issued: October 9, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa and Charles G. Stalon.

On August 29, 1985, EUA Power Corporation (EUA Power) filed a petition for a declaratory order and a motion for expedited Commission consideration and waiver of an Initial Decision in this proceeding. EUA Power's filing indicates that it will become a subsidiary of Eastern Utilities Associates (EUA) and was formed as a vehicle to purchase the shares of the Seabrook Nuclear Generating Project (Seabrook) currently owned by Bangor Hydro-Electric Company, Central Maine Power Company, Maine Public Service Company, and Central Vermont Public Service Company (Sellers). EUA Power seeks a declaratory order from the Commission determining that it be allowed to sell power, generated from its purchased share of Seabrook, to non-affiliated buyers at market-based prices.

In addition, EUA Power seeks a series of determinations by the Commission relating to ratemaking and accounting which would apply to establishing cost-based rates for the sale of Seabrook power and energy to affiliated buyers. The determinations would apply to all rates of EUA Power if the Commission disallows EUA Power's request to sell at market-based prices to non-affiliated buyers. The requested ratemaking and accounting determinations are as follows:

First, EUA Power requests Commission approval of an initial capital structure of 80% debt and 20% equity.

Second, EUA Power requests approval of a proposed equity structure resulting from its proposal to raise virtually the entire component of the initial capital structure through the issuance of preferred stock to EUA. Only a nominal amount of capital stock ($10,000) would be issued to EUA.

Third, EUA Power seeks approval of a 25% rate of return on equity capital. This return would apply to both the preferred stock and the nominal capital stock. EUA Power also requests that the Commission approve its proposed procedure for establishing the allowed rate of return on debt—the return being the weighted average of the actual interest costs of various debt issues.

Last, EUA Power requests a determination here that if in a subsequent proceeding, expenditures for unfinished construction incurred before the date of closing are determined to have been imprudent and are disallowed, such amount would be attributed to the discounted portion of costs at which the Sellers sold their shares and not treated as a reduction of the price at which EUA Power has purchased the shares, unless the disallowed amount exceeds the discount.

Background and Proposed Transaction

EUA Power, under its previous name, NuMaineCo Corporation, had earlier sought a Commission declaratory order in Docket No. EL85-21-000 regarding a proposed purchase of shares of Seabrook. The Commission denied that petition on the ground that the scope of the proposal was inadequately delineated.[1] We indicated, however, that the denial was without prejudice to refiling when the scope of the proposal had been fully delineated.

EUA Power, in its filing, indicates that the scope of the proposal is now precisely defined and is set forth in letters of agreement between EUA Power and the Sellers.

The agreements include the following price terms:

1. *Base Price:* $65.4 million for Sellers' shares of Seabrook Nos. 1 and 2 as of June 1, 1985. The base price includes payment for nuclear fuel and Seabrook No. 1 plant. No value is assigned to unfinished plant of Seabrook No. 2 and no part of payment is attributable to Unit No. 2.

2. *Progress Payments:* Estimated at $54.5 million if closing date is March 31, 1986. Sellers will financially support Seabrook from June 1, 1985, to contemplated closing date of March 31, 1986. EUA Power will reimburse progress payments.

3. *Interest:* Estimated at $10.9 million as of March 31, 1986. EUA will pay interest on the base price and progress payments from June 1, 1985, until closing of March 31, 1986. Interest rate at a rate equivalent to Sellers' AFUDC rate.

4. *Delayed Closing Payments:* $18 million at March 31, 1986 closing. Additional payments are to be made for each month through March 1986, that the closing is delayed beyond October 1985.

The proposed price terms on the above assumptions total $148.8 million to all Sellers as of on March 31, 1986. If the project is completed on schedule, October 31, 1986, at projected costs, EUA Power's additional payments and carrying charges would be $39.4 million. EUA Power's total projected cost of its share of the completed unit, based on above assumptions, would be $188.2 million or a cost of $1,142 per kilowatt.

Certain non-price terms are also included in the letter agreements. Those terms include:

1. Within 60 to 90 days the parties will execute formal purchase and sale agreements, subject to approval by the parties' respective boards.

2. Closing is contingent upon approval of various rate and sale provisions by State and Federal agencies including favorable Federal Energy Regulatory Commission action on the instant petition.

3. If closing has not occurred by March 1986, the Sellers have the option to cancel the purchase and sale.

4. Sellers remain liable for claims and causes of action against parties other than EUA and subsidiaries existing at date of closing.

5. Sellers will, to a limited amount, indemnify EUA Power for their shares of cancellation costs related to Seabrook No. 2 incurred within five years of the date of closing.

6. The purchase and sale is made without warranty of any kind, on an "as is, where is" basis.

Notice of the filing was published in the **Federal Register**, with protests or motions to intervene due on or before September 16, 1985. Timely motions to intervene were filed by the Attorney General of the State of Rhode Island and the Rhode Island Division of Public Utilities and Carriers, the Public Advocate of the State of Maine, the Public Utilities Commission of New Hampshire, the Dirigo Electric

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[1] *NuMaineCo Corporation,* Order Denying Petition for Declaratory Order Without Prejudice, Docket No. EL85-21-000, 31 FERC ¶ 61,334 (June 19, 1985), *reh. denied* 32 FERC ¶ 61,211 (August 5, 1985).

Cooperative, Inc., and Central Vermont Public Service Corporation. None of these motions to intervene cites specific issues to be addressed, but each requests participation in any Commission proceeding. In addition, the Public Advocate of the State of Maine requests that the matter be set for hearing and that the instant proceeding not be treated as a precedent for permitting Maine utilities to charge their wholesale customers for losses occurring from the sale of EUA Power.

On September 13, 1985, a timely joint motion to intervene was filed by Bangor Hydro-Electric Company and Maine Public Service Company asking for participation in this proceeding and further indicating that the sale of their shares of Seabrook are conditioned upon their receiving from this Commission satisfactory approvals of rate treatment for their unrecovered investment in Seabrook. The companies indicate that they will file a petition for declaratory order seeking rate approval and would seek to consolidate such filing with this proceeding.

The Massachusetts Attorney General on September 16, 1985, also filed a timely motion to intervene in which he requests that the petition for declaratory order be summarily denied or, if not denied, set for hearing. The Massachusetts Attorney General alleges that the cost estimates relied upon by the Seabrook joint owners are unreliable and should not be used for any purpose. In addition, the Attorney General argues that findings regarding the justness and reasonableness of utilities' capital structures and rates of return cannot be made in the summary context of a declaratory order.

In addition to the timely motions to intervene, three late motions were filed on September 17, 18, and 20, 1985, by Central Maine Power Company, the Maine Public Utilities Commission, and the Massachusetts Department of Public Utilities, respectively. Central Maine Power Company states its intent to file a separate petition for a declaratory order seeking approval of wholesale rate treatment for its unrecovered investments in Seabrook. As with the other Sellers, the company indicates that it will seek to have such request, when filed, consolidated with this docket.

EUA Power on September 20, 1985, filed a response to all the protests and motions to intervene except the motions to intervene of the New Hampshire Public Utilities Commission and the Massachusetts Department of Public Utilities. EUA Power does not oppose the interventions but does oppose the Massachusetts Attorney General's motion for summary denial of EUA Power's petition for declaratory order.

The Attorney General of the State of Rhode Island and the Rhode Island Division of Public Utilities and Carriers, on September 25, 1985, filed a response indicating their support for expedited treatment in this proceeding, but expressing the belief that EUA Power's proposed schedule is unrealistic.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure, the timely notices and motions to intervene serve to make the Attorney General of the State of Rhode Island, the Rhode Island Division of Public Utilities and Carriers, the Public Advocate of the State of Maine, the Public Utilities Commission of New Hampshire, the Dirigo Electric Cooperative, Inc., Bangor Hydro-Electric Company, Central Vermont Public Service Cooperative, and the Massachusetts Attorney General parties to this proceeding.

In view of the fact that Central Maine Power Company is one of the parties proposing to sell its share of Seabrook and three of the parties proposing to sell their shares of Seabrook are located in the State of Maine, we find that good cause exists to grant the untimely interventions of Central Maine Power Company and the Maine Public Utilities Commission. In addition, given the interests expressed by the Massachusetts Department of Public Utilities and the early stage of this proceeding, we shall also permit that State agency to intervene out of time.

EUA Power's petition sets forth a variety of arguments in support of its requested Commission determinations. EUA Power has also filed written testimony of proposed witnesses in support of its petition. We shall not now discuss EUA Power's proffered support since EUA Power's petition acknowledges that questions of material fact are raised and the company therefore requests a hearing to resolve such matters.

The Massachusetts Attorney General's motion for summary denial of EUA Power's petition for declaratory order is based in large part on factual arguments which are best resolved through an evidentiary proceeding. We shall therefore deny the motion for summary disposition of the EUA Power petition.

In *NuMaineCo Corporation*,[2] the Commission expressed its understanding that the company's anticipated sales from its interest in Seabrook would lack the requisite firmness to be considered requirements sales and would therefore be viewed as a coordination service. Coordination service is the focus of Phase I of the Commission's Notice of Inquiry.[3] At this time, the Commission believes it is appropriate to move forward, expeditiously, with the merits of EUA Power's innovative coordination service proposal, recognizing that a comprehensive re-examination of coordination service regulation is occurring concurrently. In this proceeding the Commission will be focusing on a specific proposal, while, in the Notice of Inquiry, it will be reviewing policies regarding coordination services on a broader basis.

With respect to that portion of EUA Power's request for a declaratory order which seeks authorization to apply market-based prices to sales of electricity from Seabrook to non-affiliated buyers, the presiding judge should develop a full record and make findings of fact. However, since the final decision on this issue in particular will rest in large part on a weighing of novel policy considerations by the Commission, and in view of the ongoing Notice of Inquiry, we do not intend that the presiding judge will issue a ruling on the ultimate question of whether market-based pricing will be permitted in this case.

EUA Power requests that we adopt procedures that will allow for a final Commission decision to be entered before December 31, 1985. EUA Power sets forth a proposed procedural schedule, including a suggested waiver of an initial decision, which in its opinion will enable the Commission to make a determination by December 31, 1985.

We shall, by this order, set EUA Power's request for Commission approval of its requested determinations for hearing. We shall not, however, take any specific action with regard to EUA Power's proposed procedural schedule. While we must express concern as to the feasibility of such an abbreviated schedule even under the most optimal conditions,[4] we shall leave the matter of

[2] 31 FERC at 61,760.

[3] *Regulation of Electricity Sales—for Resale and Transmission Services*, Notice of Inquiry, Docket No. RM85-17-000 (Phase I), 31 FERC 61,334 (May 30, 1985).

[4] Both the subject matter and timing of the hearing conceivably could become further complicated if, as suggested, the Sellers themselves choose to file requests for declaratory orders and seek consolidation.

a procedural schedule to the discretion of the presiding administrative law judge. We believe that the judge will be in the best position to establish an expedited schedule that takes into account the magnitude of the issues and the concerns of the participants. In suggesting its procedural schedule to the presiding judge, EUA Power should elaborate on the need for expedition, the significance of any particular dates that must be met (and why), and the relationship of this Commisison's role and timing vis-a-vis that of other regulatory bodies.

EUA Power further requests that the Commission provide that data requests be submitted in writing at the initial prehearing conference. While leaving the ultimate procedural schedule to the presiding judge, we encourage all parties, to the extent possible, to be prepared to submit written data requests on the date of the prehearing conference as established by the presiding judge consistent with this order.

Such expedited schedule should include time for appropriate briefs on legal and factual issues and issuance of an initial decision by the presiding judge. The Commission's Rule 708 (18 CFR 385.708) provides for the preparation of a written initial decision unless otherwise ordered by the Commission, or an oral initial decision may be issued if time and circumstances require. Rule 710 (18 CFR 385.710) provides that any participant may file a motion requesting the Commission to issue a final opinion without an initial decision. The Commission shall at this time deny the motion to waive an initial decision. The Commission feels that an initial decision in such a complex matter as the one presented will be of significant assistance. If, however, after hearing, time continues to be of the essence and a renewed motion for waiver of an initial decision is filed, the Commission may consider it in light of the circumstances then prevailing.

The Commission Orders

(A) The untimely motions to intervene of the Maine Public Service Commission, the Central Maine Power Company, and the Massachusetts Department of Public Utilities are hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) The Massachusetts Attorney General's request to summarily deny EUA Power's petition for a declaratory order is hereby denied.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, including sections 205 and 206 thereof, and pursuant to the Commissions Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning EUA Power's requested determinations.

(D) EUA Power's motion for expedited consideration of its petition for a declaratory order is granted to the extent discussed in the body of this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding not later than 10 days after the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is instructed to set an expedited procedural schedule which, at his discretion, will allow presentation of all necessary evidence and briefs. The presiding adminsitrative law judge shall as expeditiously as reasonable prepare an initial decision for final Commission review.

(F) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24876 Filed 10-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-12-000]

Mesa Petroleum Co.; Application for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Abandonment and Pre-Granted Abandonment

October 11, 1985.

Take notice that on October 7, 1985, Mesa Petroleum Co. (Mesa) pursuant to section 7 of the Natural Gas Act, 15 U.S.C. 717f (1982) (NGA), and Part 157 of the regulations of the Federal Energy Regulatory Commission (commission), 18 CFR Part 157 (1984), hereby applied for a blanket certificate of public convenience and necessity: (1) Authorizing sales for resale of natural gas in interstate commerce by Mesa, entities controlled by Mesa as general partner or trustee, and joint interest owners, (2) authorizing blanket temporary abandonment and pre-granted abandonment of certain sales as described herein, (4) authorizing transportation (and the pregnant abandonment of same) by interstate pipelines, intrastate pipelines and Hinshaw pipelines all to be effective on or before November 1, 1985, as more fully described in the Application which is on file with the Commission and open for public inspection.

Applicants state that the certificate and abandonment authority sought herein, if granted, will enable Mesa and the other entitles described above to sell natural gas that remains subject to the Commission's NGA jurisdiction and to have such gas, as well as gas which is no longer within the Commission's NGA jurisdiction transported in interstate commerce to all customers who have the ability to buy gas on the open market.

Mesa is requesting the authority described herein only to the extent that such authority is not provided for in any final rule issued by the Commission in its Notice of Proposed Rulemaking, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Docket No. RM85-1-000 (May 30, 1985) (NOPR), in the event a final rule in the NOPR is not issued by November 1, 1985, and/or in the event any such rule is stayed or not in effect after its issuance.

Mesa, on behalf of itself, producers, and pipelines, is requesting authority, to be effective no later than November 1, 1985, (1) to make sales for resale in interstate commerce; (2) to temporarily abandon sales for resale of which is subject to the Natural Gas Act jurisdiction of the Commission, to the extent that such gas has been or is released by interstate, intrastate and Hinshaw pipelines, and local distribution companies; (3) to abandon any sale for resale in interstate commerce authorized pursuant to the blanket certificate issued herein; (4) to have any such gas, as well as natural gas which is no longer subject to the Commission's NGA jurisdiction, transported in interstate commerce, on a self-implementing basis, by any transporter to any purchaser; and (5) to abandon (pre-granted abandonment) such transportation.

The authority sought by Mesa is similar to that recently granted to other producers and marketers of natural gas, it is asserted. The Commission's finding in those cases that such authority will, in particular, aid small independent producers that usually do not participate in the spot market, is equally applicable here. Mesa can ease the administrative burden of such activities on small producers, effect the release of surplus gas where necessary, find purchasers for that gas, and arrange for transportation, on behalf of these producers.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before October 21, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24877 Filed 10-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GP85-52-000]

Soutland Royalty Co.; Petition To Reopen and Vacate Final Well Category Determinations

Issued: October 11, 1985.

I the matter of: U.S. Department of the Interior, Bureau of Land Management, Section 108 Determinations, Southland Royalty Company, SRC-Thompson No. 10 (DK) Well, BLM Docket No. NM-70-79, FERC JD No. 79-09373, SRC-Reid No. 20 (MV) Well, BLM Docket No. NM-180-79, FERC JD No. 79-11314.

October 28, 1983, Southland Royalty Company (Southland) filed, pursuant to the Commission's regulations,[1] a petition to reopen and vacate final well category determinations by the U.S. Geological Survey that the above-captioned wells qualified as stripper wells under section 108 of the Natural Gas Policy Act of 1978 (NGPA),[2] and to withdraw its applications for the determinations. The wells are located in San Juan County, New Mexico.[3]

Southland states that it has discovered that both the Thompson No. 10 well and the Reid No. 20 well have more than one production zone. The avarage daily combined production of the producing zones for each of the wells exceeds 60 Mcf, the maximum permissible amount to qualify a well as a stripper gas well under section 108 of the NGPA. Southland therefore concludes that the referenced wells do not qualify as section 108 stripper wells.

Take notice that the question of whether refunds plus interest, as computed under the Commission's regulations,[4] will be required is a matter subject to review and final determination by the Commission.

Any person desiring to intervene in this proceeding or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211, respectively,[5] of the Commission's rules of practice and procedure. All motions to intervene or protests should be sumitted to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, not later than 30 days following publication of this notice in the **Federal Register**. All protest will be considered by the Commission but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24887 Filed 10-17-85; 8:45 am]

BILLING CODE 6717-01-M

[1] 18 CFR 275.205 (1985).

[2] 15 USC 3318 (1982).

[3] On June 19, 1979, the Commission received the determination on the SRC-Thompson No. 10 well and assigned it FERC JD No. 79-09373. On June 28, 1979, the Commission received the determination on SRC-Reid No. 20 well and assigned it FERC JD No. 79-11314. The determinations became final on August 3 and August 12, 1979, respectively, 45 days following notification pursuant to the Commission's regulations. 18 CFR 275.202(a) (1985).

[4] 18 CFR 154.102(c) (1985).

[5] 18 CFR 385.214 and 385.211 (1985).

[Docket Nos. EC86-1-000, et al.]

Electric Rate and Corporate Regulation Filings; Central Illinois Public Service Co., et al.

Take notice that the following filings have been made with the Commission

1. Central Illinois Public Service Company

[Docket No. EC86-1-000]

October 10, 1985.

Take notice that on October 1, 1985, Central Illinois Public Service Company ("CIPS") tendered for filing an application pursuant to Title 18, CFR 33.1, *et seq.* requesting that authority be granted under Title 16, U.S.C. 824b(a) allowing CIPS to purchase, acquire, hold and sell securities of other public utilities as part of a planned investment program. CIPS proposes to limit its holding or ownership of any given class of securities to an amount not to exceed (i) one percent (1%) of the outstanding capital stock of the obligor of such security if such security is an equity security or convertible into an equity security or (ii) 1% of the outstanding funded debt of the obligor of such security if such security is a debt security. Additionally, CIPS is requesting a modification of the reporting requirement under Title 18, CFR 33.8 to allow an annual report of acquisitions and holdings of securities. The Application sets forth the limitations and requirements protecting the public interest. The application is on file with the Commission and open to public inspection.

Comment date: October 21, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Kansas Gas & Electric Company

[Docket No. ER85-461-001, ER85-521-001]

October 10, 1985.

Take notice that on October 3, 1985 Kansas Gas and Electric Company tendered for filing an original and 14 copies of its filing in compliance with ordering paragraph "D" of the Commission's Order issued July 19, 1985 in Docket No. ER85-521-000.

Comment date: October 21, 1985, in accordance with Standard Paragraph H at the end of this notice.

3. Northern States Power Company

[Docket No. ER84-690-002]

October 10, 1985.

Take notice that on October 4, 1985, Northern States Power Company tendered for filing an original and fourteen copies of a refund compliance report, pursuant to the Commission's order dated August 21, 1985. As set forth in that Order, the attached report shows monthly billing determinants and revenues under the present and settlement rates, the monthly refunds, and the monthly interest earned for each Company. A summary is also included for the total refund period.

The filing Company states that prior billing determinants were not shown because of the difficulty of providing such numbers. The calculation of rates under the Coordinating Agreement required a large number of manhours to split transmission accounts and transmission additions between extra-high-voltage transmission and other transmission. This procedure was necessary under the Coordinating

Agreement because only extra-high-voltage transmission was passed through the agreement. Since the implementation of the Interchange Agreement, the split of transmission property has not been made in anticipation of saving the large number of manhours necessary to make such a determination.

Comment date: October 22, 1985, in accordance with Standard Paragraph H at the end of this notice.

4. Indiana & Michigan Electric Company

[Docket No. ER84-587-001]

October 10, 1985.

Take notice that on October 3, 1985, Indiana & Michigan Electric Company submitted for filing, pursuant to Commission order dated August 21, 1985, a report of refunds made to Michigan Power Company, Northern Indiana Public Service Company, Indiana Municipal Power Agency on behalf of Richmond Power and Light and Indiana Municipal Power Agency.

Comment date: October 22, 1985, in accordance with Standard Paragraph H at the end of this notice.

5. Portland General Electric Company

[Docket No. ER86-7-000]

October 10, 1985.

Take notice that on October 7, 1985, Portland General Electric Company (PGE) tendered for filing its revised Average System Cost (ASC) which reflects PGE's Power Cost Adjustment (PCA) rate change which became effective with meter readings on and after January 30, 1985. This filing includes a revised Schedule 4 to Appendix 1, exibit C of the Residential Purchase and Sale Agreement along with the authorization to implement this rate change from the Public Utility Commissioner of Oregon.

PGE states that the filing shows that the PCA adjustment to the current base ASC is (1.23) mills/kWh, which when combined with the base ASC results in a net ASC rate effective for this period.

Comment date: October 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. Indiana & Michigan Electric Company

[Docket No. ER86-6-000]

October 10, 1985.

Take notice that American Electric Power Service Corporation (AEP) on October 4, 1985 tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (I&ME), which is an AEP affiliated operating subsidiary, Modification No. 12 dated August 30, 1985 to the Interconnection Agreement dated February 21, 1964 between Public Service Company of Indiana, Inc. (PSI) and I&ME. The Commission has previously designated the 1964 Agreement as I&ME's Rate Schedule FERC No. 24 and PSI's Rate Schedule FERC No. 49.

Section 1 of Modification No. 12 increased the transmission demand rate for Emergency Energy to 2.75 mills per kilowatthour. In addition, Section 2 revises the provisions for Economy Energy by adding a 3.75 mill per kilowatthour minimum to I&ME's multi-party Economy Energy rate. Section 4 of this Modification updates the provisions for Non-Displacement Power and Energy by adding a 2.75 mill per kilowatthour demand charge for multi-party transmission. These proposed revisions apply to I&ME only. AEP requests an effective date of October 1, 1985.

I&ME's rates in this Modification are consistent with the charges associated with the transmission demand rates I&ME presently has in effect for Transmission Service, Limited Term Power, and Short Term Power services. These rates have previously been submitted and accepted for filing by the Commission for filing in numerous other AEP filings.

Copies of the filing were served upon PSI, Michigan Public Service Commission, and the Public Service Commission of Indiana.

Comment date: October 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Niagara Mohawk Power Corporation

[Docket No. ER86-5-000]

October 10, 1985.

Take notice that Niagara Mohawk Power Corporation (Niagara), on October 4, 1985 tendered for filing as a rate schedule, an agreement between Niagara and Rochester Gas and Electric Corporation (Rochester) dated July 31, 1985.

Niagara presently has on file an agreement with Rochester dated July 3, 1980 and last amended October 1, 1984. This agreement is for the transmission of Rochester's share of the Oswego #6 generation unit over Niagara's transmission system to Rochester.

The July 31, 1985, agreement contained in this filing revises the transmission rate for transmitting Oswego Unit #6 power and energy from the Oswego Unit #6 generating station to Rochester as provided for in the terms of the original agreement. Niagara requests waiver of the Commission's prior notice requirements in order to allow said agreement to become effective as of July 1, 1985.

Copies of the filing were served upon the following:

Rochester Gas & Electric Corporation, 89 East Avenue, Rochester, NY 14649

Hon. John J. Kelliher, Secretary, Department of Public Service, Three Empire State Plaza, Albany, NY 12223

Comment date: October 22, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Duquesne Light Company

[Docket No. ER85-264-002]

October 11, 1985.

Take notice that on September 30, 1985, Duquesne Light and Power Company tendered for filing an original and fourteen copies of a Compliance Record in accordance with the directions of the Commission.

Comment date: October 24, 1985, in accordance with Standard Paragraph H at the end of this notice.

9. Idaho Power Company

[Docket No. ER86-14-000]

October 11, 1985.

Take notice that on October 8, 1985, Idaho Power Company submitted for filing a Service Agreement between it and the City of Riverside, California, covering the sale of nonfirm energy under Idaho Power Company's 1st Revised FERC Electric Tariff, Volume No. 1.

Comment date: October 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Idaho Power Company

[Docket No. ER86-8-000]

October 11, 1985.

Take notice that on October 7, 1985, the Idaho Power Company tendered for filing in compliance with the Federal Energy Regulatory Commission's Order of October 7, 1978, a summary of sales made under the Company's 1st Revised FERC Electric Tariff, Volume No. 1 during August, 1985, along with cost justification for the rate charged. This filing includes the following supplements:

Utah Power & Light Company—Supplement 46

Sierra Pacific Power Company—Supplement 42

Portland General Electric Company—Supplement 38

Southern California Edison Company—Supplement 32

San Diego Gas & Electric Company—Supplement 27

Washington Water & Electric Company—Supplement 32

Pacific Gas & Electric Company—Supplement 13

Western Area Power Administration—Supplement 6
California Department of Water Resources—Supplement 2

Comment date: October 24, 1985, in accordance withn Standard Paragraph E at the end of this notice.

11. Pacific Power and Light Company, an assumed business name of PacificCorp

[Docket No. ER86-11-000]

October 11, 1985.

Take notice that on October 8, 1985, Pacific Power & Light Company (Pacific), an assumed business name of PacifiCorp, tendered for filing Second Revised Sheet No. 5C, superseding First Revised Sheet No. 5C (Index of Purchasers) of Pacific's PERC Electric Tariff, Original Volume No. 3 (Tariff), and Service Agreements between Pacific and the following parties:

Parties

Utah Power & Light Company
Colockum Transmission Company, Inc.

Pacific states that the Service Agreements provide for the sale of nonfirm power and energy, in accordance with the rates specified in Service Schedule PPL-3 under Pacific's Tariff.

Comment date: October 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Company

[Docket No., ER86-13-000]

October 11, 1985.

Take Notice that on October 7, 1985 Portland General Electric Company tendered for filing a Notice of Cancellation of Rate Schedule FERC No. 45. PGE states that this Rate Schedule has expired by its own terms.

PGE requests an effective date of April 30, 1985.

Notice of the proposed cancellation has been served upon the following parties:

The Department of Water Resources State of California
Public Utility Commissioner of Oregon

Comment date: October 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

13. Public Service Company of New Mexico

[Docket No. ER86-12-000]

October 11, 1985.

Take notice that on October 7, 1985, Public Service Company of New Mexico (PNM) submitted for filing notice of Termination of Service Schedule E to the Interconnection Agreement between Nevada Power Company (NPC) and PNM. PNM seeks to terminate Service Schedule E which expires on its own terms September 15, 1985. NPC and PNM say they do not presently contemplate filing a new rate schedule or part thereof in place of Service Schedule E.

PNM requests that the notice requirements of section 35.15 be waived to permit Service Schedule E to be terminated as of September 15, 1985.

Comment date: October 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Electric and Gas Company

[Docket No. ER86-9-000]

October 11, 1985.

TAKE NOTICE THAT on October 8, 1985, Public Service Electric and Gas Company (Public Service) tendered for filing an initial rate schedule to provide transmission service to Jersey Central Power and Light Company. The Rate Schedule provides for a monthly transmission service charge of $1.05 per kilowatt for the delivery of the combined shares of the Borough of Butler, Borough of Lavallette, Borough of Madison, Borough of Pemberton, Borough of Seaside Heights and the Sussex Rural Electric Cooperative of the State of New Jersey's allocation of New York Power Authority (NYPA) neighboring state hydroelectricity from the New York/New Jersey border to Jersey Central Power and Light Company at Roseland Switching Station.

Public Service requests a waiver of notice requirements with the customer's consent so that the Rate Schedule can be made effective as of July 1, 1985.

Public Service states that a copy of this filing has been served by mail upon customer.

Comment date: October 23, 1985, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Power & Light Company

[Docket No. ER86-10-000]

October 11, 1985.

Take notice that on October 8, 1985, Puget Sound Power and Light Company (Puget) submitted for filing documents pertaining to the calculation of Average System Cost (ASC) for Puget for the Exchange period effective February 1, 1985, through May 31, 1985. By making this filing, Puget says it does not waive any rights it has to challenge the validity of the new ASC Methodology in any forum.

Puget's retail rates are set by the Washington Utilities and Transportation Commission ("WUTC") in general rate orders and adjusted three times each year by an Energy Cost Adjustment Clause ("ECAC") rate order. The rates effective on February 1, 1985, were those set by general rate order in Cause No. U-83-54, effective October 6, 1984, and adjusted by the ECAC No. 9 rate order in Cause No. U-84-72, effective February 1, 1985. This filing includes the ASC material demonstrating the ECAC adjustment reflecting Cause No. U-84-72 data.

Comment date: October 24, 1985, in accordance with Standard Paragraph E at the end of this notice.

16. Southern California Edison Company

[Docket No. ER 85-691-000]

October 11, 1985.

Take notice that, on August 12, 1985, as supplemented on October 8, 1985, Southern California Edison Company (Edison) tendered for filing a notice of change of rates for the purchase of Replacement Capacity by the Cities of Anaheim (Anaheim) and Riverside (Riverside) from Edison for San Onofre Nuclear Generating Station, Unit No. 2 (SONGS Unit No. 2), under the provisions of the following rate schedules:

	Rate Schedule FERC No
City of Anaheim	95
City of Riverside	94

Edison requests waiver of the Commission's prior notice requirement and an effective date of February 26, 1985, for these rate changes.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 25, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. 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.

H. Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before the comment date. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24910 Filed 10-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-18-003]

Natural Gas Pipeline Co. of America; Compliance Filing

October 10, 1985.

Take notice that on September 25, 1985, Natural Gas Pipeline Company of America (Natural) tendered for filing a report in accordance with the Federal Energy Regulatory Commission's Order (Order) that issued September 11, 1985 in Docket No. RP85-18-002. Natural's filing summarizes the retroactive Order No. 94 payments to be recovered by Natural through a special, lump-sum, direct billing procedure.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 17, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24878 Filed 10-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-29-005]

Odeco Oil & Gas Co.; Application for Amendment and Extension of Certificate of Public Convenience and Necessity

October 10, 1985.

Take notice that on October 7, 1985, Odeco Oil & Gas Company (Odeco) of P.O. Box 61780, New Orleans, Louisiana 70161, filed an application pursuant to the provisions of the Natural Gas Act and Commission's rules and regulations thereunder, for amendment and extension of its certificate of public convenience and necessity as to permit continuation of existing sales and allow for new sales after October 31, 1985.

By order issued January 2, 1985 in Docket No. CI85-29-000 the Commission granted Odeco a certificate to implement an SMP and limited term partial abandonment of existing sales under the Natural Gas Act. Such grant is to expire no later than October 31, 1985. Any sales made pursuant to Odeco's SMP certificate is subject to the conditions specified in Tenneco Oil Co., *et al.*, Docket Nos. CI83-269-000, *et al.*

Odeco is currently making sales via its SMP and is concerned with continuation of such sales after October 31, 1985 and that it could be faced with large volumes of gas shut in due to expiration of its SMP certificate and abandonment authority. Odeco does not believe that the Commission's proposed rules issued in Docket No. 85-1 will provide the necessary authority to continue existing sales or permit new sales from its reserves. Loss of such authority could be detrimental not only to Odeco, but to the markets currently being served as well as those pipelines providing transportation service. Accordingly, Odeco is requesting extension of its SMP certificate and associated abandonment authority to January 1, 1991.

Because the judical authority has determined that the market restrictions imposed generically on SMP's is currently discriminatory to ineligible markets, Odeco further requests removal of such market restrictions from its SMP and permission to make sales to any willing purchaser.

Because SMP's have been in existence for a period of time and have shown themselves to the beneficial to the public, and also because of their competitive nature, Odeco requests elimination or modification of the current reporting requirements. In lieu of total elimination Odeco believes annual written reports would serve the Commission's purposes and in the absence of market limitations such reports should include volume and prices only.

Wherefore, Odeco respectfully requests that the Commission:

1. Extend Odeco's existing SMP to January 1, 1991 with modifications as proposed.
2. Omit the intermediate decision procedure and in that connection, Odeco waives oral hearing.
3. Grant such other relief as is necessary to effectuate the proposed.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before October 21, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to be come a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24879 Filed 10-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-5-000]

Samson Resources Co.; Application for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Abandonment and Pre-Granted Abandonment

October 11, 1985.

Take notice that on October 3, 1985, Samson Resources Company, (hereinafter referred to as Samson) filed an Application pursuant to sections 4 and 7 of the Natural Gas Act (NGA), and the provisions of 18 CFR Parts 154, 157, and 385 seeking a blanket certificate of public convenience and necessity authorizing the: (1) Sale for resale in interstate commerce of certain natural gas produced by Samson and its joint interest owners, (2) blanket temporary abandonment and pre-granted permanent abandonment of certain sales as described therein, and (3) transportation by interstate pipelines and others (and the pre-granted abandonment of same), where and if necessary, to effectuate the sale and purchase of gas on the spot market, as more fully described in the Application which is on file with the Commission, and open for public inspection. Samson also requests that said blanket authorization be made effective on or before November 1, 1985.

Samson states that the blanket authority as requested is consistent with the Commission's rules and regulations, *i.e.*, Parts 154 and 157 requirements, and is necessary for Samson to remain competitive in the spot market. Further, Samson states that, absent said blanket authorization, the flexibility and efficiency necessary for successful operation of the spot market would be hindered.

Samson states that no Commission-mandated scheme of contract carriage or market access is sought by its Application. A decision by an interstate pipeline, intrastate pipeline or local distribution company to have gas transported on its behalf, or to provide transportation services as a participating pipeline, or for pipelines to enter into transportation agreements with Samson, is purely voluntary.

Specifically, Samson requests that the Commission authorize Samson, effective on or before November 1, 1985:

(1) To make sales for resale in interstate commerce, without supply or market limitations, of NGA-gas with an applicable maximum lawful ceiling price higher than the Natural Gas Policy Act of 1978 (NGPA) section 109 ceiling price that is produced from various interests owned by Samson;

(2) To make sales for resale in interstate commerce, without supply or market limitations, of NGA-gas with an applicable maximum lawful ceiling price higher than the NGPA Section 109 price and produced from various interests attributable to other owners having interests in the same wells as Samson, to the extent that such joint interest owners agree to same;

(3) To abandon, temporarily, sales for resale of NGA-gas with an applicable maximum lawful ceiling price higher than the NGPA Section 109 price and previously certificated by the Commission, to the extent that such gas is released by interstate pipelines for resale in the spot market to third parties;

(4) To abandon (pre-granted abandonment) any sale for resale in the spot market authorized pursuant to any blanket certificate issued herein; and

(5) To have both NGA- and non-NGA-gas that is sold in the spot market by Samson and its joint interest owners transported in interstate commerce, on a self-implementing basis and without source or recipient limitations, by any willing transporter to any willing and able purchaser of such gas, with pre-granted abandonment of same.

Samson is requesting the authorization described herein only to the extent that any element of such authorization is not otherwise made effective on or before November 1, 1985, as a result of Commission action in any other proceeding. In particular, Samson references the Commission's Notice of Proposed Rulemaking (NOPR) issued May 30, 1985, in Docket No. RM85-1-000 and states that the blanket authority requested would be supplemental to the flexible transportation scheme proposed by the NOPR and would be necessary to achieve the NOPR objectives.

Sales proposed to be made by Samson on behalf of itself and its joint interest owners will not involve a dedication of reserves but will be based on periodic nominations, either by purchasers or by Samson. The sales volumes, prices, purchasers, delivery points, transporter, and supply source will vary. Samson proposes to sell and deliver to various spot gas purchasers all or a portion of the gas Samson determines is available for sale at terms acceptable to Samson for a particular month. Samson will not be obligated to sell gas pursuant to any nomination or proposed nomination until the exact volumes, terms and conditions, and prices are agreed to by Samson and a purchaser. The actual contract between Samson and the spot gas purchaser may be for all or any portion of the quantity which was set out in the nomination or proposed nomination.

Samson and its joint interest owners operating under the authorizations sought would give take-or-pay credit to purchasers releasing contractually committed gas for sale and/or transportation pursuant to such authorizations.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before October 21, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determing the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24880 Filed 10-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-7-000]

Seagull Marketing Services, Inc.; Application for Blanket Certificate of Public Convenience and Necessity and for an Order Permitting and Approving Abandonment and Pre-Granted Abandonment

October 11, 1985.

Take notice that on October 4, 1985, Seagull Marketing Services, Inc. (Seagull Marketing), pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717-717z (1982) (NGA), and Part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Part 157 (1984), applied for a blanket certificate of public convenience and necessity: (1) Authorizing sales for resale of natural gas in interstate commerce by Seagull Marketing and the producers from which Seagull Marketing purchases natural gas; (2) authorizing sales for resale of natural gas in interstate commerce by producers for which Seagull Marketing acts as agent; (3) authorizing blanket partial abandonment and pre-granted abandonment of certain sales as described herein; (4) authorizing transportation, where and if necessary, under section 7(c) of the NGA for interstate pipelines; (5) authorizing pre-granted abandonment of such transportation by interstate pipelines; and (6) authorizing transportation by intrastate and Hinshaw pipelines as set forth herein, all to be effective on or before the earlier of November 1, 1985, or the effective date of the new rules proposed in Docket No. RM85-1-000, as more fully described in the Application which is on file with the Commission and open for public inspection.

Applicant states that the certificate and abandonment authority sought herein, if granted, will enable Seagull Marketing to purchase from various producers and resell natural gas that remains subject to the Commission's NGA jurisdiction for which the maximum lawful price is higher than that established by section 109 of the Natural Gas Policy Act of 1978 (NGPA); to act as agent in sales by producers for resale of natural gas that remains subject to the Commission's NGA jurisdiction for which the maximum lawful price is higher than that established by section 109 of the NGPA; and to have such gas, as well as gas which is no longer within the Commission's NGA jurisdiction, transported in interstate commerce to all customers that have the ability to buy gas on the open market.

Seagull Marketing is requesting the authority desicribed herein only to the extent that such authority is not provided for in any final rule issued by the Commission in Docket No. RM85-1-000 (NOPR); in the event a final rule in the NOPR is not issued by November 1, 1985; and/or in the event any such rule is stayed or not in effect after its issuance.

Seagull Marketing, on behalf of itself, producers, and pipelines, is requesting authority, to be effective no later than November 1, 1985, (1) to make sales for resale in interstate commerce of NGA gas for which the maximum lawful price is higher than the Section 109 price; (2) to temporarily abandon sales for resale of NGA gas for which the maximum lawful price is higher than the Section 109 price and which sales were previously certificated by the Commission, to the extent that such gas is released by interstate and Hinshaw pipelines and local distribution companies, to producers for resale on the spot market either by Seagull Marketing or by such producers through Seagull Marketing acting as agent; (3) to abandon (pre-granted abandonment) any sale for resale in interstate commerce authorized pursuant to the blanket certificate issued herein; (4) to have any such gas, as well as natural gas that is no longer subject to the Commission's NGA jurisdiction, transported in interstate commerce on a self-implementing basis, by any interstate pipeline to or for any purchaser; (5) to have any such NGA gas, as well as natural gas that is no longer subject to the Commission's jurisdiction under the NGA transported on a self-implementing basis in interstate commerce by intrastate pipelines, Hinshaw pipelines, and local distribution companies pursuant to section 311 of the NGPA or Section 7(c) of the NGA to any purchaser; and (6) to abandon (pre-granted abandonment), if such authorization is necessary, the transportation authorized as requested herein.

Such authority, if granted, will enable Seagull Marketing to purchase NGA gas for which the maximum lawful price is higher than the Section 109 price (hereinafter referred to as "NGA gas") from producers willing to sell to Seagull Marketing, for resale on the spot market. Such authority will also enable Seagull Marketing to act as agent for various producers in sales of NGA gas on the spot market. Further, pipelines will be authorized to transport both NGA gas, and gas that is no longer subject to the Commission's NGA jurisdiction, sold by Seagull Marketing and producers on the spot marketing.

Seagull Marketing currently acts as a reseller or agent on behalf of various parties in marketing non-NGA gas on the spot market. Grant of this authority will allow Seagull Marketing to continue to perform such marketing activities after October 31, 1985, and will permit Seagull Marketing to engage in such activities involving NGA gas.

The authority sought by Seagull Marketing on behalf of itself, producers, and pipelines, is similar to that recently granted to other marketers of natural gas, it is asserted. Seagull Marketing asserts that the Commission's finding in those cases that such authority will, in particular, aid small independent producers that usually do not participate in the spot market, is equally applicable here. Seagull Marketing states it can ease the administrative burden of such activities on small producers, effect the release of surplus gas where necessary, find purchasers for that gas, and arrange for transportation on behalf of these producers. Seagull Marketing states it can provide the necessary marketing and contract administration functions that many producers are not staffed to handle.

Seagull Marketing is willing to subject itself to the Commission's NGA jurisdiction to the extent, and only to the extent, of its participation in these jurisdictional transactions, in the same manner and on the same basis that the Commission's jurisdiction attached to the marketing companies that have previously received authorization to conduct SMPs. Seagull Marketing requests that the Commission clarify and declare that Seagull Marketing will be subject to the Commission's NGA jurisdiction only to the extent necessary to effectuate the requested authority and only with respect to its participation in the transactions authorized. Further, Seagull Marketing requests that the Commission clarify and confirm that intrastate pipelines, local distribution companies, and Hinshaw pipelines that engage in transportation pursuant to the authorization requested herein will not be subject to the Commission's jurisdiction, except to the extent necessary to effectuate the requested authority with respect to their participation in specific transactions.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than usual for the filing of protests and motions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before October 21, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 384.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Seagull Marketing to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24881 Filed 10-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-14-000]

Shell Offshore Inc.; Shell Western E&P Inc.; Application for Blanket Limited-Term Certificate of Public Convenience and Necessity and Limited Partial Abandonment Authorization

October 10, 1985.

Take Notice that on October 4, 1985, Shell Offshore Inc. ("SOI") and Shell Western E&P Inc. ("SWEPI") One Shell Plaza, P.O. Box 2463, Houston, Texas 77001, filed an Application, pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's ("Commission") Regulations thereunder, for limited partial abandonment authorization and a blanket limited-term certificate of public convenience and necessity authorizing Shell Offshore Inc. and Shell Western E&P Inc. (herein jointly called "Shell") to conduct a short-term spot sales marketing program, hereinafter referred to as the Shell Saver Program ("Shell Saver"), all as more fully set forth in the Application which is on file with the Commission and open to public inspection.

Approval would: (1) Authorize the sale of natural gas by SOI or SWEPI or its joint venture working interest owners in the same well and reservoir for resale in interstate commerce; (2) permit temporary partial abandonment of certain natural gas sales; (3) confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in Shell Saver; and (5) confer pre-granted abandonment authorization for the transportation service allowed under the requested certificate. This authority is necessary for implementing a short-term experimental spot sales marketing program. SOI or SWEPI will seek temporary releases of gas from the purchasers to whom it is committed in order to meet market demand for spot sales. Releasing purchasers will be given relief from take-or-pay liability for any volumes of gas released and sold under the Shell Saver Program.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before October 21, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24882 Filed 10-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-696-000, et al.]

Northern Gas Marketing, Inc., et al.; Applications for Abandonment of Service

October 10, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before October 23, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft ^{3}	Pressure base
CI85-696-000, B, Sept. 24, 1985	Northern Gas Marketing, Inc., P.O. Box 4524, Houston, Texas 77210.	NorVal Gas Company, Tennessee Exchange Corporation and Florida Gas, Transmission Company, Matagorda Island Block 700, Offshore Texas.	([1])	
CI85-698-000, B, Sept. 24, 1985	Mark Producing, Inc., 675 Bering Drive, Houston, Texas 77057.	Promark Energy Company, Lease No. OCS-G-2306, South Marsh Island Area, Block 261, Offshore Louisiana, Federal Domain.	([2])	
CI85-699-000, B, Sept. 24, 1985	Total Petroleum, Inc., One Allen Center, Suite 2950, Houston, Texas 77002.	Northern Gas Marketing, Inc., Lease No. OCS-G-3108, Matagorda Island Area, Block 700, Offshore Texas.	([3])	

[1] Two short-term contracts have expired and Seller entered into the Contracts and initiated service upon the erroneous assumption that the gas is not subject to the Natural Gas Act.
[2] Purchaser advised Seller it would cease purchasing gas under the contract, effective 9-30-85.
[3] Gas no longer wanted by purchaser.

Filing Code: A—Initial Service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total Succession. F—Partial Succession.

[FR Doc. 85-24886 Filed 10-17-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-13-000]

Sonat Exploration Co.; Application

October 10, 1985.

Take notice that on October 7, 1985, Sonat Exploration Company ("Applicant") filed an application pursuant to sections 4 and 7 of the Natural Gas Act ("NGA"), and the provisions of 18 CFR Part 157, seeking Special Market Program (SMP) authority which would include a Blanket Certificate of Public Convenience and Necessity authorizing the Applicant and its joint interest owners to: (1) Make sales for resale of natural gas in interstate commerce of gas produced by the Applicant and its joint interest owners; (2) authorize sale for resale of natural gas in interstate commerce of gas purchased by the Applicant from other producers; (3) authorize sale for resale of natural gas in interstate commerce by producers for whom the Applicant is acting as their agent; (4) Authorize temporary partial blanket abandonment and pre-granted abandonment of certain sales; (5) authorize transportation, where and if necessary, under section 7(c) of the NGA for interstate pipelines; (6) authorize pre-granted abandonment of such transportation by interstate pipelines; and (7) authorize transportation by intrastate and Hinshaw pipelines, all without source or recipient limitations, by any willing transporter to any willing and able purchaser of such gas, and all as more fully described in the Application which is on file with the Commission and open for public inspection. Applicant further requests that said Blanket Authorizations be made effective on or before November 1, 1985, and that they be in addition to and as supplemented by such other authority as may be provided for by final rule issued by the Commission under Docket No. RM85–1–000.

Applicant states that the results of Special Marketing Program have provided some benefit to all parties concerned. The authorizations applied for in its Application are consistent with the Commission's goals as set forth in the Notice of Proposed Rulemaking issued May 30, 1985 in Docket No. RM85–1–000 and are critical to the continuing success of the spot market. Without such authorizations, Applicant reports that it will be precluded from effectively, efficiently and fully participating in the spot market as of November 1, 1985.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protests with reference to said application should on or before October 21, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–24883 Filed 10–17–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA85-2-9-006]

Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.; Informal Conference

October 10, 1985.

Pursuant to the Commission order issued October 8, 1985, in this proceeding, an informal conference will be convened on Thursday, October 17, 1985 at 10:00 a.m. in a room to be designated at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

At the conference, Tennessee is requested to present the following information:

1. Derivation of sales volumes and projected purchases. For both sales and purchases, state the basis for the numbers used and any assumptions made in determining these numbers. Additionally, for purchases, state what portion of the cost is applicable to gas that must be taken due to operational constraints.

2. A list of any pending Tennessee certificate matters pertaining to abandonment of sales, additional sales or additional purchases. If none exist or are relevant to this proceeding, so indicate.

In addition to the above, Tennessee may present at the conference any other data that it used in projecting a $3.17 per dth weighted average cost of gas for the relevant PGA period.

All interested persons and Staff will be permitted to attend. At the conference, all persons and Staff shall be prepared to present any additional data requests of Tennessee.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–24884 Filed 10–17–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-35-000, 001]

West Texas Gas, Inc.; Rate Change Pursuant To Purchased Gas Cost Adjustment Provision

October 9, 1985.

Take notice that on October 1, 1985, West Texas Gas, Inc. (WTG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet:

Second Revised Sheet No. 3a

Second Revised Sheet No. 3a is being filed by WTG in order to effectuate its annual purchased gas adjustment (PGA) to be effective on October 1, 1984. The implementation of this PGA will result in a rate reduction to its customers served under Rate Schedules GS–1, IS–1, and I–1.

Copies of the filing were served upon the WTG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before October 16, 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.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85–24885 Filed 10–17–85; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-717-000, et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Metrocare Inc., et al.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Metrocare Inc.

October 7, 1985.

[Docket No. QF85-717-000]

On September 20, 1985, Metrocare Inc. (Applicant), of 222 East Whiting Avenue, Fullerton, California 92632, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Twin Palms Sanitarium, Artesia Blvd., Artesia, California 90701. The facility will consist of a reciprocating engine fueled by natural gas, and necessary heat recovery system. Heat recovered will be utilized in absorption chillers, swimming pool heating, space heating, and pre-heating of domestic hot water. The electric power production capacity of the facility will be 60 kW.

2. Klondike Equity Enterprises, Inc.,

October 8, 1985.

[Docket No. QF85-712-000]

On September 17, 1985, Klondike Equity Enterprises, Inc., (Applicant), of P.O. Box 100, Newport Beach, Calfifornia 92662 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility, known as Klondike IV, will be located on southwest corner of Myford Road and Dow Avenue in Tustin, California. The primary energy source will be natural gas. The electric power production capacity will be 27.6 MW. Klondike IV will consist of a combustion turbine-generator, a two pressure level heat recovery boiler (HRB) and an extraction steam turbine-generator. The extracted steam together with low pressure steam from the HRB will be supplied to the absorption refrigeration equipment and heating needs at the athletic facility. Klondike IV is scheduled for commercial operation in spring of 1987.

3. Kenvil Energy Company—Reading Anthracite Company—Yatesville, Pennsylvania

October 8, 1985.

[Docket No. QF85-720-000]

On September 23, 1985, Kenvil Energy Company, (Applicant) of 400 Morris Avenue, Denville, New Jersey 97834, filed on behalf of the Reading Anthracite Company of 200 Mahantongo Street, Pottsville, Pennsylvania 17901, an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be owned and operated by the Reading Antracite Company. The facility will be located near Yatesville, Mahanoy Township, Schuylkill County, Pennsylvania. The facility will consist of a circulating fluidized bed boiler, condensing steam turbine generator, and related auxiliary equipment. The primary energy source for the facility will be antracite refuse. The net electric power production capacity of the facility will be 80 megawatts.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the coment date. Protests will be consdered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-24871 Filed 10-17-85; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-42026B; TSH-FRL 2887-1]

4-Chlorobenzotrifluoride; Decision Not to Test

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is issuing a decision not to require further testing of 4-chlorobenzotrifluoride (4-CBTF), CAS #98-56-6, for health effects, environmental effects, and chemical fate. An August 24, 1984, U.S. District Court, Southern District of New York, ruling requires EPA to issue a test rule for this chemical under section 4(a) of the Toxic Substances Control Act (TSCA) or state reasons for not issuing one. EPA has determined that data now available to the Agency, including data received pursuant to a negotiated testing agreement between the Agency and Occidental Chemical Corporation, are adequate to characterize 4-CBTF for these effects and that no further testing need be required at this time.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Toll Free: (800-424-9065), in Washington, DC: (554-1404), outside the USA: (Operator 202-554-1404).

SUPPLEMENTARY INFORMATION: The Agency is publishing a decision not to require additional testing of 4-chlorobenzotrifluoride for health effects, chemical fate, or environmental effects.

I. Introduction

In its Ninth Report, published in the Federal Register of February 5, 1982 (47 FR 5456), the Interagency Testing Committee (ITC) designated 4-chlorobenzotrifluoride (4-CBTF) for priority testing consideration. The ITC recommended that 4-CBTF be tested for chronic health effects, for bioconcentration in fish, and for chemical fate. On July 18, 1983 (48 FR 32730), EPA published notice of a negotiated testing agreement (NTA) between EPA and Hooker Chemical and Plastics Corporation (Occidental Chemical Corp.) for 4-CBTF. To answer the concerns expressed by the ITC, Occidental Chemical Corp. proposed a multi-tiered series of health and environmental effects testing consisting of screening tests, base set tests, and conditional mammalian testing, with periodic full program reviews. In addition, atmospheric fate studies were scheduled immediately after completion of the base set testing prior to the first program review. The specific details of the NTA are presented in the July 1983 Federal Register notice. The screening and base set tests, as well as the atmospheric fate studies have been completed, and EPA has announced receipt of the test results in four Federal Register notices (48 FR 20312, 48 FR 53159, 49 FR 18779, and 50 FR 5421). These notices are included in the public docket (OPTS-42026) for this notice.

On August 24, 1984, the U.S. District Court, Southern District of New York, ruled that negotiated testing agreements were not a legally adequate substitute for rulemaking under section 4 of TSCA in EPA's responding to priority testing designations of the ITC. (*NRDC* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y. 1984)). In its final order, the court required that EPA publish a notice of proposed rulemaking for 4-CBTF or its reasons for not initiating rulemaking by October 1985. This notice is being published in response to the court's mandate and announces the Agency's decision not to require additional health effects, chemical fate, or environmental effects testing for 4-CBTF.

Under section 4(a) of TSCA, the Administrator shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment,

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture,

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

EPA uses a weight-of-evidence approach in making a section 4(a)(1)(A)(i) finding; both exposure and toxicity information are considered in determining whether available data support a finding that the chemical may present an unreasonable risk. For the finding under section 4(a)(1)(B)(i), EPA considers only production, exposure and release information to determine whether there is or may be substantial production and significant or substantial human exposure or substantial release to the environment. For the findings under sections 4(a)(1)(A)(ii) and 4(a)(1)(B)(ii), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to, or environmental release of, the chemical. In making the finding under section 4(a)(1)(A)(iii) or 4(a)(1)(B)(iii) that testing is necessary, EPA considers whether ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's approach to determining when these findings are appropriately made is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) findings are discussed at 45 FR 48528 and 46 FR 30300, and the section 4(a)(1)(B) findings are discussed at 46 FR 30300.

II. Review of Available Data

A. Description, Manufacture, and Use

4-Chlorobenzotrifluoride (CAS #98-56-6) is a liquid at room temperature. While soluble in most organic solvents, it is only slightly soluble in water (Ref. 1). It is volatile ($VP^{T=20^\circ C}=5.8$ mmHg) and quickly evaporates from water to the atmosphere, where it has a lifetime of up to 50 days (Ref. 2). It absorbs to soils and sediments (Ref. 3), where it will persist unless evaporation is possible, since it is not readily biodegradable (Ref. 4).

Occidental Chemical Company at Niagara Falls, NY, is the sole industrial producer of 4-CBTF, with an estimated production volume of 10 to 50 million pounds/year (Ref. 5). Over 80 percent of this production is shipped in tank cars to Elanco, a subsidiary of Eli Lilly, Lafayette, IN, where it serves as the starting material for the production of trifluralin, a pre-emergent herbicide (Ref. 5). The remainder is mostly used for synthesis of trifluralin-related compounds or diphenyl ether herbicides. However approximately 4 percent is used as an intermediate in the synthesis of dyes and drugs. 4-Chlorobenzotrifluoride is also reported to be usable as a dielectric fluid or a solvent, but EPA has no evidence of such uses at this time. (Ref. 5).

B. Release and Exposure

The Agency believes that workplace exposure to 4-CBTF is low because manufacture, transport to Elanco, storage in underground tanks and subsequent trifluralin production are closed processes. Occidental performs both area and personnel monitoring within its Niagara Falls manufacturing facility and has submitted these data on worker exposure (as well as data on worker exposure at the Elanco processing plant) as confidential business information (CBI) (Ref. 6). In a non-CBI context, Occidental stated 4-CBTF levels were less than 1 ppm (Ref. 7). Eli Lilly does not monitor but believes 4-CBTF air levels in the Elanco plant are below the detectable limit (level not given) (Ref. 7). These submissions have been reviewed and evaluated by the Agency (Ref. 8). Using standard assumptions for worker weight, inhalation volume and rate, and duration and level of 4-CBTF in the plant, the Agency calculates an exposure level on the order of micrograms per kilogram per day. As discussed in Unit II.C.4., a subchronic mammalian study indicates a no effect level of 10 mg/kg/day, giving a margin of safety of three orders of magnitude.

At Elanco, release of 4-CBTF to the environment appears minimal. Air emissions from the underground storage tanks total less than ten gallons per day. All process water released is treated with an activated carbon system known to remove at least 99 percent of the organics present. Solid residues are completely incinerated. However, there has been no analysis of either embient air near the plant site or plant effluent. Elanco has analyzed the process intermediates following the initial reaction with 4-CBTF and the final reaction products for 4-CBTF contamination. They report concentrations below the detectable limit (0.10 percent) (Ref. 7).

There is no known consumer exposure to 4-CBTF, and the general population exposure appears to be limited to the town of Niagara Falls, NY and surrounding areas. Even here, exposure is very site-specific; 4-CBTF has been detected only in discrete areas adjacent to the production facility and near certain landfill disposal sites (Refs. 7, 9 and 11).

Many reports of detection of 4-CBTF in the environment were published in the 1970s. At that time disposal procedures at Occidental's manufacturing plant were less restrictive. 4-Chlorobenzotrifluoride waste was buried in landfills with runoff streams emptying into the Niagara River. Occidental also released untreated wastewater to the river and volatile emissions directly to the air. As a consequence environmental levels were higher than present levels. For example, in a 1979 study (Ref. 11), 4-CBTF was found in 3 of 15 sampls in Niagara Falls air up to 3 parts per billion (ppb). The same study reported less than one ppb 4-CBTF in the breath of 5 of 9 Love Canal residents. At no time has 4-CBTF ever been detected in the Niagara Falls drinking water (Ref. 11). There is one report of 4-CBTF presence (2 ppm) in Niagara River fish collected prior to 1976 (Ref. 12). FDA repeated this study in 1980 and did not find 4-CBTF present in local fish (Ref. 13).

Disposal practices by Occidental have been greatly modified in the past decade. Occidental closed the Hyde Park site in 1975, intiated pre-treatment practices, and is substituting New York State Department of Environmental Conservation-approved incineration for burial. These extensive engineering modifications and changes in disposal practices by Occidental have been successful in controlling release to air and receiving steams (Refs. 6, 7, 14 and 15).

The present level of 4–CBTF in Niagara Falls ambient air is not known. Based on the "B" environmental rating given 4-CBTF by the New York State Air Pollution Control Regulation (part 212), ambient monitoring is not required (Ref. 6). However, release of 4–CBTF to the water column is better characterized. Current discharges to the Niagara River of 4–CBTF are explicitly limited by State and Federal permits (Refs. 14 and 15). The current SPDES Permit and Consent Order issued to Occidental in September 1984 allows a maximum discharge (all outfalls combined) of 10 pounds per day for all monochlorobenzotrifluoride isomers. The minimum monitoring required is two 24-hour composite sample taken twice a month.

Occidental, in a confidential business submission, has reported levels of 4–CBTF released to the environment from the manufacturing process during the past five years (Ref. 6). These data show a 95 percent decrease in 4–CBTF levels released to the Niagara River from the Occidental plant. But levels of 4–CBTF in the water column (0.1 to 1.0 ppb) have not significantly changed over the past decade (Refs. 7, 9, 10, 14, and 15). The Canadian Ministry of the Environment (Ontario) has conducted much of the ambient monitoring of Lake Erie, the Niagara River, and Lake Ontario since 1978 (Ref. 10). They identified trace levels of 4–CBTF in raw intake water near the mouth of the Niagara in 3 of 10 samples in 1981 and in 2 of 21 samples in 1982. (The limit of detection and level considered to be a trace amount was not given.) The joint U.S. Canada Niagara River Toxics Committee classified 4–CBTF as a Group II D contaminant. Their rating system entails 9 designations with II D as number 5. Only the first three designations have found to be of concern. Group II D contaminants are either not totally characterized, or have only been identified qualitatively, or warrant additional monitoring to confirm their existence.

While air emissions and water discharges of 4-CBTF from manufacture are minimal, the Agency believes that residual leaching from over 7,700 metric tons (about 17 million pounds) of benzotrifluoride derivatives disposed at the Hyde Park landfill remains a main source of exposure and is probably responsible for maintaining current water levels (Refs. 7, 9 and 10). Since 4-CBTF is not readily biodegradable, leaching from previously deposited wastes will continue indefinitely or until the disposal sites are cleaned up.

EPA has evaluated the potential effects of the total aquatic release of 4-CBTF (from Occidential and/or landfill leaching) using a model of the Niagara River that is specific for that part of the river where Occidental discharges waste effluent about 4 miles upstream from the Falls to where they discharge indirectly through Niagara Falls wastewater treatment plant facility below the Falls (Ref. 16). Using available data on 4-CBTF (especially empirical values for physical properties and chemical fate developed under the NTA), the Agency used the maximum acceptable toxicant concentration (MATC) for the aquatic organism found to be most sensitive to 4-CBTF (*Daphnia*) (See Unit II.D.) to estimate the minimum quantity of 4-CBTF that would have to be released to achieve the low end of the *Daphnia* MATC range (30 to 50 ppb). The Agency estimates that Occidental would have to release 12 million lb/yr to achieve a 30 ppb concentration in the Niagara River. Such a release is highly unlikely not only because the SPDES limit is 3,650 pounds a year but because this quantity is 24 percent of the maximum production figures for 4-CBTF and 43 percent of the estimated level of 28 million lb/yr.

C. Health Effects

1. *Mutagenicity.* 4-Chlorobenzotrifluoride showed no evidence of mutagenicity in several test systems. Additional gene mutation testing is not considered necessary because the Ames Battery, the *in virtro/in vivo* Urinary Assay and the Mouse Lymphoma Assay were all negative. In the Ames Battery in *Salmonella* strains TA–1535, TA–1537, TA–1538, TA–98, and TA–100; in *Saccharomyces* strain D_4; and in *E. coli* strains W3110/*pol*A$^+$ and P3478/*pol*A$^-$, 4-CBTF at 0.01 to 10.0 ul per plate, with and without activation, produced negative results (Ref. 17). In an *in vitro/in vivo* Urinary Assay with *Salmonella* strains TA-1535, TA-1537, TA-98, and TA-100, each plate received 0.1 to 0.3 ml urine collected from mice given 50 to 500 mg/kg 4-CBTF by oral gavage over a 48-hour period. 4-Chlorobenzotrifluoride was not mutagenic (Ref. 18). The Mouse Lymphoma Assay, using a series of concentrations from 0.78 nl/ml to 400 nl/ml, with and without activation, also produced negative results (Ref. 19).

Additional chromosome aberration testing is not considered necessary because *in vitro* testing with Chinese Hamster Ovary (CHO) cells and *in vitro* testing in the Rat Bone Marrow Cytogenic Assay were all negative. The *in vitro* testing of Chinese Hamster Ovary cells, with and without activation, exposed to 29.99 to 130.0 nl/ml produced negative results (Ref. 20). The *in vitro* Rat Bone Marrow Cytogenic Assay, using 4–CBTF levels of 0.5, 1.7, and 5.0 ml/kg, produced negative results (Ref. 21).

In a Sister Chromatid Exchange (SCE) Assay, a positive mutagenic response has been reported in mouse lymphoma cells using levels of 4–CBTF from 2.5 nl/ml to 40 nl/ml (Ref. 22). Without activation, 4–CFBT indiuced statistically significant increases in SCE frequencies in a dose-dependent manner. With metabolic activation, results were less clear; While 3 of 5 concentration levels showed significantly greater SCE frequencies than controls, the highest dose level was not among them. Since the Sister Chromatid Assay measures DNA damage, it is not part of the chain of assays assessing oncogenic potential from gene mutation or chromosome aberration tests. For this reason, a cell transformation assay with BALB/3T3 cells was conducted. In the non-activated system BALB/3T3 cells exposed to 4–CBTF over a concentration range of 0.1 nl/ml to 40.0 nl/ml produced negative results (Ref. 23). The same assay with activation also produced negative results at levels of 10 to 300 ug/ml (Ref. 24).

While mouse lymphoma cells responded to a SCE assay with a positive response in a non-activated system and a possible positive response in an activated system, the preponderance of evidence is that 4–CBTF is not mutagenic; it does not induce chromosomal transformations in several "higher tier" mutagenicity assays, namely tow *in vitro* assays (CHO and BALB/3T3) and in the *in vitro* Bone Morrow Assay. The Agency has reviewed these data following the Proposed Guidelines for Mutagenicity Risk Assessment (49 FR 46314) and has conlcuded that 4–CBTF may be considered non-mutagenic because the weight-of-evidence (especially the data from the higher tier studies) shows 4–CBTF does not induce mutagenicity, chromosomal aberrations, or cell transformations (Ref. 25).

2. *Acute toxicity.* The acute toxicity of 4–CBTF has been well defined. Testing demonstrates 4–CBTF to be only mildly toxic. Sprague-Dawley rats receiving a single dose of 4–CBTF (608 g/kg) via oral gavage had no pathology specific to 4–CBTF exposure after 2 weeks. The LD_{50} was 6.8 g/kg (Ref. 26). Sprague-Dawley rats exposed for 4 hours to 6.03, 20.8, 28.4, 39.1, or 66.7 mg/1 4-CBTF in the air were observed for 14 days after

exposure. An inhalation LC_{50} of 33 mg/1 (33 g/m^3 or 4467 ppm) was calculated. At the two lowest levels there were no deaths; however, dose-related effects such as partially closed eyes, excessive lacrimation, redness around the eyes, mucoid discharge and labored breathing were evident. No specific pathology was seen in higher dose groups that was not also seen in the controls (Ref. 27). Dermal toxicity tests with albino rabbits given 2.7 g/kg 4-CBTF showed no mortality or long-term skin irritation (Ref. 28). Acute eye and primary skin irritation tests in rabbits indicate 4-CBTF is not appreciable irritating to eye or skin (Ref. 28).

3. *Pharmacokinetics*. In a preliminary qualitative pharmacokinetics study, rats were dosed via oral gavage with radioactive 4-CBTF (1 mg/.kg) (Ref. 29). About 80 percent of the 4-CBTF dose was rapidly exhaled unchanged. There were no other radioactive products (*e.g.* CO_2) exhaled. This strongly suggests that 4-CBTF does not enter the central intermediary metabolic pathways in the body. Another 2 to 3 percent was recovered unchanged in the feces. Approximately 15 percent was recovered in the urine, mainly in the form of glucuronide adducts. At 4 days, only 1 percent of the radioactive dose remained in the tissues. Again this indicates that the body does not process much 4-CBTF through central metabolic channels.

4. *Subchronic toxicity*. A 90-day subchronic study in Fischer 344 rats (Ref. 30) was conducted under the negotiated testing program. Rats received one of four dose levels of 4-CBTF (10, 40, 150, or 500 mg/kg body weight/day) by gavage. Effects due to 4-CBTF were both dose- and sex-related, with males more sensitive to the effects of 4-CBTF than females. Dose-related effects included elevated blood urea nitrogen, elevated total bilirubin, elevated alkaline phosphatase, induction of hepatic detoxifying enzymes, increased liver and kidney weights, liver hypertrophy and mild proteinuria. These clinical and pathological changes implicate kidney and liver detoxifying systems with moderate kidney damage (tubular degeneration at high dose levels in males). Symptoms were more pronounced at dose levels of 150 mg/kg and 500 mg/kg. Although the toxicity of 4-CBTF was clearly dose-related, there was no particular dose level associated with a specific pathological expression; rather 4-CBTF produced an array of symptoms (at levels above 10 mg/kg), which became more pronounced as the dose increased. The NOEL was estimated to 10 mg/kg for 90 days exposure.

EPA has reviewed all these data (Refs. 25 and 31). In summary, the health effects studies, especially when considered as a whole, tend to characterize 4-CBTF as a chemical with low toxicity. The Agency believes the data from the gene mutation, the chromosome aberration, and the cell transformation tests do not indicate a potential for mutagenicity or oncogenicity. The pharmacokinetics study is suggestive that 4-CBTF is not channeled into metabolic pathways (with the exception of excretion via glucuronides). Finally, the Agency has concluded that the mammalian subchronic study is adequate to characterize the subchronic and potential chronic toxicities of 4-CBTF. No additional subchronic testing appears necessary, and this study does not suggest that 4-CBTF produces any chronic or abnormal reproductive effects after 90 days oral exposure.

D. Environmental Effects

The acute and subchronic environmental effects of 4-CBTF on aquatic species are well characterized; additional testing is not considered necessary. Aquatic toxicity testing provided acute toxicity data for fish and daphnid. The 96-hour LC_{50} values for bluegill sunfish and rainbow trout were 12.0 ppm and 13.5 ppm, while the 96-hour NOELs were 5.6 ppm and 3.2 ppm, respectively. The 48-hour LC_{50} for *Daphnia* was 12.4 ppm, while the NOEL was 6.5 ppm (Ref. 32).

A 31-day embryo/larval test in fathead minnows continuously exposed after hatching to 5 concentrations of 4-CBTF from 0.07 ppm to 1.4 ppm provides data to calculate an MATC between 0.54 ppm and 1.4 ppm (Ref. 33).

In a 21-day flow-through study, *Daphnia* were exposed to 5 concentrations of 4-CBTF from 0.01 ppm to 0.2 ppm. Concentration of 0.03 ppm or less had no observable effects on mortality, growth, or productivity. The 21-day LC_{50} was 0.071 ppm. For productivity, the 21-day MATC for *Daphnia* was calculated to be between 0.03 and 0.05 ppm (Ref. 34). Of the species tested, *Daphnia* was the most sensitive aquatic organism to 4-CBTF.

In a study to assess bioconcentration potential, bluegill sunfish were exposed to two measured concentrations of 4-CBTF (0.250 ppm and 0.025 ppm) for 48 hours. Uptake of 4-CBTFwas rapid, with tissues reaching equilibrium values (35 ppm and 3.4 ppm respectively) in 4 hours. After a 48-hour depuration period, only 10 percent of the high dose and 2 to 5 percent of the low dose remained in the tissues. The bioconcentration factor (BCF) was calculated and found to be between 121 and 202 (Ref. 35). The Agency accepts this calculation as valid (Ref. 25).

E. Environmental and Chemical Fate

4-Chlorobenzotrifluoride adsorption to sandy and clay soils and to aquatic sediments was determined experimentally. Coefficients expressing the degree of adsorption to soil or organic carbon were calculated giving a K_{oc} of 420-530, which shows a moderate ability to sorb to soils (Ref. 3). The octanol-water partition coefficient for 4-CBTF ($\log K_{ow} = 3.70$), calculated from experimental values, showed a strong affinity for 4-CBTF to partition to organic material rather than to water (Ref. 36).

The photolysis of 4-CBTF in water was studied experimentally. After 28 days, 97 percent of the initial 4-CBTF was present, indicating no significant degradation had occurred (Ref. 37). The rate of volatilization from water was determined experimentally; 4-CBTF was found to have a rate equal to 0.64 compared to that of oxygen which shows that 4-CBTF is very volatile from water (Ref. 38). The Agency has reviewed the studies of K_{ow}, adsorption, photolysis, and volatilization and finds the experiments were done well, and that the conclusions are valid (Ref. 39).

Anaerobic and aerobic aquatic biodegradation studies were submitted (Ref. 4). The Agency found the results of both studies to be inconclusive due to the high volatility of the test chemical. However, EPA, after a review of the studies, is not proposing further testing at this time since most 4-CBTF will partition to the atmosphere rather than persist in soils. If biodegradation in soils, sediments, or suspended particulates is of special concern, a new type of biodegradation test would have to be designed to compensate for the effect of 4-CBTF's volatility (Ref. 39).

The fate of 4-CBTF in air was studied and rate constants for degradation by photolysis (> 6.5 days), by hydroxyl free radical attack (about 50 days), and by ozone attack (> 8.8 years) were determined. The lifetime of 4-CBTF in air is determined by the ratio of these constants, but it will be at least 7 days but less than or equal to 50 days (Ref. 2). In reviewing this study, the Agency has noted that the test protocol used black light conditions rather than actual sunlight, since there is no standard test protocol for sunlight testing (Ref. 40). Therefore while these degradation rates are the most accurate obtainable, they do not reflect actual atmospheric conditions.

III. Decision Not To Initiate Rulemaking

The health and environmental effects and the chemical fate testing submitted to the Agency by Occidental pursuant to the NTA has been reviewed (Refs. 25, 31, 39 and 40). The Agency finds that these data are valid and are sufficient to reasonably predict the chemical fate, environmental effects and the health effects of 4-CBTF. Moreover these data raise no concerns for the need for additional testing at this time. At present release levels there is no substantial environmental exposure to 4-CBTF, nor does the Agency believe the current level poses an unreasonable risk to the environment.

EPA has, therefore, decided that testing of 4-CBTF under section 4(a)(1)(A) or 4(a)(1)(B) of TSCA is not warranted at this time. The basis for this determination is that the test data now available for 4-CBTF are adequate to assess the health and environmental concerns identified by the ITC, and the existing data do not suggest that 4-CBTF may present an unreasonable risk to human health or the environment. Release and exposure for 4-CBTF do not appear sufficient to warrant testing for any other effects on a section 4(a)(1)(B) basis.

IV. Public Record

EPA has established a public record for this decision not to test under section 4 of TSCA (docket number OPTS-42026). The record includes the following information:

A. Support Documentation

(1) Federal Register notices pertaining to this decision consisting of:

(a) Notice containing the ITC designation of 4-CBTF to the Priority List (February 5, 1982, 47 FR 5456).

(b) Notice of request for public comment on 4-CBTF NTA (November 8, 1982, 47 FR 50555).

(c) Notice of final action on 4-CBTF NTA (July 18, 1983, 47 FR 32730).

(d) Receipt of data notices (May 4, 1983, 48 FR 20132; November 25, 1983, 48 FR 53159; May 2, 1984, 49 FR 18779; February 6, 1985, 50 FR 5421).

(e) Proposed guidelines for mutagenicity risk assessment (November 23, 1984, 49 FR 46314).

(2) Communications consisting of:

(a) Written public and intra-agency or interagency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Summaries of meetings.

(3) Reports—published and unpublished factual materials, including contractor's reports.

B. References

(1) Hooker Research Center. Solubility of *p*-chlorobenzotrifluoride in water. Letter with attached studies from Samuel Gelfand to S.D. Newburg-Rinn, Environmental Protection Agency. March 11, 1982.

(2) Occidental Chemical Corp. "Loss processes for 4-chlorobenzotrifluoride under atmospheric conditions." Submitted by Elanco Products Company as reported in 50 FR 5421. February 6, 1985.

(3) Elanco Products Company. "Adsorption of *p*-chlorobenzotrifluoride on soil and sediment." Submitted by Elanco Products Company as reported in 49 FR 18779. May 2, 1984.

(4) Elanco Products Company. "Aerobic aquatic biodegradation of 4-chlorobenzotrifluoride", and "Anaerobic biodegradation of 4-chlorobenzotrifluoride." Submitted by Elanco Products Company as reported in 49 FR 18779. May 2, 1984.

(5) Mathtech, Inc. Draft Level I Economic Evaluation: 4-chlorobenzotrifluoride. Prepared for Economics and Technology Division, U.S. Environmental Protection Agency. August 1982.

(6) Occidental Chemical Corp. Letter: J.G. Colson to M.G. Price, Test Rules Development Branch, U.S. Environmental Protection Agency. Document Control Number 408500078. April 15, 1985. Confidential Business Information.

(7) U.S. Environmental Protection Agency. Internal Memorandum from L.S. Rosenstein, Test Rules Development Branch, to the File. Industry Meeting Summary. March 17, 1982.

(8) U.S. Environmental Protection Agency. Internal Memorandum from M.L. Chatmon, Chemical Engineering Branch, to M.G. Price, Test Rules Development Branch. Exposure Analysis for 4-Chloro—benzotrifluoride (PCBTF) Document Control Number 20-851-0431. March 27, 1985. Confidential Business Information.

(9) Elder, V.A., B.L. Proctor, and R.A. Hites. "Organic Compounds Found Near Dump Sites in Niagara Falls, New York." *Environ. Sci. and Technology.* 15(10):1237–1242. October 1981.

(10) The Niagara River Toxics Committee. Report. October 1984.

(11) Pellizzari, E.D., M.D. Erickson, and R.A. Zweidinger. "Formulation of a preliminary assessment of halogenated organic compounds in man and environmental media." EPA 560/13-79-006. 1979.

(12) Yurawecz, M.P. "Gas-liquid chromatographic and mass spectrometric identification of chlorinated trifluorotoluene residues in Niagara River fish." *J.A.O.A.C.* 62(1):36–40, 1979.

(13) Occidental Chemical Corp. Letter: J.G. Colson to N. Gray, Test Rules Development Branch, U.S. Environmental Protection Agency. January 14, 1983.

(14) Stack, J.E., Telephone Conversation. J.E. Stack, New York State Department of Environmental Conservation to M.G. Price, Test Rules Development Branch, U.S. Environmental Protection Agency. January 15, 1985.

(15) New York State Department of Environmental Conservation. Letter: J.E. Stack to M.G. Price, Test Rules Development Branch, U.S. Environmental Protection Agency. February 8, 1985.

(16) U.S. Environmental Protection Agency. Internal Memorandum from P. Harrigan, Design and Development Branch, to M.G. Price, Test Rules Development Branch. Concentrations of 1-Chloro-4-(Trifluoromethyl) Benzene in the Niagara River. January 14, 1985.

(17) Hooker Research Center. "Mutagenicity evaluation of parachlorobenzotrifluoride in the Ames *Salmonella*/Microsome Plate Test." Letter with attached studies from Samuel Gelfand to S.D. Newburg-Rinn, Environmental Protection Agency. March 11, 1982.

(18) Hooker Research Center. "Mutagenicity evaluation of parachlorobenzotrifluoride in a *In Vivo/In Vitro* Urine Assay." Letter with attached studies from Samuel Gelfand to S.D. Newburg-Rinn, Environmental Protection Agency. March 11, 1982.

(19) Hooker Research Center. "Mutagenicity evaluation of parachlorobenzotrifluoride in the mouse Lymphoma Forward Mutation Assay." Letter with attached studies from Samuel Gelfand to S.D. Newburg-Rinn, Environmental Protection Agency. March 11, 1982.

(20) Elanco Products Company. "Chromosome abberations in Chinese hamster ovary cells." Submitted by Elanco Products Company as reported in 49 FR 18779. May 2, 1984.

(21) Elanco Products Company. "Activity of compound 38502 (T2025) in the Acute *in vivo* Cytogenetics Assay in male and female rats." Submitted by Elanco Products Company as reported in 49 FR 18779. May 2, 1984.

(22) Hooker Research Center. "Mutagenicity Evaluation of parachlorobenzotrifluoride in the Sister Chromatid Exchange Assay in L5178Y Mouse Lymphoma Cells." Letter with attached studies from Samuel Gelfand to S.D. Newburg-Rinn, Environmental Protection Agency. March 11, 1982.

(23) Hooker Research Center. "Evaluation of parachlorobenzotrifluoride in the *In Vitro* Transformation of BALB/3T3 Cells Assay." Letter with attached studies from Samuel Gelfand to S.D. Newburg-Rinn, Environmental Protection Agency. March 11, 1982.

(24) Elanco Products Company. "Evaluation of compound #38502 in the BALB/C-3T3 Neoplastic Transformation with an Aroclor-induced Rat Liver Microsomal (S9) Metabolic Activation System." Submitted by Elanco Products Company as reported in 49 FR 18779. May 2, 1984.

(25) U.S. Environmental Protection Agency. Internal Memorandum from W.H. Farland, Health and Environmental Review Division, to G. Timm, Test Rules Development Branch. Review of 4-Chloro-benzotrifluoride. October 12, 1984.

(26) Hooker Research Center. "Acute oral toxicity (LD_{50}) in albino rats." Letter with

attached studies from Samuel Gelfand to S.D. Newburg-Rinn, Environmental Protection Agency. March 11, 1982.

(27) Hooker Research Center. "An acute inhalation toxicity study of parachlorobenzotrifluoride in the rat." Letter with attached studies from Samuel Gelfand to S.D. Newburg-Rinn, Environmental Protection Agency. March 11, 1982.

(28) Hooker Research Center. "Acute dermal toxicity (LD_{50}), eye irritation, and skin irritation in albino rabbits." Letter with attached studies from Samuel Gelfand to S.D. Newburg-Rinn, Environmental Protection Agency. March 11, 1982.

(29) Elanco Products Company. "Metabolism of *p*-Chlorobenzotrifluoride by Rats." Submitted by Occidental Chemical Co. as reported in 48 FR 20132. May 4, 1983.

(30) Elanco Products Company, "A subchronic (three-month) toxicity study in Fischer 344 rats given daily gavage doses of 4-chlorobenzotrifluoride (PCBTF)". Submitted by Elanco Products Company as reported in 49 FR 18779. May 2, 1984.

(31) U.S. Environmental Protection Agency. Internal Memorandum from Baumel, Health and Environmental Review Division. 4-chlorobenzotrifluoride Data Metabolism Study and Analysis of Fish Samples. February 25, 1983.

(32) Hooker Research Center. "The acute toxicity of parachlorobenzotrifluoride to the rainbow trout, *Salmo gairdneri* Richardson." "The acute toxicity of parachlorobenzotrifluoride to the bluegill sunfish, *Lepomis macrochirus* Rafinesque." "The acute toxicity of Parachlorobenzotrifluoride to the water flea *Daphnia magna* Straus." Letter with attached studies from Samuel Gelfand to S.D. Newburg-Rinn, Environmental Protection Agency. March 11, 1982.

(33) Hooker Research Center. "The toxicity of parachlorobenzotrifluoride to fathead minnow (*Pimephales promelas*) embryos and larvae." Letter with attached studies from Samuelf Gelfand to S.D. Newburg-Rinn, Environmental Protection Agency. March 11, 1982.

(34) Hooker Research Center. "*Daphnia magna* chronic study testing parachlorobenzotrifluoride." Letter with attached studies from Samuel Gelfand to S.D. Newburg-Rinn, Environmental Protection Agency. March 11, 1982.

(35) Elanco Products Company. "Bioconcentration of ^{14}C-parachlorobenzotrifluoride by bluegill in a static system." Submitted by Elanco Products Company as reported in 49 FR 18779. May 2, 1984.

(36) Elanco Products Company. "n-octanol-to-water Partition Coefficient of Parachlorobenzotrifluoride." Submitted by Elanco Products Company as reported in 49 FR 18779. May 2, 1984.

(37) Elanco Products Company. "Photolysis of parachlorobenzotrifluoride in water." Submitted by Elanco Products Company as reported in 49 FR 18779. May 2, 1984.

(38) Elanco Products Company. "Volatilization rate of parachlorobenzotrifluoride from water." Submitted by Elanco Products Company as reported in 49 FR 18779. May 2, 1984.

(39) U.S. Environmental Protection Agency. Internal Memorandum from M.P. Halper, Exposure Evaluation Division, to G. Timm, Test Rules Development Branch. Review of 4-Chlorobenzotrifluoride (4-CBTF) Base Set Studies. October 11, 1984.

(40) U.S. Environmental Protection Agency. Internal Memorandum from M.P. Halper, Exposure Evaluation Division, to G. Timm, Test Rules Development Branch. Review of 4-chlorobenzotrifluoride (4-CBTF) Air Fate Study. November 30, 1984.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, along with other information considered by the Agency in developing this notice is available for inspection in the OPTS Reading Rm. E-107, 401 M St., SW., Washington, DC from 8 a.m. to 4 p.m. Monday through Friday, except legal holidays.

Authority: 15 U.S.C. 2603.

Dated: October 9, 1985.

Susan F. Vogt,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-24843 Filed 10-17-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2912-6]

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 October 7, 1985 through October 11, 1985 Pursuant to 40 CFR 1506.9.

EIS No. 850446, Draft, AFS, UT, Dixie National Forest, Land And Resource Management Plan, Due: January 17, 1986, Contact: Al Schuldt (801) 586-2421.

EIS No. 850447, Final, FHW, OR, Kuebler Boulevard-Cordon Road Improvements, South Commercial Street to North Santiam Highway, Marion County, Due: November 18, 1985, Contact: Dale Wilken (503) 399-5749.

EIS No. 850448, Final, BLM, UT, Box Elder Planning Area, Resource Management Plan, Box Elder Country, Due: November 18, 1985, Contact: Dennis Oaks (801) 524-6767.

EIS No. 850449, Final, AFS, ID, WY, Targhee National Forest, Land and Resource Management Plan, Due: November 18, 1985, Contact: Robert Williams (208) 624-3151.

EIS No. 850450, Final, AFS, WY, Bighorn National Forest, Land and Resource Management Plan, Due: November 18, 1985, Contact: Edward Schultz (307) 672-0751.

EIS No. 850451, Draft, AFS, CO, Wolf Creek Valley Ski Area Development, Special Use Permit, San Juan National Forest, Mineral County, Due: December 2, 1985, Contact: John Kirkpatrick (303) 247-4874.

EIS No. 850452, Final, BLM, UT, PR Spring and Hill Creek Special Tar Sand Areas, Oil and Gas Leases, Conversion to Combined Hydrocarbon Leases, Approval, Due: November 18, 1985, Contact: Robert Pizel (303) 236-1080.

EIS No. 850453, Final, CDB, NY, Pierrepont Street Office Development, Construction, UDAG, Kings County, Due: November 18, 1985, Contact: James Stuckey (212) 619-5000.

EIS No. 850454, Final, FHW, NJ, NJ-20 Connector Completion, I-80 to CBD Loop Road, Passaic County, Due: November 18, 1985, Contact: Russell Eckloff (609) 989-2280.

Amended Notices

EIS No. 850319, Draft, AFS, UT, Fishlake National Forest, Land and Resource Management Plan, Due: October 31, 1985, Published FR August 2, 1985—Review period extended.

EIS No. 850411, Final, OSM, NM, La Plata Mine, Mining and Transportation Corridor Plans, Permit, Due: November 4, 1985, Published FR September 27, 1985—Review period reestablished.

EIS No. 850418, Draft, AFS, ID, Salmon National Forest, Land and Resource Management Plan, Due: January 10, 1986, Contact: Richard Huff (202) 756-2215, Published FR October 4, 1985—Review period extended and New contact information.

Dated: October 15, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-24953 Filed 10-17-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2912-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 30, 1985 through October 4, 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-AFS-J65140-WY, Rating EC2, Shoshone Nat'l Forest, Land and Resource Mgmt. Plan, WY. SUMMARY: EPA believes that the proposed forest plan alternative provides an environmentally acceptable forest management program. The EPA has, however, expressed concerns regarding the management of such activities as timber harvesting, road construction, grazing, and mineral development, in relation to water quality standards and regulations, and riparian/wetland areas. Management of watersheds and fisheries were also concerns. To meet these concerns, EPA has requested additional impact analysis, and further development of management direction for individual and cumulative impact assessment, best management practices, planning, monitoring, project-specific planning, and inter-governmental/public coordination.

ERP No. D-AFS-K65080-00, Rating EC2, Toiyabe Nat'l Forest, Land and Resource Mgmt. Plan, CA and NV. SUMMARY: EPA expressed concerns on potential impacts to water quality resulting from recreation, fuels and timber management activities.

ERP No. D-AFS-K65085-NV, Rating EC2, Humboldt Nat'l Forest, Land and Resource Mgmt. Plan, NV. SUMMARY: EPA expressed concern over potential impacts to riparian habitats in the Forest, to water quality caused by multiple use activities, and to air quality resulting from mining activities.

ERP No. D-BLM-G60004-NM, Rating LO, Jackpile-Paguate Uranium Mine Reclamation Plan, Approval, Laguna Indian Reservation, NM. SUMMARY: EPA expressed no objection to the proposed reclamation plan with the inclusion of the established mitigation proposed in the FEIS.

ERP No. D-CDB-C89024-NY, Rating LO, Pierrepont Street Office Development, Construction, UDAG, NY. SUMMARY: EPA's review did not identify any significant environmental impacts that will result form implementing the proposed aternative.

ERP No. D-COE-D28011-VA, Rating EU3, James City County Dam and Water Supply Reservoir, Construction and Development, 404 Permit, Ware Creek, VA. SUMMARY: EPA's review found the project to be environmentally unsatisfactory because of: (1) Degradation to wetlands, (2) degradation to water quality, (3) potential impacts to the Chesapeake Bay, (4) inconsistency with the 1984 regional COE water supply study, and (5) unexamined alternative technologies for water treatment. A Draft Supplement resolving those issues was recommended.

ERP No. DS-COE-L36070-00, Rating EC2, Bonneville Lock and Dam Navigation Development and Disposal Plan, Construction, Columbia R., OR and WA. SUMMARY: EPA was concerned about potential impacts to fish and fish mitigation, which could occur as a result of the proposed construction, and subsequent changes in current patterns. EPA also suggested that more recent information on Canada goose populations be included in the EIS. Finally, EPA could not support use of the Franz and Arthur Lakes area as a disposal site for dredged material, except for selected placement as an erosion control measure.

ERP No. D-FHW-B40061-VT, Rating EC2, Chittenden County Circumferential Highway Construction, VT-127 to I-89, (404 Permit), VT. SUMMARY: EPA requested that the Final EIS include a more detailed analysis of impacts to drinking water, wetlands, fisheries and wildlife resources, air quality, and noise receptor sites. Additional mitigation measures for the impacted areas was also requested.

ERP No. DS-FHW-D40119-VA, Rating EC2, Springfield Bypass and Extension, Construction, I-66 to the Braddock Rd./VA-620 Intersection, Cannon Ridge Alternative, VA. SUMMARY: EPA's review of the EIS determined that the Cannon Ridge alternative was preferable to the applicant-selected alternative, for environmental reasons. EPA suggested that further study of each alternative' components be done for the Final EIS.

ERP No. D-NAS-E12002-00, Rating LO, Galileo Mission Project, Jovian System Investigation Program and Ulysses Mission Project, Heliosphere Exploration Program. SUMMARY: EPA's review of this EIS has not identified any potential impacts requiring substantive changes to the preferred alternative.

ERP No. D-SFW-L64030-AK, Rating LO, Togiak Nat'l Wildlife Refuge, Comprehensive Conservation Plan and Wilderness Review, AK. SUMMARY: EPA's review found the project to be satisfactory.

ERP No. D-USA-G11015-LA, Rating LO, Fort Polk Multipurpose Range Complex, Construction, 5th Infantry Division (Mechanized) Designation, LA.

Summary: EPA expressed no objections to the proposed action as described.

Final EISs

ERP No. F-AFS-L61144-AK, Situk R. Wild and Scenic Study, Designation, Tongass Nat'l Forest, AK. SUMMARY: EPA made no formal comments. EPA's review found the project to be satisfactory.

ERP No. F-FAA-F51036-WI, Austin Straubel Field Airport Runway Extension, Land Acquisition, 404 Permit, WI. SUMMARY: EPA determined that the recommended alternative should not result in any unacceptable adverse environmental impacts.

ERP No. F-FHW-F40281-MI, MI-44/East Beltline Ave. Reconstruction, I-96 to Plainfield Ave., Right-of Way Acquisition, 404 Permit, MI. SUMMARY: EPA believes the recommended plan should not result in any unacceptable adverse environmental impacts.

ERP No. F-FHW-L40139-WA, WA-2 and WA-28 Corridor Improvement, Between Rocky Reach Dam and East Wenatchee Vicinity, 404 Permit, WA. SUMMARY: EPA made no formal comments. EPA's review found the project to be satisfactory.

Regulations

ERP No. R-OSM-A01087-00, Surface Coal Mining and Reclamation Operations Permanent Regulatory Program, Definitions of Fragile and Historic Lands, 30 CFR Part 762 (50 FR 30408). SUMMARY: EPA supported the proposed rule, but suggested that to improve the usefulness of the Part 762 regulations, consideration should be given to defining key statutory terms such as "significant damage" and to discussing the relationship of the definition changes to the entire unsuitability process.

Dated: October 15, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-24954 Filed 10-17-85; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-2913-4]

Science Advisory Board Environmental Health Committee, Metals Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Metals Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on January 9-10, 1986, in Conference Room 451 of the Joseph Henry Building; National Academy of Sciences; 2122 Pennsylvania Avenue, NW., Washington, DC 20037. The meeting will start at 9:00 a.m. on January 9 and adjourn no later than 4:00 p.m. on January 10.

The purpose of the meeting will be to discuss draft drinking water Health Advisory documents for the following substances: Arsenic, Barium, Cadmium, Chromium, Cyanide, Lead, Mercury, Nickel, Nitrate/Nitrite.

The Metals Subcommittee will not receive oral comments on the Health Advisory documents at the meeting. Written comments on any of the specific substances should be delivered within forty (40) days from the date of this notice to Manager, Health Advisory Program; Criteria and Standards Division [WH-550]; U.S. Environmental Protection Agency; 401 M Street, SW., Washington, DC 20460.

EPA's Office of Drinking Water prepared the draft Health Advisory documents. They are neither regulations nor regulatory support. To obtain copies of the draft Health Advisory documents for specific substances please write to the Manager of the Health Advisory Program at the above address.

The meeting will be open to the public. Any member of the public wishing to attend or to obtain further information should contact either Dr. Daniel Byrd, Executive Secretary to the Committee, or Mrs. Brenda Johnson, by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A-101F); 401 M Street, SW., Washington, DC 20460, no later than c.o.b. on December 20, 1985.

Dated: October 15, 1985.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 85-24986 Filed 10-17-85; 8:45 am]

BILLING CODE 6560-50-M

[OPPE-FRL-2914-5]

Establishment and Open Meeting of the Farmworker Protection Standards for Agricultural Pesticides Negotiated Rulemaking Advisory Committee

As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice to the establishment of an Advisory Committee to negotiate Farmworker Protection Standards for Agricultural Pesticides. We have determined that this is in the public interest and will assist the Agency in performing its duties prescribed in 40 CFR Part 170, under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended.

Copies of the Committee charter will be filed with appropriate committees of Congress and the Library of Congress.

The Committee's initial meeting will be held on November 4, 1985, in the Conference Room at the Day's Inn, 2000 Jefferson Davis Highway, Arlington, Virginia. The meeting will start at 9:00 a.m., and will last until completion.

The purpose of this meeting is to complete any outstanding procedural matters, to determine how best to address the substantive issues, and to begin to address them.

If interested in attending or receiving more information, please contact Chris Kirtz at (202) 382-7565.

Dated: October 16, 1985.

Milton Russell,

Assistant Administrator for Policy, Planning, & Evaluation.

[FR Doc. 85-25057 Filed 10-17-85; 9:38 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

October 10, 1985.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paper Reduction Act of 1980, Pub. L. 96-511.

Copies of these submissions are available from Doris Benz, FCC, (202) 632-7513. Comments should be sent to David Reed, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503 (202) 395-7231.

OMB NO.: 3060-0096

Form No.: FCC 506/506A

Title: Application for Ship Radio Station License and Temporary Operating Authority

Action: Revision

Estimated Annual Burden: 86,457 Respondents; 28,790 Hours.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-24836 Filed 10-17-85; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Olga Iris Fernandez; et. al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and State	File No.	MM Docket No.
A. Olga Iris Fernandez; Cabo Rojo, PR	BPH-840126AJ	85-294
Roberto A. Alvarez & Nestor Perez d/b/a Cabo Rojo Radio; Cabo Rojo, PR	BPH-840209AB	
Maria I. OPrtiz Aviles; Cabo Rojo, PR	BPH-840511IM	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. City Coverage, A,B,C
2. Air Hazard, B
3. Comparative, A,B,C
4. Ultimate, A,B,C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's Contact Representative, Room 242, 1919 M Street, NW., Washington, DC 20554. Telephone (202) 632-6334.

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 85-24837 Filed 10-17-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

OMB Circular A-76 Cost Comparison and Internal Efficiency Studies

AGENCY: Federal Energency Management Agency.

ACTION: Notice.

The Federal Emergency Management Agency is conducting A-76 studies for cost comparison with other potential sources for: Mail Room (FEMA Headquarters), Arts and Graphics (FEMA Headquarters), Architecture and Civil Engineering (FEMA Regions). Any requests for proposals will be published in the Commerce Business Daily no sooner than December 1985.

Internal efficiency reviews are being conducted for: Training (Emmitsburg, Maryland), Audiovisual (Loudoun Co., Virginia).

Dated: October 11, 1985.

James J. Delaney, II,

Acting Deputy Director, FEMA.

[FR Doc. 85-24847 Filed 10-17-85; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL RESERVE SYSTEM

First Vermont Financial Corp., 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 or these applications must be received not later than November 8, 1985.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First Vermont Financial Corporation*, Brattleboro, Vermont; to merge with BankNorth Group, Inc., St. Albans, Vermont, thereby indirectly acquiring Franklin-Lamoille Bank, St. Albans, Vermont.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Big Lake Financial Corporation*, Okeechobee, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Big Lake National Bank, Okeechobee, Florida.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Dermott Bancshares, Inc.*, Dermott, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of First Delta Financial Corporation, Dermott, Arkansas, thereby indirectly acquiring First State Bank of Dermott, Dermott, Arkansas.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *CNB Financial Corporation*, Kansas City, Kansas; to aqcuire 100 percent of the voting shares of United Kansas Bancshares, Inc., Atchison, Kansas, thereby indirectly City National Bank of Atchison, Atchison Kansas.

E. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Texstar Financial Corporation, Inc.*, Azle, Texas; to become a bank holding company by acquiring 99.93 percent of the voting shares of First National Bank of Azle, Azle, Texas.

2. *Granger Bancshares, Inc.*, Granger, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The Granger National Bank, Granger, Texas.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Verde Valley Bancorp, Inc.*, Cottonwood, Arizona; to become a bank holding company by acquiring 80 percent of the voting shares of The Bank of Verde Valley, Cottonwood, Arizona.

2. *Western Security Bancorp, Inc.*, Rocky River, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of Western Security Bank, Phoenix, Arizona.

Board of Governors of the Federal Reserve System, October 11, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-24864 Filed 10-17-85; 8:45 am]

BILLING CODE 6210-01-M

Midlantic Banks Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 6, 1985.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Midlantic Banks Inc.*, Edison, New Jersey; to engage *de novo* through its subsidiary, Midlantic Brokerage Services, Inc., Edison, New Jersey, in providing securities brokerage services, related securities credit activities and certain incidental activities pursuant to § 225.25(b)(15) of Regulation Y.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, Detroit, Michigan; to engage *de novo* through its subsidiary, NDB Securities, Inc., Detroit, Michigan, in offering discount securities brokerage, related securities credit activities, and other incidental activities including custodial services, individual retirement accounts and Keogh accounts pursuant to §225.25(b)(15) of Regulation Y. Company will also engage in the sale

of tax exempt securities and money market instruments pursuant to § 225.25(b)(16) of Regulation Y.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas Texas 75222:

1. *RepublicBank Corporation*, Dallas, Texas; to engage *de novo* through its subsidiary, RepublicBank Securities Company, Dallas, Texas, in securities brokerage activities and certain securities credit and incidental activities pursuant to § 225.25(b)(15) of Regulation Y.

Board of Governors of the Federal Reserve System, October 11, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-24865 Filed 10-17-85; 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 October 11, 1985.

Health Care Financing Administration

Subject: Provider Cost Reimbursement Questionnaire—HCFA-339—Revision (0938-0301)

Respondents: State/local governments, businesses or other for-profit institutions, non-profit institutions, small businesses or organizations

OMB Desk Officer: Fay S. Iudicello

Social Security Administration

Subject: Quarterly Report of Recoveries of Overpayments—SSA-4972—Revision (0960-0325)

Respondents: States

Subject: Semiannual Budget Estimates (formerly Quarterly Budget Estimates)—OCSE-25—Revision (0960-0226)

Respondents: States

Subject: State Agency Report of Obligations for SSA Disability Programs—SSA-4513—Existing Collection

Respondents: State/local governments

Subject: Final Regulations on Medical Support Enforcement—New

Respondents: States

OMB Desk Officer: Judy A. McIntosh

Public Health Service

Centers for Disease Control

Subject: Immunization Assistance Project Grants—Revision (0920-0032)

Respondents: State/local governments

OMB Desk Officer: Fay S. Iudicello

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: October 14, 1985.

K. Jacqueline Holz,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 85-24937 Filed 10-17-85; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committee.

Meetings: The following advisory committee meetings are announced:

Gastroenterology-Urology Devices Panel

Date, time, and place. November 4, 9 a.m., Rm. 1207, Silver Spring Plaza, 8757 Georgia Ave., Silver Spring, MD.

Type of meeting and contact person. Open plublic hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 11 a.m.; closed presentation of data, 11 a.m. to 12 m.; open committee discussion, 1 p.m. to 4 p.m.; Norman T. Welford, Center for Devices and Radiological Health (HFZ-420), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7750.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or inwriting, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before October 21, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMA) for a device for an immunoabsorption affinity column.

Closed presentation of data. The committee may review and discuss trade secret or confidential commercial information in the PMA for a device for an immunoabsorption affinity column. This portion of the meeting will be closed (5 U.S.C. 552b(c)(4)).

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. November 18 and 19, 8:30 a.m., Bldg. 29, Rm. 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, November 18, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 11 a.m.; closed committee deliberations, 11 a.m. to 5 p.m.; closed committee deliberations, November 19, 8:30 a.m. to 12 m.; Jack Gertzog, Center for Drugs and Biologics (HFN-31), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5455.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of vaccines and related biological products intended for use in the diagnosis, prevention, or treatment of human diseases. The committee also reviews and evaluates the quality and relevance of FDA's research program which provides scientific support for the regulation of these products.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will discuss considerations for polio vaccine usage and a review of an intramural pertussis research program.

Closed committee deliberations. November 18, 11 a.m. to 5:00 p.m., contiuation of the review of the Office of Biologics Research and Review program discussed in the open session. The closed session involves discussions of personal information concerning the scientific competence of individuals associated with the intramural research progam. Disclosure of this information would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552(c)(6)). On November 18 and 19, the committee will review trade secret or confidential commercial information relevant to pending license applications. This portion of the meeting will be closed (5 U.S.C. 55b(c)(4)).

Blood Products Advisory Committee

Date, time, and place. November 21 and 22, 8:30 a.m., Auditorium, Lister Hill Center, Bldg. 38A, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. Open public hearing, November 21, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 10:30 a.m.; closed presentation of data, 10:30 a.m. to 12:30 p.m.; open committee discussion, 1:30 p.m. to 3 p.m.; closed presentation of data, 3 p.m. to 5 p.m.; open committee discussion, November 22, 8:30 a.m. to 11 a.m.; closed presentation of data, 11 a.m. to 11:30 a.m., closed committee deliberations, 11:30 a.m. to 12 m.; Isaac F. Roubein, Center for Drugs and Biologics (HFN-32), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4696.

General function of the committee. The committee reviews and evaluates available data on the safety, effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. On November 21, the committee will discuss safety and effectiveness data for the use of anti-lymphocyte globulin in human organ transplantation and update on recent developments on Human T-Lymphotropic Virus, Type III (HTLV-III) tests; and on November 22, the reclassification of category IIIA products, Whole Blood (Human) Heparin, and Fibrinolysin (Human), License Number 2, Merck Sharp & Dohme, Division of Merck & Co., Inc.; under the provisions of 21 CFR 601.26, and safety and effectiveness data for a new medical device (plasma/cell separator).

Closed presentation of data. The committee will hear trade secret or confidential commercial information relevant to a biological product license application for anti-lymphocyte globulin for use in organ transplantation, HTLV-III tests, and a premarket approval application for a new medical device (plasma/cell separator). This portion of the meeting will be closed (5 U.S.C. 552b(c)(4)).

Closed committee deliberations. The committee will review trade secret or confidential commercial information relevant to a biological product license application for anti-lymphocyte globulin for use in organ transplantation, HTLV-III tests, and a premarket approval application for a new medical device (plasma/cell separator). This portion of the meeting will be closed (5 U.S.C. 552b(c)(4)).

Anesthesiology and Respiratory Therapy Devices Panel

Date, time, and place. November 22, 8 a.m., Rm. 416, 12720 Twinbrook Parkway, Rockville, MD 20857.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m.; open committee discussion, 9 a.m. to 11:30 a.m.; closed presentation of data, 1 p.m. to 3 p.m.; open committee discussion, 3 p.m. to 4:30 p.m.; Michael S. Gluck, Center for Devices and Radiological Health (HFZ-430), Food and Drug Administration, Silver Spring Plaza, 8757 Georgia Ave., Silver Spring, MD 20910, 427-7226.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make a formal presentation should notify the contact person before November 6, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of the proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss a premarket approval application (PMA) for a high-frequency ventilator.

Closed presentation of data. The committee will discuss trade secret or confidential commercial information regarding the manufacturing and in vitro data contained in the PMA for a high-frequency ventilator. This portion of the meeting will be closed (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures to expedite electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be requested from the Dockets Management Branch (HFA-305), Rm. 4-62, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA's regulations (21 CFR Part 14) on advisory committees.

Dated: October 10, 1985.

Frank K. Young,

Commissioner of Food and Drugs.

[FR Doc. 85-24971 Filed 10-16-85; 11:11 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Redesignation of Illinois Health Service Areas 7 and 8

AGENCY: Health Resources and Services Administration, Public Health Service, HHS.

FOR FURTHER INFORMATION CONTACT: John F. Belin, Director, Division of Agency Operations and Management, OHP, BHMORD, 5600 Fishers Lane, Room 9A-19, Rockville, Maryland 20857, 301-443-6680.

ACTION: On July 25, 1985 a notice was published in the **Federal Register** (50 FR 30301) announcing the Secretary's decision to redesignate Ilinois health service areas 7 and 8. The effective date was to have been September 13, 1985. Subsequent to that announcement an action was filed in the U.S. District Court, District of Columbia, seeking to have the Secretary's area redesignation decision set aside. On August 30, 1985 (50 FR 35324), it was announced that in order to allow that litigation to proceed in an orderly manner, the Department had agreed to postpone the effective date until October 15, 1985.

The Department hereby announces that the effective date of the Secretary's decision to redesignate Illinois health service areas 7 and 8 is postponed until further notice, pending the outcome of the litigation.

Dated: October 11, 1985.

John H. Kelso,

Acting Administrator, HRSA.

[FR Doc. 85-24834 Filed 10-17-85; 8:45 am]

BILLING CODE 4160-16-M

Application Announcement for Grants for Establishment of Departments of Family Medicine

The Bureau of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1986 Grants for Establishment of Departments of Family Medicine are being accepted under the authority of section 780 of the Public Health Service Act.

Applicants should be advised that this application announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. The Administration's budget request for Fiscal Year 1986 does not include funding for this program. This notice regarding applications does not reflect any change in this policy.

In addition, programmatic changes may result from currently pending legislative action. Should such changes be necessary, all applicants will be notified at a later date.

Section 780 authorizes Federal support to medical and osteopathic schools to assist developing and existing family medicine units in achieving administrative status equal to that of other major clinical units. Funds awarded will be used to strengthen the administrative base and structure that is responsible for planning, directing, organizing, coordinating, and evaluating all undergraduate and graduate family medicine activities. Funds are to complement rather than duplicate programmatic activities for the operation of family medicine training programs under section 786(a), Title VII, of the Public Health Service Act.

To be eligible to receive support for this grant program, the applicant must be a public or nonprofit private accredited school of medicine or osteopathy.

To receive support, programs must meet the requirements of final regulations as set forth in 42 CFR Part 57, Subpart R.

The application deadline date is January 15, 1986. Applications shall be considered as meeting the deadline if they are either:

(1) *Received* on or before the deadline date, or

(3) *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 (D32), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Questions regarding programmatic information should be directed to: Division of Medicine, Multidisciplinary Resources Development Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-25, Rockville, Maryland 20857, Telephone: (301) 443-3614.

This program is listed at 13.984 in the *Catalog of Federal Domestic Assistance.* Applications submitted in response to this announcement are not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs, or 45 CFR Part 100.

Dated: October 11, 1985.

John H. Kelso,

Acting Administrator.

[FR Doc. 85-24835 Filed 10-17-85; 8:45 am]

BILLING CODE 4160-16-M

Public Health Service

Intent To Grant an Exclusive Patent License; MedQuest, Inc.

Pursuant to § 6.3 of 45 CFR Part 6 and 37 CFR Part 404, notice is hereby given of intent to grant to MedQuest, Inc. an exclusive license to make, use, and sell an invention by James E. Lyddy, Jr., Paul H. Sugarbaker, and William Z. Penland, entitled "Medical Apparatus," which is described and claimed in Application for Letters Patent of the United States Serial No. 740,171, filed May 31, 1985. A copy of the patent application may be obtained upon written request submitted to Mr. Leroy B. Randall, Chief, Patent Branch, Department of Health and Human Services, c/o National Institutes of Health, Room 5A-03, Westwood Building, Bethesda, Maryland 20205.

The proposed license will have a duration of five (5) years, may be royalty-bearing, and will contain other terms and conditions to be negotiated by the parties in accordance with the Department of Health and Human Services Patent Regulations. The Department will grant the license unless, within sixty (60) days of this Notice, the Chief of the Patent Branch named hereinabove, receives in writing any of the following, together with supporting documents:

1. A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

2. An application for a nonexclusive license to manufacture and/or sell the invention in the United States is submitted in accordance with the provisions of 37 CFR 404.8 and the applicant provides evidence that he has already brought the invention to practical application or is likely to do so expeditiously.

The Assistant Secretary for Health of the Department of Health and Human Services will review all written responses to this Notice.

Authority: 45 CFR 6.3 and 37 CFR 404.7

Dated: October 9, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85-24935 Filed 10-17-85; 8:45 am]

BILLING CODE 4110-12-M

Intent To Grant a Co-Exclusive Patent License; Raf-Tan, Inc.

Pursuant to § 6.3 of 45 CFR Part 6 and 37 CFR Part 404, notice is hereby given of intent to grant to Raf-Tan, Inc. a co-exclusive license to make, use, and sell the inventions by Dr. Narbik A. Karamian entitled "Apparatus for Producing High-Purity Water," which is described and claimed in United States Patent No. 4,089,749, issued May 16, 1978, and "Distillation Flask and Apparatus for Producing High-Purity Water Having Overflow Liquid Trap Means," which is described and claimed in United States Patent No. 4,235,677, issued November 25, 1980. A copy of the patents may be obtained upon written request submitted to Chief, Patent Branch, Department of Health and Human Services, c/o National Institutes of Health, Room 5A-03, Westwood Building, Bethesda, Maryland 20892.

The proposed license will have a duration of five(5) years, may be royalty-bearing, and will contain other terms and conditions to be negotiated by the parties in accordance with the Department of Health and Human Services Patent Regulations. The Department will grant the license unless, within sixty (60) days of this Notice, the Chief of the Patent Branch receives in writing any of the following, together with supporting documents:

1. A statement from any person setting forth reasons why it would not be in the best interest of the United States to grant the proposed license; or

2. An application for a nonexclusive license to manufacture and/or sell the invention in the United States is submitted in accordance with the provisions of 37 CFR 404.8 and the applicant provides evidence that he has already brought the invention to practical application or is likely to do so expeditiously.

The Assistant Secretary for Health of the Department of Health and Human Services will review all written responses to this Notice.

Authority: 45 CFR 6.3 and 37 CFR 404.7.

Dated: October 9, 1985.

James O. Mason,

Acting Assistant Secretary for Health.

[FR Doc. 85-24936 Filed 10-17-85; 8:45 am]

BILLING CODE 4110-12-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-035044, Group 79]

Arkansas; Filing of Plat of Dependent Resurvey

October 11, 1985.

1. The plat of the dependent resurvey of the east boundary, Township 14 North, Range 19 West, a portion of the south boundary, Township 15 North, Range 18 West, and a portion of the subdivisional lines, Township 14 North, Range 18 West, Fifth Principal Meridian, Arkansas, will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on November 25, 1985.

2. The dependent resurvey was made at the request of the U.S. Forest Service.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., November 25, 1985.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 85-24919, Filed 10-17-85; 8:45 am]

BILLING CODE 4310-GJ-M

Colorado; Filing of Plats of Survey

October 8, 1985.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., October 8, 1985.

The plat representing the dependent resurvey of a portion of the north boundary and subdivisional lines, and the survey of the subdivision of certain sections, T. 35 N., R. 19 W., New Mexico Principal Meridian, Colorado, Group No. 735, was accepted October 1, 1985.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 85-24923 Filed 10-17-85; 8:45 am]

BILLING CODE 4310-84-M

[ES-035417, Group 177]

Florida; Filing of Plat of Dependent Resurvey

October 11, 1985.

1. The plat of the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines, Township 17 South, Range 25 East, Tallahassee Meridian, Florida, will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m. on November 25, 1985.

2. The dependent resurvey was made at the request of the U.S. Forest Service.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., November 25, 1985.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 85-24920 Filed 10-17-85; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-035418, Group 89]

Michigan; Filing of Plats of Dependent Resurvey and Subdivision of Sections 27 and 30

October 11, 1985.

1. The two plats of the dependent resurvey of a portion of the south boundary, Township 52 North, Range 33 West, a portion of the east and west boundaries, a portion of the subdivisional lines, and subdivision of sections 27 and 30, Township 51 North, Range 33 West, Michigan Meridian, Michigan, will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on November 25, 1985.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., November 25, 1985.

4. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 85-24921 Filed 10-17-85; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-035416, Group 19]

Missouri; Filing of Plat of Dependent Resurvey

October 11, 1985.

1. The plat of the dependent resurvey of the east boundary (Fifth Principal Meridian), Township 35 North, Range 1 West, the south boundary, Township 36 North, Range 1 West, and a portion of the subdivisional lines, Township 35 North, Range 1 West, Fifth Principal Meridian, Missouri, will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., November 25, 1985.

2. The dependent resurvey was made at the request of the U.S. Forest Service.

3. All inquiries of protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., November 25, 1985.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey.

[FR Doc. 85-24922 Filed 10-17-85; 8:45 am]

BILLING CODE 4310-GJ-M

Final Notice to Lessees and Operators of Federal Geothermal Leases; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Final Notice to Lessees and Operators of Federal Geothermal Leases.

SUMMARY: The California State Office, Bureau of Land Management (BLM) has made final the Notice to Lessees (NTL) on drilling deep temperature gradient holes (greater than 500 feet (152 m)). The NTL CA-86-01 is effective October 1, 1985, and contains requirements for drilling gradient holes on BLM administered lands in California. Copies of the final NTL may be obtained between the hours of 7:30 a.m. and 4:00 p.m. at: California State Office, Bureau of Land Management, 2800 Cottage Way, Rm. E-2727, Sacramento, CA 95825, (916) 978-4735.

Dated: October 10, 1985.

Ed Hastey,

State Director.

[FR Doc. 85-24925 Filed 10-17-85; 8:45 am]

BILLING CODE 4310-40-M

Proposed Plan Amendment and Environmental Assessment for an Area of Critical Environmental Concern, Medford District, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Proposed Plan Amendment and Environmental Assessment for an Area of Critical Environmental Concern.

SUMMARY: Pursuant to section 202(c)(3) and (f) of the Federal Land Policy and Management Act (FLPMA) and section 102(2)(c) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a proposed Management Framework Plan Amendment and Environmental Assessment (EA) for a proposed Area of Critical Environmental Concern (ACEC) in the Medford District. The document addresses alternatives for the potential Eight Dollar Mountain ACEC on public lands within the Medford District in southwestern Oregon. Interim management assures that important resources of this potential ACEC are protected pending the designation decision.

Public reading copies of the plan amendment and environmental assessment document will be available for review at the following locations:

Bureau of Land Management, Office of Public Affairs, 825 N.E. Multnomah Street, Portland, Oregon 97208

Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504

Klamath County Library, Klamath Falls, Oregon

Josephine County Library, Grants Pass, Oregon

Coos County Library, Coquille, Oregon

Curry County Library, Gold Beach, Oregon

Douglas County Library, Roseburg, Oregon
Jackson County Library, Medford, Oregon
Rogue Community College Library, Grants Pass, Oregon
Library, Southern Oregon State College, Ashland, Oregon
Library, Oregon Institute of Technology, Klamath Falls, Oregon
Library, University of Oregon, Eugene, Oregon
Library, Portland State University, 727 S.W. Harrison, Portland, Oregon
Library, Oregon State University, Corvallis, Oregon

A limited number of the documents are available upon request from the BLM Medford District Office.

Written comments on the EA should be sent by December 20, 1985 to: District Manager, Attention: Mike Walker, Environmental Specialist, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504

A public meeting will be held on November 6, 1985 at 7:30 p.m. in the BLM's Medford District Office. BLM personnel will be available to answer questions regarding the plan amendment and Environmental Assessment document at that time.

FOR FURTHER INFORMATION CONTACT: Mike Walker, Environmental Specialist, Medford District Office, Telephone (503) 776-4604.

SUPPLEMENTARY INFORMATION: The plan amendment process was started with the publication of the Notice of Intent in the May 7, 1981 **Federal Register** and local newspapers. Proposed planning issues and criteria were published on August 20, 1981. Proposed alternatives were published for public review and comment on March 18, 1983. Public meetings were held during the planning process. The proposed decision will be published. A brief description of the potential ACEC follows:

Eight Dollar Mountain

1,240.6 acres of BLM-administered land in T. 38 S., R. 8 W., parts or all of Sections 9, 15, 21, and 28, W.M., Josephine Country, Oregon.

The lands nominated for ACEC designation are located southwest of Selma, on the east side of Eight Dollar Mountain, in Josephine County, Oregon. This includes portions of sections 9, 15 and 28, and all of section 21 in T. 38 S., R. 8 W., of the Willamette Meridian totalling 1,240.6 acres. The nominated lands are part of the Eight Dollar Mountain area which encompasses about 4,440 acres of private and public lands in southwest Oregon.

Eight Dollar Mountain, one of the most significant botanical areas in Oregon, represents the major area of species endemism (plants specific to a certain local) in the state. The mountain provides diversified habitats for eleven candidate species which are under review by United States Fish and Wildlife Service (USFWS) for listing as threatened or endangered.

These species represent almost nine percent of the plant species under review by USFWS for the State of Oregon. These plants are specific to serpentine substrate and are very narrow endemics known botanically as Illinois Valley endemics. The major population of *Hastingsia bracteosa*, one of the eleven candidate species, is located on Eight Dollar Mountain. The mountain is the type locality (a place from where plant species are first described) for several species. It is an area which has ongoing research on several of the rare species by botanists from throughout the United States. This research is in the areas of plant evolution, genetics, and systematic relationships.

BLM-administered lands on Eight Dollar Mountain are open to mineral entry subject to the provisions and limitations (where appropriate) of Pub. L. 359, Mining Claim Restoration Act; and, Pub. L. 167, Surface Resources Act.

There are five mining claims within the proposed ACEC. Four of the claims, located on September 7, 1956, are in Section 21 and total 640 acres. The remaining claim, located on May 7, 1956, is in Section 28 and totals 80 acres.

Approximately 760 acres of the nominated area have been identified as containing nickel-bearing laterites, and the entire Eight Dollar Mountain has been nominated as an Area of Critical Mineral Potential (ACMP) by the Southern Oregon Resources Alliance. ACMPs are areas that were nominated by the public in 1982 as having mineral potential that is important to the local, regional, or national economy or that could become important in the future. They are used by BLM to reevaluate areas under existing or "de facto" withdrawals from mineral location and leasing.

Strategic and critical minerals determined to have a moderate to high potential for occurrence in Eight Dollar Mountain include nickel, chrome, and cobalt which are used in large quantities and have a pervasive influence on the economy and national well-being.

Four alternatives are analyzed for the Eight Dollar Mountain potential ACEC, as listed:

Alternative 1, ACEC Designation of 1,240.6 Acres.

Alternative 2, No Action—Current Management.

Alternative 3, Other Designation—National Natural Landmark.

Alternative 4, Modified Current Management.

These alternatives and their management constraints were developed largely through a consensus process involving concerned citizens in the general area of Eight Dollar Mountain. The alternatives and management proposals for most resources are outlined in the plan amendment and environmental assessment.

Eight Dollar Mountain has been nominated as an ACEC to protect unique botanical values found there. A portion of the west side of Eight Dollar Mountain has been proposed for a Botanical Interest Area by the U.S. Forest Service.

BLM's preferred alternative is to designate the 1,240.6 acre Eight Dollar Mountain as an Area of Critical Environmental Concern. Under the preferred alternative, an interagency cooperative management plan and agreement would be developed and implemented. Leasable and salable mineral permits and leases would be discretionary. The area would remain open for locatable entry subject to approved mining plans. However, the ACEC designation itself would impact known strategic and critical mineral resources by having additional planning and approval requirements. The ACEC would be closed to ORV use except for designated roads. There would be no planned timber harvest and no authorized rights-of-way. Livestock grazing would continue contingent upon protection of botanical values. Communication sites would not be authorized. Species would be protected under existing state and federal laws. Natural fires would be allowed under managed conditions.

Dated: October 4, 1985.

Hugh R. Shera,

Medford District Manager.

[FR Doc. 85-24915 Filed 10-17-85; 8:45 am]

BILLING CODE 4310-33-M

Resource Management Plans; Baker Resource Area, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Baker RMP Summary of Proposed Alternatives.

SUMMARY: Pursuant to 43 CFR 1610.3 and 1610.4-5 of the Regulations for Resource Management Planning, the Department of the Interior, Bureau of

Land Management, Vale District Office has developed proposed alternatives to facilitate scoping of the Baker Resource Management Plan (RMP) and Environmental Impact Statement (EIS).

SUPPLEMENTARY INFORMATION: The plan will result in land use allocations and resource management directions for approximately 513,000 acres of public land in the Baker Planning Area. The Baker Planning Area is located in Baker, Malheur, Morrow, Umatilla, Union and Wallowa Counties in Oregon and Asotin and Garfield Counties in Washington. Major resource management issues include grazing, riparian, wildlife, forest management, land tenure, minerals, recreation and special management areas.

The draft plan and EIS will be available for public review in the spring of 1986. The final statement is scheduled to be completed in September of 1986. Decision-making will take place in the fall of 1986 and include publication of a record of decision and rangeland program summary for public lands in all but Baker and Malheur Countries in the spring of 1987. The original Notice of Intent to prepare the Baker RMP EIS was published in the **Federal Register** and local news media on March 5, 1985. Four proposed alternatives have been developed to address the major resource management and allocation issues. Copies of the Baker RMP Summary of Proposed Land Use Alternatives have been sent to the District's current mailing list. Copies are also available for review at BLM Baker Resource Area Office, 1550 Dewey Ave., Baker, Oregon 97814, Vale District Office, 100 Oregon Street, Vale, Oregon 97918, and BLM Oregon State office, 825 NE Multnomah Street, Portland, Oregon.

The public is invited to submit written comments by November 25, 1985, on (1) the elements which should be in the preferred alternative plan or proposed action, (2) ideas on the formulation of other alternatives that should be addressed in the EIS, and (3) ideas on issues which should be addressed in the EIS. Written public comments will be available for review in the Baker Resource Area Office. Additional information may be obtained at the Baker Resource Area Office or Vale District Office during regular business hours, 7:45 AM to 4:30 PM.

DATE: Comments must be received by November 25, 1985.

ADDRESS: Written comments, requests for copies of the summary document or request for further information should be directed to: Bureau of Land Management, Baker Resource Area Office, ATTN: Sam Montgomery, 1550 Dewey Avenue, P.O. Box 987, Baker, Oregon 97814, Telephone: (503) 523-6391.

Dated: October 9, 1985.

George House,

Acting District Manager.

[FR Doc. 85-24917 Filed 10-17-85; 8:45am]

BILLING CODE 4310-33-M

Bakersfield District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Bakersfield District Advisory Council Meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that the Bakersfield District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet formally on November 15 and 16, 1985. The meeting on Friday, November 15, will be a field tour and will leave from the Folsom Resource Area office at 63 Natoma in Folsom, California, at 8 a.m. The meeting on Saturday will begin at 8 a.m. in the Folsom Resource Area office.

SUPPLEMENTARY INFORMATION: The agenda will include discussion and examination of occupancy trespass, river management, land sales and leases, mining claims, and other issues specific to the Folsom Resource Area, which encompasses BLM-administered public lands in 19 counties of north-central California.

Public participants are invited to join the meeting and field trip, but must provide their own transportation and meals. An opportunity for members of the public to address the Advisory Council on public land management issues will be available at 10 a.m., Saturday, November 16, in the Folsom Resource Area office. Advance notification of intention to formally address the Council should be sent to the address below by November 13.

Summary minutes of the meeting will be maintained in the Bakersfield District office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Marta Witt, Public Affairs Officer, Bakersfield District, Bureau of Land Management, 800 Truxtun Avenue, Room 311, Bakersfield, CA 93301; (805) 861-4191.

Dated: October 8, 1985.

Robert D. Rheiner, Jr.,

District Manager.

[FR Doc. 85-24916 Filed 10-17-85; 8:45 am]

BILLING CODE 4310-40-M

[R 1151 WR]

California, Proposed Continuation of Withdrawal

Correction

In FR Doc. 85-23054 beginning on page 39050 in the issue of Thursday, September 26, 1985 make the following corrections:

1. In the fourth line of the **SUMMARY** "Majave" should read "Mojave".

2. Under **DATE,** "September" should read "December".

3. In the third column *San Bernardino Meridian* the second line should read "Sec. 22, SE¼NE¼".

4. In the third column, third paragraph from the bottom in the ninth line "of" should read "or". In the sixteenth line "consulation" should read "consultation".

5. In the second paragraph from the bottom, sixth line, "lives" should read "views".

BILLING CODE 1505-01-M

Meeting of the Elko District Advisory Council

In accordance with Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that the BLM Elko District Advisory Council will meet at 9:00 a.m. on November 15, 1985, in the new Elko District Office Conference Room, 3900 East Idaho Street, Elko, Nevada.

Topics to be discussed are: (1) Wilderness Study Area Proposals; (2) Fire Rehabilitation Program; (3) Desert Land Entries; (4) Riparian Area Protection; and (5) Status of District Land Use Planning.

The meeting is open to the public. Interested persons may make oral statements for the Council's consideration between 1 and 2 p.m. on the meeting date. Anyone wishing to make a statement must notify the District Manager, BLM, P.O. Box 831, Elko, Nevada 89801, or call 702-738-4071, no later than November 13, 1985.

Summary minutes of the meeting will be prepared and available for public inspection and reproduction during regular business hours within 30 days following meeting.

Rodney Harris,

District Manager.

[FR Doc. 85-24860 Filed 10-17-85; 8:45 am]

BILLING CODE 4310-HC-M

Prineville District Grazing Advisory Board Meeting

Notice is hereby given in accordance with Pub. L. 92-463 of a meeting of the Prineville District Grazing Advisory Board to be held December 5, 1985.

The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office located at 185 East 4th Street, P.O. Box 550, Prineville, OR 97754.

The agenda will include the following topics:

1. Proposed projects for FY 86.
2. Status of the Grazing Advisory Board.
3. Status of the "Omnibus Bill".
4. Wilderness status update.
5. Review/update of the range management section of the "Two Rivers Resource Management Plan".

The meeting is open to the public. Anyone wishing to attend and/or make written or oral statements to the Board is requested to contact the District Manager at the above address prior to November 29, 1985.

Summary minutes of the meeting will be available for review and reproduction within 30 days following the meeting.

Dated: October 10, 1985.

Donald Smith,

Acting District Manager.

[FR Doc. 85-24861 Filed 10-17-85; 8:45 am]

BILLING CODE 4310-33-M

[NM-52336]

New Mexico; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior proposes that a 2,240.14-acre withdrawal for the Department of the Army continue for an additional 50 years. The lands are held in trust by the United States for the benefit and use of the Pueblo of Santa Ana by Pub. L. 95-498 dated October 21, 1978, and are not subject to entry under the public land laws, including the mining laws and the mineral leasing laws.

DATE: Comments should be received by January 16, 1986.

FOR FURTHER INFORMATION CONTACT: Pauline T. Brown, BLM, New Mexico, State Office, P.O. Box 1449, Santa Fe, New Mexico 87504-1449, 505-988-6326.

The Department of the Interior proposes that the existing land withdrawal made by Public Land Order 873 of November 14, 1952, be continued for a period of 50 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The land is described as follows:

New Mexico Principal Meridian

T. 13 N., R. 3 E.,
Sec. 1, Lots 1, 8, 9 and 10, S½NE¼, SE¼NW¼, NE¼SW¼.

T. 13 N., R. 4 E.,
Sec. 5, Lots 1, 2, 3, 4, NW¼NW¼, S½NW¼, SW¼, W½SE¼, that part of lot 5 lying north of the east-west-quarter section line;
Sec. 6, Lots 1, 2 and 3, NE¼, E½NW¼, NE¼SW¼, N½SE¼, SE¼SE¼;
Sec. 8, Lots 3, 4 and 5, W½NE¼, NW¼, N½SW¼, NW¼SE¼;
Sec. 17, Lots 10, 11, that part of lot 12 lying east of the north-south-quarter section line.

T. 14 N., R. 3 E.,
Sec. 31, SW¼NE¼, NW¼NW¼, S½NW¼, S½.

The areas described aggregate 2,240.14 acres in Sandoval County, New Mexico.

The purpose of the withdrawal is for use in connection with the Jemez Canyon Dam and Reservior Project, Department of the Army, Corps of Engineers.

The lands are subject to Pub. L. 95-498 dated October 21, 1978, and are segregated from operation of the public land laws generally, including the mining laws and the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing of the Chief, Branch of Lands and Minerals Operations, in the New Mexico State Office.

A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long.

The final determination on the continuation of the withdrawal will be published in the Federal Register. The existing withdrawal will continue until such final determination is made.

Dated: October 10, 1985.

Monte G. Jordan,

State Director.

[FR Doc. 85-24916 Filed 10-17-85; 8:45 am]

BILLING CODE 4310-FB-M

Realty Action; Competitive Sale of Public Land; Van Buren County, AR; Amendment

A Federal Register Notice published on September 26, 1985 (Vol. 50, No. 187, Pg. 39053), inadvertently indicated the date of sale in column two (2) lines 10 and 19 as 47 days, it should have read December 9, 1985, and the 30 days in column two (2), line 16, should have read 180 days.

Dated: October 7, 1985.

Donald L. Libbey,

District Manager.

[FR Doc. 85-24924 Filed 10-17-85; 8:45 am]

BILLING CODE 4310-PP-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1034, Block 266, Ship Shoal Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on October 4, 1985.

ADDRESS: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service; Gulf of Mexico OCS Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0875.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: October 7, 1985.

John L. Rankin,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 85-24859 Filed 10-17-85; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf Operations; Notice of Lessees and Operators on Maximum Attainable Rate

AGENCY: Minerals Management Service, Interior.

ACTION: Notice.

SUMMARY: This Notice supersedes the Interim Notice to Lessees and Operators (NTL) published in the **Federal Register** on May 23, 1979 (44 FR 29988). The purpose of this NTL is to provide improved and clearer guidelines and instructions for use by lessees and operators in preparing reports to the Minerals Management Service (MMS) on the maximum attainable rates from significant Outer Continental Shelf (OCS) fields. The introduction of a new Form MMS-2013, "Projected Maximum Attainable Rate (MAR) of Oil and Gas Production for Significant OCS Fields," (see attachment) is expected to further enhance communications by better defining the specific nature and scope of the information requested. This is expected to reduce the number of submittals of unnecessary data and requests for additional information or resubmittals.

DATE: This NTL is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Charles Nixdorff, Minerals Management Service, Gulf of Mexico OCS Region, RD-4-1, P.O. Box 7944, Metairie, Louisiana, 70010. Telephone (504) 838-0909.

Notice to Lessees and Operators on Maximum Attainable Rate of Oil and Gas Production for Significant OCS Fields

Background

Section 606(c) and (d)(1) of the Outer Continental Shelf Lands Act Amendments (OCSLAA) of 1978 (43 U.S.C. 1865) provide that the Secretary shall conduct a continuing investigation on the availability of oil and natural gas and that such an investigation shall include a determination of the maximum attainable rate (MAR) for each of the significant fields in the OCS and an analysis of the differences between the MAR's and actual production.

Section 204(g)(1) and (2) of the OCSLAA provide that the lessee shall produce oil or gas at rates as ordered by the President in accordance with any provisions or law or as authorized by the Secretary of Energy through regulations which assure the MAR without loss of ultimate recovery for the period of an approved plan.

The provisions of this NTL are intended to provide clarification, description, or interpretation of requirements contained in sections 606(c), (d)(1), and (e) of the OCSLAA (43 U.S.C. 1865). This NTL does not impose additional requirements.

The initial MAR determination was made for the period October 1, 1979, through December 31, 1981. Subsequently, the MAR periods have been on a biennial term basis with the second period being from January 1, 1982, through December 31, 1983. Past MAR determinations were made in accordance with the interim NTL which was published in the **Federal Register** on May 23, 1979 (44 FR 29988).

The Regional Supervisors will determine MAR's for significant fields in compliance with this NTL which also requires that the determinations be based on production information and estimates from the industry. The MAR periods under this NTL will continue uninterrupted biennially beginning with the period January 1, 1986, through December 31, 1987.

Definitions

The following terms shall have the meanings given below:

Maximum Attainable Rate of Production or MAR means the maximum rate of production of crude oil and natural gas which may be produced under actual operating conditions without loss of ultimate recovery of crude oil and natural gas.

Actual operating conditions means the prevailing conditions on the lease including lease production facility capacity, pipeline capacity, normal well downtime, and other production rate constraints or enhancements.

Field means a particular area named and prescribed by the Regional Supervisor as being a producing field in the OCS. It shall include all leases or portions of leases within the particular area.

Significant field means any developed or developing field where production over the most recent 6-month period has averaged at least 5,000 barrels of oil per day or 100,000 Mcf (thousand cubic feet) of gas per day or which is capable of production in such amounts.

The MAR Determination

Lessees and operators shall determine field MAR's as follows:

1. The MAR for a significant field shall be an estimated average daily rate of oil or gas production from oil and gas wells, respectively, which can be projected as a rate vs. time decline (or incline) curve for a 2-year period of time or by using the midpoint (or average) of calendar quarters,

2. The MAR for a field shall be a compilation of the MAR's for the individual leases within the field, and

3. The MAR shall be based mainly on production and pressure trends, recent production and pressure tests, facility and/or pipeline limitations, average well downtime for the field, and any sensitivity of reservoirs to high rates of production.

The Regional Supervisor will prepare and forward a listing of the significant fields and the respective leases to the involved lessees by July 1 prior to each MAR period.

The operator of leases within an identified significant field shall file with the appropriate Regional Supervisor a Form MMS-2013 for each lease or group of commonly operated leases within the field. The completed form shall be submitted by October 1 prior to each MAR period. Whenever an operator believes that certain MAR determinations of record should be revised or corrected, the operator shall request such a revision or correction by filing with the Regional Supervisor another Form MMS-2013.

Reasons for the revision or correction and reasons for any discrepancies between the previous MAR and the production rates should be noted in the Remarks section of the form.

The Regional Supervisor will determine the MAR projection by significant fields and will forward every 2 years to the lessees involved a schedule of the MAR determinations. The Regional Supervisor will periodically compare MAR projections with production. When significant discrepancies appear, the operators will be notified and requested to furnish explanations for the discrepancies and will be given an opportunity to revise the MAR projections.

Dated: April 17, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

BILLING CODE 4310-MR-M

U.S. DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

OMB Approval No. 1010-0023
Expiration Date June 30, 1988

Projected Maximum Attainable Rate (MAR) of Oil and Gas Production
for Significant OCS Fields

January 1, ________ through December 31, ________

1. Operator ________________________________

2. Field Name ________________________________

3. OCS Lease or Leases ________________________________

____

4. For Each Lease or Group of Commonly Operated Leases Within the Field:

   a. Expected Increase or Decrease in Number of Producing Oil and Gas Completions Over the Next 2 Years ________________________________

   ____

   b. Any Information, Constraining or Otherwise, Considered Pertinent to the MAR Determination ________________________________

   ____

   ____

   ____

   ____

   ____

   c. Estimated MAR for 2-Year Period, Either by Projected Curve (attached) or by Midpoint (or average) of Calendar Quarters:

   |__| Initial |__| Revision (indicate in "Remarks" reason for revision)

Calendar Year ________	Calendar Year ________
1st Qtr. ________	1st Qtr. ________
2nd Qtr. ________	2nd Qtr. ________
3rd Qtr. ________	3rd Qtr. ________
4th Qtr. ________	4th Qtr. ________

5. Remarks or Discussion ________________________________

____

____

____

____

Signature ________________
Date ________________

The Paperwork Reduction Act Statement. This information is being collected and used to prepare the biennial report to the Congress on the availability of oil and natural gas on the Outer Continental Shelf. Response to this request is mandatory (43 U.S.C. 1865). Failure to report this information can result in a fine of not more than $10,000 for each day of continuance of such failure (43 U.S.C. 1350).

Form MMS-2013

[FR Doc. 85-24930 Filed 10-17-85; 8:45 am]
BILLING CODE 4310-MR-C

INTERSTATE COMMERCE COMMISSION

Agricultural Cooperative; Intent To Perform Interstate Transportation for Certain Nonmembers

Dated: October 15, 1985.

The following Notices were filed in accordance with section 10526(a)(5) of the Interstate Commerce Act. These rules provide that agricultural cooperatives intending to perform nonmember, non-exempt, interstate transportation must file the Notice, Form BOP 102, with the Commission within 30 days of its annual meetings each year. Any subsequent change concerning officers, directors, and location of transportation records shall require the filing of a supplemental Notice within 30 days of such change.

The name and address of the agricultural cooperative (1) and (2), the location of the records (3), and the name and address of the person to whom inquiries and correspondence should be addressed (4), are published here for interested persons. Submission of information which could have bearing upon the propriety of a filing should be directed to the Commission's Office of Compliance and Consumer Assistance, Washington, DC 20423. The Notices are in a central file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC.

(1) and (2) WISCO Farm Cooperative, P.O. Box 753, Lake Mills, WI 53551
(3) 450 North C.P. Ave., Lake Mills, WI 53551
(4) Jerome J. Kuhl, P.O. Box 753, Lake Mills, WI 53551

James H. Bayne,
Secretary.

[FR Doc. 85-24911 Filed 10-17-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30729]

The Atchison, Topeka and Santa Fe Railway Co.; Purchase (Portion) Illinois Central Gulf Railroad Co. and Illinois Central Gulf Railroad Co. Trackage Rights

AGENCY: Interstate Commerce Commission.

ACTION: Application accepted for consideration.

SUMMARY: The Commission is accepting for consideration the application for the Atchison, Topeka and Santa Fe Railway Company (Santa Fe) to purchase a portion of a line, 15.35 miles in length between Plaines and Pequot, IL, from Illinois Central Gulf Railroad Company (ICG) pursuant to 49 U.S.C. 11343 (a)(2). In conjunction therewith, the Commission further accepts ICG's application to acquire trackage rights over the same time segment from Santa Fe pursuant to 49 U.S.C. 11343 (a)(6).

DATES: Written comments must be filed by November 18, 1985.

Send an original and 10 copies of all statements referring to Finance Docket No. 30729 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423
(2) Applicants' representative:
Michael W. Blaszak, 80 East Jackson Blvd., Chicago, IL 60604
Howard D. Koontz, 233 North Michigan Avenue, Chicago, IL 60601
(3) The United States Secretary of Transportation and the Attorney General of the United States.

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 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

James H. Bayne,
Secretary.

[FR Doc. 85-24914 Filed 10-17-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-No. 79)]

Southern Pacific Transportation Co.—Abandonment in NAPA County, CA; Findings

The Commission has found that the public convenience and necessity permit the Southern Pacific Transportation Company to abandon its 21.25-mile rail line between milepost 67.50 at Rocktram and milepost 88.75 at Krug, in Napa County, CA.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,
Secretary.

[FR Doc. 85-24853 Filed 10-17-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-12 (Sub-No. 80)]

Southern Pacific Transportation Co.—Abandonment—In Lane and Linn Counties, or Notice of Findings

The Commission has found that the public convenience and necessity permit the Southern Pacific Transportation Company to abandon its 29.89-mile rail line between milepost 684.87 at Tallman and milepost 654.98 at Wilkins, in Lane and Linn Counties, OR.

A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offererd assistance (through subsidy or purchase) to enable the rail service to be continued, and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower-left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

James H. Bayne,
Secretary.

[FR Doc. 85-24854 Filed 10-17-85; 8:45 am]

BILLING CODE 7035-01-M

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: Alexander Chemical

Corporation, 1211 West 22nd Street, Oakbrook, IL 60521.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

Alexander Chemical Corporation, P.O. Box 248, Lemont, IL. 60439—Incorporated in Illinois.
Cardinal Chemical Company, Kingsbury Industrial Park, Kingsbury, Indiana 46445—Incorporated in Illinois.
Tipton Laboratories Inc., 101 Bucktail Lane, Sugar Grove, IL. 60554—Incorporated in Illinois.

1. Name and address of parent corporation or organization: Bairnco Corporation, 200 Park Avenue, New York, New York 10166.

2. Wholly-owned subsidiaries which will participate in the operations, and the States of their incorporation:

a. Keene Corporation (same address as above), State of Incorporation: New York
b. Lightolier Incorporated, 346 Claremont Avenue, Jersey City, New Jersey 07305, State of Incorporation: New York
c. Coastal Fast Freight, Inc., P.O. Box 445, Jersey City, New Jersey 07303, State of Incorporation: New York
d. DFT Acquisition, Inc., 1425 Rockwell Avenue, Cleveland, Ohio 44114, State of Incorporation: Delaware
e. Genlyte Group, Inc., 346 Claremont Avenue, Jersey City, New Jersey 07305, State of Incorporation: Delaware
f. Wide-Lite International Corporation, 346 Claremont Avenue, Jersery City, New Jersey 07305, State of Incorporation: Delaware
g. KCS Lighting, Inc., 346 Claremont Avenue, Jersey City, New Jersey 07305, State of Incorporation: Delaware
h. Basic Concept, Ltd., 141 Lanza Avenue, Garfield, New Jersey 07026, State of Incorporation: Delaware

1. Parent corporation and address of principal office: Lear Siegler, Inc., 2850 Ocean Park Boulevard, P.O. Box 2158, Santa Monica, California 90406 through Safelite Division, 801 South Wichita, P.O. Box 1879, Wichita, Kansas 67201.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(a) Arroyo Insurance Company, Colorado
(b) Bangor Punta Corporation, Delaware
(c) Bangor Punta International Capital Company, Delaware
(d) Brake Specialty, Incorporated, New York
(e) Developmental Sciences, Inc., California
(f) LSI Avionic Systems Corporation, Delaware
(g) Lear Siegler Properties, Inc., Delaware
(h) M.H.E. Contracting Inc., Michigan
(i) Piper Aircraft Corporation, Pennsylvania
(j) Producers Cotton Oil Company, California
(k) Prodco Finance Company, California
(l) South Lake Farms, California
(m) B & D Auto Upholstery and Glass Company, Maryland
(n) Starlite Barricade Company, California
(o) Surfglass Inc., California
(p) Lear Siegler Finance Corporation, Indiana
(q) Piper Acceptance Corporation, Florida

1. Parent Corporation and address of principal office: Macons de Mexico, S.A., Ave Constitution 715, Tijuana, B.C., Mexico.

2. Wholly-owned Subsidiary which will participate in the operation and State of Corporation:

(i) Macons Transportation Inc.
(ii) State of California.

1. Prestige Foods Corporation, 46. W. Ferris Street, East Brunswick, NJ 08816
2. i. SOUTHEN BELLE FOODS, 625 N. Commerce, Tupelo, Mississippi 38801 (Delaware)
ii. DAK FOODS, INC., Lexington Avenue, East Brunswick, NJ 08816 (New Jersey)
iii. MID-SOUTH TRUCKING, P.O. Drawer 829, Tupelo, Mississippi 38801 (Delaware)

1. Parent corporation and address of principal office: Ritter Food Corporation, 640 Dowd Avenue, Elizabeth, New Jersey 07207.

2. Wholly-owned subsidiary which will participate in the operations and state of incorporation: Jersey Ritter Corporation t/a Combined Services Corporation. State of Incorporation: New Jersey. Principal Place of Business: 640 Dowd Avenue, Elizabeth, New Jersey 07207.

1. Parent corporation and address of principal office: Rubel Lenihan Corporation (a Kentucky Corporation), 4703 Allmond Avenue, Louisville, Kentucky 40209.

2. Wholly-owned subsidiaries which will participate in the operations, and States of incorporation:

(i) Harvest Freight, Inc. (a Kentucky Corporation), 4709 Allmond Avenue, Louisville, Kentucky 40209
(ii) Dixie Beer Distributors, Inc. (a Kentucky Corporation), Louisville, Kentucky 40209

James H. Bayne,
Secretary.

[FR Doc. 85-24852 Filed 10-17-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council Committees; Meetings and Agenda

The regular fall meetings of committees of the Labor Research Advisory Council will be held on November 13 and 14. The meetings will be held in Room S-4215, A,B,&C, of the Frances Perkins Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members.

The schedule and agenda of the meetings are as follows:

Wednesday, November 13

9:30 a.m.—Committee on Prices and Living Conditions

1. Consumer Price Index Program
   (a) Base program
   (b) Revision
2. Consumer Expenditure Survey
   (a) Progress
   (b) Issues
3. International Price Program
4. Other business

1:30 p.m.—Committee on Productivity, Technology and Economic Growth

1. Discussion of the 1995 projections of economic growth
2. Work programs on economic growth for fiscal 1986
3. Current results of survey of hours worked and hours paid
4. Update on productivity programs for fiscal 1986

Thursday, November 14

9:30 a.m.—Committee on Employment Structure and Analysis

1. Discussion of Program Plans
   (a) Labor Force Analysis
   (b) Current Employment Statistics
   (c) Covered UI Employment
   (d) Occupational Employment Survey
   (e) Local Area Unemployment Statistics

(f) Permanent Mass Layoff-Plant Closing Report
2. Analysis of Weekly Earnings of Workers and Their Families
3. Report on research on the Temporary Help Industry
4. Plans for the 1987 Standard Industrial Classification Revision
5. Discussion of designation of statistical areas and labor market areas

11:30 a.m.—Committee on Foreign Labor and Trade

1. The BLS, OECD, and EUROSTAT comparisons of unemployment
   (a) Report prepared for the Statistical Office of the European Communities
   (b) OECD Working Party on Employment and Unemployment Statistics
2. Real Gross Domestic Product per employed person: New benchmarks

1:30 p.m.—Committee on Wages and Industrial Relations

1. Review of work in progress
2. Wage and compensation concepts, current compensation developments
3. Keeping an eye on changing benefits
4. Committee for review of benefits in the Employment Cost Index
5. Status of lump-sum payments
6. Other business

The meetings are open. It is suggested that persons planning to attend as observers contact Joseph P. Goldberg, Executive Secretary, Labor Research Advisory Council on (Area Code 202) 523-0001.

Signed at Washington, D.C., this 11th day of October 1985.

Janet L. Norwood,

Commissioner of Labor Statistics.

[FR Doc. 85-24940 Filed 10-17-85; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

[TA-W-16,050]

Tubular Corporation of America, Inc., Muskogee, OK; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on May 31, 1985 in response to a worker petition which was filed on behalf of workers at the Muskogee, Oklahoma facility of Tubular Corporation of America, Incorporated.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed at Washington, DC, this 8th day of October 1985.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 85-24939 Filed 10-17-85; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-85-78-C]

NACCO Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

NACCO Mining Company, Powhatan Point, Ohio 43942 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Powhatan No. 6 Mine (I.D. No. 33-01159) located in Belmont County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that return aircourses be examined in their entirety on a weekly basis.

2. As an alternate method, petitioner proposes to establish monitoring stations using carbon monoxide sensors and a methane detector where quality and quantity of all air passing through the tempering panel will be monitored. These stations will be maintained in safe condition at all times and the roof will be supported by roof bolts or other means.

3. In support of this request, petitioner states that:

(a) The carbon monoxide sensor will initiate an alert signal when the carbon monoxide content of the air passing over the sensor is 10 ppm above the ambient level for the tempering entries and an audible alarm signal when the carbon monoxide level is 15 ppm above the ambient level;

(b) The methane monitor will activate the alert signal at a central location where a responsible person is always on duty when the methane content of air exiting the tempering entries exceeds 0.25 volume percent and an audible alarm when the methane content reaches 0.5 percent.

(c) The monitoring instruments will be examined daily, the monitors will be tested weekly for functional operation, and the carbon monoxide sensoring system will be calibrated at least monthly. Tests for methane will be made, and the quantity of air will be measured at each station by a certified person;

(d) If at any time any part of the system malfunctions or is deenergized, the air will be continuously monitored by a certified person for carbon monoxide and methane until the monitoring system is restored to normal operation; and

(e) The person at the central location will be trained in the operation of the systems and in the proper procedures to follow in the event of an alert or alarm. When the monitoring system gives a visual or audible signal, all personnel will be withdrawn from the mine.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 18, 1985. Copies of the petition are available for inspection at that address.

Dated: October 10, 1985.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 85-24941 Filed 10-17-85; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Availability of Proposed Records Schedules; Request for comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes a notice at least once monthly of all agency records schedules (requests for records disposition authority) which include records proposed for disposal. The first notice was published on April 1, 1985. Records schedules identify records of continuing value for eventual preservation in the National Archives of the United States and authorize agencies to dispose of records of temporary value. NARA invites public comment on proposed

records disposals as required by 44 U.S.C. 3303a(a).

DATE: Comments must be received in writing on or before December 17, 1985.

ADDRESS: Address comments and requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requestors must cite the control number assigned to each schedule when requesting a copy. The control number appears in parenthesis immediately after the title of the requesting agency. Copies of the schedules are also available for public inspection during the comment period at the Office of the Federal Register, Room 8401, 1100 L Street, NW., Washington, DC 20408.

SUPPLEMENTARY INFORMATION: Each year U.S. government agencies create billions of records in the form of paper, film, magnetic tape, and other media. In order to control the accumulation of records, Federal agencies prepare records schedules which specify when the agency no longer needs them for current business and what happens to the records after the expiration of this period. Destruction of the records requires the approval of the Archivist of the United States, which is based on a thorough study of their potential value for future use. A few schedules are comprehensive; they list all the records of an agency or one of its major Subdivision. Most schedules cover only one office, or one program, or a few series of records, and many are updates of previously approved schedules. The monthly public notice identifies the Federal agencies and their appropriate subdivisions requesting disposition authority, includes a control number assigned to each schedule, and briefly identifies the records scheduled for disposal. The complete records schedule contains additional information about the records and their disposition. Additional information about the disposition process will be furnished with each copy of a records schedule requested.

Schedules Pending Approval

1. U.S. Department of Agriculture, Agricultural Marketing Service (NC1-136-83-2). Records relating to the administration of the Agricultural Marketing Service and to is inspection, and commodity procurement activities.

2. Department of the Army, Office of the Adjutant General (NC1-AU-85-1). Personnel action suspense reporting files, including reports, forms, correspondence, and supporting documents.

3. Department of the Army, Office of the Adjutant General (NC1-AU-85-21). Reduction in retention period for processing of oversea replacement files, including movement requests, travel authorization, information sheets questionnaires, and related documents.

4. Department of the Army, Office of the Adjutant General (NC1-AU-85-38). Individual and summary questionaires for surveying user requirements and evaluating experimental products relating to mapping and geodetic activities.

5. Department of the Army, Office of the Adjutant General (NC1-AU-85-44). Plant data files, including plant description cards, drawings, photographs, operating and repair reports, and related documents. Records with reference and research value will be accessioned by the National Archives.

6. Department of the Army, Office of the Adjutant General (NC1-AU-85-46). Reserve component evaluation files, including correspondence, reports, forms, and similar documents relating to reserve unit personnel, logistics, and readiness.

7. Department of the Army, Office of the Adjutant General (NC1-AU-85-49). Documents relating to surveys conducted to determine existing and potential health hazards.

8. Department of the Army, Office of the Adjutant General (NC1-AU-85-62). Joint airborne/air transportability training files, including requests for airlift support, program evaluations, mission request lists, and related records.

9. Department of the Army, Office of the Adjutant General (NC1-AU-86-4). Organizational effectiveness files, including records relating to program management, education and training, evaluation and research, and consultant services. Records with reference and research value will be accessioned by the National Archives.

10. Central Intelligence Agency (Job NO. NC1-263-84-10). The CIA schedule is classifed in the interest of national security pursuant to Executive Order 12356 and is further exempt from public disclosure pursuant to the National Security Act of 1947, 50 U.S.C. 403(d)(3), and the CIA Act of 1949, 50 U.S.C. 403g.

11. Committee for Purchase from the Blind and Other Severely Handicapped (NC1-220-85-3). Revision of disposition standards. Workshops files including certifications, reports, and correspondence.

12. Federal Communications Commission, Office of the Managing Director (NC1-173-85-6). Certification forms and VHS cassette tapes verifying FCC license lotteries.

13. General Services Administration (NC1-269-84-2). Records of the Committee Management Secretariat, including correspondence, reports, and case files concerning the implementation of the Federal Advisory Committee Act.

14. Department of Health and Human Services, Public Health Service, National Institutes of Health (NC1-443-85-1). Diagnostic radiological records including X-rays, positive photographic images, and related studies and interpretations.

15. Interstate Commerce Commission (NC1-134-85-2). Operating rights dockets case files and certificate files for motor carriers, water carriers, and freight forwarders.

16. Department of Justice, Justice Management Division (NC1-60-85-4). Public files convering applications under the Newspaper Preservation Act, the contents of which are duplicated in official files designated for achival retention.

17. Department of Labor, Bureau of Labor Management and Cooperative Programs (NC1-317-84-1). Comprehensive records schedule dealing with the administration at the national office of the Redwood Employee Protection Program, the Urban Mass Transportation Act Program, and the Rail Passenger Service Act Program.

18. Department of State, Bureau of Human Rights and Humanitarian Affairs, Office of Asylum Affairs (NC1-59-85-3). Copies of individual asylum applications and related materials.

19. Department of the Treasury, Internal Revenue Service, Facilities Management Division. (NC1-58-85-10). Records Control Schedule 206 containing records in paper and microform created or maintained in IRS Service Centers in carrying out their functions pertaining to revenue collection and accounting; processing analysis and disposition of tax returns, tax information documents and related records; transcription of statistical data and preparation of special reports.

20. Department of the Treasury, Internal Revenue Service, Facility Management Division (NC1-58-85-11 and NC1-58-85-12). Files generated in the process of collecting delinquent tax accounts.

21 Veterans Administration (NC1-15-85-12). Claims folders, relating to Pubic Laws 346 and 550, which do not contain records from private physicians or VA hospitals, original marriage and divorce

documents, or original birth documents for children under age 26.

James E. O'Neill,

Acting Archivist of the United States.

[FR Doc. 85-24927 Filed 10-17-85; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities Advisory Committee; Meeting

October 8, 1985.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on November 6-8, 1985.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out his functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. The afternoon session on November 6, 1985 and a portion of the morning and afternoon sessions on November 7-8, 1985 will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated January 15, 1978.

The agenda for the session on November 6, 1985 will be as follows:

Committee Meeting

(Open to the Public)

1:00—2:00 p.m., Challenge Grants, Room 430

2:00 p.m. until Adjourned (Closed to the Public). Discussion of specific grant applications

The agenda for the sessions on November 7, 1985 will be as follows:

Committee Meetings

(Open to the Public)

8:30—9:30 a.m., Coffee for Council Members, Room 502

9:30—10:30 a.m., Committee Meetings—Policy Discussion

Education Programs, Room M-14

Fellowship Programs, Room 315

General Programs, Room 415

Research Programs, Room 316-2

Preservation Grants, Room 316-2

State Programs, Room M-07 East

10:30 a.m. until Adjourned. Committee Meetings (Continued), (Closed to the Public for the reasons stated above)—Consideration of specific applications.

The morning session on November 8, 1985 will convene at 8:30 a.m. in the 1st Floor Council Room M-09 and will be open to the public. The agenda for the morning session will be as follows. (Coffee for Staff and Council members attending the meeting will be served from 8:30 a.m.—9:00 a.m.)

Minutes of the Previous Meeting

Reports

A. Introductory Remarks

B. Introduction of New Staff

C. Contracts Awarded Previous Quarter

D. Final Fiscal Year Reports: Applications; Gifts and Matching; and Obligations

E. Fiscal Year 1986 Appropriations and Reauthorization

F. Election of Vice Chairman

G. Jefferson Lecture

H. Committee Reports on Policy and General Matters

1. Education Programs
2. Fellowship Programs
3. General Programs
4. Research Programs
5. Preservation Grants
6. State Programs
7. Challenge Grants

I. Emergency Grants and Actions Departing from Council Recommendation—Approvals

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Mr. Stephen J. McCleary, Advisory Committee Management Officer, Washington, DC 20506, or call area code 202-786-0322.

Stephen J. McCleary,

Advisory Committee Management Officer.

[FR Doc. 85-24901 Filed 10-17-85; 8:45 am]

BILLING CODE 7536-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, November 7, 1985

Thursday, November 14, 1985

Thursday, November 21, 1985

Thursday, November 28, 1985

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 632-9710).

William B. Davidson, Jr.,

Chairman, Federal Prevailing Rate Advisory Committee.

October 10, 1985.

[FR Doc. 85-24945 Filed 10-17-85; 8:45 am]

BILLING CODE 6325-01-M

SES Performance Review Board Members

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is given of members of the SES Performance Review Board for OPM.

DATE: October 18, 1985.

FOR FURTHER INFORMATION CONTACT: Jerry Burchard, Administration Group, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, (202) 632-9402.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of title 5, United States Code, requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The board(s) will review and evaluate the initial appraisal of a senior executive's performance by the supervisor and make recommendations to the appointing authority relating to the performance of these executives.

Office of Personnel Management.

Constance Horner,

Director.

Members of the OPM Performance Review Board are—

1. Claudia Cooley, [Chair], Deputy Associate Director, Compensation Group.
2. Steven R. Cohen, [Vice-Chair], Regional Director, Chicago Region.
3. William R. Irvin, Regional Director, St. Louis Region.
4. Joseph A. Morris, General Counsel.
5. Gerald K. Hinch, Deputy Associate Director, Workforce Effectiveness and Development Group.
6. Lucretia F. Myers, Deputy Associate Director, Compliance and Investigations Group.
7. Richard B. Post, Associate Director, Staffing Group.
8. William M. Hunt, Associate Direcfor, Administration Group.
9. Thomas G. McCarthy, Regional Director, Seattle Region.
10. James W. Morrison, Jr., [ad hoc member], Associate Director, Compensation Group.
11. Raymond J. Sumser, [ad hoc member], Director of Civilian Personnel, Department of the Army.

[FR Doc. 85-24946 Filed 10-17-85; 8:45 am]

BILLING CODE 6325-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Losses and Goals Advisory Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Losses and Goals Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Losses information discussion.
- Contributions issue scoping.
- Goals issues scoping.
- Other.
- Public comment.

DATE: October 21, 1985. 9:30 a.m.

ADDRESS: The meeting will be held at the International Trade Conference Room, SeaTac Airport, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: John Marsh, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-24830 Filed 10-17-85; 8:45 am]

BILLING CODE 0000-00-M

Production Planning Advisory Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Production Planning Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will inlcude:

- Goals update.
- Discussion of hydro projects contributions to losses—issue paper.
- Hatcheries discussion.
- Other
- Public comment.

DATE: October 29, 1985. 9:30 a.m.

ADDRESS: The meeting will be held in the Council's meeting room, 850 S.W. Broadway, Suite 1100, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Ron Eggers, 503.222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-24831 Filed 10-17-85; 8:45 am]

BILLING CODE 0000-00-M

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning January 1, 1986, shall be at the rate of 22.5 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning January 1, 1986, 27.8 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 72.2 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By authority of the Board.

Dated: October 10, 1985.

Beatrice Ezerski,

Secretary of the Board.

[FR Doc. 85-24858 Filed 10-17-85; 8:45 am]

BILLING CODE 7905-01-M

SMALL BUSINESS ADMINSITRATION

[Declaration OF Disaster Loan Area #2208]

Declaration of Disaster Loan Area; Pennsylvania

As a result of the President's major disaster declaration on October 8, 1985, I find that the Counties of Lackawanna, Luzerne, Wayne and the adjacent County of Susquehanna constitute a disaster loan area because of damage from severe storms and flooding beginning on September 27, 1985. Eligible persons, firms, and organizations may file applications for loans for physical damage until the close of business on December 9, 1985, and for economic injury until July 8, 1986, at:

Disaster Area 2 Office, Small Business Administration, Richard B. Russell Federal Bldg., 75 Spring St., SW., Suite 822, Atlanta, Georgia 30303

or other locally announced locations.

The interest rates are:

Homeowners with credit available elsewhere, 8.000%.

Homeowners without credit available elsewhere, 4.000%.

Businesses with credit availabe elsewhere, 8.000%.

Businesses without credit available elsewhere, 4.000%.

Businesses (EIDL) without credit available elsewhere, 4.000%.

Other (non-profit organizations including charitable and religious organizations), 11.125%.

The number assigned to this disaster is 220806 for physical damage and for economic injury the number is 633700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 10, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-24948 Filed 10-17-85; 8:45 am]

BILLING CODE 8025-01

[Declaration of Disaster Loan Area #2211]

Declaration of Disaster Loan Area; Puerto Rico

As a result of the President's major disaster declaration on October 10, 1985, I find that the municipalities of Coamo, Ponce, Santa Isabel, and Toa Baja within the Commonwealth of Puerto Rico constitute a disaster loan area because of damage from severe storms, landslides, mudslides, and flooding beginning on Octobe: 6, 1985. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on December 9, 1985, and for economic injury until July 10, 1986, at:

U.S. Small Business Administration, Federal Building, Room 691, Carlos Chardon Avenue, Hato Rey, Puerto Rico 00919

or other locally announced locations.

Interest rates are:

Homeowners with credit available elsewhere, 8.000%.

Homeowners without credit available elsewhere, 4.000%.

Businesses with credit available elsewhere, 8.000%.

Businesses without credit available elsewhere, 4.000%.

Businesses (EIDL) without credit available elselwhere, 4.000%.

Other (non-profit organizations including charitable and religious organizations), 10.500%.

The number assigned to this disaster is 221106 for physical damage and for economic injury the number is 634700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: October 11, 1985.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 85-24949 Filed 10-17-85; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2207; Amdt.]

Declaration of Disaster Loan Area; Wisconsin

The above numbered Declaration (50 FR 41286) is hereby amended to include the adjacent Counties of Juneau and Portage in the State of Wisconsin. All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on December 2, 1985, and for economic injury until the close of business on July 2, 1986.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: October 8, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-24950 Filed 10-17-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-0490]

Issuance of a Small Business Investment Company License; WFG-Harvest Partners, Ltd.

On September 13, 1985, a notice was published in the **Federal Register** (50 FR 37450) stating that an application has been filed by WFG-Harvest Partners, Ltd., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)) for a licence as a small business investment company.

Interested parties were given until close of business September 28, 1985, 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. 02/02-0490 on September 30, 1985, to WFG-Harvest Partners, Ltd. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-24947 Filed 10-17-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 04/04 0234]

Surrender of License; Mid America Venture Capital Corp.

Notice is hereby given that Mid America Venture Capital Corporation (Mid America), 500 West Broadway, Louisville, Kentucky 40202 has surrendered its License to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Mid America was licensed by the Small Business Administration on September 5, 1984.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on October 2, 1985, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.001, Small Business Investment Companies)

Dated: October 10, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment

[FR Doc. 85-24951 Filed 10-17-85; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting; New Hampshire

The U.S. Small Business Administration Region I Advisory

Council, located in the geographical area of Concord, will hold a public meeting at 10:00 a.m., Thursday, October 31, 1985, in the Concord National Bank Board Room, Concord National Bank, 42 N. Main and Warren Streets, Concord, New Hampshire, to discuss such matters as may be presented by members, staff of the Small Business Administration and others attending.

For further information, write or call William Phillips, District Director, U.S. Small Business Administration, 55 Pleasant Street, Concord, New Hampshire 03301, (603) 224-4041.

Jean M. Nowak,

Director, Office of Advisory Councils.

October 10, 1985.

[FR Doc. 85-24952 Filed 10-17-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[File No. AC-21.17(b)-2]

Advisory Circular: Type Certification—Airships

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notification of the availability of proposed Advisory Circular 21.17(b)-2 and Federal document No. FAA-P-8110-2 titled "Airship Design Criteria"—request for comments.

SUMMARY: Proposed Advisory Circular (AC) 21.17(b)-2 which provides airworthiness criteria for the type certification of airships is available for review. The AC is a companion document to a Notice of Proposed Rulemaking (NPRM) which proposes to amend Part 21 of the Federal Aviation Regulations (FAR) to allow for the type certification of airships and other special classes of aircraft discussed in that NPRM. The AC also references a separate document, FAA-P-8110-2, titled "Airship Design Criteria" (ADC) as an acceptable means of showing compliance with the newly proposed amendment to § 21.17(b). The NPRM and this notice are published concurrently in the **Federal Register**.

DATES: Comments must be received on or before December 17, 1985.

ADDRESSES: Comments on the proposed AC and ADC document are solicited from all interested persons and must be sent to: Federal Aviation Administration, Office of Airworthiness, Policy and Procedures Branch (AWS-110), File No. AC 21.17(b)-2, 800 Independence Avenue, SW., Washington, DC 20591; or delivered to Room 335D, at the foregoing address. Comments may be inspected at Room 335D between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Zahringer, Policy and Procedures Branch (AWS-110), Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 426-8374.

SUPPLEMENTARY INFORMATION:

Discussion of the Draft Advisory Circular

The proposed Advisory Circular (AC) provides guidance to an applicant seeking a United States type certificate for an airship. The AC also references the "Airship Design Criteria" (ADC) document as providing one means, but not the only acceptable means, for showing compliance with a proposed amendment to § 21.17(b) of the Federal Aviation Regulations (FAR). The proposed AC would also permit an applicant to develop its own airworthiness criteria based on the procedures set forth in proposed § 21.17(b) for showing compliance for the type certification of an airship.

Concurrent with this notice, the Federal Aviation Administration (FAA) is publishing a notice of proposed rulemaking regarding the amendment to Part 21 in the **Federal Register**. The proposed amendment will establish a group of aircraft designated as "special classes of aircraft." These aircraft are those for which there are not presently specific airworthiness standards in the FAR. Special classes of aircraft include gliders, both powered and unpowered, airships, and other aircraft for which airworthiness standards have not been issued as a separate Part in the FAR. It is intended that special classes of aircraft be eligible for a standard airworthiness certificate and thus could carry persons or property for compensation and hire.

The proposed AC also contains airworthiness criteria for the type certification of airship engines and propellers. The document addresses emergency exits, engine fire extinguishing systems, and fire detection means for all airships. The FAA recognizes the significant differences between the performance of airships and other aircraft, therefore, it is specifically interested in receiving comments on the foregoing issues as well as on any other aspect of the AC or the ADC document.

Issued in Washington, DC, on October 10, 1985.

M.C. Beard,

Director of Airworthiness.

[FR Doc. 85-24828 Filed 10-17-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement; Washington County, MN and St. Croix County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Washington County, Minnesota and St. Croix County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Thomas J. Fudaly, Area Engineer, Federal Highway Administration, Suite 490 Metro Square Building, St. Paul, Minnesota 55101, Telephone (612) 349-5238, or Robert C. Winter, Preliminary Design Engineer, Minnesota Department of Transportation, District Nine, 3485 Hadley Avenue North, Box 9050, North St. Paul, Minnesota 55109, Telephone (612) 779-1209.

SUPPLEMENTARY INFORMATION: The proposed project consists of replacement of a 54 year old, substandard, two-lane lift bridge over the St. Croix River joining Minnesota Trunk Highway (TH) 36 and Wisconsin State Trunk Highway (STH) 64, between Stillwater, Minnesota and Houlton, Wisconsin. The proposed project also includes the construction of four-lane or six-lane highway approaches. The project will extend between Washington County (Minnesota) State-Aid Highway 15 to a point on STH 64, 2.5 miles east of the existing river bridge, in St. Croix County, Wisconsin.

Project length will be from six to nine miles, depending on the specific location corridor and final alignment selected. The intent of the proposed project is to relieve a serious traffic congestion situation on and near the existing bridge during peak travel periods.

The Draft Environmental Impact Statement (Draft EIS) will be essentially a corridor-level study document. At this time there are three proposed alternative location corridors, one of which has a sub-alternative. A broad study area has been defined which encompasses these corridors. In addition, on-site replacement of the existing structure with minimal approach work is an alternative at this time as well as the no-build option. Some of these alternatives may be dismissed from consideration or others may be added as a result of the scoping process.

The Draft EIS will be prepared jointly by the FHWA, the Minnesota Department of Transportation (Mn/DOT) and the Wisconsin Department of Transportation (Wis/DOT). Mn/DOT will be the lead State agency. A scoping meeting to receive public and agency comment regarding the scope of the Draft EIS will be held on November 7, 1985 at 7:30 PM at the St. Joseph Township Hall at the junction of County Roads E and V, 3½ miles east of the Stillwater-Houlton river bridge in Wisconsin. A 30-day state-mandated comment period on the scope of the EIS will begin on October 21, 1985 and extend through November 21, 1985.

Questions, comments or suggestions concerning the proposed project or the scope and content of the DEIS may be directed to the FHWA or Mn/DOT contact persons at the addresses provided above.

Issued on: October 11, 1985.

John S. Bowers,

Assistant Division Administrator and Engineering Coordinator.

[FR Doc. 85-24928 Filed 10-17-85; 8:45 am]

BILLING CODE 4910-22-M

Research and Special Programs Administration

Grants and Denials of Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT.

ACTION: Notice of grants and denials of applications for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the exemptions granted in September 1985. The modes of transportation involved are identified by a number in the "Nature of Exemption Thereof" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Exemptions.

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
3126-X	DOT-E 3126	Hercules, Inc., Wilmington, DE	49 CFR 173.62, 177.821, 177.822(b), 177.835(k).	To authorize an alternate vehicle loading configuration. (Mode 1).
3128-X	DOT-E 3128	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.304, 175.3	To authorize use of non-DOT specification cylinders, for transportation of a Class C explosive and a liquefied nonflammable gas. (Modes 1, 2, 3, 4).
3415-X	DOT-E 3415	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.79, 173.92	To authorize shipment of rocket motors, containing certain Class A or Class B explosives, without overpacking. (Mode 1).
4291-X	DOT-E 4291	United Technologies Chemical Systems, San Jose, CA.	49 CFR 173.239a(a)(2)	To authorize use of a non-DOT specification aluminum portable tank, for transportation of a certain oxidizer. (Modes 1, 2).
4291-X	DOT-E 4291	Pacific Engineering & Production Co. of Nevada, Henderson, NV.	49 CFR 173.239a(a)(2)	To authorize use of a non-DOT specification aluminum portable tank, for transportation of a certain oxidizer. (Modes 1, 2).
5243-X	DOT-E 5243	Appalachian Explosives, Inc., Romney, WV.	49 CFR 173.103(a), 173.66(g)(1), 177.835(g)	To authorize modified DOT specification packaging for transportation of Class C or Class A explosives. (Modes 1, 2, 3).
5778-X	DOT-E 5778	Liquid Air Corp., Cambridge, MD	49 CFR 173.302(a)(4), 173.304(a)(1)(i).	To authorize use of a DOT specification 39 steel cylinder, for shipment of certain flammable gases. (Modes 1, 2).
6657-X	DOT-E 6657	Liquid Air Corp., San Francisco, CA	49 CFR 173.34(e)(15)(i), 175.3	To authorize use of DOT specification 3A or 3AA cylinders and cylinders marked ICC-3, 3A or 3AA having an age over 35 years for transportation of certain nonliquefied compressed gases. (Modes 1, 2, 3, 4, 5).
6672-X	DOT-E 6672	Chandler Evans Inc., West Hartford, CT.	49 CFR 173.302(a)(4), 175.3	To authorize manufacture, marking and sale of welded or seamless, nonrefillable non-DOT specification steel cylinders, for transportation of certain nonliquefied compressed gases. (Modes 1, 2, 4).
6974-X	DOT-E 6974	U.S. Department of Defense, Falls Church, VA.	49 CFR 173.302(a)(1), 175.3, 178.42.	To authorize use of non-DOT specification of certain nonliquefied compressed gases. (Modes 1, 2, 4).
6984-X	DOT-E 6984	Appalachian Explosives, Inc., Romney, WV.	49 CFR 173.103(a), 173.66(g), 177.835(g)(2)(i).	To authorize packaging of 1000 or less electric blasting caps in inside pasteboard cartons or tubes, overpacked in an IME Standard 22 container. (Mode 1).
7056-X	DOT-E 7056	Diamond Shamrock Corp., Irving, TX	49 CFR 173.204(a)(4), 173.28(m)	To authorize one time reuse of DOT specification 3/A steel drums, for transportation of a certain flammable solid. (Modes 1, 2, 3).
7060-X	DOT-E 7060	Federal Express Corp., Memphis, TN.	49 CFR 175.702(b), 175.75(a)(3)(ii)	To authorize carriage of non-fissile radioactive materials aboard cargo-only aircraft when the combined transport index exceeds 50.0 and/or the separation criteria cannot be met. (Mode 4).
7060-X	DOT-E 7060	Central Skyport Inc., Columbus, OH	49 CFR 175.702(b), 175.75(a)(3)(ii)	To authorize carriage of non-fissile radioactive materials aboard cargo-only aircraft when the combined transport index exceeds 50.0 and/or the separation criteria cannot be met. (Mode 4).
7071-X	DOT-E 7071	Clayton Chemical, Los Angeles, CA	49 CFR 172.101, 173.245, 175.3	To authorize shipment of a certain corrosive liquid, in non-DOT specification polyethylene bottles overpacked in a non-DOT specification single-wall fiberboard box, or DOT Specification 20 polyethylene containers overpacked in a DOT Specification 12P fiberboard box. (Mode 1, 2, 3, 4).
7282-X	DOT-E 7282	MarChem Corp. Maryland Heights, MI.	49 CFR 173.315(a)(1)	To authorize use of non-DOT specification steel portable tanks, for shipment of certain mixtures of nonpoisonous, nonflammable compressed gases. (Mode 1).
7611-X	DOT-E 7611	Richfood, Inc., Richmond, VA	49 CFR 173.101, 173.87	To authorize transport of certain class C explosives in packagings not presently authorized in 49 CFR 173.101(a). (Mode 1).
7616-X	DOT-E 7616	Missouri Pacific Railroad Co., Omaha, NE.	49 CFR 172.204(a), 172.204(d)	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2).
7616-X	DOT-E 7616	The Kansas City Southern Railway Co., Kansas City, MO.	49 CFR 172.204(a), 172.204(d)	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2).
7616-X	DOT-E 7616	The Western Pacific Railway Co., Ohama, NE.	49 CFR 172.204(a), 172.204(d)	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2).
7616-X	DOT-E 7616	Union Pacific Railroad Co., Ohama, NE.	49 CFR 172.204(a), 172.204(d)	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2).
7616-X	DOT-E 7616	The Atchison, Topeka and Santa Fe Railway Co., Chicago, IL.	49 CFR 172.204(a), 172.204(d)	To authorize carrier to certify the shipping papers on behalf of the shipper when transporting certain hazardous materials by rail. (Mode 2).
7716-X	DOT-E 7716	Kinepak, Inc., Lewisville, TX	49 CFR 173.153(b)(1)	To authorize transport of ammonium nitrate in inside polyethylene bottles or foil pounches, each containing less than 3 pounds or less, overpacked in DOT Specification 12H-65 fiberboard boxes with a plastic liner bag containing not more than 36 pounds net weight. (Mode 1, 2, 3).

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7835-X	DOT-E 7835	Ashland Chemicals, Dublin, OH	49 CFR 177.848, Part 107 Appen. B(1).	To authorize transport of compressed gas in cylinders bearing the flammable gas label, the oxidizer label, flammable liquid label, corrosive label, or the poison gas label and tank car tanks bearing the poison gas label on the same vehicle. (Mode 1).
7907-X	DOT-E 7907	Hercules, Inc., Wilmington, DE	49 CFR 173.127, 173.184, 178.224	To authorize shipment of wet notrocellulose, in non-DOT Specification fiberboard drums. (Mode 1, 2, 3).
8059-X	DOT-E 8059	EFI Corp. formerly Acurex, Los Gatos, CA.	49 CFR 173.302(a)(1), 173.304(a), 173.304(d), 175.3.	To authorize epoxy resin repairs of FRP cylinders which are damagd during service in accordance with the Compressed Gas Association's Pamphlet C-6.2. (Modes 1, 2, 3, 4, 5).
8195-X	DOT-E 8195	McDonnell Douglas Corp., Saint Louis, MO.	49 CFR 173.8(b)(3), 175.3, Part 173, Subpart D, F, H.	To authorize use of non-DOT specification metal drums as outside containers in lieu of prescribed DOT specification fiberboard or wood containers, for shipments of flammable liquids, corrosive materials, and Class B poisons subject to 49 CFR 173.6(b)(3). (Modes 1, 2, 4, 5).
8214-X	DOT-E 8214	Mercedes-Benz of North America, Inc., Montvale, NJ.	49 CFR 173.153, 173.154, 175.3	To authorize transport of inflators and modules for passive restraint systems for use in automobiles as flammable solids, n.o.s.. (Modes 1, 2, 3, 4).
8248-X	DOT-E 8248	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 173.245, 173.247, 173.271, 178.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1).
8248-X	DOT-E 8248	Cerametals, Inc., New York, NY	49 CFR 173.245, 173.247, 173.271, 178.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four glas bottles, each secured in an aluminum shipping canister. (Mode 1).
8248-X	DOT-E 8248	C. M. China Trade, Inc., New York, NY.	49 CFR 173.245, 173.247, 173.271, 178.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1).
8248-X	DOT-E 8248	AT&T Technologies, Inc., Greensboro, NC.	49 CFR 173.245, 173.247, 173.271, 178.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1).
8248-X	DOT-E 8248	China Metallurgical Import & Export Corp., Shanghai, China.	49 CFR 173.245, 173.247, 173.271, 178.170.	To authorize shipment of various corrosive liquids in a modified DOT Specification 15C wooden box containing four compartments capable of transporting four glass bottles, each secured in an aluminum shipping canister. (Mode 1).
8278-X	DOT-E 8278	Maintenance Mechanical Corp., Houston, TX.	49 CFR 173.119, 173.304, 173.315	To authorize manufacture, marking and sale of non-DOT specification containers, for shipment of flammable gases and flammable liquids. (Mode 1).
8308-P	DOT-E 8308	Del-Med, Inc. Philadelphia, PA	49 CFR 177.842(a), 177.842(b)	To become a party to Exemption 8308. (Mode 1).
8344-P	DOT-E 8344	Munson Sporting Goods, Costa Mesa, CA.	49 CFR 173.197a	To become a party to Exemption 8344. (Modes 1, 2).
8451-P	DOT-E 8451	Atlas Powder Co., Dallas, TX	49 CFR 173.65, 173.66(e), 175.3	To become a party to Exemption 8451. (Modes 1, 2, 4).
8453-P	DOT-E 8453	Explo-Midwest, Inc., Joplin, MO	49 CFR 173.114a	To become a party to Exemption 8453. (Mode 1).
8585-X	DOT-E 8585	Thermodynamics Corp., Broken Arrow, OK.	49 CFR 173.247, 173.266, 178.19, Part 173 Suppart D, Subpart F, H.	To authorize manufacture, marking and sale of non-DOT specification reusable, rotationally molded, polyethylene container, for shipment of certain corrosive, flammable, class B poisonous liquids, and oxidizer. (Modes 1, 2, 3).
8606-X	DOT-E 8606	Makhteshim Darom (Ramat Hovav) Ltd., Beer Sheva, Israel.	49 CFR 173.315	To authorize shipment of monomethylamine in non-DOT specification IMO Type 5 portable tanks. (Modes 1, 3).
8645-X	DOT-E 8645	Austin Powder Co., Cleveland, OH	49 CFR 173.154(a) (18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commerically designated as "HEF", in DOT Specification MC-307 or MC-311 insulated cargo tanks at ambient temperature. (Mode 1).
8645-X	DOT-E 8645	Wampum Hardware Co., New Galilee, PA.	49 CFR 173.154(a) (18)	To authorize bulk shipment of a thickened solution of an oxidizing material, commerically designated as "HEF", in DOT Specification MC-307 or MC-311 insulated cargo tanks at ambient temperature. (Mode 1).
8657-P	DOT-E 8657	BASF Wyandotte Corp., Parsippany, NJ.	49 CFR 173.289(a)(2)	To become a party to Exemption 8657. (Mode 2).
8685-X	DOT-E 8685	Hercules Inc., Wilmington, DE	49 CFR 173.182(b) (6) (ii)	To authorize shipment of ammonium nitrate fertilizer (prills) in non-DOT specification collapsible polyethylene-lined, woven polypropylene bags having a capacity of approximately 2,240 pounds each. (Modes 1, 2, 3).
8689-X	DOT-E 8689	Schlumberger Offshore Services, Houston, TX.	49 CFR 173.302, 173.304, 175.3	To authorize manufacture, marking and sale of a non-DOT specification oil well sampling device, for the shipment of various compressed gases, n.o.s. (Modes 1, 2, 3, 4).
8708-X	DOT-E 8708	Great Lakes Chemical Corp., El Dorado, AR.	49 CFR 173.357(b)(2)	To authorize use of non-DOT specification steel drums (overpacked, palletized and containerized), for shipment of a Class B poison. (Modes 1, 3).
8708-X	DOT-E 8708	Trical, Inc., Hollister, CA	49 CFR 173.357(b)(2)	To authorize use of non-DOT specification steel drums (overpacked, palletized and containerized), for shipment of a Class B poison. (Modes 1, 3).
8732-X	DOT-E 8732	Ashland Services Co., Dublin, OH	49 CFR 173.245	To authorize use of a DOT Specification MC-303 and MC-306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1).
8732-X	DOT-E 8732	Delta Solvents & Chemicals Co., Longview, TX.	49 CFR 173.245	To authorize use of a DOT Specification MC-303 and MC-306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1).
8732-X	DOT-E 8732	Dow Chemical U.S.A., Midland, MI	49 CFR 173.245	To authorize use of a DOT Specification MC-303 and MC-306 cargo tanks, made of aluminum or steel for transportation of a corrosive material. (Mode 1).
8750-X	DOT-E 8750	Applied Companies, Woodland Hills, CA.	49 CFR 173.302(a), 175.3	To authorize manufacture, marking and sale of non-DOT specification girth welded steel cylinders, for shipment of certain nonflammable gases. (Modes 1, 2, 4).
8751-X	DOT-E 8751	Delta Tech Service, Inc., Martinez, CA.	49 CFR 173.119(a), 173.119(m), 173.245(a), 173.263(a), 173.346(a), 178.340-7, 178.343-5.	To authorize use of non-DOT specification cargo tanks designed and constructed in full compliance with DOT Specification MC-312 with certain exceptions, for shipment of certain hazardous materials. (Mode 1).
8757-X	DOT-E 8757	Y-Z Industries, Inc., Snyder, TX	49 CFR 173.302(a)(1), 173.304(a)(1), 173.304(b)(1), 175.3.	To authorize manufacture, marking and sale of non-DOT specification stainless steel cylinders, for shipment of compressed gases. (Modes 1, 4).
8845-P	DOT-E 8845	HL McCullough/NL Industries, Inc., Houston, TX.	49 CFR 173.110(c)(1), 173.80(b), 173.80(c).	To become a party to Exemption 8845. (Modes 1, 3).
9025-X	DOT-E 9025	American Greetings Corp., Cleveland, OH.	49 CFR 173.28(m)	To authorize reuse of DOT Specification 17H drums of 55-gallon capacity, having inside liners of polyethylene film and which deviate from retest requirements, for shipment of ink, classed as a flammable liquid. (Mode 1).
9047-X	DOT-E 9047	Union Carbide Corp., Danbury, CT	49 CFR 173.124(a)(2), 173.124(a)(4), 175.3.	To authorize shipment of ethylene oxide in prescribed DOT cylinders or drums equipped with brass valves. (Modes 1, 2, 3, 4, 5).
9061-X	DOT-E 9061	The S. S. I. Group Ltd., Fairdale, KY	49 CFR 172.504, 173.178	To authorize shipment of small quantity of a flammable solid labeled Flammable Solid and Dangerous When Wet but without a Flammable Solid W placard on the vehicle. (Modes 1, 2).
9061-P	DOT-E 9061	Leonard Joseph Co., & Safesport Manufacturing Co., Denver, CO.	49 CFR 172.504, 173.178	To become a party to Exemption 9061. (Modes 1, 2).
9066-X	DOT-E 9066	Bayern-Chemie GmbH, Ottobrunn, West Germany.	49 CFR 173.154, 175.3	To authorize transport of an airbag gas generator as flammable solid, in a box constructed of single was corrugated fiberboard with an inside styropor container insed for shock absorption (Modes 1, 2, 3, 4).
9067-X	DOT-E 9067	Watco Truck Rigging, Inc., Odessa, TX.	49 CFR 173.119, 173.245, 178.253	To authorize manufacture, marking and sale of non-DOT specification portable tanks manifolded together with a frame and securely mounted on a truck chassis, for transportation of flammable liquids and corrosive liquids. (Mode 1).

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9074-P	DOT-E 9074	U.S. Department of Energy, Washington, DC.	49 CFR 173.302, 175.3	To become a party to Exemption 9074. (Modes 1, 2, 3, 4, 5).
9074-X	DOT-E 9074	Reuter-Stokes, Inc., Twinsburg, OH	49 CFR 173.302, 175.3	To authorize use of non-DOT specification metal, single trip, inside containers, for transportation of a nonflammable gas. (Modes 1, 2, 3, 4, 5).
9108-X	DOT-E 9108	E. I. du Ponc de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.77	To authorize transport of an initiating explosive in a plastic bag, packed in a DOT Specification 12H fiberboard box. (Mode 1).
9110-P	DOT-E 9110	Alby Klorat AB, Avesta, Sweden	49 CFR 173.163	To become a party to Exemption 9110. (Modes 1, 2, 3).
9114-X	DOT-E 9114	AT&T Technologies, Inc., Lee's Summit, MO.	49 CFR 172.203(d)(1)(ii), 172.203(d)(1)(iii), 172.403(b), 172.403(g)(2), 173.415(a).	To authorize packagings to be used for highway tranport to Western Electric of electron tubes containing small amounts of radioactive material (Radium 226 or Krypton 85) without specific determination of total activity or Transport Index for the package. (Mode 1).
9116-X	DOT-E 9116	Hoover Universal, Inc., Beatrice, NE	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tank enclosed within a protective steel frame, for shipment of corrosive liquids, flammable liquids or an oxidizer. (Modes 1, 2, 3).
9140-X	DOT-E 9140	Crown Rotational Molded Products, Inc., Marked Tree, AR.	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173 Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tanks, for shipment of corrosive liquids, flammable liquids, or an oxidizer. (Modes 1, 2, 3).
9142-X	DOT-E 9142	EVA Eisenbahn-Verkehrsmittel GmbH, Dusseldorf, West Germany.	49 CFR 173.315, 178.245	To authorize use of a non-DOT Specification IMO Type 5 portable tank, for transportation of liquefied compressed gases. (Modes 1, 2, 3).
9149-X	DOT-E 9149	Ethyl Corp., Baton Rouge, LA	49 CFR 173.354, 178.245	To authorize use of non-DOT specification IMO Type 1 portable tanks, for transportation of motor fuel antiknock compound. (Modes 1, 2, 3).
9150-X	DOT-E 9150	Hoover Universal, Inc., Beatrice, NE	49 CFR 173.119, 173.256, 173.266, 178.19, 178.253, Part 173, Subpart F.	To authorize manufacture, marking and sale of non-DOT specification rotationally molded, cross-linked polyethylene portable tanks with bottom outlet, for shipment of corrosive and flammable liquids or an oxidizer. (Modes 1, 2, 3).
9170-X	DOT-E 9170	Transport Company, Inc., El Dorado, AR.	49 CFR 173.245, 178.340-10, 178.340-8, 178.341-3, 178.341-4, 178.341-5, 178.341-7.	To authorize use of non-DOT specification cargo tanks, for transportation of a corrosive liquid. (Mode 1).
9170-X	DOT-E 9170	Davison Transport Co., Inc., Ruston, LA.	49 CFR 173.245, 178.340-10, 178.340-8, 178.341-3, 178.341-4, 178.341-5, 178.341-7.	To authorize use of non-DOT specification cargo tanks, for transportation of a corrosive liquid. (Mode 1).
9174-X	DOT-E 9174	The National Aeronautics and Space Administration, Washington, DC.	49 CFR 173.302(a)	To authorize usg of non-DOT specification cylindrical and spherical pressure vessels, for transportation of helium and nitrogen. (Mode 1).
9379-X	DOT-E 9379	Kaiser International Corp., Savannah, GA.	49 CFR 172.301, 173.182(b)(6)(ii), 176.410(d).	To authorize shipment of ammonium nitrate fertilizer in collapsible polyethylene-lined, woven polypropylene bags having a capacity for approximately 2,000 pounds each. (Mode 3).

New Exemptions

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9228-N	DOT-E 9228	Southern California Chemical Co., Inc., Santa Fe Springs, CA.	49 CFR 178.340, 178.343	To authorize use of non-DOT specification cargo tanks, for transportation of corrosive materials. (Mode 1).
9350-N	DOT-E 9350	Square D Co., Florence, KY	49 CFR 173.302	To authorize use of a non-DOT specification seamless molded biphenolic epoxy cylinder, for shipment of a nonflammable gas. (Modes 1, 3).
9391-N	DOT-E 9391	Dowell Schlumberger, Inc., Tulsa, OK.	49 CFR 172.101, 175.30	To authorize shipment of hydrochloric acid solution in DOT Specification 60 rubber lined portable tanks. (Mode 4).
9415-N	DOT-E 9415	Plasti-Drum Corp., Lockport, IL	49 CFR Part 173, Subpart D, E, F, H.	To authorize manufacture, marking and sale of a polyethylene drum of 30-gallon capacity conforming with DOT Specification 34 except for having a single opening of four-inch diameter, for shipment of those hazardous materials authorized in DOT Specification 34 and DOT Specification 21C drums. (Modes 1, 2, 3).
9464-N	DOT-E 9464	Broco, Inc., Rialto, CA	49 CFR 173.100	To authorize transport of a pest control device which has dimensions exceeding those authorized in 49 CFR, in a fiberboard card and placed in a heat sealed plastic bag. (Modes 1, 2, 3, 4, 5).
9481-N	DOT-E 9481	C-I-L Inc., North York, Ontario, Canada.	49 CFR 173.77	To authorize transport of PETN wet with 25% water in plastic bags packed in fiberboard boxes instead of metal drums. (Mode 1).
9487-N	DOT-E 9487	Kaw Valley Inc., Leavenworth, KS	49 CFR 173.304	To authorize transport of an insecticide classed as a nonflammable compressed gas in DOT Specification 39 cylinders. (Mode 1).

Emergency Exemptions

Application No.	Exemption No.	Applicant	Regulation(s) affected	Nature of exemption thereof
EE 9159-N	DOT-E 9159	Martin Marietta, Orlando, FL	49 CFR 172.101 column 6 (b), 173.79(a) 175.30.	To authorize air transportation of rocket ammunition, rocket motors and igniters. (Mode 4).
EE 9486-N	DOT-E 9486	Bver Inc., Chester, WV	49 CFR 173.119(a), (m), 173.245(a), 173.342-5, 173.346(a), 178-340-7, 178343-5.	To authorize use of a non-DOT specification cargo tank designed and constructed in full compliance with DOT Specification MC-307/312, with exceptions, for transportation of a liquid and semi-solid waste material. (Mode 1).
EE 9509-N	DOT-E 9509	The BF Goodrich Co., Cleveland, OH.	49 CFR 171.2, 173.314, 179.100-16	To authorize use of a non-DOT specification 105J300W except for certain prescribed bracket reinforcing pads, for shipment of flammable gases. (Mode 2).
EE 9510-N	DOT-E 9510	Embassy of the Arab Republic of Egypt, Washington, DC.	49 CFR 172.101 column 6(b), 174.320(a).	To authorize transport of Class A and B explosives aboard cargo aircrafts. (Mode 4).

Withdrawals

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
7657-P	Big Three Industries Inc., Houston, Tx	49 CFR 173.302(a)(1) 173.304(a)(1), 173.304(b)(1), 175.3, 178.42.	To become a party to Exemption 7657. (Modes 1, 2, 3, 4).

WITHDRAWALS—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9417-N	Russell-Stanley West, Inc., City of Industry, CA	49 CFR 178.19-3	To authorize use of approximately 3,046 five gallon capacity DOT Specification 34 containers which have a thinner thickness than required in a isolated area in the bottom of the drums for shipment of those hazardous materials authorized in Specification 34. (Modes 1, 2).

Denials

9057-X Request by Olympic Chemical Company, Orange, CA to authorize use of DOT Specification MC-331 carge tanks equipped with angle valves and pressure relief valves not presently authorized, for transportation of a nonflammable gas denied September 19, 1985.

9138-N Request by International Minerals & Chemical Corporation, Mundelein, IL to authorize of methylamine, dimethylamine and trimethylamine described as methylamine anhydrous or methylamine aqueous, as appropriate denied September 23, 1985.

Issued in Washington, DC, on October 9, 1985.

J.R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 85-24869 Filed 10-17-85; 8:45 am]

BILLING CODE 4910-60-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 202
Friday, October 18, 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

FEDERAL HOME LOAN BANK BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. No. 50, Page No. 41619. Date published—Friday, October 11, 1985.

PLACE: In the Board Room, 6th Floor, 1700 G St., NW., Washington, DC.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6679).

CHANGES IN THE MEETING: The Bank Board Meeting scheduled for Thursday, October 17, 1985, at 3:00 p.m. has been changed to start at 3:30 p.m.

Nadine Y. Penn,

Assistant Secretary.

October 16, 1985.

[FR Doc. 85-24895 Filed 10-16-85; 3:11 pm]

BILLING CODE 6720-01-M

2

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., October 23, 1985.

PLACE: Hearing Room One, 1100 L Street, NW., Washington, DC. 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Portions closed to the public:

1. Agreements Nos. 202-010829 and 202-010833: the Eurocorde Discussion Agreement and the Eurocorde I agreement, respectively.
2. Agreements Nos. 217-010823 and 217-010823-001: Consideration of the Canadian Transport Service/C.M.B. n.v. Joint Container Service Agreement, and a proposed modification to the agreement to permit agreement on fees to be paid to C.M.B.
3. Consideration of the Inquiry Officer's determination an internal personnel matter.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Acting Secretary, (202) 523-5725.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-25021 Filed 10-16-85; 3:57 pm]

BILLING CODE 6730-01-M

3

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, October 23, 1985.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be voted on without discussion unless a member of the Board requests that an item be moved to the discussion agenda.

1. Publication for comment on two proposals concerning the elimination or recovery of float attributable to nonstandard holidays.
2. Publication for comment on a proposal to consolidate the noncash collection activities of the Federal Reserve Banks of Minneapolis and San Francisco.

Discussion Agenda

3. Proposals to be issued for public comment regarding the treatment of perpetual debt securities for capital adequacy purposes.
4. 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, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: October 16, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-24991 Filed 10-16-85; 1:17 pm]

BILLING CODE 6210-01-M

4

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wednesday, October 23, 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, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed policy statements regarding confirmation and relocation expenses of Federal Reserve Board nominees.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: October 16, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-24992 Filed 10-16-85; 1:18 pm]

BILLING CODE 6210-01-M

5

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m. Thursday, October 24, 1985.

PLACE: Suite 410, 1825 K Street, NW., Washington, DC.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Mary Ann Miller (202) 634-4015.

Dated: October 16, 1985.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 85-25011 Filed 10-16-85; 3:11 pm]

BILLING CODE 7600-01-M

6

POSTAL SERVICE

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, November 5, 1985, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

Agenda

Tuesday Session: November 5, 1985—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, September 30-October 1, 1985.

2. Remarks of the Postmaster General.

3. Consideration of Filing with the Postal Rate Commission on Experimental Parcel Post.

(Ms. Uemoto, Assistant Postmaster General, Rates and Classification Department, will make the proposed filing presentation.)

4. Consideration of Rates for Preferred Rate Mail.

5. Quarterly Report on Service Performance.

(Mr. Spates, Director, In-Plant Systems, will present the quarterly summary on service performance.)

6. Report on Employee and Labor Relations and the Employee Involvement/Quality of Working Life Program.

(Mr. Coughlin, Senior Assistant Postmaster General, Employee and Labor Relations Group, will report on employee and labor relations.)

7. Detailed Review of INTELPOST.

(Mr. Schiller, Assistant Postmaster General, Technololgy Resource Department, will make the presentation on INTELPOST.)

8. Report of Regional Postmaster General.

(Mr. Acord, Regional Postmaster General, Central Region, will report on conditions in the Central Region.)

9. Capital Investments:

a. Southeastern Pennsylvania GMF Expansion.

b. Richmond, Virginia, site for GMF Expansion.

10. Tentative agenda for December 2-3, 1985, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 85-24976 Filed 10-16-85; 11:13 am]

BILLING CODE 7710-12-M

7

RAILROAD RETIREMENT BOARD

Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 22, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611.

The agenda for this meeting follows:

(1) Proposed Changes in the RUIA Regulations
(2) Canadian Service
(3) Appeal of Nonwaiver of Overpayment, Wilson McCall, Sr.
(4) Appeal of Nonwaiver of Overpayment, Helen McLaughlin

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 387-4920.

Dated: October 11, 1985.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 85-24973 Filed 10-16-85; 10:34 am]

BILLING CODE 7905-01-M

8

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [50 FR 40470 10/3/85.]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATES PREVIOUSLY ANNOUNCED: Friday, September 27, 1985.

CHANGE IN THE MEETING: Additional meeting.

The following item was considered at a closed meeting held on Thursday, October 10, 1985, following the 10:00 a.m. open meeting.

Institution of injunctive action.

Commissioners Peters, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Ida Wurczinger at (202) 272-2014.

John Wheeler,

Secretary.

October 11, 1985.

[FR Doc. 85-24990 Filed 10-16-85; 1:18 pm]

BILLING CODE 8010-01-M

federal register

Friday
October 18, 1985

Part II

Federal Communications Commission

47 CFR Ch. I

Satellite Systems Providing International Communications; Report and Order

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 84-1299; FCC 85-399]

Satellite Systems Providing International Communications

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: This action issues a Report and Order on the Commission's policies regarding the construction and operation of satellite systems providing international communications services and authorizes three applications for the establishment of satellite systems.

This action is taken by the Commission in its efforts to set out and define its policies on the establishment of separate satellite systems providing international communication services and its decision on the five applications requesting authority to construct and operate international satellite systems.

This action sets out the Commission's policies and licensing requirements for authority to construct and operate an international satellite system and conditionally authorize three of the applications for authority to construct and launch international satellite systems.

EFFECTIVE DATE: September 3, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barbara Lynch, Common Carrier Bureau, (202) 632-7265.

SUPPLEMENTARY INFORMATION:

Report and Order

In the matter of establishment of satellite systems providing international communications; CC Docket No. 84-1299.

Adopted July 25, 1985.

Released September 3, 1985.

By the Commission: Commissioner Rivera issuing a separate statement; Commissioner Quello concurring and issuing a separate statement.

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II. Introduction

1. On January 4, 1985, we initiated an inquiry and rulemaking about the construction and operation of satellite systems providing international communication services.[1] The purpose of this proceeding was to solicit data and analyses about issues that have arisen in connection with the filing of a series of applications for authority to establish international communications satellite systems separate from INTELSAT and to obtain comments on the recent Executive branch decisions that such systems are "required in the national interest" subject to certain limitations.

2. Applications were filed by the Orion Satellite Corporation ("Orion"), File No. CSS-83-002-P, on March 11, 1983; by International Satellite, Inc. ("ISI"), File Nos. CSS-83-004-P(LA), I-P-C-83-073, on August 12, 1983; by RCA American Communication, Inc. ("RCA"), File No. I-T-C-84-085, on February 13, 1984; by Cygnus Satellite Corporation ("Cygnus"), File No. CSS-84-002-P(LA), on March 7, 1984; and by Pan American Satellite Corporation ("PanAmSat"), File No. CSS-84-004-P(LA), on May 31, 1984.[2] After the initiation of this proceeding, Financial Satellite Corporation ("FINANSAT"), File No. CSS-85-004-P(LA), filed an application on May 17, 1985.

[1] 50 FR 1570 (1985). Comments were originally due on February 14, 1985. By *Order*, 50 FR 4711 (1985), the Chief Common Carrier Bureau, extended the deadline for comments to April 1, 1985 and reply comments to June 5, 1985.

[2] Systematics General Corporation filed two applications to construct, launch, and operate satellite systems providing international services (File Nos. CSS-84-005-P(LA), CSS-84-008-P(LA)) on June 12, 1984. On July 27, 1984, Systematics filed a motion to withdraw both applications. Under delegated authority, the Commission dismissed the applications without prejudice by letter dated August 6, 1984 pursuant to § 1.748(a) of the Commission's Rules and Regulations, 47 CFR 1.748(a) (1984). In addition, Western Union Telegraph Co. requested, and was granted, a waiver to spend additional money to modify its previously authorized WESTAR VI-S domestic satellite (File No. 1144-DSS-P/LA-84) to allow six transponders to provide coverage of Central and South America. Letter from Chief, Domestic Facilities Division, Common Carrier Bureau, to Robert N. Green, Associate Counsel, Western Union Telegraph Company (July 20, 1984). It has an application on file, File Nos. 1114-DSS-P/LA-84; I-T-C-85-009, which is currently being considered by the Commission.

3. In our Notice of Inquiry and Proposed Rulemaking, we asked for comments on the potential public benefits of authorizing separate systems, and on the economic impact separate systems would have on INTELSAT and their effect on consumers, service providers and equipment manufacturers. In addition, we requested comments on legal, technical and other policy issues and on those U.S. international obligations that must be taken into account in considering the applications before us. Finally, we requested comments on the scope and applicability of the Executive branch service restrictions intended to avoid significant economic harm to INTELSAT.

III. Summary

4. In this proceeding, we establish regulatory policies to consider applications for satellite systems providing international communications services separate from INTELSAT. We find here that the authorization of these separate satellite systems according to the Executive branch restrictions will be in the public interest. In arriving at this determination, we consider, first, the potential public benefits alternative satellites may introduce in the international marketplace. In that section, we look at the current structure of both the domestic and international satellite markets and determine whether the competitive benefits claimed in the proposals for these systems would be a likely result of their entry. Next, we consider the scope, applicability, and enforceability of the Executive Branch restrictions designed to avoid causing significant economic harm to the INTELSAT system. In that area, we address the definition of public-switched network and whether the sale or long term lease restriction will effect the services the satellite operators will be able to offer. Third, we look at the concept of significant economic harm in Article XIV(d) of the INTELSAT Agreement and the potential impact of the entry of separate satellite systems into a limited segment of the international communications market on INTELSAT. Fourth, we consider a number of related issues which were raised in the record and could effect the authorization of these systems. Finally, we consider the necessary legal, technical, and financial qualifications to be a satellite systems operator.

5. We find that the separate satellite systems will provide substantial benefits to the users of international communications services without causing significant economic harm to INTELSAT. We also find it necessary to impose the Executive branch restrictions on the authorization of these systems in order to meet our international obligations under the INTELSAT Agreement. As to the scope and applicability of the Executive Branch restrictions, we find that: (1) No communications provided over the separate systems may interconnect with the public-switched network either directly or indirectly; (2) there will be no minimum unit of capacity; (3) there will be a one-year minimum lease period; (4) separate systems operators are not to operate as common carriers; (5) the "no-interconnect" restrictions and one-year long-term lease requirement will apply to all levels of users of separate system facilities; (6) common carriers and enhanced service providers may resell separate satellite capacity consistent with the restrictions; and (7) the use of separate systems by United States carriers would require authorization under Section 214 of the Communications Act of 1934. We also find that because of inherent detectability and disincentives and our commitment to take forceful remedial action, the restictions would be enforceable. In addition, we conclude that the entry of these systems in a limited area of the international market will not cause significant economic harm to INTELSAT. INTELSAT will remain the exclusive provider of satellite facilities for public-switched message services and already has a start in providing the services which the separate satellite systems would compete. INTELSAT may lose a small part of its business in this market to new entrants, but we conclude that growing demand for satellite services will more than compensate for a smaller market share. We also conclude that none of the related issues raised will preclude or delay the authorization of these systems. Finally, in this order, we set out the specific details of the legal, financial, and téchnical qualifications necessary to obtain authority to construct and operate separate satellite systems.

III. Background

A. The Applications

6. Orion's proposed system would consist of two in-orbit satellites and one ground spare, with each satellite having 22 transponders providing 36 MHz of useable bandwidth per tansponder. The satellites' signals would cover the eastern portion of North America and the western portion of Europe and would transmit and receive in the 11/14 GHz frequency bands. The proposed satellites would be designed to provide video, data, and audio services using digital and analog modulation techniques. The video services would consist of both full-frame, full-speed video for television programming, and compressed, teleconferencing capabilities. Each satellite's capacity would exceed the equivalent of 20,000 voice-grade half-circuits, 22 full rate video signals, or 1.4 Gops of data signals. Orion states in its application that it would not operate as a common carrier because it would sell or lease transponder capacity on a non-tariffed basis to users on either side of the Atlantic.

7. ISI's proposed system would consist of two in-orbit satellites and one ground spare, with each satellite having 32 receive and transmit channels (over 32 transponders) providing 54 MHz of useable bandwidth per channel. The satellites' signals would cover the contiguous 48 United States (CONUS) and the western portion of Europe as far as the Adriatic Sea. The proposed system would tansmit and receive in the 11–12/14 GHz frequently bands. The satellites would be designed to provide video, audio, and data services using both digital and analog modulation techniques. The video services would consist of both high-speed and slow-scan video teleconferencing and, along with the audio services, would encompass every kind of television and radio programming currently available in the United States and Europe. The data services would include TWX/telex, newswires, facsimile, and electronic mail. ISI states in its application that it would use a portion of its capacity to provide services on a tariffed common carrier basis. ISI would sell or lease the remainder of its capacity in the same manner as that proposed by Orion.

8. Cygnus' proposed system would consist of two in-orbit satellites and one ground spare, with each satellite having 16 transponders providing 54 MHz of useable bandwidth per tansponder. The satellites' signals would cover CONUS and the western portion of Europe. The system also would have a spot beam which would provide service to Puerto Rico, the U.S. VIrgin Islands, the Caribbean Basin, and portions of Central America. The system would operate in the 11–12/14 GHz frequency bands and be able to operate with a variety of earth stations including the inexpensive "micro" earth stations (e.g., roof-top antennas) as well as the larger "mini" and "main" earth stations. The satellites would be designed to provide

digital communications services including video teleconferencing, high-speed facsimile, computer-to-computer communications, remote printing, teletext, videotext, and data collection and distribution services. Cygnus states in its application that it would offer all of its transmission capacity on a non-common carrier basis through long-term leases or transponder sales.

9. PanAmSat's proposed system would consist of one operational satellite and one in-orbit spare. Twelve of the satellite's 36 transponders would be used for international traffic between North and South America. The remaining 24 would be used for domestic service in South America. The twelve international transponders would have 72 MHz of useable bandwidth per transponder and would be used to provide links between New York, Miami, the South American continent, and parts of Central America, the Caribbean, and the Iberian pennisula. The system would uplink at 6.4–6.9 GHz and downlink at 10.7–11.2 HGz. The satellite would be designed to provide video and audio distribution services, specifically, distribution of television and radio programs from entities such as television networks, motion picture studios, cable systems, and news and wire services. PanAmSat proposes in its application to offer its transponder capacity on a non-common carrier basis for sale or long-term lease to both U.S. and foreign customers.

10. RCA's proposed system would consist of six transponders on its previously authorized SATCOM VI domestic satellite.[3] The satellite would operate in the 4/6 GHz frequency band and have 36 MHz of useable bandwidth per transponder capable of covering CONUS and portions of Europe and Africa. The six transponders would be available for either domestic or international service because the satellite would be equipped with transfer components capable of switching the transponders' service areas to accommodate either service. The transponders would be used for video distribution, teleconferencing, private leased voice, and low-speed and medium-speed data communications. RCA states in its application that it would provide its services on a tariffed, common carrier basis, but it also states it would make whole transponders available for customers with high capacity needs.

11. FINANSAT's proposed system would consist of two in-orbit satellites and one ground spare. One satellite would operate in the Atlantic Ocean Region and the other in the Pacific Ocean Region, with each satellite having 24 transponders providing 36 MHz of useable bandwidth per transponder. FINANSAT proposes to link internationally its networks between the Atlantic and Pacific regions and provide full dual-region satellite system interconnectivity. FINANSAT's Atlantic satellite will have separate beam coverage of the contiguous United States (CONUS), Western Europe and South America, and FINANSAT's Pacific satellite will have three separate beams covering the Western United States, the Far East and Australia. Both satellites will operate in uplink frequencies of 5.925 to 6.425 GHz and downlink frequencies of 3.7 to 4.2 GHz. FINANSAT proposes to offer its transponders for sale or long-term lease to major financial and other business institutions exclusively on a private, non-common carrier basis. FINANSAT's primary service capability will be a point-to-point data distribution and interactive data transmission through small, low-cost earth stations to be located on customer premises.

B. The Presidential Determination and Executive Branch White Paper

12. On April 6, 1983, shortly after the Orion application was filed, the Department of State and the Department of Commerce sent a joint letter to the Commission requesting that the Commission refrain from taking any final action on the application until such time as an Executive branch group could review and study the application's impact on the national interest and foreign policy of the United States.[4] On August 26, 1983, following the filing of ISI's application, the Department of Commerce sent a letter to the Commission which again requested that the Commission not take any final action on the applications.[5] The letter stated that the filing of a second application for international satellite services raised new considerations which would have to be included in the Executive branch analysis.

13. On November 28, 1984, President Reagan signed a Presidential determination (PD No. 85–2) that alternative satellite systems were "required in the national interest" within the meaning of Sections 102(d) and 201(a) of the Communications Satellite Act. The President's determination states that the United States shall consult with INTELSAT regarding such systems "as are authorized by the Federal Communications Commission." On the same date, at the direction of the President, the Department of State and Department of Commerce jointly informed the Commission of the President's decision and the criteria necessary to ensure United States fulfillment of its international obligations as well as furtherance of its telecommunications and foreign policy interests.[6] The joint letter states that two restrictions must be imposed on the alternative systems prior to final authorization by the Commission:

(1) each system is to be restricted to providing services through the sale or long-term lease of transponders or space segment capacity for communications not interconnected with public-switched message networks (except for emergency restoration service); and,

(2) one or more foreign authorities are to authorize use of each system and enter into consultation procedures with the United States Party under Article XIV(d) of the Intelsat Agreement to ensure technical compatibility and to avoid significant economic harm.

14. In addition, two letters were exchanged between Secretary of Commerce Malcolm Baldridge and Secretary of State George Schultz regarding two related issues to the President's determination on new international satellite systems.[7] The letters stated that the Executive branch should clarify its positions on: (1) INTELSAT's ability to price flexible when confronted with actual or potential competition, and (2) direct cost-based access to the INTELSAT space segment by users and carriers in addition to Comsat.

15. On February 8, 1985, the Department of State and the Department of Commerce jointly submitted a paper to the Commission stating the policy grounds for the President's determination and reviewing related

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[3] RCA American Communications, Inc., Mimeo No. 33200, released August 4, 1983.

[4] Letter from David J. Markey, Assistant Secretary for Communications and Information, Department of Commerce and Diana Lady Dougan, Coordinator, International Communications and Information Policy, Department of State to Mark S. Fowler, Chairman, Federal Communications Commission (April 6, 1983).

[5] Letter from David J. Markey, Assistant Secretary for Communications and Information, Department of Commerce to Mark S. Fowler, Chairman, Federal Communications Commission (August 26, 1983).

[6] Letter from George P. Shultz, Secretary of State, and Malcolm Baldridge, Secretary of Commerce, to Mark S. Fowler, Chairman, Federal Communications Commission (November 28, 1984).

[7] *See* letter from Malcolm Baldridge, Secretary of Commerce, to George P. Schultz, Secretary of State (November 30, 1984); and letter from George P. Schultz, Secretary of State, to Malcolm Baldridge, Secretary of Commerce (December 20, 1984).

issues. The paper, entitled "A White Paper on New International Satellite Systems," (hereinafter referred to as the "White Paper") was completed by the Senior Interagency Group on International Communication and Information Policy. The White Paper was placed in the record for this proceeding.[8]

16. The White Paper reviews current U.S. telecommunications policies and international obligations to determine whether and under what conditions authorizing satellite systems and services in addition to the INTELSAT system would be: (1) Consistent with prevailing U.S. law, practice, and international treaty obligations; (2) compatible with sound foreign policy and telecommunications policy goals; and (3) in the U.S. national interest. The White Paper generally concludes that:

> It is technically feasible, economically desirable, and in the national interest to allow new entry by U.S. firms into the international satellite field. Customers should be afforded both the new service options and the benefits of competition among customized service providers that new entry promises. This can be accomplished, moreover, while maintaining the technical integrity of the INTELSAT global system and avoiding significant economic harm to that system. U.S. foreign policy, and international communications and information policy, require a continued strong national commitment to INTELSAT as "a single global commerical telecommunications satellite system as part of an improved global telecommunications network." But our national commitment to INTELSAT and other important goals can be accommodated, provided that new international satellite systems and services are authorized and regulated along the lines discussed in this report.

17. The White Paper specifically concludes that additional satellite systems should be authorized by the Commission but limited to providing only "customized" services as defined in the White Paper. In addition, it concludes that the Commission should be reexamine the issue of allowing U.S. carriers and end users costs-based access to INTELSAT space segment for customized services. Finally, it emphasizes that the United States should and will contined to maintain its full commitment to INTELSAT.

18. In arriving at these conclusions, the Senior Interagency group looked at several factors of the international telecommunications industry. The group noted the tremendous growth in the telecommunications industry, the diversity of services available in the industry, the industry's contribution to promoting international trade in general, and its specific contribution to U.S. trade. The White Paper states that there currently is competition between the submarine cable facilities and satellite facilities, which the Senior Interagency group believes will increase with the introduciton of fiber optic cables and with a possible change in the "balanced loading" rules. It also states that there are planned regional satellite systems for the Middle East and Africa and certain European domestic satellite systems which would have "footprints" that would cover much of the eastern half of the United States and Canada and, thus, would be capable of providing transatlantic service.

19. The White Paper discusses U.S. foreign policy regarding international communications satellite systems,[9] reviews the background of INTELSAT and discusses the U.S. role as the primary force behind the development of that organization. It states that providing communication service to developing countries was a significant goal of the establishment of a global system and that, from the outset, INTELSAT has charged uniform rates for identical services provided on a global basis. The White Paper recognizes that some countries are concerned that the introduction of separate systems in the North Atlantic would lead to an increase in worldwide rates, but concludes that placing conditions restricting the operation of separate systems would avoid significant economic harm to INTELSAT. Thus, if the separate systems only are authorized under regulatory terms and conditions that restrict them to the "customized service" market, the White Paper concludes that an adverse impact on INTELSAT is unlikely. Since the new satellite systems would not be able to provide public-switched services, INTELSAT would retain its "commercial core" of revenues and would not be harmed. The White Paper further concludes that there would be little possibility of adverse economic harm to developing nations which are concerned that the entrance of satellite systems would divert substantial amounts of traffic from profitable routes and result in increases in communication costs. It reaches this conclusion because: (1) The entrants would be unable to compete with a majority of INTELSAT's service offerings; (2) even with significant cross-elasticities between the conventional and customized markets, both markets are growing rapidly and revenue siphoning would not occur; and (3) INTELSAT is in a good position to compete for the customized services market.

20. As to the future role of the United States in INTELSAT, the White Paper states that the United States has been and will continue to be a strong leader and contributor to the INTELSAT system. It emphasizes the need to respond to changing needs in international communications and states that the Satellite Act and the INTELSAT charter permit such response. It concludes that the Executive branch approach would balance the need to avoid significant economic harm to INTELSAT with recognition and movement toward satisfying changing international communications needs.

21. Finally, the White Paper also finds that the introduction of the satellite systems will not adversely affect the procurement of satellite equipment from U.S.-based companies. Rather, it concludes that there should be positive trade effects because of the increase in the number of satellites. It states that the satellite equipment industry has been becoming more competitive each year with more U.S. and foreign owned companies entering the market and that this trend will continue whether or not these new systems enter the international communications market.

V. Comments

22. We received 32 comments and 18 reply comments in response to our Notice. In addition, we received a large number of informal comments which have been made part of the record in this proceeding, including letters of concern from INTELSAT signatories, members of Congress and other parties. We will state the basic position of these parties and, as necessary, further describe their positions in our discussion of the issues in this proceeding.

A. Formal Comments

23. Five applicants, Orion, ISI, Cygnus, RCA Americom and PanAmSat, filed comments supporting the authorization of the separate satellite systems, subject to the restrictions set forth by the Executive branch. Four of the applicants argue that the Commission is bound by

[8] The addition of the White Paper to CC Docket No. 84-1299 was placed on public notice. Report No. I-4032, on February 11, 1985.

[9] Among the foreign policy considerations addressed in the White Paper is the effect of the authorization of these systems on the use and desirability of the Intersputnik satellite system. The White Paper states that, while increasing use of Intersputnik and Soviet influence in international communications would continue to be an area of concern under any circumstances, increased Soviet influence would be an unlikely result of a U.S. decision to authorize separate systems.

the Presidential determination, does not need to re-examine the policy issues already decided by the Executive branch, and should immediately proceed to act on the applications to determine if they meet the requirements of the Communications Act of 1934.

24. The following common carriers and/or domestic resellers filed comments: American Telephone and Telegraph Co. (AT&T); Communications Satellite Corporation (Comsat); International Relay, Inc. (IRI); Hawaiian Telephone Company (HTC); ITT World Communications, Inc. (ITT); Satellite Business Systems (SBS); Equatorial Communications Services (Equatorial); American Satellite Co. (ASC); World Communications Inc. (Wold); Fedex International Transmission Corp. (Fedex); MCI International, Inc. (MCII); and Ethereum Scientific Corp. (Ethereum).

25. SBS, ASC, Wold, and Ethereum support the authorization of the separate satellite systems under the limitations set forth by the Executive branch. AT&T, however, contends that the restrictions would be ineffective and that the satellite systems should be authorized without any limitations, thus allowing open competition with INTELSAT. Comsat maintains that any separate system the Commission may authorize must be restricted according to the limitations articulated by the Executive branch, but the Commission also must impose additional restrictions to protect INTELSAT. IRI joins Comsat in calling for additional restrictions to protect INTELSAT. ITT, Equatorial, MCII, and Fedex take no position on the authorization of the separate satellite systems but argue for carrier direct cost-leased access to INTELSAT.

26. In addition to the carriers, Turner Broadcasting System, Inc. (TBS), and ESPN, Inc. (ESPN), both of which provide video programming to cable systems and own and operate domestic earth stations, filed comments supporting the authorization of the satellite systems. Home Box Office, Inc. (HBO), Gannett Co., Inc. (Gannett), and American Broadcasting Companies, Inc. (ABC), CBS, Inc. (CBS), and National Broadcasting Company, Inc. (NBC), jointly, filed comments supporting separate systems as an alternative source of facilities for international television transmission and other services.

27. Two U.S. government agencies filed comments supporting the authorization of separate systems. Three bureaus of the Federal Trade Commisson, the Bureaus of Competition of Economics, and of Consumer Protection, advocate authorization of the satellite systems without restrictions. The Department of Justice supports the authorization of separate systems consistent with the public interest standard of the Communications Act and in accordance with the Presidential determination.

28. Hughes Aircraft Co. (Hughes), the largest manufacturer of commercial communications satellites in the world, supplied information on the revenues and total contract values of the commercial communications market. Hughes does not take a position on the authorization of separate satellite systems stating that its principal interest lies in promoting the use of satellite technologies in whatever manner they can serve the public interest. Hughes concludes that the proposed separate systems will result in some lessening of technological stimulation, because the satellites will be constrained to off-the-shelf technology; and, INTELSAT itself will have less ability to invest in new technology if its traffic is diverted to the proposed systems.

29. Comments were also filed by the Ad Hoc Telecommunications Users Committee (Ad Hoc Committee), the Computer and Business Equipment Manufacturers Association (CBEMA), the Central Committee on Telecommunications of the American Petroleum Institute (API), and jointly by the National Black Media Coalition, TransAfrica, and the American Committee on Africa (collectively, African Interest Organizations or AIOs). The Ad Hoc Committee, CBEMA, and API represent end users of international transmission services and state their support for the separate satellite systems. The AIOs, on the other hand, contend that the separate system applications should be denied because the entry of these systems would require African states to pay higher costs for telecommunications services. One foreign entity, Technova, Inc. (Technova) a Japanese technical and economic research organization, submitted comments which supported the authorization of the separate satellite systems.

30. Finally, several individual parties submitted comments. Former Ambassador and Commissioner Abbott Washburn states that he believes that the authorization of these systems would not be in the public interest. However, should the Commission decide to proceed with these systems, Amb. Washburn states that it must take every precaution to ensure INTELSAT will be protected. Walter Hinchman Associates, Inc., communications consultants, filed economic studies, originally commissioned by INTELSAT, which defined significant economic harm and found that the alternative systems would cause significant economic harm to INTELSAT. Arthur L. Levine, a professor of Public Administration at Baruch College in New York, states that the Commission should consider a number of issues most carefully in a broad forum, in particular the impact of authorizing private systems on the telecommunications needs of developing countries, before authorization of such systems. Jefferson C. Glassie, a student at the National Law Center, George Washington University submitted his publication entitled "Analysis of the Legal Authority for Establishment of Private International Communications Satellite Systems," which concludes that the Commission has authority to authorize private satellite systems, but, if the Commission decides to proceed with the systems, it should do so only under a structured plan which ensures that the INTELSAT system would not be harmed.

31. The Commission received reply comments from: Amb. Abbott Washburn; [10] ABC, CBS, NBC; Ad Hoc Committee; AT&T; Comsat; Equatorial; Fedex; Financial Satellite Corporation; Home Box Office; IRI; ISI; National Black Media Coalition; National Telecommunications and Information Administration (NTIA); Orin; PanAmSat; RCA; Systematics General Corporation; and United Satellite Action. Those parties filing reply comments that previously filed initial comments in this proceeding generally reiterate their basic positions in addition to responding to certain specific

[10] Abbott Washburn also filed a Petition for Leave to File Additional Comments on July 11, 1985. In the petition, Amb. Washburn requests that the Commission accept his additional comments addressing the Reply Comments of IRI and states that his comments present no new issues or evidence and therefore will cause on prejudice to any other interested party. In the additional comments, Amb. Washburn wishes to associate himself with the legal and legislative history analysis put forth in IRI's Appendix to its Reply Comments which argues that ultimately only Congress has the authority to allow private, commercial satellite systems. Amb. Washburn also encloses a summary of IRI's Appendix. In response to Amb. Washburn's petition, ISI filed an Opposition to Petition for Leave to File Additional Comments on July 22, 1985. We agree with ISI's argument that Abbott Washburn fails to show with particularity the facts and circumstances which warrant accepting his additional comments under § 1.3 of the Commission's rules and regulations, 47 CFR 1.3 (1984). Given the extension of time granted in this docket and the facts that his comments do not raise new issues or evidence, and that his ability to comment in this proceeding was not compromised, we will not grant Amb. Washburn's petition. Moreover, granting his petition would require an opportunity for other parties to respond which would add unnecessary delay to this proceeding.

comments filed by other parties. Among those parties which filed replies but did not file initial comments, Financial Satellite Corporation states that it agreed with many of the initial comments filed in support of separate satellite systems and mentioned further that it is inappropriate to conclude that the implementation of its proposed service would cause significant economic harm to INTELSAT. Systematics General Corporation (SGC), which supports the President's determination that separate satellite systems are "required in the national interest," urges the Commission to recognize the legal nexus between domestic and international satellite authorization proceedings. SGC also requests that the Commission, in preparing for WARC–ORB (1) vigilantly protect U.S. national rights to international orbital locations. United Satellite Action (United) states that the approval of private international satellite systems would strengthen the market for communications satellite equipment. United also argues that allowing direct access to the INTELSAT space segment would improve INTELSAT's competitive posture in the international communications marketplace. Finally, NTIA strongly supports the licensing of separate systems. NTIA argues that public benefits would accrue to users of specialized services if separate systems are licensed and enter the market. It further contends that the proposed Executive branch service restrictions are enforceable and also are both necessary and sufficient to protect INTELSAT.

B. Informal Comments

32. Several members of Congress submitted letters and materials to the Commission which were included in the record for this proceeding. Letters and materials were submitted by Representatives Jim Bates, Tony Coelho, John D. Dingell, Julian C. Dixon, Dan Fuqua, Steny H. Hoyer, Sander M. Levin, Buddy MacKay, Daniel A. Mica and the Committee on Foreign Affairs, Al Swift, and Alan Wheat jointly with the Congressional Black Caucus; and by Senators Max Baucus, Alan Cranston, Thomas F. Eagleton, John Glenn, Barry Goldwater, Spark M. Matsunaga, and Claiborne Pell. Materials enclosed with the letters primarily consist of copies of INTELSAT internal documents addressing the issue of separate satellite systems. Although Comsat already has provided these documents to the Commission for Commission use in oversight of Comsat's involvement in INTELSAT, and although most of the documents already are available to the public at the Commission, we have placed them in the record. However, some of the documents do not carry the normal INTELSAT identification markings that appear on those provided to U.S. government agencies. Thus, to the extent there may be inconsistencies with the official documents that we receive, we are relying on the official documents.

33. In addition, we have received a series of letters from signatories to INTELSAT and from a few foreign embassies stating their concern about the possible impact separate systems might have on INTELSAT. These letters also have been included in the record.[11] Generally, they claim that the competing systems propose to concentrate their services in the high traffic routes in the North Atlantic basin and, in effect, receive high earnings while meeting the requirements of a small number of large users. For INTELSAT, it is argued, this would result in the loss of large traffic trunks and would significantly reduce the revenues available to meet its capital investment requirements and hold down rates throughout the world. Such a change in U.S. policy would negatively impact all users of INTELSAT, in particular, the people in small and developing countries. Also expressed is the concern that United States approval of any of the pending applications would lead to a proliferation of other U.S. satellite systems intending to carry public international telecommunications traffic in direct competition with INTELSAT which, in turn, would encourage other INTELSAT members to make similar authorizations.

34. Finally, we have received correspondences from other interested parties. Meheroo Jussawalla, a Research Associate/Economist with the Center for Cultural and Technical Interchange Between East and West, Inc., states that the introduction of private international satellite systems to operate in the Atlantic region may threaten cost-effective service to developing nations in the Asia-Pacific region, particularly with respect to their thin route traffic.[12] Ms. Jussawalla adds that INTELSAT will receive a sufficient competitive challenge from undersea cables. Harrison H. Schmitt, a consultant specializing in the commercialization of space and a former U.S. Senator, extolled INTELSAT and warns against adopting a policy which does not adequately protect the vital foreign affairs, national defense and commercial interests served by INTELSAT.[13] Finally, Joseph M. Trevino, National Executive Director of the League of United Latin American Citizens, suggests that any separate satellite system which is licensed must be limited in scope, cause no economic harm to INTELSAT and complement INTELSAT.[14] Mr. Trevino also suggests that the conditions and limitations placed on such a system be clearly defined and enforceable.

VI. Discussion

35. The applications that have been filed with the Commission pose a fundamental policy question to the United States: should the United States continue to rely almost exclusively on INTELSAT for its future international satellite communications needs or should it seek alternatives to satisfy some of those needs if it can avoid significant economic harm to INTELSAT. This question requires consideration of foreign policy, international trade and national security as well as telecommunications matters. As described above, the President has reviewed the proposals under the national interest standard of the Communications Satellite Act of 1962 and has made the generic policy determination that separate satellite systems are required in the national interest subject to certain limitations. The task before the Commission is to establish a policy for regulatory consideration of the applications and to determine whether any of the proposed systems should be licensed under the public interest standard of the Communications Act of 1934 consistent with the Presidential determination.[15]

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[11] We also have received letters from signatories in response to specific separate system applications. These letters have been placed in the appropriate application file.

[12] Letter from Meheroo Jussawalla to William J. Tricarico, Secretary, Federal Communications Commission (received February 13, 1985).

[13] Letter from Harrison H. Schmitt to Mark S. Fowler, Chairman, Federal Communications Commission (received February 11, 1985).

[14] Letter from Joseph M. Trevino to Mark S. Fowler, Chairman, Federal Communications Commission (received May 24, 1985).

[15] We find no basis for IRI's contention that Congress intended any systems authorized pursuant to Section 102(d) of the Communication Satellite Act of 1962 to be government-owned satellite systems. In an appendix to its Reply Comments, IRI claims that the legislative history of the Satellite Act demonstrates that Congress did not delegate power to the Executive Branch of the Commission to license private, commercial satellite systems but that Congress contemplated only the authorization of government. Owned satellite systems under the national interest standard of sections 102(d) and 201(a)(6) of the Satellite Act. We do not find this to be the case but conclude that we have broad authority under the Communications Act of 1934 to

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36. After consideration of the record in this proceeding and the records established in response to the applications, we conclude that the establishment of separate satellite systems will result in substantial benefits to users of international satellite communications services. Separate systems will provide users with special communications needs with currently unavailable means of packaging and transmitting information over satellite networks. In addition, separate systems will stimulate technological innovation and service development, improve network efficiencies, reduce user-costs, create new business and trade opportunities. We further conclude that we can authorize separate systems subject to the Presidential limitations as further developed in this order with the reasonable assurance that INTELSAT will not incur significant economic harm. In separate orders adopted today, we are conditionally granting three of the applications that have been filed with the Commission and issuing construction permits. Each authorization is conditioned on one or more foreign authorities authorizing the use of the proposed system and entering into consultation procedures with the United States under Article XIV(d) of the INTELSAT Agreement to ensure technical compatibility and to avoid significant economic harm. We will not issue licenses permitting the proposed systems to be launched or begin operating until we have been informed by the Department of State that the United States has fulfilled its international obligations. With respect to the other two applications, we have found that the proposals do not comply with certain provisions of the international Radio Regulations, and we are therefore giving the applicants thirty days to modify their applications to bring them into compliance. Upon satisfactory modifications, we will issue construction permits with the same condition.

37. In reaching these decisions, we emphasize, as has the Executive branch on several occasions, the continuing commitment of the United States to the INTELSAT Agreement and the obligations it entails. The United States is not acting unilaterally nor without consideration of the concerns of other nations. In all respects, the United States will conduct consultations consistent with the INTELSAT Agreement. The United States views its commitment to INTELSAT as an integral part of its desire to continue development of an improved global telecommunications network. This policy is embodied in the Communications Satellite Act of 1962. While we view INTELSAT as an essential core for the provision of international public telecommunications services to all areas of the world, INTELSAT now operates in a dynamic environment driven by changing technology, competitive economics and diversifying user needs. We believe that new approaches in the provision of satellite services will give users increasing diversity and flexibility, and will be consistent with the mandate of the 1962 Satellite Act by reflecting the benefits of satellite technology "in both quality of services and charges for such services." 47 U.S.C. 702(b).

38. We also emphasize several additional points. First, the United States is not the first INTELSAT member to consider the use of non-INTELSAT space segment to meet its international public telecommunications needs. Systems separate from INTELSAT have already been established by other nations, and new ones are planned. A growing number of nations, developing as well as developed, are using, or are considering use of, separate systems to complement INTELSAT in providing their international telecommunications needs. INTELSAT has favorably coordinated several systems under Article XIV(d) finding no significant economic harm. It has yet to reach an unfavorable recommendation for any proposed system. From this record, it is clear that the INTELSAT charter is flexible in recognizing the diverse needs of nations and the challenges and opportunities offered by evolving telecommunications technology. Thus, while the proposals now being considered by the United States may appear from the perspective of other countries to be distinguishable from other non-INTELSAT endeavors that they have undertaken or are planning, the question before INTELSAT in the coordination process is not whether the proposed systems are regional in character or are broader in scope.[16] As with other systems which have been coordinated, the question before INTELSAT is avoidance of significant economic harm and assurance of technical compatibility.

39. Second, as reflected by the President's policy determination, the Executive branch White Paper and our decision today, the United States is taking extraordinary measures to avoid economic harm to INTELSAT by placing service restrictions on the new systems. Our imposition of these restrictions is voluntary. There is no obligation, either express or implied, in the INTELSAT Agreement or elsewhere to impose such restrictions. To our knowledge, this action is unprecedented. We take it in order to assure the future economic viability of INTELSAT and its ability to provide services on a global basis. As required by the INTELSAT Agreement, the United States will "furnish all relevant information to and . . . consult with the Assembly of Parties through the Board of Governors" to show why it believes that the imposition of service restrictions on the proposed systems will avoid significant economic harm.[17]

A. General Policy Considerations

1. Current U.S. Policy

40. The Communications Satellite Act of 1962, 47 U.S.C. 701–744 (1984), embodies the United States policy goals on the establishment of international satellite systems. The Act calls for the establishment of a commercial communications satellite system which would meet public needs and national objectives, serve the communication needs of the United States and other countries, and contribute to world peace and understanding by the development of a system through cooperation with other countries. 47 U.S.C. 701(a). To effectuate these objectives, the Act states that the system to be established should: (1) provide communication services to the economically less developed countries as well as the highly developed countries; (2) promote the use of the most efficient and advanced technology available; and (3)

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authorize private commercial international satellite systems based on a Presidential determination that such satellite systems are "required in the national interest."

[16] INTELSAT has suggested that the authorization of "intercontinental" or "transoceanic" separate satellite systems as such would threaten significant economic harm to INTELSAT. However, nowhere in the language of the INTELSAT Agreement are such systems specified to be universally incompatible with INTELSAT. In fact, the Agreement plainly states that all facilities proposed to provide public international satellite services separate from INTELSAT should be coordinated on similar terms—i.e., based upon whether the facility is technically incompatible with INTELSAT or threatens it with significant economic harm—regardless of whether a facility would provide "regional" or transoceanic/international services. *See* letter from Santiago Astrain, Director General, INTELSAT, to Kenneth W. Dam, Deputy Secretary of State, U.S. Department of State (April 5, 1983) (included as Attachment No. 2 to BG–55–50E, W/6/83). *See also* Meeting of Signatories Document, Resolution of the INTELSAT Meeting of Signatories MS–13–3E, B/4/83, p. 7 (April 21, 1983).

[17] INTELSAT Intergovernmental Agreement, August 20, 1971, 23 U.S.T. 3813, TIAS 7532 (1973).

reflect the efficiencies of the system in its rates and services. 47 U.S.C. 701(b).

41. In the White Paper, the Executive branch sets forth further U.S. international communications and information goals which are to: promote the free flow of information throughout the world; retain U.S. leadership and economical and technological strength in the communications market; expand U.S. involvement in international trade; foster the availability of efficient, cost-effective, and innovative services; fulfill U.S. obligations under the INTELSAT Agreements and support the INTELSAT organization as a key element in providing all countires of the world access to global communications services; and advocate and adopt international communications policies which foster competition and move toward increasing reliance on market forces, while accounting for differing national policies.

42. Although the Satellite Act provides for the establishment of a global commercial satellite system, it clearly does not require or contemplate a monopoly satellite system.[18] The Act specifically provides for the creation of additional satellite systems if "required to meet unique governmental needs or if otherwise required in the national interest." 47 U.S.C. 701(d). The President has made the threshold determination that additional satellite systems are "required in the national interest" pursuant to authority under section 102(d) and 201(a) of the Act.

2. General Benefits of Competition

43. Introduction of competition into a market has been generally deemed to be a significant and positive step that is beneficial to the public. In the White Paper, the Executive branch states that "advocating and adopting international communications policies which stress reliance on free enterprise, competition, and free trade" are policies necessary to further the U.S. goal of promotion of competition and reliance on market forces.[19] Competition benefits the public interest when it maintains or improves a good service and enhances the economical and efficient provision of communications services.[20] The hallmark of a competitive market is the maximization of customer choice which can be effectuated by allowing multiple entrants (i.e., adopting an open entry policy with little or no entry barriers).[21] With the power of choice, customers are better able to influence the types of services available simply by frequenting one service provider over another. This market pressure not only encourages service providers to be responsive to customer needs, but also encourages them to lower the price of their services in order to obtain a larger share of the market and, therefore, to maximize profits and to offer service in the most efficient and economical manner. The end result of this process is reduced rates and service more responsive to customer needs.

44. The domestic satellite industry exemplifies all the benefits of a competitive market. The Commission initially adopted an "open skies" policy to facilitate the entry of qualified parties in this martket.[22] Low entry barriers have resulted in a dynamically growing domestic satellite industry. This industry currently includes six satellite carriers, each with several satellites in operation, and numerous resellers and service providers.[23] The Commission has also eliminated the Section 214 authorization and tariff filing requirements for domestic satellite carriers through its *Competitive Carrier Rulemaking*.[24] The pressures of the marketplace and the existence of unregulated resale have encouraged efficient innovative service offerings and cost based prices in this industry, as many of the commenters note.

45. The Commission's *Transponder Sales* decision allows a customer or end-user several options with respect to obtaining transponder capacity.[25] Users may lease capacity from a carrier, buy capacity in bulk for resale, lease or purchase entire transponders or parts thereof on a long term basis, obtain a percentage ownership interest, or choose to buy capacity from a reseller. By studying these options and selecting the best one for the specified business, the customer can achieve greater operational flexibility, fix costs for transmission, and configure the capacity or transponder to meet the business's particular needs. In addition to the benefits of transponder ownership, a customer has a choice of customer premise, shared use or common use general purpose earth stations and a variety of transmit-receive equipment. Finally, there have been significant advances in the design and operation of the spacecraft and ground equipment which have increased these satellites' use and efficiency and allowed for the use of smaller, less expensive earth stations.

46. We have taken a number of measures to introduce competition in the provision of international services. Our relaxation of entry barriers for new international carriers has resulted in an increasing number of new carriers providing a variety of new services.[26] These new carriers include Western Union,[27] entering the international record market under the terms of the Record Carrier Competition Act of 1981, 47 U.S.C. 222, and MCI, GTE Sprint and SBS competing with AT&T for international telephone service.[28] In the

[18] INTELSAT recognizes that it is not established nor was intended as a monopoly in international communications. *See* INTELSAT Document, entitled "A Critical Review of Responses in the U.S. FCC Proceeding on Separate Satellite Systems," BG-63-35E, p. 3 (May 31, 1985). *See also*, Transborder Satellite Video Services, 88 FCC 2d 258, 274 (1981).

[19] *See* White Paper at 5 and 10.

[20] *See* FCC v. RCA, 346 U.S. 86, 96 (1952); See also, All American Cables and Radio, Inc. v. FCC, 736 F.2d 752, 757 (1984); Telocator Network of America v. FCC, 691 F.2d 525, 544 (1982).

[21] *See* All America Cables and Radio, Inc., 736 F.2d at 758.

[22] *See* Domestic Communication Satellite Facilities, 22 FCC 2d 86 (1970) (Domsat I); 35 FCC 2d 844 (1972), *recon. in part*, 38 FCC 2d 665 (1972).

[23] *See* Report and Order, CC Docket No. 81-704 (released August 16, 1983).

[24] Fifth Report and Order, CC Docket No. 79-252, 98 FCC 2d 1191 (1985).

[25] Domestic Fixed-Satellite Transponder Sales, 90 FCC 2d 1251 (1982), *aff'd sub nom.*, Wold Communications, Inc. v. FCC, 735 F.2d 1465 (1984).

[26] *See* International Relay, Inc., 77 FCC 2d 819, 824 (1980), *on reconsideration*, 82 FCC 2d 41 (1980); Satellite Business Systems, 91 FCC 2d 941, 946 (1982); Western Union Telegraph Company, 91 FCC 2d 1051, 1061-3 (1982); GTE Telenet Communications Corporation, Mimeo No. 2765 (released March 15, 1982) and Tymnet, Inc., Mimeo No. 3223 (released April 8, 1982), *aff'd on applicaiton for review*, Computer II International, FCC No. 82-377 (released August 25, 1982); FTC Communications, 92 FCC 2d 463, 468-9 (1982); Argo Communications Corporation, Mimeo No. 1723 (released January 10, 1984); MT Systems Inc., Mimeo No. 5766 (released August 3, 1984); Telecom Plus International, Mimeo No. 5787 (released August 3, 1984); NetExpress Communications, Inc., Mimeo No. 1391 (released December 17, 1984); IsaComm, Inc., Mimeo No. 1342 (released December 3, 1984) and Teltec Saving Communications, Inc., Mimeo No. 1653 (released January 7, 1985).

[27] *See* Western Union, FCC 82-378, Mimeo No. 31938 (released August 12, 1982).

[28] *See* Satellite Business Systems (SBS service to Mexico), Mimeo No. 2816 (released February 26, 1985); GTE Sprint Communications Corporation (GTE service to the United Kingdom) Mimeo No. 2548 (released February 14, 1985); Satellite Business Systems (SBS service to Switzerland) Mimeo No. 2463 (released February 11, 1985); MCI Telecommunications Corp. (MCI service to Greece) Mimeo No. 2461 (released February 8, 1985; MCI Telecommunications Corp. (MCI service to Brazil) Mimeo No. 2432 (released February 7, 1985); MCI Telecommunications Corp. (MCI service to the United Kingdom) Mimeo No. 2081 (released January 23, 1985); MCI International Telecommunications Corporation (MCI voice-only leased channel service to the United Kingdom) Mimeo No. 1855 (released January 11, 1985); GTE Sprint Communications Corp. (GTE Service to Australia) Mimeo No. 1775 (released January 8, 1985); MCI Telecommunications Corp. (MIC service to Belgium) Mimeo No. 5804 (released August 10, 1984); MCI Telecommunications Corporation (MCI service to Australia), Mimeo No. 2570 (released February 27, 1984); MCI International Telecommunications Corporation (MCI service to Belgium), Mimeo No.

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TAT-4 decision, we eliminated the voice-record dichotomy in international communications and encouraged the full utilization of digital networks in the international market. [29] We have modified our policy with regard to the ownership and operation of U.S. international earth stations that operate with the INTELSAT global communications satellite system to permit any international carrier or group of carriers to apply for authority to construct and operate such earth stations, whether IBS, television or multi-purpose type. This policy has already resulted in the authorization of 23 new earth stations at several different urban locations to provide video and data services comparable to those proposed by the separate system applicants. [30] Competition in the provision of earth station services is expected to have the indirect benefit of encouraging more equipment manufacturers to enter the market. In our *Authorized User* decision, we allowed Comast to lease spare segment directly to users and enhanced-service providers and to provide earth-station and end-to-end service through a common carrier subsidiary. Finally, we granted Cable Landing Licenses to two private companies, Tel-Optik Ltd. and Submarine Lighwave Cable Company, for authority to construct and operate fiber-optic submarine cables in the North Atlantic. We concluded that the introduction of private cable systems would provide users of North Atlantic transmission capacity with new alternatives to satisfy their needs and would further stimulate technology and service development to the benefit of international communications users. [31] We concluded further that, with the advent of these cables, the benefits of owning and leasing transmission capacity available to domestic satellite communications users would now be available to the international communications user.

47. In these decisions, we found that competition in the international area would give users increased choice of services and carriers, provide more accurate cost information for users to make an informed choice, give users more flexibility in tailoring a communication system to meet their specific needs, result in technically superior service to consumers, enhance the efficient use of facilities and create downward pressure on costs and rates for the designated services. We also stated that the introduction of competition in the aforementioned areas of the international market would present no major economic hurdles and would not greatly affect our foreign partners in INTELSAT.

48. In view of our findings in these decisions that public benefits will result from the introduction of competition internationally, the Department of Justice contends that the Commission has ample grounds for a finding ". . . that authorization of additional satellite systems would satisfy the public interest standard of the Communications Act without making detailed specific findings as to the probable economic results of increased rivalry." While we agree with DOJ that we may rely on our findings in past actions with respect to the benefits of competition, we believe that our responsibilities under the Communications Act require a more thorough analysis of the probable results of authorizing separate satellite systems. In particular, we must determine whether competition in the supply of international satellite facilities is feasible and, if so, whether public benefits will result from such competition.[32] These determinations require us to consider the specific benefits of the proposals before us.

3. Review of Specific Proposals

49. Those parties supporting the introduction of separate satellite systems contend that, even with the Executive branch restrictions, competition for "customized" services would result in technological and service development, competitive rates, and other benefits presently available in the competitive domestic satellite market. On the other hand, other commenters challenge these claims and argue that these systems would only duplicate services currently offered by INTELSAT without any specific advances in the technology or system efficiency.

(a) *Findings by the Senior Interagency Group.* 50. In its White Paper, the Executive branch concludes that the introduction of separate satellite systems could: (1) Provide new diversity and flexibility in satellite services; (2) create and expand markets in new areas of satellite services; (3) create incentives for INTELSAT and the signatories to be more efficient in their provision of satellite services; and (4) allow outside financing sources to undertake the speculative, high-risk ventures in communications, thereby allowing INTELSAT to focus on expanding its provision of basic communication services in a financially conservative manner. Also, the Executive branch finds that additional satellite systems limited to "customized" services will: (1) Provide more flexible options to communications users and advance more efficient provision of international satellite communications than those services presently available; (2) promote the development and use of satellite technology; and (3) afford U.S. entrepreneurs an opportunity to develop new communication services and to increase trade opportunities.

51. The White Paper also states that there are "sound reasons" to forecast positive effects on international trade if separate satellite systems are approved. It concludes that, with the expected reduction in the cost of international communication services, frequent users such as U.S. financial services and data processing companies will be able to increase their use of services and, therefore, business activity in the provision of international communications services will increase. The Executive branch believes that "[n]ew communication service options and resulting efficiency gains should be reflected ultimately in lower costs to consumers and, in the case of U.S. firms, would enhance the attractiveness of their products in international markets." It finds that there should be an additional positive effect on the U.S. service sector in general.[33] And it finds that the authorization of separate systems would advance the U.S. defense interests by contributing to the variety of facilities necessary to ensure constant and effective international communications and by improving the

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1501 (released December 22, 1983); MIC Telecommunications Corporation (MIC service to Belgium), Mimeo No. 5894 (released August 10, 1984); Satellite Business Systems (SBS service to Hong Kong and the Netherlands), Mimeo No. 1200 (released December 8, 1983); Satellite Business Systems (SBS service to the United Kingdom), Mimeo No. 32122 (released October 1, 1982); Satellite Business Systems (SBS private line service to Canada), 88 FCC 2d 195 (1981).

[29] Overseas Commuications Services, 92 FCC 2d 641 (1982) (*TAT-4*).

[30] *See* Modification of Policy on Ownership and Operation of U.S. Earth Stations that Operate with the INTELSAT Global Communications Satellite System, 49 FR 50030 (Dec. 26, 1984). This decision permitted independent earth station ownership outside of the current ESOC arrangement.

[31] *See In re* Tel-Optik Ltd., FCC 85-99 (released April 3, 1985).

[32] *See* cases cited in footnote 20.

[33] According to the White Paper, the services sector in recent years has become one of the largest exporters of U.S. goods, *i.e.*, services, and thus is a major factor in the U.S. balance-of-payment accounts. Since the U.S. services sector is increasingly dependent on international communications to conduct its business, any beneficial effect, specifically an expansion of communication service options, should contribute to the growth of the U.S. services sector.

survivability of the U.S. national telecommunications infra-structure.

(b) *Comments by Service Providers and End-Users.* 52. Several service providers, end-users, and user-groups support the authorization of separate satellite systems. They maintain that INTELSAT does not offer a sufficient range of services at reasonable prices. And they contend that separate systems offer a substantial variety of efficient and innovative services at reasonable prices.

53. First, these parties observe that satellite transmission costs are distance insensitive and that there is a substantial disparity between domestic satellite transmission costs and international satellite transmission costs for comparable services. Since satellite transmission costs are distance insensitive, they contend that the price differential is the result of INTELSAT being the single provider of transoceanic satellite services. ESPN states that without another entity offering similar services and acting as a check on improper and excessive pricing practices, INTELSAT is not easily influenced by market demands and therefore is able to charge inflated rates. Turner includes in its comments a study which compares the current rates for domestic satellite services with the newly filed Comsat international television rates,[34] and international communication services rates which cannot be accounted for by the additional costs associated with Comsat's participation in the INTELSAT system.

54. Second, several parties contend that INTELSAT only offers a limited range of services. They argue that since INTELSAT is a common-user, ubiquitous system which focuses its efforts on providing global connectivity for basic services, INTELSAT has not developed a broader range of innovative or flexible services. The FTC contends that INTELSAT's failure to provide Ku-band multi-point distribution service has hampered the development of the international cable television and video market. Ethereum contends that although INTELSAT may offer all the basic types of services, such as telephony, data, television and audio services, it has a limited range of offerings in each service category. Ethereum states that it has not been able to offer television service to small earth stations in Europe because of INTELSAT service restrictions. HBO also cites a situation in which it had difficulty obtaining satellite transmission service for television over North Atlantic facilities and eventually had to settle for an arrangement at a considerable increase in cost.

55. Third, many parties contend that, in addition to the limited range of services offered by INTELSAT, there is a corresponding lack of flexibility in obtaining services. They contend that INTELSAT does not offer a transponder on a sale or long-term lease basis. Thus, they argue that a customer is unable to have the transponder configured or designed to meet its particular needs and is relegated to obtaining service through Comsat on an occasional use or short-term lease basis. They emphasize that a bulk or frequent user of international communication services could purchase the amount of capacity desired and guarantee the availability of the capacity it needs and also lock in the price it would pay. ESPN points out that by buying or leasing transponders on a long-term basis, customers would guarantee price stability and predictability in the provision of services. Ethereum states that with ownership of capacity a customer could have the beam coverage and beam power designed for its specific needs. API states that alternative systems would use the increased flexibility in providing satellite services to design new services in order to attract new customers. NTIA states that the major difference between INTELSAT and alternative satellite systems would be transponder or space segment capacity ownership.

(c) *Benefits that the Applicants Believe Will Result from Their Proposals.* 56. The applicants generally contend that their proposals, if approved, would result in significant public benefits because they seek to serve markets which INTELSAT does not now and will not in the future adequately serve. They primarily seek to provide business data and video distribution services through the sale or lease of space segment capacity to be operated with small, low cost earth stations located at or near the customer's premises. They contend that as a result, customers will achieve greater operational flexibility and significant savings compared to INTELSAT's services. They also contend that the design of the INTELSAT system generally does not permit emphasis on the types of services that they are proposing.

57. *Orion:* The essence of Orion's proposal is to enable large communications users to purchase a transponder; install small, low-cost user-premises earth stations at its locations in the United States and Europe; and thereby configure, own and operate its own network for "in-house" communications such as data collection and distribution, video transmission, teleconferencing, high speed facsimile, remote printing, teletext and videotext. Orion believes: (1) That those specialized users needing this type of customer premises service (CPS) are not well served by general public service providers which engineer systems to serve large primary markets; (2) that INTELSAT has designed a system primarily for public-switched services which features satellites operating with a small number of large gateway earth stations in each country in order to maximize connectivity over large areas in each ocean region; (3) that maximum connectivity requires maximizing the number of individual links or routes served by each satellite; (4) that the design assumes the existence of a terrestrial switched network which channels "random" traffic into the system through large gateway earth stations; and (5) that the INTELSAT system design provides an inefficient means of communication for CPS users whose traffic is not based on random distribution patterns and who have relatively concentrated connectivity requirements. Orion states that the customer premises service which it seeks to provide would offer to users a relatively low cost for the volume of information transferred, reliability, high data rates, security, greater control over end-to-end costs, and guaranteed access to satellite facilities. Orion contends that achieving requisite levels of connectivity, security, user control and low overall costs requires the use of multiple, small and inexpensive earth stations and the maximization of satellite EIRP (equivalent isotropically radiated power) through the use of beams focused at specific points to serve those stations. To accomplish this, Orion states that it has designed a system in which transponders are substantially more powerful than INTELSAT's. It concludes that INTELSAT cannot provide, by means of its current and presently-planned facilities, the same throughput levels, multi-point capacity and reduced size in earth terminals as are possible in its proposed system.

58. *ISI.* ISI believes that new entry in the international satellite market will lead to: (1) New services; (2) more

[34] Due to our recent Earth Station Ownership decision, Comsat has recently filed new "unbundled" tariffs which separate the cost of the international space segment from the cost of the ground segment. Comsat traditionally had both components of communication costs in one tariff. See Earth Station Ownership, *supra*, note 20.

efficiency in the provision of all services; (3) stimulation of latent demand; and (4) more rapid technological innovation. It states that under its proposal, large users could purchase or lease whole transponders and moderate or small users could obtain space segment capacity by purchasing or leasing units or space segment capacity as small as equivalent T-1 circuits. It anticipates that its primary market will be video distribution of programming on a customer premises basis, thereby permitting customers to avoid the service degradation and high cost of landline or domestic satellite extensions to international earth station facilities. ISI believes that grant of its application will serve the public interest by providing new services, new forms of facility use and new operational arrangements for international satellite use in the United States.

59. ISI contends that INTELSAT's basic mission is to interconnect domestic telephone, telex and television systems through national gateway earth stations. However, ISI believes that there is a need for other services for U.S. and European users who would like to distribute video and high speed data from a single satellite throughout the contiguous United States (CONUS) and Western Europe on a cost-effective basis, using low-cost earth stations located at urban customer premises. It maintains that this type of service cannot be provided by any INTELSAT spacecraft in orbit or under construction. According to ISI, cost-effective video conferences will be possible interconnecting customer premises earth stations in San Francisco, New York, London and Rome for simultaneous transmission and viewing. In addition, it states that programming originating in Europe can be distributed to cable headends and broadcasting stations throughout CONUS, and, likewise, European cable headends can be reached from uplinks anywhere in CONUS. ISI contends that no other satellite system under construction or yet proposed can provide these services. It states that INTELSAT could approximate this service by using more than one satellite, dual earth stations and double hopping, but at greater cost and use of orbit/spectrum resources. ISI states that its proposed satellite is four times more spectrally efficient than INTELSAT's use of the Ku band for INTELSAT Business Service (IBS).

60. *RCA*. RCA primarily plans to provide international video services for distribution but also intends to offer teleconferencing and commercial communications service, including private leased voice, low speed data communications and point-to-point medium speed data communications to Europe and portions of Africa. RCA believes that there is a potentially large unaddressed market for satellite distribution of premium video programming in Europe. It therefore would concentrate on distribution of international video signals to small earth stations serving European cable television systems, and thus provide European programmers and film companies with access for the first time to most U.S. domestic cable television systems and independent broadcasters. RCA maintains that INTELSAT has not promoted international video services in this manner because of its primary focus on international MTS, which led to its large and costly high-gain earth stations and its global satellite network configured for international MTS. INTELSAT's orientation toward high-gain earth stations, has resulted in Comsat offering television service from five points in the United States which are located away from the metropolitan areas where television programs are usually produced. RCA points out that it has earth stations in or near ten major U.S. metropolitan areas. According to RCA, distribution of international video services is now restricted by the terms, conditions and rates of Comsat's tariffed services through INTELSAT and the isolation of INTELSAT from marketplace trends and its slowness to react to changes. RCA believes that INTELSAT's slowness to react to market trends stems from its organizational structure, orientation toward MTS and treaty obligations. It contends that authorization of its system would result in direct contact between the market and the provider of satellite service and thereby eliminate delays in the introduction of new services. It further contends that its proposal will provide greater flexibility in customer use of leased or purchased transponders (use for video during prime time European television view hours and data during off-peak hours), and result in increased customer choice of earth station locations. Finally, RCA states that introduction of competitive satellite services will result in lower prices. It anticipates that rates for a full-time Satcom transponder will be less than INTELSAT's rates and states that it is planning the introduction of rates below those offered in the market.

61. *Cygnus*. Cygnus proposes to sell or lease on a long-term basis transponders to users such as video suppliers, distributors and television networks, multi-national corporations, financial service companies, time-critical information delivery service, international trading and freight distribution companies and U.S. government agencies which have needs for: (1) Digital communications such as teleconferencing, high speed facsimile, computer to computer communications remote printing, teletext, videotext, data collection and distribution services; (2) private voice services; and (3) video programming distribution services involving the use of small roof-top receivers. According to Cygnus, the high power output and gain of its satellite design will enable its signal to be received by small and relatively inexpensive micro earth stations ranging from 2.0 meters to be used in conjuction with business micro computers (to transmit and receive data at rates up to 224 Kbps). Among other points, Cygnus contends that the size limitations of IBS earth stations are much more restrictive than those of its proposal in terms of the type of services offered and the potential pool of available users. In contrast to the compatibility of its proposal with earth stations as small as 0.8 meters in diameter, Cygnus contends IBS can only be provided through earth stations of specified sizes, including, besides the very large standard-size INTELSAT stations (designated A, B, and C), the E-1 (3.5 meters), E-2 (5.5 meters) and E-3 (8 meters) size earth stations. Cygnus states that while the estimated cost of IBS-compatible standard-E earth stations may range from $150,000 to $600,000 each, earth stations compatible with the Cygnus system will likely cost as little as $25,000. Cygnus concludes that its earth stations will be used by small as well as large business users in view of this cost differential. It states that the use of very small stations will allow customers to have multipoint-to-point and point-to-multipoint data networking services that will not be available with IBS. And it also states that the most critical difference between IBS and its proposal has to do with the charges at which their respective services can be provided because IBS rates are necessarily tied to the Comsat tariff structure—a structure that Cygnus claims is inherently incapable of permitting the type of cost savings that users could realize from Cygnus. Under the Comsat IBS tariff, Cygnus argues that it is more economical to use the larger stations than the relatively smaller ones because the Comsat space segment charge.

which is a recurring charge, is higher for small stations than for large ones.[35]

62. Cygnus states that its design also will allow customers to use off-the-shelf, small roof-top antennas which are currently being used or will be used in the future in the U.S. domestic direct-to-home satellite market. Cygnus states that mini earth stations (ranging from 2.0 to 4.5 meters) and main earth stations (ranging from above 4.5 meters) will be compatible with the satellite design and can be used by customers with higher volumes of private voice and data communications traffic. Through use of these small stations, Cygnus states that customers will have available direct single-hop access to the satellite, resulting in greater customer flexibility and cost savings from the elimination of expensive terrestrial links and coordination with multiple carriers.

63. *PanAmSat.* PanAmSat would sell or lease transponder capacity on a non-common carrier basis for international communications within the region comprising the United States, Latin America and the Caribbean and for domestic communications within Latin America and the Caribbean. PanAmSat proposes to offer both Ku-band and C-band service. The Ku-band service would provide various specialized services, such as broadcast and data transmission for intra-regional traffic. The C-band service would offer domestic services, including high power television transmission. PanAmSat argues in general terms that its proposed services are either not currently provided by INTELSAT or are offered in a costly and inefficient manner. The market it wishes to serve, it claims, has yet to be substantially developed and would not develop through reliance solely on INTELSAT, due to the (latter's) economic and technical constraints. PanAmSat claims that the power of INTELSAT's transponders is appreciably weaker than that of the transponders in its proposal. As a result, PanAmSat concludes, INTELSAT could utilize only large, high cost earth stations and could therefore not afford to provide services other than between large towns with a high level of telephone traffic density. It claims that the Ku-band service it proposes to offer is neither provided currently nor planned to be provided by INTELSAT. According to PanAmSat, because of the smaller antenna sizes possible utilizing the Ku-band and the decreased problems with interference in the Ku-band, this service would allow the efficient and economic development of broadcasting and data services, such as customer premise services.

(d) *Challenges to Claimed Benefits of Separate Systems.* 64. Those commenters opposing the authorization of separate systems argue that these systems would not provide the competitive benefits claimed by the applicants but would only duplicate services already available through INTELSAT. They argue that none of the applications proposes a new technology or new services.

65. IRI points out that INTELSAT offers the same ability as Orion to use small earth stations with its IBS and INTELNET II service offerings. In addition, IRI states that Cygnus' proposal to use spread spectrum techniques for small earth station connectivity is an essential characteristic of the INTELNET II offering. Amb. Abbott Washburn maintains that the applicants for separate systems would not provide any services INTELSAT does not offer presently or would do so in the future. He contends that none of the putative benefits of these systems has been proved and that no new satellite technology or significant changes in satellite configuration or arrangements are being proposed. Amb. Washburn states that bulk capacity through long-term leases, the longest being a seven-year lease, at a fixed price is available for tailored services and, currently, 28 countries use it for domestic services. Moreover, he says that INTELSAT offers two levels of services designed to meet customers' specific needs. The first level is bulk capacity in which the customer leases the transponder and designs his own services with the desired configuration and earth station. The second level of service is one in which the customer approaches INTELSAT to design the service and guarantee a certain performance level. Thus, both IRI and Amb. Washburn conclude that the services proposed by these systems would be redundant and would not bring any benefits to the international satellite industry. In fact, they both state that to the extent the systems promise efficiency, INTELSAT could change and offer the same efficiencies. They also maintain, as does Walter Hinchman & Associates that, if separate systems were allowed to enter the market, the foreign communications monopolies, the PTTs, would usurp any of the economic benefits these systems might provide in the international satellite industry by engaging in the practice of whipsawing. Since the system owner needs to get the permission of the government or an operating agreement with the PTT in order to transmit and receive in that country, the parties argue that the foreign government (itself or through its PTT) with monopoly control can extract all the economic competitive benefits that the applicants claim would become available in the international satellite industry.[36]

66. In addition, two Board of Governors documents[37] set forth the INTELSAT management response to the applicants' claims. These documents state that real competition would not exist because the new systems would be non-regulated while Comsat, the U.S. Signatory of INTELSAT, would remain a regulated entity. They contend that in order for genuine competition to exist, the new entrants should be subject to the same rules and regulations as Comsat. For example, they should have to justify their new services, technological innovation or charges for the services. In addition, they state that the applicants are proposing no new services or technology and that INTELSAT offers all the services and technologies that the applicants propose. The documents state that INTELSAT offers small earth station transmission, high power transponders and a range of satellite coverage. They claim that INTELSAT has the same flexibility as Orion to offer high-power satellite beams with a small antenna earth station; that it can sell or lease capacity; and that IBS, a non-preemptible service, is available with nine different earth station options on a full-time, part-time, or occasional use basis. In addition, they state that PanAmSat's comparison of the anticipated cost of its transponders to INTELSAT's transponders is misleading, since the transponder prices being quoted, $700,000 per year, are for an as-yet-unbuilt system. The documents state further that it now offers leases for international video service and domestic service and offers a wide variety of service periods, coverage beams and annual charges. They also dispute PanAmSat's claim that its customers would be able to use a small antenna

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[35] For example, Cygnus states that the charge for using the E-3 station is only 1.25 times the Comsat basic charge, while that for the smaller E-2 station is 1.7 times the basic charge, and that for the even smaller E-1 is 2.8 times the basic charge.

[36] For purposes of our discussion, we may refer exclusively to the PTT, typically a government-owned monopoly, in referring to the foreign entity. In reality, U.S. satellite system operators may have to deal with the PTT or another government organ, depending upon the country.

[37] See INTELSAT Documents, "A Critical Review of Responses in U.S. FCC Proceeding on Separate Satellite Systems," BG-63-35E (May 31, 1985); and "INTELSAT Statements on Proposed U.S. Policies on Separate Satellite Systems," BG-63-37E (June 7, 1985).

earth station when INTELSAT's customers must use more expensive earth stations. They state that a country leasing domestic service from INTELSAT has a choice as to the size of the earth station it may use, and that INTELNET services may be used with a variety of small earth stations.

67. According to these documents, INTELSAT has every incentive to be economically efficient and innovative. First, they maintain that INTELSAT is not a monopolist but is subject to competition from cable facilities and, in many instances, landline or microwave facilities that provide substitutable transmission capacity. Second, INTELSAT is subject to competition in situations where INTELSAT members can load traffic on various facilities. In view of these factors, the documents conclude that INTELSAT must continue to provide technologically superior satellite services, especially when fiber-optic submarine cables and increasingly sophisticated land-based facilities are developed.

4. Conclusions as to Public Benefits

68. At the outset we emphasize that, from the perspective of the types of information that can be carried over a given satellite network, the services now offered or planned by INTELSAT are generally comparable to those proposed by the separate system applicants. INTELSAT services permit the transmission of voice, record, audio programs, facsimile, video teleconferencing, television programs and data. The separate system applicants have not proposed to provide services that would accommodate any other types of information.[38] However, within these broadly defined and widely recognized service categories, there exist any number of variations of packaging and transmitting the information from one place to another. It is in this area that we find that the proposed separate satellite networks would differ markedly from INTELSAT. These differences will be significant in terms of satisfying yet unmet customer needs and applying competitive pressure on INTELSAT to attempt to meet these needs.

69. INTELSAT has understandably designed its satellite networks and service offerings to provide international switched services on a global basis. In general, INTELSAT procures and operates space segment facilities which feature high-capacity, low-power satellites, and which must be operated with large, high-grain antennas at expensive earth stations. These earth stations serve as national gateways to a country's public-switched terrestrial networks. Because this system design is intended to provide the widest possible global connectivity, it is well suited to the provision of international telephone and other switched services. However, generally, it is not as cost effective or efficient for many other types of services, particularly point-to-multipoint and multipoint-to-point services which require a number of earth stations, as are the proposed separate systems. These services are most efficiently provided by use of small earth stations located at or near a customer's premises, operating with high power satellites and/or satellites in the 11–12/14 GHz band.

70. To provide small earth station services, INTELSAT has both modified space segment facilities and specifically planned new space segment facilities that will provide higher power beams in the 11–12/14 GHz bands. It has also introduced IBS. IBS is a totally digital integrated transmission service over which a wide range of information services can be provided to customers at earth stations located at or near their premises. In addition, INTELSAT has introduced a service, INTELNET, designed to provide point-to-multipoint data service to earth stations with very small antennas. INTELNET uses spread-spectrum modulation techniques to allow for such small earth stations. INTELSAT also has introduced a variety of new international video services which it states are tailored to meet specific user requirements and involve, in some instances, distribution of signals to small earth stations serving cable television systems. These new video services are offered to the operators of small earth stations through the use of unused transponder capacity. Use of small earth stations is made possible by devoting more transponder bandwidth, and corresponding power, to the TV carrier than is ordinarily the case.

71. All parties in this proceeding recognize the benefits available through the use of small customer premises earth stations that give the user direct access to the satellite. The user can achieve cost savings by elimination of the need to use national gateway earth stations and expensive terrestrial facilities between those stations and the customer's premises. In addition, the user can achieve greater operational flexibility and security through choice of earth station location, limited dependence on the availability of terrestrial facilities and ownership, and operational control of the earth stations. These factors, with concomitant ownership or long-term lease of space segment capacity, give the user an opportunity to have its communications space network configured to meet its special needs in ways not offered through currently available facilities.

72. INTELSAT recognized both the benefits of small earth station services and the potentially significant unmet demand for such services when it decided to introduce its new IBS, INTELNET, video and other services. For example, it forecast rapid growth of IBS when it decided to initiate this new service.[39] The Director General stated that market demand for video service has: "out-paced the supply of the INTELSAT capacity currently allocated for this purpose with the result that there has been a loss of revenues due to service denial. There appears to be potentially significant unmet demand for a variety of new international video applications involving, in some instances, distribution of signals to smaller earth stations serving cable television systems."[40]

73. The primary differences between the services proposed by the applicants and the services currently provided or planned by INTELSAT are in (1) satellite downlink power, (2) areas of coverage and connectivity, and (3) opportunity to purchase or lease transponders on a long-term basis.

74. As to the first area, our review of information provided by INTELSAT to the International Frequency Registration Board of the International Telecommunication Union for international coordination of its space stations and information contained in the INTELSAT tariff manual, leads us to conclude that, for any given configuration, the proposed separate systems would be able to provide downlink powers greater than can be provided by INTELSAT. This capability will permit the separate systems to create combinations of service enhancements depending on specific customers' needs that include the use of smaller earth stations and/or higher information transmission rates than are possible with INTELSAT satellites.[41]

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[38] Some separate system applicants have proposed, however, to allow the transmission of new variations on these types of signals, such as the transmission of high definition television which requires more spectrum than is permitted with INTELSAT television services.

[39] *See* INTELSAT Document, "INTELSAT Business Services," BG-56-50E (August 29, 1983).

[40] *See* INTELSAT Document, "Preemptible International Video Services on Satellites other than Primary/Major Path Satellites," BG-58-46E (rev. 2) (June 16, 1985).

[41] As we will discuss, two applicants, Orion and Cygnus, propose satellite downlink powers which

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Thus, although INTELSAT provides services comparable to the proposed separate systems in terms of the type of information transmitted, it cannot, as a general matter, match the proposed separate systems in achieving combinations of earth station size, transmission rates, connectivity, user control, security and costs that may be desired by a user with special needs. INTELSAT can make tradeoffs in available bandwidth, information transmission rates and other service parameters to offer a comparable combination of factors to that user. But such tradeoffs would result in system inefficiencies not present in separate systems that are specifically designed to provide various combinations of service enhancements. For example, INTELSAT's tariff manual shows that nine sizes of earth stations may be used for IBS. The smallest is 3.5 meters in diameter—larger than those proposed by some of the separate system applicants. However, INTELSAT has claimed that IBS customers can use any size earth station.[42] But to achieve this capability, INTELSAT would have to allocate more bandwidth per channel to permit antenna sizes matching that to be offered by the proposed separate systems. This smaller earth station capability would only be available to bulk leases of transponder capacity (from 9 MHz to 72 MHz) for periods ranging from one to seven years. As a general matter, INTELSAT would have to make similar tradeoffs to match separate system offerings in other service areas.

75. It would be neither necessary nor meaningful to speculate on all of the potential system configurations that INTELSAT may undertake to match separate system offerings. However, we note that INTELSAT's management makes the general statement that "[h]igh power transponders are available at 6/4 GHz, as well as 14/11 or 14/12 GHz, for domestic, TV, IBS and other services working to earth station antennas down to two feet in diameter." [43] It appears that the two-foot earth stations referred to may be those that operate with INTELSAT's INTELNET service which, as stated above, uses spread spectrum techniques and not "high power transponders" that would permit use of such small earth stations for other services. Nonetheless, the higher power of the satellites proposed by the separate system applicants still will permit them to offer the spread-spectrum type service either to smaller earth stations or at higher data transmission rates than available with the INTELNET service.

76. With respect to coverage area and connectivity of satellites providing customer-premises services, some of the networks the applicants have proposed will provide full or nearly-full coverage of the contiguous United States (CONUS) *in a single 11–12/14 GHz beam* INTELSAT does not and will not have such capability. INTELSAT's current 11–12/14 GHz service only covers approximately one-third of CONUS. INTELSAT's planned 11–12/14 GHz services would only provide full-CONUS coverage with the use of two satellites. Therefore, a European entity wishing to distribute information to all of CONUS would have to arrange for service from two uplink earth stations over two satellites when only one of each would be required with some of the proposed separate satellites. As ISI stated in its comments, "by using more than one satellite, dual earth stations and double hopping, INTELSAT could provide service approximating that described . . . [b]ut such a method of operation would obviously be far more costly in money and in use of orbit spectrum resources. . . ." Ethereum specifically noted a case where, although not requiring a double hop, it had difficulty attempting to arrange for television service from INTELSAT between its Houston uplink and small earth stations in Europe. Due to lack of coverage of the Houston area by an 11–12/14 GHz INTELSAT beam, Ethereum would have been required to uplink at 6 GHz and have the signal cross-strapped at the satellite to 11–12 GHz at an additional charge. Such problems, and problems far more complex than that reported by Ethereum, can be avoided by use of the systems proposed by the applicants.

77. In addition, INTELSAT does not provide 11–12/14 GHz coverage, or high power coverage in any band, to South America for any services. PanAmSat proposes such coverage which will be significant in the reduction or elimination of the need for terrestrial facilities, and in achieving lower earth station costs. By way of illustration, PanAmSat notes in its comments the findings in a report prepared by the Andean Regional Telecommunications Association, ASETA, that while there would be significant cost savings by using an INTELSAT transponder over a domestic satellite transponder the high costs associated with INTELSAT earth stations would be so substantial that the crossover point on overall system economics from INTELSAT to a domestic system is achieved when only eight additional earth stations per transponder are used. While we will not debate the precise numbers here, PanAmSat clearly will provide a grade of service comparable to a typical domestic satellite system, and there is no question that, given the costs of earth stations necessary for INTELSAT services, the savings in those costs can be great enough to reduce substantially overall system costs by the use of the PanAmSat satellites.

78. The third area of difference between INTELSAT and the proposed separate systems is particularly significant in terms of satisfying those customers with special service needs. INTELSAT states that it is permitted to both sell and lease space segment capacity.[44] It does not now, however, offer to sell transponders. INTELSAT does currently offer a variety of long-term leases for IBS, INTELNET, domestic leased and video services.

79. In comparison, each separate system applicant intends the sale of space segment capacity to be a primary aspect of its operation. Their proposals provide a means of attaining for international users the same benefits that are now available from the sale of domestic transponders. In our *Transponder Sales* decision, we concluded that the private sale of transponder capacity on a non-tariffed basis would: (1) Permit the providers of capacity to make tailored and flexible arrangements with customers that are not possible under the regimen of a tariffed service offering; (2) enable customers to make long-term plans for the use of facilities with assurance as to facility availability and price; (3) permit systems to be specifically designed to customer needs; and (4) result in positive market development for new and innovative service offerings.[45] We find here as we did in authorizing private submarine cable facilities[46] that

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exceed limitations on power flux-density contained in the International Radio Regulations and, accordingly, we are requiring amendments to their applications to come into compliance with the Radio Regulations. Nonetheless, they still will be able to achieve permissible satellite downlink powers greater than those offered by INTELSAT and, by making trade offs in receiving equipment characteristics or information transmission rates, they still will be able to provide service to earth stations with antennas as small as proposed in their applications.

[42] *See* INTELSAT Document, "INTELSAT Statements on Proposed U.S. Policies on Separate Satellite Systems" BG-63-37E (June 7, 1985).

[43] *Id.*

[44] *Id.*

[45] *See* Transponder Sales, 90 FCC 2d at 1251–1252, 1255.

[46] *See* Tel-Optik Limited, *et al.*, Order FCC 85-99 (released April 5, 1985).

users with bulk capacity needs for special service requirements for international services should enjoy the same benefits.

80. In general, users gain greater control over such factors as design, availability, use and costs when they are permitted to own space segment capacity. Control over these variables and the options that would be offered by competing facility providers, including INTELSAT, will permit customers to meet special needs that they now are unable to satisfy. As NTIA points out, each separate system would have a different configuration of transponders, provide different degrees of connectivity and operate at different transmitting powers. Thus, a user could choose which system is most capable of satisfying his special needs in terms of these factors, and, within the technical parameters of the satellite system, specify the required beam coverage (zone, hemi-, or spot) and the beam power at which he wishes to operate. The user's selection of beam power would depend on ground segment needs (number and size of earth stations within the network) and desired transmission rates. This operational flexibility would assure the user of the availability of transmission capacity for the period of time desired at an established price. Long-term business plans could be made accordingly. The user could not be similarly assured that transmission capacity will be so available from current common carrier offerings since carriers must offer capacity indiscriminately as it is available and may change the price and other terms and conditions of their offer through tariff filings.

81. In addition to the ability to fix transmission costs, purchasers of space segment capacity would enjoy other financial benefits.[47] In our *Transponder Sales* decision, we found that transponder sales would make it possible for small users to finance a purchase of a transponder as a result of the tax benefits that accrue and the ability to collateralize the transponder as a tangible asset when a monthly lease payment might have been too expensive. The same benefits would accrue to purchasers of international space segment capacity. They would be able to depreciate the satellite equipment if it is used for business purposes and use the equipment as collateral for loans.

82. As the comments reflect, many users are dissatisfied with the insufficient service choices offered by INTELSAT in the past and with the inflexible and inadequate arrangements and a lack of responsiveness. We find that the operational flexibility which would be offered by the proposed separate systems would give these users a means of satisfying their needs. Users will be able to establish the type of satellite communications networks envisioned in the comments. For example, users such as Gannett could buy capacity on a separate system configured according to specific requirements for point-to-multipoint communications so that it could transmit newspapers, magazines and similar information to various discrete foreign locations for printing and distribution. The petroleum companies could purchase capacity and establish dedicated networks to send or receive data, with distant exploration sites and to communicate with foreign offices and agents. Broadcasting entities such as Turner, ESPN, HBO, WOLD and the three networks could establish dedicated television transmission facilities for the exchange of sports, information, and entertainment programming between the United States and other countries. Here the assured availability of transmission facilities would be particularly important both for long-term program planning and promotion and for transmission needs for sudden news events. The U.S. broadcasting and cable television industries were the primary beneficiaries of the U.S. "open skies" domestic satellite policy and the resulting increase in programming distribution options.

83. We disagree that the competitive benefits would accrue only to the large communications users and not to the public at large. Small users should be also able to benefit from the operational flexibility offered by ownership of space segment capacity. Although a user may not have bulk requirements requiring full transponder ownership, the user may have specialized needs that justify a time sharing arrangement with other users who jointly acquired capacity. We agree with the Turner comments which point out that with respect to broadcasting, a decrease in communications costs for the broadcasters may lead to a decrease in prices for their programming which should benefit the end-users and result in an increase in demand for programming. This same analysis applies to other users which could decrease their international communications costs and pass on those savings to their customers. The financial benefits of owning transponders or space segment capacity might make the capacity more affordable to the small users. The authorization of separate satellite systems does not constitute a revolutionary change in the international communications market. It is an evolutionary change. INTELSAT itself has acknowledged that it must compete with submarine cables and satellite systems which, in certain circumstances, other signatories have a choice of using. In addition, fiber-optic submarine cables will increase competition once they become operational in the next few years.

84. We conclude that the establishment of separate satellite systems will provide substantial benefits to users of international satellite communications services. The introduction of competition with INTELSAT within the service area defined by the Executive branch will provide many of the same benefits to international users that are now provided to users by U.S. domestic satellites. Separate systems will provide currently unavailable service enhancements to users with special communications needs, stimulate technology and service development and reduce user-costs. We recognize that INTELSAT has begun to introduce services which are comparable to many of those proposed by the separate systems. Although many of these services have been long under consideration, we can reasonably conclude that INTELSAT's effort to expedite the implementation of these services was spurred, in part, by the existence of the separate system applications.[48] We join NTIA in

[47] The sale as well as the long-term lease of transponders or space segment capacity will provide benefits to the separate satellite system operators. Just as in our domestic transponder sales order, we conclude here that sales and leases of transponders or space segment capacity in the international satellite industry are an additional financing mechanism which would provide a means for satellite operators to raise necessary capital either before or after the satellite is operational and a mechanism which would promote risk-sharing. Moreover, new entrants will better be able to gauge market demand for their services through their ability to seek capacity and transponders before the satellites are operational.

[48] Since Comsat is a common carrier under the Communications Satellite Act of 1962, 47 U.S.C. 401 (1984), the Commission must approve Comsat's investment in any space segment program. INTELSAT and other parties have claimed that the U.S. regulatory process has delayed the offering of IBS, INTELNET and the new video services to U.S. customers. We do not find this to be the case. Comsat's application to participate in INTELSAT's IBS program was filed with the Commission on October 12, 1982. Comsat stated that the application would have to be periodically updated since INTELSAT was still weighing various operational options with respect to IBS. Comsat filed a supplement to the application on January 4, 1983

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expressing our approval that INTELSAT is responding to potential competition with new service offerings. While INTELSAT may take the view that its response eliminates any need for separate systems, we believe that competition spurs and continually encourages innovation and efficiency.

85. With regard to the PTT's ability to take advantage of its strategic position in the market and to reap a disproportionate share of the competitive benefits by engaging in traditional whipsawing, we find that the circumstances typically associated with the practice of whipsawing are not present in relation to separate satellite systems. The term "whipsawing" has normally been used in the context of accounting rates and settlements share for switched services where several U.S. common carriers deal with a single PTT. In this proceeding, the separate satellite systems will be allowed to provide private line-like services and will not be allowed to provide switched services so the potential for accounting rate manipulation is not present. Private line-like services entail no revenue sharing because the U.S. common carrier charges a rate for one-half of a circuit and a PTT charges a rate for the other half. Nonetheless, we recognize that as long as foreign governments have control over an essential component of the end-to-end service, such as the foreign ground stations, they can control the price of the total service by manipulating the charges for their component. PTTs could exercise this price manipulation by charging excessive usage fees, requiring additional payments to obtain access or requiring a U.S. firm to purchase an earth station at an excessive price from the PTT. While we are not predicting that this type of whipsawing will occur, there are certain measures available to us and the U.S. Government as a whole to counteract such possible whipsawing. We would view such satellite system price manipulation to be inconsistent with the purposes of the Communications Act and we reserve the right to condition licenses that we issue, if such practices are undertaken by PTTs. In addition, we are requiring the separate system operators to file with the Commission all operating agreements they enter with foreign entities and are reserving the right to reconsider the authorization of a satellite system which enters an operating agreement with satellite procurement restrictions. (See para. 209, *infra*.) Moreover, the U.S. Government, as part of its decision to enter in the consultation process pursuant to Article XIV(d) for any particular satellite system, may require the applicants to submit all financial agreements with all foreign parties including governments, PTT and correspondents for its review. The U.S. Government reserves the right to refuse to begin consultation procedures if such arrangements are not in the U.S. interest.

86. We disagree with those parties which argue that if INTELSAT is capable of providing the proposed services, the separate satellite systems will be duplicative and, therefore, unnecessary. We also disagree with the position of the INTELSAT management that the applicants and this Commission have a "burden of proving that INTELSAT does not or cannot offer features and capabilities provided by the proposed systems."[49] These views ignore the benefits of competition. Multiple entry of service providers, customer choice and service overlap are hallmarks of competition. Without a certain overlap of service offerings, there would be no meaningful customer choice and there would be little incentive to innovate with lower prices or greater responsiveness to customer needs. Each separate system operator will make a business judgment on technical design and marketing to meet user needs. As NTIA concludes, the separate system proposals reflect the kind of entreprenurial judgment and risk-taking which this government seeks to facilitate and encourage. In the *Comsat Study*,[50] the Commission recognized that, at some time in the future, the United States would have to decide whether INTELSAT continues to serve U.S. international communications needs. It is this ultimate question we are considering today. We find the following: that there is an unfulfilled demand for service enhancements that meet specialized needs of users of international communications; that separate systems offer customers alternative suppliers to fulfill their special needs; that no single space segment provider should be expected to provide the variety of special services that can be offered by multiple suppliers; and that authorizing competition to INTELSAT within this limited and specialized service area is feasible and will result in the further development of this market and service innovation. We conclude that these public benefits are desirable, and, as we will discuss, are attainable without causing significant economic harm to INTELSAT.

B. Economic Impact on INTELSAT

1. U.S. Obligations Under Article XIV(d) of the INTELSAT Agreement

87. Article XIV of the INTELSAT Agreement sets forth particular rights and obligations of the parties and signatories.[51] Subpart (a) of the article provides that when exercising their rights and fulfilling their obligations, the parties and signatories shall act consistently with, and in furtherance of, the principles in the Preamble and other provisions of the Agreement.[52] The Preamble states that the parties to the Agreement desire to create a single global commercial telecommunications satellite system as part of an improved global telecommunications network in order to provide telecommunications services throughout the world with the most efficient and economic facilities.[53] Article XIV recognizes the possibility that parties may want to use non-INTELSAT space segment to fulfill their international telecommunications services needs. Subpart (d) requires parties to coordinate with INTELSAT the use of non-INTELSAT space segment for international public telecommunications services, stating as follows:

> To the extent that any Party or Signatory or person within the jurisdiction of a Party

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and letters on August 12 and November 7, 1983 providing additional information about the applications. Comsat stated in its November 7 letter that this letter together with its previous filings completed its application. The application proposed, *inter alia*, that IBS would be provided using existing Comsat earth stations as well as specialized IBS earth stations to be constructed in urban areas. The application was granted on March 30, 1984. In addition, Comsat filed an application on July 19, 1983 to construct an IBS earth station on Staten Island, New York. This application was also granted on March 30, 1984 after an amendment by Comsat requesting authority to construct a larger earth station than originally proposed. Comsat could have initiated IBS service from existing earth stations prior to its Staten Island earth station becoming operational. However, the Comsat IBS tariff on file with the Commission did not provide for IBS service from existing Comsat earth stations. Instead, the Comsat tariff provided only for space segment services using customer provided earth terminals. At that time there were no independently owned earth terminals in operation to provide IBS. Comsat did, from time to time, file tariffs for 1.544 Mbps IBS service using the Etam, West Virginia earth station on a temporary basis. It was not until January 31, 1985 that a full array of IBS service options became available when IRI initiated service from its newly constructed earth station which was authorized by the Commission on March 30, 1984.

[49] BC-83-37E, *supra*, n. 41.

[50] Communications Satellite Corporation, 77 FCC 2d 564, 627–628 (1980).

[51] INTELSAT Intergovernmental Agreement, August 20, 1971, 23 U.S.T. 3813, 3853, TIAS No. 7532.

[52] *Id.*

[53] *Id.* at 3814.

intends individually or jointly to establish, acquire or utilize space segment facilities separate from the INTELSAT space segment facilities *to meet its international public telecommunications services requirements*, such Party or Signatory, prior to the establishment, acquisition or utilization of such facilities, shall furnish all relevant information to and shall consult with the Assembly of Parties, through the Board of Governors, *to ensure technical compatibility* of such facilities and their operation with the use of the radio frequency spectrum and orbital space by the existing or planned INTELSAT space segment and *to avoid significant economic harm* to the global system of INTELSAT. Upon such consultation, the Assembly of Parties, taking into account the advice of the Board of Governors, shall express, in the form of recommendations, its findings regarding the considerations set out in this paragraph, and further regarding the assurance that the provision or utilization of such facilities shall not prejudice the establishment of direct telecommunication links through the INTELSAT space segment among all the participants. (23 U.S.T. at 3854 (emphasis added).)

Once this consulation process is commenced, the INTELSAT Assembly of Parties must render, in timely fashion and in terms of non-binding recommendations, findings as to whether the utilization of separate satellite facilities would be technically compatible with the use of the INTELSAT space segment and would not result in significant economic harm to the global INTELSAT system.

88. The meaning of the phrase "significant economic harm" is not so apparent as to provide clear guidance from which to ascertain whether the use of non-INTELSAT space segment facilities for international public telecommunications services is economically compatible with a global INTELSAT system for purposes of the INTELSAT Agreement. Nowhere in the INTELSAT Agreement is this broad language clarified to provide qualitative or quantitative criteria as to what type or amount of economic harm is sufficient to be "significant." Further, the negotiating history of the INTELSAT Agreement, which suggests only that the modifier "significant" was employed as a compromise between "substantial" and "any" economic harm[54] affords little help to those who must apply the "significant economic harm" test to a particular context.

89. The findings of the Assembly of Parties with respect to previous coordinations conducted pursuant to subpart (d) of Article XIV also do not define "significant economic harm" for the purposes of the INTELSAT Agreement. To date, INTELSAT has coordinated favorably several separate satellite facilities providing international public telecommunications services. The previous coordinations where INTELSAT has found that a separate satellite system provides public telecommunications services economically and technically compatible with INTELSAT are: (1) The U.S. maritime satellite system (MARISAT), proposed to provide services to each major ocean basin and later extended to accommodate the system's use by the International Maritime Satellite Organization (INMARSAT); (2) the European Communication System (ECS), proposed to serve intra-Western Europe traffic and established through the creation of a European Telecomunications Satellite Organization (EUTELSAT) by certain member nations of the Conference Europeanne des Administrations des Postes et des Telecommunications (CEPT); (3) The PALAPA system, proposed to serve Indonesia, Malaysia, Singapore, Thailand and the Philippines, but not to service traffic connecting any two international centers in the region; (4) the ARABSAT system, proposed to serve those countries comprising the Arab league with domestic and intra-regional satellite communications capability; (5) the use of the Intersputnik system to provide services between Algeria and several Eastern European nations, the U.S.S.R. and Cuba; (6) the MARECS satellite network, with respect to its proposed utilization by INMARSAT; and (7) U.S. domestic satellite systems proposing to provide certain "transborder" services between the United States and certain neighboring countries.[55]

90. In favorably coordinating these systems, INTELSAT has utilized an *ad hoc* approach in its determination of significant economic harm.[56] The evaluation process considered the specific circumstances involving each satellite system and took into account various factors for assessing economic harm.[57] However, no qualitative concepts or numerical tests were developed to provide clear guidance as to what would constitute the threshold of significant economic harm in future coordinations. Hence, in determining, for the purposes of this proceeding, whether the authorization of the separate systems may cause significant economic harm to INTELSAT, we will develop an approach which takes into account the particular circumstances presented by the proposed systems and the Executive branch service restrictions. This approach requires that those service restrictions be clearly defined as to scope and applicability.

2. Executive Branch Restrictions

91. As we have stated, the Executive branch has determined that, in order to ensure U.S. fulfillment of its international obligations as well as furtherance of both telecommunications and foreign policy interests, any separate satellite system authorized by the Commission ". . . is to be restricted to providing services through the sale or long-term lease of transponder or space segment capacity for communications not interconnected with public switched message networks (except for emergency restoration service)."[58] The Executive branch would impose this service restriction in order to avoid significant economic harm to INTELSAT. It recognizes that no regulatory regime can be "air-tight." But it believes that such restrictions are sustainable, particularly in view of the multinational character of international services and the fact that foreign PTTs police the services provided by companies serving their countries.

92. In our Notice, we requested comment on a variety of issues raised by the Executive branch service restrictions, including: (1) The need for the service restriction; (2) the legal standards by which it may be imposed; (3) the need for any time limit on the restriction; (4) the specific services which would fall within the scope of the restriction; (5) the extent to which the restriction could be implemented in

[54] *See* First Intersessional Working Group (IWG) Document, "Summary Record of IWG" (May 22, 1970).

[55] *See* INTELSAT Document, "Policies, Criteria and Procedures for the Evaluation of Separate Systems Under Article XIV(d)" (hereinafter cited as "The Article XIV Coordination Document"), BG-60-69E (August 22, 1984) (available in Public Reference Room (533), Federal Communications Commission). *See also* INTELSAT Documents "Report of the Board of Governors to the Assembly of Parties Pursuant to Article XIV(d) Concerning Coordination of the European Communications Satellite System," BG-37-54E (March 16, 1979) and "Report of the Board of Governors to the Assembly of Parties Pursuant to Article XIV Concerning Coordination of the Arab Communications Satellite System (ARABSAT)," BG-41-51E (March 14, 1980).

[56] *See* The Article XIV Coordination Document, *supra*, at p. 34-35.

[57] *See* INTELSAT Document "Intersystem Coordination Procedures: Proposed Procedures for Implementation of Article XIV(d) Requirements Concerning Significant Economic Harm," BG-28-63E (June 29, 1977).

[58] Letter from George P. Shultz, Secretary of State, and Malcolm Baldridge, Secretary of Commerce, to Chairman Fowler (November 28, 1984).

actual practice; and (6) the effect such a restriction would have on the competitive viability of the proposed separate satellite systems. We received diverse views on these issues.

(a) *Comments on the Restriction.* 93. Each applicant stated that it could accept and would adhere to service restrictions, with some qualifications on the scope and applicability of the restrictions. Orion states that it does not oppose the restrictions or believe that a time limitation on their applicability is necessary. Orion believes that the Commission can implement the restrictions by incorporating them in instruments of authorization. ISI contends that the Commission is bound by the restrictions but has flexibility in interpreting and implementing the restrictions under its public interest standard. Specifically, ISI requests the Commission to limit the restrictions to five years following the grant of a construction permit and thereafter extend them only by affirmative findings based on experience. Cygnus states that the restrictions do not constitute an unreasonable constraint, that it can conduct a viable, cost-effective operation in the immediate future by targeting private corporate users and other commercial entities for data, private voice and video programming services, and that it would take all reasonable precautions to ensure that its customers not offer public switched service. However, Cygnus does not rule out some future reexamination of the restriction. RCA states that it will abide by whatever restrictions are ultimately imposed. However, it believes that the restrictions should not be regarded as fixed, but as a reasonable, provisional means of managing the inevitable transition of international satellite services from a monopoly to a fully competitive environment. RCA believes that the restrictions can be successfully implemented. It questions whether the restrictions are intended to cover telex services and MTS provided by non-dominant carriers. PanAmSat supports the restrictions and states that the Commission clearly has authority to impose them. PanAmSat interprets the restrictions as precluding common carriage arrangements and only permitting new entrants to sell or lease all of their capacity on a contractual or non-tariffed basis. It believes that the restrictions are enforceable because: (1) The Commission will retain jurisdiction to monitor licensee activities; (2) no licensee would risk its large investment by intentionally or carelessly violating the conditions of its authorization; (3) foreign telecommunications agencies can be expected to enforce the restrictions; and (4) currently available technology and equipment can assure the effectiveness of the restrictions.

94. Comsat states that workable, effective restrictions must be placed on separate systems in order to protect INTELSAT. However, Comsat points out that the difficulty of maintaining a distinction between private (or "customized") services and public-switched services. It contends that the "no-interconnection" condition will not by itself be sufficient and urges that the Commission must apply its telecommunications expertise and experience to fashion operational requirements that will achieve the President's objectives. Comsat believes that the intent of the Executive branch restrictions is to limit separate systems to the provision of international leased channel or private-line services. It argues that demand for customized services will fall short of capacity and that separate satellite system operators will have economic incentives and technical ability to invade the public switched domain. It also argues: (1) That there is interchangeability or substitutability among conventional and customized services; (2) that large corporations have sufficient traffic volume to divert traffic from the public-switched network; (3) that resale or shared use of separate system facilities would further enlarge the number of potential business users; and (4) that there are a variety of techniques which would make enforcement of the restriction difficult. In view of these factors, Comsat maintains that there could be large scale bypass of INTELSAT without effective Commission action. Comsat believes that an effective regulatory plan should limit purchasers or lessors to classes of users that, by their nature, have a recognizable need for private or intracorporate communications; prevent private networks from being reconfigured to replicate the public-switched network; and establish policy, operational, and technological means to prevent interconnection with the public switched network. Comsat states that the Commission should forbid the sale of capacity to common carriers; prohibit service for hire, resale, and shared use; ban interconnection with the public-switched network; establish minimum unit sizes available for sale or lease; adopt a precise definition of the phrase "long-term;" and make all restrictions applicable not only to separate system operators but to all users of such systems. Comsat states that a reasonable minimum unit of space segment capacity would be one half transponder (18 MHz). Also, it states that a long term lease should be for a minimum of five years. It states that sales and leases must be on a full period, 24-hour, seven-day-per-week basis.

95. Two other parties take positions similar to that of Comsat. IRI states that there are serious technical and practical difficulties with the Executive branch restrictions, and that further clarification and refinement are required. IRI believes that the prospects for enforceability of the restrictions are dim at best, in view of the U.S. experience with widespread use of "leaky PBXs," the financial incentive of large business customers to use private system capacity for international calls either orginating or terminating in the public-switched network, and the difficulty in detecting or measuring PBX leakages. In addition, IRI believes that the term "customized services" and the concept of "sale or long-term lease of transponders or space segment capacity" are lacking in definition. It suggests that the minimum lease term should be roughly equivalent to the lifetime of the satellite and that minimum capacity levels should be estabished. Finally, apart from these clarifications, IRI argues that further conditions should be imposed: (1) A showing that proposed services are not susceptible to efficient provision by INTELSAT and that use of INTELSAT facilities would be uneconomical and impractical; (2) a correspondent relationship between the applicant and foreign operating authorities; and (3) a demonstration by the applicants of the adequacy and enforceability of specific safeguards that they will impose to prevent interconnection of their services with public-switched networks.

96. Amb. Abbott Washburn contends that any restriction will be difficult, if not impossible, to enforce, that the "leaky PBX" has long been recognized by the Commission as a prevalent and vexing problem, and that, in the case of separate satellite systems, system operators would have the same severe policing difficulties as the Commission since the leaks would occur on the customers' private networks using purchased or leased transponders. Amb. Washburn also countends that the Executive branch restrictions should not "sunset." He argues that the Presidential determination does not include a "sunset" provision, nor does its rationale and criteria allow such a development. Amb. Washburn states that the importance of the restrictions in maintaining INTELSAT's viability by

maintaining a narrow scope of services available to separate systems will not diminish over time. Amb. Washburn also maintains that the Commission must impose restrictions on interconnection between separates systems and on resale and sharing. He argues that absent a ban on interconnection between separate systems, there would be substantial bypass of the INTELSAT public switched network. Finally, he further argues that any restriction on the scope of services would be rendered meaningless if resale of capacity made available by sale or long-term lease of transponders is permitted.

97. Three of the applicants, ISI, PanAmSat and RCA, oppose the additional restrictions proposed by Comsat. The other two applicants, Orion and Cygnus, did not comment on the additional restrictions. ISI states that the impostion of Comsat's mutliple restrictions would not leave it or any other applicant much to sell. ISI contends that it could not take advantage of new technology and its inherent facility and service flexibility to tailor capacity to individual needs. It interprets the Executive branch limitations to apply to switched message servcies such as switched voice (MTS) and TWX/telex. It contends that the purpose of the restriction is to protect INTELSAT from loss of its principle revenue stream, which is switched voice traffic. Other switched message services, such as packet-switched or other switched data services account for a very small portion of INTELSAT's revenues, acording to ISI.

98. PanAmSat states that none of Comsat's additional restrictions are included in the Presidential determination, with the exception of the no-interconnection restriction and the "long-term" restrictions of leases. PanAmSat agrees that a definition of "long-term" lease is needed but finds the terms suggested by Comsat and IRI unreasonable. Alternatively, PanAmSat suggests that the Commission propose minimum lease terms similar to those currently offered or prepared by INTELSAT, Comsat and the new IBS providers. On the other hand, PanAmSat does not believe that a minimum unit of capacity for lease or sale needs to be set since such a restriction would limit the applicant's flexibility in responding to user needs. As to the imposition of resale and shared use restrictions, PanAmSat contends that the new private networks will not substitute for the public-switched network given the "no-interconnection" restriction. It also contends that small corporations without the volume of traffic that would support the purchase or long-term lease of transponders would be barred from achieving the cost savings and flexible arrangements offered by the proposed separate systems if resale and shared use are prohibited. Finally, PanAmSat notes that the proposed international private cables have not been burdened by the same restrictions proposed by Comsat and that it would be unfair to impose the restrictions on the private satellite applicants.

99. RCA argues that Comsat's proposal to prohibit use of separate systems by U.S. international carriers would disserve users that prefer to acquire pre-assembled and packaged foreign international service from a carrier rather than to acquire the separate components themselves. RCA believes that there is no reason to impose resale and shared use restrictions in advance when conformity with international practice can be achieved by the imposition of such conditions through a carrier's tariff, pursuant to arrangements with foreign correspondents. In addition, RCA contends that Comsat's proposal for a minimum unit of capacity would place use of the separate systems beyond the reach of many users. Finally, RCA maintains that Comsat's proposal that all sales and leases be on a full-period, 24-hour, seven-day-per-week basis is without warrant in the Executive branch recommendations and would serve no useful purpose other than to maintain all occasional-use television as the exclusive perserve of Comsat. As long as each user commits for a period long enough to meet the Executive branch's service restrictions, RCA argues, the objective of those restrictions would be fully satisfied.

100. The Ad Hoc Telecommunications Users Committee expresses reservations about the restrictions. The Ad Hoc Committee questions whether the "no-interconnection" restriction can be, successfully implemented and if it would limit too severely a new entrants competitive opportunities. If the Commission determines that such restrictions are necessary, the Ad Hoc Committee urges the Commission to define the precise scope and application of the restrictions in order to permit investors and users to make sound and informed commercial decisions and to minimize future misunderstandings with INTELSAT and foreign authorities. The Ad Hoc committee opposes Comsat's proposed additional restrictions as unnecessary to protect INTELSAT and argues it would impose significant competitive restraints on separate system operators

101. ABC, CBS and NBC also oppose Comsat's proposed additional restrictions. The networks contend that common carriage and resale restrictions on television transmission service are unnecessary to protect INTELSAT's MTS business and would significantly impair the ability of a separate system to compete for television transmission business, both for occasional service and full-time transponder leases. In addition, the networks place particular importance on occasional use service and specifically urge that separate system opearators be permitted to offer occasional or part-time service on a common carrier basis.

102. The American Petroleum Institute believes that the Executive branch restrictions would be impractical and impossible to enforce. In any event, API contends that it should not apply to customers. API argues that some traffic in an intracorporate network must go over the telephone network and the restrictions would limit customers too severely. In contrast, Wold Communications believes that the restriction will be both enforceable and judicially sustainable and that any modification or elimination of them must be based upon a change in market conditions. Wold believes that the separate satellite system operator must bear the burden of demonstrating changed conditions if it wishes to be relieved of the restrictions.

103. AT&T believes that the Executive branch bar on interconnection with public switched message networks is not sustainable and probably is, at best, a transitional device that cannot be relied upon to provide long-term protection to INTELSAT because it will inevitably erode. First, AT&T contends that since separate satellite system operators will have a substantial investment upon which they will seek to earn a return, and the international private line market is not large enough to fill the capacity of the proposed private systems, the separate system operators will have the economic incentive to provide public-switched services. Second, AT&T states that monitoring would be difficult because there is no way to determine whether streams of information originate or terminate in a public switched network. Third, AT&T believes that enforcement of the restrictions would be difficult because the Commission would have no jurisdiction over users or control over the foreign end, and because remedies against the satellite system operators either would be too draconian or fraught with evidentiary problems. AT&T also states that the Executive branch "no-

interconnection" restriction would cause market distortions by creating a disparity between the price of leased channels and the price of services over public-switched networks. IMTS suppliers would be forced to use higher cost INTELSAT satellite circuits while private line users would be able to use lower cost private facilities. According to AT&T, this situation would give large users the incentive to abandon the public switched network which would depress growth in the public switched network. AT&T argues for a fair chance to compete and suggests an automatic termination date of 1989 for the Executive branch restrictions. AT&T opposes Comsat's proposed additional restrictions, maintaining that they would ensure that the market segment available to separate systems would be so narrow as to seriously threaten their viability. In particular, AT&T contends that Comsat's proposal to prohibit common carrier use of the separate systems is inconsistent with Presidential objectives and would eliminate the best-positioned potential users of the separate systems who can provide the customized services envisioned by the Executive branch as the principle benefit of separate systems. Finally, AT&T opposes RCA's suggestion that only AT&T's IMTS should be subject to the Executive branch restrictions. AT&T maintains that the effect of this proposal would be to create a blatantly discriminatory handicap for AT&T in the North Atlantic market.

104. The Federal Trade Commission contends that no service restrictions are warranted because they will limit benefits of competition offered by the proposed separate systems. It recommends that the Commission authorize the new systems without substantially restricting the type of traffic they may carry. The Department of Justice states that the Executive branch determination forecloses any argument against the need for restrictions, although the precise form of the restrictions may depend to some extent on the results of negotiations with foreign authorities and the results of the INTELSAT consultation process. In addition, DOJ states that the Executive branch can recommend removal of the restrictions in the future if they become unnecessary. Finally, NTIA emphasizes the need for the Executive branch restrictions to protect INTELSAT's core revenues which are derived from its provision of facilities for public-switched message services. NTIA maintains that the restrictions are enforceable and that widespread violations are unlikely to occur.

(b) *Need for Restrictions.* 105. There appears to be substantial agreement that some kind of operational restrictions on separate satellite systems will be necessary to avoid significant economic harm to INTELSAT. We conclude that operational restrictions will be necessary. We believe that the Executive branch approach to assure the avoidance of significant economic harm is a reasonable and workable approach. It properly balances the continuing U.S. commitment to INTELSAT with our goal of obtaining the benefits of competition in international communications satellite services. By prohibiting separate systems from interconnecting with public-switched networks, these restrictions would protect INTELSAT's "core" revenues obtained from supplying space segment capacity for international switched message services. Peripheral or "customized" services would be subject to competition between INTELSAT and separate satellite systems. Although the restrictions will limit customer use of separate systems, the potential benefits from introducing competition on a limited basis are still substantial, as we have described, and are worthy of pursuit.

106. In addition, the Executive branch restrictions are an integral part of a Presidential determination that weighs foreign policy, national security, economic and trade considerations as well as telecommunications policy interests. The restrictions are intended to ensure that the United States meets its international obligations. As a result, the Commission must accord the Executive branch determination the greatest deference and should not reject or substantially modify such determination absent further consideration by the Executive branch.

107. We cannot agree, however, with those commenters who argue that the Commission need not consider issues concerning the economic impact of the proposed systems on INTELSAT. Those commenters maintain that the Executive branch process in reviewing these issues was exhaustive and need not be repeated by the Commission. They also maintain that the Commission's role is limited to reviewing the applications to determine whether the Executive branch criteria have been satisfied and whether the applicants have the requisite legal, technical and financial qualifications under the Communications Act of 1934 to be issued a license. We agree that we should not ignore the Executive branch restrictions or override them without further consideration by the Executive branch. But, implementation of those restrictions will require the Commission to impose conditions on any licenses that it may grant for separate satellite systems, as well as U.S. earth stations that operate with the systems. From a regulatory perspective, this agency has the responsibility and expertise to review the telecommunications and related economic issues that must be considered in deciding to impose such conditions. Also, U.S. policymaking in the rulemaking and licensing process must include on-the reord public comment (or petitions to deny, as the case may be) which was not a part of the Executive branch process. The comments and replies that we have received show that the Executive branch restrictions require clarification and further definition as to their scope and applicability in order to ensure their effectiveness.

(c) *Scope and Applicability of Restrictions.* 108. The Executive branch restrictions must be defined more precisely in order to: (1) Prepare and furnish all relevant information to INTELSAT for consultation under Article XIV(d); and (2) impose license conditions which are clear and understandable. We indicated in our Notice a need to identify the services which fall within and outside the scope of the restrictions. The language of the restrictions defines the permissible services by a negative—"communications that are not interconnected with public-switched message networks." The White Paper states that separate systems should be limited to "customized" services as defined in the White Paper.[59] It further states that such services *involve* the sale or long-term lease of transponders or space segment capacity for communications not interconnected with the public-switched networks, and *include* intracorporate networks and television transmission. The term "customized" generally means "to build, fit or alter according to individual specifications." [60] However, intracorporate networks can include a range of services such as conventional private line services which may not necessarily be "customized" but are nevertheless needed to satisfy intracorporate communications needs. In addition, with respect to the concept of "long-term lease," neither the Executive branch restrictions nor the White Paper state how long a "long-term

[59] Both the Executive branch restriction and the White Paper state that "customized" services would include emergency restoration service.

[60] Webster's *New Third World Dictionary*, Copyright 1971, p. 560.

lease" must be to comply with the restriction. Nor do they specify a minimum unit of space segment capacity that can be made available through sale or lease. They do not state whether resale and shared use of the space segment capacity are barred. If resale is permissible, it is not clear whether resale must be only by sale or long-term lease and whether a "minimum unit" restriction must apply. Finally, the White Paper is silent on whether the separate satellite system operators may engage in common carriage and whether they may sell or lease capacity to common carriers. If common carriers are to be permitted to acquire capacity, it is not clear what restrictions apply to their use of capacity other than the "no-interconnection" restriction.

109. Although we agree with Comsat and other commenters that implementation of the Executive branch restrictions requires more detailed definition, we need not adopt, "explicit, detailed rules," to achieve this objective. We believe that incorporation of the operating restrictions that we adopt in this proceeding as specific conditions to the instruments of authorization will effectively accomplish the same purpose. We may achieve our regulatory goals by making a reasoned determination that particular operating restrictions are in the public interest and expressly include those restrictions in the instruments of authorization.[61]

110. Any attempt to clarify and further define the Executive branch restrictions must start with a clear understanding of what services are intended to be barred from separate systems. It is clear that the purpose of the Executive branch restrictions is to avoid significant economic harm to INTELSAT by protecting its "commercial core," which the White Paper defines as "public-switched traffic." [62] It is also clear that in order to assure this goal, the restrictions must apply to communications originating in foreign countries and destined for the United States as well as communications originating in the United States destined for international points. In addition, they must continue to apply at the "foreign-end" of the circuit for communications originating in the United States. The comments that we have received, however, show disagreement as to what services fall within the term "public-switched traffic." Some commenters interpret the term as referring only to message telephone service (MTS), whereas Comsat believes that it is also intended to include record service, alternate voice-data (AVDs) and data services. RCA does not believe that it should include telex or "non-dominant" MTS.

111. The White Paper attempts to describe "public-switched traffic" by historical revenue figures and also in terms of projected circuit utilization. It first describes "public-switched traffic" as the full-time voice, record and data services that account for 86 percent of the total utilization revenues that INTELSAT receives.[63] The White Paper observes from INTELSAT forecasts that "transatlantic voice grade circuits will continue to be composed overwhelmingly of message telephone service (MTS) and related switched services." [64]

112. We believe that it is clear that the Executive branch intends that services in addition to MTS are to be barred from separate satellite systems. But the White Paper is unclear as to which additional services are to be included. The "86 percent" figure cited by the White Paper is from the 1983 INTELSAT annual report. It includes revenue derived from non-switched services such as AVDs and private line voice, record and data services as well as switched services such as MTS telex and telegraph and high-speed switch data. Moreover, the remaining 14 percent of the revenue that is derived from leasing transponders, from providing SPADE service (SPADE service provides satellite circuits on demand, one circuit at a time, for public switched telephone traffic; each circuit forms a link only for the duration of a telephone call), and from providing facilities that carry occasional services such as television, the restoration of submarine cables and the temporary demands created by special events, includes at least some switched services, since AT&T leases SPADE circuits to provide MTS.

113. The White Paper analysis of INTELSAT traffic projections presents a similarly confusing picture. That analysis includes the following table from the June 1982 INTELSAT *Global Forecast* for 1988:

14,185	MTS [65]
113	Record Service
1,259	Alternate Voice Data (AVD)
46	Data
15,603	Total voice-grade (4 kHz) circuits

From these data, the White Paper observes that according to INTELSAT forecasts, MTS alone comprises 14,000 of 15,603 satellite voice-grade circuits to 18 European countries, and concludes that "[u]nder the Executive Branch approach, new entrants would thus be barred from providing services which are directly competitive with some 90 percent of INTELSAT's voice-grade offerings . . ." Since it is the 14,185 figure listed for MTS which is 90 percent of the total voice-grade circuits forecast for 1988 to the 18 countries involved, services in the remaining categories are presumably not barred to separate satellite systems. This conclusion, however, would permit separate systems to provide switched telex, telegraph, and high speed data services as well as AVDs and private line services. Thus, while the White Paper's description of public switched traffic by historical revenue figures would include some non-switched services, its description of public-switched traffic in terms of projected circuit utilization would appear to exclude some switched services as well as non-switched services.

114. We believe that a reasonable approach to clarifying what services are barred from separate systems is to identify those services that are switched services. Interconnection with the carrier networks over which these services are provided is barred. Separate systems would be permitted to provide all other services subject to the limitations set out in the Executive branch restrictions and further defined by this Commission. First, MTS is a switched service and separate systems may not interconnect any MTS switched network. All MTS is barred whether or not it is provided by AT&T or any new and smaller carrier such as MCI, GTE Sprint and SBS. Telex, TWX telegraph and teletext services generally are switched services. Interconnection with IRC networks to access these services is barred as is interconnection with carriers switched networks providing facsimile or low speed and high speed switched data services. Private line voice record services are not switched and may be provided by separate systems. AVDs have been considered from their inception to be a form of

[61] *See* MCI Telecommunications Corporation v. F.C.C., 561 F.2d 365 (D.C. Cir. 1977), *cert. denied*, 434 U.S. 1040 (1978).

[62] White Paper at 30.

[63] White Paper at 30.

[64] White Paper at 34.

[65] The 14,185 figure cited by the White Paper as only MTS actually represents both MTS and private line voice projections. The INTELSAT Global Report generally labels this entry as "voice" and not specifically MTS. The "113" figure cited by the White Paper in the table above as "Record Service" includes both switched telex and telegraph service and non-switched private line record services.

private leased line.[66] We do not agree with Comsat that the White Paper intends to regard AVDs as a switched service and bar separate systems from providing them for intracorporate use.[67] There is simply no basis to consider AVDs as a switched service. As to other services, the White Paper explicitly states that separate satellite systems may provide television transmission services which do not involve the switched network. However, videoconferencing and associated audio may involve the switched network. Separate satellite system operators may not interconnect with the carriers' switched networks to provide these services. In sum, we regard the term "public-switched message networks" for purposes of implementing the Executive branch restriction to include those facilities established to provide switched message services such as MTS, telex, TWX, telegraph, teletext, facsimile and high speed switched data services. Generally, no communications provided over the separate system space segment may interconnect with these networks, either directly or indirectly.[68] Thus, for example, separate system users would not be permitted to interconnect their facilities to the MTS network through a PBX or by the manual interconnection of a switchboard operator. Neither would a data circuit obtained from a separate system be permitted to interconnect with a public switched message network if it terminates in a computer that can store and process the data and subsequently retransmit it over that network.

115. Having determined what constitutes a "public switched-message network," we must consider the intent and meaning of "customized services" as introduced in the White Paper. The term does not appear in the language of the Executive branch restrictions. The use of the term in the White Paper essentially presents us with an attempted definition of what services separate systems may provide, while the language of the Executive branch restriction states what services a separate system may not provide. It is not clear from the White Paper's statement that "customized services include intracorporate networks and television transmission," whether this definition is intended as exemplary of services which may be provided or is exclusive of all other services. The problem is that there are services, which, although not "intracorporate" in nature or involving "television transmissions," are still not interconnected with public-switched message networks. For example, the Ad Hoc Committee emphasizes the need for private line connections between U.S. firms with non-affiliated foreign entities, such as agents, franchisees, distributors and suppliers. Although not interconnected to public-switched message networks, these services are neither television transmissions nor do they involve internal private communications between corporate offices. Comsat appears to believe that the Executive branch restrictions are intended to limit use of separate satellite system capacity to purely internal, private communications between corporate offices, other than television transmission. This interpretation establishes a further limitation not expressly stated in the Executive branch restriction. It would go beyond and contradict that restriction by proscribing separate systems from providing certain non-switched services. In its reply comments, NTIA makes it clear that both users and carriers may have the opportunity to obtain capacity on the proposed systems. It is reasonable to assume that carriers would obtain capacity to provide non-switched services to users and not just for their internal, corporate communications. In addition, we note that the White Paper anticipates that firms providing financial services and data processing companies could benefit from the lower costs that separate systems may offer, and states that "worldwide credit card and electronic funds transfer operations, for example, may be heavily dependent on the availability of efficient, dedicated satellite communications network."[69] None of these functions are necessarily "intracorporate" in nature. Thus, we believe that NTIA's comments reflect an Executive branch intention that the White Paper's definition of "customized services" is intended as exemplary and not exclusive. We conclude that "customized services" is intended as a term generally descriptive of the services that separate systems may provide and is not intended to further narrow the language of the Executive branch restrictions. That language limits separate systems to the sale or long-term lease of space segment capacity for communications not interconnected with public-switched message networks. By this language, the Executive branch intends to limit competitive ventures to international leased channel or private-line type services which are tailored or "customized" to meet special customer needs. The "no-interconnection" and the "sale or long-term lease" aspects of the Executive branch restrictions are intended to ensure customer use of separate satellite system capacity for its "customized" services.

116. The proposals of Comsat to impose additional service restrictions are intended to clarify: (1) How a separate system operator may provide service; (2) what unit of capacity may be provided; (3) what lease periods may be made available to customers; and (4) what the customer may do with the service. As we have already stated above, Comsat proposes the separate satellite system operators not be permitted to operate as common carriers; that common carriers not be permitted to obtain space segment capacity from separate systems; that resale and shared used of separate satellite system space segment capacity be prohibited; that a minimum unit size of capacity available for sale or lease be established; that a precise definition of the phrase "long-term" be adopted; and that all restrictions applicable to separate system operators be applied to users of the systems. Comsat believes that these restrictions are necessary to prevent private networks from duplicating the public-switched message networks and threatening INTELSAT's "core" business.

117. As to the question of how separate system operators may provide services, we conclude that the phrase "sale and long-term lease" in the Executive branch restrictions together with the use of the term "customized services" in the White Paper is indicative of an Executive branch intention that separate satellite system licesees are not to operate as common carriers. Our conclusion here in further

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[66] *See* AT&T Co. and Radio Corp. of Puerto Rico *et al.*, 28 FCC 221 (1960) (authorizing the provision of private line voice-grade channels with alternate use for telephone-data-teletypewriter transmission).

[67] Comsat's claim appears to be based on a misreading by its consultant of the White Paper analysis of INTELSAT's 1988 projected voice-grade circuit utilization shown in the table above. This claim is inconsistent with both the White Paper's statement that 90 percent of INTELSAT's voice-grade offerings are barred from separate systems and the White Paper's table which shows the 90 percent figure as representing MTS, and while the remaining 10 percent included in record service, AVD and data. If the White Paper intended to bar 100 percent of INTELSAT's voice-grade offerings, then it would have so stated and no purpose would have served to single out 90% of those offerings.

[68] A customer of a separate satellite system may not have a customer premises earth station through which service could be originated and/or terminated. In such cases, some connection would have to be established between a downlink, whether owned by the separate system operator or a common carrier, and the customer's premises. This would not present a problem where the connecting circuit is a distinct channel, such as a private line, not part of a switched network.

[69] White Paper at 42–43.

supported by the White Paper which refers to separate satellite systems as "noncommon carrier, satellite systems."[70] We have previously found that the sale or long-term lease of satellite transponders by satellite owners is a factor supporting a determination that the offering does not constitute common carrier activity.[71] In that decision, the Commission applied the definition of common carriage as set forth in the *NARUC I* decision and concluded that the sellers of domestic satellite transporders under consideration there would not hold themselves out indifferently to serve the user public.[72] For the most part, we find no distinction between what the separate satellite system applicants propose and what we found to be non-common carrier activity in our *Transponder Sales* decision. Rather, they are to operate in a manner similar to domestic satellite operators which provide domestic satellite capacity on a non-tariffed basis in the manner anticipated by the Commission in adopting its *Transponder Sales* decision.[73] Three applicants (Orion, Cygnus, and PanAmSat) propose to provide space segment capacity on this basis. Two applicants (ISI and RCA) propose to provide some common carrier services as well as offer space segment capacity on a non-tariffed basis. While we are today concurrently granting ISI and RCA conditional Title III applications, we are denying the section 214 portion of their applications.[74]

118. Neither the language of the Executive branch restrictions nor the White Paper define a minimum unit of space segment capacity which a separate system may offer, or specify a minimum term for "long term lease" of capacity. Comsat is concerned that, absent specific definitions, a separate system operator could provide the equivalent of international MTS by selling or leasing small amounts of capacity or permitting the purchase of single voice circuits on a time-shared basis. Therefore, Comsat believes that a minimum unit of space segment capacity would be one-half transponder (18 MHz), which it contends is small enough to permit user flexibility and large enough to prevent abuse of the intent of the Executive branch restrictions. Comsat further believes that the proposed minimum lease period should be five years. IRI proposes that it should be the lifetime of the satellite. Comsat proposes that all sales and leases must be on a full-period, 24-hour, seven-day-per-week basis which would prevent time-sharing.

119. We agree with Comsat that the term "long-term lease" requires further definition. However, we believe that Comsat's proposed minimum unit of capacity and long-term lease terms are overly restrictive and unnecessary to achieve the objectives of the Executive branch proposal. We find no need to establish a minimum unit of capacity. The Executive branch restrictions clearly anticipate permitting separate system operators to offer less than full transponders. In fact, the White Paper suggests that capacity as small as a single voice-grade circuit could be offered.[75] More important, we believe that there are clear distinctions between private lines and international MTS which make it unlikely that their provision by separate system operators would lead to duplication of the MTS network, as Comsat fears. First, from an operational standpoint, private lines cannot match the MTS network where there is a need for multiple point connection. By definition, a private line will connect one point with another, while the MTS network offers on-demand connectivity to points all over the world. A private line can only achieve this result through interconection with the MTS network which is prohibited by the Executive branch restrictions. Second, we believe that Comsat overstates the substitutability aspect of voice-grade private line circuits, even considering time sharing. Third, since INTELSAT already offers transponder capacity in 9 MHz units for IBS, INTELNET and domestic leased services, imposition of a minimum unit of capacity requirement of one-half transponder (18 MHz) as Comsat proposes would place separate system operators at a competitive disadvantage in areas the Executive branch has deemed subject to competition. This result would be contrary to the intent of the Executive branch restrictions. Finally, the minimum lease term that we will impose and require to be applied to all users of separate system capacity will by itself discourage the use of voice-grade private lines as a widespread substitute for international MTS.

120. Absent any indication from the White Paper as to how long a lease period should be permitted, we look to the purpose of the restrictions and are guided by existing commercial practices in offering satellite leases. Comsat states that a long-term lease should be for a minimum of five years. It states that sales and leases must be on a full-period, 24-hour, seven-day-per-week basis. However, we conclude than a five year minimum is longer that necessary to accomplish the objective of the Executive branch restrictions. This objective is to protect INTELSAT's "core" business by limiting competitive systems to those services which do not comprise that "core" business. It requires that customers acquire capacity on a "long-term" basis in order to assure that the capacity is tailored or "customized" for the special needs of the customer which separate satellite systems are technically designed to satisfy. We do not believe that a five-year lease term is necessary to achieve this goal.

121. First, a five year lease term would so severely limit the scope of separate satellite system operations that only very large users might consider obtaining capacity. Small users would most likely be unable to project their communications needs over the course of five years and, therefore, would not invest in separate satellite systems if a five year lease were required. The White Paper clearly describes the benefits of "customized" services to large users; however, it does not foreclose these benefits to businesses with smaller but equally important communications needs. In its reply comments, NTIA anticipates that multinational companies and heavy users would be the primary customers of separate systems, but it also speaks in more general terms such as "U.S. business users," "international business users" and "users" benefitting from separate satellite system services.[76] As

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[70] White Paper at 42.

[71] *See* Transponder Sales, 90 FCC 2d, at 1256.

[72] *Id.* at 1257; *see* National Association of Regulatory Utility Commissioners v. FCC, 525 F.2d 630 (D.C. Cir.), *cert. denied*, 425 U.S. 999 (1976) ("NARUC I").

[73] *See* Transponder Sales, 90 FCC 2d, at 1238.

[74] We recently initiated a rulemaking looking toward adoption of an application process for those seeking status as recognized private operating agencies (RPOAS). Under that proposal, operators of the separate satellite systems would be eligible for designation as RPOAs as that term is used in the International Telecommunications Convention and the Regulations and Recommendations issued thereunder, and for membership in the International Consultative Radio Committee notwithstanding their lack of 214 authorization. *See* Intercommunication Policies Governing Designation of Recognized Private Operating Agencies, Grants of IRU's in International Facilities and Assignment of Duty Network Identification Codes, FCC 85-369, ——— FCC 2d ——— (adopted July 12, 1985).

[75] White Paper of 42 (comparing domestic and international charges for full-time, voice-grade private lines, and concluding that "a U.S. firm offering international circuits at prices comparable to U.S. domestic prices should thus experience significant demand").

[76] Reply Comments of NTIA at 3, 10, 12, 13, 16, 18 and 19.

long as INTELSAT's "core" business is preserved, we see no need to require minimum lease terms that would effectively prohibit smaller businesses and users with customized service needs from using separate systems.

122. Second, the proposed five year term is not supported by existing domestic satellite and INTELSAT lease terms. U.S. domestic satellite providers offer leased services variously called "long-term," "fixed-term" and "full-time" for periods extending from one to seven years with various restrictions and requirements. INTELSAT and Comsat offer leased services also at various periods of time: (1) "Full-period" space segment television service (customer provides earth terminals) initially for two, five or seven years, with one or two year extensions; (2) "Improved Video Channel Service" for five years; (3) "full period" space segment television service (Comsat provides earth station) initially for two years, with extensions in multiples of one year; (4) INTELSAT Business Service (IBS) transponder capacity (full (72 MHz) ½ (36 MHz) ¼ (18 MHz) and ⅛ (9 MHz) transponder, initially for one year, with extensions in yearly multiples up to seven years; (5) domestic leased space segment capacity (full (36 MHz), ½ (18 MHz) and ¼ (9 MHz) transponder, for one year with a regular operational satellite and five years with a spare satellite; (6) INTELNET (full (72 MHz), ½ (36 MHz), ¼ (18 MHz), ⅛ (9 MHz) transponder) non-preemptible for one year and preemptible for two, five, or seven years; and (7) Integrated Video/Data service (full (72 MHz); ½ (36 MHz), ¼ (18 MHz) and ¼ (9 MHz) transponders) full time preemptible for two, five and seven years and full-time non-preemptible for one, four and seven years.[77]

123. In view of these factors, we believe that *one year* is a reasonable minimum lease period for the business data, television and domestic lease services that the applicants for separate system propose to provide. As can be seen, INTELSAT, through Comsat, offers U.S. users leased services in these areas for periods of one year. Not to permit separate system operators to offer similar leases would place them at a distinct competitive disadvantage in areas that the Executive branch has deemed desirable for competition. Thus, while separate system operators would be restricted to five year leases under Comsat's proposal, INTELSAT would offer one-year leases for IBS, INTELNET, integrated voice/data and domestic leased services. This result would be contrary to the intent of the Executive branch restrictions. Under these circumstances, we conclude that imposition of a minimum lease period of one year is consistent with the intent of the restrictions. This minimum period will of course preclude separate system operators from offering the occasional use video services that several commenters desire. While we may have reached a different result under different circumstances, we believe that we have no choice but to give effect to this facet of the Executive branch restrictions. Any period less than one year could not reasonably be considered "long term."

124. We will apply the "no-interconnection" and "sale and long-term lease" restrictions called for by the Executive branch restrictions not only to separate system operators, but also to all levels of users of the facilities. We agree with Comsat that the restrictions must attach to the satellite facilities themselves and not just to the licensed operating company.[78] The purpose of the "no-interconnection" restriction will be defeated if users are permitted to interconnect with "public-switched message networks" because separate systems could be used to carry MTS and other switched traffic which the Executive Branch seeks to protect to avoid significant economic harm to INTELSAT.

125. In addition, there is no basis for independent Commission action to impose a sunset date on the Executive branch restrictions. The language of the restriction does not specify a sunset date and the White Paper does not discuss the possibility of such a limitation. Since the restrictions are intended to assure U.S. fulfillment of its international obligations, we will not consider removal of the restrictions absent a finding by the Executive Branch that they are no longer necessary to fulfill U.S. international obligations.

126. As to Comsat's proposals that common carriers not be permitted to obtain space segment capacity from separate systems and that the resale and shared use of capacity be prohibited, neither the language of the Executive branch restrictions nor the White Paper explicitly require these measures. Comsat believes that there is no function for common carrier purchasers or lessors to perform because carriers, like system operators, would be limited to the sale or long-term lease of non-interconnected capacity, and could not provide prices or services that could compete effectively with the underlying suppliers. Comsat therefore believes that permitting carrier investment in space segment capacity and associated ground segment would create incentives to expand the defintions of "long-term" and "no interconnection" in a manner inconsistent with U.S. obligations to INTELSAT. We disagree. First, even if carriers may have incentives for "creative expansion" of the "long-term" and "no interconnection" definitions, incentive, in and of itself, is not a public policy reason to declare carriers ineligible for separate system facilities.[79] Second, Comsat's view that carriers would have no function in reselling separate system capacity apparently is partly based on the assumption that they would not be permitted to break up the capacity in any way and would be required to resell it in the same form originally acquired. This assumption requires imposition of a minimum use of capacity requirement which, as we have discussed, is unnecessary to achieve the purpose of the Executive branch restrictions of protecting Comsat's "core business." Thus, we believe that carriers would have a function in reselling separate system capacity by breaking the capacity that they acquire into small units which could be tailored to the

[77] INTELSAT also offers leased services at shorter periods of time. These services are: (1) "Full time" voice grade service (4 KHz) for one month; (2) contract television service, with minimum lease periods ranging from 200 minutes per month, to 10 consecutive minutes on 5 consecutive days a week for 26 consecutive weeks, depending on the type of contract; (3) Sound Program Channel service (4–12 KHz) for one month; (4) high speed data channel service (48 Kops—1.544 mops) for one month; (5) Digital Data Satellite Communications Service (DIGISAT) for one month; (6) full time INTELSAT Business Satellite Service (IBSS) for three months; (7) Rural Communications Service (4 KHz) for three months; (8) "short term" domestic leased space segment capacity (9–36 MHz) for three months; and (9) "full time" VISTA service, for three months. In addition, even shorter leases are provided by INTELSAT on an occasional use basis.

[78] Amb. Washburn and IRI argue the Commission also should prohibit interconnection between the separate satellite systems in order to prevent "massive" bypass of the INTELSAT public-switched network through the exchange of data, facsimile and other services between two companies' private networks. However, neither the Executive branch restrictions nor the White Paper impose such a prohibition. Amb. Washburn offers no evidence that interconnected traffic between separate systems would be "massive" as he contends. The services to which he refers are not forbidden to separate systems as long as they are not interconnected to the public-switched message network.

[79] If the Commission adopted this line of reasoning in the *Comsat Study*, it would have prohibited Comsat from entering into non-INTELSAT/INMARSAT lines of business based on its findings that Comsat had both the incentive and opportunity to use its position as the sole U.S. representative in INTELSAT and INMARSAT to engage in anti-competitive behavior. *Comsat Study*, 77 FCC 2d 564 (1980).

private needs of customers and that this function would be one means of achieving the benefit that we have found can be provided by separate systems. As we have noted, NTIA states in its reply comments that both carriers and users may have an opportunity to obtain capacity in the proposed systems.

127. We conclude that the Executive branch intends to permit common carrier resale of separate satellite system capacity so long as such operations comply with the "long-term lease" and "no interconnection" requirements set forth by the Executive branch. The use of separate systems by U.S. carriers would require section 214 authorization from the Commission. That authorization would be conditioned on compliance with the Executive branch restrictions. Carrier tariffs would have to comply with the "long-term" lease requirement. In addition, we shall not preclude resale of separate system facilities by enhanced service providers as long as the foreign authorities within the countries they operate and their foreign correspondents agree to resale operations.[80] As with any other separate system user, enhanced service providers will be subject to the Executive branch "no-interconnect" and "long-term lease" restrictions.

(d) *Operating Agreements.* 128. Finally, we reject IRI's proposal to require as a precondition for licensing of separate systems that applicants must establish a correspondent relationship. In support of its contention, IRI attempts to distinguish between applications involving the licensing of individual carriers, where it concedes that such a requirement might stifle competition, and those applications for licensing of facilities. IRI also cites the Commission's decision involving the application of Submarine Lightwave Cable Company for a transatlantic cable as further support for its contention.[81]

129. We find some irony in IRI's proposal in view of its own experience in attempting to enter the international communications market. In 1980, IRI's application to provide service to the United Kingdom was opposed, *inter alia*, because IRI did not have an operating agreement. Opponents argued that IRI could not be authorized because the existence of an operating agreement was a prerequisite to receiving Commission authorization.[82] The Commission rejected this contention, citing previous cases where it established that an operating agreement is not a prerequisite to receiving authorization.[83] The Commission noted that adherence to such a requirement "may inhibit our efforts to bring the benefits of competition in the international communications marketplace to consumers." [84] We find no basis for IRI's attempt to distinguish between applications involving the licensing of services and applications involving the licensing of facilities. The mere fact that a facilities application is involved does not warrant the imposition of such a requirement. The Commission determined with respect to service applications that foreign authorities might not consider entering into appropriate agreements with potential U.S. entrants for overseas termination of services if the potential U.S. entrant had yet to receive Commission authorization. Separate satellite system operators must obtain some form of agreement with foreign authorities in order to begin operations with a particular country. Clearly, the same concerns are equally applicable to facilities licensing applications.

130. Moreover, IRI's reliance on the Commission's decision involving SLC is misplaced. In considering SLC's application, the Commission initially determined that the application did not contain all of the information required by the Commission's Rules and did not meet the threshold reciprocity showing of the Cable Landing License Act or otherwise appear to be consistent with the United States interests under the Act. However, it did not state that an operating agreement would be required prior to granting a Cable Landing License. In response to these concerns SLC filed supplemental information showing the foreign landing points of the cable and indicating that it would adhere to its obligations under the Cable Landing License Act with respect to reciprocal treatment of U.S. interests. Based on these representations, SLC's application was granted and a Cable Landing License was issued without the existence of an operating agreement.[85]

(e) *Enforceability of Executive Branch Restrictions.* 131. Having reviewed the Presidential Determination and the comments,[86] we do not believe the restrictions can be read to mean that, absent an absolute guarantee that separate system traffic will not interconnect with the public switched network, such systems would not be in the national interest. Such an interpretation, given today's technology, is to put form over substance. The connect-on-demand capability of modern PBX and similar "smart" technology give private line users the capability to route their traffic to public-switched message networks.[87] Given

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[80] The Commission is examining in its *International Resale* proceeding various provisions currently embodied in IRC tariffs which restrict the resale of their services by third parties. Regulatory Policies Concerning Resale and Shared Use of Common Carrier Communications Services (International Resale), 77 FCC 2d 831 (1980). Our action here permitting the resale of separate system facilities does not prejudge our decision in our *International Resale* proceeding since it does not alter existing tariff restrictions governing third party use of international services. *See* GTE-Telenet Communications Corp. (Computer II International), 91 FCC 2d 232 (1982); *reconsideration denied*, Mimeo No. FCC 8529 (released February 22, 1985).

[81] *In re* Tel-Optik Limited, FCC 85-99 (released April 5, 1985).

[82] *See* International Relay, Inc., 77 FCC 2d 819 (1980).

[83] *See* Graphnet Systems, Inc., 63 FCC 2d 402, 408 (1977) and 67 FCC 2d 1020, 1039-40 (1978), Communications Satellite Corporation, FCC 80-42 (released February 21, 1980), and Graphnet, Inc., Mimeo No. 30890 (released April 3, 1980). Our discretion in requiring an operating agreement was affirmed in ITT World Communications Inc. v. FCC, where the court upheld our determination that an operating agreement is not a requirement for an authorization under section 214. *See* ITT World Communications, Inc. v. FCC, 595 F.2d 897 902-03 (1979).

[84] International Relay, Inc., *supra*, 81, 77 FCC 2d at 827.

[85] Submarine Lightwave Cable Co., Mimeo No. 5241 (released June 19, 1985).

[86] Two signatories, Norwegian Telecommunications Administration and the Swedish Telecommunications Administration, stated that they do not believe that the "no-interconnect" restriction will be enforceable. *See* letter from Tony Hagstrom, Director General, Swedish Telecommunications Administration to Mark S. Fowler, Chairman, Federal Communications Commission (May 5, 1985). Letter from Director General, Norwegian Telecommunications Administration to Mark S. Fowler, Chairman, Federal Communications Commission (May 24, 1985).

[87] In the domestic area, we are not presented with an analogous situation, since we do not seek to prohibit interconnection of PBX's with the public switched-message network. We have defined the leaky PBX phenomenon as: "A private line subscriber's capability to patch an interstate call through a PBX to off-network destinations in the local exchange. MTS/WATS Market Structure, Second Supplemental Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 224 (1980) (Second Supplemental Notice). Because of the difficulty in detecting or measuring this leakage and in order to prevent any unreasonable discrimination in rates between MTS users and private line users, we have imposed a private line surcharge of $25 to ensure that those users responsible for leaky PBX traffic bear some share of the interstate access costs. *See* MTS/WATS Market Structure, Third Report and Order, 93 FCC 2d 241 (1983) (*Access Charge Order*), *modified on reconsideration*, 97 FCC 2d 682 (1983) (*First Reconsideration Order*), *modified on further reconsideration*, 97 FCC 2d 834 (1984) (*Second Reconsideration Order*), *aff'd and remanded in part*, *Nat'l Ass'n of Regulatory Comm'rs v. FCC*, 737 F.2d 1095 (D.C. Cir. 1984), *cert. denied*, 105 S.Ct. 1224 (1985), (*NARUC v. FCC*). Since the flat surcharge of $25 was developed under serious time constraints, we are currently seeking public comment on

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this technological reality, we read the restrictions to mean that this Commission must assure that it takes steps to minimize interconnection such that Intelsat will not be subject to significant economic harm and, thereby, we will meet the underlying concerns and criteria of the Executive Branch "restrictions." We believe that there are means that can be taken which will strongly discourage users from abusing the system and, thus, will minimize violation of the Executive branch "no interconnect" restriction. These measures will provide a means of enforcing the restriction.

132. Pursuant to sections 303(f) and (r) of the Communications Act, 47 U.S.C. 303(f) and 303(r), the Commission may legally restrict any license it issues authorizing operation of an international satellite system that promotes the public interest.[88] In order to implement the Executive branch restrictions, we will condition the license of any separate system that we may authorize to prohibit the interconnection of these systems with the public switched message network. In addition to conditioning separate satellite system licenses, we will impose the same condition on the licenses of all earth station operators. This condition would be imposed on earth station licenses whether owned or operated by the separate satellite system operator or its customer or ultimate user. The imposition of the restriction on the earth station owners will enable us to limit any necessary remedial action to a single earth station owner/violator rather than revoking the license of the separate system operator—an action which could affect innocent parties. However our ability to focus remedial action narrowly in no way relieves the separate system operators/licensees of their ultimate responsibility to ensure through due diligence, that their systems are utilized in full compliance with the conditioned authorizations. See paragraph 135 below. Besides, given the significant investment at risk for any violation, whether penalties are applied narrowly or broadly, it is in the self interest of the separate system licensee to "enforce" strict adherence to the "no interconnect" restriction.

133. We will also require that the "no interconnect" restriction run with the use of the facilities and not be limited only to the space and ground segment licensees. In order to achieve compliance among all levels of separate system users, we will retain jurisdiction over the use of all separate system facilities. Since, as we have stated, the "no-interconnect" restriction will apply to communications originating in foreign countries and destined for the United States as well as communications originating in the United States destined for international points, and will continue to apply at the "foreign-end" for communications originating in the United States, we must rely upon foreign authorities to take measures to enforce the restriction. We therefore will require that all operating agreements entered into by separate system licensees with foreign authorities must contain language stating that both parties will take necessary measures to enforce the "no-interconnect" restriction. We also will require separate system operators to place the "no-interconnect" restriction in all lease agreements for space segment capacity and all sales contracts for the purchase of transponders.

134. In addition, we will impose certain requirements on separate system users to foreclose opportunity for them to escape legal responsibility for adhering to the restriction. For those users which seek to resell separate system capacity on a common carrier basis, we will condition all section 214 authorizations on compliance with the "no-interconnect" restriction and require carrier tariffs to impose the restriction on customer use of the facilities and services offered. Violation of the restrictive condition by carriers will subject them to loss of their section 214 authority to use separate system facilities and violation of the tariff restriction by users will subject them to loss of service. We will require written agreements to be maintained between those users that seek to resell separate system capacity as enhanced service providers or to enter into sharing arrangements with other service providers and their customers and among users entering into sharing arrangements. These agreements must be filed with the Commission and contain explicit language precluding interconnection of separate system facilities to the public-switched message networks. Finally, for all those users which interconnect their separate system facilities to a PBX or similar equipment, we will require that such equipment be configured by either hardware design or through software features to block on-demand connections with public-switched message networks.[89] Each such user must file a written sworn certification by a corporate official with the Commission: (1) Stating that it understands the "no-interconnect" restriction placed on all levels of use of separate system facilities and is aware of the sanctions for non-compliance; (2) giving assurances that it will comply with the restriction; (3) indicating that all concerned employees will be continually advised of the restrictions and that it will enforce strict compliance by its employees; (4) describing the technical measures to be employed to prevent "on-demand" interconnection with the public switched-message network; and (5) attesting that these technical measures will not be changed or overridden for any reason. Failure to adhere to the certificated statements would subject the user to sanctions (see, *e.g.* 18 U.S.C 1001) in addition to those for the underlying violations themselves (see para. 137 below). The written certifications must be filed with the Commission prior to actual use of separate system facilities. No separate system service provider, whether that service provider be the separate system licensee or a reseller, may provide service to a potential customer until that customer files the required certification with the Commission (if it intends to interconnect its separate system facilities with a PBX or similar

whether the private line surcharge should be continued, modified, deleted or replaced. MTS/WATS Market Structure, Notice of Proposed Rulemaking, 49 FR 50412 (Dec. 28, 1984). However, the domestic surcharge approach would not be appropriate here where we are prohibiting interconnection with public switched-message networks. The domestic surcharge is not an enforcement tool, but rather a local exchange "access charge" designed to make PBX users bear some of the interstate access costs. No commenting parties suggest that a surcharge would be an acceptable arrangement in the international area.

[88] Section 303(f) of the Communications Act, 47 U.S.C. 303(f) state that the Commission shall "[m]ake such regulations not inconsistent with law as it may deem necessary . . . to carry out the provisions of the Act." Section 303(r) of the Communications Act, 47 U.S.C. 303(r) states that the Commission shall "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act, or any international radio or wire communications treaty or convention, or regulations annexed thereto, including any treaty or convention insofar as it relates to the use of radio, to which the United States is or may hereafter become a party."

[89] For purposes of implementing the "no-interconnect" restriction, we obtain jurisdiction over enhanced service providers and end-users which seek to interconnect a PBX or similar equipment with their separate system facilities through the full panoply of authority under Title III of the Communications Act of 1934 to license and condition the use of radio facilities and pursuant to the residual authority under Title I of the Act to ensure full effectuation of our statutory mandate. We have sufficient ancilliary authority to remedy specific abuses by enhanced service providers or end-users which undermine the policies that we are adopting today. See *GTE Telenet Communications Corporation* (Computer II International reconsideration) Mimeo No. FCC 85-29 (released February 22, 1985) citing *CCIA v. FCC* 693 F. 2d at 211-13 (1982).

equipment). All contracts between service providers and such customers and all tariffs must as a precondition to the provision of service require the customer to provide evidence that the certification has been filed with the Commission. The contracts and tariffs must also specify that violation of the "no-interconnect" restriction is grounds for immediate revocation of service. We expect all separate system service providers to use their best efforts to ensure compliance with the "no interconnect" restriction through these and other means, as may be necessary, such as contractual and tariff provisions for inspections and monitoring procedures.

135. We believe that any widespread violation by either a separate system operator or resellers would become evident because such violators would have to advertise illegal interconnect services or utilize some means to inform customers of their availability. These actions would draw attention to the activity, lead to competitor complaints and result in U.S. government or foreign authority investigations and sanctions. In addition, it is clear that self-enforcement among competing suppliers will be another means of detecting abuses.[90] Any party that has reason to believe that a carrier is violating the "no interconnection" restriction may file a complaint with the Commission pursuant to section 208 of the Communications Act. Complaints alleging violations by non-carriers and requesting Commission investigation may be filed pursuant to Sections 4(i) and 403 of the Act. However, we recognize that end-user self-enforcement may not be a useful means of detecting abuses by separate system end-users. Their diverse activities and unrelated interests would not provide them reasons for concern about system abuses by other end-users. We believe that detection of end-user abuses of the "no-interconnect" restriction first will require ongoing review of international MTS trends by the FCC as well as by competitors of the separate systems to determine whether reductions of IMTS are occurring in a manner which suggest wide-spread violation of the restriction. Isolated abuses involving small amounts of traffic will be difficult to detect. We will monitor the annual international traffic data submitted by U.S. carriers (see, *e.g.*, § 43.61 of our Rules) for any significant reductions in the levels of traffic handled by U.S. carriers. This data can be supplemented, as may be needed, by the carriers with data showing monthly trends. A reduction in the expected growth levels in traffic volume between the United States and those countries served by separate systems would signal the possibility of widespread violations of the "no-interconnect" restriction. Furthermore, AT&T, as a competitor of the separate systems will have an economic incentive to vigorously police potential violations. Accordingly, we expect it to monitor the situation carefully and bring to our attention any indications of significant restriction violations. AT&T can identify through its billing records decreases in IMTS use by large customers. Our certification requirements will enable us to identify whether those large customers are separate system end-users which interconnect their facilities to PBX's or similar equipment. This information would provide us a basis for further investigation by both this Commission or by the separate system licensee at the request of the Commission. We then may be in a position to initate expeditiously whatever action is required to remedy any abuses that we find.

136. Alleged violators that are subject to the Act's sanctions would include satellite operators, earth station operators and common carriers in the United States. If the Commission determines that a violation has occurred, several sanctions may be instituted against the violator. A violator may have its license revoked or be subject to a cease and desist order for willful or repeated failure to operate substantially within the license, or for willful or repeated violation of the Act, regulations, or treaties pursuant to section 312 of the Act, 47 U.S.C. 312. Under section 303 of the Act, 47 U.S.C. 303, an operator may have its license suspended for violation of laws and treaties the Commission implements.

137. The Commission also intends to avail itself of both civil and criminal remedies which it may apply to any violators (including users) of the Executive branch restrictions. Section 503(b) of the Act, 47 U.S.C. 503(b), allows the Commission to impose monetary fines on such violators. Sections 501 and 502, 47 U.S.C. 501 and 502, carry monetary penalties as well as imprisonment sanctions for the willful and knowing violation of the Communications Act or of regulations and treaties. Other sanctions such as the seizure of property under section 510, 47 U.S.C. 510, for the willful and knowing intent to violate Sections 301 and 302, 47 U.S.C. 301 and 302, are available to the Commission for violations of the restrictions.

138. We believe that, given the measures discussed above, violations of the Executive branch "no interconnection" restriction can be minimized. As we have stated, no amount of regulatory procedures and sanctions can guarantee 100 percent compliance with the restriction or be immune to further industry evolution. We are confident, however, that these measures we have outlined will prove sufficiently effective to discourage violation of the "no interconnect" restriction. Our serious commitment to enforcement and firm intention to take forceful remedial action cannot be over emphasized.

3. Consideration of Significant Economic Harm

(a) *Introduction.* 139. As part of its *ad hoc*, case-by-case approach to determine significant economic harm, INTELSAT evaluates the specific circumstances of each satellite system to be coordinated. INTELSAT's current procedure for determining significant economic harm was adopted by the

[90] INTELSAT has stated that self-enforcement is at least one way it plans to enforce its policy prohibiting users of IBS from using this all digital service to divert public-switched telephony traffic. In response to a statement that this policy would be difficult to enforce, the Director General stated to the Board of Governors that:

"It is a policy which is in the interest of all Signatories and hopefully there will be a strong element of self-policing by the individual Signatories themselves; in addition, INTELSAT is studying means to improve its capability to monitor and identify situations in which the policy is being transgressed and will assist Signatories in this regard. (BG-59-3E. H/6/84 June 1984 p. 50)."

Comsat has attempted to distinguish the Director General's statement by stating that INTELSAT has complete control over the IBS service and may make whatever changes are necessary to preserve that boundary. In addition, Comsat argues that, however the traffic is classified, it is all carried over the INTELSAT system. We are not persuaded by this attempted distinction. The point is not the extent of INTELSAT control over its services or the implication that the revenue shortfalls will be minimized because all of the traffic involved is carried over INTELSAT, however it may be classified. The point is that, to the extent INTELSAT wants to prohibit IBS users from connecting with the public switched-message network, it is relying on a "self-policing" mechanism to achieve this objective. Other than the broad and unexplained statement that "INTELSAT can make whatever changes are necessary to preserve the line." (Comsat reply comments at footnote 22) Comsat does not explain why a "self-policing" mechanism can be any more or less effective with separate satellite systems. Comsat's contention that INTELSAT would not have control over the operations of separate satellite systems comparable to the control that it has over its own system is irrelevant, since the U.S. government and foreign authorities will be responsible for enforcing the "no interconnect" restriction and not INTELSAT.

Board of Governors in 1977.[91] This procedure requires those members seeking to coordinate under Article XIV(d) to furnish such information as the expected date of commencement of operation and expected duration of operations of the separate space segment facilities; the types of international public telecommunications services to be provided and coverage zone(s) of the separate facilities; the identity of other INTELSAT Parties or Signatories or other entities expected to utilize the separate facilities; and the identity of all existing or projected international public telecommunications traffic or services to be provided by the separate system for the period of operation (including the identification of any such traffic or service presently contained in the INTELSAT Traffic Data Base for that period). The principal indicators in assessing economic harm are to be the impact on projected INTELSAT space segment costs and utilization charges, the effect on INTELSAT planning and operations, and the resulting impact on signatories' investment. This impact is to be measured by comparing the level of projected INTELSAT costs and utilization charges, had the service requirements been met by existing or planned INTELSAT facilities, with the projected INTELSAT costs and utilization charges, absent the service requirements being met by the INTELSAT system. INTELSAT also considers the effect a separate satellite system would have on signatory investment shares and other factors that may be relevant on a case-by-case basis.

140. Pursuant to this procedure, many factors have been considered in past Article XIV(d) consultations. Some factors have been important in more than one coordination procedure. For example, the amount of traffic likely to be diverted from the INTELSAT system was an important factor in the economic coordinations of ARABSAT, the European Communications Satellite system and its subsequent expansion, the Algerian use of Intersputnik, and the use of domestic systems for the transmission of service between the U.S. and Canada. In the case of these systems, the potential traffic diversion was determined to be small or negligible. In other coordination proceedings, some factors have been specific to the proposed satellite system. For example, PALAPA was designed to provide services between remote locations in the Philippines, Malaysia, Indonesia, Singapore, and Thailand where interconnection with the INTELSAT system would have been uneconomical. In another case involving U.S.-Bermuda TV reception, Bermuda's small size and limited economic resources were decisional factors.

141. The INTELSAT Board of Governors has been considering alternatives to the current procedures for determining significant economic harm. The Director General has proposed criteria that would consist of five basic interrelated questions that would be addressed in turn in an assessment of significant economic harm and prejudice to the establishment of direct communications links.[92] However, the criteria that would be applied to Article XIV(d) coordination requests go beyond the mere issue of economic harm, although this issue is an integral part of the coordination procedure. The first basic question is whether the services to be provided by a proposed separate satellite system are public international services. If the services are not public international services, no further coordination is required.[93] The second question is whether the proposed services can be provided by INTELSAT. If INTELSAT can provide the services, then a determination has to be made as to whether the proposed separate system is likely to prejudice the establishment of direct telecommunications links through the INTELSAT space segment among all the participants. The third question concerns ensuring mutual connectivity among all users at reasonable costs, including ground facilities, in a technically efficient manner. The fourth question focuses on the issue of economic harm. Under this criteria, if INTELSAT is providing or could provide the service that a separate system proposes to offer, then the harm inflicted on INTELSAT is identified and evaluated. The Director General identifies three factors to evaluate in order to determine harm: the amount of traffic diversion, the cap or ceiling on traffic diversion, and the impact of traffic diversion upon INTELSAT's satellite loading and deployment plans.[94] Finally, the fifth question in the proposed revised procedures involves a determination of special circumstances that may be relevant to a proposed separate system. The primary concerns with this question are transborder services and geographic coverage over short distances. Satellite communications is said to be more cost effective for longer distances, so a separate system that proposes to provide service over short distances, *e.g.*, 1500 kilometers or less, is presumed to be established for other reasons.

142. The Director General's proposal has been submitted for the record in this proceeding by parties filing informal comments and the applicants have commented on it. The Board of Governors did not adopt the proposal when it was considered at the Board's most recent meeting in June of this year, and it is considering alternative proposals submitted by other signatories. The United States has continued to support the existing procedures that provide for a case-by-case assessment which affords flexibility and an interactive environment which promotes good faith consideration of the needs and plans of INTELSAT members.[95] It does not support the adoption of any mechanistic procedures or criteria that rely on inflexible, quantitative criteria and that do not consider qualitative as well as quantitive factors.

143. Our analysis here is consistent with INTELSAT's current procedures of

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[91] *See* INTELSAT Document, "Intersystem Coordination Procedures for Implementation of Article XIV(d) Requirements Concerning Significant Economic Harm," BG-28-63E (June 29, 1977).

[92] *See* INTELSAT Document, "Policies, Criteria and Procedures for the Evaluation of Separate Systems Under Article XIV(d)," BG-60-69E (August 22, 1984).

[93] Orion has argued in its application that it would not be providing "public telecommunications services" and therefore need not coordinate under Article XIV(d) but need only technically coordinate under Article XIV(e). We disagree. We regard the Executive branch's Memorandum of Law on Orion's contention as conclusive.

[94] The first factor, traffic diversion caused by a separate satellite system, would be determined on a service-by-service, region-by-region, and case-by-case basis as well as on an INTELSAT system wide basis. Consideration would be given as to whether or not INTELSAT could provide comparable service, whether the diversion would be "small" or "negligible," and whether the diversion would be incidental to the natural fringe of a domestic satellite system. The second factor, the cap, is concerned with the aggregate traffic diversion from INTELSAT that is caused by all separate satellite systems planned by a country for a period of ten years. The traffic that is diverted by each separate satellite system may not inflict economic harm on INTELSAT but the combined, cumulative impact caused by several systems could result in significant economic harm. In order to prevent adverse effects from being caused by more than one system, a cap is proposed to limit the economic harm any one nation could impose on INTELSAT. The cap would be set for an operational region or for individual countries and it could differ between regions or services. The third factor, satellite loading, would involve an analysis and determination as to whether a separate satellite system would result in inefficient loading of INTELSAT satellites in a region.

[95] *See* INTELSAT Document, submitted by the U.S. Signatory, entitled "Comments on Proposals for the Establishment of Policies, Criteria and Procedures for the Evaluation of Separate Systems Under Article XIV(d) of the INTELSAT Agreement (BG-60-69)," BG-62-54 (March 22, 1984).

the economic impact of the proposed separate systems on INTELSAT as embodied in "Intersystem Coordination Procedures for Implementation of Article XIV(d) Requirements Concerning Significant Economic Harm." Further, we believe our analysis is broad enough to be consistent with any modified procedures that would continue to rely on a flexible, case-by-case approach. Our findings on significant economic harm are made as part of our regulatory consideration of the applications before us and are intended to constitute this agency's part in this country's internal process in developing a U.S. policy concerning separate satellite systems. These findings do not necessarily constitute the final U.S. view on this subject. The U.S. Government, as the Party to INTELSAT, will make the final determination as to whether it will seek coordination of any of the proposed separate systems. Of course, the INTELSAT Assembly of Parties will make the recommendation as to significant economic harm.

(b) *Comments.* 144. In our Notice, we invited comments as to the appropriate criteria for determining whether separate satellite systems would cause economic harm to INTELSAT and for measuring the degree of harm. We further invited comments on what constitutes "significant" economic harm. We stated that comments should focus on the language, intent and drafting history of Article XIV(d) and on technological or structural developments in the satellite market and services market which may bear on this issue. We also asked commenters to review past INTELSAT coordinations and analyze the similarities and differences between the satellite systems which were the subject of past consultations and the proposed satellite systems. In addition, we invited comments on a study on significant economic harm done for INTELSAT BY Walter Hinchman Associates, Inc.

145. ISI believes that the term significant economic harm is the product of a compromise in the negotiations that led to the INTELSAT Agreements. According to ISI, the concept lacks definitive meaning and, therefore, its interpretation is a matter of policy rather than linquistics or economics. ISI argues that significant economic harm is a relative concept that depends upon an entity's overall financial health. ISI rejects the definition of economic harm proposed by INTELSAT because it claims that no separate satellite system would be able to pass the test under such a measure. In place of the definition of economic harm proposed by the Director General, ISI alleges that INTELSAT is injured when it loses traffic that is already on the system and would have been retained, or loses traffic that it planned on carrying and could be transmitted over satellites that are being constructed for INTELSAT or are under contract. ISI believes that INTELSAT is a large, financially healthy, growing organization so that significant economic harm to INTELSAT is harm "which realistically threatens the economic viability of the common enterprise."[96] Six principles are proposed by ISI to govern the economic impact consultations under Article XIV(d): (1) Estimates of the economic impact that are submitted by member governments should be considered conclusive; (2) INTELSAT should take account of separate systems in its plans in order to avoid excess capacity; (3) estimates of impact should concentrate on the first five years of the proposed system's life; (4) new satellite systems should be evaluated in light of the overall situation, including new cable systems, and the likelihood of their construction and use; (5) significant economic harm should be considered only as harm which threatens INTELSAT's economic viability or its ability to carry out its global mission; and (6) significant economic harm should be assessed in light of INTELSAT's health, including its growth rates, return on capital, and accumulated surplus.

146. Orion believes that the Executive branch policy determination sets the appropriate criteria for Article XIV(d) consultation procedures. Orion contends that there is no significant economic harm provided that new facilities and service offerings do not serve public switched needs and that such facilities and offerings do not substantially affect the properly planned and approved offerings by INTELSAT to meet those needs. Orion also contends that no formula or numerical tests should be employed to reach a determination on significant economic harm. In place of a quantitative analysis, Orion proposes four conditions, each of which must occur, for significant economic harm to ensue. First, there would be a substantial diversion of INTELSAT's primary traffic, which is switched public telecommunications, to separate satellite systems. Second, the growth in INTELSAT's primary services would have to slow significantly so that traffic growth would not compensate for the diversion to separate satellite systems. Third, INTELSAT would have to lose control over its current and future investment. Fourth, INTELSAT would have to lose control over its business and pricing practices. Orion alleges that these conditions will not exist and, therefore, separate satellite systems will not inflict significant economic harm on INTELSAT.

147. PanAmSat contends that a rigid definition of significant economic harm is not needed to carry out consultation procedures and that such a definition has not been used in the past. Instead, past determinations have been rendered on an *ad hoc* basis. PanAmSat argues that traffic diversion should be used as the basis for determinations of significant economic harm. INTELSAT's total global traffic is the proper basis to use to estimate traffic diversion, according to PanAmSat. Further, traffic diversion should be based on the services INTELSAT provides rather than the services it claims it can provide. PanAmSat also alleges that the significant economic harm concept should take into account present and future changes in the performance of the INTELSAT satellite system because any firm will argue that short-term idle capacity caused by competition results in harm.

148. RCA submits that the proper test for significant economic harm "ought to be harm that threatens INTELSAT's long-term overall viability." [97] RCA notes that the testimony of a prior INTELSAT Director General supports this approach. RCA also cites several decisions to support its definitions of economic harm including a finding of the court that defines the degree of unacceptable economic harm to be that which could cause carriers to fail and thus threaten service to the public. RCA concludes that the service restrictions proposed by the Executive branch will adequately protect INTELSAT's long-term viability.

149. AT&T states that the quantitative approach to determining significant economic harm will not work and it should not be underaken by the Commission. This kind of approach would be based on too many assumptions and require too much information and data. AT&T contends that any attempt to quantify the impact of separate satellite systems on INTELSAT requires forecasts, the reliability of which is uncertain, and results that run the risk of wide error. The Commission, therefore, should adopt the "open skies" approach taken in its domestic satellite policy.

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[96] Comments of ISI at 65.

[97] RCA comments at 37.

150. Comments endorses the concept of significant economic harm developed in the study commissioned by INTELSAT. Comsat argues that the principal indicators of economic harm are the levels of projected INTELSAT costs and utilization charges that would occur if the service requirements are met by using existing or planned INTELSAT facilities, as compared to the projected INTELSAT costs and charges that would occur if the traffic is diverted to separate satellite systems. Comsat supports the idea that significant economic harm should be measured on a cumulative basis. Finally, Comsat does not believe that significant economic harm should be equated with either INTELSAT's viability or its ability to provide certain services.

(c) Review of the Hinchman Report.

151. In addition to their general comments on significant economic harm, several parties to this proceeding comment on the Hinchman Report and the Director General's revised criteria. INTELSAT retained Walter Hinchman Associates, Inc. to study international satellite communications and the issue of significant economic harm. Hinchman prepared reports for INTELSAT contained in INTELSAT documents "The Economics of International Satellite Communications," Attachment No. to BG-59-34E (May 18, 1984), "Significant Economic Harm," Attachment No. 1 to BG-60-63E (August 15, 1984), and "International Satellite Competition Impact Analysis," BG-62-20E (January 29, 1985). These documents have been submitted for the record by Walter R. Hinchman, as a party to this proceeding, and also by other parties filing formal and informal comments. Of particular interest to us in connection with this proceeding is the report that deals with significant economic harm. The report is concerned with the definition of economic harm and its measurement. In the report, economic harm is defined in terms of the annual unit cost of the INTELSAT space segment, and it is measured by the increase in the annual cost per unit of INTELSAT capacity that is used to provide satellite service. Specifically, the report concludes that "the most direct measure of the economic impact or harm of alternative satellite telecommunications systems on INTELSAT is the calculated effect of such systems on INTELSAT's realized cost per unit of utilized space segment capacity." [98] According to the report, an increase in INTELSAT's unit costs would result if new satellite systems divert traffic from INTELSAT that it has the capacity to provide or that it could provide by acquiring capacity and realizing economies of scale. The loss of traffic, it is alleged, reduces the efficiency of the INTELSAT system and increases the unit costs of the capacity that is used to provide satellite service. The report states that economic harm is best expressed in terms of the expected difference in INTELSAT's utilization charges that is caused by the traffic diversion which leads to less efficient utilization of INTELSAT's satellite capacity. The expected difference in INTELSAT's utilization charge is measured by INTELSAT's revenue requirements. In short, this report proposes to quantify economic harm by estimating INTELSAT's future revenue requirement per unit of utilized capacity before and after the expected traffic diversions that would result from the provision of service by separate satellite systems. The difference between the two estimates of revenue requirements per unit of INTELSAT space segment utilization is proposed as a measure of economic harm. The report also states that traffic diverted from INTELSAT to separate systems may have a significantly different impact on INTELSAT depending on the service, the region, or the satellite that is affected. In order to measure these differences, the report, therefore, recommends that separate estimates of economic harm should be calculated for individual services, individual satellites, groups of satellites, and geographic regions in addition to estimates of economic harm to INTELSAT as a whole. The report notes that a suitable threshold of what constitutes significant economic harm is a difficult and perhaps impossible task. It concludes that "we are unable to suggest a definitive, discrete threshold for significant economic harm that would be effective in protecting the economic viability of the INTELSAT system under all the varying situations and scenarios that could arise." [99] In place of definitive measures, the report suggests *de minimis* thresholds. In particular, it recommends a one percent limit for individual effects and a 5-10 percent limit for the cumulative effects that might result from several satellite systems. The report recommends that the limits be applied on a service-by-service, region-by-region, and facility-by-facility basis over a 5-10 year planning horizon. This measure of economic harm is quantified in terms of INTELSAT's calculated revenue requirements per unit of utilized capacity with and without traffic diversion to separate satellite systems.

152. With the exception of Comsat, the responses to the Hinchman report and the Director General's proposed, revised criteria are critical. The criticisms fall into three general subject areas: (1) The approach to defining and measuring economic harm suggested in the Hinchman report is inconsistent with past practices; (2) the definition of economic harm is conceptually deficient; and (3) significant measurement problems would be encountered in attempts to measure the Hinchman concept of economic harm. We find that many of these criticisms have merit.

153. Several parties state that the Hinchman proposal and the Director General's revised criteria are inconsistent with previous coordinations involving Article XIV(d). Some parties note that potential traffic diversion has been examined to determine economic harm and others point out that special circumstances are examined on a case-by-case basis. Orion, for example, states that in previous coordinations an important consideration was the potential for diversion of large amounts of public-switched traffic INTELSAT planned to carry and had the technical capability to carry. PanAmSat states that total global satellite traffic projections have been the basis for traffic diversion analysis rather than the more disaggregated bases proposed in the Hinchman report and recommended by the Director General. It also states that the unit cost measure proposed in the Hinchman report has never been used in coordination procedures. Another criticism is that previously each coordination has been evaluated separately for its potential impact on INTELSAT and there has never been a cumulative impact criterion like the one proposed. According to Orion, the definition of economic harm and the standards used to meaure it that are suggested in the Hinchman report have no foundation in the INTELSAT Agreements, their history or past practices. ISI argues that Hinchman's assumptions about traffic diversion are such that every system would cause significant economic harm. PanAmSat states that the Director General's proposal for the traffic diversion criterion, which is based on the Hinchman report, would cause significant economic harm on "any basis short of global which will allow the

[98] INTELSAT Document, "Report on the Study and Significant Economic Harm," BG-60-63E, Attachment No. 1, "Significant Economic Harm," at 21 (August 15, 1984).

[99] *Id.* at 29.

Director General to claim economic harm." [100]

154. The measure of economic harm proposed in the Hinchman report also has been criticized on the grounds that it has conceptual defects. Several parties note that the international telecommunications market is dynamic, growing and expanding in many directions. They claim that the measure of economic harm should recognize the dynamic nature of the market. Instead, the parties suggest that the Hinchman proposal tends to view the demand for communications services as static, and it overlooks the real possibility that entry could enlarge the market beyond current expectations by stimulating new demand, offering new services and providing service to new markets. The potential for interaction among suppliers in the marketplace, these parties claim, is not reflected in the analysis. Some parties suggest that Hinchman's analysis takes a short run perspective of INTELSAT's costs by assuming that the satellite system is fixed and unchangeable for the next several years. INTELSAT is assumed to be unable to change its scale of operations or to improve its efficiency in response to entry. For example, the Hinchman report's estimates of the impact of traffic diversion assume that INTELSAT's total costs, stated in terms of total revenue requirements, are constant, regardless of the level of traffic that is assumed to be diverted to separate systems. Even in this time period, however, INTELSAT has some control over its costs. It can delay launches, defer procurement of follow-on satellites, reduces other capital expenditures and reduce its operating and maintenance expenses. In fact, INTELSAT includes estimates of such cost reductions in its short term financial plans.[101] In addition, PanAmSat points out that: (1) Satellites have short lives; (2) satellites can be shifted among ocean basins; (3) it is possible to redesign satellites that are already in production; and (4) plans for new, yet to be launched satellites can be changed. In contrast to the assumptions in the Hinchman analysis, these possibilities strongly suggest that INTELSAT has the ability to respond to market changes and to modify its operations and plans for the near term. But, as PanAmSat notes, the use of capacity utilization costs as the measure of econmic harm assumes that investment, services and prices are unchangeable and the market is static. These assumptions are inconsistent with the realities of the international telecommunications market.

155. Orion argues that there may be welfare gains to be realized from the introduction of entry and increased competition in the international telecommunications market. These gains could take the form of new service offerings, improvements in the terms and conditions under which existing services are offered, wider choices available to consumers, lower prices and others. Orion argues that the welfare gains may outweigh any advantages that may be realized from continued reliance on a single firm to provide international service. However, the definition of economic harm proposed in the Hinchman report does not allow for potential welfare gains and does not compare them with potential welfare losses. Indeed, it could be argued that the Hinchman report, rather than showing the economic harm that might be caused from entry by separate satellite systems, shows the loss in economic welfare that has been imposed on users of the system in the past and apparently will continue in the future. The Hinchman study estimates that the INTELSAT space segment was operated at about 30 percent of its available capacity during the period 1981–1983.[102] Further, the ratio of utilized capacity to available capacity in the INTELSAT space segment is shown to decline substantially throughout the 1980's.[103] The costs of unused capacity are borne by the owners and users of the INTELSAT system and they are ultimately included in rates charged to international communications consumers. Prices that reflect large amounts of unused capacity restrict consumer demand and reduce economic welfare. Conversely, lower levels of unused capacity provide the basis for lower space segment charges and, ultimately, lower consumer rates which enhance economic welfare. Thus, there may be significant welfare losses caused by the inefficient utilization of the space segment. As several commenters have stated, the unused capacity is caused, in part, by INTELSAT's inaccurate forecasts and over-investment in the satellites.

156. Another criticism of the measure of economic harm proposed in the Hinchman report is that there are no standards, benchmarks, or criteria advanced in the report that can be used to distinguish economic harm from significant economic harm. Percentage limits are proposed in the report, *e.g.*, a one percent limit for individual effects and a 5-10 percent limit for cumulative effects, applied on a service-by-service, region-by-region, and facility-by-facility basis for a 5-10 year planning horizon. However, these limits have no foundation or basis, they are arbitrary. The lack of a rational basis for distinguishing between economic harm and significant economic harm under the Hinchman proposal may help explain the absence of unit cost measures from the criteria recently proposed by the Director General for Article XIV(d) evaluation.[104] The Director General, in his review and analysis of the criteria used in the past to evaluate separate satellite systems being coordinated under Article XIV(d), proposed a detailed set of revised criteria to be used in connection with Article XIV(d) analysis. In the Director General's report, there is no mention of the Hinchman proposal to use revenue requirement per unit of utilized capacity, or any variant of unit cost, as measures of significant economic harm. In connection with the limits proposed in the Hinchman report, ISI argues that the cumulative impact criterion is discriminatory against newer systems, and it unrealistically assumes that the total impact on INTELSAT is equal to the sum of the individual impacts.

157. The third general area of criticism of the Hinchman proposal involves the difficulty in developing accurate and reliable estimates of economic harm proposed in the report. Several commenters have identified substantial measurement problems that would be encountered in attempts to estimate the economic harm that may be caused by separate satellite systems. The data and information that would be needed to estimate accurately the Hinchman concept are formidable, as we noted in our Notice.[105] As PanAmSat

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[100] Comments of PanAmSat at 30–1.

[101] *See* INTELSAT Document, "INTELSAT Five-Year Financial Plan 1982–1986," BG–48–19E (November 19, 1981).

[102] *See* INTELSAT Document, "Final Report on the Study of the Economics of International Satellite Communications," Attachment No. 1, "The Economics of International Satellite Communications," BG–59–34E, (May 18, 1984) at 46.

[103] *Id.*, at 30.

[104] *See* INTELSAT Document, "Policies, Criteria and Procedures for the Evaluation of Separate Systems Under Article XIV(d)," BG–60–69E, (August 22, 1984).

[105] Comsat argues that the information requirements are not as formidable as they seem from the discussion in the Notice. Comsat refers to an appendix in its Comments which has a mathematical relationship between changes in unit costs and traffic diversion. Comsat's solution to the information requirement problem is to take Hinchman's revenue requirement as given for the various levels of traffic diversion that are assumed to occur and then compute a mathematical equation. In its appendix, Comsat's starting point is to assume that the total revenue requirement in the Hinchman analysis is correct and that this figure does not

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emphasizes in its comments, the specific data relating to INTELSAT traffic and space segment costs are held only by INTELSAT. PanAmSat claims that these data and information are not readily available to parties who might want to attempt to estimate the economic impact of entry by a separate satellite system. Several parties, including Orion, also note that INTELSAT has not demonstrated an ability to estimate demand with a high degree of accuracy. The parties point to consistent overestimates of demand and argue that estimates of diversion will not be reliable and that INTELSAT's charges will be higher than they would be with accurate projections. Orion also argues that changes in capacity cost figures and these figures themselves may be influenced by several different factors like managerial errors, forecasting errors, over-investments, entry and market interactions.[106] In order to identify economic harm that is caused by entry, therefore, the impact of entry on INTELSAT's unit costs must be identified separately from all other factors that may cause a change in INTELSAT's unit costs. Then, the net quantitative impact of entry has to be identified.

158. Our analysis of the definition and measurement of economic harm that are proposed in the Hinchman report and our review of the comments submitted in this proceeding lead us to conclude that revenue requirements per unit of utilized capacity are not a reasonable measure of economic harm. The definition has conceptual shortcomings and implementation problems. Further, no sound rationale has been proposed in the report that can be used to distinguish significant economic harm from economic harm. The percentage limits that are suggested for individual and cumulative effects are arbitrary. Further, the Hinchman report does not present a well-reasoned basis or any other convincing rationale to justify its assertion that economic harm should be determined on a region-by-region, service-by-service or satellite-by-satellite basis. Since INTELSAT was established to provide global satellite service, and because it operates on a global basis, we are not persuaded by the suggestion that economic harm should be determined on a region-by-region, service-by-service or satellite-by-satellite basis. The impact of entry on INTELSAT's overall operations is the appropriate basis to use in order to evaluate the degree of economic harm that might be caused by the entry of separate satellite systems into the international telecommunications market. Finally, the reasons for the cumulative impact criterion proposed in the Hinchman report are not supported, and no sound basis is given to determine the level of the cumulative impact that results in significant economic harm.

(d) General Conception of Economic Harm. 159. Some parties to this proceeding have stated that INTELSAT would not suffer significant economic harm unless its economic viability is threatened. ISI, for example, defines significant economic harm in terms of economic viability. ISI, however, does not define the meaning of the term "economic viability" and we are not aware of any commonly accepted definition of the term. An examination of *The McGraw-Hill Dictionary of Modern Economics* [107] and *Economics Dictionary* [108] did not result in a definition of the term. The concept of economic viability may differ with the circumstances of an organization. For example, economic theory suggests that in the short run, a period of time when a firm's operations are fixed by the level of its capital investment, a firm should remain in business if it earns revenues that cover all of its variable costs and some of its fixed costs. According to this theory, the firm's fixed costs have already been incurred and they cannot be avoided by going out of business. So, if a firm covers its variable costs and some of its fixed costs, it should stay in business even though the revenues it earns are not enough to meet all of its financial obligations. This theory seems to suggest that a firm is economically viable and should stay in business in the short run as long as its revenues cover its variable costs. If a firm's revenues fall below its variable costs, then it suffers significant economic harm.

160. Economic theory suggests that, in the long run, economic viability depends on a firm's total costs. In the long run, a firm can change the scale of its operations and build the most efficient size to meet its anticipated level of demand. All of the firm's costs are variable and it must earn revenues to cover all its costs, including a return on invested capital that is equal to its opportunity cost, which is the return the capital would earn in its next best alternative use. Otherwise the firm would not be able to attract capital and pay for other resources and, as a result, it would not be able to stay in business. This theory seems to suggest that a firm is economically viable in the long run if its revenues cover its total costs, including a return on invested capital. If a firm's revenues fall short of its total costs, then it suffers significant economic harm and its future may be in jeopardy.

161. Break-even analysis provides another possible definition of economic viability. This short run analysis compares total revenues and total costs for different levels of output in order to determine the level of output at which revenues and costs are equal.[109] The analysis suggests that economic viability is defined by comparing total revenues with total costs, and significant economic harm occurs at output levels below the break-even point.

162. These concepts of economic viability, as measures of significant economic harm, seem to be based on a firm's ability to remain in business. Significant economic harm does not

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change as assumptions and scenarios change. Then, Comsat derives its equation. Calculating the revenue requirement estimate is complex, fraught with assumptions, and requiring a lot of data and information about satellite investment costs, operating costs, launch costs, launch successes and failures, opportunity costs of capital, and so on. Further, it is not realistic to assume, as Comsat and the Hinchman analysis assume, that the total revenue requirement estimate will remain unchanged as the scenarios change in significant ways. We attempted to identify some of the information problems in the *Notice*, and we are still convinced that there are formidable information requirements to the Hinchman approach, Comsat's arguments notwithstanding.

[106] In addition to these concerns, we have discovered a serious inconsistency in the Hinchman analysis between the total revenue requirement of a satellite and its annual cost per utilized transponder. Logically, a satellite's total revenue requirement should be greater than its annual cost per utilized transponder. This is not always the case in the Hinchman analysis. For example, throughout most of the analysis, the satellite identified as satellite 403 has an annual cost per utilized transponder that exceeds its total revenue requirement. In one instance, there is a substantial difference between the annual transponder cost estimate and the total revenue requirement, $38,441,799 for the annual cost per utilized transponder versus $5,606,096 for the total revenue requirement of the satellite. The same discrepancy arises with satellite 407 which, in one scenario, has a total revenue requirement of $2,603,275 and an annual cost per utilized transponder of $17,359,651. In another scenario, the analysis shows that satellite 412 has a total revenue requirement of $1,062,476 and an annual cost per transponder utilized $2,217,340. The report has no explanation for these inconsistencies which raise serious questions about the validity of the entire cost analysis contained in the Hinchman report on significant economic harm. *See* Attachment No. 2 to "Significant Economic Harm," at 12–17, 20, 22, 24, 26, 28, 30, 32.

[107] *The McGraw-Hill Dictionary of Modern Economics*, Second Edition, McGraw-Hill Book Company, 1973.

[108] *Economics Dictionary* by D.W. Moffat, Elsevier, 1976.

[109] *See, e.g., Managerial Economics* by Joel Dean, Prentice Hall, 1951, pp. 326–341 and *Price Theory and Its Uses*, (4th ed.) by Donald S. Watson and Mary A. Holman, Houghton Mifflin Co., 1977, pp. 156–187.

arise unless a firm's very existence is threatened. Such a definition seems to be appropriate in many sectors of the economy, but in the case of INTELSAT, which is affected by public interest as well as national interest considerations, economic viability may not be an acceptable measure of significant economic harm. Economic viability, as we have interpreted the concept, does not seem to comport with the signatories' deliberations on the issues. We believe that the signatories intended significant economic harm to mean something less severe than a threat to INTELSAT's continued operation. As ISI notes in its comments, " 'significant' must mean something more than 'any' or 'trivial,' and my mean less than 'disabling, incapacitating, or critical.' "[110] We reason that significant economic harm is intended to denote a degree of harm which is less severe than harm threatening INTELSAT's very existence. However, we do not believe that INTELSAT necessarily suffers significant economic harm whenever its revenues fall below the level it might have realized if it was the only satellite system providing international telecommunications satellite service.

163. In general, the concept of "economic harm" is best understood in terms of the relationship between an organization's revenues and its costs. In order for an organization to attract capital and other resources for its use, it must earn sufficient revenues to cover its costs, including a return on its capital investment. In the long run, this means that an efficiently operated entity does not experience economic harm if the revenues it expects to earn from its overall operations will cover its operating and maintenance expenses, administrative and overhead costs, amortization and depreciation expenses, and earn a return on invested capital that is equal to its opportunity cost of capital. If an organization's expected revenues do not meet all of its costs (including opportunity costs on its invested capital) in the long run, we believe that the organization has sustained economic harm. At this level of business, expected revenues are not sufficient to cover the organization's costs and enable it to pay a return on capital equal to the return those funds could earn if they are invested in other alternatives that have comparable risk. Thus, the organization may experience difficulty in attracting capital that is needed to finance its investment in plant and equipment.

[110] Comments of ISI at 48.

164. We believe that significant economic harm results when expected revenues from an organization's overall operations in the long run cover a part of its costs, but are inadequate to pay a return on invested capital that is equal to or greater than the risk-free rate of return. In this situation, an entity's revenues are sufficient to meet a portion of its costs but it is unable to pay a return on investment that is as much as an investor could earn on a risk-free investment. Under these conditions, an organization will experience difficulty in continuing to attract the capital that it needs to finance long-term investment expenditures. Hence, economic harm encompasses a range. If an organization's expected revenues cover its expected costs, including a return on invested capital that equals or exceeds its opportunity cost, the organization suffers no economic harm. If the expected rate of return is greater than the risk-free rate of return but less than the opportunity cost of capital, then the organization experiences economic harm but not significant economic harm. However, if expected revenues meet expected costs, but are not sufficient to pay a risk free rate of return on invested capital, then economic harm exists which may be considered significant.

165. We believe that this conception of significant economic harm is a better measure of INTELSAT's finanical well-being than other concepts that have been proposed in this proceeding, such as unit cost measures that are based on a region-by-region, service-by-service, or facility-by-facility basis. We also think that this conception of significant economic harm offers a better approach to quantifying the potential impact of entry on INTELSAT than does a unit cost measure. The unit cost measure simply ignores INTELSAT's revenues or even its total costs. If unit costs incurred to provide a particular service increase, for example, then this measure concludes that INTELSAT has suffered economic harm. However, the increase in the unit cost may be accompanied by an increase in INTELSAT's net revenues, and such an increase does not seem consistent with a finding of significant economic harm. The increase in net revenues could result from several factors including growth in demand, improvements in efficiency, the introduction of new services or the development of new markets. The concept of significant economic harm that we have discussed provides for a determination of the net effect of the various interrelated factors that can change total revenues, total costs and the difference between the two.

166. We are fully aware of the financial arrangements that have been established by INTELSAT to account for the somewhat unusual characteristics of the organization. Consideration of the concept of economic harm in this proceeding must take into account the nature of INTELSAT as an economic organization and the peculiarities of its operations. INTELSAT signatories, as satellite system owners, make capital contributions to finance investment much like common stock owners in a private corporation. Ownership in INTELSAT, however, is generally based on relative use of the satellite system, which is adjusted on an annual basis to reflect actual use. As users of the satellite system, signatories pay a utilization charge to lease satellite circuits that are used to provide communications services to consumers. In addition non-owner users of the satellite system pay utilization charges to lease circuits and provide service. The revenues generated from the provision of INTELSAT services to owners and non-owners are used to meet INTELSAT's operating expenses and depreciation expenses, and to compensate owners for their capital investment. The unusual situation in the case of INTELSAT, which distinguishes the organization from a private corporation, is that the owners are, with some exception, the users of the system. Thus, we realize that INTELSAT is a consortium whose owners have joined together to provide global satellite services to themselves and that its ownership and financial arrangements differ from those of a private corporation.

167. At the same time, however, INTELSAT's business procedures are like those practiced by a privately owned regulated utility. The INTELSAT Operating Agreement provides, in part, that INTELSAT space segment utilization charges "shall have the objective of covering the operating maintenance and administrative costs of INTELSAT, the provision of such operating funds as the Board of Governors may determine to be necessary, the amortization of investment made by Signatories in INTELSAT and compensation for use of the capital of Signatories." [111] Article 8(a) establishes that an essential financial objective of INTELSAT is to set rates for the satellite services it offers at a level sufficient to earn revenues to meet its costs and

[111] INTELSAT Intergovernmental Agreement, Article 8(a), August 20, 1971, 23. U.S.T. 3813, 4091, TIAS No. 7532.

compensate its owners, *i.e.*, signatories, for their capital contributions. To do this, INTELSAT computes a revenue requirement which is composed of its operating expenses, overhead costs, annual depreciation and amortization charges and a return component. Rates for INTELSAT's satellite services are set to generate revenues that will equal its estimated revenue requirement. This procedure is identical to the one used by a privately owned, regulated utility, *e.g.*, Comsat, to set its rates. The main difference is that a regulated utility identifies its return component as a rate of return on investment while INTELSAT calls it "compensation for use of funds." The function of the return component, however, is the same in both cases, *i.e.*, to attract capital and to compensate investors for the use of their funds. Thus, INTELSAT's rates are set to cover its costs, including a return on invested capital. INTELSAT's rates, in the form of utilization charges, are cost based and, therefore, a reasonable measure of the costs INTELSAT incurs to provide satellite service. The revenues INTELSAT earns are intended to cover its total costs, including compensation on invested capital. In short, we believe INTELSAT operates its satellite system and sets rates for its satellite services in the manner of a privately owned, regulated public utility which has revenue and rate of return objectives. Notwithstanding the differences between INTELSAT's financial arrangements and those of a privately owned, regulated public utility, we believe that the comparison of INTELSAT's revenues from satellite service to the costs it incurs to provide the service is a reasonable basis for assessing the potential for significant economic harm.

168. To render a determination of significant economic harm as we have discussed the term, however, INTELSAT's future revenues and costs have to be estimated. Future revenues and costs are difficult to forecast even in a market where entry by new firms is not anticipated. Potential entry by separate satellite systems and the dynamic interdependency that could result from several suppliers offering satellite services only add to the complexity and difficulty of forecasting future revenues and costs. Estimates for the values of several variables that influence INTELSAT's revenues would be needed. For example, INTELSAT's rates would have to be estimated, the demand for INTELSAT's services would have to be estimated, the demand for services by final users would have to be estimated because satellite circuits are used to provide these services, and the price elasticities of consumer services would have to be estimated. In addition, assumptions would have to be made on INTELSAT's response to entry, INTELSAT's pricing and service strategies, and decisions by service providers such as common carriers to change or not to change their prices if satellite rates change. Similarly, in order to estimate INTELSAT's costs, one must make assumptions about changes in satellite segment planning, cost elasticities, efficiency improvements, the costs of other resources used to provide satellite service, and money market conditions in the future. Even if INTELSAT's revenues and costs could be estimated, the forecasted values would tend to be uncertain and the results may not have the reliability needed to reach policy decisions. Also, there is a potential for substantial variation in the results depending on the assumptions that must be made for many key variables. For the conditions that exist in this proceeding, we agree with AT&T that "there are too many important assumptions that have to be made about too many variable factors for quantification to be a useful tool for analysis." [112] With the problems and uncertainties that are inherent in developing revenue and cost forecasts of INTELSAT operations, we do not believe that precise estimates of significant economic harm to INTELSAT caused by separate systems readily would have the reliability needed to reach public policy determinations in this proceeding.

169. Thus, although we believe that our conception of significant economic harm is a better quantitative approach than the unit cost measure that has been proposed, we are also aware of the difficulties that would be encountered in attempting to develop estimates of INTELSAT's revenues and costs that have the degree of reliability we feel is needed for making decisions in this proceeding. Fortunately, precise, quantitative estimates of the possible harm to INTELSAT that might be caused by the entry of separate systems are unnecessary to reach a determination on whether significant economic harm to INTELSAT is threatened by such entry. As we shall now demonstrate, INTELSAT's satellite services produce a substantial level of revenues, INTELSAT has realized a more than adequate return on invested capital and its services offer the potential for significant growth. Further, separate systems are restricted to providing services which are only a small fraction of INTELSAT's market. Therefore, we do not believe that the entry of separate systems could prevent INTELSAT from earning sufficient revenues on the services it supplies to cover its costs of providing those services, including a reasonable rate of return on its net investment in capital equipment. Thus, we conclude that entry by separate satellite systems will not cause significant economic harm.

(e) *Significant Economic Harm in this Proceeding.* 170. The most reasonable approach we can use to evaluate the potential impact of separate satellite systems on INTELSAT is to examine several economic and financial variables in order to reach a reasoned judgment on the effect entry will have on INTELSAT's financial condition. No single indicator or threshold value of a particular variable could reasonably indicate whether the degree of economic harm would be significant. As we have noted, the problems inherent in developing reliable estimates of INTELSAT's costs and revenues when potential entry exists make the application of our conceptual measure a difficult exercise. Rather than attempt to implement the concept, we believe our purposes will be served and our objectives met by examining several factors that will affect INTELSAT's revenues and costs.

171. The first factors that we will discuss are INTELSAT's financial well being and growth opportunities. The potential impact of entry on an enterprise is, after all, influenced by its overall financial condition and the nature of the market it serves. A robust, financially strong organization that provides service in a large and growing market is better able to respond to entry than is a weak financial entity that serves a shrinking market. Second, we shall discuss the relative importance to INTELSAT of the switched and non-switched service markets. This discussion is relevant in light of the President's determination that the authorization of separate systems is in the national interest if these systems are restricted to providing services through the sale or long-term lease of transponder or space segment capacity for communications not interconnected with the public-switched message networks. The existence of barriers to entry such as the Executive branch restrictions is another factor in ascertaining the impact that entry would have upon an established enterprise like INTELSAT. Finally, after determining the nature of INTELSAT's market in the absence of entry and the proportion of

[112] Comment of AT&T at 10.

this market which would be opened to entry by the implementation of the Executive branch restrictions, we will then introduce entry into the analysis in order to determine its potential impact on the economic status of INTELSAT. We believe that a study of these factors will enable us to ascertain conclusively, if only qualitatively, whether or not the authorization of separate satellite systems would threaten INTELSAT with significant economic harm.

172. *INTELSAT's Growth Opportunities.* INTELSAT has experienced dramatic growth in its relatively short history and the market in which it operates has expanded rapidly during that time. There are no figures readily available on the total size of the international telecommunications market but, based on U.S. experience, it is reasonable to conclude that the market generates several billion dollars in revenues annually and that it is expanding rapidly. As an indication of the size and growth of the international telecommunications market, we note that the revenues earned by U.S. international common carriers reporting to us amounted to $2.4 billion in 1983. These revenues represent a tripling from the $823.0 million earned by the carriers in 1974.[113] In comparison, INTELSAT's revenues grew more rapidly than those of the U.S. international common carriers. During the period 1974–1984, INTELSAT's total revenues grew from $101 million to $411 million.[114] Thus, INTELSAT's revenues grew at an annual compound rate of 15.1 percent while those of U.S. international common carriers grew at a rate of 11.3 percent. Growth in INTELSAT's individual services reflects its overall revenue growth during the period. For example, TV half channel hours grew from 7,361 to 49,141, billable minutes of SPADE (single channel per carrier pulse code modulation multiple access demand assigned equipment) grew from 3,439,375 to 46,056,342, single channel per carrier (SCPC) circuits grew from 11 to 1,723, and full-time units of utilization grew from 11,507 to 72,461.[115] Other measures of INTELSAT's operations support this picture of rapid growth. The number of countries served by INTELSAT increased from 94 to 163 during the period and the number of earth station antennas increased from 104 to 831.[116] INTELSAT's space segment plant also grew substantially during this time. Its net investment in the space segment expanded from $291,358,000 in 1974 to $1,534,495,000 in 1984.[117] Finally, INTELSAT's cumulative rate of return on invested capital at the end of May 1985 was 15.3 percent.[118] This figure measures INTELSAT's annual return on a cumulative basis since 1973. INTELSAT's stated financial objective is to earn an annual return of 14 percent. Thus, since 1974, INTELSAT has exceeded its financial objective by 1.3 percentage points. Stated in terms of dollars, this differential represents a cumulative return of $109.9 million in excess of 14 percent. This rate of return was realized while INTELSAT's annual space segment utilization charge was dropping from $9,000 in 1974 to the current level of $4,680. By all of these measures, INTELSAT has been successful.

173. We have also reviewed INTELSAT's most recent traffic data base, which is its forecast of satellite system traffic through 1998, in order to ascertain INTELSAT'S prospects for continued growth in the future. Our analysis leads us to conclude that INTELSAT appears to be anticipating substantial growth in the demand for its satellite services well into the future. INTELSAT projects the global demand for full-time units of utilization for its conventional services, which include voice, record, AVD, and data services, to grow from 95,070 half circuits by the end of 1985 to 309,964 by the end of 1998.[119] This represents a compound growth rate of 9.5 percent per year, which is less than the percentage growth rates experienced in the past but greater than past growth in terms of the numerical increase in the demand for half circuits. The projected growth rate declines from 12.4 percent in 1985–1986 to 8.6 percent in 1997–1998, but growth in the demand for half circuits increases from 11,818 in 1985–1986 to 24,492 in 1997–1998. INTELSAT also projects substantial increases in the demand for the other services it plans to offer. For example, VISTA, a service that can be used for voice communications or low-speed data applications to rural and remote communities, is projected to grow from 78 circuits in 1985 to 2,516 in 1998. This represents a compound annual growth rate of 30.6 percent. Another example is IBS which is a high-quality, integrated, digital service that is offered on a full-time and a part-time basis at speeds ranging from 64 Kbps to 2,048 Mbps. For the full-time service, demand is expected to increase from approximately 2,829 unidirectional circuits in 1985 to approximately 11,357 in 1990.[120] (Forecasts beyond 1990 are not included in the traffic data base.) This represents a compound annual growth rate of 32.1 percent. These forecasts include a major portion of the international telecommunications market, in addition to its full-time services but INTELSAT will offer other services like TV, transponder leases, and occasional-use. Further, since the INTELSAT traffic data base does not include traffic planned for transmission over the worldwide network of submarine cable systems, the potential market for international service is much larger than the satellite circuit forecasts.

174. We realize that the very nature of forecasts makes them uncertain and subject to error. Nevertheless, INTELSAT's own forecasts are the best indicators that are available on INTELSAT's expectations of the future demand for its satellite services. In the past, the forecasts contained in the traffic data base have had a tendency to be higher than the levels of traffic that actually materialized. As an indication of the steps INTELSAT is taking to remedy this problem, we note that the Director General has expressed his concern with accuracy in forecasting and the need to improve that accuracy in the future.[121] To the extent the suggestions made by the Director General are reflected in INTELSAT's forecasts, there will be a tendency for the projections to be more accurate. Even taking account of possible errors, however, there has been substantial growth in the demand for satellite circuits. Hence, we believe that its reasonable to conclude that INTELSAT's traffic projections, which show the demand for conventional satellite services increasing from 95,070 in 1985 to 309,964 in 1988, demonstrate

[113] Statistics of Communications Common Carriers, Tables 14 and 25.

[114] INTELSAT Report 1984–1985 at 32.

[115] *Id.* at 12–13.

[116] *Id.* at 12–13.

[117] *Id.* at 12–13.

[118] INTELSAT Document, "INTELSAT Financial Status as of 31 May 1985," BG–64–6E (July 10, 1985).

[119] The INTELSAT Traffic Data Base Resulting from the 1984 Global Traffic Meeting, August 13, 1984.

[120] Forecasts for IBS full-time service are stated in terms of bits per second in the INTELSAT traffic data base. In order to state IBS full-time service forecasts on a comparable basis with other full-time service forecasts and, ultimately, to combine individual service forecasts, we converted the IBS figures to units of utilization by using the following factors:

56/64 kbps=5 units of utilization
128 kbps=10 units of utilization
256 kbps=20 units of utilization
1,544 kbps=24 units of utilization
2,048 kbps=32 units of utilization

[121] *See* INTELSAT Document, "Improving the Accuracy of INTELSAT Traffic Forecasting," BG–59–38E (May 17, 1984).

substantial opportunities for continued growth. We note specifically that most of this growth is expected to occur in full-time units of utilization that are used to provide services like record, AVD, data and, particularly, voice. The expected growth in the demand for satellite services that is demonstrated by these circuit projections should insure INTELSAT's continued growth and contribute substantially to its financial success.

175. *Relative Importance of Switched and Non-switched Services.* The discussion of INTELSAT's traffic data base shows trends and forecasts in broad aggregated estimates of future demand levels. Disaggregated data are more relevant and useful to an assessment of the potential for significant economic harm under the circumstances involved in this proceeding. The restrictions on entrants to providing services through the sale or long-term lease of transponders that are not interconnected with the public-switched message networks will have a significant impact on INTELSAT's business because, historically, most of INTELSAT's revenues have been derived from full-time international voice service. In 1984, for example, INTELSAT reported that 72.5 percent of its total revenues came from units of utilization that were leased to provide full-time international voice service.[122] This figure understates the restriction's full impact because revenues from other services to which the restriction applies are not identified in the INTELSAT Report.

176. Each of the separate satellite systems is planned to provide service in the Atlantic Ocean Region. With the exception of PanAmSat and Finansat, the proposed satellite systems would concentrate all of their efforts on providing communications services between the U.S. and Europe. INTELSAT records show that service in the Atlantic Ocean Region accounted for revenues amounting to $258,242,541 in 1984. This figure represents 63.7 percent of INTELSAT's global revenues which totalled $405,118,190 in 1984. In the Atlantic Region, 80.8 percent or $208,568,380 of INTELSAT's revenues were derived from full-time service in 1984. Other services provided by INTELSAT in this region that generated revenues in 1984 included the INMARSAT lease (1.4 percent), SPADE (1.0 percent), occasional TV service (4.0 percent), business service (0.06 percent), circuit restoration (0.2 percent), domestic transponder leases (11.3 percent), international TV transponder leases (1.1 percent), and other occasional service (0.2 percent).[123] Thus, a major portion of INTELSAT's revenues from units of utilization in the Atlantic Region were derived from full-time service in 1984.

177. In order to develop an estimate of the revenues earned by INTELSAT in 1984 that would not be included in the service restrictions under out conception of those restrictions, we examined additional information. The estimate is not intended to establish a critical or threshold value of any kind. Since the separate systems under consideration in this proceeding are proposed mainly for service in the Atlantic region, our analysis concentrates on this area. We estimated the revenues that INTELSAT earned in 1984 from service it provided in the Atlantic region that would not have fallen within the service restrictions. We found that two percent of INTELSAT's total revenues were derived from services that could have been provided by separate systems if the service restrictions had been in effect. To develop the estimate, we first identified INTELSAT's total satellite utilization revenues in 1984. These revenues amounted to $405,118,190. Domestic transponder leases accounted for $37,651,410, but these revenues are excluded from our analysis because Article XIV(d) is concerned with international telecommunications service. Revenues earned from other services provided in INTELSAT in the Atlantic region included leases for international TV, occasional TV, circuit restoration, other occasional services, business services, full-time units of utilization, SPADE, and the INMARSAT lease. Under the service restrictions that we are imposing in this order, transponder leases for international TV service that meet the minimum time period requirement, circuit restoration service, business services that meet the minimum time period requirement, and full-time units of utilization that meet the minimum time period requirement and are used to provide services that are not interconnected with the public switched network could be supplied by separate satellite systems. Thus, revenues that INTELSAT earned from the INMARSAT lease, SPADE, occasional TV service, and other occasional service are excluded from our estimate. In the case of revenues from full-time service, INTELSAT's records do not distinguish between revenues that are earned from circuits used to provide exchange service and revenues that are earned from circuits used to provide private line service. To overcome this problem, information contained in U.S. common carriers' circuit status reports was used to estimate INTELSAT's revenues from full-time units that were used by common carriers to provide private line voice service and AVD service.[124] First, private line and AVD circuits between the U.S. and Europe on satellite facilities were determined from the circuit status reports. The number of circuits was converted to half circuits and then divided by the total Atlantic region full-time satellite half circuits in service at the end of 1984. Then the resulting percentage figure was multiplied by INTELSAT's revenues from full-time service in the Atlantic region. The resulting estimate of INTELSAT's revenues that were derived from full-time circuits that were used by U.S. common carriers to provide private line voice service and AVD service between the U.S. and Europe was $3,710,313. We were unable to detemine the private line and AVD circuits that met the minimum time period restrictions and, therefore, the corresponding revenues. We, therefore, assumed that the entire revenue estimate fell outside the bounds of the restriction. Since we think it is reasonable to assume that some, perhaps most, of these revenues were earned from service that does not meet the minimum time period restriction, we believe that our estimate of the revenues earned by INTELSAT in 1984 that would not be included in our service restrictions in overstated. For the remaining revenue categories identified by INTELSAT (including international TV transponder leases, circuit restoration, and business services), we assumed that all of the revenues, which amounted to $3,693,805 in 1984 for the Atlantic region, were derived from satellite service between the U.S. and Europe. Here again, the minimum time period requirement may not be satisfied in some cases so including all of the revenues in our estimate may result in an overstatement. Information on transponder leases indicates that our assumption about service between the U.S. and Europe is reasonably accurate.

[122] INTELSAT Report 1984–1985 at 32.

[123] *See* INTELSAT Document, "INTELSAT Financial Statements for Year Ended 31 December 1984," Attachment No. 1, BG-62-13E, (February 11, 1985).

[124] A small number of satellite circuits used to provide leased channel record services were not included in the estimates because they could not be identified for all carriers. This omission does not affect the reliability of the estimates because it is minor. For example, one carrier reported that 91 telegraph grade channels out of a total of 246 voice grade satellite circuits were used to provide leased record service.

International TV leases accounted for 80.0 percent of the $3.7 million. We found no information that enabled us to estimate the U.S.-Europe portion of the revenues derived from the remaining service categories or that allowed us to determine whether the minimum time period requirement was satisfied. Therefore, we assumed that all of the revenues from these service categories were derived from the U.S.-Europe route and met the minimum time period requirement. Once more, these assumptions may overstate our estimate. Combining the individual figures, our estimate of INTELSAT's revenues that were derived from services between the U.S. and Europe in 1984 that are not subject to the service restrictions is $7,404,118. INTELSAT's total revenues in 1984, excluding revenues from domestic satellite service, amounted to $367,466,780. Hence, at most only 2.0 percent of INTELSAT's revenues would have been accessible to separate satellite systems.[125]

178. Historically, international message telephone service (IMTS) has been the largest source of revenues in international communications and has experienced rapid growth. INTELSAT has benefitted substantially from IMTS growth as an increasing number of satellite circuits are used to meet the expanding demand for global telephone service. Total IMTS revenues (excluding service to Mexico and Canada) earned by U.S. common carriers grew from $508.9 million in 1974 to $1.7 billion in 1983, representing an annual compound growth rate of 14.6 percent. Total U.S. international telephone calls increased from 53.7 million to 369.5 million during the same period, representing an annual growth rate of 23.9 percent. Growth in service between the U.S. and Europe surpassed global growth with revenues retained by U.S. common carriers increasing from $187.9 million to $686.7 million, a 15.5 percent growth rate, and telephone calls increasing from 21.1 million to 147.7 million, a 24.2 percent growth rate. Other major international services did not grow as rapidly as IMTS. Telegraph service provided by U.S. common carriers, for example, declined on a global basis from $52.3 million in 1974 to $23.6 million in 1983, and revenues realized by U.S. common carriers for service between the U.S. and Europe fell from $14.2 million to $8.3 million. Telex service grew but more slowly than IMTS. Telex revenues earned by U.S. common carriers increased from $142.7 million to $357.3 million, and the volume of telex messages rose from 37.6 million to 134.4 million during the period 1974–1983. Thus, telex revenues realized by U.S. common carriers grew at a compound annual rate of 10.7 percent while the message rate was 15.2 percent. Revenues from telex service between the U.S. and Europe increased from $80.4 million to $156.4 million, a 7.6 percent annual growth rate, and messages grew from 21.9 million to 61.4 million, a growth rate of 12.1 percent. Revenues from the other major service category provided by U.S. common carriers, private line service, increased from $77.0 million in 1974 to $154.0 million in 1983. This increase in the U.S. common carriers' total private line revenues represents a compound annual growth rate of 8.0 percent. Thus, as these data show, IMTS is the largest service category in international communications, and it has grown more rapidly than other services. These results are significant in view of the fact that the service restrictions prohibit separate satellite systems from providing this service.

179. Forecasts we have reviewed indicate that the demand for international telecommunications service is expected to continue to grow. In particular, the demand for international switched services is expected to grow at least as fast as overall demand. The INTELSAT traffic data base projects the global demand for satellite half circuits to grow from about 98,000 in 1985 to about 315,000 in 1998. Full-time half circuits, which are used predominantly to provide IMTS, comprise 95,070 half circuits in 1985 and 309,964 in 1998. For satellite service between the U.S. and European countries,[126] INTELSAT projects an increase in the demand for full-time units of utilization that will be used to provide voice service from 9,079 in 1985 to 31,283 in 1998.[127] Further, these forecasts show an increase in the proportion of full-time units of utilization that are expected to be used to provide voice service. Specifically, whereas 90.9 percent of the satellite half circuits between the U.S. and European countries in 1984 were used to provide voice services, the figure is expected to increase to 93.8 percent by the end of 1998.

180. We have examined another set of traffic forecasts that are available to us in an effort to determine the relative significance of switched services. These forecasts are not global traffic projections like the INTELSAT estimates but they are particularly important in this proceeding because they measure expected demand for service between the U.S. and CEPT countries for the period 1985–1995.[128] These forecasts show that the demand for IMTS between the U.S. and CEPT countries is expected to require 14,923 circuits by the end of 1985 and increase to 69,645 in 1995. When traffic forecasts for other services are added to the IMTS forecasts, the estimates increase to 17,649 circuits in 1985 and 81,743 in 1995.[129] Our analysis of these forecasts for service between the U.S. and CEPT countries shows that the results are consistent with the INTELSAT's traffic data base. The U.S.-CEPT forecasts indicate that IMTS is expected to represent about 85 percent of the total number of circuits and the remaining portion will be composed of record and other services. Hence, for cables, IMTS is the predominant service as it was in the case of the satellites. In addition, the number of IMTS circuits that are forecast, as a percentage of the total number of circuits that are forecast for all services, increases during the period after an initial decline. Specifically, IMTS circuits represent 84.6 percent of the total number of circuits that are forecast for 1985. This percentage declines to 84.1 percent in 1987, and, thereafter, it rises continuously to 85.2 percent in 1995. Thus, not only is the number of IMTS circuits that are

[125] This estimate included the international video or audio services PanAmSat proposed in its application. *See* PanAmSat Authorization Order, paras. 24 and 39, n. 22, File No. CSS-84-004-P(LA) (adopted July 25, 1985).

[126] European countries included in these totals are: Austria, Belgium, Bulgaria, Cyprus, Czechoslovakia, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Netherlands, Nordic countries, Poland, Portugal, Roumania, Switzerland, Spain, Turkey, U.K., U.S.S.R. and Yugoslavia.

[127] These figures include some satellite circuits that will be used to provide private line voice service, but the number is undoubtedly small. As an example, AT&T reports that in May 1985, 19 out of 7174 satellite circuits between the U.S. and Europe countries were used to provide private line voice service. The remaining 7155 circuits were used to provide IMTS.

[128] These forecasts were derived from forecasts by individual U.S. common carriers in Common Carrier Docket No. 79-184. They were used to develop the forecasts contained in the U.S. submission to the North Atlantic Counsultative Meeting held January 8–11, 1985.

[129] The other services include record services, AVD, data services and other services. We were unable to tabulate these forecasts in a manner that is identical to our delineation of the services that are included in the restricted service categories. However, as was the case with satellite circuit forecasts, IMTS demand projections constitute most of the total estimates. To the extent other switched services have not been identified, the switched service market is understated.

forecast the largest portion of the total forecasts for service between the U.S. and CEPT countries for the period 1985–1995, but IMTS circuits represent an increasing portion of the total number of circuits that are forecast for all services.

181. INTELSAT, of course, provides global satellite service while the separate systems are proposing to provide service primarily between the U.S. and Europe. To gauge the relative size of the INTELSAT market which would be open to alternative systems if the President's determination is implemented, we have compared INTELSAT's projected non-switched service business between the U.S. and the European countries listed in footnote 126 with its global business. We first combined INTELSAT's projections of full-time units of utilization that are expected to be needed to satisfy demand for record services,[130] AVD service and data services between the U.S. and Europe as a measure of the projected satellite circuits that will not be included in the service restrictions that will be applicable to the separate systems.[131] Estimates of the demand for IBS in the Atlantic region were converted to units of utilization using the factors listed in footnote 106, and combined with the demand for record, data, and AVD services between the U.S. and Europe. The combined forecasts were compared to INTELSAT's global projections for all full-time units of utilization over the period 1985–1998. This period was divided into two segments, 1985–1990 and 1991–1998. The first segment includes INTELSAT's forecasts for IBS. The second segment does not include forecasts for IBS because the INTELSAT Traffic Data Base does not contain IBS forecasts for the latter period. This comparison shows that forecasts for transatlantic record service, AVD service and data services, plus Atlantic region IBS are less than seven percent of INTELSAT's global forecasts during the first segment of the period. The percentages range from 4.1 percent in 1985 to 6.7 percent in 1989. With the omission of IBS in the second segment, the percentages drop below two percent, ranging from 1.7 percent in 1991 to 1.2 percent in 1998. Since the forecasts for record, data, AVD, and IBS services do not account for the minimum time period requirement in our restrictions, these percentage figures overestimate the portion of INTELSAT's forecasts that could be provided by separate satellite systems.

182. To summarize the results of our analysis, the demand forecasts in INTELSAT's traffic data base and those for U.S.-CEPT traffic submitted in connection with our transatlantic facilities planning docket strongly suggest that the demand for international communications services interconnected with the public-switched network is expected to experience considerable growth. Indeed, INTELSAT has stated that it expects its conventional international traffic to grow at about 15 percent per year over the period 1988–2000.[132] INTELSAT's past forecasts have been optimistic to a certain degree but even a somewhat lower growth rate would still represent a substantial increase in the demand for INTELSAT satellite circuits. These services include IMTS, a switched service, which currently represents around 90 percent of INTELSAT's projected transatlantic units of utilization and is expected to represent even a higher percentage in the near future. Only a small percentage of INTELSAT's projected global full time circuit forecasts could be served by the separate systems under the service restrictions we impose with this order.

183. *Impact of Entry on INTELSAT.* The demand projections that we have analyzed for international telecommunications service do not take into account the effects entry could have on the size and composition of the market or the benefits INTELSAT could realize if entry occurs and market size increases. Based on our experience with the domestic communications industry, we believe that entry will increase the economic welfare of communications users. We are well aware of the differences between the domestic and international markets but history has demonstrated that international communications consumers are very responsive to rate reductions and improvements in the quality of service. In addition, we believe that the market pressures created by entry will have a beneficial impact on INTELSAT, leaving it in a better position to meet its objectives and satisfy its obligations. We do not believe it is possible to quantify precisely the impact that entry by separate satellite systems will have on the international market or INTELSAT. However, by analyzing the market qualitatively, we can draw reasonable conclusions regarding both the probable effects and any foreseeable effects of such entry.

184. We have found that separate system operators intend to design their systems and tailor their services in such a way that the services meet customers' particular requirements. Their efforts may take the form of services that do not resemble any which are currently provided by INTELSAT or other suppliers. As we have found in reviewing the applications now on file, their efforts may take the form of services that are differentiated from available services, or are packaged differently from available services to meet a particular customer's specifications.

185. We expect rivalry among satellite service suppliers if entry takes place. This rivalry would put pressure on satellite suppliers to operate efficiently and to charge prices that reflect their costs of providing service. These pressures alone should stimulate the demand for satellite services. The pressures on demand will be reinforced by entry into the final service market by firms such as MCI International, GTE Sprint, Western Union and others. With entry by separate satellite systems, downward pressure would be exerted on the prices that are charged for satellite circuits leased to other service suppliers. As the number of service suppliers grows, they will be under increasing market pressure to reflect lower satellite circuit charges in the prices they set for consumer services. Together, service differentiation and lower prices brought about by separate satellite systems and final service providers would stimulate demand for service and enlarge the size of the international communications service market.

186. We believe that if entry takes place, INTELSAT would be a formidable rival and continue to be the preeminent satellite concern in a changing international communications market. There is no basis to conclude that INTELSAT may encounter serious problems and lose substantial business to entrants in the markets where there are service restrictions in effect. Further, INTELSAT has the capability to respond and compete in those markets where there are no restrictions. INTELSAT is an established enterprise with a net investment in plant and equipment that

[130] Some record services like telex and telegraph services are interconnected with the switched network but they involve a relatively small number of half circuits so including them in the estimates does not distort the results. Further, including them tends to increase the size of the market that is not restricted under the Executive branch restriction.

[131] The method used to develop the estimate does not take into account the minimum time period requirement that is included in our restrictions imposed on separate satellite systems. From the information in INTELSAT's Traffic Data Base, we are unable to determine long-term leases. Some, perhaps many, of the full-time units of utilization for record, data, and AVD services do not satisfy the time requirement. Thus, our estimates are overstated.

[132] See INTELSAT Annual Report 1983 at 17.

exceeds $1.5 billion. Its total revenues amounted to $411 million in 1984. INTELSAT has more than twenty years of experience in operating a satellite system and providing satellite service. In recent years, INTELSAT has expanded the range of services it offers to the point where "Today INTELSAT provides hundreds of different services." [133] INTELSAT's financial condition is very sound. It has earned a cumulative rate of return on investment of 15.3 percent since 1973, $109.9 million over its target rate of 14 percent. In addition, INTELSAT will be the exclusive satellite supplier to a large, well-established and growing service market.

187. In anticipation of entry, it is reasonable to presume that INTELSAT will develop and offer additional services. Indeed, INTELSAT has moved in this direction already with several new service offerings. We expect this kind of business behavior by INTELSAT to continue and perhaps to intensify as the threat of entry becomes more real. Also, it seems reasonable to assume that INTELSAT will adopt new pricing strategies that are designed to retain its existing business and to expand into other markets. These steps will increase significantly the risks confronting separate satellite systems if they decide to enter the market. In contrast to INTELSAT, separate satellite systems operators have to arrange financial backing, to purchase and launch satellites, to develop markets for their services and to gain entry to foreign markets before they can begin to provide service. One commenter has argued, in fact, that entrants will face serious problems in gaining access to telecommunications users in foreign countries.[134] In light of these differences between INTELSAT and the potential entrants, we do not believe it is realistic to base an analysis of the impact that entry will have on INTELSAT on the assumption that services INTELSAT currently provides will be completely diverted to entrants. Analyses that use this assumption do not yield reasonable estimates of the impact entry may have on INTELSAT because the impact tends to be overstated. The studies completed by Hinchman rely on this assumption.[135] We believe that a more realistic assessment of the situation that is likely to evolve if separate systems enter the international market is that they may compete at the margin but they will make no significant inroads into the major markets currently served by INTELSAT.

188. When we take all the relevant factors into consideration, we do not believe that entry by separate international satellite systems would inflict significant economic harm on INTELSAT. The service restrictions placed on the separate systems protect a major portion of INTELSAT's business from diversion. Since substantial growth is projected for the services that are subject to the restriction, the revenues that INTELSAT earns from providing these services will continue to increase. In the markets that are open to entry, rivalry among alternative suppliers is likely to expand service options available to users and exert downward pressure on the prices of these services. Together, these two forces can be expected to stimulate the demand for international telecommunications services, to increase the international telecommunications service market and to generate additional revenues.

189. We believe that INTELSAT will be able to compete effectively in those service markets that are open to entry and that it will earn its share of the additional revenues. With unused capacity available to meet customer demands, INTELSAT is in a strategic position to capture a substantial portion of the revenues in markets where entry is open. In the short run, INTELSAT has satellite capacity in operation, a major part of its costs have been incurred and the cost characteristics of satellite technology are such that average unit costs decline as service levels expand. This situation provides the basis for lower prices on all services offered by INTELSAT.

190. Further, with satellites already in operation, INTELSAT will be able to move into these markets before the separate systems begin operation and provide service. This time lag should benefit INTELSAT by enabling it to develop services to suit customer needs while potential satellite entrants are involved with obtaining the capital needed to finance their systems, with negotiating with satellite manufacturers to construct their systems, with making arrangements to launch their satellites, with purchasing their satellites and with launching the satellites successfully. While the potential satellite entrants are going through all these steps for the first time, INTELSAT will be able to concentrate its efforts on the markets it wants to serve and, perhaps, capture them before any separate system enters the market. We believe that entry would put added pressure on INTELSAT to plan, purchase and operate its satellite system in a fully cost efficient manner. We have noted the estimates of the amount of unused capacity reported in a recent study completed for INTELSAT.[136] This unused capacity existed in the past and, apparently, it will continue to exist, at least throughout the current decade. We realize that some unused capacity must be maintained as spares for other satellites, to meet future growth in demand and to protect service against unexpected contingencies. Where market forces are allowed to operate, they provide incentives to insure that the amount of unused capacity is reasonable and excessive investment in capital equipment is penalized.

191. In conclusion, entry, by forcing INTELSAT to compete for some of its business, would put pressure on INTELSAT to operate its satellite system more efficiently, minimize its costs consistent with reasonable quality of service standards, and set prices to reflect its costs in those markets where entry occurs. As a result, INTELSAT's economic efficiency would improve, and the size of the entire market for non-switched services would increase as well, thereby strengthening INTELSAT's financial condition. Further, the restrictions to entry found by the President to be in the national interest will protect most of INTELSAT's business from diversion and ensure INTELSAT's continued financial success in a rapidly growing and lucrative market. Hence, based on all the information and data that we have examined in this proceeding, we conclude that authorizing separate international satellite systems to enter the international telecommunications market and to offer those services that are not prohibited by the service restrictions proposed as part of the Presidential determination would not subject INTELSAT to significant economic harm. INTELSAT may lose a small part of its business to entrants but we foresee an increase in the size of the market beyond that contemplated by INTELSAT prior to the possibility of entry. We believe that demand will be stimulated to more than compensate for a smaller market share.

192. *Prejudice to Direct Links.* In addition to the consideration of significant economic harm, Article

[133] INTELSAT Annual Report 1984–1985 at 24.

[134] *See* Comments of Walter R. Hinchman at 9–13.

[135] *See* "Significant Economic Harm and International Satellite Competition Impact Analysis."

[136] *See* The Economics of International Satellite Communications

XIV(d) of the INTELSAT Agreement states that the Assembly of Parties, taking into account the advice of the Board of Governors, shall make recommendations regarding the assurance that the provision or utilization of separate satellite facilities shall not prejudice the establishment of direct communications links among all the participants. This test was enunciated by the framers of the INTELSAT Agreement to further their goal of establishing a global system that would allow members to access other members through the INTELSAT space segment. Therefore, we believe that this requirement might reasonably be interpreted to protect against systems that would directly prevent (*e.g.* through legal prohibitions) direct links among those countries using a separate system, or might divert enough traffic among those countries using a separate system to pose a serious threat to their ability to maintain direct links to other members (*e.g.* through the inability to afford dual systems).

193. In light of the economic analysis above and the following additional considerations, we believe that authorization of any of the applications should not prejudice the ability of those countries participating in the separate system to access INTELSAT directly. First, there would certainly be no legal impediment created by the U.S. and other participating countries which would prohibit continuation of communications links through INTELSAT. Second, since participation in separate satellite systems is voluntary, there would also be no financial impediment to continuation of links through INTELSAT since no country would join in the consultation for the separate system if it had any doubt in its ability to participate simultaneously in multiple satellite systems. Therefore, there is no reason to conclude that these systems would "prejudice the establishment of direct communications links among all the participants."

194. As a final point, we note that an argument has been made that the term "participants" in the language Article XIV(d) refers to all members of INTELSAT and not solely to those members participating in the separate system. While we believe that this interpretation stretches the meaning of the word "participants," we would note that the authorizations would even satisfy this alternative test. As we indicated earlier, authorization of these systems should not cause any adverse financial impact on the organization as a whole. We also believe that it will not cause any adverse financial impact on any of the members of INTELSAT and, therefore, will not affect their ability to maintain their INTELSAT connections.

C. Other Considerations

1. Pricing Flexibility

195. In our Notice we solicited comments on the extent of INTELSAT's ability to alter its rate structure in response to competition. We requested commenters to identify any existing constraints on INTELSAT's pricing flexibility and to discuss any modifications of INTELSAT's pricing structure necessary to ensure that INTELSAT remains a viable competitive entity.

196. In the White Paper, the Executive branch states that INTELSAT possesses sufficient pricing flexibility in setting its rates for services and utilizes an established policy that prices should reflect costs. The White Paper also points out, though, that INTELSAT is somewhat limited in its flexibility because the rate that will actually compete with the separate system rates is the rate signatories charge end-users for the entire service and not the circuit utilization charge INTELSAT charges the signatories. The White Paper, however, concludes that INTELSAT has sufficient flexibility to structure its rates and, with its other competitive advantages, will be a strong competitor in the marketplace. In addition, the Department of State recently issued a paper which supports the findings set out in the White Paper and states that INTELSAT has the flexibility to price according to the operational parameters, type of service offered, bandwidth, type of transponder used, degree of protection and satellite to be used. The former paper also notes that INTELSAT can decide which services to provide to which markets under which conditions. Thus, it concludes that INTELSAT has sufficient flexibility in pricing to meet competition and that no change in the INTELSAT Agreement is required.[136A]

197. A recent document issued by the Director General of INTELSAT criticizes the State Department's position and argues that INTELSAT cannot price competitively to meet the rates that will be set by the separate satellite system.[137] The document states that legal restraints exist which preclude INTELSAT from defining services and setting rates that discriminate directly or indirectly against a particular user or group of users. The paper notes that Article V(d) of the INTELSAT Agreement states:

> All users of the INTELSAT space segment shall pay utilization charges determined in accordance with the provisions of this Agreement and the Operating Agreement. The rates of space segment utilization charge for each type of utilization shall be the same for all applicants for space segment capacity for that type of utilization.

According to the document, establishing services and charges on an individual route or geographic basis is necessary to compete with the separate systems, and Article V(d) prevents INTELSAT from doing so. The paper then concludes that the State Department's position improperly suggests that INTELSAT introduce pricing flexibility "through the back door" and that an amendment to the INTELSAT Agreement is required before INTELSAT could price on a route-by-route and region-by-region basis.

198. In their comments, FTC, ABC, NBC, CBS, AT&T and Amb. Abbott Washburn support INTELSAT moving toward cost-based pricing and de-averaging its rates. They state that the United States, along with the other members of INTELSAT, must consider amending Article V(d) in order to give INTELSAT complete pricing flexibility to compete with the rates of separate systems. In fact, Mr. Washburn argues that the separate systems should not be authorized until the necessary changes, in INTELSAT's pricing structure are made. RCA, PanAmSat, Orion and ISI, on the other hand, support the Executive branch position and argue that INTELSAT has sufficient pricing flexibility to compete effectively with the separate satellite systems. In its comments, Comsat does not take a position on whether INTELSAT has sufficient pricing flexibility to meet competition from the separate systems, but emphasizes that it is Comsat's prices, rather than INTELSAT's prices, which will actually compete with the separate systems' rates. In this regard, Comsat states that it possesses substantial latitude to respond to competitive challenges and intends to compete vigorously with the separate systems. Finally, the Department of Justice concludes that INTELSAT's pricing flexibility is not directly relevant to this proceeding because INTELSAT is assured of remaining a viable entity due to the restrictions placed on the separate systems.

[136A] Memorandum of Department of State, "Flexibility to Compete, INTELSAT in an Era of Separate Systems," (May 1985) *reprinted in* INTELSAT Document BG-63-93E, Addendum No. 1 (June 14, 1985).

[137] INTELSAT Document, "INTELSAT's Legal Flexibility to Compete," BG-63-93E (June 5, 1985).

199. A number of parties believe that the pricing flexibility issue is an important factor that must be taken into consideration by the Commission to determine whether INTELSAT will be able to compete with new suppliers. We have already found that INTELSAT will not be harmed by separate systems. In view of this finding, and the fact that both INTELSAT and Comsat are free to establish rates closer to costs in response to competition, we see no reason why a determination of the adequacy of INTELSAT's pricing flexibility is a prerequisite to the authorization of separate systems. We note, also, that only INTELSAT has authority to change its pricing policy through an amendment to its charter.[138] As a member of INTELSAT, the United States will have one vote in the Assembly of Parties on such a question. Moreover, the U.S. position on this matter is not determined by the Commission alone, but by the Executive branch in consultation with the Commission. Thus, in light of these considerations, we will not reach any conclusions in this proceeding as to the pricing flexibility issue. We will, however, consider the record in this proceeding in our consultations with the Executive branch on this matter.

2. Effect on Developing Countries

200. The National Black Media Coalition, TransAfrica and the American Committee on Africa argue that the separate satellite systems will cause INTELSAT's costs to increase by diverting traffic from the INTELSAT system and that these increased costs will fall disproportionately on the developing nations which are least able to afford them.[139] They argue that the developed nations with access to the separate systems will decrease their investment share in the INTELSAT system by using the separate systems and, as a result, the increased costs will fall on the developing countries which have no access to the separate systems. They further note that the Hinchman report estimates that INTELSAT's costs could increase by approximately 30 percent.[140]

201. We do not find that the authorization and entry of separate satellite systems will result in increased costs to the developing countries. In this decision, we have gone through an extensive analysis of the potential effects entry of these systems will have on INTELSAT and find that INTELSAT stands to realize substantial long term benefits from their entry. We find that the restrictions imposed on these systems will protect much of INTELSAT's business from diversion and will ensure INTELSAT's continued financial success in a rapidly growing and lucrative market. Since substantial growth is projected for the services that the separate systems will not be able to provide, usage of the INTELSAT system and the revenues INTELSAT earns from providing those services will continue to increase. Moreover, INTELSAT should be able to earn its share of revenues in the market open to the separate systems. consequently, we conclude that INTELSAT will continue its financial success, its costs will not increase and it will not have to increase its rates.

202. In addition, our conclusions are supported by a recently issued NTIA Summary Analysis of INTELSAT Economics.[141] In this document, NTIA concludes and that INTELSAT will not lose any revenues as a result of competition and that INTELSAT revenues should actually increase as a result of competition. NTIA, though, finds that under the bleakest assumptions, INTELSAT would have to increase revenues from the non-competitive market, *i.e.*, public-switched market, by slightly over 5 percent by 1987. However, NTIA explains that a 5 percent increase in revenues would only require an increase of $1.34 per day per circuit. Moreover, NTIA argues that INTELSAT's circuit charges account for only a fraction of the total end-user price[142] and a minor increase need not be passed on to the end-user. It contends that the increase in cost could be absorbed by either the signatories, which traditionally have high mark-ups on INTELSAT's circuit charges, or by INTELSAT, which has been earning and paying a return on the signatories' capital investment over the 14 percent targeted rate of return.

3. Effect on U.S. Satellite Equipment Manufacturers

203. In our Notice, we requested comments on the effects of authorizing international separate satellite systems on the U.S. manufacturers of satellite equipment. Specifically, we requested data and analyses on any changes in the amount of revenues earned by U.S. satellite equipment manufacturers or in the development of satellite equipment technology which would stem from the introduction of competition in the international satellite industry. We also ask for comments on what steps the Commission could take to protect U.S. manufacturers of satellite equipment should foreign governments adopt anti-competitive practices in satellite procurement procedures in reaction to the entry of separate systems.

204. RCA, ISI, Orion and United Satellite Action state that the authorization of separate systems will benefit the U.S. satellite equipment manufacturers because separate systems will increase the demand for satellite transmission services and thus will create an increase in demand for satellite equipment. In addition, these parties argue that, if INTELSAT must decrease its purchases of satellites with the advent of these systems, the

[138] Pursuant to Article XVII of the INTELSAT Agreement, Tanzania and Cameroon have proposed an Amendment to Article V(d) to give INTELSAT additional pricing flexibility "to meet competition in various ocean regions or traffic routes." This proposal will be considered by the INTELSAT Assembly of Parties at its ordinary meeting in October 1985.

[139] A related issue is the assertion that entry by separate systems will cause prices of service to developing nations to rise because INTELSAT's uniform rate structure results in high volume routes subsidizing low volume routes and high density regions, like the Atlantic region, subsidizing low density regions, like the Pacific region. This argument goes on to say that entry by separate satellite systems will force INTELSAT to deaverage its rates which will result in higher costs for developing nations. In its comments, Orion included two reports prepared by Dale N. Hatfield Associates on the issue of cross-subsidy. In one report, "An Analysis of INTELSAT Subsidy Issue," Hatfield attempts to quantify the cross-subsidy issue by estimating INTELSAT's rate of return on investment for each ocean region. Although handicapped by data limitations on INTELSAT's revenues, expenses, and investment, Hatfield finds that the rates of return on net investment differ among the Atlantic, Pacific, and Indian regions and that the estimated rates of return depend crucially on the mechanism that is used to allocate investment among the regions. This mechanism is arbitrary according to Hatfield who finds that the direction of the subsidy changes if different allocation mechanisms are used. The other report completed by Hatfield, "Issues in International Telecommunications Pricing and Demand," concludes that, if a subsidy exists, it would flow from heavy traffic routes to thin routes with Standard A earth stations. But, Hatfield concludes that the impact on developing countries is negligible since INTELSAT charges make up less than 10 percent of end-to-end satellite costs. Finally, the study finds that "it appears safe to conclude from the evidence in the two reports that if a subsidy exists it is difficult to quantify." ("Issues in International Telecommunications Pricing and Demand" at 11).

[140] As we have stated in para. 157, *supra*, we do not believe the cost increases in the Hinchman report are reasonable estimates because they are based on unrealistic assumptions.

[141] INTELSAT Economics, Summary Analysis, reprinted in INTELSAT Document, "Economic Studies Relating to International Satellite Communications," MS-15-19E Attachment No. 2 (Apri. 11, 1985).

[142] It has been estimated that INTELSAT's charges for satellite capacity generally represent less than 10 percent of the total cost to the end-user of the international satellite system. *See* Statement of Richard R. Colino before the Subcommittee on Arms Control, Oceans, International Operations and Environment, Senate Foreign Relations Committee, October 19, 1983.

increase in purchases of satellite equipment by the separate satellite system operators will compensate U.S. equipment manufacturers for any lost revenues. They also contend that the U.S. manufacturers will not lose any revenues from INTELSAT in the short run because INTELSAT has already contracted with U.S. companies for its INTELSAT V and INTELSAT VI programs which will continue to provide services into the 1990's. They further suggest that U.S. firms will incur no long run revenue loss from the INTELSAT market, since the INTELSAT Agreements require open bidding procedures which award contracts on the basis of price, quality and delivery time.

205. In the White Paper, the Executive branch finds that the U.S. satellite equipment manufacturers have obtained a substantial share of INTELSAT's procurement expenditures because they offer the best in satellite technology, quality and price. Therefore, the Executive branch concludes, the U.S. satellite equipment manufacturers will continue to be successful and competitive in the marketplace. In addition, the Executive branch notes that, since INTELSAT will be subject to limited competition, it will have every incentive to purchase the most economical and highest quality equipment in the future. The Executive branch also states that if a separate system complies with any requirement imposed by a foreign government mandating that the system purchase equipment manufactured by its nation's firms or government as a condition to obtain an operating agreement, the United States would consider declining to coordinate the system under Article XIV(d).

206. Other parties, however, contend that the U.S. satellite equipment manufacturers will be adversely affected by the entry of separate satellite systems in the international communications market. Hughes argues that, with the advent of these systems, INTELSAT would experience a decrease in demand for its services and, as a result, would require less satellite equipment. Thus, notes Hughes, entry of separate systems would lead INTELSAT to decrease its purchases of equipment manufactured by U.S. firms, which supply a substantial amount of INTELSAT's equipment. Hughes includes the cumulative contract values of commercial satellites through the end of 1984 which show that U.S. manufacturers have obtained about 71 percent of the total contract values for the commercial satellite market. The figures also show that INTELSAT's purchases were 26 percent of the total contract values, and U.S. domestic satellite purchases were 34 percent of the total contract values. Hughes further states that the prime contracts for all INTELSAT and U.S. domestic satellite spacecraft have been obtained by U.S. firms. In addition, Hughes contends that since INTELSAT will be unable to contract for the number of satellites over a given period of time that it has in the past, and since separate system operators would purchase only one or two satellites and be constrained to off-the-shelf technology, there will be a substantial decrease in technological stimulation and, thus, development. Also, both Hughes and Amb. Washburn argue that the foreign governments will require the separate system operators to purchase a substantial amount of their equipment from foreign companies before the foreign government will sign an operating agreement. Thus, they contend that the U.S. manufacturers will lose both INTELSAT's business and the business of separate systems. Amb. Washburn states that INTELSAT may abandon its open bidding policy in retaliation for the authorization of separate systems and purchase all of its satellites from foreign companies.

207. In its reply comments, ISI states that the data supplied by Hughes are misleading since they fail to include satellite equipment used by the Soviet and Intersputnik systems. In addition, ISI contends that there are a number of technological advances which are not the result of INTELSAT's procurement of satellites and, therefore, the entry of separate systems will not hinder technological development. Finally, ISI states that it intends to procure spacecraft under competitive practices similar to INTELSAT's and would not agree to purchase satellite equipment from a foreign company in order to obtain an operating agreement.

208. Any foreseeable harm which could affect the U.S. manufacturers of satellite equipment could only result from a loss in revenues incurred in providing equipment to INTELSAT. In order to determine the effect that separate systems may have on these manufacturers, we have evaluated the size of the INTELSAT market in relation to the total size of the industry in which INTELSAT's actual and potential manufacturers compete. Specifically, in our evaluation, we have compared the INTELSAT equipment manufacturing market with the combined equipment manufacturing market for all types of satellites, *e.g.*, those satellites used for navigation, science, weather and military purposes as well as commercial communications satellites. Despite various differences in the function of these satellites, they all share common technology, such as propulsion systems (for orbital insertion and station-keeping), power systems (including solar panels and batteries), stabilization systems and telemetry and telecommand equipment. As further evidence of the substitutability of different types of satellite equipment, we note that firms engaged in satellite manufacturing tend to build various types of satellites.

209. We separated the U.S. satellite equipment industry into three separate markets: (1) spacecraft equipment; (2) launching vehicle equipment; and (3) ground equipment. We found that each of these markets involves different technologies and that different U.S. firms dominate each market. We then compiled the approximate amount of revenues obtained by U.S. satellite equipment manufacturers from the spacecraft and launching vehicle markets, respectively, separating out the revenues derived from INTELSAT procurement. In the ground segment market, since we were unable to obtain estimates of the proportion of U.S. manufacturing content, we compiled information on the approximate amount of revenues spent by the Department of Defense (DoD) which we attributed to U.S. firms, and on the approximate dollar value obtained from manufacturing U.S. home satellite dishes, U.S. domestic earth stations and INTELSAT earth stations, respectively.

210. U.S. companies have supplied a substantial amount of INTELSAT equipment. In our evaluation of the size of the INTELSAT market for U.S. equipment in relation to the total market for U.S. spacecraft, launching vehicles, and ground equipment, we found that in each of the three segments of the satellite equipment industry the INTELSAT market is sufficiently small that even a complete loss of revenues derived from the INTELSAT market would not appreciably affect the U.S. satellite equipment industry as a whole. Figures 1 and 2, and Table 1 summarize the information we compiled on each segment of this industry.

211. In our analysis of the satellite spacecraft market, we accumulated data on the U.S. share of INTELSAT spacecraft and all other commercial satellite systems as well as spacecraft built for the National Oceanic and Atmospheric Administration (NOAA), the National Air and Space Administration (NASA), and the Department of Defense (DoD). Tables 3,

6, 7, 8, 9 and 10 summarize these data. We find that between 1980 and 1990 an average of $5.4 billion annually will accrue to U.S. firms from manufacturing non-INTELSAT satellite spacecraft, as compared with an average of $112 million annually which will accrue to U.S. firms from the manufacture of INTELSAT spacecraft. Thus, from 1980 to 1990, we expect the manufacture of INTELSAT spacecraft to account for at most two percent of the U.S. spacecraft equipment market.

212. In our analysis of the launch vehicle market, we accumulated data on the U.S. share of the launching revenues obtained from INTELSAT and the total revenues obtained by NASA and DoD.[143] Tables 4, 8, 9 and 11 summarize these data. We find that INTELSAT procurement for launching services will average $73 million annually for the years 1980–1990, as compared with the amount of revenues accruing to NASA and DoD, which will average $3.7 billion annually for the same time period. As in the spacecraft equipment market, the revenues obtained by U.S. manufacturers from the launch of INTELSAT satellites are expected to account for approximately two percent of the revenues to U.S. manufacturers for the launch of all satellites during 1980–1990.

213. In our analysis of satellite ground equipment, we accumulated data on DoD's procurement of ground equipment, which we attribute to U.S. manufacturing firms. Otherwise, we were only able to obtain reliable data on revenues to world industry in general, not the U.S. industry in particular, from the manufacture of ground equipment. In addition to estimating the size of the total INTELSAT earth station market, we also estimated the size of the U.S. home satellite antenna market and the U.S. domestically licensed earth station market, both of which we assume to contain a substantial proportion of U.S. manufacturing content. We find that the amount of revenues obtained by world industry from manufacturing INTELSAT ground satellite equipment from 1980 to 1984 was an average of $181 million annually, while the amount of revenues obtained by U.S. manufacturers from manufacturing DoD satellite ground equipment was an average of $2 billion annually for the same time period. See Tables 5, 9, 12 and 13 summarize these data. We also find that from 1980 to 1984 the average revenues obtained annually from the manufacture of U.S. home satellite dishes and U.S. domestic earth station equipment were $1 billion and $220 million, respectively. In comparing the available data, we find that the amount of revenues obtained by world industry from manufacturing INTELSAT earth stations during the period from 1980 to 1984 was less than 1/10 of the amount obtained by U.S. firms from building DoD ground equipment and less than ⅙ of the amount obtained by world industry from building civilian earth stations located in the United States. (*i.e.*, earth stations licensed with the Commission and home satellite dishes). Table 1 summarizes these data. It is important to note that the INTELSAT figure includes revenues from all INTELSAT earth stations and not merely the INTELSAT earth stations located in the United States, and, therefore, the figure overstates the impact on U.S. manufacturers if the INTELSAT revenues were to be lost to other competitors.

214. In addition to our finding that the total loss of revenues from supplying INTELSAT satellite equipment would not substantially affect the total U.S. manufacturing market for satellite equipment, we also conclude that U.S. firms will not lose an appreciable amount of their revenues obtained from manufacturing INTELSAT equipment. Since the separate systems are limited in the provision of services, INTELSAT will retain its share of the international public-switched service market and will also be competing with the separate systems in the customized services market. INTELSAT, therefore, will continue to need a substantial amount of satellite equipment to provide its services and, with the introduction of increased competition, INTELSAT has every incentive to purchase the most economical and best quality equipment available. We find that the success enjoyed by the U.S. manufacturers of satellite equipment is a clear indication of the ability of these manufacturers to offer high quality equipment at relatively low prices, and we conclude that U.S. firms will continue to be strong competitors in the satellite equipment industry and the INTELSAT market in particular. Moreover, it is unlikely that INTELSAT will change its procurement practices in retaliation for the authorization of separate satellite systems since there will be minimal impact on the INTELSAT system from the entry of these systems in the international communications services market.

215. We also find that the satellite system owners would have every incentive to purchase the most economical and best quality satellite equipment in order to effectively compete in the marketplace. Therefore, we find that these system operators would be unlikely to enter operating agreements which would require them to purchase satellite equipment from foreign companies that, absent procurement restrictions, they would not find in their business interests to purchase. We will, however, require, as a condition in the authorization orders, separate satellite system operators to file any operating agreements they enter into with foreign entities with the Commission and will reconsider the authorizations of satellite system operators who enter an operating agreements with satellite procurement restrictions. We further find no support for Hughes' claim that the entry of separate satellite systems would hinder technological development because of a decrease in INTELSAT purchases. Since we have already determined that the portion of the U.S. satellite equipment market attributable to INTELSAT is small in relation to the total U.S. market, we find that the development of satellite technology is not primarily a product of INTELSAT procurement. In fact, as ISI notes, many of the important advances in satellite equipment technology have been introduced in satellites not procured by INTELSAT. Moreover, we have already determined that INTELSAT will not be significantly affected by the introduction of separate systems.

216. Finally, we conclude that there is a solid basis on which to determine that the entry of separate satellite systems could have a beneficial effect on the U.S. satellite equipment industry. As we have already stated, we find that the entry of these systems would introduce competitive benefits to the international communications marketplace and could lead to an increase in demand for satellite services. If there is a corresponding increase in demand for satellite services, there would necessarily also be an increase in demand for communications equipment from which U.S. manufacturers would benefit. In fact, as competition advances in the international satellite arena, thereby increasing the incentives for satellite owners to be as efficient as possible, we would expect U.S. firms to obtain a disproportionate share of added manufacturing revenues. Though we are unable to approximate the amount of additional revenues which we expect to accrue to U.S. satellite manufacturers as a result of the entry of separate systems, we note that the applications already on file with the Commission propose to generate over $1

[143] NASA and DoD are the only U.S. entities which launch satellites.

billion dollars in equipment manufacturing revenues.

4. Excessive Capacity

217. Amb. Washburn in his reply comments states that the authorization of separate international satellite systems will lead to substantial increases in communications capacity in the North Atlantic. He contends that the entry of the separate systems along with the newly authorized cable facilities will encourage foreign governments to build competing systems resulting in gross overcapacity in the North Atlantic Ocean region. Amb. Washburn estimates that a demand-supply imbalance approaching a ratio of 11 to 1 would be reached by 1995 causing substantially increased rates for public-switched services and decreased rates for customized services. In addition, Comsat includes a report in its comments, entitled "Alternative Satellite Systems: Economic and Technical Considerations" by Mar Tech Strategies, Inc., which also evaluates the potential for excess capacity that could result from the entry of separate satellite systems into the international telecommunications market. This report estimates that the "customized service" demand will require 36 transponders in 1990 while the entry of alternative satellite systems will result in a supply of 202 active transponders to meet that demand.

218. We do not subscribe to the theory that separate systems should not be permitted because their entry will result in a gross imbalance between supply and demand. First, as we have found, separate systems will stimulate demand for communications services and increase the overall size of the international communications market. In addition, the financial markets and the potential systems owners will serve as an effective check on the amount of capacity built in the North Atlantic region. Potential entrants must secure financial backing from the financial institutions before they can contract with manufacturers for the systems to be built. Financial institutions will not commit funds without closely scrutinizing the risks involved in any venture. Thus, if there is a substantial risk of overcapacity and insufficient demand, the financial institutions will not commit their funds to build these systems. Likewise, since these systems involve private investment with the risk of failure falling on the investors and not directly on any common carrier ratepayer, potential system owners will carefully consider the risks of failure. Finally, the authorization of separate systems may serve as a competitive check on the amount of INTELSAT's capacity in the North Atlantic. Through Comsat, whose ownership share of INTELSAT is presently 23 percent, we may exert some influence over INTELSAT on the proper amount of INTELSAT capacity in the North Atlantic in light of the capacity of separate systems and other facilities authorized in the region. As we have previously stated, however, if INTELSAT commits to a program, whether or not Comsat supports the program, Comsat is also committed to that program.[144] Thus, authorization of these systems may serve as a competitive check on the amount of INTELSAT's capacity in the North Atlantic.

5. Foreign Policy Considerations

219. Several parties, including some members of Congress, request that the Commission carefully consider the foreign policy implications of authorizing international separate satellite systems. We recognize that these applications raise significant foreign policy and national security issues. However, we must look to the Executive branch for direction in the determination and execution of foreign policy.[145] Therefore, we view as conclusive the finding set forth in the Presidential determination and the joint letter from the Departments of State and Commerce, which set out the criteria necessary to assure that the United States meets its international obligations and furthers its foreign policy interests.

220. Of related interest is a brief paper, accompanied by a more detailed study, filed as a public comment in this proceeding by Philip H. Trezise, a researcher, writer and consultant in the field of foreign economic policy.[146] These documents, taken together, suggest that if the United States chooses to license separate satellite systems, it would still be faced with the critical choice of whether to license separate systems first and negotiate with other governments later or to negotiate with other sovereigns first and then to license separate systems in accordance with the outcome of the negotiations. The authors conclude that the second alternative is preferable, both from a foreign relations standpoint and from the perspective of obtaining increased competition in international communications. The first alternative is criticized in these filings as leading to intergovernmental confrontation, and examples are provided to support the notion that past attempts to implement U.S. policy unilaterally on sovereign nations have proved counter-productive. After analyzing the Trezise filings, we remain unconvinced of any dangers inherent in licensing international communications facilities prior to obtaining negotiating agreements overseas. For the United States to license international facilities does not in any way challenge the sovereignty of other nations to adopt whatever policy they see fit but merely suggests to these nations certain policies currently advocated by the United States. The discussion provided in the Trezise filings points out quite correctly, however, the importance of affording proper respect to international comity and of noting the past disagreements among various sovereigns over matters of international communications policy. These points had without a doubt been considered extensively by the Executive branch in reaching their "national interest" determination as we have considered them in analyzing whether the licensing of separate systems at this time is in the public interest.

6. Direct Access

221. Since the potential for introducing alternative international systems brings into consideration additional factors which may increase the desirability of direct access to INTELSAT by U.S. carriers, the Commission invited comment on the possibility of allowing direct access as a means of promoting efficiency in the provision of international satellite services.[147] Several parties argue in favor of direct access, contending that it would lower prices and increase service flexibility for end users of international telecommunications services as well as improve the ability of INTELSAT to

[144] *See* Communications Satellite Corporation, 84 FCC 2d 377, 380 (1980).

[145] The President's authority over the foreign policy and national security interests of the United States are recognized as part of his implied powers under Article II of the Constitution. *See* United States v. Curtiss-Wright Export Corporation, 299 U.S. 304, 319 (1936).

[146] Philip H. Trezise, "Unilateralism in International Trade: Will We Ever Learn?" (received July 12, 1984); accompanied by Bert W. Rein, Bruce L. McDonald, Danny E. Adams, Robert E. Nielson and Carl R. Frank, "Implementation of a U.S. 'Free Entry' Initiative for Transatlantic Satellite Facilities: Problems, Pitfalls and Possibilities," a study by the law firm of Wiley and Rein, counsel for Comsat in this proceeding.

[147] The issue of whether to allow direct access to the INTELSAT space segment by U.S carriers other than Comsat or, additionally, by end users of satellite services has been considered by the Commission in a previous rulemaking. *See* Regulatory Policies Concerning Direct Access to INTELSAT Space Segment for the U.S. International Service Carriers, 90 FCC 2d 1446 (1982) (Notice of Inquiry); FCC No. 84-129, 49 FR 19132 (1984) (Report and Order terminating the proceeding).

compete against alternative systems. They also affirm the authority of the Commission to implement direct access. Comsat, on the other hand, states that the Commission should not institute direct access in any form because direct access would not result in economic savings to carriers or end users, but would add an unnecessary layer of regulation and have the paradoxical affect of bypassing Comsat, an owner of INTELSAT, in order to improve INTELSAT's competitive position. Other parties argue that under no circumstances should resolution of this issue delay the separate satellite proceeding. These commenters state that the issue of direct access would be appropriately addressed in a discrete proceeding. NTIA petitioned the Commission, on February 21, 1985, to reopen the issue in a separate rulemaking proceeding.[148] In light of the existence of NTIA's petition, we find that it would be premature to consider the direct access issue in the context of the separate satellite proceeding. We conclude that the two issues involve sufficiently different facts as to merit discrete treatment by the Commission. The White Paper appears to support this conclusion, stating that direct access is not a prerequisite for and should not be a basis for delay in action on the separate systems applications.[149]

7. Orbit/Spectrum Efficiency

222. In our Notice, we observed that demand for orbital positions in certain portions of the geostationary-satellite orbit, particularly that portion over the Atlantic Ocean, has increased markedly in recent years. We also noted that arguments had been advanced suggesting that a common-user system such as INTELSAT is more orbit/spectrum efficient than the separate international systems would be. Conversely, arguments had been advanced that systems proposed by the separate satellite applicants would not necessarily be less efficient and that for any system (common-user or otherwise) to provide certain types of services would require operational trade-offs which might lead to less efficient configurations. We specifically sought comments on this issue and, in particular, on the degree to which we could rely on economic incentives to achieve greater efficiency. In this context, most of the applicants explicitly claim that the systems they have proposed in their applications have been designed to maximize spectrum/orbit efficiency.

223. RCA states that its SATCOM VI satellite, like the other applicants' satellites, would be a "common-user" system since it would be meeting the satellite communications needs of more than one administration, and that there should be no different treatment for itself and INTELSAT. RCA contends that INTELSAT does not necessarily provide a more efficient use of the geostationary orbit than some other common user systems. It adds that because of other current and proposed satellites near SATCOM VI, RCA has an incentive to use the geostationary orbit efficiently, and will take all steps to minimize interference with other domestic and international systems.

224. Orion states that the spectrum/orbit efficiency issues must be addressed in economic terms with regard to the trade-offs that are inherently involved in different types of systems. It argues that while INTELSAT might be deemed more efficient because of its ability to cover large areas of the globe with relatively few satellites, such a system rules out the possibility of economies of specialization because it is unable to effectively serve the needs of highly specialized user markets or of specific geographic areas. Orion believes that the Commission is correct that the extent to which a particular satellite network may be deemed more or less efficient in its utilization of the spectrum/orbit resource is determined largely by the economic incentives and the primary mission or objectives of the network operator.

225. PanAmSat limits its comparison of the efficiencies of its proposed satellite facilities with those of INTELSAT's satellites, to 4/6 GHz service since INTELSAT does not offer 11–12/14 GHz service to South America. Assuming the use of 72 MHz of bandwidth and the use of a thirty-foot antenna, PanAmSat concludes that, when using a full-transponder telephone carrier, INTELSAT would be able to accommodate 360 telephone channels while PanAmSat's own system could accommodate 864 channels. In an FDM/FM companded mode, the number of channels for INTELSAT and PanAmSat satellites were calculated to increase to 792 and 5784, respectively. For operation with 64-kbps digitally-encoded SCPC telephone carriers using six-meter antennas (and still comparing a 72 MHz bandwidth), PanAmSat calculates that an INTELSAT satellite could handle 318 carriers and a PanAmSat satellite 1094 carriers. For 1.544–Mbps (T1) carriers, INTELSAT satellites could accommodate 14 carriers while PanAmSat satellites could accommodate 44 carriers. PanAmSat states that the advantage of its system stems largely from the high EIRP of its satellites.

226. ISI states that INTELSAT's latest series of satellites, the INTELSAT V and INTELSAT VI series, are hybrid satellites that employ both the 4/6 and 11–12/14 GHz bands and, therefore, can be inherently inefficient if the orbital spacing criteria for the two bands are different, or if one band is used efficiently, but the other is not used efficiently. ISI also states that INTELSAT's use of movable beams may prevent the use of an orbital position by another satellite to illuminate any portion of the earth if the movable beam is not restricted to serving a particular area.[150] In comparing the 11–12/14 GHz facilities to be used by itself and INTELSAT, ISI states that the INTELSAT V and VA satellites have a single use by three transponders of about 400 MHz in each of the two uplink and downlink beams in that band. ISI notes that for the INTELSAT VB satellites, the configuration is the same except that only about 220 MHz are available in each beam. Since those beams on the INTELSAT V series satellites use 10-watt transponders, the total power available on each satellite in the 11–12/14 GHz band is 60 watts. For INTELSAT VI satellites, ISI states that the spectrum availability is increased to a single use of 500 MHz by five 10-watt transponders, giving those satellites a total power in the band of 100 watts. In contrast, ISI notes that its proposed satellites would employ two full uses of 500 MHz in each of two beams using sixteen 10-watt transponders and sixteen 20-watt transponders, thus giving its satellites 1000 MHz of available spectrum in each direction and a total space station power of 480 watts.

227. Comsat simply states that if conflicts in orbital positions arise between INTELSAT and the separate

[148] Petition for Rulemaking to Consider Authorizing Competitive Access by Carriers and Users to the INTELSAT Space Segment for the Provision of Customized International Communications Services, RM–4904 (filed February 21, 1985). In this petition, NTIA advocated allowing "competitive" access by carriers and users to the INTELSAT space segment for the provision of customized services.

[149] White Paper at 33.

[150] As these two spectrum/orbit efficiency issues relate to satellites licensed by this Commission, the issue of hybrid satellites has been addressed in Orbit Deployment Plan—Domestic Satellite, 84 FCC 2d 584 (1981) (hereinafter referred to as "1980 Assignment Order"), and Licensing of Space Stations in the Domestic Fixed-Satellite Service, 48 FR 40233 (1983), *recon. in part* (hereinafter referred to as "Reduced Orbital Spacing") at para. 77–79, and the issue of movable beams is addressed in paragraphs 249–250, below.

satellite applicants, they should generally be resolved in favor of INTELSAT, ". . . which, as a common user system, provides more efficient use of spectrum/orbit resources than can be realized by separate U.S. and foreign-based satellite systems."

228. While we will not debate the meaning of the term "common-user system" here. As discussed above, we recognize that INTELSAT has designed its space station facilities in a fashion that is suitable for the provision of its primary services. However, it is also clear that the separate satellite applicants can provide specialized services with facilities configured in a very efficient manner that can result in user benefits.

229. PanAmSat's high power satellites will provide a greater "throughput" than INTELSAT can provide using a comparable earth segment configuration. Also, in addition to the greater power capability of its proposed satellites, ISI's proposed reuse of the 11–12/14 GHz spectrum resource would, alone, permit approximately twice the "throughput" of INTELSAT's most efficient satellite in that band. And as we have found above, all of the applicants have proposed to use facilities with an EIRP capability greater than INTELSAT facilities, permitting them to offer services employing smaller earth stations or at higher information transmission rates. In this sense, all of the applicants will be efficient.

230. We, therefore, conclude that separate systems can serve the specialized needs of users in a fashion that makes efficient use of the orbit/spectrum resource. We find that economic incentives can play a major role in promoting efficient use of the orbit/spectrum resource. For example, they will best govern an operator's (or user's) determination as to whether the additional satellite EIRP that will be provided by the separate systems should be used to provide services to smaller earth stations, or to accommodate more channels of communication or higher information transmission rates for one or more customers. However, we also believe that certain minimal efficiency criteria should be applied to separate systems that we authorize. We expect that applying these criteria will be in the interest of the satellite operators, by ensuring that orbital positions will be available for new entrants in the future and that state-of-the-art facilities are used. At the same time, the criteria will promote orbit/spectrum efficiency generally. We discuss our minimal technical standards below.

D. Licensing Policies

231. We have accepted for filing and have received comments on the six applications for the construction and operation of international satellite systems that are described in paragraphs 6 through 11 above. On June 6, 1985, we decided to "freeze" the acceptance of any newly filed applications or amendments to applications for new space stations (including applications for domestic-fixed satellite service) which request orbital positions between 30° West Longitude and 60° West Longitude in the 4, 6, 11, 12 and 14 GHz band. In this proceeding, we are adopting licensing policies for processing all international satellite applications now before us and any additional applications that may be filed in the future. These policies are similar to our domestic satellite licensing policies except in certain instances where circumstances require divergence from domestic policies. Based on these policies, we are today conditionally authorizing three proposed systems and deferring action on two applications pending modification by the applicants to bring the applications into compliance with the licensing standards that we are adopting today. We are granting conditional authorizations to ISI, PanAmSat and RCA Americom and deferring action on the applications of Orion and Cygnus. We will act on the Finansat application at a later time. We are lifting the freeze at this time for the limited purpose of accepting amendments to the Orion and Cygnus applications consistent with our findings. We are delegating authority to the Chief, Common Carrier Bureau, to lift the freeze at a later date and to establish procedures for the acceptance of additional applications.[151]

1. Legal Qualifications

232. We shall require applicants to submit such information as may be necessary to determine legal qualifications to become Commission licensees. For this purpose, we are requiring separate system applicants to file with their applications the Common Carrier and Satellite Radio Licensee Qualification Report (FCC Form 430) which requests the minimum information that we believe is necessary to make a determination as to legal qualifications. Since separate system operators will be non-common carriers, section 310(b) of the Communications Act will not apply. Therefore, separate system applicants need not respond to those questions in Form 430 requesting information required by section 310(b). We reserve the right to request additional information as may be necessary.

2. Financial Qualifications

233. In assessing an applicant's ability to construct, launch and operate an international satellite system, we must consider the applicant's financial competence or qualifications. Close examination of an applicant's financial qualifications principally ensures that qualified applicants will not be precluded from constructing and operating proposed systems by a grant of an authorization to a financially unqualified applicant. Further, a determination of an applicant's financial qualifications ensures that the desired capacity and/or service is promptly made available. We must also consider the speculative nature of the proposed international separate satellite systems and the various obstacles to be surmounted by the applicant before a license is issued by the Commission. Thus, the applicant must demonstrate its financial preparedness to assume the costs and liabilities involved in constructing, launching and operating the system for one year. The applicant must show financing currently available for the planning, construction, launch and operation of the proposed system as well as the income or revenues anticipated from the operation of the system. The financial qualifications required for obtaining a license are in addition to the various requisites of the application process.

234. We will permit an otherwise qualified applicant to begin construction of its proposed system only upon demonstration of (1) the estimated costs of proposed construction and launch, and any other initial expenses for the proposed space station(s); (2) the estimated operating expenses for one year after launch of the proposed space station(s); and (3) the applicant's current financial ability to meet both the costs of construction and launch and operating expenses for one year after launch. However, the fact that the applicant must undergo the INTELSAT consultation process and the resulting continued uncertain status of the application pending this process means that the applicant is unlikely to receive from any banking or financial institution irrevocable financial commitments until consultation process is completed. Also,

[151] Our delegation of authority also gives the Bureau Chief discretion to lift the freeze for the limited purpose of accepting for filing amendments to existing applications (those applications discussed in paragraphs 6 through 11, *supra*.) as may be required to carry out the policies that we are establishing today.

where the estimated costs of the proposed satellite systems average approximately $240 million, it is understandable that firm financial support for such systems be demonstrated only after this process is completed. The applicant, therefore, will have much difficulty in showing in its initial application proof of firm financial commitments on either a short-term or long-term basis. However, we believe that issuance of some kind of preliminary authorization is necessary for an applicant to obtain foreign authorization of its proposed system—a condition precedent for U.S. initiation of the Article XIV(d) consultation process. In addition, the applicant will have difficulty in locating customers for its proposed capacity and/or services absent both a construction permit and successful completion of the Article XIV(d) consultation process.

235. In light of these complicating factors, it is impractical for an applicant to submit to the Commission in its initial application more that general estimations of income or revenue from the operation of the proposed system. We therefore have decided to adopt a two-stage approach to determining the financial qualifications of the applicant.[152] In the first stage, we will issue a conditional construction permit if the applicant meets specific minimal financial qualifications. The applicant must show: (1) The estimated costs of proposed construction and launch, and any other initial expenses for the proposed space station(s); (2) the estimated operating expenses for one year after launch of the proposed space station(s); and (3) the source(s) or potential source(s) of funding of the proposed system for one year, which would include the identity of financiers and their letters of financial interest. Any applicant which has not met these minimal qualifications will be given 45 days to do so following the issuance of this order. Failure to comply will result in denial of the application. The conditional construction permit that is issued in this first stage to applicants meeting these minimal financial qualifications does not permit the applicant to begin construction, but is intended to set forth the approved technical parameters of the proposed system for the purpose of INTELSAT technical coordination under Article XIV(d). The Commission will issue an order permitting construction by the applicant only upon a showing of the applicant's current financial ability to meet the costs of construction and launch, and operating expenses for one year after launch. A demonstration of current financial ability to meet such costs and expenses would include the submission of a balance sheet, verified by affidavit, shall demonstrate its current financial ability current for the latest fiscal year and documentation of any financial commitments reflected in the balance sheet together with an exhibit demonstrating that the applicant has current assets and operating income sufficient to meet its estimated construction, launch and operation costs and expenses. For newly established entities unable to submit a current balance sheet, these applicants shall submit an exhibit indicating the estimated income or revenues anticipated from the proposed operation of the satellite system necessary to meet the estimated costs of construction, launch and operation along with any additional information requested by the Commission, which would include scheduled debt financing or stock issues, established lines of credit or other forms of internal financing. If the applicant is owned by more than one corporate permit, it must submit evidence of a commitment to the proposed satellite program by management of the corporate parent upon whom it is relying for financial resources. The applicant must meet these requirements no later than 60 days following receipt by the Commission of the State Department's letter stating that the United States has fulfilled its obligations under the INTELSAT charter and that the Commission may proceed with final authorization of the proposed system. At that time, we will issue an order permitting the applicant to begin construction. However, we also will permit otherwise qualified applicants to begin construction prior to receipt of the State Department's letter if the applicant can satisfy the second stage requirements prior to that time.

236. Should the conditions of the second stage not be timely satisfied, or untimely satisfied without good cause shown, the conditional construction permit will become null and void and the orbital locations tentatively assigned to the applicant will become available for reassignment. Once either the conditional construction permit or Commission order permitting construction by the applicant is issued, the applicant bears all risks and liabilities in commencing construction of its satellite system pending final Commission issuance of launch authority and a license to begin operation.

3. Technical Standards

237. In our Notice, we stated that some variation on the orbital-spacing, full-frequency-reuse and transponder-power standards that we apply to domestic satellite systems could be appropriate for separate international systems in order to allow for the greatest number of satellites in the geostationary-satellite orbit and the greatest efficiency of those satellites. The comments we received on this issue treated it very generally.

(a) *Comments.* 238. Orion believes the Commission should apply standards to separate satellite systems similar to those for the domestic fixed-satellite service, to the extent compatible with international treaty constraints on frequency use.

239. Cygnus agrees that technical standards should be implemented to allow for the greatest number of satellites in the geostationary orbit and the greatest efficiency of those satellites, but adds that the domestic satellite standards should not be applied directly and, instead, should take into account the peculiar characteristics of the proposed international systems. Cygnus contends that it has designed its proposed system in such a manner as to maximize orbit/spectrum efficiency and that its application contains discussions and analyses that should assist the Commission in establishing and applying standards. Cygnus has determined that a 2° separation between its own two satellites and a 2.5° separation from other satellites are sufficient to ensure efficient utilization of the orbital arc. Cygnus states that its spacecraft would employ linear orthogonal polarization and would reuse the uplink frequency band.

240. RCA states that its SATCOM VI satellite (the one from which it proposes to provide international service) has already been designed to meet all of the Commission's domestic satellite technical standards and contends that all of the applicants should conform to those stardards.

241. ISI concurs in the Commission's view that standards regarding utilization of the spectrum orbit resource would be useful. But due to the complexity of the matters involved and the convening of the World Administrative Radio Conference on the use of the geostationary orbit (WARC–ORB(1)) in August of 1985, ISI believes that it would be inappropriate and untimely to

[152] We have not adopted a two-stage approach to determining the financial qualifications for domestic satellite authorizations. However, no INTELSAT economic coordination is necessary for domestic systems. The only reason for our two-stage approach here is the uncertainty caused by the INTELSAT Article XIV(d) consultation process.

address the use of the domestic standards for international systems in this proceeding. Instead, ISI recommends that the Commission give the matter further consideration after WARC-ORB(1).

242. PanAmSat states that technological advances, such as low-cost earth station antennas which meet or exceed the Commission's sidelobe requirements, should definitely play a part in the authorization of new satellite systems and the evolution of existing systems.

243. Finally, Comsat claims that the United States will have to seek the cooperation and support of other countries in the Americas and elsewhere for any large-scale use of the orbital arc for separate satellite systems to serve U.S.-Europe routes, and that this might have to include the development of even stricter technical standards than those resulting from 2° spacing.

(b) *Orbital Spacing*. 244. With respect to orbital spacing criteria, we will extend our established policies of reduced orbital spacing to separate satellite systems that we authorize. While Cygnus appears to suggest that a 2.5° spacing between satellites of different systems (with 2° spacing between satellites of the same system) would be a sufficiently close spacing, the other commenters did not suggest that the 2°-spacing criteria we are implementing for U.S. domestic satellites would be inappropriate or unacceptable for international systems. Our commitment to the efficient utilization of the geostationary orbit and the accommodation of the requirements of all countries, including additional U.S. requirements, for access to the orbit is too great to not use these criteria. Therefore, we are adopting the general policies and standards for the separate systems that we have developed to reduce the spacing between domestic satellites to 2°.[153]

245. We recognize that we cannot apply such standards unilaterally because their implementation is subject to international coordination requirements. However, we will apply our 2° criteria to spacing between U.S. satellites, and we will be encouraging the acceptance of spacings as small as 2° by administrations with which we will be coordinating, as circumstances warrant. Obviously, if bilateral or multilateral discussions between the U.S. and other administrations result in an agreement to have a spacing greater than 2°, U.S. operators will be permitted (and required) to position their satellites such that the greater separation is maintained between their space stations and those of the other affected administration(s).[154]

246. With respect to orbital spacing criteria as they apply to earth stations, we will continue to apply the requirements of Section 25.209 of our Rules, 47 CFR 25.209 (1984), to all earth stations licensed in the U.S., including those licensed for communicating with international satellites. These antenna sidelobe requirements will continue to be a valuable means of meeting our objective of reduced orbital spacing.

247. Finally, we note that there is an ongoing review by our satellite spacing Advisory Committee of the precise criteria that should be used in meeting our objective of reduced orbital spacing.[155] Therefore, we will take the findings of the Advisory Committee into account as we further establish the criteria we will apply to the spacing of international satellites.

(c) *Full Frequency Reuse*. 248. With respect to full frequency reuse, we have decided to adpot a variation from the domestic satellite service requirements and to establish an addtional requirement for certain satellite configurations. In *Reduced Orbital Spacing*, the Commission set forth its full frequency reuse standards for domestic satellites in terms of a satellite's capacity.[156] The Commission required that a 4/6 GHz space station have a capacity equivalent to that which could be provided by a space station having transponders that use 864 MHz of a 1000 MHz (with two-times frequency reuse) assignment and provide a total power of 192 watts. A 12/14 GHz space station is required to have a capacity equivalent to a space station having transponders that use 860 MHz of a 1000 MHz (with two-times frequency reuse) assignment and provide a total power of 400 watts. These "performance" standards were based on certain assumptions concerning the characteristics of a reasonable state-of-the-art space station. We believe that similar standards must be applied to the separate international satellite systems in order to ensure the most efficient use of the orbit/spectrum resource. However, we have decided that, due to the additional complexity (use of multiple beams and use of different frequency bands in different beams) of international satellites, we must identify the underlying assumptions from our domestic "performance" or "capacity" standards and apply some of them explicitly to international satellites as technical standards.[157]

249. The first aspect of the requirements we are adpoting from the domestic service concerns the use of transponder configurations that insure that the actual bandwidth available for use on a satellite is a reasonable percentage of the assigned bandwidth. Based upon the assumptions used for our domestic standards, we have decided to require that each space station of a separate international system be equipped with transponders capable of using at least 860 MHz of each 1000 MHz assignment in any band. These figures assume the reuse of assigned frequencies by polarization discrimination, as discussed below. An applicant must make a compelling demonstration by request for waiver that this standard should be modified to some extent to accommodate a special situation.

250. The second aspect of the requirements we are adopting from the domestic service is that of having satellite operators employ polarization discrimination in order to reuse both the uplink and downlink frequency bands. The domestic standards are based on the assumption that each frequency will be used twice in a given beam. In all but the most extraordinary of circumstances, the domestic "capacity requirement" can only be met by the reuse of all frequencies by polarization discrimination. Because the international satellites, by their nature, will employ multiple beams and, in some cases, will employ different frequency bands for the uplinks or downlinks in different beams, the "capacity" requirement becomes ambiguous and difficult to apply. Therefore, to accomplish our goal of

[153] *See* Reduced Orbital Spacing, *supra* n. 150. Also, consistent with our standards for domestic satellites, we will require that international space stations maintain station-keeping tolerances of ±0.1°, or better.

[154] In order to improve operational coordination and, thereby, successfully reduce spacings between the separate international satellites and either satellites of foreign countries, or other U.S. satellites, we will in the future, impose reporting requirements similar to those that exist for domestic satellite operators. We may also require the submission of additional information regarding the technical or operational aspects of a proposed system in order to complete international coordination of the system.

[155] *See* Order Establishing Advisory Committee on Reduced Orbital Spacing, FCC 84-488 (released January 15, 1985).

[156] Reduced Orbitial Spacing, *supra* n. 150.

[157] The Commission stated in Reduced Orbitial Spacing that "[i]f comparative evaluation becomes necessary, orbit and spectrum efficiency is likely to become the critical criterion (sic) in any administrative selection among competing applications." Reduced Orbital Spacing, *supra* n. 129. We are explicitly adopting this policy for cases involving international satellites as well.

requiring efficient use of the orbit/spectrum resource, we are setting forth the reuse-by-polarization-discrimination requirement explicitly for the separate international satellites.[158]

251. The commenters did not express any objections to such a requirement. We also note that all of the applicants have proposed to employ linear orthogonal polarization in all beams. Cygnus, which has proposed not to reuse its downlink frequency assignments (even though it would use linear polarization in its downlink beams), offered no reason why we should not require full frequency reuse in both directions other than to state that such standards ". . . should take into account the peculiar characteristics of the proposed international systems."[159] Our firm commitment to efficient utilization of the geostationary orbit and the space-service frequency bands makes adoption of a requirement for frequency reuse by polarization discrimination essential. As we noted above, however, we will take the findings of our Advisory Committee into account in the respect that cross-polarization may affect satellite spacing.

252. With respect to the remaining underlying assumption of our domestic requirements, that of minimum transponder power, we have decided not to adopt an explicit standard. Our evaluation of the applications we have received thus far leads us to believe that such a standard is unnecessary at this time. To the extent permissible by the power flux-density (PFD) limits of the international Radio Regulations,[160] all of the applicants have proposed to use transponders which meet or exceed the state-of-the-art standards which underlie our domestic requirements. In fact, two of the applicants have proposed to employ transponders with such a high power capability that we have tentatively determined that they can not be fully used without violating the PFD limits of the Radio Regulations.[161] Therefore, although we will expect applicants to use transponders with a state-of-the-art power capability (to the extent permissible by the Radio Regulations and the Commission's Rules), we will evaluate applications on a case-by-case basis in this respect, taking into account other aspects of the technical proposals that will affect spectrum/orbit use efficiency.

253. In addition to full frequency reuse by polarization discrimination as discussed above, we are setting forth a new reuse requirement that we will apply to separate international systems. We will require satellites serving widely separated geographic areas (without serving intervening areas in the same bands) to be capable of simultaneous operation on all assigned frequencies in all beams (both uplink and downlink). In other words, we will require that satellites be configured so that all frequencies and both polarizations can be reused in beams serving widely separated areas. This is possible due to the space station antenna discrimination that can be achieved when different beams serve areas that are widely separated. We will not require that a satellite actually use the same frequencies in all beams. We will only require that if an applicant requests assignment of a frequency band for a particular beam that the space station be configured so that all of the assigned frequencies can be used in that beam at the same time they are being used in other beams; and if the applicant does not request assignment of a frequency band for a particular beam then that band can be used in the particular direction by another space station.

254. In the case of the proposed transatlantic satellites, for example, one of the applicants (ISI) has proposed to construct its space station in a fashion that will meet this standard. By taking advantage of the space station antenna discrimination that is possible because of the wide separation of the American and European service areas, ISI will reuse each frequency and both polarizations in its two uplink beams and thereby achieve four-times frequency reuse. The resultant effective bandwidth of an ISI satellite from a single orbital position will therefore be 2000 MHz. By contrast, two of the other applicants, Orion and Cygnus, have proposed satellites that would only permit the use of an uplink frequency in one of their two beams at a time. This means that the total information flow through those satellites will be limited by an effective bandwidth (taking into account polarization reuse) of 1000 MHz—half that of the ISI satellites. Moreover, since the type of configuration proposed by Orion and Cygnus envisions the changing of frequency use from one beam to another at will, it would be impossible for another satellite operator to determine which frequencies would be left unused by Orion and Cygnus in a given direction, at any given time. Therefore, that spectrum would be useless to such an operator (either from the U.S. or another country) that could otherwise collocate (or closely space) an additional satellite at the particular orbital positions and provide services using that spectrum.

255. We recognize that a requirement for frequency reuse by space station antenna discrimination has a profound effect upon satellite design considerations. In particular, if a band of uplink frequencies is reused in this fashion on a spacecraft, the number of transponders aboard the spacecraft would have to be doubled. However, in general, we would expect the attendant increase in satellite capacity to be in the satellite operator's interest at the same time that it improves the efficient use of the geostationary orbit. Nonetheless, we realize that this type of frequency reuse may be impossible or inappropriate for some systems. Therefore, we will examine applications on a case-by-case basis, and we will require that any applicants proposing not to employ such reuse demonstrate clearly why such reuse criteria do not or should not apply to them. In such cases, we will also expect a showing as to whether other orbit/spectrum conservation measures could be employed in place of the frequency reuse standard we are adopting.[162]

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[158] In order to implement 2° spacing, we may require in construction permits that certain polarizations be used on particular frequencies in particular beams. To the extent that any individual satellite would not conform to a polarization plan, the licensee will be required to perform necessary coordination to ensure that operation of its satellite will not cause unacceptable interference to adjacent satellites.

[159] Comments of Cygnus at 14.

[160] Radio Regulations (Geneva, 1979).

[161] *See* Memorandum Opinions and Orders in the matters of the applications of Orion Satellite Corp., File No. CSS-83-002-P, and Cygnus Satellite Corp., File No. CSS-84-002-P(LA), adopted July 25, 1985.

[162] We note that a configuration of the type proposed by Orion and Cygnus would permit a satellite to be switched from international use to primarily "domestic" use (i.e., signals originating in North America only being downlinked to North America and signals originating in Europe only being downlinked to Europe) with a minimum economic penalty in relation to the original construction costs of the satellite. Such considerations are not an adequate justification for a waiver of our full-frequency-reuse standards. Furthermore, we consider many of the orbital positions requested by the applicants to be critical, limited resources for the provision of particular international services. Therefore, we will retain jurisdiction over the assignment and use of orbital positions for international services to assure that their use is consistent with our general orbital assignment policies. In addition, if a separate satellite operator should desire in the future to provide primarily "domestic" service from its space station, it must comply fully with the application and authorization procedures established for domestic satellites.

(d) *Application of Standards to Low Capacity Beams.* 256. In cases where an applicant proposes to devote a portion of its satellite capacity to serving an area outside of its primary service area by the use of a separate, "low capacity" beam, or a beam that is either switchable or movable, the full-frequency-reuse standards we are adopting may present an unreasonable burden. One of the applicants has proposed a network which we believe falls into this category. RCA has proposed to modify its Satcom VI spacecraft in order to allow it to switch, at will, six transponders with vertically polarized downlinks from its CONUS downlink beam to a downlink beam covering parts of Europe and Africa. RCA would also be able to switch these six transponders and six other transponders (all of the spacecraft's transponders with horizontally polarized uplinks) from a CONUS-only uplink beam to an uplink beam covering CONUS, and parts of Europe and Africa. Clearly, this proposed arrangement would violate our full-frequency-reuse standards. When the Europe-Africa beams would be turned on, those beams would not reuse frequencies by either polarization discrimination or space station antenna discrimination. In addition, those beams would not make full use of the frequency assignments made to the system.

257. Nonetheless, we believe that space station beam configurations which provide satellite capacity on a temporary or ancillary basis to locations outside the primary service area of a satellite are useful for providing services or connectivities that otherwise might not be available. Therefore, we believe a flexible approach to this issue is desirable. However, we must balance the desirability of a flexible approach with our interest in maintaining efficient use of the orbit/spectrum resource. We have decided that this balance can be struck by permitting international satellite operators to configure their space stations with such beams, but only at the risk that we may determine in the future that those beams must be repositioned, reconfigured or turned off in order to permit the accommodation of an additional full capacity space station. In other words, we will not reserve a frequency assignment to a particular service area, from a particular orbital position, for a low capacity beam, if those assignments are needed to implement a full-capacity satellite of a U.S. operator or an operator representing another country.

(e) *Conclusion.* 258. As we have stated, we have a strong commitment to maintaining efficient use of the orbit/spectrum resource. We believe that the standards we are adopting today achieve this goal without unduly hindering satellite operators in the development of systems that meet the interests of themselves and their customers. Yet, we also recognize that the environment we are dealing with is changing constantly. The state of the art of satellite communications is evolving rapidly. Therefore, we will entertain showings by applicants that particular satellite configurations which do not meet the standards we are adopting should be permitted. However, we will hold such showings to the test that the satellite will perform at least equivalently to a satellite operating within our technical standards in terms of orbit/spectrum efficiency and satellite capacity. We also note that more and more companies and countries are expressing interest in establishing satellite networks. The upcoming World Administrative Radio Conference on the use of the geostationary-satellite orbit may change the international regulatory procedures under which we cooperatively work with other countries. Therefore, we may also find it appropriate to give the matter of technical standards further consideration in a separate proceeding at a later date. In the meantime, we believe that the standards we have set forth here will prove adequate for evaluating applications that come before us.

4. Orbit Assignment Positions

259. As we have discussed, the congestion in certain portions of the orbital arc, particularly over the Atlantic Ocean, has become fairly significant. This will inevitably raise issues as to the best means of making orbital assignments to international satellites. We have decided to extend many of our general domestic satellite orbital-assignment policies to the separate international systems.[163] We will adopt our domestic policies designed to deter the filing of speculative applications and to permit the Commission to make assignments that will lead to the most efficient use of the spectrum/orbit resource.

260. In particular, we will permit an entity to initially apply for only two orbital positions in a given band for international satellites. In the *1980 Assignment Order,* the Commission determined that two positions were reasonable under the circumstances and more than sufficient to establish a reasonably competitive market presence when the satellite operator had little or no firmly demonstrated traffic commitments. We believe this also to be the case for the separate international satellite operators. In a case where an applicant desires orbital assignments for an international satellite as well as a satellite in the domestic fixed-satellite service, we will only permit applications for a total of two satellites for both services. The applicant will have the choice of providing both domestic and international service on one or both satellites, or providing one type of service on one satellite and the other type of service, or a combination of services, on the other. However, we cannot permit one type of application to be used as a pretense to gain the assignment of more than two positions initially for a given type of service. In the case of an applicant proposing to provide international service to more than one region of the world, and where those regions are so widely separated that more than one satellite must be used to provide the proposed service (e.g., one satellite placed over the Atlantic to provide transatlantic service and one satellite placed over the Pacific to provide transpacific service), we will entertain a showing from the applicant that it should be permitted initially to build and launch more than two satellites.

261. We will also adopt the policy from the Report and Order in CC Docket No. 85–135 and the *1980 Assignment Order* and not assign any additional orbital positions to an operator for international "expansion" satellites until there is a showing that ". . . in-orbit satellites are essentially filled and that an additional orbit location is needed to satisfy firm customer growth requirements, including reasonable protection requirements."[164] In cases where a single satellite is used to provide both international and domestic service, we will apply this requirement individually to each type of service. That is, capacity dedicated for each service must be essentially filled before an authorization will be made for an expansion satellite.

In *Reduced Orbital Spacing,* the Commission stated:

> We will also require that in-orbit satellites maintain reasonable fill as represented in the applications. We have previously indicated that the availability of in-orbit spare capacity will be limited to reasonable amounts. Under current circumstances, the upper limit on in-

[163] *See* Report and Order in CC Docket No. 85–135 (adopted July 25, 1985); Reduced Orbital Spacing, *supra,* at para. 80–86; Assignment Order, *supra,* at 600–605.

[164] 1980 Assignment Order, *supra,* at 603.

orbit spare capacity for any space station licensee will be set at the equivalent of one spare satellite used for occasional or preemptible services within the system. If an operator fails at any time to demonstrate that its representations in its launch application(s) regarding traffic fill has been in fact achieved, we will consider the unfilled satellite as an excess spare. This will result in the termination of the orbital assignment. If the unfilled satellite has in fact been launched, relocation will be required if necessary to accommodate another satellite.[165]

We will apply this standard to international satellites that we authorize. If relocation of an excess spare is required, we may order that it be collocated with another of the operator's satellites, if necessary, to permit the accommodation of other operator's requirements. Consistent with our decision in the Report and Order in CC Docket No. 85-135, we will serve licensees with an order to show cause before any satellites are ordered to be collocated, and we will require the lightest loaded systems to be collocated first, as necessary, to accommodate fully qualified new entrants or fully justified expansion satellites.

262. As we have done in the case of domestic satellites, we will preserve our authority to make orbital assignments and to change those orbital assignments, if necessary, in response to changing conditions. The Commission has held that a domestic satellite applicant's request for a particular orbital position is not dispositive of the location that will actually be assigned. The Commission has also held in regard to domestic satellites that conflicting requests by different applicants will not give rise to comparative hearing rights. All previous orbital assignments have been made only on a temporary basis, subject to relocation on thirty days' notice by order of the Commission. We consider these same policies to be essential to meet changing circumstances for the international satellites without unnecessary and costly administrative delays.

263. We noted in the *1980 Assignment Order* ". . . that in the satellite market, where the risks are high and the financial investments substantial, predictability and stability are desirable if investment and innovation are to be encouraged." [166] We, therefore, decided that changes in orbital assignments would only be made after we had carefully considered the public interest factors and attempted to minimize the adverse impact on any licensee. These considerations also apply to any international satellites that we may authorize. However, any assignment of an orbital position by this Commission will be subject to international coordination efforts, and the accommodation of future requirements of the U.S. and other countries may require a further reduction in orbital spacing or other adjustments that may require a satellite to be repositioned.[167] Therefore, while we will carefully consider the effects of requiring a satellite to be relocated to a different orbital position, we will also condition all authorizations in order to permit us to order a satellite repositioned on thirty days' notice.[168]

264. As we have done with domestic satellite authorizations, we will condition the international satellite authorizations on the successful completion of certain requirements by certain dates in order to discourage the warehousing of orbital assignments. In the case of domestic satellites we require that ". . . the construction of the space station begin by a specified date, be completed by a specified date, and be launched and placed into operation by a certain date." [169] We will place these same requirements on the international satellite operators. The actual dates that must be met by those operators will be specified in the Commission order that actually authorizes construction of the proposed facilities pursuant to a construction permit.[170] Failure to meet the specified dates will render orbital and frequency assignments null and void.[171]

(E) Summary of Conclusions

265. In this proceeding, we have considered a variety of issues that have been raised by the applications that have been filed with the Commission to construct and operate international communciations satellite systems separate from INTELSAT. We have concluded that the proposed separate systems will offer substantial benefits to international communications users. Separate systems will provide users with special communications needs with currently unavailable means of packaging and transmitting information over satellite networks. Separate Systems will also stimulate technological innovation and service development, improve network efficiencies, reduce user costs, create new business and trade opportunities through improved international communications. Further, we have concluded that authorization of the proposed separate systems subject to the Executive branch service restrictions will provide reasonable assurance that INTELSAT will not incur significant economic harm. These service restrictions will protect INTELSAT's revenues obtained from supplying space segment capacity for international switched message services by prohibiting separate systems from interconnecting with public-switched networks. Public-switched services by far comprise INTELSAT's largest source of revenues. Only peripheral or "customized" services would be subject to competition between INTELSAT and separate systems. We believe that entry will stimulate the overall international satellite communications market beyond the levels anticipated by INTELSAT and that INTELSAT stands to benefit from such expansion. Entry of competing suppliers also will put pressures on INTELSAT to improve the efficiencies of its operations and provide services at minimum costs, consistent with reasonable service standards.

266. To implement the Executive branch service restrictions, we will condition the license for any separate system that we authorize to limit its operation to the provision of services through the sale or long-term lease of transponders or space segment capacity for communications not interconnected

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[165] Reduced Orbital Spacing, *supra*, at para. 84.

[166] 1980 Assignment Order, *supra*, at 601.

[167] It should be noted that in 1983, administrations of ITU Region 2 (the western hemisphere) adopted a plan for the broadcasting-satellite service that contains frequency segments that are also proposed for use by several international fixed-satellite service systems (12.5–12.7 GHz). Depending upon the orbital location selected, there exists a potential for harmful interference between these services unless the proper coordination is effected. The existence of this BSS plan will have to be considered by the Commission when making orbital location assignments for U.S. international satellite systems, as well as when making comments on the proposed fixed-satellite systems of other countries.

[168] We note that, particularly in the case of satellites providing international service, positioning of a satellite in certain narrow regions of the orbital arc may be essential to the provision of service between particular geographic locations. Likewise, the Commission has recognized in the case of domestic satellite service that certain regions of the arc are more desirable (or essential) to providing service to certain areas in the United States. Nonetheless, while we bear these factors in mind, they do not change our overall policy that orbital positions are fungible.

[169] Reduced Orbital Spacing, *supra*, at para. 82.

[170] As discussed above, the construction permits that we will initially grant to some of the international satellite applicants will not permit them to begin construction. Only when we have determined that an applicant can actually begin construction will we be able to specify the milestone dates that the applicant will be required to meet to demonstrate diligence in construction of its proposed facilities.

[171] Consistent with the 1980 Assignment Order, *supra* n. 150, we will also place reporting requirements on the operators in order to determine the status of satellite construction and anticipated launch dates, including any major problems or delays that may be encountered.

with public-switched message networks (except for emergency restoration service). No communications provided over a separate satellite system's space segment may interconnect with the public facilities of common carriers to provide switched message services such as MTS, telex, TWX, telegraph, teletext facsimile and high speed switched data services. The "no-interconnection" and "sale and long-term lease" restrictions apply not only to separate systems operators, but also to all levels of resellers and users of the facilities. In view of the "sale and long-term lease" requirement, separate system licensees may not operate as common carriers. Finally, we have determined the following: (1) There is no need to establish a minimum unit of space segment capacity which a separate system must provide; (2) the minimum lease period for the "long-term lease" of capacity is to be one year; (3) space segment capacity may be obtained and resold by common carriers and enhanced service providers to provide communications services not interconnected with any public-switched message network; and (4) there is no basis to establish a "sunset" date for the Executive branch service restrictions absent a finding from the Executive branch that these restrictions are no longer necessary to fulfill U.S. international obligations.

267. In addition, consistent with the Presidential determination that separate systems are required in the national interest, we will not issue a license permitting any separate system applicant to begin operating its proposed system until the United States has completed coordination of that system with INTELSAT pursuant to Article XIV(d) of the INTELSAT Agreement and we have been informed by the Department of State that the United States has fulfilled its obligations under Article XIV(d). We will review applications to determine whether the proposals: (1) Are consistent with the Executive branch service restrictions and the spectrum/orbit efficiency standards that we are adopting in this decision; (2) satisfy requisite legal, financial and technical standards; and (3) otherwise are in the public interest under the Communications Act of 1934. We will issue initial construction permits to those applicants initially satisfying legal, technical and minimum financial standards. However, no applicant may begin construction until it satisfies all financial standards. Those standards must be satisfied no later than 60 days after the State Department informs the Commission that the U.S. has fulfilled its Article XIV(d) obligations. An applicant meeting all legal, technical and financial standards prior to completion of the Article XIV(d) process may begin construction upon Commission order and at its own risk. However, no license will be issued until Article XIV(d) consultation is completed and the applicant demonstrates that it has completed construction pursuant to the terms of its construction permit.

268. Accordingly, it is ordered, pursuant to sections 4(i), 4(j), 157, 303, 308, 309, 403 and 404 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)(j), 157, 303, 308, 309, 403 and 404 (1984), sections 102(d), 201(c) (3), (4), (9), and (11) of the Communications Satellite Act of 1962, as amended, 47 U.S.C. 701(d), 721(c) (3), (4), (9), (11) (1984), section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b) (1984), and §§ 1.412 and 1.430 of the Commission's Rules and Regulations, 47 CFR 1.412, 1.430 (1984), that applications for international communications satellite systems separate from INTELSAT SHALL BE SUBMITTED in accordance with the standards, restrictions and requirements specified in this decision.

269. It is further ordered that this Report and Order is immediately effective on release of this document since it serves to relieve restrictions on separate satellite systems providing international communication services. To the extent this Report and Order imposes additional requirements, the applicants are granted 45 days in which to file amendments so that their applications comply with the requirements, unless a different schedule has been otherwise set out in the Report and Order. See 5 U.S.C. 553(d) (1984); 47 CFR 1.427(b) (1984).

270. It is further ordered that Amb. Abbott Washburn's Petition for Leave to File Additional Comments is DENIED.

271. It is further ordered that International Satellite, Inc.'s Application for Review, filed on February 11, 1985, and Pan American Satellite Corporation's Motion to Re-Establish Fair and Reasonable Procedural Dates, filed on February 4, 1985, are DENIED.

272. Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354), it is certified, that sections 603 and 604 of the Act do not apply because this proposed rule or policy will not, if promulgated, have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603, 604, 605(b) (1984). The policies adopted in this proceeding will not have a significant economic impact on a substantial number of small businesses or other small entities because the Commission has not received, and does not anticipate receiving, a substantial number of applications from small businesses for authority to construct and operate satellite systems providing international communications services.

273. It is further ordered that CC Docket No. 84-1299 IS HEREBY TERMINATED.

274. It is further ordered that the Secretary shall cause a summary of this Report and Order to be published in the **Federal Register.**

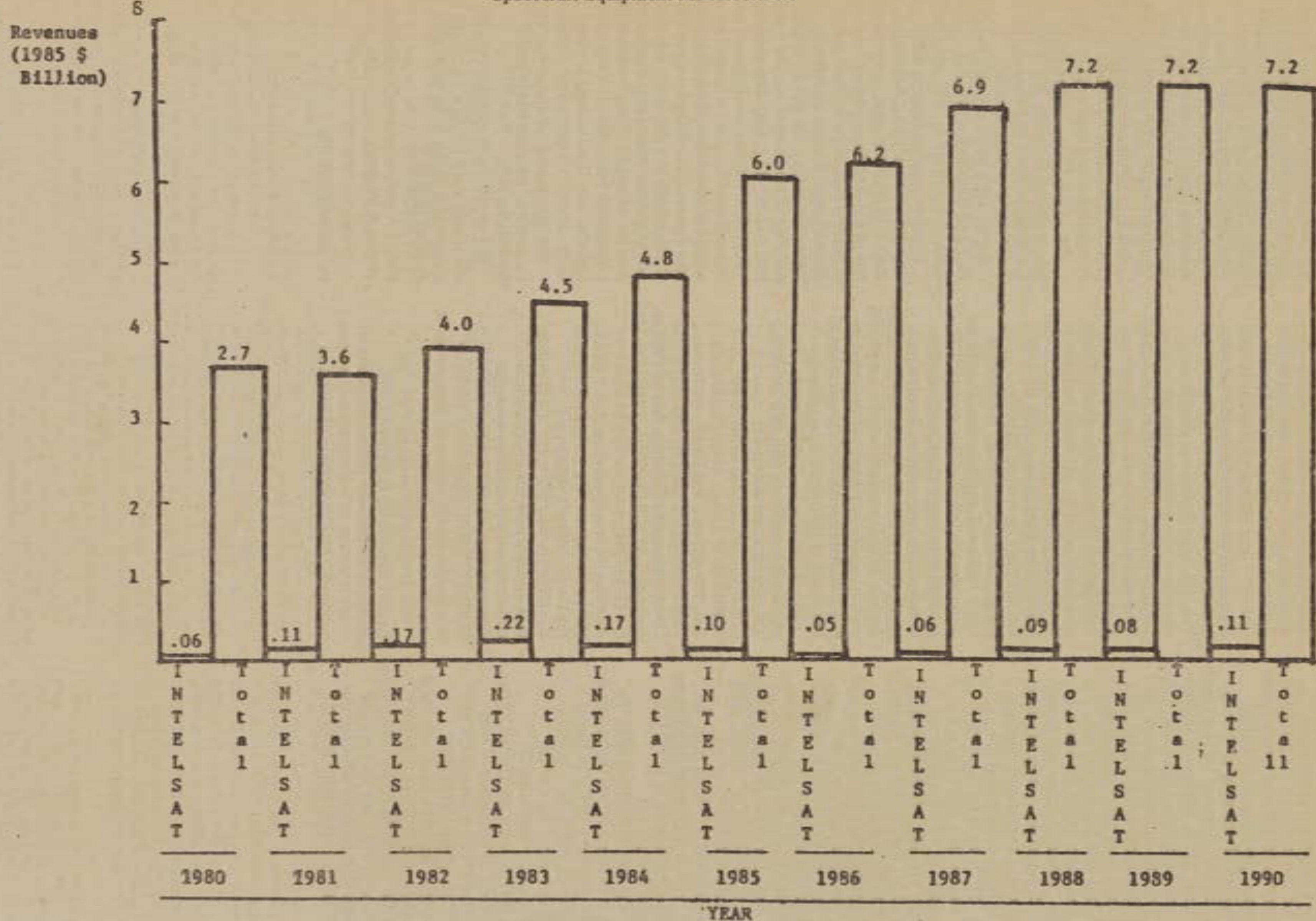
Federal Communications Commission.

William J. Tricarico,

Secretary.

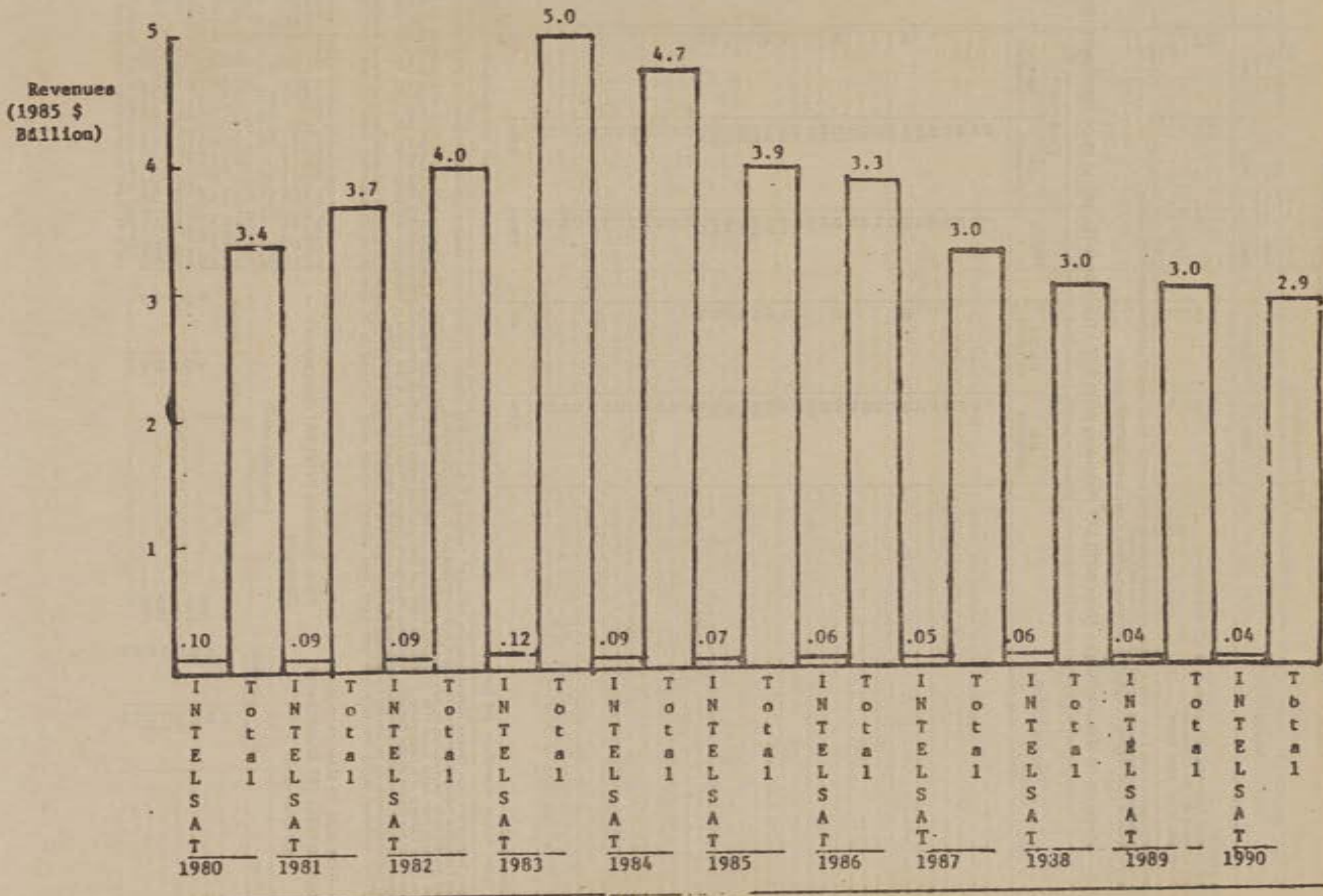
BILLING CODE 6712-01-M

Figure 1.—Revenues to U.S. Firms From the Manufacturer of INTELSAT Spacecraft in Relation to Total Revenues to U.S. Spacecraft Equipment Manufacturers [1]



[1] The data comprising Figures 1 and 2 and Table 1 include equipment manufacturing revenues for all types of satellites regardless of function. The sub-industry totals contained in Figures 1 and 2 are conservative estimates, including only those manufacturing revenues for which there exist reasonable grounds in the public domain to assume that the revenues accrue to U.S. firms in each specified year.

Figure 2.—Revenues to U.S. Firms From Building Vehicles Which Launch INTELSAT Spacecraft in Relation to Total Revenues of U.S. Launch Vehicle Equipment Manufacturers[1]



[1] *See supra*, Figure 1, n.1. Note that the revenue data contained in this Figure do not include an estimated $250 million obtained during the 1980-1990 time frame from the manufacturing of Japanese launch vehicles. *See* letter to the Commission from William P. Morris, Washington Representative, Space Systems and Diversification, McDonnell Douglas Corporation (May 30, 1985), in response to a request for information from a member of the Commission staff.

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TABLE 1.—REVENUES TO WORLD MANUFACTURERS OF SATELLITE GROUND EQUIPMENT [1]

[1985 dollars billion]

Markets [2]	Year					Total
	1980	1981	1982	1983	1984	
INTELSAT Earth Stations [3]	0.1	0.1	0.1	0.3	0.2	0.9
U.S. Department of Defense Ground Equipment (virtually all U.S. Manufactured)	1.7	1.8	2.0	2.2	2.3	10.0
U.S. Earth Stations Licensed with the Commission	.1	.2	.2	.2	.3	1.0
Home Satellite Dishes Sold in the United States	.3	.5	.7	1.4	2.1	5.0

[1] The data comprising Figures 1 and 2 and Table 1 include equipment manufacturing revenues for all types of satellites regardless of function.
[2] Data were not available for foreign owned, non-INTELSAT ground equipment.
[3] This category includes all earth stations throughout the world which provide access to the INTELSAT system.

TABLE 2.—REVENUES TO MANUFACTURERS FROM INTELSAT PROGRAMS INTELSAT-I THROUGH INTELSAT-VI AS OF SEPTEMBER 1983 [1]

Then year $ million	Year		Total	1985 $ million [2]		Total
	U.S. component	Non-U.S. component		U.S. component	Non-U.S. component	
1964	5		5	10		10
1965	11		11	22		22
1966	24		24	48		48
1967	35		36	71	1	72
1968	32	3	35	65	7	72
1969	54		54	108		108
1970	64	20	84	126	39	165
1971	71		71	140		140
1972	44		44	85		85
1973	68		68	131		131
1974	72		72	130		130
1975	70	14	84	121	24	145
1976	68		68	118		118
1977	102		102	171		171
1978	92		92	144		144
1979	93	30	123	137	45	182
1980	129	56	185	166	72	238
1981	168	61	229	201	72	273
1982	233	49	282	264	56	320
1983	309	89	397	337	97	434
1984	253	61	315	263	63	326
1985	157	53	210	157	53	210
1986	75		75	72		72
1987	38		38	35		35
1988	42		42	37		37
1989	16		16	14		14
1990	13		13	11		11
1991	12		12	10		10
1992	14		14	11		11
1993	16		16	12		12
1994	15		15	11		11
1995	14		14	10		10
1996	11		11	7		7
1997	4		4	2		2
Total	2,424	436	2,860	3,247	529	3,776
Percent United States					86	

NOTE.—These figures include expenditures and commitments for spacecraft, spacecraft performance incentives and launch vehicles. Research and development is not included.[3]

[1] Derived from Richard R. Colino, Director General-Designate INTELSAT, Testimony Before the Subcommittee on Arms Control, Oceans, International Operations and Environment, Senate Foreign Relations Committee (hereinafter cited as The Colino Testimony) (October 19, 1983), Appendix 8.
[2] Throughout this appendix, revenues will be converted from nominal dollars to constant dollars (1985=100) according to the following sources: For 1964-1984, revenues will be indexed according to the *Producer Price Index*, Code 1178 "Electronics Components and Accessories," Bureau of Labor Statistics, Department of Labor (Available through the Producer Price Index Office, Bureau of Labor Statistics, U.S. Department of Labor); for 1964 and 1965, producer prices for electronic components and accessories in 1966 will be used. For 1985-1990, revenues will be indexed according to the *Current Budget Estimates*, "Economic Assumptions-Consumer Price Index," p. 4, U.S. Office of Management and Budget (April 15, 1985). For 1991-1997, relevant only for the purposes of Table 2, revenues will be indexed based on the assumption that prices will increase 4% per year.
[3] INTELSAT budget statements on file with the Commission, *see infra*, Table 3, n. 1, indicate that total INTELSAT expenditures on research and development as well as tracking, telemetry and control (TT&C) equipment during the 1978-1984 time frame were relatively minimal when compared to its expenditures on spacecraft equipment and launching services.

TABLE 3.—REVENUES TO MANUFACTURERS FROM BUILDING INTELSAT SPACECRAFT [1]

[1985 dollars million]

Year	U.S. [2]	Non-U.S.
1978	72	
1979	58	18
1980	62	19
1981	112	33
1982	173	39
1983	217	48
1984	173	42
1985	99	23

TABLE 3.—REVENUES TO MANUFACTURERS FROM BUILDING INTELSAT SPACECRAFT [1]—Continued

[1985 dollars million]

Year	U.S. [2]	Non-U.S.
1986	50	6
1987	64	12
1988	91	18
1989	83	18
1990	108	18

[1] Historical data breaking down INTELSAT expenditures on spacecraft and launching services annually were obtained from the following INTELSAT Board of Governors documents on file with the Commission: "INTELSAT Budget for 1979," BG-35-26E (November 17, 1978); "INTELSAT Budget for 1980," BG-40-29E (November 19, 1979); "INTELSAT Budget for 1981," BG-44-31E (November 25, 1980); "INTELSAT Budget for 1982," BG-48-18E (November 23, 1981); "INTELSAT Budget for 1983," BG-53-35E (November 24, 1982); and "INTELSAT Budget for 1984," BG-57-24E (November 16, 1983);"INTELSAT Budget for 1985," BG-61-33E (November 21, 1984). Projections on future INTELSAT procurement were derived from INTELSAT Board of Governors Documents, "INTELSAT Five-Year Financial Plan (1985-1989)," BG-61-44E (November 21, 1984) and "INTELSAT Longer-Term Financial Projections (1990-1994)," BG-61-47E (Rev. 1) (November 21, 1984).
[2] Estimates of the proportion of U.S. manufacturing content in INTELSAT spacecraft were obtained from INTELSAT

Documents: "Addendum to Draft Contract with Hughes Aircraft Company for Procurement of Three INTELSAT IV-A Satellites," BG-1-7E (February 27, 1983), with respect to the INTELSAT IV-A program, "INTELSAT V Contract Negotiations," BG-23-10E (September 20, 1976), with respect to the INTELSAT V and V-A programs, and "Report on the Status of R&D Contracts and on Procurement Activities of INTELSAT," SG/84-4-1 (August 23, 1984) used in conjunction with a letter to the Commission from Edwin J. Martin, Vice President, International Operations, World Systems Division, Communications Satellite Corporation (hereinafter cited as the Martin letter) (March 12, 1984) (*See* FCC File No. CSG-82-011-P), with respect to the INTELSAT VI program. From these estimates, employed in combination with The Colino Testimony, *see supra*, Table 2, n. 1, we were able to derive the proportion of U.S. manufacturing content in the launch vehicles used by INTELSAT prior to the INTELSAT VI program. An estimate of the proportion of U.S. manufacturing content in the launch vehicles used for the INTELSAT VI program was obtained from BG-61-44E, *supra*, Table 3, n.1, indicating the number of U.S. and non-U.S. launch vehicles already procured for the purpose of launching INTELSAT VI spacecraft, and the Martin letter, indicating the current price of available launch vehicle services. The proportion of U.S. manufacturing content in projected future INTELSAT procurement is assumed to equal the proportion of U.S. content in the equipment already known to be procured for the INTELSAT VI series.

TABLE 4.—INTELSAT EXPENDITURES ON LAUNCHING VEHICLES (APPROXIMATE MANUFACTURING REVENUES GENERATED FROM THE INTELSAT MARKET)

[1985 dollars million]

Year	U.S.[1]	Non-U.S.
1978	72	
1979	79	27
1980	104	53
1981	68	40
1982	91	17
1983	121	49
1984	90	38
1985	69	53
1986	59	23
1987	45	29
1988	57	18
1989	42	18
1990	40	18

NOTE.—Virtually 100% of INTELSAT's expenditures on NASA's launching services are targeted at major (U.S.) aerospace firms.[2]

[1] *See supra*, Table 3, n. 2.

[2] *See* letter to the Commission from Thomas Campbell, Deputy Comptroller, NASA (May 22, 1985) in response to a request for information from a member of the Commission staff. All NASA expenditures targeted at industry are assumed to go to U.S. firms.

Table 5.—Revenues to World Industry From Building INTELSAT Earth Stations[1]

[1985 dollars in millions]

Earth station	Year				
Type	1980	1981	1982	1983	1984
A	73	146	22	131	80
B	19	19	7	54	26
C		42	14		28
Z[2]	10	31	32	123	48
Total[3]	102	238	75	308	182

NOTE.—An Export-Import Bank Sector Study, *see supra*, Table 5 n. Note 1, Appendix Ib, estimates the U.S. manufacturing content in INTELSAT Type A and B earth stations to be 29% and 47%, respectively.

[1] Estimates of the average amount of revenues obtained from the manufacture of INTELSAT Standard A, B and C Type earth stations, respectively, were derived from "Sector Study-Satellite Earth Stations," Export-Import Bank of the United States (hereinafter cited as Export-Import Bank Sector Study) (June 1984). These estimates include revenues from manufacturing the antenna and tracking system, high power and low noise amplifiers, ground communications equipment (including multiplex equipment) and the ancillary and support equipment (e.g. air conditioning, power supplies, controls). Much lower estimates of the revenues obtained from manufacturing the "basic hardware" for these stations are found in The Colino Testimony, *Questions and Answers*, Question Number 11, "How much do INTELSAT Standard A, B and C Type earth stations cost?" Estimates of the numbers of each type of earth station manufactured annually are derived from INTELSAT documents on file with the Commission, entitled "Earth Station Implementation Schedule," namely: SR/84-3-3 (October 10, 1984), BG-57-11E (November 22, 1983), BG-53-11E (November 23, 1982), BG-48-11E (November 11, 1981), BG-44-11E (November 17, 1980) and BG-40-11E (November 16, 1979). Revenues from the manufacture of earth station equipment are, for purposes of analysis, attributed to the year in which the station became operational.

[2] Standard Z earth stations were designated as "Non-Standard" in INTELSAT documents prior to 1982. An estimate of the average amount of revenues obtained from the manufacture of an INTELSAT Standard Z Type earth station was derived from two letters to the Commission from H. Carlton Craddock, International Marketing Manager, SATCOM International Division, Scientific Atlanta (June 3, 1985 and June 11, 1985), in response to requests for information from a member of the Commission staff. Upper and lower ranges for the amount of revenues obtained from the manufacture of INTELSAT Standard Z Type Earth Stations were estimated in a letter to the Commission from Walter R. Hinchman, Directory Business Planning and Service Development, INTELSAT (July 1, 1985), in response to a request for information from a member of the Commission staff.

[3] Reliable estimates of the revenues obtained from manufacturing INTELSAT D, E, Standard Coast and Non-Standard Type Earth Stations were not available. Hence, no revenues from the manufacture of these stations are included in Table 5. Since only 19 of these types of stations combined were operational as of September 30, 1984, compared to 196 Standard Type A, 86 Standard Type B and 520 Standard Z stations, and since the former types of stations tend to be relatively inexpensive (*see* The Colino Testimony, *supra*, Table 2, n. 1, *Questions and Answers*, Question Number 11, "How much do INTELSAT Standard A, B and C Type earth stations cost?"), the omission of data on these stations should not significantly affect the "Total" revenue figures included in this Table.

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Table 6

REVENUES FROM MANUFACTURING THE SPACE SEGMENT OF THE WORLD'S COMMERCIAL COMMUNICATIONS SATELLITES (EXCLUDING INTELSAT SATELLITES) 1/ (1985 $ Million)

System	Nation of Ownership	1978 Minimum U.S. Share	1978 World Total	1979		1980		1981		1982		1983		1984		1985		1986		1987		1988		1989		1990	
				MU	WT	MU	WT	MU	WT	MU	WT	MU	WT	MU	WT	MU	WT	MU	WT	MU	WT	MU	WT	MU	WT	MU	WT
Comstar 2/	U.S.	11	11	4	4	4	4	4	4							33	35	34	36	33	35	23	24	9	10		
Westar	U.S.	22	22	22	22	19	19	14	14	14	14	12	13	26	27	27	28	42	45	51	54	72	76	53	56	39	41
Satcom 3/	U.S.	4	4	21	22	18	19	18	19	9	10	43	47	51	55	66	70	29	33	29	33	33	37	60	64	46	50
SBS	U.S.	25	25	25	25	24	24	14	14	14	14	29	30	50	51	36	37	36	37	29	30	9	9			41	43
Marces	France/ESA/ Inmarsat		5		25		25		34		29		18		10												
Aurora	U.S.			7	8	7	8	7	8	7	8			5	6	15	16	15	16	15	16	15	16	15	16	5	6
Insat 4/	India	15	15	15	15	15	15	15	15	15	15	21	22	16	16	16	16	16	16								
L-Sat (Olympus)	E.S.A.								11		11		11		11		11		11		16		24		40		50
Telstar	U.S.					12	12	25	25	36	37	35	36	25	25	23	23	11	11	22	23	22	23	20	21	27	29
Galaxy	U.S.							39	40	39	40	39	40	24	24	86	88	86	88	74	75	47	49	57	60	45	48
Palapa	Indonesia					21	21	28	29	28	29	28	29	18	18	9	9						24		35		35
Sakura 5/ (CS)	Japan					7	20	7	20	7	20	7	20	5	27	5	27	5	27	5	27	5	27				
ECS	Eutelsat		11		11		21		29		29		29		33		24		34		25		40		40		25
Telecom 6/	France						16		16		16		16		16		9						19		19		19
Yuri 7/ (BS)	Japan									19	37	19	37	19	37	11	31		17		17		17		17		8
Telesat 8/ (Anik,MSAT)	Canada	20	24	14	25	24	43	24	43	24	43	14	25	8	17	3	7				15		15		42		42
Spacenet	U.S.							28	31	28	31	40	43	40	43	18	20	10	11					8	8	16	17
Arabsat 9/	Arab States							9	32	9	32	9	32	9	32	9	32				18		18		18		18
G Star	U.S.							35	39	35	39	35	39	35	39	35	39	8	9							8	9
ASC	U.S.											17	18	17	18	17	18										
Morelos	Mexico									25	25	25	25	25	26	25	26					7	7	7	7	7	7
STW	P.R. of China										9		9		9						11		11		11		11
Aussat	Australia									35	36	35	36	35	36	35	36	10	10						25		25
SBTS 10/ (Brazilsat)	Brazil									11	36	11	36	11	36	17	49	5	12	5	14	5	14				8
TDF	France										11		11		23		23		23		11		11		11		19
Tele	Sweden										9		9		9		9		9								

System	Nation of Ownership	1978 Minimum U.S. Share	1978 World Total	1979 MU	1979 WT	1980 MU	1980 WT	1981 MU	1981 WT	1982 MU	1982 WT	1983 MU	1983 WT	1984 MU	1984 WT	1985 MU	1985 WT	1986 MU	1986 WT	1987 MU	1987 WT	1988 MU	1988 WT	1989 MU	1989 WT	1990 MU	1990 WT
STC-DBS	U.S.									24	26	24	26	24	26	24	26	24	26								
Amerisat 11/	U.S.											28	31	28	31	28	31	42	45	29	31	29	31	29	31		
Coronet	Luxembourg															35	39	36	40	15	16						
DBSC 12/	U.S.													30	32	30	32	31	33	31	33	14	15				
Colsat	U.S.															32	34	32	34	32	34						
Equastar	U.S.															32	34	32	34	32	34						
Spotnet	U.S.															68	72	103	108	104	109	56	58	46	47		
Cablesat	U.S.															39	42	39	42	39	42						
Unisat	U.K.														25		27		27		27		12		12		12
DFS 13/ (Postsat)	F.R. Germany														28		28		28		28						
DBS	P.R. of China														10		10		10		24		19		19		12
Italsat	Italy														11		11		11		11		6		6		6
Argensat	Argentina																21		21		21		9				
Digisat	U.S.															17	18	17	18	17	18	17	18	7	7	7	7
USSB-DBS	U.S.													23	25	23	25	23	25	23	25	23	25				
Domi-Sat	U.S.															31	31	30	31	30	31	30	31				
NEI	U.S.													20	21	20	21	20	21	20	21	20	21				
Fordsat	U.S.													19	20	80	86	80	86	80	86	80	86				
Fednet	U.S.															33	35	33	35	33	35	33	35				
ACC-DBS	U.S.															29	31	29	31	29	31	29	31				
M-Domsat	U.S.															33	35	33	35	33	35	33	35				
SDT	U.S.															31	32	31	32	31	32	40	41	16	17	7	7
AMS	Israel																31		31		31		31				
Paksat	Pakistan																		12		12		12				
CBS-DBS 14/	U.S.													24	26	24	26	24	26	24	26	24	26	24	26		
RCA-DBS	U.S.													8	9	8	9	17	19	17	19	26	28	26	28	17	19
HC-5	U.S.															25	25	25	25	24	25	25	25	25	25		
SSS-DBS	U.S.															11	12	25	27	25	27	26	28	26	28		
NCN-DBS	U.S.																	29	31	29	31	29	31	29	31		
Helvesat	Switzerland																17		17		17		17		17		
ESB	Sweden																		23		23		24		24		
Cygn	Sweden																		35		35		35		35		
Nat-Sat	Nigeria																		17		17		17		17		17
Thai	Thailand																				21		21		21		21
Kor	Korea																12		12		12		12		12		12

System	Nation of Ownership	1978 Minimum U.S. Share	1978 World Total	1979 MU	1979 WT	1980 MU	1980 WT	1981 MU	1981 WT	1982 MU	1982 WT	1983 MU	1983 WT	1984 MU	1984 WT	1985 MU	1985 WT	1986 MU	1986 WT	1987 MU	1987 WT	1988 MU	1988 WT	1989 MU	1989 WT	1990 MU	1990 WT
Erinsat	Ireland																				28		28		28		28
Antares	U.S.															22	23	22	23	22	23	22	23	22	23	22	23
Afsat	African States																						28		28		29
Nordcom	Nordcom																						12		12		14
U.S. Domsat	U.S.																							12	14	11	12
Andean	Andeansat																								25		25
NTT	Japan																								18		24
SCS	Japan																				9		18		18		18
Carib	Caribsat																										11
TOTAL		97	117	108	157	151	247	267	423	379	606	471	688	595	908	1161	1559	1084	1516	982	1500	794	1350	491	1069	298	807

Note: The "Minimum U.S. Share" includes only those manufacturing revenues for which there exists reasonable grounds in the public domain to assume that the revenues accrue to U.S. firms. This figure far understates total U.S. manufacturing revenues, particularly with regard to later-year satellites for which contracts have yet to be signed.

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Footnotes to Table 6

[1] Though a series of spacecraft is often procured through more than one contract, in this Table, we have broken down revenues from the manufacture of commercial communications spacecraft on a series-by-series basis only, rather than specifying data on every procurement contract. Unless otherwise indicated, for each procurement contract analyzed in order to construct this table, we have consulted Communication 21 Corporation's *World Satellite Systems Scoreboard and Forecast*, February 15, 1985, to ascertain the name of the contractor (and, in some cases, the major subcontractor) and to estimate or project the contract value and the number of spacecraft procured. Manufacturing revenues from each equipment sale are assumed to be spread evenly between the contract year and the launch year, inclusive. Only the revenues from manufacturing satellite spacecraft are included in this table, unless the contract to procure the spacecraft also includes the manufacture of TT&C equipment, in which case the revenues derived from manufacturing this equipment are included in this Table as well. Revenues from manufacturing spacraft for Eastern-block nations were not available and, therefore, were not included in this table.

[2] Unless otherwise indicated, for all satellites contracted to the Hughes Aircraft Company (Hughes), we have assumed that the "Minimum U.S. Share" equals the total contract value multiplied by the proportion of U.S. (as opposed to non-U.S.) manufacturing content estimated in a letter to the Commission from K.M. Castillo, Senior Contracts Administration, Commercial Systems Division, Space and Communications Group, Hughes (April 26, 1985), in response to a request for information from a member of the Commission staff. For domestic satellites in which the contractor's name is unknown, the Minimum U.S. Share is assumed to equal the total contract value multiplied by the mean proportion of U.S. manufacturing content in the domestic satellites of Hughes, Ford Aerospace and Communications Corporation (Ford) and RCA Astro-Electronics (RCA).

[3] For all satellites contracted to RCA, we have assumed that the Minimum U.S. Share equals the total contract value multiplied by the proportion of U.S. manufacturing content estimated in a letter to the Commission from Robert A. Amadio, Director, Finance, Government Systems Division, RCA (December 6, 1984), in response to a request for information from a member of the Commission staff.

[4] Unless otherwise indicated, for all satellites contracted to Ford, we have assumed that the Minimum U.S. Share equals the total contract value multiplied by the proportion of U.S. manufacturing content estimated in a letter to the Commission from Ronald J. Kasper, Manager Space Systems, Finance Department, Western Development Laboratories Division, Ford (January 15, 1985), in response to a request for information from a member of the Commission staff.

[5] To ascertain the minimum proportion of U.S. manufacturing content for this series of spacecraft, we have consulted "Japan Prepares for Next Space Phase," Aviation Week and Space Technology, March 12, 1984, p. 129–130.

[6] To ascertain the number of satellites procured in the original contract for this series of spacecraft, we have consulted "International Satellite Directory", Flight International (hereinafter cited as the 1983 Flight International Satellite Directory), May 14, 1983, p. 1323. We assume that the price of the spare Telecom satellite is identical to the price of the other satellites included under the same contract.

[7] Communication 21 Corporation's *World Communications Satellite Market Characteristics and Forecast* (hereinafter cited as the 1983 Communications 21 Forecast), November 1983, p. 88, estimated the proportion of non-Japanese manufacturing content in the satellites designated as "BS–2a" and BS–2b" to be 71%. Since General Electric Corporation is the major subcontractor on this contract, which went to a Japanese firm, we have assumed that the minimum proportion of U.S. manufacturing content in these satellites is 50%. The contractor and major subcontractor remained the same for the "BS–2c" satellite, so we have assumed that this latter satellite contains the same Minimum U.S. Share as do the two earlier BS satellites.

[8] We have used a projection of Telesat Canada's future procurement plans contained in a letter to the Commission from H.A. McGuire, Director, Corporate Services, Telesat Canada (April 30, 1985), in response to a request for information from a member of the Commission staff. To calculate the minimum proportion of U.S. content forthe Anik C sub-series of satellites, we have consulted a Hughes "Executive Summary" (for general publicity) on the Anik C sub-series. According to the 1983 Communications 21 Forecast, *see id.*, p. 93, the Anik D sub-series of spacecraft were built by Hughes under a subcontract from Spar Aerospace, a Canadian firm. Hence, we have assumed that the minimum proportion of U.S. manufacturing content in these satellites is 40%.

[9] To ascertain the number of satellites and the contract price for this series of satellites, we have consulted the 1983 Flight International Satellite Directory, *see supra*, Table 6, n. 6, p. 1312.

[10] To ascertain the Minimum U.S. Share and "World Total" of revenues derived from manufacturing the satellites designated as "SBTS–A1" and "SBTS–A2", we have consulted "Brazil's SBTS A1 and A2", Satellite Communications, September 1984, p. 76. The contractor and major subcontractor remained the same for the "SBTS–A3" satellite, so we have assumed that this latter satellite will contain the same U.S. manufacturing share as do the two earlier SBTS satellites.

[11] To ascertain the contract and launch dates for the satellite designated as "Amerisat A", we have consulted the 1983 Flight International Satellite Directory, *see supra*, Table 6, n. 6, p. 1312.

[12] We have assumed that the DBSC's, as another series of domestic spacecraft expected to be manufactured by Ford, will contain the same proportion of U.S. manufacturing content as do the Fordsat satellites.

[13] To ascertain the number of satellites procured in the original contract, we have consulted the 1983 Flight International Satellite Directory, *see supra*, Table 6, n. 6, p. 1322. We have assumed that the price ofthe spare DFS satellite is identical to the price of the other satellites included under the same contract.

[14] For domestic satellites in which the contractor is known to be other than Hughes, Ford or RCA, the Minimum U.S. Share is assumed to equal the total contract value multiplied by the mean proportion of U.S. manufacturing content in the domestic satellites of Hughes, Ford and RCA.

TABLE 7.—REVENUES TO THE U.S. SATELLITE EQUIPMENT MANUFACTURING INDUSTRY FROM SUPPLYING SPACECRAFT UTILIZED BY NOAA [1]

[1985 dollar billion]

Spacecraft series	Year					
	1984	1985	1986	1987	1988	1989
G.O.E.S.	0.05	0.05	0.07	0.06	0.05	0.03
N.O.A.A.	.03	.05	0.5	.06	.07	.08
Total	.08	.10	.12	.12	.12	.11

NOTE.—All NOAA expenditures targeted at industry are assumed to go to U.S. firms. Space segment revenues only are included; revenues derived from launching NOAA spacecraft are included in the figures for NASA, see Table 6.

[1] All figures were derived from "Fiscal Year 1985 National Environment Satellite, Data and Information Service (NESDIS) General Budget Statement" (hereinafter cited as NESDIS Budget), February 3, 1984. Annualized figures on the LANDSAT system were not available; hence no data on LANDSAT were included in this Table. For more information on LANDSAT, see NESDIS Budget, p. 112, 121.

TABLE 8.—REVENUES TO THE U.S. SATELLITE EQUIPMENT MANUFACTURING INDUSTRY FROM SUPPLYING EQUIPMENT UTILIZED BY NASA, NOT ATTRIBUTABLE TO INTELSAT[1]

[In billions (1985 dollars)]

	Year											
	1979	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Launch vehicle equipment[2]	2.8	2.9	3.3	3.4	4.4	4.1	3.3	3.2	2.7	2.2	2.3	2.2
Space segment equipment[3]	1.6	1.7	1.4	1.4	1.7	1.7	2.1	2.2	2.9	3.3	3.5	3.7

NOTE—All NASA expenditures targeted at industry are assumed to go to U.S. firms. Expenditures on ground equipment are assumed to be minimal.

[1] All figures were derived from a letter to the Commission from Thomas Campbell, Deputy Comptroller, NASA (May 22, 1985), in response to a request for information from a member of the Commission staff.

[2] Reimbursements for constructing the vehicles used to launch DOD satellites are excluded from this table, as they are included in the figures for DOD, *see infra*, Table 9. Also excluded are reimbursements for constructing the vehicles used to launch INTELSAT satellites.

[3] Includes space tracking systems.

TABLE 9.—REVENUES TO THE U.S. SATELLITE EQUIPMENT MANUFACTURING INDUSTRY FROM SUPPLYING EQUIPMENT UTILIZED BY DOD[1]

[In billions (1985 dollars)]

	Year										
	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990
Navigation programs:[2]											
Space segment equipment	.06	.07	.08	.09	.10	.11	.12	.13	.13	.13	.14
Ground equipment[3]	.06	.07	.08	.09	.10	.11	.12	.13	.13	.13	.14
Communications programs:											
Space segment equipment	.63	.68	.74	.80	.86	.90	1.00	1.03	1.06	1.09	1.13
Ground equipment	.63	.68	.74	.80	.80	.90	1.00	1.03	1.06	1.09	1.13
Other programs:											
Space segment equipment	1.01	1.09	1.18	1.27	1.37	1.48	1.60	[4]1.65	1.70	1.75	1.80
Ground equipment	1.01	1.09	1.18	1.27	1.37	1.48	1.60	1.65	1.70	1.75	1.80
Launch vehicles (all programs)[5]	.39	.42	.45	.49	.52	.57	.61	[6].64	.66	.67	.69
Total DOD:											
Space segment equipment	1.70	1.84	2.00	2.16	2.33	2.49	2.72	2.81	2.89	2.97	3.07
Launch vehicle equipment	.39	.42	.45	.49	.52	.57	.62	.64	.66	.67	.69
Ground equipment	1.70	1.84	2.00	2.16	2.33	2.49	2.72	2.81	2.89	2.97	3.07

NOTE.—All DOD expenditures targeted at industry are assumed to go to U.S. firms.

[1] All figures were derived from two letters to the Commission from Dennis J. Grenato, Staff Specialist, Space and Advance Systems, Office of the Under Secretary of Defense for Research and Engineering, DOD (February 14, 1985 and April 26, 1985), in response to requests of information from a member of the Commission staff.

[2] The navigation programs are assumed to provide revenues to the spacecraft and ground equipment manufacturers in similar proportion to that involving other DOD programs.

[3] Includes control systems.

[4] Real growth of 3% is assumed for the period from 1987 to 1990.

[5] These figures include revenues from manufacturing the launch vehicles owned by DOD as well as reimbursements to the manufacturers of NASA launch vehicles for the launching of DOD spacecraft.

[6] Real growth of 3% is assumed for the period from 1987 to 1990.

TABLE 10.—A CONSERVATIVE (MINIMUM) ESTIMATE OF TOTAL REVENUES TO U.S. SATELLITE EQUIPMENT MANUFACTURERS FROM BUILDING NON-INTELSAT SPACECRAFT

[In billions (1985 dollars)]

Year: 1980, 3.6; 1981, 3.5; 1982, 3.8; 1983, 4.3; 1984, 4.6; 1985, 5.9; 1986, 6.1; 1987, 6.8; 1988, 7.1; 1989, 7.1; 1990, 7.1.

TABLE 11.—REVENUES TO U.S. SATELLITE EQUIPMENT MANUFACTURERS FROM BUILDING LAUNCH VEHICLES (REVENUES DERIVED FROM THE LAUNCHING OF INTELSAT SPACECRAFT NOT INCLUDED)

[In billions (1985 dollars)]

Year: 1980, 3.3; 1981, 3.6; 1982, 3.9; 1983, 4.9; 1984, 4.6; 1985, 3.9; 1986, 3.6; 1987, 3.3; 1988, 2.9; 1989, 3.0; 1990, 2.9.

NOTE.—Revenues to U.S. firms from building Japanese launch vehicles are not included in these figures.

TABLE 12.—REVENUES TO WORLD MANUFACTURERS OF HOME SATELLITE DISHES SOLD IN THE UNITED STATES[1]

[In billions (1985 dollars)]

Year: 1980, 0.3; 1981, 0.5; 1982, 0.7; 1983, 1.4; 1984, 2.1; 1985, 1.8.

NOTE.—Home satellite dishes sold in the United States may be manufactured by foreign corporations. We do not possess reliable information on the overall percentage of U.S. manufacturing content in these stations.

[1] These estimates were obtained from a letter to the Commission from Frank Moldstad, Editor, Home Satellite Marketing (May 29, 1985), in response to a request for information from a member of the Commission staff. For other estimates of the size of this market, *see* "An Eye on the Sky," Forbes, November 5, 1984, p. 196.

TABLE 13.—REVENUES TO WORLD MANUFACTURERS OF LICENSED, U.S. DOMESTIC SATELLITE EARTH STATIONS [1]

[In billions (1985 dollars)]

Earth station type	Year						
	1978	1979	1980	1981	1982	1983	1984
Receive only (RO):							
Under 6 meters [2]	17	40	27	33	42	44	42
6 to 9 meters	11	9	8	16	13	17	17
Over 9 meters	3	4	2	2	3	2	1
Non-RO:							
Under 6 meters	3	8	37	32	20	23	42
6 to 9 meters	0	1	2	16	12	34	125
Over 9 meters	30	25	66	99	99	124	104
Total	64	87	142	198	189	244	331

NOTE.—Licensed earth stations in the United States may be manufactured by foreign corporations. We do not possess reliable information on the overall percentage of domestic manufacturing content in these stations.

[1] These estimates were derived from consulting the "Earth Stations Applications List" and the applications to construct licensed domestic earth stations on file with the Domestic Facilities Division, Common Carrier Bureau, Federal Communications Commission. The Commission staff separated the earth stations into the six categories shown in this Table, computed the number of stations of each type placed in operation annually and, after examining the applications themselves, estimated the average amount of revenues accruing to equipment manufacturers from constructing each type of earth station.

[2] This Table classifies the size of an earth station according to the length of the diameter of its satellite dish.

August 29, 1985.

Concurring Statement of Commissioner James H. Quello

In re: *Report and Order* regarding the establishment of satellite systems providing international communication services, CC Docket No. 84–1299.

The use of private satellites in the international telecommunication service is consistent with the Commission's authorization of other competitive services in both the domestic and international arenas. In this case, however, it is necessary to take special care that the continued viability of Intelsat is not compromised.

I remain concerned that the restrictions adopted may not be sufficient to assure that these newly authorized facilities will be limited to providing private line services and that they will not be introduced eventually into the public switched networks. Nevertheless, because of the strengthened enforcement provisions that have been added and the assurance in the document that the Commission will take appropriate steps if experience demonstrates significant violations of these restrictions, I concur in the decision.

July 25, 1985.

Separate Statement of Commissioner Henry M. Rivera

Re: Establishment of Satellite Systems Providing International Communications (CC Docket No. 84–1299)

While I have always supported the competitive thrust of this Report and Order, I was more than skeptical about the practicality of implementing the "non-interconnection" restrictions as they were initially drafted. I articulated this skepticism during the open Commission meeting at which this item was considered and reserved voting on this item until I could review the redrafted enforcement provisions. The enforceability of these restrictions is crucial to this decision because these restrictions are a major underpinning for both the Presidential determination and our conclusion that authorization of restricted separate satellite systems will not cause significant economic harm to Intelsat.

The enforcement provisions have now been significantly revised. I am now satisfied that these strengthened enforcement provisions and the Commission's unequivocal commitment to both enforcement, in general, and forceful remedial action, in particular, fully meet the requirements of the "non-interconnection" restrictions.

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federal register

Friday
October 18, 1985

Part III

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 Order 9–83, 48 FR 35736 (1983), and 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 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.

Modification 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.

Arkansas: AR85-4030	Aug. 30, 1985.
Colorado: CO85-5015	Mar. 15, 1985.
District of Columbia: DC84-3009	Apr. 6, 1984.
Illinois: IL85-5002	Jan. 11, 1985.
Iowa:	
IA85-4017	June 14, 1985.
IA85-4016	Do.
Maryland:	
MD85-3041	July 25, 1985.
MD85-3045	Sept. 6, 1985.
MD85-3053	Sept. 27, 1985.
Missouri: MO85-4038	Sept. 6, 1985.
Nevada: NV84-5012	May 18, 1984.
Virginia:	
VA85-3051	Sept. 13, 1985.
VA85-3025	May 3, 1985.
Washington: WA85-5037	Sept. 20, 1985.

Supersedeas Decision 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. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

Arkansas:	
AR84-4100 (AR85-4043)	Oct. 19, 1984.
AR84-4090 (AR85-4045)	Jan. 13, 1984.
AR84-4091 (AR85-4044)	Do.
Illinois:	
IL83-2035 (IL85-5042)	Apr. 8, 1983.
IL85-5006 (IL85-5040)	Feb. 8, 1985.
IL84-5042 (IL85-5041)	Dec. 14, 1985.

Signed at Washington, DC this 11th day of October 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

MODIFICATIONS P. 1

DECISION NO.: AR85-4030-MOD. NO.1 (50 FR 35369-August 30, 1985) Sebastian County, Arkansas

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS	$14.00	$1.10
SPRINKLER FITTERS	14.80	3.40

DECISION #CO85-5015-Mod#3 (50 FR 10584-March 15, 1985) Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan, Park, Summit and Weld Counties, Colorado

	Basic Hourly Rates	Fringe Benefits
OMIT:		
Eagle, Grand and Summit Counties from original decision		

DECISION NO. IL85-5002 - Mod#2 (50 FR 1676 - Jan. 11, 1985) Peoria & Tazewell Counties, Illinois

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS:		
Commercial:		
Peoria (Chillicothe area):		
Carpenters, Piledrivermen, & Soft Floor Layers	$15.80	$2.95
PAINTERS:		
Brush	15.60	2.63
Spray, Steel, Sandblast	16.45	2.63
Residential Painter	14.60	2.63
ROOFERS	18.09	1.95
LABORERS:		
Peoria Co.and City of East Peoria in Tazewell Co.:		
Group 1	13.97	3.05
Group 2	14.095	3.05
Group 3	14.22	3.05
Group 4	14.245	3.05
Group 5	14.345	3.05
TRUCK DRIVERS:		
Group 1	14.525	2.00+d
Group 2	14.925	2.00+d
Group 3	15.125	2.00+d
Group 4	15.375	2.00+d

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MODIFICATIONS P. 2

DECISION NO. DC84-3009 MOD. #22 (49 FR 13800-April 6,1984) DISTRICT OF COLUMBIA, MARYLAND-MONTGOMERY & PRINCE GEORGES COUNTIES, THE D.C. TRAINING SCHOOL, VIRGINIA-INDEPENDENT CITY OF ALEXANDRIA & ARLINGTON & FAIRFAX COUNTIES

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELEVATOR CONSTRUCTORS:		
Mechanics	16.11	3.58+a&b
Helpers	11.28	3.58+a&b
Probationary Helpers	8.055	
LABORERS:		
Plumber's laborers	11.88	1.95
Plasterers' tenders	12.59	2.05
Operators of scootcretes, buggymobiles, and other machines of similar character. Mixer operator not in conjunction with plastering machines and Tenders mixing brown mortar for four or more plasters by hand		
All Areas	12.94	2.05
Mixer operators in conjunction with plastering machines		
All Areas	13.30	2.05
STEAMFITTERS, REFRIGERATION & AIR CONDITIONING MECHANICS:		
Light commercial refrigeration and/or air conditioning systems serving a single business - air conditioning systems shall not total more than 7½ tons and the refrigeration system shall not total more than 7½ tons; apartment buildings over 4 stories with individual units not to exceed 5 tons; heat pumps (package units not to exceed 5 tons (excluding split units).	9.73	3.31
All Other Work	16.46	3.31

DECISION NO. DC84-3009 MOD. #22 (CONT'D)

	Basic Hourly Rates	Fringe Benefits
SPRINKLER FITTERS:		
Montgomery and Prince Georges Counties, MD.	16.90	3.40
Remaining Areas	17.35	3.40

DECISION #IA85-4017-MOD.#1 (50 FR 24989--6/14/85) Statewide (except Black Hawk and Scott Cos., Iowa)

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LABORERS:		
Zones 2 and 3:		
Group 1	$ 9.91	$1.30
Group 2	9.61	1.30
ADD:		
LABORERS:		
Zones 2 and 3:		
Group 3 (Flaggers)	$ 9.41	$1.30

DECISION #IA85-4016-MOD.#1 (50 FR 24987--6/14/85) Statewide (except Black Hawk & Scott Cos., Iowa)

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LABORERS:		
Zones 2 & 3:		
Group 1	$ 9.91	$ 1.30
Group 2	9.61	1.30
ADD:		
LABORERS:		
Zones 2 & 3:		
Group 3 (Flaggers)	$ 9.41	$1.30

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MODIFICATION P. 3

DECISION NO. MD85-3041 MOD. #4 (50 FR 30587-July 25, 1985) ANNE ARUNDEL (EXCLUDING THE D.C. TRAINING SCHOOL), BALTIMORE AND BALTIMORE CITY, MARYLAND (Building and Heavy Construction) HARFORD & HOWARD COUNTIES, MARYLAND (Heavy Construction Only)	Basic Hourly Rates	Fringe Benefits
CHANGE:		
STEAMFITTERS	16.96	4.85

DECISION NO. MD85-3045 MOD. #1 (50 FR 36524-September 6, 1985) ALLEGANY AND GARRETT COUNTIES, MARYLAND	Basic Hourly Rates	Fringe Benefits
CHANGE:		
CARPENTERS	14.26	3.84
PILEDRIVERMEN	14.66	3.84

DECISION NO. NV84-5012 - Mod. #5 (49 FR 21261 - May 18, 1984) Nevada Test Site including the Tonopah Test Range in Clark, Lincoln and Nye Counties, Nevada	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers	$16.59	
Marble Setters	16.59	
Terrazzo Workers: Tile Setters	16.59	

DECISION NO. MD85-3053 MOD. #1 (50 FR 39521-September 27, 1985) ALLEGANY AND GARRETT COUNTIES, MARYLAND	Basic Hourly Rates	Fringe Benefits
CHANGE:		
LINEMEN-Allegany and Garrett (East of Rt. 219)		
Linemen	15.00	3.50+ 3.75%
Equipment Operator	14.25	3.50+ 3.75%
Truck Driver & Groundmen	9.75	3.50+ 3.75%
LINEMEN-Garrett County (West of Rt. 219)		
Linemen	15.40	3.50+ 3.75%
Equipment Operator	14.65	3.50+ 3.75%
Truck Driver & Groundmen	10.15	3.50+ 3.75%

DECISION NO. VA85-3051 MOD. #2 (50 FR 37476-September 13, 1985) The Cities of CHESAPEAKE, PORTSMOUTH, & VIRGINIA BEACH	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS	16.95	3.725
BRICKLAYERS & STONE MASONS	13.03	1.53

DECISION NO. VA85-3025- MOD. #4 (50 FR 18966-May 3, 1985) RADFORD ARMY AMMUNITION PLANT, VIRGINIA	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BOILERMAKERS	16.95	3.725

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MODIFICATION P. 4

DECISION #MO85-4038-MOD #1 (50 FR 36528-September 6, 1985) Cass, Clay, Jackson, Platte, Ray, Henry, Johnson and Lafayette Cos., Missouri; Johnson & Wyandotte Cos., Kansas	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters:		
Zone 1	$16.35	2.82
Zone 2		
Carpenters & Lathers	13.80	2.82
Millwrights & Piledrivermen	16.35	2.82
Zone 3		
Carpenters & Lathers	14.875	2.82
Millwrights & Piledrivermen	16.35	2.82
Bricklayers & Stonemasons	15.04	4.50
Laborers:		
Building Construction:		
Zone 1:		
Group 1	12.55	3.55
Group 2	12.70	3.55
Group 3	12.85	3.55
Zone 2:		
Group 1	11.55	3.55
Group 2	11.70	3.55
Group 3	11.85	3.55
Pipefitters	18.99	3.52
Plumbers:		
Zone 1	19.61	2.90
Zone 2	17.37	2.90
Power Equipment Operators:		
Building Construction:		
Group I	16.36	4.05
Group II	16.01	4.05
Group III:		
(a)	10.95	4.05
(b)	14.11	4.05
(c)	11.75	4.05
(d)	14.36	4.05
Group IV	16.61	4.05
Group V	16.26	4.05
Group VI	16.86	4.05
Group VII:		
(a)	16.46	4.05
(b)	16.21	4.05
(c)	14.21	4.05
Group VIII	17.36	4.05
Group IX	16.86	4.05

DECISION #MO85-4038 (contd)	Basic Hourly Rates	Fringe Benefits
Power Equipment Operators:		
Site Preparation & Grading, Heavy & Highway Construction:		
Zone 1		
Group I	15.30	4.07
Group II	15.05	4.07
Group III	14.35	4.07
Group IV:		
Oilers	10.33	4.07
Oiler drivers (all types)	13.35	4.07
Soft floor layers	13.07	3.79
Truck Drivers:		
Building Construction:		
Group I	14.435	3.25
Group II	14.485	3.25
Group III	14.56	3.25
Group IV	14.685	3.25
Group V	14.585	3.25
Group VI	14.785	3.25
Group VII	15.535	3.25
Group VIII	15.435	3.25
Boilermakers	17.345	3.50
Omit:		
Classifications Definitions Truck Drivers (Building Construction):		
Group VI-Mechanics: transit mix tractor trailer		
Add:		
Truck Drivers:		
Building Construction:		
Group IX	15.685	3.25
Classifications Definitions Truck Drivers (Building Construction):		
Group VI-Mechanics		
Group IX-Transit mix tractor trailer; mechanic (ready mix plants)		

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MODIFICATION P. 5

DECISION NO. WA85-5037 - Mod #1
(50 FR 38405 - Sept. 20, 1985)
Chelan, Clallam, Grays Harbor, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Pierce, Snohomish, Thurston, Pacific (Northern portion), and the areas of Douglas & Okanogan lying West of the 120th Meridian

	Basic Hourly Rates	Fringe Benefits
OMIT:		
SOFT FLOOR LAYERS:		
Omit wages, fringes, and Area Descriptions:		
Areas 1, 2, 3 & 4		
ADD:		
SOFT FLOOR LAYERS:		
Area 1:		
King County	$17.30	$2.83

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	Basic Hourly Rates	Fringe Benefits

SUPERSEDEAS DECISION

STATE: ARKANSAS
COUNTY: PULASKI
DECISION NO. AR85-4043
DATE: Date of Publication
SUPERSEDES DECISION NO. AR84-4100 dated October 19, 1984 in 49FR 41139.
DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
Asbestos Workers	$15.73	2.33
Bricklayers:		
Bricklayers, Stonemasons, Pointers, Caulkers, Cleaners	13.15	2.24
Carpenters	10.23	1.41
Cement Masons, Finishers	9.31	
Electricians	14.75	3-1/4% +2.50
Elevator Constructors:		
Journeyman	13.17	3.29 +A
Helpers	70%JR	3.29 +A
Probationary helpers	50%JR	
Glaziers	9.08	
Ironworkers	10.93	2.46
Laborers	6.40	
Lathers	12.50	1.00
Marble, Tile & Terrazzo Workers	11.40	.80
Metal Building Erector	6.03	
Painters:		
Painters, paperhangers & steam cleaners, sheetrock finishers & wall cover hangers	12.00	.63
Spray gun operators & sand blasters	12.60	.63
Plasterers	13.25	.64
Plumbers & Pipefitters: (Including the setting & erecting of all piping in heating-ventilating and air conditioning systems):		
Within 10 miles from Pulaski County Courthouse	14.30	2.05
Over 10 miles from Pulaski County Courthouse	14.60	2.05
Roofers	11.91	.30

	Basic Hourly Rates	Fringe Benefits
Sheet Metal Workers: (Including the installation, dismantling, conditioning, adjustment, alteration, repairing & servicing of all air-veyor & air handling systems, testing & balancing of all air handling equipment of duct work)	12.58	3% + 2.02
Sprinkler Fitters	13.03	3.23
Truck Drivers	7.04	
Power Equipment Operators:		
Backhoe Operator	10.48	1.40
Bulldozer Operator	9.13	1.40
Cherry Picker	10.48	1.40
Motor Patrol	9.13	1.40

FOOTNOTES:
A - 6 mos to 5 yrs. - 6%; over 5 yrs. - 8% of basic hourly rate; plus seven paid holidays.

PAID HOLIDAYS:
A - New Year's Day; B- Memorial Day; C - Independence Day; D - Labor Day; E - Thanksgiving Day; F - Day after Thanksgiving; G - Christmas Day.

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)).

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SUPERSEDEAS DECISION

STATE: ARKANSAS
COUNTY: GARLAND, CLARK, HOT SPRING
DECISION NO. AR85-4045
DATE: Date of Publication
SUPERSEDES DECISION NO. AR84-4090 dated January 13, 1984 in 49FR 1844.
DESCRIPTION OF WORK: Building Projects (excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$ 15.73	2.33
BOILERMAKERS	16.125	2.95
BRICKLAYERS-STONEMASONS		
Clark & Garland Cos.	12.95	1.00
Hot Spring County	12.10	.79
CARPENTERS:		
Carpenters	12.50	1.44
Millwrights-Piledrivermen	13.00	1.46
CEMENT MASONS	12.75	.63
ELECTRICIANS:		
Electricians	13.42	+B
Cable Splicers	13.545	+B
ELEVATOR CONSTRUCTORS:		
Journeymen	13.17	3.29+A
Helpers	70%JR	3.29+A
Probationary Helpers	50%JR	
IRONWORKERS	14.10	2.71
LABORERS:		
Group 1	6.41	1.45
Group 2	6.66	1.45
Group 3	6.81	1.45
Group 4	6.91	1.45
Group 5	7.06	1.45
Group 6	7.31	1.45
Group 7	7.21	1.45
LINE CONSTRUCTION:		
Lineman	13.42	B
Cable Splicers	13.545	B
Groundman	64%JR	B
Truck Drivers with winch	80%JR	B
Truck Drivers (flat bed)	64%JR	B

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Brush and roller	$ 9.50	
Paperhanging	10.00	
Sheet rock (tape and float only)	10.00	
Stage and Steel	11.50	
Spray & Sandblasting	12.75	
Painting operating any kind of taping or floating machine	13.25	
PLASTERERS	13.25	.64
PLUMBERS-PIPEFITTERS:		
Within 10 miles of Garland Co. Courthouse	13.07	1.98
10 miles and over from Garland Co. Courthouse	13.97	1.98
POWER EQUIPMENT OPERS.:		
Group 1	14.55	1.40
Group 2	13.18	1.40
Group 3	12.56	1.40
Group 4	10.32	1.40
ROOFERS	11.91	.33
SHEET METAL WORKERS	12.58	3%+2.02
SPRINKLER FITTERS	14.80	3.40
TILE LAYERS (Garland & Clark Counties)	12.75	.63

FOOTNOTES:
A- 6 months to 5 years - 6%; over 5 years - 8% of basic hourly rate plus 7 paid holidays.
PAID HOLIDAYS:
New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day, Day after Thanksgivings Day; and Christmas Day.
B- 3-3/4% - $2.00

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DECISION NO. AR85-4045 Page 2

LABORERS CLASSIFICATION DEFINITIONS

GROUP I - Construction laborer-concrete, wrecking, carpenters, drywall, mechanics, excavating, plumbers and electricians laborers, green cutter, blow pipe, and crete pump hose placer

GROUP II - Semi-skilled labor - pipelayers, concrete, clay and mechanical tool, cement mixer, wet or dry finishers and plasterers, mason tenders, mortar mixers, asphalt rakers and shovelers, creosote wood handlers, chuck tender

GROUP III - Skilled "A" - Steelform setters, curb and gutters, grout and cement muckers

GROUP IV - Skilled "B" - Swinging scaffold, barco, 90lb pavement breakers and burners

GROUP V - Nozzleman (gunite, grout, and sandblasters); concrete pump (nozzel placer)

GROUP VI - Powderman and blaster GROUP VII - Wagon drill

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I - Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbing cranes, and derricks required to work 25 feet or over from the ground, blacksmith, mechanics

GROUP II - Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturers, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swinging boom attachments, gradalls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size

GROUP III - HEAVY EQUIPMENT OPERATORS: All bulldozers, all front end loaders, all sidebooms, skytracks, all push tractors, all pull scrapers, all motor graders, all trenching machines, regardless of size or motive power, all back fillers, central mixing plants, 10S and larger, finishing machines, all boiler firemen high or low pressure, all asphalt spreaders, hydro truck crane, multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or churn drill, water well and foundation drilling machines, regardless of size, regardless of motive power and dredge tender operator

GROUP IV - LIGHT EQUIPMENT OPERATORS: Oilerdriver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material. Lad-A-Vator, conveyor, batch plant, and mortar or concrete mixers, below 10S, end dump Euclid, pumpcrete, spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines light plants, pumps, all well point system de-watering and protable pumps, space heater, irrespective of size, and motive power, equipment greaser, oiler, asphalt distributor, and like equipment, safety boat operator and deckhand.

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).

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SUPERSEDEAS DECISION

STATE: Arkansas
COUNTY: Union and Ouachita
DECISION NO. AR85-4044
DATE: Date of Publication
Supersedes Decision No. AR84-4091 dated January 13, 1984 in 49FR1845.
DESCRIPTION OF WORK: Building projects (excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$ 15.73	2.33
BOILERMAKERS	16.225	2.95
BRICKLAYERS	13.00	1.50
CARPENTERS:		
Carpenters	12.50	1.44
Millwrights, Piledrivermen	13.00	1.46
CEMENT MASONS	12.75	.63
ELECTRICIANS:		
Electricalcontracts $20,000 or less:		
Electricians	14.71	+A
Cable Splicers	15.01	+A
Electrical contracts over $20,000:		
Electricians	15.50	+A
Cable Splicers	15.80	+A
IRONWORKERS:		
Ouachita County - excluding the Southeastern portion	14.10	2.71
Union County and Southeastern portion of Ouachita County	14.55	2.31
LABORERS:		
Group I	6.41	1.45
Group II	6.66	1.45
Group III	6.81	1.45
Group IV	6.91	1.45
Group V	7.06	1.45
Group VI	7.31	1.45
Group VII	7.21	1.45
LINE CONSTRUCTION:		
Electrical contracts $20,000 or less:		
Linemen, Operators	14.71	+A
Cable Splicers	15.01	+A
Electrical contracts over $20,000:		
Linemen, Operators	15.50	+A
Cable Splicers	15.80	+A
Electrical contracts $20,000 or less and over $20,000:		
Groundman	65%JR	+A
Truck Drivers	70%JR	+A
Winch operator	80%JR	+A

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Brush, Roller, Sheet Rock Work and Paperhanging	$9.00	
Spray and Sandblasting	9.875	
PLASTERERS	13.25	.64
PLUMBERS, PIPEFITTERS	12.70	1.95
POWER EQUIPMENT OPERATORS:		
Group I	14.55	1.40
Group II	13.18	1.40
Group III	12.56	1.40
Group IV	10.32	1.40
ROOFERS	11.91	.30
SHEET METAL WORKERS	12.58	3%-2.02
SPRINKLER FITTERS	14.80	3.40

FOOTNOTE:
A. 3%+$1.00

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DECISION NO. AR85-4044 Page 2

LABORERS CLASSIFICATION DEFINITIONS

GROUP I - Construction laborer-concrete, wrecking, carpenters, drywall, mechanics, excavating, plumbers and electricians laborers, green cutter, blow pipe, and crete pump hose placer

GROUP II - Semi-skilled labor - pipelayers, concrete, clay and mechanical tool, cement mixer, wet or dry finishers and plasterers, mason tenders, mortar mixers, asphalt rakers and shovelers, creosote wood handlers, chuck tender

GROUP III - Skilled "A" - Steelform setters, curb and gutters, grout and cement muckers

GROUP IV - Skilled "B" - Swinging scaffold, barco, 90lb pavement breakers and burners

GROUP V - Nozzleman (gunite, grout, and sandblasters); concrete pump (nozzel placer)

GROUP VI - Powderman and blaster GROUP VII - Wagon drill

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP I - Cranes, draglines, shovels and piledrivers with a lifting capacity of 50 tons or over, and operators of all towers, climbing cranes, and derricks required to work 25 feet or over from the ground, blacksmith, mechanics

GROUP II - Hydraulic cranes, cherry pickers, backhoes and all derricks with a lifting capacity less than 50 tons, as specified by the manufacturers, all backhoes, tractor or truck type, all overhead and traveling cranes, or tractors with swinging boom attachments, gradalls, all above equipment irrespective of motive power, leverman (engineer), hydraulic or bucket dredges, irrespective of size

GROUP III - HEAVY EQUIPMENT OPERATORS: All bulldozers, all front end loaders, all sidebooms, skytracks, all push tractors, all pull scrapers, all motor graders, all trenching machines, regardless of size or motive power, all back fillers, central mixing plants, 10S and larger, finishing machines, all boiler firemen high or low pressure, all asphalt spreaders, hydro track crane, multiple drum hoist, irrespective of motive power, all rotary, cable tool core drill or churn drill, water well and foundation drilling machines, regardless of size, regardless of motive power and dredge tender operator

GROUP IV - LIGHT EQUIPMENT OPERATORS: Oilerdriver motor crane, single drum hoists, winches and air tuggers, irrespective of motive power, winch or A-frame trucks, forklifts, rollers of all types and pull tractors, regardless of size, elevator operators inside and outside when used for carrying workmen from floor to floor and handling building material. Lad-A-Vator, conveyor, batch plant, and mortar or concrete mixers, below 10S, end dump Euclid, pumpcrete, spray machine and pressure grout machine, air compressors, regardless of size, all equipment, welding machines light plants, pumps, all well point system de-watering and protable pumps, space heater, irrespective of size, and motive power, equipment greaser, oiler, asphalt distributor, and like equipment, safety boat operator and deckhand.

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).

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SUPERSEDEAS DECISION

STATE: ILLINOIS
COUNTIES: *See Below
DECISION NUMBER: IL85-5042
DATE: Date of Publication
Supersedes Decision Number IL83-2035, dated April 8, 1983, in 48 FR 15413
DESCRIPTION OF WORK: Heavy and Highway Projects

*Bureau, Carroll, Henry, JoDaviess, Lee, Ogle, Rock Island, Stephenson, Whiteside, and Winnebago

	Basic Hourly Rates	Fringe Benefits
CARPENTERS:		
Area 1	$17.30	$3.08
Area 2	17.16	2.85
Area 3	16.93	3.08
Area 4	17.52	2.49
Area 5	14.87	5.10
CEMENT MASONS:		
Area 1	16.30	1.85
Area 2	15.13	3.70
Area 3	15.25	2.15
Area 4	15.11	2.02
Area 5	14.95	3.15
ELECTRICIANS:		
Area 1:		
Electricians	18.50	2.60+ 3.6%
Cable Splicers	18.90	2.60+ 3.6%
Area 2	17.41	1.85+ 3.6%
Area 3	19.00	2.25+ 3.5%
Area 4	16.59	1.66+8%
Area 5	14.95	1.80+ 3.75%
IRONWORKERS:		
Area 1	17.10	3.65
Area 2	16.20	3.335
Area 3	17.02	5.625
LINE CONSTRUCTION:		
Area 1:		
Lineman	18.35	1.25+ 8.5%
Groundman Equipment Operator	17.12	1.25+ 8.5%
Groundman Truck Driver with Winch	13.03	1.25+ 8.5%
Groundman Truck Driver Without Winch	12.28	1.25+ 8.5%
Groundman	11.71	1.25+ 8.5%

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D):		
Area 2:		
Lineman	17.92	1.00+a +11.5%
Equipment Operator	15.22	1.00+a +11.5%
Truck Driver	12.13	1.00+a +11.5%
Groundman	11.73	1.00+a +11.5%
Area 3:		
Lineman, Heavy Equipment Operator & Technicians	16.97	1.25+ 3.5%
Cable Splicer	17.07	1.25+ 3.5%
Dynamiter	14.25	1.25+ 3.5%
Groundman Equipment Oper.	13.55	1.25+ 3.5%
Groundman Truck Drivers	11.84	1.25+ 3.5%
Groundman	11.43	1.25+ 3.5%
PAINTERS:		
Area 1:		
Brush	11.00	1.05
Sandblasting, Spray	12.00	1.05
Area 2:		
Brush, Roller	14.47	3.49
Spray, Structural Steel	14.97	3.49
Area 3:		
Brush, Roller	12.50	1.00
Sturctural Steel	12.75	1.00
Spray	13.00	1.00
Area 4:		
Brush, Roller	11.25	1.60
Spray, Structural Steel	11.88	1.60
Area 5:		
Brush, Roller	15.97	2.55
Open Structural Steel	16.22	2.55
Spray	16.47	2.55
Sandblasting	16.97	2.55

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	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Area 1:		
Unskilled	$13.77	$2.65
Semi-skilled	13.97	2.85
Skilled	14.17	2.85
Area 2:		
Group 1	14.84	2.115
Group 2	15.09	2.115
Area 3:		
Group 1	13.39	3.515
Group 2	13.64	3.515
Area 4:		
Group 1	13.44	3.515
Group 2	13.69	3.515
Area 5:		
Unskilled	13.92	3.05
Semi-skilled	14.12	3.05
Skilled	14.32	3.05
Area 6:		
Unskilled	13.18	2.70
Semi-skilled	14.12	3.05
Skilled	14.32	3.05
POWER EQUIPMENT OPERATORS:		
Area 1:		
Group 1	17.09	2.95
Group 2	15.94	2.95
Group 3	14.23	2.95
Area 2:		
Group 1	18.45	5.55
Group 2	17.90	5.55
Group 3	16.75	5.55
Group 4	15.35	5.55
Group 5	14.15	5.55

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (CONT'D):		
Area 3:		
Group 1	15.30	3.28
Group 2	15.30	3.28
Group 3	13.70	3.28
Group 4	13.70	3.28
Group 5	12.55	3.28
TRUCK DRIVERS:		
Area 1:		
Group 1	14.525	2.00+b
Group 2	14.925	2.00+b
Group 3	15.125	2.00+b
Group 4	15.375	2.00+b
Area 2:		
2-3 Axles	14.98	4.50
4 Axles	15.13	4.50
5 Axles	15.33	4.50
6 Axles	15.53	4.50
Area 3:		
2-3 Axles	15.70	c
4 Axles	15.85	c
5 Axles	16.06	c
6 Axles	16.25	c

FOOTNOTES:

a. Paid Holidays: Memorial Day, July 4th, Labor Day & Thanksgiving Day

b. $55.00 per week

c. $116.00 per week

AREA DESCRIPTIONS

CARPENTERS:
Area 1: Bureau Co.
Area 2: Carroll, JoDaviess, Whiteside & Stephenson Cos.
Area 3: Henry, Ogle (Oregon & S. thereof) & Rock Island Cos.
Area 4: Lee Co.
Area 5: Ogle (N. of Oregon) & Winnebago Cos
CEMENT MASONS:
Area 1: Bureau Co.
Area 2: Carroll, JoDaviess, Lee, Ogle, Stephenson & Whiteside (excl. Erie & SW thereof)
Area 3: Henry Co.
Area 4: Rock Island Co.
Area 5: Winnebago Co.

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AREA DESCRIPTIONS

ELECTRICIANS:
Area 1: Bureau (Walnut, Ohio, Lamoille, Clarion, Bureau, Dover, Cherry, Malden, Arlington, Berlin & Westfield Twps) Cos.
Area 2: Bureau (Arispe, Concord, Fairfield, Gold, Greenville, Hall, Indiantown, Leepertown, Macon, Manlius, Milo, Mineral, Neponset, Princeton, Selby, Wheatland & Wyanet Twps) and Henry (Annawan, Burns, Cambridge, Galva, Kewanee, Weller & Wethersfield Twps) Cos
Area 3: Carroll (Cherry Grove, Shannon, Rock Creek, Lima, Wysox, Elkhorn Grove Twp) JoDaviess (Warren, Rush, Nora, Stockton, Wards Grove, Pleasant Valley and Berreman Twps), Lee, Ogle, Stephenson, Whiteside (Genesee, Jordan, Hopkins, Sterling, Hume, Montgomery, Tampico & Hahnaman Twps), and Winnebago Cos.
Area 4: Carroll (Chadwick, Mt. Carroll, Savanna & Thompson Cities), Henry (Rem. of Co), JoDaviess (Savanna Ordnance Plant), Rock Island & Whiteside (Remainder of Co.)
Area 5: JoDaviess (Remainder of Co.)
IRONWORKERS:
Area 1: Bureau Co.
Area 2: Carroll (Thompson, Savanna & vic), Henry, JoDaviess (E. Dubuque, Galena, Hanover and Vic), Rock Island and Whiteside (W. 1/2) Cos.
Area 3: Carroll (Rem. of Co0, JoDaviess (Rem. of Co), Lee, Ogle, Stephenson, Whiteside (E. 1/2) and Winnebago Cos.
LINE CONSTRUCTION:
Area I: Bureau Co.
Area 2: Carroll (E. part inclu. Lanark, Milledgeville & Shannon), JoDaviess (Apple River & E. thereof), Lee, Ogle, Stephenson, Whiteside (E. of Clyde, Lyndon, Mt. Pleasant & Prophetstown), and Winnebago Cos.
Area 3: Carroll (Rem. of Co.), Henry, JoDaviess (Rem. of Co), Rock Island, and Whiteside Cos.
PAINTERS:
Area 1: Bureau Co.
Area 2: Carroll, Henry (N. 1/2 to I-80), Rock Island & Whiteside (W. of Rt #78)
Area 3: Henry (S. 1/2 to I-80) Co.
Area 4: JoDaviess Co.
Area 5: Ogle, Stephenson & Winnebago Cos.
LABORERS:
Area 1: Bureau
Area 2: Carroll, JoDaviess, Lee, Ogle (Excle. City of Rochelle), Stephenson, and Whiteside Cos.
Area 3: Ogle (City of Rochelle) Co.
Area 4: Winnebago Co.
Area 5: Henry Co.
Area 6: Rock Island Co.
POWER EQUIPMENT OPERATORS:
Area 1: Henry (E 1/2), Bureau (W. 1/2) Cos.
Area 2: Carroll, JoDaviess, Lee, Ogle, Stephenson, Whiteside (E. 1/2), Bureau (E. 1/2), and Winnebago Cos.'
Area 3: Henry (W. 1/2), Rock Island and Whiteside (W. 1/2) Cos.
TRUCK DRIVERS:
Area 1: Bureau, Carroll (Excl. N. of Rt #72 & E. of RT #78), Henry, JoDaviess (W. of Rt #78 incl. Stockton), Lee (W. of Rt. #51), Ogle (W. of Rt. #51), Rock Island and Whiteside Cos.
Area 2: Carroll (N. of Rt. #72 & E. of Rt #78), JoDaviess (E. of Rt #78, exclu. Stockton), Stephenson & Winnebago Cos.
Area 3: Lee (E. of Rt. #51) and Ogle (E. of Rt. #51) Cos.

CLASSIFICATION DESCRIPTIONS

LABORERS AREA 1

UNSKILLED LABORERS: Common, Carpenter tender, tool crib man, fireman of salamander tender, gravel box man, dumpman and spotter, form handler, material handler, fencing laborer, cleaning lumber, pit man, dispatcher, landscaper, unloading explosives, laying sod, planting and removing trees, asphalt plant laborer, wrecking laborer, fireproofing laborer, wallman and housemover, driving stakes, stringlines for all machinery

SEMI-SKILLED LABORERS: Handling materials treated with oil, creosote, asphalt, or other foreign material, track laborer, cement handler, chloride handler, unloading and laborers with steel workers and rebars, wet concrete workers, tunnel tender in free air, batch dumper, mason and plaster tender and material wheeler, kettleman and tarman, tank cleaner, plastic installer, scaffold worker, motorized buggy or motorized units used for wet concrete or handling building materials, laborer with dewatering system, all sewer workers, plus depth, asphalt raker, grade checker, vibrator operator, mortar mixer operator, cement silica, clay, fly ash, lime and plasters; handlers, bulk or bag, cofferdam workers, plus depth (on concrete paving), placing cutting and tying or reinforcing, deck hand, dredge hand and shore laborer, bankman on floating plant

SKILLED LABORERS: Dynamite man or blaster, caisson worker, plus depth, gunnite nozzle man, leadman on sewer work, welder, cutter, burner, torchman, chain saw operator, jackhammer and drill operator, layout man, steel for setter (street and highway), air tamping hammerman, signal man on crane, concrete saw operator, screeman on asphalt paver, laborer tending masons with hot materials, multiple concrete duct-leadman, luteman, curb asphalt machine operator, ready-mix scaleman, portable or temporary plant, laborer handling masterplate or similar material, laser beam operator, coring machine operator, concrete burning machine operator

LABORERS AREAS 2, 3 & 4

GROUP 1: Common laborer, carpenter tender, tool crib man, fireman or salamander tender, gravel box man, dumpman & spotter, form handler, material handler, fencing laborer, cleaning lumber, pit man, landscaper, unloading explosives, laying sod, planting trees, removal of trees, asphalt workers with machine & layers, asphalt plant laborer, wrecking, fireproofing, driving stakes, stringlines for all machinery, window cleaning

GROUP 2: Handling any materials with with any foreign matter harmful to skin or clothing, track labor, cement handler, chloride handler, unloading & laborers with steel workers & re-bars, wet concrete workers, tunnel tenders in free air, baton dumper, mason tender, kettle & tar man, tank cleaner, plastic installer, scaffold worker, motorized buggies or motorized unit used for wet concrete or or Handling of building materials, laborers with de-watering systems, sewer workers plus depth, vibrator operator; cement silica, clay, fly ash, lime & plasters handlers (bulk or bag): cofferdam worker plus depth, concrete paving, placing cutting & tying of reinforcing, deck hand, dredge hand and shore laborer, bankman on floating plant, grade checker, power tools, front end man on chip spreader, caisson worker plus depth, gunnite nozzleman, leadman on sewer work, welder, cutter, burner & torchman, chain saw operator, jackhammer & drill operator, layout man and/or tile layer, steel form setter - street & highway, air tamping hammerman, signal man on crane, concrete saw operator, screeman on asphalt paver, tending masons with hot material or where foregin materials are used, mortar mixer operator, multiple concrete duct - leadman, luteman, asphalt raker curb asphalt machine operator, ready mix scaleman permanent portable or temporary plant, laborer handling masterplate or similar materials, laser beam operator, concrete burning machine operator, coring machine operator, plaster tender, underpinning & shoring of buildings, pump man, manhole & catch basin, dirt & stone tamper, hose man on concrete pump

CLASSIFICATION DESCRIPTIONS

LABORERS AREA 6:

UNSKILLED: Common laborer, carpenter tender, gravel box man, dumpman & spotter, form handler, fence laborer, cleaning lumber, dispatcher, landscaper, unloading explosives, laying sod, planting & removing trees, asphalt plant laborer, wrecking laborer, scaleman, deck hand

SEMI-SKILLED: Laying & jointing of telephone conduit, darco & jackhammer operator, operator on power tools used under jurisdiction of laborers, cement jumper, puddler, power & hand saw clearing timber, center strip, reinforcing in concrete, wire mesh, concrete saw, mortar mixer, prime mover or any mechanical device taking the place of concrete buggy or wheelbarrow, sand point setter, asphalt kettleman, mastic asphalt mixerman or other preparations used on joints, sheeting hammer drivers (2 men), backup man or joint man with pipelayer, laborer in ditch or tunnel on sewer & water main & telephone conduit, gas distribution man, pipe setter on laterals, drain tiles culvert pipe & storm sewer connections to catch basins manholes or main line; handling materials treated with oil,creosote,asphalt,or any foreign material harmful to skin or clothing, chloride handler, unloading and laborers with steel workers & re-bars, batch dumper, tank cleaner, cofferdam worker, bankman on floating plant

SKILLED: String or wireline (1 man), head form setter, dynamite man, asphalt raker, tunnel miner, pipelayer on sewer & water main, gunnite nozzleman, welder, cutters, burners & torchman, screedmen on asphalt pavers, luteman, asphalt curb machine operator, laser beam operator, concrete burning machine operator, coring machine operator, head grade man

POWER EQUIPMENT OPERATORS AREA 1:

GROUP 1: Cranes, hydro cranes, shovels, crane type backfiller, tower cranes-mobile crawler and stationary, derrick & hoists (3 drum), draglines, Drott Turbo & similar types considered as cranes, backhoe, derrick boats, pile driver & skid rigs, clamshell, locomotive cranes, road pavers-single drum-dual drum-tri batcher, motor patrol & power blades - Dunmore - elevating & similar types, mechanics, central concrete mixing plant operator, asphalt batch plant operator and plant engineers, Gradall, caisson rigs, skimmer scoop-Koehring scooper, dredges, Hoptoe, all cherry pickers, work boat, Ross carrier, helicopter, dozer, tournadozer, tournapulls-all and similar types,multiple unit earth movers 24¢/hr for each scoop over one, scoops, pushcats, endloaders, asphalt surfacing machine, slip form paver rock crusher, heavy equipment greaser top greaser on spread, CMI, auto grade, CMI belt placer 3- track and similar types, side boom, starting engineer on pipeline, asphalt heater & planer combination (used to plane street),Wheel tractor with dozer, hoe or endloader attachment, FWD & similar types, Blaw Knox spreader & similar types, trench machines, pump crete-belt crete-squeeze crete-screw type pumps & gypsum (operator will clean), formless finishing machine, flaherty spreader or similar types, screed man on laydown machine, werneer concrete saw, Escalated rate on crane and derrick booms - 1¢/hr per foot over 80 Ft including jib, $1/hr over scale when crane or derrick boom is positioned 50 ft or more adjacent ground level or water level

GROUP 2: Bulker & pump, power launches, boring machine & pipe jacking machine, Dinkeys, P-H one pass soil cement machines & similar types, wheel tractors (industry or farm type), backfillers, Euclid loader, fork lifts, Jeep with ditching machine or other attachments, tuneluger, automatic cement & gravel batching plants, mobile drills-soil testing & similar types, pugmill with pump, all 1 & 2 drum hoists, de-watering system, straw blower, hydro-seeder, boring machine, hydro-boom, bump grinder self propelled, assistant heavy equipment greaser,

CLASSIFICATION DESCRIPTIONS

POWER EQUIPMENT OPERATORS AREA 1

GROUP 2 (Cont'd):

Apsco spreader, tractors track type without power units pulling rollers, rollers on asphalt brick or macadam, concrete breakers, concrete spreaders, cement strippers, cement finishing machines & CMI texture & reel curing machines, vibro-tamper & all similar types self propelled, mechanical bull floats, mixers over 3 bags to 27E, winch & boom trucks, tractor pulling power blade or elevating grader, porter rex rail, clary screed, mule pulling rollers, pugmill without pump, Barber Green or similar loaders, tract type tractor with power unit attached, fireman, spray machine on paving, curb machines, paved ditch machine, power broom, self-propelled conveyors, power subgrader, oil distributor, straight tractor, truck type oilers, 3-4 pieces small equipment, oiler & 1 piece small equipment

GROUP 3: Trac air machine w/0 attachments, Herman Nelson heater, Dravo Warner, Silent Glo & similar types, one engineer will operate 1-5 and after 5 two operators required, self-propelled concrete saws, rollers-5 ton & under on earth and gravel, form graders, 1 or 2 pumps, light 1 or 2, generator 1 or 2, air compressor, 1 or 2, conveyor 1 or 2 (operator will clean), welding machine 1 or 2, mixer 3 bags & under, bulk cement plant, oilers

POWER EQUIPMENT OPERATORS AREA 2:

GROUP 1: Asphalt plant, asphalt heater & planer combination, asphalt spreader, autograder, belt loader, caisson rig, car dumper, central redi-mix plant, combination backhoe front end loader 1 cu yd & over, concrete breaker truck mounted, concrete conveyor, concrete paver over 27E cu ft, concrete placer, concrete tube float, cranes all attachments, cranes, Hammerhead, Linden, Peco & machines of a like nature, creter crane, derricks traveling derrick boats, dredges, field mechanic welder, formless curb & gutter machine, Gradall & similar machines, elevating grader, motor grader, motor petrol, auto petrol, form grader, pull grader, subgrader, guard rail post driver truck mounted, hoists, 1,2,&3 drum, locomotives, mucking machine, piledriver & skid rig, pre-stress machine, pump cretes dual ram, rock drill-crawler or skid rig, truck mounted rock drill, roto mill grinder, slip form paver, soil test drill rig truck mounted, straddle buggies, hydraulic telescoping form (tunnel), tractor drawn belt loader with or w/o attach., pusher, tractor with boom, tractaire with attachments, trenching machine, truck mounted concrete pump with boom, raised or blind hole tunnel shaft drill, underground boring and/or mining machines under 5', wheel excavator, Widener (APSCO)

GROUP 2: Batch plant, bituminous mixer, bobcats over 3/4 cu yd, boiler & throttle valve, bulldozer, car loader trailing conveyor, combination backhoe front end loader under 1 cu yd, compressor & throttle valve, concrete breaker or hydro-hammer, concrete grinding machine, concrete mixer or paver 7S series to & inclu. 27 cu ft, concrete spreader, concrete curing machine, burlap machine, belting machine & sealing machine, finishing machine-concrete, greaser engineer, highlift shovel or front end loader, hoist-sewer dragging machine, hydraulic boom trucks (all attachments), locomotives, Dinky, pumpcretes: squeeze cretes-screw type pumps, gypsum bulker & pump, roller, asphalt, rotary snow plows, rototiller, seaman, etc self-propelled, scoops tractor drawn, self propelled compactor spreader chip stone, etc, scraper, scraper-prime mover in tandem add $1 for each hour & each machine attached, tank car heater, tractor-push, pulling sheeps foot, disc, compactor, etc, & tug boats

GROUP 3: Boiler, brooms, all power propelled, cement supply tender, concrete mixer 2 bag & over, conveyor, portable, farm-type tractors,used for mowing seeding etc, fireman on boilers, forlift truck, grouting machine, automatic hoist, all elevator hoists, tugger single drum hoist, jeep digger, pipe jacking machine, post hole digger, concrete power saw, pug mill, roller other than asphalt, steam generators, stone crusher, stump machine, winch trucks with "A" frame, work boats, tamper - form-motor driven

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CLASSIFICATION DESCRIPTIONS

POWER EQUIPMENT OPERATORS (CONT'D):

AREA 2 (Cont'd):

GROUP 4: Air compressor, asphalt spreader backend man, combination-small equipment operator, generators, heaters mechanical, light plants 1 to 5, pump over 3" 1 to 3 not to exceed 300 ft total, pump well point, tractaire, welding machine 2 to 5, 4 small electric drill winches, Bobcat up to 3/4 cu yd

GROUP 5: Oiler

POWER EQUIPMENT OPERATORS AREA 3:

GROUP 1: Crane, shovel, clamshell, dragline, backhoe, derrick, tower crane, cable way, concrete spreader, asphalt spreader, asphalt mixer plant engineer, dipper dredge craneman, dual purpose truck boom or winch, leverman or engineman hydraulic dredge, mechanic, paving mixer with tower attached, piledriver, boom tractor, stationary portable or floating mixing plant, trenching machine over 40 hp, building hoist 2 drums, hot paint wrapping machine, cleaning & priming machine, backfiller throw bucket, locomotive engineer, welder, tow or push boat, concrete paver, seaman trav-l-plant or similar machines, CMI autograder or similar machines, slip form paver, caisson augering machine, mucking machine, asphalt heater-planer unit, hydraulic cranes, mine hoists

GROUP 2: Athey, Barber-Greene, Euclid or Haiss Loader, asphalt pug mill, fireman & drier, concrete pump, concrete spreader, bulldozer, endloader, log chipper or similar machines, elevating grader, group equipment greaser, LeTourneaupul & similar machines, DW-10 Hyster winch & similar machines, motor patrol, power blade, push cat, tractor pulling elevating grader or power blade, tractor operating scoop or scraper, tractor with power attachments, roller on asphalt or blacktop, single drum hoist, Jaeger mix & place machine, pipe bending machine, Flexoplane or similar machines, automatic curbing machines, automatic cement & gravel batch plants one stop setup, seaman Pulvi-mixer or similar machines, blastholer self-propelled rotary drill or similar machines, work boat, combination concrete finishing machine & float, self-propelled sheep foot roller or compactor, asphalt spreader screed operator, Apsco spreader or similar machine, forklift over 6000 lb capacity or over 28 ft height, concrete conveyor, and chip spreader.

GROUP 3: Asphalt booster, fireman & pump at asphalt plant, mud jack, underground boring machine, concrete finishing machine, form grader with roller on Earth, Mixers 3 bag to 16E, power operated bull float, tractor without power attachment, dope pot (agitating motor), dope chop machine, distributor back end, straddle carrier, portable machine fireman,hydro hammer, power winch on paving work, self-propelled roller or compactor, more than one well-point pump, portable crusher, trench machine under 40 hp, power subgrader on forms or similar machine, forklift 6000 lb capacity or less, gypsum pump, conveyor over 20 hp, fuller kenyon cement pump or similar machines

GROUP 4: Air compressor 275 cfm or over, driver on truck crane or similar machine, light plant, 1 or 2-bag mixers, power batching machine cement auger or conveyor, boiler engineer or fireman, water pumps, mechanical broom, automatic cement & gravel batch plants 2 or 3 stop setup, small rubber-tired tractors (excluding backhoes & end loaders), self-propelled curing machines, brush chippers

GROUP 5: Oiler, mechanic's tender, mechanical heater other than steam boiler, belt machine, small tractors used to unroll or roll wire mesh

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CLASSIFICATION DESCRIPTIONS

TRUCK DRIVERS:

AREA 1:

GROUP 1: Drivers on 2 axles hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, fork lifts up to 6000 lbs capacity, mechanic tenders, pickups when hauling materials tools, or men to and from and on the job site, truck driver tenders

GROUP 2: 2 or 3 axles hauling more than 9 tons but less than 16 tons, A-frame winches, fork lifts over 6000 lbs capacity, 4-axle combination units, hydrolifts or similar equipment when used for transportation purposes, and winches

GROUP 3: 2, 3, or 4 axles hauling 16 tons or more, dispatcher, 5 axles or more combination units, mechanics and working foreman, drivers on semi-lowboys when moving equipment

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)

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SUPERSEDEAS DECISION

STATE: ILLINOIS COUNTIES: *See Below
DECISION NUMBER: IL85-5040 DATE: Date of Publication
Supersedes Decision Number IL85-5008, dated February 8, 1985, in 50 FR 5486
DESCRIPTION OF WORK: Building projects (does not include single-family homes and apartments up to and including four stories)
*ADAMS, BOND, BOONE, BROWN, BUREAU, CALHOUN, CARROLL, CASS, CLINTON, DEKALB, FULTON, GREENE, HANCOCK, HENDERSON, HENRY, JERSEY, JODAVIESS, KNOX, LASALLE, LEE, LIVINGSTON, LOGAN, MCDONOUGH MCLEAN, MACOUPIN, MARSHALL, MASON, MENARD, MERCER, MONROE, MONTGOMERY, MORGAN, OGLE, PIKE PUTNAM, RANDOLPH, ROCK ISLAND, SCHUYLER, SCOTT, STARK, STEPHENSON, WARREN, WASHINGTON, WHITESIDE, WINNEBAGO & WOODFORD

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area 1	$18.99	$2.76
Area 2	16.50	2.70
Area 3	18.00	3.78
Area 4	16.86	2.40
BOILERMAKERS:		
Area 1	19.20	3.905
Area 2	18.40	4.53+5%
Area 3	18.50	3.03
BRICKLAYERS; CAULKER; CLEANER: POINTER & STONEMASON:		
Area 1	15.85	.40
Area 2	17.97	3.18
Area 3	17.20	3.01
Area 4	16.38	2.25
Area 5	14.83	2.42
Area 6	17.97	3.18
Area 7	17.06	2.99
Area 8	15.91	3.22
Area 9	16.38	
Area 10	16.15	1.75
Area 11	15.23	3.40
Area 12	15.53	3.25
Area 13	15.45	2.73
Area 14	15.63	2.50
Area 15	16.85	.15
Area 16	15.88	2.81
Area 17	16.25	1.87
Area 18	15.11	2.97
Area 19	15.10	1.95
CARPENTERS: LATHER; MILLWRIGHT; PILEDRIVERMEN & SOFT FLOOR LAYER		
Area 1:		
Carpenters: Lathers & Soft Floor Layers	16.505	2.44
Millwrights; Piledrivermen	17.005	2.44
Area 2:		
Carpenters: Lathers; Millwright & Soft Floor Layer	17.435	2.90
Area 3:		
Piledrivermen	17.435	2.90
Area 4:		
Carpenter; Lather; Piledriver and Soft Floor Layer:		
Projects over $200,000	15.83	4.35
Projects under $200,000	13.79	3.32
Millwrights	18.045	3.55

	Basic Hourly Rates	Fringe Benefits
CARPENTERS (CONT'D):		
Area 5:		
Carpenters: Lathers; and Soft Floor Layers	15.605	3.01
Millwrights	16.105	3.01
Area 6:		
Piledrivermen	16.305	3.01
Area 7:		
Carpenter; Soft Floor Layer	15.15	2.85
Millwright & Piledrivermen	18.72	2.40
Area 8:		
Carpenters; Piledrivermen; and Soft Floor Layers	15.80	2.95
Millwrights	16.48	3.25
Area 9:		
Carpenters; Soft Floor Layer	14.91	2.79
Piledrivermen	15.41	2.78
Area 10:		
Carpenters: Millwrights; Piledrivermen and Soft Floor Layers	16.91	3.17
Area 11:		
Carpenters; Hardwood Floor Layers & Soft Floor Layers	15.80	3.17
Millwright & Piledriverman	16.55	3.17
Area 12:		
Carpenter & Soft Floor Layer	15.68	3.07
Millwright & Piledriverman	16.18	3.07
Area 13:		
Carpenter & Soft Floor Layer	14.00	1.08
Millwright & Piledriverman	14.70	1.08
Area 14:		
Carpenters: Lathers & Soft Floor Layers	16.37	2.61
Millwright & Piledriverman	16.87	2.61
Area 15:		
Carpenter; Piledriverman; and Soft Floor Layer	14.90	2.60
Millwright	16.48	3.25
Area 16:		
Millwright	16.48	3.25
CEMENT MASONS & PLASTERERS:		
Area 1:		
Cement Masons	14.78	1.53
Plasterers	15.05	1.53
Area 2:		
Cement Masons	16.155	2.52
Plasterers	17.775	

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	Basic Hourly Rates	Fringe Benefits
CEMENT MASONS & PLASTERERS (CONT'D):		
Area 3:		
Cement Masons	$15.42	$3.95
Plasterers	15.44	2.51
Area 4:	16.30	1.85
Area 5:		
Cement Masons	15.13	3.70
Plasterers	15.07	3.70
Area 6:		
Cement Masons	16.23	1.50
Plasterers	17.51	2.01
Area 7:		
Cement Masons	16.75	.01
Plasterers	16.85	.01
Area 8	16.90	4.01
Area 9	16.14	2.03
Area 10:		
Cement Masons	15.43	3.15
Area 11:		
Plasterers	15.59	3.15
Area 12:		
Cement Masons	16.90	.85
Plasterers	16.65	.85
Area 13:		
Cement Masons	15.11	2.02
Area 14:		
Plasterers	16.94	
Area 15:		
Cement Masons	17.65	
Plasterers	17.28	
Area 16:		
Cement Masons	15.70	1.65
Area 17:		
Cement Masons	16.79	1.42
Plasterers	18.59	
Area 18:		
Cement Masons	15.90	
Plasterers	17.15	
Area 19:		
Cement Masons	14.83	2.42
Plasterers	15.69	2.06
Area 20	15.58	
ELECTRICIANS:		
Area 1	17.12	2.25+ 3.75%
Area 2	18.61	1.25+14%
Area 3	19.20	2.83
Area 4	19.00	2.25+ 3.5%
Area 5	18.50	2.60+ 3.6%
Area 6	17.41	1.85+ 3.6%
Area 7	18.56	1.25+ 3.3%

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS (CONT'D):		
Area 8:		
Electricians	16.59	1.66+9%
Cable Splicers	17.59	1.66+8%
Area 9:		
Electrician & Cable Splicer	17.62	2.15+ 3.2%
Area 10	18.50	20.5%
Area 11	17.12	2.25+ 3.75%
Area 12	17.12	2.25+ 3.75%
Area 13	14.95	1.80+ 3.75%
Area 14	17.15	2.25+ 3.5%
Area 15	17.38	2.35+ 3.5%
Area 16	17.85	2.14
ELEVATOR CONSTRUCTORS:		
Area 1	16.425	3.00+ab
Area 2	18.80	3.29+ab
Area 3	16.88	3.29+ab
Area 4	17.36	2.33+ab
Area 5	14.19	2.89+ab
(Helpers = 70% + full fringe Probationary =50%, no fringe)		
GLAZIERS:		
Area 1	16.29	.97
Area 2	15.81	7.00
Area 3	14.53	2.77
Area 4	14.50	2.27
Area 5	16.24	2.06+ 5%+a
IRONWORKERS:		
Area 1	15.95	2.23
Area 2	16.00	2.40
Area 3	18.90	2.75
Area 4	17.02	5.625
Area 5	17.10	3.65
Area 6	16.20	3.335
Area 7	19.67	2.59
Area 8	15.665	3.66
Area 9	15.00	3.03
MARBLE & TILE SETTERS:		
TERRAZZO WORKERS:		
Area 1	15.85	.40
Area 2:		
Terrazzo Workers	17.55	
Area 3:		
Tile Setters	13.98	2.51
Area 4:		
15.83	2.99	
Area 5	14.83	2.06
Area 6	15.56	3.22

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	Basic Hourly Rates	Fringe Benefits
MARBLE & TILE SETTERS; TERRAZZO WORKERS (CONT'D):		
Area 7:		
Terrazzo Workers	$16.85	
Area 8	16.85	.15
Area 9	15.78	2.56
Area 10	16.25	1.87
Area 11	14.10	2.75
Area 12:		
Marble & Tile Setters	14.20	1.80
MARBLE, TILE, TERRAZZO FINISHER:		
Area 1:		
Marble & Tile Finisher	16.50	
Terrazzo:		
Finisher & Floor Machine Op.	16.65	
Base Machine Operator	17.05	
Area 2:		
Tile Finishers	11.70	1.61
Area 3	11.60	.95
Area 4:		
Marble & Tile Finishers	14.74	2.05
Terrazzo Finishers	14.87	2.05
Base Machine Operators	15.12	2.05
PAINTERS:		
Area 1:		
Brush	11.00	
Sand & Water Blasting, Spray, & Steam Cleaning	13.00	
Area 2:		
Brush	16.34	1.86
Taper	16.59	1.86
Spray & Blast	17.34	1.86
Area 3:		
Brush & Roller (Repaint)	14.97	2.55
Brush & Roller (New)	15.97	2.55
Structural Steel	16.22	2.55
Spray	16.47	2.55
Sandblasting	16.97	2.55
Area 4:		
Brush	14.85	2.20+c
Sandblasting	15.35	2.20+c
Spray	15.60	2.20+c
Roller, Taping	15.85	2.20+c
Area 5:		
Brush, Roller	10.00	1.05
Spray, Taping	11.00	1.05
Area 6:		
Brush, Roller, Sign Painter	14.47	3.49
Drywall Taper, Sandblasting, Spray, Structural Steel	14.97	3.49
Area 7:		
Brush, Roller	12.50	1.00
Structural Steel	12.75	1.00
Taper	12.85	1.00
Spray	13.00	1.00

	Basic Hourly Rates	Fringe Benefits
PAINTERS (CONT'D):		
Area 8:		
Brush, Drywall Finisher, Sandblast & Spray	14.95	2.71
Area 9:		
Brush	15.60	2.63
Pressure Roller, Sandblast, Spray & Structural Steel	16.45	2.63
Paperhanger	16.20	2.63
Area 10:		
Brush, Drywall Taper Finisher and Wall Covering	15.75	
Spray	16.75	
Pressure Roller, Sandblast, and Structural Steel	16.25	
Area 11:		
Brush, Paperhanger, Roller and Taper	11.25	1.60
Spray, Steel	11.80	1.60
Area 12:		
Brush & Roller	12.00	1.85
Sandblast, Spray, Taper	13.00	1.85
Area 13:		
Brush	10.53	
Sandblast, Spray, Taper	13.00	1.85
Area 14:		
Brush, Structural Steel	14.00	
Area 15:		
Brush	17.05	2.25
Spray, Taper, Steel, High Work	17.55	2.25
Bridges, Airless Spraying	18.05	2.25
Area 16:		
Brush	13.00	.33
Structural Steel	13.50	.33
Sandblast & Spray	14.00	.33
PLUMBERS, PIPEFITTERS & STEAMFITTERS:		
Area 1	16.05	3.29
Area 2	20.00	2.13+d
Area 3	19.18	2.88
Area 4	17.57	2.09
Area 5	16.50	3.70
Area 6	17.73	2.75
Area 7	18.30	2.70
Area 8	18.75	3.25
Area 9	18.00	3.20
Area 10	16.89	3.50
Area 11	19.00	3.35
Area 12	16.55	4.83
Area 13	19.40	2.88

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	Basic Hourly Rates	Fringe Benefits
ROOFERS:		
Area 1	$16.00	$3.00
Area 2	16.75	2.35
Area 3	16.97	1.93
Area 4	16.13	3.25
Area 5	14.70	1.96
Area 6	16.63	2.65
Area 7	18.09	1.95
Area 8	14.25	.60
Area 9	14.40	2.86
Area 10	12.16	.50
Area 11:		
Composition	11.85	.45
Slate & Tile	11.90	.45
SHEET METAL WORKERS:		
Area 1	16.08	2.98
Area 2	15.64	2.36+9%
Area 3	17.13	3.25
Area 4	17.12	2.48+e
Area 5	16.45	2.51+e
Area 6	16.08	2.98
Area 7	16.75	2.61+e
Area 8	14.33	2.98
Area 9	17.76	3.23
SPRINKLER FITTERS	16.47	2.83
LABORERS:		
Area 1:		
Unskilled	13.89	1.70
Semi-skilled	14.09	1.70
Skilled	14.24	1.70
Area 2:		
Unskilled	13.59	2.00
Semi-skilled	13.79	2.00
Skilled	13.94	2.00
Area 3:		
Unskilled	14.15	1.95
Semi-skilled	14.35	1.95
Skilled	14.50	1.95
Area 4:		
Unskilled	14.10	2.50
Semi-Skilled	14.30	2.50
Skilled	14.45	2.50
Area 5:		
Group 1	16.95	.35
Group 2	17.20	.35
Group 3	17.45	.35
Group 4	18.55	.35
Area 6:		
Group 1	16.85	.45
Group 2	17.10	.45
Group 3	17.35	.45
Group 4	18.45	.45
Area 7:		
Group 1	17.00	.30
Group 2	17.25	.30
Group 3	17.50	.30
Group 4	18.60	.30

	Basic Hourly Rates	Fringe Benefits
LABORERS (CONT'D):		
Area 8:		
Group 1	17.05	.25
Group 2	17.30	.25
Group 3	17.55	.25
Group 4	18.65	.25
Area 9:		
Group 1	15.70	1.60
Group 2	15.95	1.60
Group 3	16.20	1.60
Group 4	17.30	1.60
Area 10:		
Group 1	16.25	1.05
Group 2	16.50	1.05
Group 3	16.75	1.05
Group 4	17.85	1.05
Area 11:		
Group 1	16.80	.50
Group 2	17.05	.50
Group 3	17.30	.50
Group 4	18.40	.50
Area 12:		
Group 1	16.65	.65
Group 2	16.90	.65
Group 3	17.15	.65
Group 4	18.25	.65
Area 13:		
Group 1	17.25	.05
Group 2	17.50	.05
Group 3	17.75	.05
Group 4	18.85	.05
Area 14:		
Group 1	14.30	3.00
Group 2	14.55	3.00
Group 3	14.80	3.00
Group 4	15.90	3.00
Area 15:		
Group 1	15.40	1.90
Group 2	15.65	1.90
Group 3	15.90	1.90
Group 4	17.00	1.90
Area 16:		
Group 1	16.45	.85
Group 2	16.70	.85
Group 3	16.95	.85
Group 4	18.05	.85
Area 17:		
Group 1	14.20	2.66
Group 2	14.30	2.66
Group 3	14.35	2.66
Group 4	14.40	2.66
Group 5	14.45	2.66
Group 6	14.55	2.66
Group 7	14.70	2.66

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	Basic Hourly Rates	Fringe Benefits
LABORERS (CONT'D):		
Area 18:		
Unskilled	13.77	2.85
Semi-skilled	13.97	2.85
Skilled	14.17	2.85
Area 19:		
Unskilled	13.82	2.80
Semi-skilled	14.02	2.80
Skilled	14.22	2.80
Area 20:		
Unskilled	14.62	2.00
Semi-skilled	14.82	2.00
Skilled	15.02	2.00
Area 21:		
Unskilled	13.62	3.00
Semi-skilled	13.82	3.00
Skilled	14.02	3.00
Area 22:		
Unskilled	12.47	4.15
Semi-skilled	12.67	4.15
Skilled	12.87	4.15
Area 23:		
Unskilled	13.55	3.07
Semi-skilled	13.75	3.07
Skilled	13.95	3.07
Area 24:		
Group 1	13.44	3.515
Group 2	13.69	3.515
Area 25:		
Group 1	13.39	3.515
Group 2	13.64	3.515
Area 26:		
Group 1	14.84	2.115
Group 2	15.09	2.115
Area 27:		
Group 1	14.70	1.45
Group 2	14.95	1.45
Group 3	15.20	1.45
Group 4	15.55	1.45
Area 28:		
Unskilled	14.67	2.35
Semi-skilled	14.87	2.35
Skilled	15.07	2.35
Area 29:		
Unskilled	14.43	2.45
Semi-skilled	14.63	2.45
Skilled	14.83	2.45
Area 30:		
Unskilled	14.23	2.65
Semi-skilled	14.43	2.65
Skilled	14.63	2.65
Area 31:		
Unskilled	13.70	2.95
Semi-skilled	13.90	2.95
Skilled	14.10	2.95

	Basic Hourly Rates	Fringe Benefits
LABORERS (CONT'D):		
Area 32:		
Unskilled	13.73	3.15
Semi-skilled	13.93	3.15
Skilled	14.13	3.15
Area 33:		
Unskilled	13.51	3.37
Semi-skilled	13.71	3.37
Skilled	13.91	3.37
Area 34:		
Unskilled	14.08	2.80
Semi-skilled	14.28	2.80
Skilled	14.48	2.80
Area 35:		
Unskilled	13.18	2.20
Semi-skilled	13.43	2.20
Skilled	13.68	2.20
Area 36:		
Group 1	14.45	1.65
Group 2	14.70	1.65
Group 3	14.75	1.65
Group 4	14.95	1.65
Area 37:		
Group 1	15.30	2.00
Group 2	15.55	2.00
Group 3	15.80	2.00
Group 4	16.90	2.00
POWER EQUIPMENT OPERATORS:		
Area 1:		
Group 1	16.95	1.83
Group 2	15.30	1.83
Group 3	13.20	1.83
Area 2:		
Master Mechanic	19.07	2.73
Group 1	18.57	2.73
Group 2	18.57	2.73
Group 3	15.18	2.73
Group 4	14.49	2.73
Group 5	14.39	2.73
Group 6:		
a	20.72	2.73
b	21.02	2.73
c	16.24	2.73
d	16.74	2.73
Area 3:		
Group 1	18.60	5.55
Group 2	17.30	5.55
Group 3	15.65	5.55
Group 4	13.90	5.55
Area 4:		
Group 1	16.64	2.95
Group 2	15.91	2.95
Group 3	14.68	2.95

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (CONT'D):		
Area 5:		
Group 1	15.25	3.28
Group 2	15.25	3.28
Group 3	13.65	3.28
Group 4	13.85	3.28
Group 5	12.80	3.28
TRUCK DRIVERS:		
Area 1:		
Group 1	14.525	2.00+f
Group 2	14.925	2.00+f
Group 3	15.125	2.00+f
Group 4	15.375	2.00+f

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS (CONT'D):		
Area 2:		
2-3 Axles	14.98	4.50
4 Axles	15.13	4.50
5 Axles	15.33	4.50
6 Axles	15.53	4.50
Area 3:		
2-3 Axles	15.70	g
4 Axl	15.85	g
5 Axles	16.05	g
6 Axles	16.25	g

FOOTNOTES:

a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving, and Christmas Day.

b. Employer contributes 7% of regular hourly rate to vacation for employees with 5 or more years of service, and 6% for those with less than 5 years.

c. $25.00 per year.

d. Paid Holiday: 4 hours for Christmas eve if holiday falls on Monday through Friday.

e. 3% of gross earnings to SASMI

f. $55.00 per week.

g. $116.00 per week.

AREA DESCRIPTIONS

ASBESTOS WORKERS:
Area 1: Adams, Bond, Brown, Calhoun, Cass, Clinton, Fulton, Greene, Jersey, Logan, Macoupin, Mason, Menard, Monroe, Montgomery, Morgan, Pike, Randolph, Schuyler, Scott and Washington
Area 2: Boone, Ogle, Stephenson, and Winnebago
Area 3: Bureau, DeKalb, LaSalle, Lee, Livingston, McLean, Marshall, Putnam, Stark, and Woodford
Area 4: Carroll, Hancock, Henderson, Henry, JoDaviess, Knox, McDonough, Mercer Rock Island, Warren and Whiteside

BOILERMAKERS:
Area 1: Adams, Bond, Brown, Calhoun, Cass, Clinton, Greene, Jersey, Macoupin, Menard, Monroe, Montgomery, Morgan, Pike, Randolph & Washington
Area 2: Boone, DeKalb and Winnebago
Area 3: Bureau, Carroll, Fulton, Hancock, Henderson, Henry, JoDaviess, Knox, LaSalle, Lee, Livingston, Logan, McDonough, McLean, Marshall, Mason, Mercer, Ogle, Putnam, Rock Island, Schuyler, Stark, Stephenson, Warren, Whiteside and Woodford Counties

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AREA DESCRIPTIONS

BRICKLAYERS, CAULKERS, CLEANERS, POINTERS & STONEMASONS:

Area 1: Adams, Brown, & Pike Co.
Area 2: Bond, Calhoun, Jersey, Macoupin (Staunton & Mt Olive) & Montgomery Cos.
Area 3: Boone, Carroll, JoDaviess, Lee, Ogle, Stephenson, Whiteside & Winnebago Cos.
Area 4: Bureau & Putnam Cos.
Area 5: Cass, Greene, Macoupin (Excluding Staunton & Mt Olive), Morgan, Schuyler, Scott
Area 6: Clinton, Monroe & Washington Cos.
Area 7: DeKalb Co.
Area 8: Fulton, Henderson, Knox, Marshall, Warren & Woodford Cos.
Area 9: Hancock & McDonough Cos.
Area 10: Henry & Stark Cos.
Area 11: LaSalle(LaSalle, Peru & vicinity)
Area 12: LaSalle (Seneca, Marseilles, Mendota, Ottawa & Oglesby)
Area 13: LaSalle (Streator & Vicinity)
Area 14: Livingston Co.
Area 15: Logan & Mason Cos.
Area 16: McLean Co.
Area 17: Menard Co.
Area 18: Mercer & Rock Island Cos.
Area 19: Randolph Co.

CARPENTERS, LATHERS, MILLWRIGHTS, PILEDRIVERMEN & SOFT FLOOR LAYERS

Area 1: Adams Co.
Area 2: Bond, Calhoun, Greene (S. of Apple Creek), Jersey, Macoupin (S. 2/3) Cos.
Area 3: Bond, Calhoun, Greene (S. of Apple Creek), Jersey, Macoupin (S. 2/3) Cos.
Area 4: Boone, Ogle (N.½), & Winnebago cos.
Area 5: Brown, Cass, Greene (Whitehall & N. thereof), Morgan, Pike, Schuyler (except part lying N. of State Hwy #101 to Federal Hwy #67, S. of Federal Hwy #67 1½ mi., from this point to SW corner of Fulton Co.) and Scott Co.
Area 6: Brown, Cass, Greene (Whitehall & N. thereof), Morgan, Pike (N. of Rt #54), Schuyler (except area N. of State Hwy #101 to Federal Hwy #67, S. of Federal Hwy #67 1½ mi., from this point to SW corner of Fulton Co.), Scott (N of Rt 54)
Area 7: Bureau (Ohio), Lee (Ashton, Franklin Grove, Amboy, Lee Center, Compton, W. Brooklyn, Shaw Station, Sublette, Eldena, Harmon, Nelson, Prairieville), Ogle (Polo, Haldane, Mt Morris, Oregon, Chana, Woosung, Brookville & Grand Detour), Stephenson, & Whiteside (Penrose Corner) Cos.
Area 8: Bureau (Exclu. Ohio & area W. of Hwy #88), LaSalle, Lee (exclu. E.½ of Co., Ashton, Franklin Grove, Amboy, Lee Center, Compton, W. Brooklyn, Shaw Station sublette, Eldena, Harmon, Nelson & Prairieville), Livingston (NW corner incl. Blackstone & Cornell), Marshall & Putnam Cos.
Area 9: Bureau (W. of Hwy #88), Henry, Mercer, Rock Island & Whiteside (W. of Hwy #78)
Area 10: Clinton, Monroe, Randolph & Washington (except area E. of a line due S. of the Montgomery-Fayette Co. line to Rt #177, E. 1½ mi, S. 2 mi to road running E&W to to Jefferson Co. line) Cos.
Area 11: DeKalb, Lee (E ½) & Ogle (Rochelle & vic) Cos.
Area 12: Fulton, Hancock (E1/3), Henderson, Knox, Livingston (exclu. SW corner), Logan (Lincoln & vic), McDonough, Mclean, Mason, Schuyler (N. of State Hwy #101 to Fed. Hwy #67 S. of Fed. Hwy #67 1½ mi, from this point to SW corner of Fulton Co.), Stark, Warren & Woodford Cos.
Area 13: Hancock (W. 2/3 of Co.)

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AREA DESCRIPTIONS (Cont'd)

CARPENTERS; LATHERS; MILLWRIGHTS; PILEDRIVERMEN & SOFT FLOOR LAYERS (Cont'd)

Area 14: Macoupin (Girard & N. thereof), Menard, Montgomery (Waggoner, Standard City & N. thereof) Cos.
Area 15: Ogle (Maryland, Forreston, Harper, Buffalo, Adeline, Lightsville, Baileyville) Stephenson, & Whiteside (E. of Hwy #78, Exclu. Penrose Corner)
Area 16: Bureau (W. of Hwy #88), Henderson (W. of Hwy #163), Henry, Mercer, Rock Island Stark, & Whiteside (W. of Hwy #78) Cos.

CEMENT MASONS & PLASTERERS

Area 1: Adams, Brown & Pike Cos.
Area 2: Bond, Calhoun, Clinton (W.½ incl. Beckemeyer), Greene, Jersey, Macoupin, Monroe & Montgomery Cos.
Area 3: Boone & Winnebago Cos.
Area 4: Bureau, LaSalle, Livingston (N. part incld. Pontiac), Marshall (E. part incl . Toluca), Putnam & Woodford (NW part inclu. Minonk) Cos.
Area 5: Carroll, JoDaviess, Lee, Ogle, Stephenson, & Whiteside (except Erie & SW thereof)
Area 6: Cass & Menard
Area 7: Clinton (Carlyle & E. thereof) & Washington Co.
Area 8: DeKalb Co
Area 9: Fulton (NW portion), Knox, Mercer (SE corner) & Warren Cos.
Area 10: Fulton (exclu. NW portion), Marshall (W. part exclu Toluca), Mason & Woodford (exclu. NW part & Minonk) Cos.
Area 11: Fulton (exclu. NW portion), Marshall (W Part exclu Toluca), Mason & Woodford (exclu NW part & minonk) Cos.
Area 12: Hancock. Lee (area S. of a line drawn 3 mi from city limits of Ft Madison in Iowa), McDonough & Schuyler Cos.
Area 13: Henderson (N½), Henry (W ½), Mercer (exclu SE part), Rock Island, Whiteside (Erie & area SW thereof) Cos.
Area 14: Henderson (N ½), Henry, Mercer (exclu SE part), Rock Island, Whiteside (Erie & area SW thereof) Cos.
Area 15: Henderson (S ½) Co.
Area 16: Henry (E ½) & Stark Cos.
Area 17: Livingston (S. part exclu Pontiac), McLean & Woodford (E. part exclu Roanoke) Co.
Area 18: Logan Co.
Area 19: Morgan & Scott Cos.
Area 20: Randolph Co.

ELECTRICIANS:

Area 1: Adams, Brown, Hancock, McDonough (Lamoine, Bethel, Industry & Eldorado), Pike & Schuyler Cos.
Area 2: Bond (E ½), Clinton (Huey, Hoffman & Vic), Randolph (exclu. Red Bud Twp) & Washington (exclu Venedy Twp) Cos.
Area 3: Bond (W ½), Clinton (exclu Huey, Hoffman & vic), Macoupin (exclu Brighton Twp Athensville, Scottville, Girard & Area N. thereof), Monroe, Montgomery, Randolph (Red Bud Twp) & Washington (Venedy Twp) Cos.
Area 4: Boone, Carroll (Cherry Grove, Shannon, Rock Creek, Lima, Wysox & Elkhorn Grove Twps), DeKalb (Franklin, Kingston, Genoa, S. Grove, Mansfield, Sycamore, Malta, DeKalb (Franklin, Kingston, Genoa, S. Grove, Mansfield, Square Grove, Paw Paw, Victor & Somonauk Twps), JoDaviess (Warren, Rush, Stephenson,

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AREA DESCRIPTIONS (Cont'd)

ELECTRICIANS:

Area 4 (cont'd): Whiteside (Genesee, Jordan, Hopkins, Sterling, Hume, Montgomery, Tampico and Hahnaman Twps) and Winnebago Counties.
Area 5: Bureau (Arlington, Cherry, LaMoille, Malden, Ohio, Walnut, Clarion, Bureau, Dover, Berlin & Westfield), & LaSalle (S. part Incl. Ottawa & Seneca) Cos.
Area 6: Bureau (Arispe, Concord, Fairfield, Wyanet, Gold, Greenville, Hall, Indiantown, Leepertown, Macon, Manlius, Milo, Mineral, Neponset, Selby, Wheatland & Princeton), Henry (Annawan, Burns, Cambridge, Galva, Kewanee, Weller, & Wethersfield Twps), LaSalle (Deer Park, Eden, LaSalle, Peru, Utica & Vermillion Twps), Putnam, (Granville, Hennepin & Senachwine Twps), & Stark (Elmira, Goshen, Osceola, Penn & Toulon Twps) Counties.
Area 7: Calhoun, Greene, Jersey, & Macoupin (Brighton Twp) Counties
Area 8: Carroll(Chadwick, Mt Carroll, Savanna & Thompson), Henry (Excl Annawan, Burns, Cambridge, Galva, Kewanee, Weller & Westerfield), JoDaviess (Savanna Ordnance Depot), Mercer (Excl Ohio Grove, N. Henderson & Suez), Rock Island &Whiteside
Area 9: Cass, Logan, Macoupin (Athensville, Scottville, Girard & Area N. thereof), Mason (Lynchburg, Bath, Kilbourne, Crane Creek, Salt Creek & Mason Twps), Menard, Montgomery (Bois D'Arc, Pitman & Harvel Twps), Morgan & Scott Counties.
Area 10: DeKalb (Sandwich Twp) Coounty
Area 11: Fulton (Cass, Deerfield, Ellisville, Harris, Lee, Union, Young & Hickory Twps), Henderson, Knox, McDonough (Blandinsville, Prairie City, Emmet, Tennessee, Scotland, Sciota, Bushnell, Macomb, Colechester, New Salem, Walnut Grove, Hire, Mound & C almers Twps), Mercer (Ohio Grove, Suez & N. Henderson Twps) & Warren Co.
Area 12: Fulton (Rem. of Co.), Marshall (W. of Bell Plain & Roberts Twps), Masons (Excl. Bath, Crane Creek, Kilbourne, Lynchburg, Mason City & Salt Creek Twps), Stark (Essex, Valley, & W. Jersey Twps), & Woodford (W. of Kansas, Linn, Palestine, & Roanoke Twps) Counties.
Area 13: Jo Daviess (Excl. Savanna Ordnance Depot & area E. of Apple River, Thompson, and Woodbine Twps) County.
Area 14: LaSalle (Remainder of Co), Livingston, McLean (Cropsey, Anchor, Cheney Grove & Belleflower Twps), Marshall (Roberts, Evans, Bell, Plaine, & Bennington), Putnam (Magnolia Twp) & Woodford (Linn, Clayton, Minonk, Roanoke, Green & Panola Twps) Counties.
Area 15: McLean (Excl. Anchor, Belleflower, Cropsey, Cheney Grove Twps) & Woodford Palestine, El Paso & Kansas Twps) Counties
Area 16: Montgomery (E. of Butler Grove, Grisham & Raymond Twps) County

ELEVATOR CONSTRUCTORS:

Area 1: Adams, Brown, McLean, Macoupin, Menard, Morgan, Pike & Scott Counties
Area 2: Boone, Lee, Ogle, Stephenson & Winnebago Counties
Area 3: Carroll, Henry, Mercer, Rock Island, & Whiteside Counties
Area 4: DeKalb County
Area 5: Greene & Jersey Counties

GLAZIERS:

Area 1: Adams, Brown, Cass, Logan, Macoupin (N. part), Mason, Menard, Montgomery, Morgan Pike, Schuyler & Scott Counties.
Area 2: Bond, Calhoun, Clinton, Greene, Jersey, Macoupin (S. part), Monroe, Randolph, & Washington Counties
Area 3: Boone, DeKalb (N. 2/3), Lee (NE part), & Winnebago Counties.

AREA DESCRIPTIONS (Cont'd)

GLAZIERS Cont'd:

AREA 4: Bureau (New Bedford, Thomas & Neponset), Carroll, Hancock, Henderson, Henry JoDaviess, Knox, Lee (NW Incl. Dixon), McDonough (N ½), Mercer, Rock Island, Stephenson, Warren & Whiteside Cos.
Area 5: Bureau (Excl. New Bedford, Thomas, & Neponset), DeKalb (S 1/3), Fulton, La-Salle, Lee (S 1/3), Livingston (N part), McLean, Marshall (E 2/3), Putnam, Stark, & Woodford (E. corner) Cos.

IRONWORKERS:

Area 1: Adams (SE corner), Brown, Cass, Fulton (S. tip incl. Marbletown, Astoria & Summum Twps), Greene (N ½), Logan, Macoupin (N. part), Mason (E. of Rt 136), Menard, Montgomery (excl. Litchfield, Hillsboro & S. thereof), Morgan, Pike, Schuyler (E ½), & Scott Cos.
Area 2: Adams (excl. SE corner), Hancock, Henderson, Knox (W. of hwy #41), Mercer, Schuyler (W ½), & Warren Counties.
Area 3: Bond, Calhoun, Clinton, Greene (S ½), Jersey, Macoupin (S. part), Monroe, Montgomery (Litchfield, Hillsboro & S. thereof), Randolph & Washington
Area 4: Boone, Carroll (excl. Thompson, Savanna & vic.), DeKalb (excl. SE 2/3), JoDaviess (excl. E. Dubuque, Galena, Hanover & vic), Lee, Ogle, Stephenson, Whiteside (Cities of Rock Falls, Sterling, & W. Sterling) & Winnebago Cos.
Area 5: Bureau, LaSalle, Marshall (excl. SW corner) & Putnam Counties
Area 6: Carroll (Thompson, Savanna & vic), Henry, JoDaviess (E. Dubuque, Galena, Hanover & vic.), Knox (Galesburg & areas N. of the City), Rock Island, & Whiteside (excl. Sterling, Rock Falls & W. Sterling) Cos.
Area 7: DeKalb (SE 2/3 incl. Sycamore & DeKalb) County
Area 8: Fulton (excl. Marbletown, Astoria & Summum twps), Knox (Area SE of Galesburg), Livingston, McDonough, McLean (W ½), Marshall (SW corner), Mason (W of Rt 136), Stark, & Woodford Counties.
Area 9: McLean (E ½) County

MARBLE & TILE SETTERS; TERRAZZO WORKERS:

Area 1: Adams, Brown & Pike Cos.
Area 2: Bond, Clinton, Monroe, Randolph & Washington Cos.
Area 3: Bond, Monroe, & Washington Cos.
Area 4: Boone, Carroll, DeKalb, Ogle, Stephenson & Winnebago Cos.
Area 5: Cass, Greene, Macoupin, Morgan, Schuyler & Scott Cos.
Area 6: Fulton, Henderson, Knox, Marshall, Warren & Woodford Cos.
Area 7: Hancock & McDonough Cos.
Area 8: Logan & Mason Cos.
Area 9: McLean Co.
Area 10: Menard Co.
Area 11: Mercer & Rock Island Cos.
Area 12: Randolph Co.

MARBLE, TILE & TERRAZZO FINISHERS:

Area 1: Adams, Brown, Cass, Greene, Logan, Macoupin, Mason, Menard, Morgan, Pike, Schuyler, Scott, Calhoun, Jersey & Montgomery Cos.
Area 2: Bond, Clinton, Monroe, Randolph & Washington Cos.
Area 3: Boone, Carroll, DeKalb, Ogle, Stephenson, & Winnebago Cos.
Area 4: Fulton, Hancock, Henderson, Knox, McDonough, McLean, Marshall, Warren, Woodford Counties.

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AREA DESCRIPTIONS (Cont'd)

PAINTERS:

Area 1: Adams County
Area 2: Bond, Calhoun, Clinton, Greene, Jersey, Macoupin, Monroe, Montgomery, Pike and Washington Cos.
Area 3: Boone, Ogle, Stephenson, & Winnebago Cos.
Area 4: Brown, Cass, Logan, Menard, Morgan & Scott Cos.
Area 5: Bureau, LaSalle (LaSalle, Mendota, Oglesby, Utica, Peru & Vic) & Putnam Cos.
Area 6: Carroll, Henry (N ½ to I-80), Mercer, Rock Island, Warren (excl. area N. to Center of East-West Hwy at Alexis) & Whiteside (W. of State Rt 78) Cos.
Area 7: Henderson, Henry (S ½ to I-80), Knox, Stark & Warren (N. to center of East-West Hwy at Alexis) Cos.
Area 8: DeKalb Co.
Area 9: Fulton, Marshall, Mason, Schuyler & Woodford Cos.
Area 10: Hancock & McDonough Cos.
Area 11: JoDaviess Co.
Area 12: LaSalle (Ottawa, Streator, Marseilles & vic.) Co.
Area 13: Lee & Whiteside (E. of State Rt 78) Cos.
Area 14: Livingston Co.
Area 15: McLean Co.
Area 16: Randolph Co.

PIPEFITTERS; PLUMBERS & STEAMFITTERS:

Area 1: Adams, Brown, Hancock (excl. E ½), & Schuyler Cos.
Area 2: Bond, Calhoun, Greene, Jersey, Macoupon (S. of Rt 108) & Montgomery (SW of Rt #127) Cos.
Area 3: Boone, Carroll (to Rt 78 incl. Mt Carroll), JoDaviess, Ogle, Stephenson and Winnebago Cos.
Area 4: Bureau, LaSalle, Livingston (N of Pontiac), Marshall (N of Rt 17) & Putnam Cos.
Area 5: Carroll (W of Rt 78 excl. Mt Carroll), Henderson, Henry, Knox, Lee, Mercer, Rock Island, Warren & Whiteside Cos.
Area 6: Cass, Logan, Macoupin (N. of State Rt 108 incl. Carlinville), Mason, Menard, Montgomery (N of Rt 127 incl Hillsboro & Schram City), Morgan, Pike, Sangamon & Scott Cos.
Area 7: Clinton (W 2/3 incl. Albers, Aviston, Bartelso, Beckemeyer, Breese, Carlyle, Germantown, New Baden, New Memphis, Posey & Trenton), McDonough (Prairie), Monroe (Hecker), Randolph (Baldwin, Red Bud, Ruma, Tilden) & Washington (Addieville, Covington, Lively Grove, Nashville, New Manden, Oakdale, Okawville, & Venedy) Cos.
Area 8: Clinton (E 1/3), & Washington (E ½) Cos.
Area 9: DeKalb Co.
Area 10: Fulton, Hancock (E ½), McDonough (excl. Prairie), Marshall (S. of Rt 17), Stark, & Woodford (except part contained in area 11 below) Cos.
Area 11: Livingston (Pontiac & S. of Rt 116 extending E. to Ford Co.), McLean and Woodford(S of Rt 116 to Rt 116A & area E. of Rt 116A to & incl. Goodfield) Cos.
Area 12: Monroe (Valmeyer & vic) Co.
Area 13: Randolph (excl. Baldwin, Red Bud, Ruma & Tilden) County.

ROOFERS:

Area 1: Adams & Hancock Cos.
Area 2: Bond, Calhoun, Clinton, Greene, Jersey, Macoupin (S ½), Monroe, Randolph and Washington, Cos.
Area 3: Boone, Carroll, DeKalb (W ½), Lee, Ogle, Stephenson, Whiteside (Rock Falls, Sterling & W. Sterling) & Winnebago Cos.
Area 4: Brown, Cass, Logan, Macoupin (N ½), Mason, Menard, Montgomery, Morgan, Pike, Schuyler & Scott Cos.

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AREA DESCRIPTIONS (Cont'd)

ROOFERS (Cont'd):

Area 5: Bureau, LaSalle, Livingston, Marshall (NE ½) & Putnam Cos.
Area 6: DeKalb (E ½ incl. Sycamore, DeKalb & Waterman) County
Area 7: Fulton, McDonough (E ½ excl. Macomb), Marshall (SW ½), Stark & Woodford Cos.
Area 8: Henderson, Knox, McDonough (W ½ incl. Macomb) & Warren Cos.
Area 9: Henry, Mercer, Rock Island, & Whiteside (excl. Rock Falls, Sterling & W. Sterling) Cos.
Area 10: JoDaviess County
Area 11: McLean County

SHEET METAL WORKERS:

Area 1: Adams, Calhoun, Hancock & Pike Cos.
Area 2: Bond, Clinton, Greene, Jersey, Macoupin, Monroe, Montgomery, Randolph and Washington Counties
Area 3: Boone, Carroll (E ½), DeKalb, JoDaviess (E of Hwy #78), Lee, Ogle, Stephenson, Whiteside & Winnebago Cos.
Area 4: Brown, Cass, Logan, Mason, Menard, Morgan, Schuyler & Scott Cos.
Area 5: Bureau, LaSalle, Livingston (S. part), Marshall, Putnam & Stark Cos.
Area 6: Carroll (W. of Hwy 78), Henderson, Henry, Knox, McDonough, Mercer, Rock-Island, Warren & Whiteside (W. of Hwy 78) Cos.
Area 7: Fulton, McLean & Woodford Counties
Area 8: JoDaviess (W. of Hwy 78) County
Area 9: Livingston (N. part) County

LABORERS:

Area 1: Adams County
Area 2: Brown, Cass, Mason, Morgan, Pike, Schuyler & Scott Cos.
Area 3: Logan & Menard (N ½) Cos.
Area 4: Menard (S ½)incl. City of Petersburg) Co.
Area 5: Bond (Greenville) & Macoupin (Mt Olive & vic) Cos.
Area 6: Bond (Pocahontas), Macoupin (Gillespie & vic) & Washington (Ashley & vic) Cos.
Area 7: Bond (Sorento) & Jersey Cos.
Area 8: Calhoun Co.
Area 9: Clinton,(Carlyle, Trenton & Vic) Co.
Area 10: Greene, Macoupin (Staunton & Vic), Montgomery (Litchfield) Cos.
Area 11: Macoupin (Shipman) Co.
Area 12: Washington Co. (Okawville & Vic.)
Area 13: Macoupin (Carlinville & vic) co.
Area 14: Montfomery Co. (Hillsboro & vic).
Area 15: Randolph Co. (Sparta & vic)
Area 16: Washington (Nashville & ivc)
Area 17: Boone County
Area 18: Bureau County
Area 19: LaSalle (Streator & Vic) Co.
Area 20: LaSalle Co. (Marseilles & vic)
Area 21: LaSalle Co. (Ottawa & vic)
Area 22: LaSalle Co. (LaSalle & vic)
Area 23: Putnam Co.
Area 24: Winnebago Co
Area 25: DeKalb & Ogle (City of Rochelle) Cos.
Area 26: Carroll, JoDaviess, Lee, Ogle (except City of Rochelle), Stephenson & Whiteside
Area 27: Clinton (New Baden & vic) Co.
Area 28: Fulton Co.

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AREA DESCRIPTIONS (Cont'd)

LABORERS (Cont'd):

Area 29: Hancock & McDonough Cos.
Area 30: Henderson, Knox & Warren Cos.
Area 31: Henry & Stark (W½) Cos.
Area 32: Livingston & Woodford Cos.
Area 33: McLean Co.
Area 34: Marshall & Stark (E ½) Cos.
Area 35: Mercer & Rock Island Cos.
Area 36: Monroe Co.
Area 37: Randolph Co. (Chester & Vic.)

POWER EQUIPMENT OPERATORS:

Area 1: Adams, Brown, Cass, Logan, Menard, Morgan, Pike, Schuyler & Scott Cos.
Area 2: Bond, Calhoun, Clinton, Greene, Jersey, Macoupin, Monroe, Montgomery, Randolph, & Washington Cos.
Area 3: Boone, Bureau (E. of Rt 26), Carroll, DeKalb, JoDaviess, LaSalle, Lee, Livingston, Ogle, Putnam (E. of Illinois River), Stephenson, Whiteside (E ½) & Winnebago Cos.
Area 4: Bureau (W. of Rt 26), Fulton, Hancock, Henderson, Henry (E ½), Knox, McDonough, McLean, Marshall, Mason, Putnam (W. of Illinois River), Stark, Warren, & Woodford
Area 5: Henry (W ½), Mercer, Rock Island & Whiteside (W. part from the 5th sectional line E. of Morrison running directly N & S) Cos.

TRUCK DRIVERS:

Area 1: Adams, Bond, Brown, Bureau, Calhoun, Carroll (excl. area N. of Rt 72 & E. of Rt 78), Cass, Clinton, Fulton, Greene, Hancock, Henderson, Henry, Jersey, JoDaviess (W. of Rt 78 including Stockton), Knox, LaSalle, Lee (excl. area E. of Rt 51), Livingston (Reading, New Town, Sunbury, Nevada, Long Point & Amity), Logan, McDonough, McLean, Macoupin, Menard, Mercer, Monroe, Montgomery, Morgan, Ogle (excluding area E. of Rt 51), Pike, Putnam, Randolph, Rock Island, Schuyler, Scott, Warren, Washington & Whiteside Cos.
Marshall, Mason, Stark & Woodford (NW corner) cos.
Area 2: Boone, Carroll (N. of Rt 72 & E. of Rt 78), JoDaviess (E. of Rt 78 excl. City of Stockton), Stephenson & Winnebago Cos.
Area 3: DeKalb, Lee (E. of Rt 51), Livingston (excl. Reading, New Town, Sunbury, Nevada, Long Point & Amity), Ogle (E. of Rt 51) & Woodford (Remainder of Co.)

LABORER CLASSIFICATIONS FOR AREAS 1, 2, 3 & 4

UNSKILLED All sewer workers plus depth pay; Asphalt plant laborers; Bankmen on Floating plant; Batch dumpers; Carpenter tender; Cleaning lumber; Cofferdam workers plus depth pay; Deck hand, Dredge hand & shore laborer; Dispatchers; Driving of stakes; Stringlines for all machinery; Fencing laborer; Firemen or salamander tenders; Fireproofing fire shop laborers; Form handlers; Gravel box men, Dumpmen & Spotters; Laborers w/de-watering systems; Landscapers; Laying of sod; Material handlers; Pit men; Plastic installers; Planting & removal of trees; Rip-rap men; Scaffold workers; Tool cribmen; Track laborers; Unloading explosives; Unloading & carrying lath; Unloading & carrying re-bars; Wrecking, Dismantling buildings; Wallmen & housemovers; Wrecking Laborers.
SEMI-SKILLED Asphalt workers with machine; Asphalt raker & Layer; Cement handler; Cement silica; Fly ash; Lime & plasters (bulk or bag); Chain saw; Chloride handler; Concrete workers (wet); Grade checker; Handling material treated with oil, creosote, asphalt or any foreign material harmful to skin or clothing; Kettle tar man; on concrete paving, placing, cutting & typing of reinforcing; Signal man on crane; Tank cleaner; Tunnel tenders in free air

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LABORERS CLASSIFICATIONS FOR AREAS 1, 2, 3, 4, (Cont'd):

SKILLED Air tamping hammerman; Caisson workers plus depth pay; Concrete burning machine operator; Concrete saw ; Coring machine; Curb asphalt machine operator; Gunnite nozzle men; Jackhammer & drill operators; Laborers handling masterplate or similar materials; Laborers tending masons with hot material or where foreign materials are used for wet concrete or handling of building materials; Multiple concrete duct - leadman; Plasterer tender; Ready mix scaleman, portable or temporary plant; Screedman on asphalt pavers; Steel form setters (street & hwy); Vibrator operator; Cutters, burners & torchmen

LABORERS CLASSIFICATIONS FOR AREAS 5 THROUGH 16

Group 1: Common Laborer
Group 2: Power vibrator
Group 3: Torchman (demolition), mortarman
Group 4: Power tamper
Group 5: Jackhammer & airspade, chainsaw, swinging stage and boatswain chair, cement gun nozzleman, hod carrier, plaster tender, and tunnel man.
Group 6: Tile layers, bottom men
Group 7: Caisson laborers, dynamiters

LABORERS CLASSIFICATIONS FOR AREAS 18 THROUGH 23

UNSKILLED: Asphalt plant laborers; Carpenter tenders; Cleaning lumber; common laborers; Driving of stakes; Dumpmen & spotters; Fencing laborers; Fireman or Salamander tenders; Fireproofing laborers; Form handlers; Gravel box men; Landscapers; Laying of sod; Pitmen; Plant of trees; Removal of trees; Stringlines for all machinery; Tool cribmen; Unloading explosives; Wallmen & housemovers; Wrecking, dismantling buildings & wrecking laborers.
SEMI-SKILLED: Asphalt rakers; Batch dumpers; Bankmen on floating plant; Cement handler; Cement silica, clay, fly ash, lime & plasters; Chloride handlers; Cofferdam workers plus depth pay; Laborers on concrete paving; Concrete workers (wet); Deck hand; Dredge hand; Grade checker; Handling of materials treated with oil, creosote, asphalt or any foreign material; Kettle & tarmen; Laborers with de-watering system; Mason & Plasterer tenders & material wheelers; Mortar mixers; Motorized buggies or motorized unit for wet concrete or handling of building materials; Placing, cutting & tying or reinforcing; Plastic installers; Scaffold workers; Sewer workers plus depth; Shore laborers; Tank cleaners; Track laborers; Tunnel tenders in free air; Unloading & laborers with steel workers & rebars; Vibrator operators.
SKILLED: Air tamping hammerman; Caisson workers plus depth; Chain saw operators; Concrete burning machine operator; Concrete saw operator; Coring machine operator; Curb asphalt machine operators;.Cutters, burners & torchmen; Dynamite man or blasters; Gunnite nozzle men; Jackhammer & drill operators; Laborers handling masterplate or or similar materials; Laborers tending masons with hot material or where foreign materials are used Laser beam operators; Layout man; Lead man on sewer work; Luteman; Multiple concrete duct-leadman; Portable or temporary plant; Ready-mix scaleman; Screedman on asphalt pavers; Signalman on crane; Steel form setters (street & hwy); and welders.

LABORERS CLASSIFICATIONS FOR AREAS 24, 25 & 26

GROUP 1: Common laborer; Carpenter tender; Tool cribmen; Firemen or salamander tender; Gravel box men, dumpmen & spotters; Form handlers; Material handlers; Fencing laborers; Cleaning lumber; Pit men; Landscaper; Unloading explosives; Laying sod, planting trees; Removal of trees; Asphalt workers with machine & layers; Asphalt plant laborers; Wrecking; Fireproofing; Driving stakes, stringlines for all machinery; Window cleaning

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AREA DESCRIPTIONS (Cont'd)

LABORERS CLASSIFICATIONS FOR AREAS 24, 25, 26 (Cont'd)

GROUP 2: Handling of any materials with any foreign matter harmful to skin or clothing; Track; Cement handler; Chloride handler; Unloading & laborers with steel workers & rebars; Concrete workers, wet; Tunnel tenders in free air; Batch dumper; Mason Tender; Kettle & tar men; Tank cleaner; Plastic installer; Scaffold worker; Motorized buggies or motorized unit used for wet concrete or handling of building materials; Laborers with de-watering systems; Sewer workers plus depth; Vibrator operator; Cement silica, clay, fly ash, lime & plasters, handlers (bulk or bag); Cofferdam workers plus depth; Concrete paving, placing, cutting & tying of reinforcing; Deck hand, dredge hand and shore laborers; Bankmen on floating plant; Grade checker; Power tools; Front end man on chip spreader; Caisson worker plus depth, Gunnite nozzle man; Lead man on sewer work; Welders, cutters, burners & torchmen; Chainsaw operator; Jackhammer & drill Oper; Layout man or tile layer; Steel form setter (street & hwy); Air tamping hammermen; Signal man on crane; Concrete saw operator; Screedman on asphalt pavers; Tending masons with hot material or where foreign materials are used; Mortar mixer operator; Multiple concrete duct - leadman; Luteman; Asphalt raker; Curb asphalt machine operator; Ready mix scaleman, permanent, portable or temporary plant; Laborers handling masterplate or similar materials; Laser beam operator; Concrete burning machine operator; Coring machine operator; Plaster tender; Underpinning and shoring of buildings; Pump men; Manhole and catch basin; Dirt & stone tamper; Hose men on concrete pump

LABORERS CLASSIFICATIONS FOR AREA 27

GROUP 1: Common Laborer
GROUP 2: Cooking & handling of hot mastic material; Cutting & burning with torch; Chain saw; Men working on bottom doing caulking, laying, or final grading for sectional sewer pipe; Men handling creosote or other material harmful to skin
GROUP 3: Mason & plasterer tenders
GROUP 4: Dynamite men

LABORERS CLASSIFICATIONS FOR AREA 36

GROUP 1: Common Laborer
GROUP 2: Air tools, cutting torch & welding (not incl. jackhammers); Bottom of sewer trenches on the final grading, laying or caulking of preformed sectional sewer pipe; High work - 50 ft or more
GROUP 3: Cooking of mastic, coal tar derivatives, or handling of creosoted materials
GROUP 4: Dynamite & blasting (4hr minimum); Mason tenders, plasterer tenders

LABORERS CLASSIFICATIONS FOR AREA 28

UNSKILLED: Carpenter tender; Tool cribman; Cleaning and oiling of machinery and tools; Fireman or salamander tenders; Gravel box men; Form handlers; Material handler; Fencing laborer; Cleaning lumber; Pit men; Landscapers; Unloading explosives; Laying sod, planting & removal of trees; Pile driver helpers; Asphalt plant helpers; Wrecking laborers; Fireproofing laborers; Driving of stakes, string lines for all machinery; Unloading and laborers with steel workers and re-bars; mason tenders; Scaffold workers; Laborers with de-watering systems; Plaster tenders; Truck driver tender to load and unload materials.
SEMI-SKILLED: Handling of materials treated with oil, creosote, asphalt or foreign material harmful to skin or clothing; Track laborer; Cement handler; Concrete worker (wet); Chloride handler; Tunnel helper in free air; Batch dumper; Kettle & tar men Tank cleaner; Plastic installer; Motorized buggies or units used for wet concrete or building materials; Sewer worker; Vibrator oper.; Mortar mixer oper.; Cement silica, clay, fly ash, lime and plaster handler, bulk or bag; Cofferdam worker; On concrete paving, placing, cutting and tying of reinforcing; Deck hand, dredge hand & shore laborer; Bank man on floating plant; Asphalt worker and laver with machine; Grade checker, dumpman, and spotter; Power tools; Chain saw oper.; Jackhammer & drill oper.;

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AREA DESCRIPTIONS (Cont'd)

Laborer classifications for Area 28 (Cont'd)

SEMI-SKILLED (Cont'd): Air tamping hammerman; Tree topping; Signaling & spotting of rigs & equipment; Stripping concrete forms, with composite crew of laborers & carpenters (applies only to forms erected by Carpenters with laborers tending them); High pressure water jetting
SKILLED: Caisson worker plus depth; Gunnite nozzleman; Lead man on sewer work; Welders, cutters, burners & torchmen to include but not limited to scrap; Layout man or tile layer; Steel form setters (street & hwy); Concrete saw oper.; Screedman on asphalt paver; Front end man on chip spreader; Laborer tending masons with hot materials or where foreign materials are used; Multiple concrete duct - leadman; Luteman; Curb asphalt machine oper.; Ready mix scalemen, permanent, portable or temporary plant; Laborers hauling masterplate or similar materials; Laser beam oper; Concrete burning machine oper; Coring machine oper; Under pinning & shoring of buildings; Dynamite shooter; Setting & using laser beam equip; Setting up and using of all concrete burning bars, whether burn-concrete or any type of material; Operation of high pressure water jetting -Over 3000 PSI

POWER EQUIPMENT OPERATORS CLASSIFICATIONS FOR AREA 1

GROUP 1: Asphalt plant engineer; Asphalt screed man; Apsco concrete spreader; Asphalt paver; Asphalt roller on bituminous concrete; Athey loaders; Backfillers; Crane type backhoes; Cableways; Cherry picker; Clam shell; CMI & similar typ Autograde formless paver, autograde placer & finisher; Concrete breaker; Concrete plant oper; Concrete pumps; Cranes; Derricks; Derrick boats; Draglines; Earth auger boring machine; Elevating graders; Engineers on dredge; Gravel processing machines; Head equipment greaser; High lift or fork lift; Hoist with two drums or 2 or more loadlines; Locomotives; Mechanics; Motor graders or auto patrols; Operators or levelman on dredges; Power boat oper; Pug mill oper.(asphalt plat); Orange peels; Overhead cranes; Paving mixers; Piledrivers; Pipe wrapping & painting machines; Push dozers, or push cats; Rock crusher; Ross carrier or similar machine; Scoops; Skimmers 1 cu yd capacity & under; Sheep foot roller (self propelled); Shovels; Skimmer scoops; Test hole drilling machines; Tower crane; Tower machine; Tower mixer; Track tupe & loaders; Track type fork lifts or high lifts; Track jacks & tampers; Tractors; Sideboom; Trenching machine; Ditching machine; Tunnel lugger; Wheel type end loader; Winch cat; Scoops (all or tournapull)
GROUP 2: Asphalt booster & heater; Asphalt Distributor; Asphalt plant fireman; Building elevator; Bull float or flexplane; Concrete finishing machine; Concrete saw, self-propelled; Concrete spreader machine; Gravel or stone spreader, power operated; Hoist automatic; Hoist with one drum & one load line; Oiler on 2 paving mixers when used in tandem boom or winch truck; Ont hole diggers, mechanical; Road or street sweeper, self-propelled; Scissors hoist; Seaman tiller; Straw machine; Vibratory compactor; Well drill machines; & mud jacks
GROUP 3: Air compressors, track or self-propelled; Bulk cement batching plants; Conveyors; Concrete mixers (except plant, paver, tower); Firemen; Generators; Greasers; Light plants; Mechanical heaters; Oilers; Power form graders; Power sub-grader; Pug mill, when used other than asphalt operation; Rollers (except bituminous concrete); Tractors w/o power attachments regardless of size or type; Truck crane oiler & driver (one man); Vibratory hammer; Water pump; Welding machine (one 300 amp or over). Combinations of one to five of any air compressors, conveyors, welding machines, water pumps, light plants or generators shall be in batteries or within 300 ft.

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AREA DESCRIPTIONS (Cont'd)

POWER EQUIPMENT OPERATORS FOR AREA 2

GROUP 1: Cranes; Draglines; Shovels; Skimmer scoops; Clamshells or derrick boats; Pile drivers; Crane-type backhoes; Asphalt plant oper; Plant oper; Ditching machines or backfillers (requiring oilers); Dredges; Asphalt spreading machines; Heavy duty Mechanic; Assistant Master mechanic; Locomotives; Cableways or tower machines; Hoists 2 drum or more; Hydraulic backhoes; Ditching machines or backfiller not requiring oilers; Cherry pickers; Overhead crane; Roller; Concrete paver; Breakers & pumps; Bulk cement plants; Cement pumps; Derrick type drills; Mixers (over 3 bags) & boat operators (25ft & over); Motor graders or pushcats; Scoops or tournapulls; Bulldozers; Endloaders or forklifts; Power blade or elevating graders; Winch cats; Boom tractors, & pipewrapping or painting machines; Drills (other than derrick type); one-drum hoists; Mud jacks; Mixers (2 or 3 bags); Conveyors(two); two air compressors; Two water pumps regardless of size; Two welding machines; Two siphons or jets; Two winch heads or apparatus; and two light plants; Tractors regardless of size (tractor only); Firemen on stationary boilers; Automatic elevators; Form grading machines; Finishing machines; Power sub-grader or ribbon machine; Longitudinal floats; Boat operator (under 25 ft); Distribution oper on trucks; Winch heads or apparatuses(1); Excavators
GROUP 2: One air compressor; One water pump regardless of size, One welding machine; One 3-bag mixer; One conveyor; One siphon or jet; One light plant; One Heater; One immobile track air
GROUP 3: Firemen on whirlies and asphalt spreader oilers.
GROUP 4: Heavy equipment oilers (Truck cranes, dredges, manigans, large cranes over 15Ton
GROUP 5: Oilers
GROUP 6: a. Engineers operating under air pressure
b. Engineers operating in air over 10 lbs pressure
c. Oilers operating under air pressure
d. Oilers operating in air over 10 lbs pressure
Hard rock mining + 15¢ per hour premium pay

POWER EQUIPMENT OPERATORS CLASSIFICATIONS FOR AREA 3

GROUP 1: Mechanic; Asphalt plant; Asphalt spreader; Autograde; Batch plant; Benoto; Boiler and throttle valves Caisson rigs; Central redi-mix plant; Combination back hoe front end loader machine; Compressor and throttle valve; Concrete breaker (truck mounted); Concrete conveyor; Concrete paver over 27E cu ft; Concrete paver 27E cu ft and under; Concrete placer; Concrete pump (truck mounted); Concrete tower; Cranes; Hammerhead crane; Crater crane; Crusher, stone, etc; Derricks; Traveling derricks; Formless curb and gutter machine; Grader, elevating; Grouting machines; Highlift shovels or front endloader 2¼ yd and over; Hoists, elevators, outside type rack and pinion and similar machines; hoists 1,2,3 drums; Hoist, two tugger one floor; Hydraulic backhoes; Hydraulic boom trucks; Locomotives; Motor patrol; Pile drivers and skid rig; Post hole digger; Pre-stress machine; Pump crete dual ram; Pump cretes; squeeze cretes screw type pumps Gypsum bulker and pump; Raised and blind hole drill; Rock drill (self-propelled); Rock drill (truck mounted); Roto mill grinder (36") and over; Roto Mill grinder less than 36"; Scoops-tractor drawn; Slip form paver; Straddle buggies; Tournapull; Tractor with boom, and side boom & trenching machines.
GROUP 2: Bobcat over 3/4 cu yd; Boiler; Brick forklift; Broom, power propelled; Bulldozer; Concrete mixer (2 bag & over); Conveyor, portable; Forklift trucks; Greaser engineer; Highlift shovels or front end loaders under 2¼ yd; Hoists, automatic; Hoists, inside freight elevators; Hoists, sewer dragging machine; Hoists, tugger single drum; Roller; Steam generators; Tractors; Tractor drawn vibratory roller (receives 50¢/hr additional); and winch trucks with "A" frame

AREA DESCRIPTIONS (Cont'd)

POWER EQUIPMENT OPERATORS CLASSIFICATIONS FOR AREA 3 (Cont'd)

GROUP 3: Air compressor-small 150 & under (1 to 5 not to exceed a total of 300 ft); Air compressor-large over 150; Combination-small equipment oper.; Generator-small 50KW & under; Large generator over 50 KW; Heaters, mechanical; Hoists, inside elevators (rheostat manual controlled); Hydraulic power units (pile driving & extracting); Pump over 3" (1 to 3 not to exceed 300 ft); Pumps, well points; Welding machines (2 to 5); Winches, 4 small electric drill winches; Bobcat up to incl. 3/4 cu yd; Brick forklift.
GROUP 4: Oilers; Hoists, inside elevators push button automatic doors

Raised & blind hole drill for Boone, Carroll, DeKalb, JoDaviess, Lee, Ogle, Stephenson, Whiteside, & Winnebago Counties only

POWER EQUIPMENT OPERATORS CLASSIFICATIONS FOR AREA 4

Group 1: Cranes & derricks [illegible] per ft over 80' including jib, $1.00/hr over scale when crane or derrick boom is positioned 50 ft or more adjacent ground level or water level; Overhead cranes, gradall, all cherry pickers, mechanics, central concrete mixing plant oper, road pavers 27E-dual drum-tri batchers, blacktop plant oper & plant engineers, 3 drum hoist, derricks, hydro cranes, shovels, skimmer scoops, Koehring scooper, dragline, backhoe, derrick boat, pile driver and skid rigs, clamshells, locomotive cranes, dredge, all types, motor patrol, power blades-Dumore-elevating & similar type, tower crane (crawlermobile) & stationary, crane-type backfiller, Drott Yumbo & similar types considered as cranes, caisson rigs, dozer, tournadozer, work boats, Ross carrier, helicopter, tournapulls-all & similar types, scoops (all sizes), pushcats, endloaders all types, asphalt surfacing machine, slip form paver, rock crusher, heavy equip. oper.; CMI, CMI belt placer, autograde & 3 track & similar types, side booms, multiple unit earth movers (25¢/hr for each scoop over one), crater crane, trench machine, pumpcrete-belt-crete-squeeze-crete, screw type pumps and gypsum, bulker & pump, formless finishing machine, Flocotto spreader or similar types, spread man on lay down machine, wheel tractors industrial or farm type w/ dozer-hoe-end loader or other attachments, FWD & similar types, vermeer concrete saw.
GROUP 2: Dinkeys, power launches, PH one-pass soil-cement machine & similar types, pug mill with pump, backfillers, Euclid loader, forklifts, jeeps w/ditching machine or other attachments, [illegible], automatic cement & gravel batching plants, mobile drills (soil testing) & similar types, [illegible] & similar types, 1 and 2 drum hoists (buck hoists and similar types), Chicago boom, boring machine & pipe jacking machine, Hydro boom, de-watering system, straw blower, hydro seeder, assistant heavy equipment greaser on spread, tractors track type without power unit pulling rollers, rollers on asphalt-brick macadam, concrete breakers, concrete spreaders, mule pulling rollers, center stripper, cement finishing machines & CMI texture & seal curing machines, cement finishing machine, Barber Greene or similar loaders, vibro tamper (all similar types) self propelled, winch or boom truck, mechanical bull floats, mixers over 3 bag to 27E, tractor pulling power blade or elevating grader, [illegible], truck type heater oilers, fireman, spray machine on paving, curb machines, truck crane oiler, oil distributor, 3-4 small equipment, oiler and one small equipment.
GROUP 3: Air compressor 1 or 2, power subgrader, straight tractor, trac air w/o attach., German Nelson heater, Dravo, Wetner, Silent Glo & similar types one engineer will operate 1-3 and after 3 two operators required, self-propelled concrete saw, roller 5 ton & under on earth or gravel, form grader, [illegible] & skid rig oilers, freight elevators, 1 or 2 pumps, 1 or 2 light plants, 1 or 2 generators 7.5KW & over, 1 or 2 converters operator will clean, welding machine 1 or 2(300 amp & over) does not include electric welder, 3 bag mixer & under standard capacity with skip, bulk cement plant, oiler on central concrete mixing plant.

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AREA DESCRIPTIONS (Cont'd)

POWER EQUIPMENT OPERATORS CLASSIFICATIONS FOR AREA 3

GROUP 1: Cranes; Shovels; Clamshells; Draglines; Backhoes; Derricks; Cableways; Dual drum pavers; Concrete spreaders behind 2 pavers; Asphalt spreaders; Asphalt mixer plant engineers; Dipper dredge operator; Dipper dredge cranemen; Dual purpose trucks (boom or winch); Leverman or engine man (hydraulic dredge); Mechanics; Paving mixers (16E to 34E); Paving mixers with tower attached (2 operators required); Pile drivers; Boom tractors; Stationary, portable, or floating mixing plants; Trenching machines; Building hoists (2 drums); Hot paint wrapping machines; Cleaning and priming machines.
GROUP 2: Athey, Barber Greene, Euclid or Haise Loaders; Asphalt pug mills; Firemen and driers; Concrete pumps; Concrete spreaders (behind one paver); Bulldozers; End loaders (other than those above); Fork lifts; Elevating graders; Group equipment greasers; LeTourneaupull & similar machines; Power blades; Power subgrad rs (on forms and similar machines); Push cats; Tractors pulling elevating graders or power blades; Tractors with power attachments; Rollers on asphalt or blacktop; single drum hoists; Jaeger mix and place machines; Pipe bending machines; welding machines (3 to 4); Fuller Kenyon cement pumps or similar machines; Automatic cement and gravel batch plants (1 stop set-up)
GROUP 3: Asphalt boosters; Firemen and pump operators at asphalt plants; Compressors 1500 cu ft and over); Concrete finishing machines; Form graders with rollers on earth; Mixers 3 bag to 14-E; Power operating bull floats; Tractors without power attachments; Dope pots (agitating motor); Dope chop machines; Distributors (backend); Flex-planes; Boat operator; Hydrohammers; Power winch on paving work; Self-propelled earth rollers or compactors (other than paving work); Pump operator (more than one well point pump); Portable crusher operator.
GROUP 4: Air compressors (375 CFR or over); Drivers on Truck cranes; Conveyors; Light plants; Mixers (1 or 2 Bags); Power batching machines (cement auger or conveyor); Boiler engineer or firemen; Water pumps; Welding machines; Mechanical brooms; Automatic cement and gravel batch plants (2 or 3 stop set-up; Small rubber tired tractors
GROUP 5: Oilers; Mechanic helpers; Water pumps (pumping water to paver); Mechanical heaters other than steam boiler

TRUCK DRIVERS CLASSIFICATIONS AREA 1

GROUP 1: Two axles hauling less than 9 tons; Air compressor & welding machine, Broom incl. those pulled by separate units; Fork lifts up to 6000 lbs capacity; Mechanic tenders; pick-ups when hauling materials, tools, or men to and from and on the job site; and truck driver tenders
GROUP 2: 2 or 3 axles hauling more than 9 tons, but less than 16 tons; A-frame winches; Fork lifts over 6000 lbs capacity; 4-axle combination units; Hydrolifts or similar equipment when used for transportation purposes; and winches
GROUP 3: 2, 3, or 4 axles hauling 16 tons or more; Dispatcher; 5-axles or more combination units; Mechanics and working foremen; and water pulls
GROUP 4: Drivers on oil distributors; and drivers on semi-lowboys when moving equipment

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))

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SUPERSEDEAS DECISION

STATE: ILLINOIS COUNTY: SANGAMON
DECISION NUMBER: IL85-5041 DATE: Date of Publication
Supersedes Decision Number IL84-5042, dated December 14, 1985, in 49 FR 48881
DESCRIPTION OF WORK: Building and Residential Projects

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$18.93	$2.76
BOILERMAKERS	19.20	3.905
BRICKLAYERS, CAULKERS, CLEANERS		
POINTERS & STONEMASONS	16.25	1.87
CARPENTERS:		
Commercial Building:		
Carpenters, Lathers, and		
Soft Floor Layers	16.37	2.61
Millwrights & Piledrivermen	16.87	2.61
Residential:		
Three stories or less,		
excluding concrete and		
steel type construction	11.31	2.54
CEMENT MASONS	16.23	1.50
ELECTRICIANS:		
Commercial Building:		
Electrician & Cable Splicer	17.62	2.15+3.2%
Residential, 3 floors or less	10.60	1.65+3.5%
ELEVATOR CONSTRUCTION:		
Mechanic	16.425	3.00+ab
Helper	70%	3.00+ab
Probationary Helper	50%	
GLAZIERS	16.29	.97
IRONWORKERS	16.50	2.73
MARBLE SETTERS, TERRAZZO		
WORKERS & TILE SETTERS	16.25	1.87
MARBLE, TERRAZZO & TILE		
FINISHERS:		
Marble & Tile Finisher	16.50	
Terrazzo Finisher & terrazzo		
Floor Machine Operator	16.65	
Terrazzo Base Machine Oper.	17.05	
PAINTERS:		
Building:		
Brush	14.85	2.20+c
Sandblasting	15.35	2.20+c
Spray	15.60	2.20+c
Roller, Taping	15.85	2.20+c
Residential:		
Brush	12.35	2.20+c
Sandblasting	12.85	2.20+c
Spray	13.10	2.20+c
Rollers, Taping	13.35	2.20+c

	Basic Hourly Rates	Fringe Benefits
PLASTERERS	17.51	2.01
PLUMBERS, PIPEFITTERS &		
STEAMFITTERS:		
Commercial Building	17.23	2.75
Residential up to and		
including 3 stories.	12.22	2.15
ROOFERS	16.00	3.00
SHEET METAL WORKERS:		
Commercial Building	17.12	2.49+d
Residential	10.91	2.46
SPRINKLER FITTERS	16.67	2.83
LABORERS:		
Unskilled	14.10	2.50
Semi-skilled	14.30	2.50
Skilled	14.45	2.50
Residential Laborer	70%	2.05
POWER EQUIPMENT OPERATORS:		
Group 1	16.95	1.83
Group 2	15.30	1.83
Group 3	13.20	1.83
TRUCK DRIVERS:		
Group 1	14.525	2.00+e
Group 2	14.925	2.00+e
Group 3	15.125	2.00+e
Group 4	15.375	2.00+e

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CLASSIFICATION DEFINITIONS

LABORERS

Unskilled - All Sewer Workers plus Depth Pay; Asphalt Plant Laborers; Bankmen on Floating Plant; Batch Dumpers; Carpenter Tenders; Cleaning Lumber; Cofferdam Workers plus depth pay; Deck Hand, Dredge Hand & Shore Laborer; Driving of Stakes; Stringlines for all machinery; Fencing Laborers; Firemen or Salamander Tenders; Fireproofing Fire Shop Laborers; Form Handlers; Gravel Box Men; Dumpmen & Spotters; Laborers w/de-watering systems; Landscapers; Laying Sod; Material Handlers; Pit Men; Plastic Installers; Planting of Trees; Removal of Trees; Rip-Rap Men; Scaffold Workers; Tool Cribmen; Track Laborers; Unloading Explosives; Unloading & Carrying Lath; Unloading & Carrying of Re-Bars; Wrecking, Dismantling Buildings; Wallmen & Housemovers; Wrecking Laborers

Semi-Skilled - Asphalt Workers with Machine; Asphalt Raker & Layers; Cement Handlers; Cement Silica, Fly Ash, Lime & Plasterers, Handlers (Bulk or Bag); Chain Saw; Chloride Handlers; Concrete Workers (Wet); Grade Checker; Handling of materials treated with oil, creosote, asphalt and/or any foreign material harmful to skin or clothing; Kettle Tar Men; on Concrete Paving, Placing, Cutting & Tying of Reinforcing; Signal Man on Crane; Tank Cleaners; Tunnel Tenders in Free Air

Skilled - Air Tamping Hammerman; Caisson Worker plus depth pay; Concrete Burning Machine Operator; Concrete Saw Operator; Coring Machine Operator; Curb Asphalt Machine Operator; Gunnite Nozzle Men; Jackhammer & Drill Operators; Laborers handling Masterplate or similar materials; Laborers Tending Masons with hot material or where foreign materials are used for wet concrete or handling of Building Materials; Multiple Concrete Duct - Leadman; Plasterer Tenders; Ready Mix Scaleman, Portable or Temporary Plant; Screenman on Asphalt Pavers; Steel Form Setters (Street & Highway); Vibrator Operators; Cutters, Burners & Torchmen.

POWER EQUIPMENT OPERATORS

GROUP 1 - Asphalt Plant Engineer; Asphalt Screed Man; Apsco Concrete Spreaders; Asphalt Pavers; Asphalt Rollers on Bituminous Concrete; Athey Loaders; Backfillers; Crane Type Backhoes; Cableways; Cherry Pickers; Clam Shell; C.M.I. & Similar Type Autograde Formless Paver, Autograde Placer & Finisher; Concrete Breakers; Concrete Plant Operators; Concrete Pumps; Cranes; Derricks; Derrick Boats; Draglines; Earth Auger Boring Machines; Elevating Graders; Engineers on Dredge; Gravel Processing Machines; Head Equipment Greasers; High Lift or Fork Lifts; Hoist w/two Drums or Two or more Loadlines; Locomotives;

POWER EQUIPMENT OPERATORS (CONT'D)

Mechanics; Motor Graders or Auto Patrols; Operators or Levelman on Dredges; Operators Power Boat; Operators Pug Mill (Asphalt Plants); Orange Peels; Overhead Cranes; Paving Mixers; Piledrivers; Pipe Wrapping & Painting Machines; Push Dozers, or Push Cats; Rock Crushers; Ross Carriers or Similar Machines; Scoops; Skimmer 2 cu. yds., cap. & under; Sheep Foot Roller (Self-propelled); Shovels; Skimmer Scoops; Test Hole Drilling Machines; Tower Cranes; Tower Machines; Tower Mixers; Track Type & Loaders; Track Type Fork Lifts or High Lifts; Track Jacks & Tampers; Tractors; Sideboom; Trenching Machines; Ditching Machine; Tunnel Luggers; Wheel Type End Loaders; Winch Cat; Scoops (All or Tournapull)

GROUP 2 - Asphalt Boosters & Heaters; Asphalt Distributors; Asphalt Plant Fireman; Building Elevator; Bull Floats or Flexplanes; Concrete Finishing Machines; Concrete Saw, Self-propelled; Concrete Spreader Machines; Gravel or Stone Spreaders, Power Operated; Hoist Automatic; Hoist w/1 Drum & 1 Load Line; Oiler on 2 Paving Mixers when used in Tandem Boom or Winch Truck; Post Hole Diggers, Mechanical; Road or Street Sweeper-Self-propelled; Scissors Hoist; Seaman Tiller; Straw Machine; Vibratory Compactor; Well Drill Machines

GROUP 3 - Air Compressor ; Air Compressors, Track or Self-Propelled; Bulk Cement Batching Plants; Conveyors ; Concrete Mixers (except plant, paver, tower); Firemen; Generators ; Greasers; Light Plants ; Mechanical Heaters ; Oilers; Power Form Graders; Power Sub-Graders; Pug Mills, when used for other than Asphalt Operation; Rollers (except Bituminous Concrete); Tractors w/o Power Attachments Regardless of size or type; Truck Crane Oiler & Driver 1 (man); Vibratory Hammer; Water Pumps ; Welding Machines

TRUCK DRIVERS

Group 1 - Drivers on 2 Axles hauling less than 9 tons; Air Compressor & Welding Machine incl. those pulled by separate units; Fork Lifts up to 6,000 lbs. cap.; Mechanic Tenders; Pick-ups when hauling materials, tools, or men to and from and on the job site; & Truck Driver Tenders

TRUCK DRIVERS (CONT'D)

Group 2 - 2 or 3 Axles hauling more than 9 tons, but hauling less than 16 tons; A-frame Winches; Fork Lifts over 6,000 lbs. cap.; 4-Axle Combination units; Hydrolifts or similar equipment when used for transportation purposes; & Winches

Group 3 - 2, 3, or 4 Axles hauling 16 tons or more; 5-Axles or more combination units; Mechanics & Working Foreman; & Water Pulls

Group 4 - Drivers on Oil Distributors; & Drivers on Semi-Lowboys when moving equipment

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 rate to vacation pay credit for employee who has worked in business more than 5 years and 6% of regular hourly rate for employee who has worked in business less than 5 years
b. 7 Paid Holidays: A through G
c. $25.00 per year
d. 3% of gross earnings to SASMI
e. $55.00 per week

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

[FR Doc. 85-24816 Filed 10-17-85; 8:45 am]

BILLING CODE 4510-27-C

federal register

Friday
October 18, 1985

Part IV

Department of Energy

Office of the Secretary

10 CFR Part 600

Financial Assistance Rules; Audit Requirements for State and Local Governments; Interim Final Rule With Request for Comments

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

Financial Assistance Rules; Audit Requirements for State and Local Governments

AGENCY: Department of Energy (DOE).

ACTION: Interim final rule with request for comments.

SUMMARY: The rule being issued today amends 10 CFR Part 600, Financial Assistance Rules, Subparts A, B, and C, and adds a new Subpart D to implement the Single Audit Act of 1984 (Pub. L. 98–502) (Act) and Office of Management and Budget (OMB) Circular A–128, Audits of State and Local Governments, issued pursuant to that Act. The intended effect of these amendments is to achieve uniform Government-wide implementation of these audit requirements. The rule also makes limited technical amendments within those sections of 10 CFR Part 600 that are affected by the new audit requirements.

DATES: Interim final rule effective October 18, 1985; comments must be received on or before November 18, 1985.

ADDRESSES: Comments should be sent to: Ellen Feinsilber, Chief, Business and Financial Policy Branch (MA–421.2), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Ellen Feinsilber, Business and Financial Policy Branch (MA–421.2), U.S. Department of Energy, (202) 252–8173

Paul Sherry, Office of the Assistant General Counsel Procurement and Financial Incentives (GC–43), U.S. Department of Energy, (202) 252–1526

SUPPLEMENTARY INFORMATION:

Table of Contents

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II. Discussion of Proposed Changes
III. Review Under Executive Order 12291
IV. Review Under the Paperwork Reduction Act
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VII. Public Comments
VIII. List of Subjects

I. Background

The Single Audit Act of 1984 (Pub. L. 98–502) builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures, and guidelines to implement the Act. On April 12, 1985, the Office of Management and Budget (OMB) issued OMB Circular A–128, Audits of State and Local Governments, pursuant to the Single Audit Act. The Circular was subsequently published in the **Federal Register** on May 6, 1985 (50 FR 19114). Consistent with the Department of Energy's (DOE's) comprehensive revision of 10 CFR Part 600 (47 FR 44076, October 5, 1982), which implements OMB Circulars A–102 and A–110, DOE is today adopting an approach to implementation of OMB Circular A–128 which DOE feels meets the combined objectives of communicating to the affected recipient community those requirements with which they must comply and of meeting OMB requirements for uniform agency implementation.

II. Discussion of Proposed Changes

A new § 600.2(d) is added to state the applicability of the provisions of OMB Circular A–128 to State and local governments and Indian tribes. The effective date is that contained in the Single Audit Act.

A new § 600.2(e) is added to specifically state DOE's intentions concerning financial assistance to foreign governments and other foreign entities. Inclusion of this paragraph would formalize the operational understanding of the applicability of this Part to foreign applicants/recipients.

Existing § 600.2(e) is redesignated as § 600.2(f). Section 600.2(f)(1) is revised to update the reference to OMB Circular A–122, and to add a reference to OMB Circular A–128.

Section 600.2(f)(2) is revised to direct inquiries for copies of OMB Circulars to OMB or the cognizant administering office rather than the current practice of the Business and Financial Policy Branch, a centralized DOE policy office, responding to requests for the circulars. DOE believes it is duplicative and costly to maintain central supplies of these documents when available from either of these two alternative sources, as appropriate.

Section 600.100(a) is amended to indicate the relationship between Supbart B of Part 600 and OMB Circular A–128.

Section 600.104(b) is amended to clarify DOE's right to conduct a preaward review and to specify DOE's options with respect to documented instances of unwillingness or inability to comply with applicable requirements.

Section 600.109(b)(8) is amended to include a statement clarifying recipient responsibilities for subrecipient audits.

Section 600.120 is rewritten almost in its entirety both to delete outdated references to and requirements of OMB Circular A–102, Attachment P, and to restate, without reference to A–102, Attachment P, the audit requirements for all other nonprofit recipients, i.e., those that would be covered by OMB Circular A–110. Although OMB Circular A–128, which is implemented in Subpart D, may have some impact on audit requirements for this latter group of recipients/subrecipients, the change to § 600.120(c) is necessitated only by the fact that cross references to the requirements for State and local governments contained in the existing § 600.120(c) are no longer appropriate.

Changes in § 600.120 (a), (b), and (e) include making specific reference to financial and compliance audits in paragraph (a), indicating, in paragraph (b), where audit requirements for State and local governments and Indian tribes are located in this Part, and modifying the existing audit requirements for "small entities" under § 600.120(e) to pertain only to qualifying non-profit organizations other than State or local governments or Indian tribes.

Section 600.123(e) is revised to clarify how the "single" audit (A–128) and the organization-wide audit (A–110) relate to the period of DOE support (project period) and to DOE's recovery rights.

Section 600.271(a)(1) is amended to specify the relationship between the requirements of OMB Circulars A–102, A–110 and A–128 for affected cooperative agreement recipients, and § 600.271(a)(2) is revised to clarify the applicability of these rules to recipients not otherwise covered by OMB Circulars A–102 or A–110.

A new Subpart D, implementing the provisions of OMB Circular A–128, is added both to comply with requirements of the Office of the Federal Register and with the OMB direction. The provisions of A–128 pertaining to recipient/subrecipient responsibilities are included essentially verbatim, although now designated as a DOE rule, except that throughout Subpart D, where appropriate, specific references to DOE or DOE organizational components, or to DOE regulations have been substituted for Circular A–128's generic language for purposes of clarity and appropriate regulatory effect. Those provisions of A–128 not specifically impacting recipients/subrecipients, e.g., paragraphs 21, 22, 23, and 24 of the

Circular, have not been included in these DOE rules.

Appendix A is revised to add the Single Audit Act of 1984 (Pub. L. 98–502) and OMB Circular A–128 to the listing of generally applicable requirements.

A new Appendix B, listing the DOE Office of Inspector General Regional Offices to which audit reports should be sent, is also added.

III. Review Under Executive Order 12291

In accordance with the requirements of Executive Order 12291 (February 27, 1981) this rulemaking has been reviewed by OMB.

DOE has concluded that the rule is not a "major rule" because its promulgation will not result in (1) an annual effect on the economy of $100 million or more, (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets.

IV. Review Under Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 94 Stat. 1164) which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities, i.e., small businesses, small organizations, and small governmental jurisdictions. This rule primarily affects governmental jurisdictions as the result of implementation of OMB Circular A–128. No other provisions of the rule create new requirements. With respect to the audit provisions, it is now explicitly recognized that audit costs may be charged to Federal assistance programs. Further the single audit is intended to avoid duplicative and unnecessary audits, and, in addition, affected recipients receiving less than $25,000 a year in Federal financial assistance are not subject to these requirements. Therefore, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities, and no regulatory flexibility analysis has been prepared.

V. Review Under the Paperwork Reduction Act

The information collection and recordkeeping requirements imposed by this rule are subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). A control number to be issued by OMB for information collections under Circular A–128 will apply to the information collection and recordkeeping requirements imposed by this rule.

VI. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and the DOE guidelines (10 CFR Part 1021) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

VII. Public Comments

Notice of proposed rulemaking and delay of effective date have been found to be unnecessary in this matter and are hereby waived pursuant to 42 U.S.C. 719 and 5 U.S.C. 553(b)(B) for the following reasons:

(1) The Single Audit Act of 1984 applies to recipient fiscal periods that begin on or after January 1, 1985. Delay in making these amendments effective would have no bearing on the effective date of the Act.

(2) Public comments on implementing the Act have been sought and considered by OMB in developing Circular A–128.

(3) The remaining changes involve limited technical amendments to sections affected by the new audit requirements.

However, interested persons are invited to submit data, views, or arguments with respect to the changes set forth in this notice. Comments should be submitted in writing to the address indicated in the "ADDRESS" section of this notice. All comments received will be available for public inspection in the DOE Public Reading Room, Rm. 1E–190, Forrestal Building, 1000 Independence Ave, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by November 18, 1985 will be fully considered and any such comments concerning the audit requirements of OMB Circular A–128 will be shared with other affected Federal departments and agencies.

The Department has concluded that this rule does not involve a substantial issue of fact or law and that the rule will not have a substantial impact on the nation's economy or a large number of individuals or businesses. The Department does not plan to hold a public hearing on this rule.

VIII. List of Subjects in 10 CFR Part 600

Audit, Cooperative agreements, Educational institutions, Grants, Indian tribes, Local governments, States.

For the reasons set out in the preamble, Part 600 of Title 10 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC, October 10, 1985.

Berton J. Roth,

Director, Procurement and Assistance Management Directorate.

10 CFR Part 600 is amended as set forth below:

1. The authority citation for 10 CFR Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308), unless otherwise noted.

2. The table of contents for Part 600 is revised to read as follows:

PART 600—FINANCIAL ASSISTANCE RULES

Subpart A—General

Sec.
600.1 Purpose and scope.
600.2 Applicability.
600.3 Definitions.
600.4 Deviations.
600.5 Selection of award instrument.
600.6 Discretionary awards.
600.7 Eligibility.
600.8 Small and disadvantaged business participation.
600.9 Solicitation.
600.10 Form and content of applications.
600.11 Intergovernmental review.
600.12 Generally applicable requirements.
600.13 Application deadlines.
600.14 Unsolicited applications.
600.15 Notice of Program Interest.
600.16 Reviewer affiliations.
600.17 Conflict of interest.
600.18 Authorized uses of information.
600.19 Application selection.
600.20 Legal authority and effect of an award.
600.21 Contents of award.
600.22 Recipient acknowledgment of award.
600.23 Notification to unsuccessful applicants.
600.24 Maximum DOE obligation.
600.25 Access to records.
600.26 Disputes and appeals.
600.27 Debarment and suspension.

Subpart B—Grants

600.100 Scope and applicability.
600.101 Definitions.
600.102 Grant applications.
600.103 Cost determinations.
600.104 Responsible applicant.

600.105 Special restrictive conditions of award.
600.106 Funding.
600.107 Cost sharing.
600.108 Calculation of award.
600.109 Financial management systems.
600.110 Cash depositories.
600.111 Bonding and insurance.
600.112 Payment.
600.113 Program income.
600.114 Budget and project revisions.
600.115 Performance reports.
600.116 Financial reports.
600.117 Property management.
600.118 Patents, data, and copyrights.
600.119 Procurement under grants and subgrants.
600.120 Audit requirements.
600.121 Noncompliance.
600.122 Suspension and termination.
600.123 Closeout.
600.124 Record retention requirements.

Subpart C—Cooperative Agreements

600.200 Scope of Subpart C.
600.211 Selection of the Cooperative Agreement as award instrument.
600.212 Alternative uses of Cooperative Agreements.
600.213 DOE criteria for cost participation.
600.232 Solicitation for Cooperative Agreement Proposals.
600.233 Program Opportunity Notice (PON).
600.234 Program Research and Development Announcement (PRDA).
600.270 Cooperative Agreement structure.
600.271 Administrative requirements for Cooperative Agreements.
600.281 Contents of a Cooperative Agreement.
600.283 Schedule.
600.290 General and special provisions.

Subpart D—Audits of State and Local Governments

600.300 Scope and applicability.
600.301 Definitions.
600.302 Policy.
600.303 Scope of audit.
600.304 Frequency of audit.
600.305 Internal control and compliance reviews.
600.306 Subrecipients.
600.307 Relation to other audit requirements.
600.308 Cognizant agency responsibilities.
600.309 Illegal acts or irregularities.
600.310 Audit reports.
600.311 Audit resolution.
600.312 Audit workpapers and reports.
600.313 Audit costs.
600.314 Sanctions.
600.315 Auditor selection.
600.316 Small and minority audit firms.
600.317 Reporting.

Appendix A to Part 600—Generally Applicable Requirements

Appendix B to Part 600—Audit Report Distributees

3. Section 600.2 is amended by adding new paragraphs (d) and (e), redesignating existing paragraph (e) as paragraph (f); revising paragraph (f)(1)(vi) to add a reference; adding a new paragraph (f)(1)(vii); and revising paragraph (f)(2) as follows:

§ 600.2 Applicability.

* * * * *

(d) The provisions of the Single Audit Act of 1984 (Pub. L. 98-502) and OMB Circular A-128, as implemented in Subpart D of this Part, apply to fiscal years of State governments, local governments, or Indian tribes that begin after December 31, 1984.

(e) Financial assistance to foreign governments shall be governed by this Part and the administrative requirements and cost principles applicable to State and local governments, to the extent appropriate. Foreign organizations shall likewise be covered by this Part and the administrative requirements and cost principles applicable to their respective recipient type, to the extent appropriate. Any deviation from the requirements of this Part and the applicable OMB circulars with respect to a foreign entity(ies) is not a deviation requiring approval in accordance with the procedures of § 600.4 of this Part.

(f) * * *

(1) * * *

(vi) OMB Circular A-122, Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Organizations (45 FR 46022, July 8, 1980 as amended by 49 FR 18276, April 27, 1984).

(vii) OMB Circular A-128, Audits of State and Local Governments (50 FR 19114, May 6, 1985).

(2) Copies of the OMB publications listed in paragraph (g)(1) may be obtained from the Office of Management and Budget, Office of Administration, Publications Unit, Washington, DC 20503 or from the cognizant administering office.

4. Section 600.100 is amended by revising paragraph (a) to read as follows:

§ 600.100 Scope and applicability.

(a) This subpart establishes requirements for the award and administration of grants and subgrants. This subpart implements OMB Circulars A-102, A-110, and the Federal cost principles. The audit requirements of OMB Circular A-128 are implemented in Subpart D of this Part.

* * * * *

5. Section 600.104 is amended by revising paragraph (b) to read as follows:

§ 600.104 Responsible applicant.

* * * * *

(b) Prior to making a new, continuation, or renewal award, DOE reserves the right to make a preaward review of the applicant's ability to manage and account for a DOE grant, if awarded, or to determine compliance (or intended compliance) with generally applicable requirements. If DOE determines on the basis of such a review or otherwise documents that the applicant is not in compliance or cannot or will not comply with such standards and requirements, DOE shall determine, prior to award, that the applicant is not responsible and may use special restrictive conditions or disapprove the application.

* * * * *

6. Section 600.109 is amended by revising paragraph (b)(8) to read as follows:

§ 600.109 Financial management systems.

* * * * *

(b) * * *

(8) A systematic method to assure timely and appropriate resolution and settlement of audit findings and recommendations pertaining to subrecipients.

* * * * *

7. Section 600.120 is amended by revising paragraphs (a), (b), and (c) and removing paragraph (e) as follows:

§ 600.120 Audit requirements.

(a) This section establishes requirements for the conduct, oversight, scope, and frequency of financial and compliance audits for recipients and subrecipients. Any financial and compliance audit of a recipient covered by paragraph (b) or (c) of this section, which is in addition to the audit required by those paragraphs, made by or on behalf of DOE shall rely, to the extent possible, on the independent audit performed pursuant to those paragraphs.

(b) *State governments, local governments, or Indian tribes.* A grantee that is a State government, a local government, or an Indian tribe, as defined therein, shall comply with the audit requirements of the Single Audit Act of 1984 and OMB Circular A-128, as implemented by Subpart D of this Part.

(c) *Nonprofit organizations.* (1) Except for public hospitals and public colleges and universities that are included in an audit conducted pursuant to Subpart D of this Part, all grantees and subgrantees that are institutions of higher education, hospitals or other nonprofit organizations shall comply with the requirements of OMB Circular A-110, Attachment F, Paragraph 2.h. and shall:

(i) Conduct, or provide for the conduct of, an independent financial and compliance audit usually annually but not less frequently than every two years, on an organization-wide basis using a representative sample of Federal awards;

(ii) Make such audits in accordance with the General Accounting Office (GAO) "Standards for Audit of Governmental Organizations, Programs Activities, and Functions;" the GAO "Guidelines for Financial and Compliance Audits of Federally Assisted Programs"; OMB-approved audit compliance supplements; and generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(iii) Submit the resulting audit report(s) to the cognizant audit agency, in the case of a grantee, or to the grantee, in the case of a subgrantee.

(2) Any grantee or subgrantee that is a small organization (as defined in § 600.101), which is not covered by the audit requirements of Subpart D and that receives DOE financial assistance only in the amount of $10,000 or less for a period of 18 months or less shall not be required to comply with paragraph (c)(1) of this section but may be audited in accordance with paragraph (d).

* * * * *

8. Section 600.123 is amended by revising paragraph (e) as follows:

§ 600.123 Closeout.

* * * * *

(e) *Audit.* If DOE closes out a grant without an audit or without benefit of an organizationwide or single audit covering the full period of DOE support, the grantee shall refund to DOE the amount of any costs subsequently disallowed under the closed out grant on the basis of any applicable audit report received subsequent to closeout.

* * * * *

9. Section 600.271 is amended by revising paragraphs (a)(1) and (a)(2) as follows:

§ 600.271 Administrative requirements for Cooperative Agreements.

(a) * * *

(1) For recipients of cooperative agreements, and subrecipients thereunder, covered by OMB Circular A-102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments, or OMB Circular A-110, Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations, the administrative requirements specified in those circulars, as implemented in Subparts A and C of this Part, will apply. In addition, State governments, local governments, and Indian tribes shall be subject to the audit requirements contained in Subpart D of this Part.

(2) Except as provided in § 600.2(f), for classes of participants not covered by OMB Circulars A-102 or A-110 (e.g., international organizations such as agencies of the United Nations, Government-owned contractor operated facilities, or research centers providing continued support for mission oriented large scale programs that are government owned, or controlled, or are designated as federally funded research and development centers, profit making organizations and individuals), §§ 600.283 and 600.290 will be followed in determining the provisions of the Cooperative Agreement.

* * * * *

10. A new Subpart D is added as follows:

Subpart D—Audits of State and Local Governments

§ 600.300 Scope and applicability.

This Subpart implements, for DOE and recipients, the Single Audit Act of 1984, Pub. L. 98-502 and OMB Circular A-128. It establishes audit requirements for State and local governments that receive financial assistance from the Department of Energy and defines responsibilities with respect to those requirements.

§ 600.301 Definitions.

For the purposes of this subpart, the following definitions from the Single Audit Act apply:

(a) "Cognizant agency" means the Federal agency assigned by the Office of Management and Budget to carry out the responsibilities described in § 600.308 of this subpart.

(b) "Federal financial assistance" means assistance provided by a Federal agency in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, or direct appropriations, but does not include direct Federal cash assistance to individuals. It includes awards received directly from Federal agencies, or indirectly through other units of State and local governments.

(c) "Federal agency" has the same meaning as the term 'agency' in section 551(1) of Title 5, United States Code.

(d) "Generally accepted accounting principles" has the meaning specified in the generally accepted government auditing standards.

(e) "Generally accepted government auditing standards" means the *Standards For Audit of Government Organizations, Programs, Activities, and Functions,* developed by the Comptroller General, dated February 27, 1981.

(f) "Independent auditor" means:

(1) A State or local government auditor who meets the independence standards specified in generally accepted government auditing standards; or

(2) A public accountant who meets such independence standards.

(g) "Internal controls" means the plan of organization and methods and procedures adopted by management to ensure that:

(1) Resource use in consistent with laws, regulations, and policies;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data are obtained, maintained, and fairly disclosed in reports.

(h) "Indian tribe" means any Indian tribe, band, nations, or other organized group or community, including any Alaskan Native village or regional or village corporations (as defined in, or established under, the Alaskan Native Claims Settlement Act) that is recognized by the United States as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(i) "Local government" means any unit of local government within a State, including a county, a borough, municipality, city, town, township, parish, local public authority, special district, school district, intrastate district, council of governments, and any other instrumentality of local government.

(j) "Major Federal Assistance Program," for State and local governments having Federal assjstance expenditures between $100,000 and $100,000,000, means any program for which Federal expenditures during the applicable year exceed the larger of $300,000, or 3 percent of such total expenditures.

Where total expenditures of Federal assistance exceed $100,000,000, the following criteria apply:

Total expenditures of Federal financial assistance for all programs		Major Federal assistance program means any program that exceeds
more than	but less than	
$100 million	$1 billion	$3 million.
$1 billion	$2 billion	$4 million.
$2 billion	$3 billion	$7 million.
$3 billion	$4 billion	$10 million.
$4 billion	$5 billion	$13 million.
$5 billion	$6 billion	$16 million.
$6 billion	$7 billion	$19 million.
Over $7 billion		$20 million.

(k) "Public accountants" means those individuals who meet the qualification standards included in generally accepted government auditing standards for personnel performing government audits.

(l) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, any instrumentality thereof, and any multi-State, regional, or interstate entity that has governmental functions and any Indian tribe.

(m) "Subrecipient" means any person or government department, agency, or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance.

§600.302 Policy.

The Single Audit Act requires the following:

(a) State or local governments that receive $100,000 or more a year in Federal financial assistance shall have an audit made in accordance with this subpart.

(b) State or local governments that receive between $25,000 and $100,000 a year shall have an audit made in accordance with this subpart or in accordance with Federal laws and regulations governing the programs they participate in.

(c) State or local governments that receive less than $25,000 a year shall be exempt from compliance with the Act and other Federal audit requirements. These State and local governments shall be governed by audit requirements prescribed by State or local law or regulation.

(d) Nothing in this paragraph exempts State and local governments from maintaining records of Federal financial assistance or from providing access to such records to Federal agencies, as provided for in Federal law and in §§ 600.25, 600.124, and 600.271.

§ 600.303 Scope of audit.

The Single Audit Act provides that:

(a) The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits.

(b) The audit shall cover the entire operations of a State or local government or, at the option of that government, it may cover departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance during the year. However, if a State or local government receives $25,000 or more in General Revenue Sharing Funds in a fiscal year, it shall have an audit of its entire operations. A series of audits of individual departments, agencies, and establishments for the same fiscal year may be considered a single audit.

(c) Public hospitals and public colleges and universities may be excluded from State and local audits and the requirements of this subpart. However, if such entities are excluded, audits of these entities shall be made in accordance with statutory requirements and the provisions of §§ 600.120(c) and 600.271.

(d) The auditor shall determine whether:

(1) The financial statements of the government, department, agency or establishment present fairly its financial position and the results of its financial operations in accordance with generally accepted accounting principles;

(2) The organization has internal accounting and other control systems to provide reasonable assurance that it is managing Federal financial assistance programs in compliance with applicable laws and regulations; and

(3) The organization has complied with laws and regulations that may have material effect on its financial statements and on each major Federal assistance program.

§ 600.304 Frequency of audit.

Audits shall be made annually unless the State or local government has, by January 1, 1987, a constitutional or statutory requirement for less frequent audits. For those governments, the cognizant agency shall permit biennial audits, covering both years, if the government so requests. It shall also honor requests for biennial audits by governments that have an administrative policy calling for audits less frequent than annual, but only for fiscal years beginning before January 1, 1987.

§ 600.305 Internal control and compliance reviews.

The Single Audit Act requires that the independent auditor determine and report on whether the organization has internal control systems to provide reasonable assurance that it is managing Federal assistance programs in compliance with applicable laws and regulations.

(a) *Internal control review.* In order to provide this assurance the auditor must make a study and evaluation of internal control systems used in administering Federal assistance programs. The study and evaluation must be made whether or not the auditor intends to place reliance on such systems. As part of this review, the auditor shall:

(1) Test whether these internal control systems are functioning in accordance with prescribed procedures.

(2) Examine the recipient's system for monitoring subrecipients and obtaining and acting on subrecipient audit reports.

(b) *Compliance review.* The law also requires the auditor to determine whether the organization has complied with laws and regulations that may have a material effect on each major Federal assistance program.

(1) In order to determine which major programs are to be tested for compliance, State and local governments shall identify in their accounts all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies and through other State and local governments.

(2) The review must include the selection and testing of a representative number of charges from each major Federal assistance program. The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program and the individual awards; the newness of the program or changes in its conditions; prior experience with the program, particularly as revealed in audits and other evaluations (e.g., inspections, program reviews); the extent to which the program is carried out through subrecipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(i) In making the test of transactions, the auditor shall determine whether:

(A) The amounts reported as expenditures were for allowable services, and

(B) The records show that those who received services or benefits were eligible to receive them.

(ii) In addition to transaction testing, the auditor shall determine whether:

(A) Matching requirements, levels of effort and earmarking limitations were met,

(B) Federal financial reports and claims for advances and reimbursements contain information that is supported by the books and records from which the basic financial statements have been prepared, and

(c) Amounts claimed or used for matching were determined in accordance with OMB Circular A-87, "Cost principles for State and local governments," and Attachment F of Circular A-102, "Uniform requirements for grants to State and local governments," as implemented by this Part.

(iii) The principal compliance requirements of the largest Federal aid programs may be ascertained by referring to the *Compliance Supplement for Single Audits of State and Local Governments*, issued by OMB and available from the Government Printing Office. For those programs not covered in the Compliance Supplement, the auditor may ascertain compliance requirements by researching the statutes, regulations, and agreements governing individual programs.

(3) Transactions related to other Federal assistance programs that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

§ 600.306 Subrecipients.

State or local governments that receive Federal financial assistance and provide $25,000 or more of it in a fiscal year to a subrecipient shall:

(a) Determine whether State or local subrecipients have met the audit requirements of this subpart and whether those subrecipients covered by the audit requirements of § 600.120(c) have met those requirements;

(b) Determine whether the subrecipient(s) spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with this subpart, § 600.120(c), or through other means (e.g., program reviews) if the subrecipient has not yet had such an audit;

(c) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instances of noncompliance with Federal laws and regulations;

(d) Consider whether subrecipient audits necessitate adjustment of the recipients own records; and

(e) Require each subrecipient to permit independent auditors to have access to the records and financial statements as necessary to comply with this Part.

§ 600.307 Relation to other audit requirements.

(a) The Single Audit Act provides that an audit made in accordance with this subpart shall be in lieu of any financial or financial compliance audit required under individual Federal assistance programs. To the extent that a single audit provides DOE with information and assurances necessary to carry out its overall responsibilities, DOE shall rely upon and use such information. However, DOE shall make or have made any additional audits which are necessary to carry out its responsibilities under Federal law and regulation. Any additional Federal audit effort shall be planned and carried out in such a way as to avoid duplication. The DOE Contracting Officer will be the DOE official responsible for determining the need for any additional Federal financial and compliance audit after review of the evaluation of the audit report by the cognizant Federal audit organization and review of the audit report.

(b) The provisions of this subpart do not limit the authority of Federal agencies to make, or contract for audits and evaluations of Federal financial assistance programs, nor do they limit the authority of any Federal agency Inspector General or other Federal audit official.

(c) The provisions of this subpart do not authorize any State or local government or subrecipient thereof to constrain Federal agencies, in any manner, from carrying out additional audits.

(d) If DOE makes or contracts for audits in addition to the audits made by recipients pursuant to this subpart, DOE shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits include economy and efficiency audits, program results audits, and program evaluations.

§ 600.308 Cognizant agency responsibilities.

(a) The Single Audit Act provides for cognizant Federal agencies to oversee the implementation of this subpart by recipients.

(b) The Office of Management and Budget will assign cognizant agencies for States and their subdivisions and larger local governments and their subdivisions. (Cognizance assignments/responsibilities for other types of recipients are not governed by the Single Audit Act or by this subpart.) Other Federal agencies may participate with an assigned cognizant agency, in order to fulfill the cognizance responsibilities. Smaller governments not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them the most funds whether directly or indirectly.

(c) When DOE is the cognizant agency, the DOE Office of Inspector General (DOE-OIG) shall:

(1) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this subpart.

(2) Provide technical advice and liaison to State and local governments and independent auditors.

(3) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations.

(4) Promtly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. DOE-OIG will also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction.

(5) Advise the recipient of audits that have been found not to have met the requirements set forth in this subpart. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, DOE-OIG shall notify the recipient and Federal awarding agencies of the facts and make recommendations for followup action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action.

(6) Coordinate, to the extent practicable, audits made by or for Federal agencies that are in addition to the audits made pursuant to this subpart so that the additional audits build upon such audits.

(7) Oversee the resolution of audit findings that affect the programs of more than one agency.

§ 600.309 Illegal acts or irregularities.

If the auditor becomes aware of illegal acts or other irregularities, prompt notice shall be given to recipient management officials above the level of involvement. (See also paragraph 600.310(b)(3) below for the auditor's reporting responsibilities). The recipient, in turn, shall promptly notify the cognizant agency of the illegal acts or irregularities and of proposed and actual actions, if any. Illegal acts and irregularities include such matters as conflicts of interest, falsification of records or reports, and misappropriations of funds or other assets.

§ 600.310 Audit reports.

(a) Audit reports must be prepared at the completion of the audit. Reports serve many needs of State and local governments as well as meeting the requirements of the Single Audit Act.

(b) The audit report shall state that the audit was made in accordance with the provisions of this subpart. The report shall be made up of at least:

(1) The auditor's report on financial statements and on a schedule of Federal assistance; the financial statements; and a schedule of Federal assistance, showing the total expenditures for each Federal assistance program as identified in the *Catalog of Federal Domestic Assistance*. Federal programs or grants that have not been assigned a catalog number shall be identified under the caption "other Federal assistance."

(2) The auditor's report on the study and evaluation of internal control systems must identify the organization's significant internal accounting controls, and those controls designed to provide reasonable assurance that Federal programs are being managed in compliance with laws and regulations. It must also identify the controls that were evaluated, the controls that were not evaluated, and the material weaknesses identified as a result of the evaluation.

(3) The auditor's report on compliance containing:

(i) A statement of positive assurance with respect to those items tested for compliance, including compliance with law and regulations pertaining to financial reports and claims for advances and reimbursements;

(ii) Negative assurance on those items not tested;

(iii) A summary of all instances of noncompliance; and

(iv) An identification of total amounts questioned, if any, for each Federal assistance award, as a result of noncompliance.

(c) The three parts of the audit report may be bound into a single report, or presented at the same time as separate documents.

(d) All fraud, abuse, or illegal acts or indications of such acts, including all questioned costs found as the result of these acts, that auditors become aware of, should normally be covered in a separate written report submitted in accordance with paragraph 600.310(g).

(e) In addition to the audit report, the recipient shall provide comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

(f) The reports shall be made available by the State or local government for public inspection within 30 days after the completion of the audit.

(g) In accordance with generally accepted government audit standards, reports shall be submitted by the auditor to the organization audited and to those requiring or arranging for the audit. In addition, the recipient shall submit copies of the reports to each Federal department or agency that provided Federal assistance funds to the recipient. Copies of audit reports to be submitted to DOE shall be submitted to the appropriate DOE-OIG as indicated in Appendix B of this Part. Subrecipients shall submit copies to recipients that provided them Federal assistance funds. The reports shall be sent within 30 days after the completion of the audit, but no later than one year after the end of the audit period unless a longer period is agreed to with the cognizant agency.

(h) Recipients of more than $100,000 in Federal funds shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by the Office of Management and Budget. The clearinghouse will keep completed audits on file and follow up with State and local governments that have not submitted required audit reports.

(i) Recipients shall keep audit reports on file for three years from their issuance.

§ 600.311 Audit resolution.

(a) As provided in § 600.308, the cognizant agency shall be responsible for monitoring the resolution of audit findings pertaining to DOE recipients that affect the programs of DOE and one or other more Federal agency(ies). If DOE is cognizant, a cognizant DOE Contracting Officer, as determined by the dollar value of awards with the recipient, will assume this responsibility for the Department. Resolution of findings that relate to the programs of DOE only will be the responsibility of the recipient and DOE. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

(b) Resolution shall be made within six months after receipt of the report by the Federal departments and agencies. Corrective action should proceed as rapidly as possible.

§ 600.312 Audit workpapers and reports.

Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

§ 600.313 Audit costs.

(a) The cost of audits made in accordance with the provisions of this subpart are allowable charges to DOE and other Federal assistance programs. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of Circular A-87, "Cost principles for State and local governments," as appropriate.

(b) Generally, the percentage of costs charged to Federal assistance programs for a single audit shall not exceed the percentage that Federal funds expended represent of total funds expended by the recipient during the fiscal year. The percentage may be exceeded, however, if appropriate documentation demonstrates higher actual cost.

§ 600.314 Sanctions.

(a) The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the Act that are not made in accordance with this subpart.

(b) In cases of continued inability or unwillingness to have a proper audit, DOE shall consider appropriate sanctions, including those specified in § 600.121 of this Part and the following:

(1) Withholding a percentage of assistance payments until the audit is completed satisfactorily,

(2) Withholding or disallowing overhead costs, and

(3) Suspending the Federal assistance agreement until the audit is made.

§ 600.315 Auditor selection.

In arranging for audit services State and local governments shall follow the procurement standards prescribed by Attachment O of Circular A-102, "Uniform requirements for grants to State and local governments," as implemented by § 600.119 of this Part. The standards provide that while recipients are encouraged to enter into intergovernmental agreements for audit and other services, analysis should be made to determine whether it would be more economical to purchase the services from private firms. In instances where use of such intergovernmental agreements are required by State statutes (e.g., audit services) these statutes will take precedence.

§ 600.316 Small and minority audit firms.

Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this subpart. Recipients of Federal assistance shall take the following steps to further this goal:

(a) Assure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable.

(b) Make information on forthcoming opportunities available and arrange timeframes for the audit so as to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

(c) Consider in the contract process whether firms competing for large audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals.

(d) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs and, in such cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities.

(e) Encourage contracting with consortiums of small audit firms as described in paragraph (a) of this section when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals.

(f) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

§ 600.317 Reporting.

The Office of the Inspector General, DOE, will report to the Director of OMB on or before March 1, 1987, and annually thereafter on the effectiveness of State and local governments in carrying out the provisions of this subpart. The report will identify each State or local government or Indian tribe that, in the opinion of the agency, is failing to comply with this subpart.

11. Appendix A to Part 600 is amended by adding the following entries:

Appendix A to Part 600—Generally Applicable Requirements

* * * * *

Administration and Fiscal Policy Requirements

* * * * *

Single Audit Act of 1984, Pub. L. 98–502.

OMB Circular A–128, Audits of State and Local Governments.

12. An Appendix B to Part 600 is added as follows:

Appendix B to Part 600—Audit Report Distributees

Distributee: Manager, Eastern Region, Office of Inspector General, U.S. Department of Energy, P.O. Box 1328, Oak Ridge, Tennessee 37831–1328.

For recipients in: Alabama, Arkansas, Connecticut, Delaware, District of Columbia, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Vermont, Virgin Islands, Virginia, West Virginia, Wisconsin.

Distributee: Manager, Western Region, Office of Inspector General, U.S. Department of Energy, P.O. Box 5400, Albuquerque, New Mexico 87115.

For recipients in: Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming.

[FR Doc. 85–24615 Filed 10–17–85; 8:45 am]
BILLING CODE 6450–01–M

federal register

Friday
October 18, 1985

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 135

Air Carriers Certification and Operations; Fuel Requirements for Flight Under Instrument Flight Rules (IFR); Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. 24803; Notice No. 85-20]

Air Carriers Certification and Operations; Fuel Requirements for Flight Under Instrument Flight Rules (IFR)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to clarify the reserve fuel requirements for certain aircraft operations for compensation or hire conducted under instrument flight rules. This action is necessary to ensure an adequate level of safety to the public when traveling on aircraft operated by commuter air carriers, air taxi operators, and certain commercial operators. The proposed requirement would ensure that each aircraft has adequate reserve fuel on board to operate under IFR, regardless of existing or forecast meteorological conditions.

DATE: Comments must be received on or before December 2, 1985.

ADDRESS: Comments on the proposal are to be marked "Docket No. 24803" and mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24803, 800 Independence Avenue, SW., Washington, DC 20591; or delivered in duplicate to: Room, 916, 800 Independence Avenue, SW., Washington, DC. Comments may be inspected at Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Larry Bedore, Project Development Branch, (AFO-240) Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 426-8096.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impact of this proposal. The comment should carry the regulatory docket or notice number and be submitted in duplicate to the address above. All comments received as well as a report summarizing any substantive public contact with Federal Aviation Administration (FAA) personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for comments.

Before taking any final action on the proposal, the Administrator will consider the comments made on or before the closing date, and the proposal maybe changed in light of the comments received.

The FAA will acknowledge receipt of a comment if the commenter submits a self-addressed, stamped postcard with the comment and on the postcard the following statement is made: Comments to Docket No. 24803. When the comment is received by the FAA, the postcard will be dated, time stamped, and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Requests should be identified by the docket number of this proposed rule. Persons interested in being placed on a mailing list for future notices of proposed rulemaking should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Section 601(b) of the Federal Aviation Act of 1958 (the Act), as amended, states that, in prescribing regulations, the FAA shall give full consideration to the duty resting upon air carriers to perform their services with the highest possible degree of safety in the public interest and to any differences between air transportation and other air commerce. In revising Part 135 of the Federal Aviation Regulations (FAR) (43 FR 46742, October 10, 1978), the FAA recognized this responsibility and associated factors contained in the Act. A major goal of the revision was to provide the passenger traveling on an on-demand air taxi or a commuter air carrier flight with a level of safety comparable to that provided by air carriers conducting operations under Part 121 of the FAR.

In Notice of Proposed Rulemaking No. 77-17 (42 FR 43490; August 29, 1977), proposed § 135.183, IFR: Alternate Airport Requirements, was included in proposed Subpart D, VFR/IFR Operating Limitations and Weather Requirements. The IRF alternate airport requirements were revised to require that a specified amount of fuel be carried during IFR operations and to allow the use of a combination of weather reports and forecasts to provide great latitude in the selection of an alternate airport for IFR operations. However, in proposing § 135.183 and in adopting the rule renumbered as § 135.223, the words "in IFR [Instrument Flight Rule] conditions" were inadvertently used in lieu of the words "under IFR." This has resulted in varied and conflicting interpretations by certain Part 135 operators, their flight crewmembers, and FAA field offices. A clarification is necessary to ensure that the safety of persons traveling on aircraft operated under Part 135 equates, with respect to reserve fuel requirements, to that provided on Part 121 air carrier aircraft operated under IFR.

Discussion of Proposal

This proposal would clarify the Part 135 reserve fuel requirements for aircraft operated under IFR. The present rule as written is ambiguous, subject to varying interpretation, and cumbersome to enforce.

Current § 135.223 specifies the alternate airport and reserve fuel requirements for the operation of an aircraft *in IFR conditions*. On the other hand, § 135.209 specifies the reserve fuel requirements for operations *under visual flight rules (VFR)*. The operation of an aircraft under IFR, in VFR conditions, poses operational safety, enforcement, and legal problems for the FAA.

For example, in October 1982, a Part 135 commuter airplane, operating under IFR, in VFR conditions, was forced to make an unplanned en route stop for fuel when the pilot realized that he did not have sufficient fuel on board to reach the destination airport. Because the current Part 135 rules do not specify reserve fuel requirements for flight *under IFR*, the pilot was cited only for careless operation under § 91.9. A straightforward citation for failing to meet the § 135.223 fuel reserve requirements for flight under IFR would have simplified the enforcement process. More importantly, a rule which specifies reserve fuel requirements for flights under IFR, regardless of forecast or existing weather conditions, would eliminate any confusion regarding current § 135.223 and would provide the level of public safety required in air transportation.

Economic Impact

The proposed amendment is not expected to cause an adverse economic impact on the regulated parties because it is essentially clarifying in nature. The proposal, if adopted, would provide a higher level of safety to persons traveling on an aircraft operated under IFR by a Part 135 on-demand air taxi or a commuter air carrier.

As previously pointed out, in adopting § 135.223 in the revised Part 135, the words "in IFR conditions" were inadvertently used in lieu of the words "under IFR." Therefore, there should be a negligible economic impact on the Part 135 operators. Accordingly, an economic analysis is not required to correct this administrative error and to clarify intent with respect to public safety during part 135 operations.

Trade Impact Statement

The FAA finds that the proposed regulation will have no impact on international trade and invites public comment on this finding.

Regulatory Flexibility Determination

The FAA finds that the proposed regulation will have no significant economic impact on small entities. Accordingly, the FAA finds that an initial regulatory flexbility analysis is not required by the Regulatory Flexibility Act.

Conclusion

Because the proposed amendment is clarifying in nature, the FAA has determined that this document involves a proposed regulation which: (1) Is not a major rule under Executive Order 12291; and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). I certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 14 CFR Part 135

Air carriers, Airplanes, Aviation safety, Air Transportation, Air taxi, Aircraft, Helicopters, Safety, Transportation.

The Proposed Rule

Accordingly, The Federal Aviation Administration proposes to amend § 135.223 of the Federal Aviation Regulations (14 CFR 135.223) as follows:

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

1. The authority citation of Part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1421–1430, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983); and 14 CFR 11.45).

2. By amending § 135.223 by revising paragraph (a) introductory text to read as follows:

§135.223 IFR: Alternate airport requirements.

(a) Except as provided in paragraph (b) of this section, on person may operate an aircraft under IFR unless it carries enough fuel (considering weather reports or forecasts or any combination of them) to—

* * * * *

Issued in Washington, DC, on October 10, 1985.

William T. Brennan,

Acting Director of Flight Standards.

[FR Doc. 85-24827 Filed 10-17-85; 8:45 am]

BILLING CODE 4910-13-M

federal register

Friday
October 18, 1985

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 21

Designation of Applicable Regulations for the Type Certification and Airworthiness Certification of Special Classes of Aircraft; Proposed Rule

DEPARTMENT OF TRANSPORTATION

14 CFR Part 21

[Docket No. 24804; Notice No. 85-21]

Designation of Applicable Regulations for the Type Certification and Airworthiness Certification of Special Classes of Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend Part 21 of the Federal Aviation Regulations (FAR) to include certification procedures which will provide a means for the Administrator to designate applicable airworthiness requirements for the type certification of special classes of aircraft. Special classes of aircraft include gliders (including self-launching gliders), airships, or other kinds of aircraft that would be eligible for a standard airworthiness certificate but for which no airworthiness standards have as yet been established as a separate part of Subchapter C of the FAR. An example of such requirements are those designated by Advisory Circular (AC) 21.23-1 for the type certification of fixed wing gliders under § 21.23. The proposed amendment would broaden the concept presently applied to gliders to include airships and future non-conventional aircraft as the need may arise.

DATE: Comments must be received on or before December 17, 1985.

ADDRESS: Comments on the proposal may be delivered or sent in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 24804, Room 916, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be inspected in the Rules Docket on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: James Zahringer, Policy and Procedures Branch (AWS-110), Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 426-8374.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on any environmental, energy, or economic impact of this proposal. The comment should identify the regulatory docket or notice number and be submitted in duplicate to the address cited under "ADDRESS". All public comments received and a report summarizing any substantive public contact with FAA personnel on this rulemaking action will be filed in the docket. The docket is available for public inspection both before and after the closing date for making comments.

Before taking any final action on the proposal, the Administrator will consider any comment made on or before the closing date for comments. The proposal may be changed in light of comments received.

The FAA will acknowledge the receipt of a comment if the commenter also submits a self-addressed, stamped postcard having the following statement: "Comments to Docket No. 24804." When the comment is received, the postcard will be dated, time stamped, and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 426-8058. Requests should be identified by the docket number of this proposed rule. Persons interested in being placed on a mailing list for future proposed rules should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Discussion of the Proposal

This notice proposes to amend portions of Subparts B and H of Part 21 of the Federal Aviation Regulations (FAR) to provide a procedural basis upon which airworthiness requirements may be designated as necessary for the type certification of special classes of aircraft. Special classes of aircraft are those kinds of aircraft that would then be eligible for a standard airworthiness certificate, but for which no airworthiness standards have as yet been established as a separate Part in Subchapter C of the FAR. Consequently, the aircraft lack a regulatory basis for type certification. Aircraft for which airworthiness standards have been isued as a separate Part include: normal, utility, and acrobatic category airplanes, Part 23; transport category airplanes, Part 25; normal and transport category rotorcraft, Parts 27 and 29; and manned free balloons, Part 31. These Parts would be used by the Administrator, to the maximum extent practicable, and as considered appropriate, to designate the applicable airworthiness requirements for the type certification of special classes of aircraft, including the engines and propellers installed thereon.

In addition to not having airworthiness standards for the type certification of special classes of aircraft, the procedural rules in Part 21 do not address their type certification. Current § 21.23, however, contains procedural rules for the type certification of gliders and sailplanes. This proposal would delete § 21.23, but preserve its provisions in proposed revisions to §§ 21.17(b) and 21.21 by broadening these provisions to include other special classes of aircraft for which type certification is requested. There are currently numerous commercial development projects related to special classes of aircraft for which application may be made for FAA type certification.

The proposal would provide a means to designate applicable airworthiness requirements for the type certification of special classes of aircraft by selecting appropriate provisions of the airworthiness standards currently in the FAR which are applicable to conventional aircraft categories. In the event that the standards in the FAR are either inadequate or otherwise inappropriate as a certification basis due to the unique, novel, and unusual design features for a special class of aircraft, § 21.16 permits the Administrator to issue special conditions found necessary to provide a level of safety equivalent to the standards embraced by the FAR. In addition to the designated FAR Parts and special conditions, other airworthiness criteria may be established to certificate special classes of aircraft if the Administrator finds that such criteria provide an equivalent level of safety to the FAR Parts cited in the proposed amendment. Such airworthiness criteria may be contained in an advisory circular issued for a special class of aircraft. However, criteria in addition to the advisory circular criteria or in lieu of it, may also be found acceptable to the Administrator for a particular type of special class of aircraft design so long as the Administrator determines that they provide a level of safety equivalent to the FAR.

Currently § 21.23 establishes type certification procedures for gliders, both powered and unpowered. In this regard, the FAA issued AC 21.23-1 which provides several acceptable means of compliance for the type certification of gliders. The concept of § 21.23 would be preserved in the proposed revision to § 21.17(b) and AC 21.23–1 would be renumbered as AC 21.17(b)–1 without substantive change in its text.

At this time, the FAA has five applications for the type certification of airships and no airworthiness criteria appropriate for their certification. Pursuant to § 21.17(a)(1), the applicable standards for existing applications for type certification are those in effect on the date of application. Since no appropriate regulations existed at the time of the type certificate applications, the FAA must assume that applicants will consent to comply with airship standards of later effectivity, or they may reapply for a type certificate when the standards become effective. This proposal would establish a basis upon which new airworthiness criteria may be designated and adopted as necessary for the type certification of airships and other special classes of aircraft. The FAA has developed proposed airship airworthiness criteria which are contained in proposed AC 21.17(b)–2. Persons interested in obtaining a copy of this AC should contact the person named in this notice under the heading "**FOR FURTHER INFORMATION CONTACT.**"

The term "manned free balloons" was inadvertently excluded in past amendments to Part 21 with respect to the titles of §§ 21.21 and 21.183 and the first paragraph of § 21.175. Accordingly, this notice proposes to amend these titles and § 21.175 to include the term "manned free ballons." In addition, this notice proposes to add the term "special classes of aircraft" to the title and lead-in paragraph of § 21.21, to § 21.175(a), and to the title of § 21.183 to show that such aircraft are eligible for a standard airworthiness certificate.

Economic Analysis

The proposed rule is presently necessary because the FAA now has five applications for the type certification of airships which it cannot process since the FAR does not presently contain procedures or airworthiness criteria for the type certification of airships.

The assumptions used to support the estimates in determining the economic impact of the proposed changes to §§ 21.17, 21.21, 21.175, and 21.183 have been developed by the FAA. These estimates may change in light of comments received on this proposal.

The FAA has determined that the proposed amendments to §§ 21.175 and 21.183 are editorial and clarifying only and have no economic impact. An early anticipated benefit of the proposed changes to §§ 21.17 and 21.21 is the potential economic value of manufacturing and operating safe airships in the U.S. (wages, interest, rent, and profits) while maintaining an acceptable level of public safety. Quantification of these benefits is not possible because of the highly speculative nature of potential airship markets and the undetermined time that may elapse before a type certificate is actually issued. Nonetheless, to the extent that these proposals, if adopted, will facilitate and shorten U.S. type certification of special class aircraft designs, they will also encourage and reinforce commercial development of innovative and utilitarian aircraft. Manufacturers will incur administrative costs because they will be required to submit type design drawings, test reports, and computations necessary to show proof of compliance with the proposed revision to Part 21. The FAA estimates that this effort will involve a maximum total of $104,000 per certification. The undetermined future economic benefit realized by the manufacture, sale, and operation of airships will exceed the one-time cost of obtaining a type certificate.

The FAA finds that these costs are consistent with the costs that any future applicant would incur in the process of seeking to obtain a type certificate for a special class aircraft for which no airworthiness criteria have been established in the FAR.

Regulatory Flexibility Determination

The FAA has determined that, under the criteria of the Regulatory Flexibility Act (RFA) of 1980, the amendments of Part 21 proposed in this NPRM, at promulgation, will not have a significant economic impact on a substantial number of small entities. The RFA requires agencies to specifically review rules which may have a "significant economic impact on a substantial number of small entities." The FAA has adopted criteria and guidelines (U.S. Department of Transportation, FAA Order 2100.14) for rulemaking officials to apply when determining if a proposed or existing rule has a significant economic impact on a substantial number of small entities and guidance for the product of regulatory flexibility analyses and reviews. The FAA small entity size standards criteria define a small aircraft manufacturer as an independently owned and managed firm having fewer than 75 employees. Under the FAA size standard criteria, only one of the manufacturers currently applying for an airship type certificate has fewer than 75 employees. However, "substantial" number of entities is defined as more than ⅓ subject to the rule, but no less than eleven. Accordingly, the proposed amendment to Part 21 will not impact a substantial number of small entities.

The proposed adoption of a procedural rule to permit the type certification of special classes of aircraft is not perceived to inhibit small manufacturers from entry into these markets.

Trade Impact Statement

The proposal will most immediately affect manufacturers of airships. Adoption of the proposal will enable domestic and foreign applicants to apply for and obtain certification of special classes of aircraft. The proposal, if adopted, would have little or no impact on trade opportunities because newly manufactured airships for the U.S. market, whether made by U.S. or foreign manufacturers, would have to comply with the rule or other criteria providing an equivalent level of safety.

Conclusion: For the reasons stated under the heading "Economic Analysis" the FAA has determined that this document involves a proposed regulation which: (1) Is not a major rule under Executive Order 12291; and (2) is not a significant rule under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Also, for the reasons stated under the headings "Trade Impact Statement and Regulatory Flexibility Determination," I certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. The total projected impact of the proposed amendment may be found in a copy of a regulatory evaluation contained in the public docket.

List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

Accordingly, the Federal Aviation Administration proposes to amend Part 21 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 21 is revised to read as follows:

Authority: Secs. 311, 313(a), 314, 601, 603, 604, 607, 608, 609, 610, 611, 1102 Federal Aviation Act of 1958, as amended (49 U.S.C. 1352, 1354(a), 1355, 1421, 1423, 1424, 1427, 1428, 1429, 1430, 1431 and 1502) (49 U.S.C.

106(g)), (Revised, Pub. L. 97-449, January 21, 1983); and 14 CFR 11.45.

* * * * *

§ 21.17 [Amended]

2. Section 21.17 is amended by redesignating §§ 21.17(b), (c), and (d), as § 21.17(c), (d), and (e), respectively, and by adding a new § 21.17(b) to read as follows:

* * * * *

(b) For special classes of aircraft, including the engines and propellers installed thereon (e.g., gliders, airships, and other nonconventional aircraft), for which airworthiness standards have not been issued under this subchapter, the applicable requirements will be those airworthiness requirements contained in Parts 23, 25, 27, 29, 31, 33, and 35, and any special conditions, found by the Administrator to be appropriate for the aircraft and applicable to a specific type design, or such other airworthiness criteria as the Administrator may find provide an equivalent level of safety to those parts.

* * * * *

3. Section 21.21 is amended by revising the title and the introductory text to read as follows:

§21.21 Issue of type certificate: normal, utility, acrobatic, and transport category aircraft; manned free ballons; special classes of aircraft; aircraft engines; propellers.

An applicant is entitled to a type certificate for an aircraft in the normal, utility, acrobatic, or transport category, or for a manned free ballon, special class of aircraft, or an aircraft engine or propeller, if—

* * * * *

§ 21.23 [Reserved]

4. By removing and reserving §21.23.

5. By revising §21.175(a) to read as follows:

§21.175 Airworthiness certificates: classification.

(a) Standard airworthiness certificates are airworthiness certificates issued for aircraft type certificated in the normal, utility, acrobatic, or transport category, and for manned free balloons, and for aircraft designated by the Administrator as a special class of aircraft.

* * * * *

6. Section 21.183 is amended by revising the title to read as follows:

§21.183 Issue of standard airworthiness certificates for normal, utility, acrobatic and transport category aircraft; manned free balloons; and special classes of aircraft.

* * * * *

Issued in Washington, D.C., on October 10, 1985.

M.C. Beard,

Director of Airworthiness.

[FR Doc. 85-24826 Filed 10-17-85; 8:45 am]

BILLING CODE 4910-13-M

federal register

Friday
October 18, 1985

Part VII

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 154

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Proposed Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 154

[Docket No. RM85-1-000 (Part D)]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued: October 9, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed rule; Notice Requesting Supplemental Comments.

SUMMARY: Based on comments it received in response to a notice of proposed rulemaking in this docket, the Commission is proposing to revise the block billing procedure it originally proposed. In this notice, the Commission discusses the comments it received and is requesting supplemental comments on its revised proposal.

In the original notice, Part D proposed:

• A three-part gas rate for pipeline gas sales, to preserve the benefits of "old" gas for existing firm sales customers and to mitigate competitive distortions resulting from the lingering effects of existing wellhead price controls.

• A first block containing "old gas" under sections 104, 106(a) and 109 of the NGPA and available first to all existing firm sales customers of the pipeline; a second block containing all other gas. All non-gas costs associated with purchasing gas were to be billed as a third charge to be allocated between the two blocks.

• That after a pipeline permitted its firm sales customers to reduce 100 percent of their contract demands and offered those customers non-discriminatory self-implementing transportation, then, subject to a transition period, the sales price established by the pipeline for natural gas assigned to the second block was proposed to be presumed to be just and reasonable.

The revised proposal for Part D is as follows:

• Eliminating "Block 3" with revisions to clarify that the "as-billed" principle contiues to apply to fixed costs.

• Phasing-in the implementation of block billing beginning in the summer of 1986.

• Extending the base period to include the period between December 1, 1978, to December 31, 1984.

• Including interruptible purchases for purposes of determining block 1 allocation factors.

• Providing for case-by-case review and determination of allocation between blocks 1 and 2 of certain enumerated gas supplies.

• Clarifying that the presumption of justness and reasonableness for block 2 gas under specified conditions is subject to rebuttal and will only apply to rates that are "reasonably related" to block 2 acquisition costs.

• Various clarifications regarding implementation.

One exhibit referenced in the preamble is not being printed in the **Federal Register.** This exhibit is available for review in the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8118.

DATES: Written comments on this notice requesting supplemental comments must be filed by November 18, 1985. A public hearing will be held on Wednesday, December 11, 1985, at 9:00 a.m. Written requests to participate in the public hearing must be received by November 26, 1985.

ADDRESS: Comments and written request to participate in the public hearing should be directed to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 and should refer to Docket No. RM85-1-000 (Part D). An original and 14 copies must be filed.

The Conference will be held at the Offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. The number of the room in which the conference will be held will be available in the Commission's Division of Public Information, Room 1000, on the morning of the conference. The Commission will issue a subsequent order establishing further procedures for the public hearing.

FOR FURTHER INFORMATION CONTACT:

For implementation matters: Kenneth A. Williams, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8500

For legal matters: Christopher J. Warner, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8440

For policy matters: Charles E. Teclaw, Federal Energy Regulatory Commission, Office of Regulatory Analysis, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8100

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Notice Requesting Supplemental Comments

In the matter of regulation of natural gas pipelines after partial wellhead decontrol, Docket No. RM85-1-000, (Part D).

Issued: October 9, 1985.

I. Introduction

On May 30, 1985, the Commission issued a Notice of Proposed Rulemaking (NOPR) in the above docket. The NOPR consisted of four Parts (A through D) and set forth a detailed proposal for changes in a number of the Commission's regulations affecting interstate pipeline companies.

By a separate order issued today in this docket, the Commission is promulgating new rules and policies relating to regulation of natural gas pipelines after partial wellhead decontrol. As indicated in that order, the Commission has determined not to promulgate at this time the block billing mechanism proposed as Part D of the May 30, 1985 NOPR. Instead, for the reasons indicated below, the Commission has determined to call for comment on a revised proposed rule in Part D. In brief, those reasons include the questions raised by supplemental comments, in particular on the impact of the block billing mechanism on gas supply and prices, and the need for additional comments on the actual implementation of that mechanism.

II. Requests for Supplemental Comments

Since the close of the comment period on July 15, 1985 and the public hearing held on August 1–2, 1985, the Commission received a significant number of supplemental comments, motions and petitions relating to, *inter alia*, the Part D block billing procedure as proposed in May of 1985.

For example, on August 14, 1985, a group of about 22 persons filed a motion requesting the Commission adopt an interim rule in Part A while renoticing the proposed rule, particularly the block billing procedure of Part D.[1] A number of pleadings were filed in response to the August 14 Motion. Some of these subsequent pleadings urged the Commission to adopt the course proposed in the August 14 Motion.[2] Others urged the Commission to deny the motion.[3] Some took a somewhat different tactic, urging the Commission to issue promptly final rules in Parts A and C even if the Commission were inclined to order further proceedings on other aspects of the proposed rules.[4]

In response to the persons favoring separate issuance of Parts A and C, pleadings were also received from persons urging the Commission, if it acted, to not act on only Parts A and C of the NOPR.[5]

The Commission also received a letter from the Chairman of the Subcommittee on Energy Regulation and Conservation of the Senate Committee on Energy and Natural Resources requesting that the Commission consider in its deliberations in this docket the testimony submitted to the Subcommittee in a hearing held on September 19, 1985.[6]

The Commission has also become aware of studies which conclude that Part D as proposed will substantially reduce natural gas prices, perhaps by more than $3.3 billion.[7]

The Commission has received supplemental comments to questions raised by the Commission at the August Hearing. For example, E. I. Du Pont de Nemours, a major gas consumer and major gas producer, filed supplemental comments in which it discussed the impact of Part D as proposed in the May 30, 1985 Notice.[8] In response to questions raised at the August hearing, Du Pont's supplemental statement discussed the market distortions that exist under the current regulatory framework. Moreover, Du Pont stated:[9]

> Under such conditions [associated with the block billing proposal] domestic shortages are probable as producers are faced with significant price uncertainties which inhibit timely investment in new exploration and development.

In short, asserted Du Pont:[10]

> The market distortions which would continue to exist with old gas price controls, coupled with the implementation of Part D of the NOPR, would lead to widely fluctuating prices accompanied by similar swings in exploration and development activity. The *resultant cycles of shortages and surplus* would have adverse economic consequences detrimental to the country's long term welfare. (Emphasis added.)

Supplemental comments filed by Texaco, Inc. summarized a study of the overall revenue effects of the block billing mechanism.[11] That study concluded that adoption of Part D as proposed by the Commission will result in average annual revenue reductions of $5 billion to producers.[12] Texaco concluded that:[13]

> This [reduction in revenues], conbined with the negative psychological effects of the government reneging on the investment ground rules held out to the industry under the NGPA, can be expected to reduce future reserve additions by 30% or more.

While not specifically asserting that shortages of natural gas will result, Texaco does state that a reduction in wellhead revenue of $5 billion will have a "devastating adverse effect on the quantities and prices of future gas supplies available to consumers." [14]

III. Discussion

These are assertions that the Commission must and does take most seriously. The Commission has determined that these assertions should be carefully evaluated. For example, one commenter bases its revenue loss

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[1] Motion or Petition of the Persons Listed for Issuance of a Revised Notice of Proposed Rulemaking in Docket No. RM85-1-000, and for Extension of Period of Effectiveness of § 157.209(e) (filed August 14, 1985) (hereafter cited as the "August 14 Motion.").

[2] Joint Response of City Gas Company, *et al.* (in support of August 14 motion) (filed September 3, 1985).

[3] Response of American Public Gas Association (opposing August 14 Motion) (filed August 16, 1985); and Answer of the State of Michigan and the Michigan Public Service Commission in opposition (filed August 28, 1985).

[4] Answer of The Fertilizer Institute (urging expeditious action on Parts A and C even if the Commission is "inclined" to order further proceedings on the other aspects of proposed rules) (filed August 16, 1985); and Response of Process Gas Consumers Group, *et al.* (urging the Commission to "promptly issue final rules") (filed August 22, 1985).

[5] Response of United Distribution Companies in opposition to the position of Respondents, The Fertilizer Institute and Process Gas Consumers Group (filed August 29, 1985) (urging the Commission not to take prompt action only on Parts A and C); and response of Transcontinental Gas Pipe Line Corporation (filed August 26, 1985) (urging additional public conferences prior to adoption of any rules and stating that if the Commission proceeds with Part A "it is absolutely imperative" to provide for an "*effective* and *contemporaneous* resolution" of take-or-pay issues).

[6] Letter dated September 23, 1985 from Senator Don Nickles, Chairman, Subcommittee on Energy Regulation and Conservation of the Senate Committee on Energy and Natural Resources, to Raymond J. O'Connor, Chairman, Federal Energy Regulatory Commission (urging the Commission to issue a final rule at this time only insofar as necessary to create a new transportation program while providing further notice and comment on the remaining elements of the NOPR).

[7] Leone, R., *Block Billing of Natural Gas* (September 1985) (sponsored by Citizens Energy Corporation).

[8] Supplemental Written Statement to the Oral Comments Presented by E. I. Du Pont de Nemours and Company at the Public Conference (filed August 20, 1985).

[9] Id. at 4.

[10] *Id.* at 6.

[11] Supplemental comments of Texaco, Inc. (filed September 24, 1985) (submitting study of overall revenue effects of block billing).

[12] *Id. at 4–6.*

[13] *Id. at 6.*

[14] *Id. at* 5. In its statement at the September 19, 1985 hearing of the Subcommittee on Energy Regulation and Conservation of the Senate Committee on Energy and Natural Resources (submitted for consideration in Docket No. RM85-1-000 by Senator Nickles). Texaco states more plainly that the long term consequences of block billing combined with old gas price controls "must" be "future shortages as supply drops, and eventual price spikes to make up for the shortages." Statement, *supra*, at 23.

projections on the assumption that block billing will force all block 2 prices down over a two year period to "market clearing prices" (*i.e., current spot market prices). See Supplemental Comments of Texaco, Inc., Schedule 4 (Assumptions Used in the Study) (Assumption No. 8(c)(2)). Yet the basis for this assumption and conclusion, whether due to some increase in supply or decrease in demand, is not articulated. The Citizens Energy Corporation study (at A-3) contains a discussion of reasonable "range" of assumptions concerning block 2 price movements, with the assumption used by Texaco comprising the bottom end of the theoretical range.*

The Commission proposed Part D because it appeared from our review of the NOI comments and the experience since enactment of the NGPA that full rolled-in pricing has significantly contributed to the wide swings from gas shortages in the 1970's to surplus in the early 1980's. The Commission notes that the supplemental comments outlined above reach a diametrically opposite conclusion, asserting instead that the block billing mechanism as proposed in the NOPR will itself lead to a cycle of surplus and shortages.

Despite this difference in views on the proposed remedy, the analysis contained in the supplemental comments and in the Commission's tentative analysis (set forth in the Comment Analysis of Part D and in the attached Exhibit S) are in substantial agreement that the current billing or pricing mechanism for natural gas is seriously flawed.

A critical question is the impact of the proposed block billing mechanism—both short and long term—on all segments of the natural gas industry and natural gas consumers as compared to the continuation of rolled-in pricing. Yet the Commission's analysis is very much at odds with that of the supplemental comments.

Accordingly, the Commission is taking the following steps: First, Part D will not be promulgated as a final rule at this time. Instead, a revised Part D, reflecting many of the comments received thus far is being proposed and supplemental comments are requested.

The revised proposal clarifies the original intent of the May 30, 1985 proposed billing mechanism and make it expressly clear that the revised proposal does not: (1) Mandate sequencing of takes by pipelines; (2) affect existing contract rights between producers and pipelines; (3) affect state regulation of natural gas production; or (4) affect state regulation of retail distribution. See proposed § 154.43(a). The revised proposed rule is designed to begin being phased-in, effective June 1, 1986, consistent with the dates set for conforming rate changes to be filed for self-implementing transportation (§284.7) and contract demand reductions (§ 284.10(c)) under the final rule issued today in Parts A–C of this docket.

Finally, the Commission is requesting comments on several major aspects of the revised proposal.

- What is the basis for the assumption that block billing as revised herein will cause the price for block 2 supplies to fall to the current price for "spot" deliveries? How realistic is that assumption?
- If block billing will make current supplies of block 2 gas "unmarketable," does that simply) mean that block 2 supplies will have been displaced by supplies of other gas that are shut-in or unmarketable today?
- Is there any policy preference under the NGA or the NGPA as to which types of natural gas are unmarketable? What considerations should inform the Commission's judgment in that regard?
- According to the Energy Information Administration, producers of NGPA Section 107 gas are receiving from major pipelines about $2 billion less in 1985 for their gas than in 1983, while producers of other supplies of "new gas" are receiving over $2 billion more than in 1983. See Table VI of the final rule issued today. What impact would the revised block billing proposal have on that distribution of revenue? What is the Commission's proper role under the NGA and the NGPA in evaluating such revenue shifts among producers?
- What will be the likely impact of the revised block billing proposal on natural gas consumers? On competition in natural gas markets subject to the Commission's jurisdiction?
- Finally, the Commission requests comments on a number of the key implementation issues, including the delivery schedules, treatment of system storage, the need, if any, for seasonal allocations, and the best approach for phasing-in the effectiveness of the revised proposal.

Thus, the purpose of the further proceedings in this docket is to permit members of the public to focus on all aspects of the revised Part D proposal including, in particular, the impact of revised Part D on gas supply and prices, especially on the claims raised by commenters that block billing will encourage a "boom and bust" cycle in drilling, leading to a recurrent cycle of shortage and surplus.

We also seek to make a reasoned comparison of supply and demand projections under the revised Part D compared to likely developments without Part D. In this regard, we request comment on the Commission's tentative analysis of the issue contained in Part IV.D of the Comment Analysis in this document, in Exhibit S attached hereto, and in the final rule issued today in Parts A–C of this docket.

IV. Comment Analysis

Note.—The footnotes for this section appear after the signature to this document.

Part D.—Billing Procedure for Purchased Gas

1. The first proposed rule

Part D of the proposed rule set forth a billing procedure for purchased gas costs. As proposed, this procedure would end full rolled-in pricing of the pipeline's gas supplies priced under NGPA sections 104, 106(a) and 109 ("old gas") with gas priced under any other NGPA category and the comparable costs of imported gas ("new gas"). The proposal retained rolled-in pricing within each of the two categories, however. Under the proposed rule, beginning October 1, 1985, each pipeline would have been required to separately bill for "old" and "new" gas purchases. The first block was to include purchases of most "old" gas on a Btu basis, while the second block was to include purchases of "new" gas on a Btu basis.[1] A third part was to include all demand and commodity costs not included in the first two blocks, as billed to the pipeline, and as incurred by the pipeline to be subsequently allocated between the two gas cost blocks.

Part D of the proposed rule further provided that existing customers of a pipeline would be entitled to be billed on the basis of a specified percentage of the Block 1 gas available to a pipeline. This section of the proposed rule provided that unless a pipeline and its customers reached an alternative agreement in an uncontested settlement, each customer's percentage entitlement to purchase Block 1 gas would be derived by dividing the amount of each customer's total firm purchases for calendar years 1982, 1983, and 1984 by the pipeline's corresponding total firm sales. The proposed rule provided that beginning October 1, 1985, and every year thereafter, in sufficient time to permit timely preparation of PGA filings, each pipeline would notify its customers of the estimated annual quantity of block 1 gas that would be available to the pipeline and each of its customers for that year.

Part D of the proposed rule also provided that a pipeline would file a revised tariff to reflect the block billing mechanism and then bill its customers under the block procedure in its first PGA filing after the effective date of the proposed rule. The proposed rule provided that pipelines must bill their customers using both a gas and a non-gas rate structure. For each customer, the bill would separately state (1) the units of gas purchased under block 1 multiplied by the weighted average cost of gas in block 1, and (2) the units of gas purchased under block 2 multiplied by the weighted average cost of gas in block 2, and (3) the non-gas rate currently in effect consisting of the pipeline's other costs, including, among other things, the demand and commodity charges billed by the pipeline suppliers.

Finally Part D as proposed provided that if a pipeline offered firm transportation on a non-discriminatory basis to all customers and offered to reduce firm sales contract demands by 100 percent under proposed § 157.21, after a four-year transition period, the block 2 rate would be presumed to be just and reasonable under the Natural Gas Act after the end of the transition period.

The Commission requested specific comments on certain aspects of the block billing procedure. In particular, the Commission asked for comments as to:

(1) Whether the proposed billing procedures will achieve more accurate and efficient pricing of gas to new and marginal markets consistent with the Natural Gas Act;

(2) Whether the negotiated rates of block 2 gas available to one or some of a pipeline's customers should also be made available to all customers;

(3) Whether the four year phase-in period of negotiated block 2 pricing is too long or too short;

(4) The proper allocation method for "as billed" costs;

(5) The rate and accounting treatment of system supply gas in storage;

(6) Whether all costs of imported gas should be included in block 2; and,

(7) What changes in Commission procedure and administration may be needed to assure the timely review of rates and tariffs filed in response to the proposed rule.

2. Summary of the revised proposed rule

The Commission is proposing a revised block billing mechanism generally along the basic lines set out in its first proposal. A number of changes have been made in response to the comments. These changes generally relate to:

(1) Phasing the implementation of the final rule;

(2) Extending the base period used to compute allocations of old gas;

(3) Clarifying the rule to make it clear that the "as-billed" principle continues to apply;

(4) Broadening the classes of customers and services eligible to receive an allotment of old gas; and

(5) Clarifying how non-gas costs will be billed.

3. Legal and Economic Justification for General Requirement of Block Billing

(a) *The Legal Standard.* We start with the NGA requirement for rates charged by interstate pipelines. Section 4(a) of the NGA states that—

> All rates and charges made, demanded, or received by any natural gas company . . . in connection with the transportation or sale of natural gas . . . shall be just and reasonable, and any such rate or charge that is not just and reasonable is hereby declared to be unlawful.

Section 5 of the NGA states:

> Whenever the Commission . . . shall find that any rate [or] charge . . . collected by any natural gas company in connection with any transportation or sale of natural gas . . . or that any . . . practice . . . affecting such rate . . . is unjust [or] unreasonable . . . the Commission shall determine the just and reasonable rate . . . [or] practice to be thereafter observed and in force.

Section 16 of the Natural Gas Act authorizes the Commission to "perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it might find necessary or appropriate to carry out the provisions of this Act."

The Commission must consider whether the practice of rolling in the price of regulated inexpensive gas with gas that is priced under an incentive category or is decontrolled, and then selling that rolled-in gas at an average price for all gas (hereafter referred to as rolled-in pricing) represents a just and reasonable rate, charge, or practice under sections 4 and 5 of the NGA.

The Commission has a basic mandate under the Natual Gas Act to protect consumers from excessive rates and charges. *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 610 (1944). In interpreting this mandate, the courts have recognized that economic efficiency and greater competition in the industry are appropriate goals for the Commission to pursue in order to protect consumers. *Atlantic Seaboard Corp. v. FPC*, 404 F.2d 1268, 1272 (D.C. Cir. 1968). *See Central Illinois Light Co. v. Panhandle Eastern Pipeline Co.*, 21 FERC ¶ 61,147 (1982); *State of Michigan v. Trunkline Gas Co.*, 20 FERC ¶ 61,100 (1982).

Indeed it has been made clear that fostering competition is not only an appropriate goal but must take a high priority in the values which the Commission considers when it determines whether rate structures are just and reasonable. *Otter Tail Power Co. v. United States*, 410 U.S. 366 (1973); *Lynchburg Gas Co. v. FPC*, 336 F.2d 942 (D.C. Cir. 1964); *See generally*, *Wisconsin Gas Co. v. FERC*, No. 84-1358, slip op. at 36–40 (D.C. Cir. August 20, 1985).

Recently speaking to the importance of competitive considerations in *City of Florence v. Alabama-Tennessee Gas Pipeline Co.*, 24 FERC ¶ 61,395 (1983), the Commission observed:

> Congress and the Courts have agreed that competition has a role even in a regulated industry such as the natural gas industry. If competition exists, incentives are created for innovation by the regulated companies. This, in turn, encourages lower prices and better services [citations omitted]. In short, competition can and should complement our regulation of the natural gas industry.

Id. at p. 61,839

As detailed below, the record in this docket suggests there are anti-competitive, inefficient and distorting effects of selling gas at an average price by rolling in the price of inexpensive regulated gas with gas priced under an incentive price category or gas whose price is decontrolled. Further, the record does not demonstrate that other considerations are so compelling that the Commission must overlook these price distortions. Accordingly, based on the mandate of the Natural Gas Act, the relevant legal precedent, and the record before it, the Commission proposes to find that full rolled-in pricing in this instance is an unjust and unreasonable rate, charge, or practice under section 5 of the NGA.

(b) *The Economic Criteria for Just and Reasonable Rates.* The Commission believes that there are four necessary conditions to a just and reasonable rate for natural gas. First, a rate is just and reasonable that brings about efficiency in both production and consumption of natural gas. The economic conditions for such efficiency are well known. The price established for natural gas in a given market should reflect the resource cost of bringing that natural gas into that market. Further, the rate should ensure that the value a consumer places on the incremental unit that is purchased corresponds to the cost of producing that unit. Efficiency also requires that the rate should permit the market to clear. That is, quantities supplied would equal quantities demanded and the rate should be responsive to changes in both supply and demand. Moreover, efficient prices reflect current circumstances, not past circumstances. An efficient price is one that relates current costs with current values.

A second condition necessary to achieving a just and reasonable rate is that the rates so established must permit "fair" competition. Such competition, whether between pipelines or between a pipeline and a competing fuel supplier (either gas, oil or electricity), should reflect the current efficiency with which those suppliers operate. Changes in a just and reasonable rate, to the extent they are affected by the actions of a pipeline, should occur in response to its current decisions, not by virtue of decisions that proved to be wrong or right in past years.

A third condition or a just and reasonable rate is that the rate should not lead to the wasteful depletion of scarce, non-renewable resources. That is, consumers should not use up supplies of natural gas whose value to them is less than the cost of making those supplies available. At the same time, the just and resonable rate should assure adequate supplies of natural gas at mininum cost to customers.

Finally, a just and reasonable rate is one that is appropriate to changing conditions in the natural gas industry. Thus, rates for natural gas should not inhibit the growth of competition envisioned by the NGPA. Nor should rates distort the benefits otherwise obtained from greater access by customers to transportation of natural gas. And just and reasonable rates should permit the full benefits to be derived from the optional expedited certificate procedures established in the rule issued today by the Commission in this docket.

(c) *The Practice of Rolled-in Pricing May Be Unjust and Unreasonable.* The main asset of rolled-in pricing is its administrative simplicity. Pipelines buy from many producers at many prices and it would be cumbersome if not impossible for sales to customers to reflect these gradations. All things being equal, an averaging methodology can be a useful regulatory tool in many instances. Because of the distortions caused by rolling in very disparate prices for the same commodity, however, considerations of administrative simplicity no longer seem sufficient to justify continued use of full rolled-in pricing.

Rolled-in pricing promotes inefficiency in consumption and production. Rolled-in pricing distorts pricing to consumers and producers. The price signal to the consumer does not represent the resource cost of bringing additional supplies to market. Instead, rolled-in pricinig averages that resource cost with a price that is controlled far below the current cost of natural gas. Thus, customers are purchasing units of natural gas which they value at $3.00 but which cost pipelines $4.00 to supply.

Rolled-in pricing frustrates the attainment of market equilibrium prices. Market equilibrating prices are most easily attained when customers see the cost consequences of marginal consumption decisions. Similarly, equilibrium is more easily sustained when producers see unambiguous price signals as a consequence of their marginal supply decisions. (It is only marginal decisions which can move the market into or out of equilibrium.)

One has only to reflect on the disparity between prices for gas being brought to market for direct sale to customers, and the prices for otherwise identical supplies that are to be rolled-in with old gas in pipelines' system supply. The rolled-in price is expected to compete against the direct sale price, yet the incremental supplies contracted for by the pipeline will necessarily have to carry a higher price since they are averaged with the price-controlled, old gas. Rolled-in pricing thus distorts marginal decisions by participants in these two markets because if forces a disparity between the prices paid for otherwise equivalent marginal supplies.

Rolled-in pricing does not communicate current conditions in markets. Until old, price-controlled gas is exhausted, the rolled-in price will necessarily reflect a mixture of current costs for new supplies and allotments of old gas supplies at below market, administered prices. Producers' decisions as to what the market will bear for their new supplies will be directly affected not by the price charged to the consumer, but rather by how much old gas is left to subsidize their production.

Rolled-in pricing encourages depletion of scarce natural resources. Customers are shown a price below the cost of incerementel supplies and therefore consume greater quantities than they would were they required to pay a price reflective of that cost. Rolled-in pricing permits incremental supplies purchased by a pipeline with a cushion of old gas to receive above-market clearing prices. Thus, production is encouraged in a fashion that promotes wasteful depletion of a valued national resource. Such depletion is clearly wasteful because the cost of those incremental supplies is greater than the value consumers place on the consumption of those supplies.

Rolled-in pricing may be inappropriate to the changing conditions in the natural gas industry. For reasons discussed previously, rolled-in pricing inhibits competition on a level playing field. Rolled-in pricing provides disincentives to producers to bring new supplies into those markets where cushions of old gas are not available to subsidize the production of that new gas. Thus, the supply of gas for direct sale to customers by producers or to spot markets is artificially constrained since producers would thereby forego the opportunity to receive a subsidy from a pipeline's cushion of old gas. Eliminating rolled-in pricing would bring forth greater supplies in those markets.

Continuation of rolled-in pricing would thus frustrate competition both under the transportation and the expedited certificate sections of this rule. This is because the unlevel playing field that results from rolled-in pricing would promote market raiding not by pipelines that are inherently more efficient than their competition but have access to greater volumes of price-controlled gas.

(d) *Block Billing Will Mitigate the Distortions of Rolled-in Pricing.* To understand the efficiency implications of block billing, it is sufficient to understand that block 1 gas is not market responsive specifically by legislative intent. Thus, to achieve the efficiency criteria discribed above, the categories of gas in block 1 should not be allowed to distort marginal decisions by consumers and producers. Block 2, by contrast, is gas whose price has been decontrolled or which is subject to NGPA regulation that intended prices to be market responsive.

The block billing mechanism would focus on precisely those categories of gas that should influence marginal decisions by consumers and are subject to marginal decisions by producers. Prices for block 2 gas would thus better reflect customer's marginal valuation of natural gas, as well as the resource cost that producers incur to bring gas to market. The price of block 2 gas would be better able to adjust to changes in supply and demand conditions. This is because unlike block 1 gas, it would unambiguously influence the marginal adjustments critical to sustaining market equilibrium.

Because of this flexibility in both price and quantities, block 2 would be better capable of reflecting current market realities unencumbered with price data for natural gas that has been forever committed under nonmarket responsive price controls.

Block billing would create a more level playing field on which pipelines may compete. Byu removing block 1 as a source of gas which pipelines can use to enter new markets or attract new sales, pipelines would find that their current gas purchasing acumen in the basis on which they would have to compete. Their efficiency in that respect would be reflected in block 2 gas prices. Further, producers could compete directly for sales to customers with greater assurance that the price they would receive directly comparable to the price the pipeline would be willing to pay given that the old gas cushion would no longer be permitted to distort system supply prices.

Block billing would discourage wasteful consumption of natural gas. Under the block billing mechanism, block 1 gas would be allocated to historical customers. Thus, block 1 gas would not influence those marginal purchasing decisions made by the customer. Any purchase above block 1 would be made from block 2. It is those marginal units consumed above the block 1 level whose value to the customer would be equivalent to the price paid for those units. (Infra-marginal consumption for normal goods such as natural gas is always more highly valued than the marginal unit consumed. It is this property which gives rise to the concept of consumer surplus.) Thus, because the marginal consumption would come from block 2 and that price would be a better reflection of current resource cost for gas supply, there would be far less opportunity for consumption of gas to take place whose value to customers is less than the resources expended to bring the gas to market.

The Commission is cognizant of the potential that states might mandate that local distribution companies roll-in the price of block 1 and block 2 gas such that consumers see an average price. To the extent that some states elect this option, the ability of the block billion mechanism to discourage wasteful consumption would not be as great as it might otherwise be. For further discussion of the effect of local distribution companies pursuing a block-billing approach a contracted with a rolled-in pricing approach for retail sales, see Exhibit A. (The Exhibit demonstrates that even in the event that all LDCs were required to use rolled-in pricing, thereby negating the major contribution towards elimination of wasteful use, there would still be a significant benefit to block billing at the wholesale level. This arises because en users would benefit from lower average costs to the extent that LDCs can shift purchases among competing pipeline suppliers. Specifically, LDCs could reduce their purchases from pipelines with high block 2 prices and increase purchases from pipelines with low block 2 prices. Thus, the highest cost block 2 gas, which represents the most wasteful use can be avoided.) The Commission incorporate Exhibit S as part of our analysis of rolled-in pricing and the proposed block billing procedure, and requests comments on the analysis contained in Exhibit S.

In addition to mitigating the distorting effects of rolled-in pricing, block billing would not result in any inconsistencies with the NGPA or any substantial economic inefficiencies.

First, the block billing mechanism should not result in supply shortages. If the block billing mechanism (or any other feature of the final rule issued by the Commission today in this docket in combination with the block billing mechanism) places incentives on producers to withhold additional supplies of gas, then clearly the wellhead price for decontrolled categories of natural gas would rise. The block billing mechanism would signal that rise in an unambiguous fashion and the price would accomplish what it does in every freely functioning market—it would ration available supply. There can be no shortage unless someone proposes to cap that price and thereby induce a greater quantity demanded than producers are willing to supply. No individuals have proposed such a cap and the block billing mechanism does not propose to do so. For theoretical demonstration that the block billing mechanism will not result in shortages, see Exhibit S.

Second, the block billing concept would not conflict with the NGPA mandate that pipelines must be permitted a passthrough of their costs of purchasing gas (absent fraud and abuse or similar grounds). Block billing would not prevent a pipeline from including any costs of gas in its PGA. If the pipeline's block 2 price were to reach an unmarketable level, then the pipelines might not recover the cost of gas that it has bought because it is unmarketable, not because the Commission did not permit a pass through. To the extent that such gas is purchased and remains unsold, block billing would not compromise the pipeline's right to collect carrying charges for such inventories of gas. Block billing thus would not be inconsistent with the pipeline's right to recover its purchased gas costs.

Third, block billing, in taking old gas out of the competition, would not penalize pipelines that enjoy a significantly large old gas cushion. These pipelines would be assured of a higher percentage of sales due to the amount of block 1 gas they make available to their customers, than would pipelines with less block 1 gas.

Finally, block billing cannot be said to conflict with state conservation and prorationing laws. Block billing would be an after the fact statement of the cost of the gas mix in a pipeline's system at any given time. It would not prescribe any particular mix of gas vintages. Hence, block billing cannot be viewed as mandating or sequencing pipeline gas purchases in any way.

4. Responses to Comments on the General Concept of Block Billing

(a) *The departure from full rolled-in pricing of gas supply.* Many of the opposing commentators state that the practice of full rolled-in pricing has been used by jurisdictional pipelines with Commission approval for many years, and that the practice is an integral part of pipeline operations and contractual relationships in the natural gas industry. Several commenters assert that the existing practice of full rolled-in pricing must be found to be unjust and unreasonable under the provisions of section 5 of the Natural Gas Act before the Commission can institute some other method of pricing.

Many commenters also assert that the proposed billing mechanism rasies many issues of material fact related to its impact on pipelines and the industry in general. For these reasons many of the opposing commenters assert that the Commission should not use a rulemaking proceeding to change the current practice of full rolled-in pricing for gas supplies. These commenters allege that an adequate record must be developed, with an opportunity for all interested parties to present their positions in an adjudicatory-type hearing.

In addition, several opposing commenters assert that the block billing mechanism is contrary to the NGPA, and that the Commission cannot change a statute by promulgating a rule. These commenters assert that the practice of full rolled-in pricing was an integral factor in the passage of the NGPA, and that the Commission cannot now overturn that practice in this proceeding.

Commission Response

The revised proposal does not do away with rolled-in pricing of gas supplies. Under the NGPA, there were over two dozen pricing categories created. In implementing the NGPA, except for the statutorily mandated scheme of incremental pricing under Title II, the Commission generally continued to allow pipelines to bill their customers on the basis of the rolled-in average cost of all purchased gas.[2]

The revised block billing procedure would retain rolled-in pricing within the blocks. Thus, the 15 different price levels for gas under NGPA sections 104, 106(a) and 109 would continue to be billed by pipelines in block 1 on a rolled-in basis. In addition, the different price levels (including the various levels at which deregulated gas is sold) which will comprise block 2 would also continue to be billed on a rolled-in basis.

This is illustrated in the following table which shows the continued rolling in of gas acquisition costs of those categories of gas that remain subject to price ceilings, as provided for under the revised proposed rule.

TABLE D-1

	August 1985	August 1984	August 1983	August 1982	August 1981	August 1980	August 1979
Rolled-in Block 2							
Section 102: New Natural Gas, Certain OCS Gas	4.045	3.752	3.472	3.176	2.863	2.532	2.244
Section 103(b)(1): New Onshore Production Wells	3.024	2.917	2.803	2.662	2.488	2.274	2.079
Section 103(b)(2): New Onshore Production Wells	3.535						
Section 105: Intrastate Existing Contracts	4.023						
Section 106(b)(1)(B): Alternative Maximum Lawful Price for Certain Intrastate Rollover Gas	1.731	1.666	1.601	1.518	1.419	1.297	1.185
Section 107: Gas Produced from Tight Formations	6.048	5.834	5.606	5.324	4.976	4.548	4.158
Section 108: Stripper gas	4.330	4.018	3.720	3.403	3.066	2.710	2.400
Rolled-in Block 1							
Section 109: Not Otherwise Covered	2.506	2.414	2.320	2.204	2.060	1.883	1.722
Sections 104 and 106(a):							
Post-1974 Gas: All Producers	2.506	2.414	2.320	2.204	2.060	1.883	1.722
1973-1974 Biennium Gas:							
Small Producer	2.119	2.045	1.963	1.865	1.742	1.592	1.456
Large Producer	1.616	1.559	1.501	1.426	1.334	1.221	1.118
Interstate Rollover Gas:							
Small Producer	.930	.896	.861	.817	.762	.728	.715
Large Producer	.930	.896	.861	.817	.762	.728	.636
Replacement Contract Gas or Recompletion Gas:							
Small Producer	1.190	1.147	1.103	1.047	.978	.893	.815
Large Producer	.911	.878	.843	.799	.748	.683	.625
Flowing Gas:							
Small Producer	.603	.580	.556	.529	.511	.453	.416
Large Producer	.509	.491	.471	.447	.420	.382	.349
Certain Persian Basin Gas:							
Small Producer	.708	.684	.658	.625	.583	.532	.487
Large Producer	.627	.603	.579	.549	.493	.467	.428
Certain Rocky Mountain Gas:							
Small Producer	.708	.684	.658	.625	.583	.532	.487
Large Producer	.603	.580	.556	.529	.433	.453	.416
Certain Appalachian Basin Gas:							
North Subarea Contracts dated after Oct. 7, 1969	.572	.549	.525	.498	.465	.425	.388
Other Contracts	.527	.509	.489	.465	.438	.400	.364
Minimum Rate Gas: All Producers (dollars per Mcf)	.311	.299	.287	.275	.257	.234	.212

Source: EIA, Natural Gas Monthly (June 1985) (Published in August 1985) Table II.

Thus, the Commission is not "eliminating" rolled-in pricing of gas supplies as claimed by some commenters [3] nor even departing from the basic principle of rolling-in. In essence, all the revised proposed rule provides is for a departure from *full* rolled-in pricing and the adoption of rolling in within two separate blocks.

Moreover, over time, as supplies of block 1 gas are depleted, all new supplies of gas would be "rolled-in" in block 2. This would lead eventually to a return to full rolled-in pricing of *all* gas supply, but without the economic distortions of partial wellhead price controls on the gas supplies within the average.

(b) *Past Commission policy on rolled-in pricing.* The commenters opposing the block billing concept proposed in the NOPR argue that the Commission has relied in the past on full rolled-in pricing of gas supply and that it should continue to do so.

The rolled-in pricing of gas costs (as well as pipeline facilities) has indeed been approved by the Commission and the courts in many pipeline cases since the beginning of Federal Power Commission jurisdiction over natural gas pipelines.[4] But while rolled-in pricing has been widely approved, incremental pricing, which is the allocation of specific costs of either gas supply or facilities to specific customers, has also been approved by the Commission and upheld by the courts.[5] Further, in *Battle Creek Gas Company v. FPC*, 281 F.2d 42 (D.C. Cir. 1960), it was held that the Commission properly exercised its discretion by rolling in part of a specific gas supply project and charging the cost to all customers, while charging the remainder of the cost of the project on an incremental basis to one specific customer.

In those cases where a Commission decision on the use of incremental or rolled-in pricing has been reversed by the courts, it has not been because the Commission must apply a rule adopting one or the other approach, but because the court has found the Commission decision inadequately supported by the evidence. Thus, in *Columbia LNG Corp. v. FPC*, 491 F.2d 651 (5th Cir. 1974), the court vacated and remanded, for lack of substantial evidence, a Commission decision that priced liquefied natural gas on an incremental basis to low-priority customers. Further, in *ANR Pipeline Co. v. FERC*, No. 84-1026, (D.C. Cir. August 13, 1985), the court reversed in part a Commission decision *to adopt rolled-in pricing* for certain services which had traditionally been priced on an incremental basis. The court held in *ANR Pipeline* that the *Transco* decision [6] requires that when the Commission seeks to impose a rate change not proposed by a company, the Commission must find that the existing rates are unjust and unreasonable, and this finding must be supported by substantial evidence.

Thus, there is no *a priori* statutory requirement of full rolled-in pricing of gas supplies.

(c) *Rolled-in Pricing and the NGPA. Comments:* Many commenters argue that block billing violates the NGPA to the extent it departs from rolled-in pricing.[7]

Some of these commenters reason that Congress assumed when it enacted the NGPA that incentive prices for new gas supplies would continue to be rolled-in with the prices of forever-regulated gas supplies.[8] As support for their argument, some of these commenters point to the express language of section 206 of the NGPA, which requires rolled-in pricing of Alaskan natural gas.[9] They argue that section 206's reference to the "general principles applicable on the date of enactment of this Act for establishing rates," when combined with the conference agreement's express interpretation that the language requires rolled-in pricing, evidences legislative intent that rolled-in pricing should continue as a general policy following the NGPA.

Other commenters argue that by establishing certain "maximum lawful price ceilings" for various categories of new gas supplies, the NGPA intended to roll in certain prices of gas. Thus, the NGPA implicitly intended rolled-in pricing in order to guarantee the incentive price levels for new gas would be maintained even if they exceeded market-clearing levels.[10]

Other commenters do not claim that the NGPA endorsed rolled-in pricing. Instead, they argue that Congress intended to preempt the field on any form of incremental pricing beyond that required under Title II of the NGPA, while applies incremental pricing of new gas supplies on a limited basis to only industrial users.[11] These commenters cite the failure of Congress to adopt the Senate-passed version of incremental pricing, which requires the costs of old gas to be allocated to high-priority users until prices to low-priority users reached Btu equivalency with substitute fuels, as evidence that Congress rejected any form of incremental pricing broader than Title II as enacted, including block billing as proposed by the Commission.[12]

Commission Response: The Commission concedes that Alaskan gas in NGPA section 208 must be priced on a rolled-in basis and that certain gas must be incrementally priced under Title II. However, with respect to all other categories of gas, the NGPA was silent.

An administrative agency that administers a broad regulatory program may use liberal interpretation of a statute that permits it to implement that program.[13] It is clear that the grant of express power carries with it the authority to engage in the necessary activities in order to implement the statute *Backus-Brooks Co. v. Northern Pac. Ry. Co.*, 21 F.2d 4 (CCA 8th 1927), *cert. denied*, 275 U.S. 562 (1927). This case involved the right of the Minnesota Public Service Commission to fix rates. The Minnesota statute specifically granted the Commission to fix and establish joint rates. Nowhere in the statute was the Commission specifically authorized to fix divisions of rates. The court found that by necessary implication the Commission had the right to divide rates in order to carry out the objective for which the Commission was created.

It is clear that nothing in the NGPA prohibits the Commission from permitting rolled-in pricing, incremental pricing or a combination of both in order to implement the mandate of its governing statutes.[14] With this background in mind it would be useful to review the legislative background of the NGPA on the policy of rolled-in pricing and incremental pricing.

A. *Rolled-in Pricing.* One of the principal goals of the NGPA was to achieve a national, uniform market for gas sales and transportation and to eliminate dual market distinctions between interstate and intrastate wellhead markets.[15] However, Congress was also aware of the ability of interstate pipelines to "bid-up" the prices of new gas supplies at the wellhead in a partially deregulated market, and then average or "roll-in" those high-prices with their mix of low-cost or forever regulated gas supplies in order to mask from consumers the true costs of new gas.[16]

In fact, the House Report which accompanied the natural gas bill reported by the House Committee on Interstate and Foreign Commerce, discussed the evils of rolled-in pricing.[17] During the Senate debate on the Conference Agreement, rolled-in pricing was also criticized.[18]

Therefore, the Commission rejects the argument that the NGPA intended that rolled-in pricing of gas would subsidize new gas prices above market-clearing levels. Congress established maximum price ceilings for incentive-priced gas. It did not guarantee to producers the right to turn rate ceilings into rate floors if the market-clearing price tumbled.

B. *Incremental Pricing Under Title II.* Congress also sought to mitigate certain adverse effects of rolled-in pricing through to industrial users increased mechanism in Title II of the NGPA. This part of the NGPA ws designed to pass through to industrial users incresed prices for new natural gas before such prices could be passed through to residential and commercial consumers.[19]

Less than two years after the NGPA, the House Interstate and Foreign Commerce Committee discussed the non-exclusive nature of Title II as a remedy to check the market disorders of practical deregulation in the Committee report recommending that Congress veto "Phase II" of NGPA incremental pricing.[20]

Even if an argument may be made that block billing expands incremental pricing under Title II, the NGPA conference agreement expressly provides that Title II does not preclude any ratemaking method of allocating the "spill-over" costs of new gas supplies which exceed the alternate fuel ceilings set for industrial boiler fuel users.[21] In fact, the conference agreement expressly grants the Commission the discretion to allocate the excess costs resulting from rolling in of the cushion with new gas costs beyond the Title II alternative fuel ceiling in whatever ratemaking manner it otherwise has discretion to require.[22]

Second, if Congress intended that Title II would preempt the field on incremental pricing, it is unlikely that the NGPA would have carved out a special exemption for rolled-in pricing of Alaskan gas under section 208. Nor is it likely Congress would have expressly required the Secretary of Energy "in consultation with the Commission" to study and report to Congress recommendations on gas rate design issues, *including incremental pricing and marginal-cost pricing* under section 306 of the Public Utility Regulatory Policies Act enacted the same day and as part of the same bill as the NGPA.[23]

For these reasons, the Commission has concluded that Congress did not intend Title II of the NGPA to preempt the block billing procedure to the extent it departs from the current Commission policy of rolled-in pricing.

(d) *May the Commission depart from full rolled-in pricing of gas by means of notice and comment rulemaking?* *Comments:* Many of the commenters asserted that the Commission may not use notice and comment rulemaking to effectuate the billing procedure.

Commission Response: Part "D" of this proposal is promulgated primarily under section 5 of the Natural Gas Act. It is well-settled that the Commission may exercise its section 5 authority by notice and comment rulemaking. *American Public Gas Association v. FPC*, 567 F.2d 1016, 1064–67 (D.C. Cir. 1977); Department of Energy Organization Act, 42 U.S.C. 7173(c) (1982); *Wisconsin Gas Company v. FERC*, No. 84–1358, slip op. at 26–27 (D.C. Cir. August 20, 1985).

The proposed revised rule in this docket is the culmination of public proceedings that began with the three-phase Notice of Inquiry initiated December 24, 1984. The full Commission heard four full days of oral presentations in the NOI phase of this proceeding in February and late March and two full days of public hearings in August on the actual proposed rule itself. The issue is whether the procedure used is adequate to inform the public record and adequately ventilates factual, legal and policy issues. The Commission has provided opportunities in stating positions in response to each phase of the Noticé of Inquiry, commenting on the proposed rule, and making their case in oral presentations to the full Commission after all written comments were filed.

(e) *Comments for and Against Rolled-in Pricing and Block Billing. Comments:* (i) *Who favors the continuation of full rolled-in pricing and why?* The commenters supporting rolled-in pricing and opposing the block billing mechanism fall into three general categories. First, there are *suppliers* of natural gas and synthetic substitutes for gas and those whose economic interests are associated with these supplies. Generally, there commenters argue that there are pervasive economic distortions under the current regulatory framework. But they appear to lay none of the blame for these distortions on the price of full rolled-in pricing of gas supplies both before and after enactment of the NGPA. According to these commenters, the problem is not that pipelines sell gas on a fully rolled-in, average-cost basis, but rather that the individual components that lie behind the average should be brought into a more narrow range. In other words, they do not disagree as to the *problem*, but only as to the preferred solution.

According to this view, it is not full rolled-in pricing of gas supplies that is a problem, but rather the retention of price controls at a low level for old gas. Thus, they agree that there are "gross distortions" [24] and inefficiencies with the present regulatory framework. It is just that they would solve it by "raising the river" rather than "lowering the bridge."

As put by the comments filed by a group of the major producing companies: [25]

> Producers support the Commission's conclusion that *the present regulatory mechanism distorts economic consumption and production decisions*. Where the Commission falls into error is in blaming the messenger—rolled-in pricing—rather than the real culprit—below market, price controlled gas.

In short, they want the Commission to exercise its authority to raise the price of old gas.

It is very easy to understand why these commenters take the position they do. It has been recognized countless times that the retention of price controls on some gas, the removal of controls on other supplies, combined with the pipeline's ability to fully roll-in or average these prices, has created the so-called "old gas cushion," producing in turn serious economic distortions.[26] Indeed some of these very parties who challenge the block billing proposal most vigorously have been among those who have been most critical of the distortions caused by the cushion.[27]

Yet the "cushion" is merely the necessary product of combining the bifurcated wellhead market with full rolled-in pricing at the resale level. And many of the commenters attacking block billing are already on the public record recognizing that fact.[28]

A variation of this theme is set forth by commenters who urge that, if the Commission insists on departing from the current approach, particular supplies should be included in block 1. In this way, these above-average priced supplies, at least, will obtain some of the benefit of the old gas cushion. Thus, some urge that section 102(d) and forever-regulated supplies of section 103(c) gas be included in block 1; [29] that stripper well gas be in block 1; [30] and that synthetic gas from the Great Plains coal gasification project be in block 1.[31]

A second group of commenters that favor full rolled-in pricing for gas supply consists of some local distributors and many industrial end-users—all at the purchasing end of the pipeline. Much of this opposition to block billing as proposed is based on a concern that the commenter might not receive a fair allocation of block 1 gas, either because they are an interruptible customer of an interstate pipeline,[32] because they purchased a significant amount of their supply from other sources during the proposed base period,[33] or because they fear that the state regulatory commission might require their local distribution company supplier to allocate all the block 1 gas to temperature-sensitive residential and commercial customers.[34]

Many of these commenters also express a real concern over potential adverse effects of the proposed billing procedure on the adequacy of future supplies of natural gas. They are joined in this regard by many of the producer commenters.[35]

The third major group of commenters favoring a continuation of full rolled-in pricing are the interstate pipeline companies themselves. Some of them express vigorous opposition to the proposal. Most, however, indicate (although without great enthusiasm, to be sure) that they could implement the proposal but they *insist* that if the Commission adopts the proposed block billing procedure, the Commission must directly order the pipelines to purchase the block 1 gas in preference to block 2.[36]

Questioning by the Commission at the public hearing disclosed that one of the reasons for the latter request is the companies' assessment that such an order of the Commission might constitute "supervening governmental action" or otherwise provide a legal defense to the pipelines in the breach of contract actions [37] which the pipelines view as the inevitable result of the block billing proposal. In the words of one witness: "But if we don't have the mandatory condition, then we'll be in the courthouse with no clothes on." [38]

In addition, many pipelines expressed concern that their distribution customers would be able to roll in their gas costs which would enable them to pay higher prices for wellhead purchases in competition with the piplines. The end result, they assert, would simply be a shifting downstream to the LDCs of the so-called distortions of rolled-in pricing.

(ii) *Who opposes rolled-in pricing?* Commenters favoring the end of full rolled-in pricing comprised most of the local distribution companies, including municipal gas utilities, the utility commissions of the "downstream" states, and other non-public commenters representing various consumer groups.

These commenters generally view the end of full rolled-in pricing as likely to produce a lower overall average price for gas at the wellhead. To some degree, their support is based on an assessment of the rule's impact that is consistent with the assessment of producers: both appear to believe that the rule will result in lower average prices—at least in the short run. But the supporters do not agree that the rule will lead to inexorable shortages.

1. *The Commission's experience with rolled-in pricing.* The rolled-in ratemaking policy encourages the development of "boom and bust" cycles. A "boom" would occur during a period where demand for gas at the rolled-in average price exceeded total supplies available. the *average* price would then tend to rise. But since the price of the controlled gas was legally forbidden to rise, the upwards pressure would all be reflected in the price of the decontrolled supplies.

Thus suppliers of decontrolled gas would see an artificially high price for *supply*, in excess of the price at which the gas was actually being *demanded*. Supply would be artificially encouraged.

But as the average price rose, demand would fall. If the average price temporarily exceeded quantities demanded at that price, the distortion would work in reverse. The downward price pressure would be focused on the decontrolled supplies, driving them to an artificially *low* level. A "bust" would occur.

In the meantime, investment capital and labor would have been directed to inefficient uses, creating net economic losses. While a commodity such as natural gas may be somewhat prone to such a cycle, full rolled-in pricing operates to exacerbate the situation.

The highs will be unnecessarily high and the lows will be unnecessarily low.

The experience of the past and the comments of the parties suggests strongly that this has in fact occurred and that full rolled-in pricing played a major contributing role.

Table D-2 summarizes this experience. The price increase of FPC Opinion No. 770-A in late 1976 had the intended effect of encouraging supply. Drilling and drilling costs rose sharply. The average wellhead price also rose sharply. The trend was exaggerated when the NGPA decontrolled certain categories of gas, primarily deep gas in 1979 and the FERC issued rules under section 107(c)(5) setting incentive prices for tight sands and production-enhancement gas. There was a rush to drill reserves that were—by definition—"high cost" reserves. Drilling and drilling costs soared, as did the average wellhead price.

Table D-2

SELECTED STATISTICS ON NATURAL GAS PRODUCTION

Year		Rig Count [a]		Average Gas Drilling Ave. Cost per Gas Foot [b]	Percent of Gas Wells High-Cost (107)[c]	Percent of Total Gas Production High-Cost (107) [h]	Price Paid for High-Cost (107)[d]	Average Wellhead price[e]
1975	|	1660	|	46.23/Mcf	--	--	--	$ .45/Mcf
1976	|	1658	|	49.78	--	--	--	.58
1977	B	2001	B	57.57	1%	--	--	.79
1978	O	2259	O	68.37	5%	NA	--	.91
1979	O	2177	O	80.66	7%	NA	--	1.18
1980	M	2909	M	95.16	8%	NA	--	1.59
1981	|	3970	|	122.17	9%	2.1%	$6.58/Mcf	1.98
1982	|	3105	|	146.20	12%	4.2%	$7.31	2.46
1983	B	2232	B	108.37	NA	6.2%	6.25	2.59
1984	U	2428	U	97.5 g	NA	5.7%	5.37	2.60
1985(8 Mos.)	S	2011 (8)	S	NA	--		4.98(6)	2.64(3)
	T		T					

Sources and Notes:

a. U.S. Energy Information Administration, Annual Energy Review: 1984, DOE/EIA-0384 (84), Table 31, Page 1969. Data for 1985 from Hughes Tool Company release, "Rotary Rigs Running By States, August 1985".

b. American Petroleum Institute, Joint Association Survey on Drilling Costs (Annual Reports 1975-1983). 1984 data based upon information from IPAA indicating that drilling costs in 1984 decreased about 9 percent with a sharper decrease in gas than oil.

c. U.S. Energy Information Administration, Drilling and Production Title 1 of the Natural Gas Policy Act, DOE/EIA-0448, June 1984, Figure 17, page 55.

d. U.S. Energy Information Administration, Natural Gas Monthly, May 1985, DOE/EIA-0130 (85/05), Table 5, page 12.

e. Ibid. Table 4, page 10..

f. While the NGPA was enacted in late 1978, its price provisions were made retroactive to April 1977. (See EIA, Drilling and Production ... (op. cit.) page vii).

g. Estimate based on data from IPAA showing a 9% decrease in all drilling cost, with a steeper reduction in gas costs than oil costs.

h. Based on projected volumes and prices reported in PGA filings.

But markets did not want to buy the $7.00 to $10.00 gas that suppliers were offering.

This pricing structure was particularly volatile and vulnerable to changes in demand, whether from weather, the business cycle, or other factors.

The economic recession began in July of 1981. Industrial demand for gas fell. Then in 1982 oil prices began to fall and residual fuel oil began to take back markets it had lost to gas in the 1979–80 period.

So when the boom ended in 1982, it ended quickly. The weekly rig count fell over 40 percent in the course of that single year. Pipelines began invoking market-out clauses in May and June of 1982 in the $4.50 to $6.00 range and many stopped executing contracts for new supplies entirely. By early 1983 most major pipelines had invoked market-out clauses where available and the level at which they did so continued to fall.[39] As the year went on, the average price of NGPA section 107 gas began to fall, as shown in Chart D-1 (Note: Chart D-1 is not being published in this NPRM. Chart D-1 may be obtained from the Federal Energy Regulatory Commission, Room 1000, 825 North Capitol Street, NE., Washington, DC.). As demand and prices fell, drillers focused their efforts on lower cost prospects. This is readily observable in Table D-2 in the sharp drop in drilling costs.

Yet the average price continued to rise in part because a great deal of price controlled gas continued to rise in accordance with the statutory ceiling escalators and the contractual provisions that referenced such escalators. In addition, the purchase mix included more of the higher than average-priced supplies.

The theoretical inefficiencies outlined above were becoming painfully manifest. As detailed in section II.A above, investors in supplies of domestic natural gas and various alternative supplies lost billions of dollars, and consumers paid high prices for gas when cheaper supplies were readily available.

The commenters do not really seem to disagree with the conclusion that the present system has produced massive adverse effects. The proof as noted above, is that they agree as to the *fact* of past and present distortions. In short, the argument of producers that the Commission should retain full rolled-in pricing but raise the price of old gas closer to the average essentially concedes the point that the status quo regarding pricing should be changed.

2. *Block billing appears to mitigate the distortions and improve price signals.* If the combination of partial wellhead price controls combined with full rolled-in pricing has produced distortions, the next issue is whether the proposed revised block billing mechanism would be any better.

Experience alone cannot assure us of the answer to that question. Instead, we must "take into account what is known as to past experience" and then make a determination as to what is "reasonably predictable about the future." Thus it may be helpful to assess how prices, supply and demand might have behaved under the NGPA had block billing been adopted in 1978. Theory suggests strongly that a different supply response, pattern of wellhead prices, and demand would have been observed. The actual wellhead price for new gas supplies would have been less.

Under two-block billing, the customers are less likely to pay any more for gas than the value they place on gas use for block 2 gas supplies. That value is in part determined by the price of substitutes available to the end-user (No. 6 fuel, electric heat-pump, conservation). For example, in 1980, the price of No. 6 fuel oil delivered to end-users averaged 60.7¢/gallon or an equivalent of $4.05/Mcf. With average transmission and distribution charges for gas of $1.00/Mcf for industrial end-users, a net-back wellhead price greater than $3.05/Mcf would have started to ration gas from these marginal users. Suppliers of gas priced above that level would have began to lose sales, indicating that the price was too high.

In 1981, the NGPA price ceiling of $4.92/Mcf for regulated section 107 gas would have resulted in lost sales. Similarly, decontrolled deep gas would not have been sold at $7 to $10/Mcf at the wellhead. These prices were not warranted for they would have driven end-users away from natural gas. Once those customers were gone, there would have been no market for this expensive gas.

With prices for marginal supplies being lower, drillers would have refocussed their efforts away from high-cost prospects and towards sections 102 and 103 whose price ceilings of $2.48/Mcf and $2.24/Mcf respectively.

This lower new gas price would have constrained the search for high-cost conventional unconventional natural gas supplies *before* much of the funds were expended and *before* investors had committed to loans.

Thus the two-block billing would then have lessened the boom in the development of high-cost supplies. This billing mechanism would not, however, necessarily have dampened the boom in drilling and reserve additions. But the recession in 1981–1982 would have induced a smaller gas surplus and, most significantly, the gas supply would have a lower cost underpinning.

The billing mechanism would not, obviously, have avoided the deep recession in 1981 and 1982, the downturn in oil prices in 1982, or all of the increased conservation observed during this period. A shift in the natural gas market from steadily increased drilling activity would have occurred irrespective of the billing mechanism. However, the needed adjustments would have been more manageable, less disruptive, and less painful had the two-block billing mechanism been in place.

The actual downturn has been severe.[40] Producers, their equipment suppliers, and their financial institutions have faced failure. The extent of the financial failures was intensified by (1) high resource cost of the supply developed, (2) the magnitude of the gas surplus created, and (3) a failure to find buyers at any price. Plainly, the two-block billing (and a more open transportation program) would have softened these factors. Under two-block billing, the rig count, wellhead price for new gas, and reserve additions would likely be higher than what is currently observed.

A number of the commenters agree that some approach similar to the block billing mechanism would indeed have mitigated the distortions that have resulted under the NGPA.[41] In the words of the Columbia Distribution Companies: [42]

> The current dilemma confronting the jurisdictional pipelines with surplus gas supplies at costs in excess of market clearing prices is a direct result of that pricing policy [or rolling in] . . . . In retrospect, the concept of segmenting gas purchase costs between old (regulated) and new (deregulated), should have been implemented contemporaneously with the partial deregulation provided under the NGPA.

Thus, the block billing mechanism should encourge more accurate price signals between wellhead and burner tip, leading to a more efficient allocation of the Nation's resources and would therefore be in the public interest.

(f) *Impact on Natural Gas Supply.* The block biling procedure is intended to modify a regulatory policy that appears to preclude consumers from obtaining natural gas at the lowest reasonable rates consistent with reliable, long-term service—in times of shortage as well as surplus.

The Commission recognizes that, as reminded by the Fifth Circuit Court of Appeals, it "must discuss the effect [its] order will have upon the ability of the gas industry to serve its market . . . ." *Southern Louisiana Rate Cases v. FPC*, 428 F. 2d 407, 443 (5th Cir. 1970) ("SOLA I"). A classic statement appears in *Colorado Interstate Gas Co. v. FPC*, written in 1945:

> Far-sighted gas-rate regulation will concern itself with the present and future, rather than with the past, as the rate-base formula does. It will take account of conditions and trends at the source of the supply being regulated. It will use price as a tool to bring goods to market—to obtain for the public service the needed amount of gas. Once a price is reached that will do that, there is no legal or economic reason to go higher; and any rate above one that will perform this function is unwarranted. * * * On the other hand, if the supply is not too plentiful and the price is not sufficient incentive to exploit it and fails to bring forth the quantity needed, the price is unwisely low, even if it does square perfectly with somebody's idea of return on a 'rate base'."

374 U.S. 581, 612 (1945) (Concurring opinion of Mr. Justice Jackson).

In response to these concerns, the Commission has considered the level of natural gas service likely to be demanded in the future; the wellhead price for natural gas that would likely result under the block billing procedure; and the gas supply the wellhead price will bring forth. *SOLA I* at 444. The Commission's evaluation of the impact of the block billing procedure on supply and demand is limited to its direct sale for resale jurisdiction to review the prices charged by interstate pipelines to consumers at the city-gate.[43]

Comments: Many producer commenters urged the Commission to reject the block billing procedure, arguing that it would seriously jeopardize the exploration and development of domestic supplies of natural gas. While the majority of these commenters agreed with the

Commission that the old gas "cushion" is distorting price signals to consumers, they argued in favor of "raising" the prices of gas subject to the maximum lawful prices of NGPA sections 104, 106(a) and 109 [44] to market-clearing levels.

For example, the Natural Gas Supply Association (NGSA) commended the proposed rule for attempting "both to enhance competition in the industry and to eliminate market distortions resulting form prior regulatory policies."[45] NGSA urged the Commission to assess the impact of block billing on future supplies of natural gas, and the availability of supplies during a potential gas shortage.

Only two commenters, NGSA and DOE, submitted statistical projections of the impact of the block billing procedure on natural gas supplies.

NGSA submitted as appendices to its comments a study by Foster Associates ("Foster") of the projected impact of the block billing procedure on producer revenues and natural gas drilling.[46]

DOE also included in its comments an estimate that consumers and the U.S. economy could realize net economic benefits of as much as $2.2 billion if the block billing procedure is adopted and assuming the savings in city-gate prices are passed through to the burner-tip.[47]

Commission Response: The Commission has reviewed the assumptions behind the Foster and DOE studies, especially concerning the likely impact of the block billing procedure on wellhead prices of gas included in block 2. On the one hand, Foster assumes block 2 prices (now $3.73 per Mcf) will drop all the way to the current level of spot gas prices (between $2.45 and $3.15 per Mcf). On the other hand, DOE assumes decontrolled gas prices will decrease to a point somewhere in between their current average prices (approximately $3.73 per Mcf) and the current weighted average cost of all gas (approximately $2.83 per Mcf, according to Foster).

The Commission considers the Foster assumption unrealistic because it equates market prices for gas, whether under short-term or long-term contracts, with a spot price for gas set based on a limited regional sample. Because market prices include a variety of values relating to duration, renegotiation and other terms and conditions which vary according to the type of contract involved, the Commission considers spot gas prices—the riskiest form of gas sale of all, from the buyer's standpoint—to be the *low* end of the range of likely block 2 prices resulting from block billing.

On the other hand, the Commission considers the DOE price assumptions more realistic but still not without flaws. The Commission agrees with DOE that block 2 prices are likely to fall somewhere in between the current average price of all gas and the current marginal price for decontrolled gas. However, the Commission does not agree that current spot prices or other "proxies" for price leadership, such as the average cost of gas on major pipelines, are not relevant to determining the *range* of likely block 2 prices. For example, to the extent spot prices begin to indicate a "futures" price for marginal purchases of gas, they are a relevant indicator of the *trend* in block 2 prices.

However, the Commission does not consider that the effect on producer revenues can be examined in isolation from other producer revenues or from the impact of lower block 2 prices on overall gas demand. Gas demand is not inelastic, and any reduction in block 2 prices must be considered in light of the likely increase in gas demand that will result. In addition, the current "bubble" of surplus gas deliverability is highly elastic in response to demand and could be marketed directly to consumers to substitute for substantial quantities of high-cost gas supplies in block 2.[48]

For these reasons, the Commission considers it reasonable that block 2 prices under proposed revised block billing procedure and nondiscriminatory access to transportation will drop to a level at which a certain amount of the current gas "bubble" will be sold by willing producers, and willing buyers will increase their gas demand to buy it. In addition, the Commission considers it is likely that lower block 2 prices will not only result in increased demand in gas markets, but also will increase the substitution of gas for other energy commodities. This substitution will create new markets for gas as well as increased demand for gas in existing markets.

In response to producer comments that urge the Commission to raise the prices of price-controlled gas to market-clearing levels in lieu of block billing, the Commission has evaluated the impact of such action on block 2 supplies. The Commission has calculated the impact of "old gas" deregulation on block 2 prices, using the DOE estimate that comprehensive deregulation would reduce average wellhead prices by $0.54 per Mcf in the first year. Using DOE's estimate, prices for gas categories included in block 2 would be reduced to $2.76 per Mcf, and the reduction in revenues to block 2 producers would aggregate approximately $4.9 billion if old gas prices were raised to market-clearing levels.

To the extent block billing mitigates the distorting impacts of the old gas cushion, it should increase the accuracy of price signals between producers and consumers. Also, the level of natural gas demand should respond more efficiently to new natural gas supplies at a market-clearing price.

The Commission is aware that natural gas drilling and exploration has decreased recently.[49] It also recognizes that there is a surplus of gas available for delivery, amounting to between 1 to 4 trillion cubic feet on an annual basis.[50] Furthermore, natural gas demand is still approximately 2 trillion cubic feet below pre-recession levels, and the $2.83 per Mcf weighted average cost of gas to pipelines is still inflated by high-cost and new gas prices averaging above $3.50 and $4.50 per Mcf, respectively.[51] In fact, for the first six months of 1985, AGA reported that gas sales were 8.3 Tcf, 1% below the first six months of 1984.[52]

The Commission believes that the continued persistence of the "bubble" of surplus gas may cause gas deliverability to decline, resulting in permanent loss of existing gas reserves. The Interstate Oil Compact Commission (IOCC) recently released a report that concluded that "the ability to deliver natural gas may be declining" in the United States.[53] Yet, EIA recently reported that the 25 major interstate pipelines owned or held under contract 96.8 percent of the 90.2 trillion cubic feet of gas reserves dedicated to interstate commerce.[54]

With respect to projected production, it is estimated that the total conventional domestic gas resource which can be discovered and produced using current or foreseeable technology and under favorable price/cost conditions is 784 trillion cubic feet.[55] Combined with proved reserves of 197 Tcf but not including unconventional resources yields a total current recoverable gas resource of 981 Tcf, more than 50 times the 1984 level of gas production.[56] This is to be contrasted with other estimates that conclude that technical and geologic uncertainties prevent a single "most likely" estimate of future annual gas production potential.[57]

On the demand side, industry analysts predict demand will recover slowly over the short-term under existing regulations, at a rate between 0.2–0.5 Tcf annually over the next few years. [58] Over the long-run, DOE predicted in its January 1985 section 123 study that demand under existing regulations and the NGPA would recover nearly 1 Tcf to

19.4 Tcf in 1986 and nearly 1.5 Tcf to 20 Tcf by 1990.[59] Assuming continuation of current policies, the Gas Research Institute in its spring 1985 Baseline Projection predicted gas demand would recover to between 19.5 to 20.0 guadrillion BTU's between 1990 and 2000.[60]

The Commission recognizes that all these projections are subject to extreme uncertainty and complex variables such as growth in the general economy, world commodity prices (such as OPEC oil prices), inter-fuel competition, and unforeseen "break-throughs" in oil and gas drilling technology.

These gas supply signals are mixed. On the one hand, the persistence of the surplus deliverability "bubble" indicates the adequacy of current supplies, especially when considered in light of continued high production levels. On the other hand, there is the potential decline in the physical deliverability of gas from wells that are shut-in as surplus except during peak periods. The inability of the market to clear this surplus is directly related to the persistence of high-cost gas prices. The inclusion of high-cost gas in a pipeline's WACOG may have a greater adverse impact on supply than the impact of lower wellhead prices.

Over the long-term, the Commission believes that the optimistic projections of recoverable reserves must be balanced against the high uncertainty that current wellhead prices will provide adequate incentives for the industry, especially independent producers, to explore and develop the supplies necessary to replace the reserves depleted over the next 20 years. However, the Commission concludes that the most important factor in the development of long-term gas supplies is demand and access of producers to markets in order to meet that demand. Over the short-term, unless natural gas demand increases, gas markets will fail to "clear" the current surplus and the United States may permanently lose thousands of independent producers that drill over 90% of the wildcat wells that discover new gas supplies. The Commission tentatively concludes that unless block billing is instituted to free city-gate prices of the distortions of the old gas "cushion," equal access to markets under the final rule may be denied to independent producers by what appears to be unjust and unreasonable rolled-in pricing policies.

(g) *Conflicts between block billing and state authority over certain natural gas activities. Comments:* A frequent comment is that the proposal is directly contrary to state proration and ratable take laws which govern the production of gas within individual producing states.[61] These commenters argue that state laws do not necessarily support the perceived goal of the billing mechanism which involves the production and delivery of less expensive gas prior to the produciton and delivery of more expensive gas.

In addition, many commenters [62] state that producer contracts with pipelines frequently cover multiple vintages of gas with the producers retaining discretion over exactly which vintage is delivered to the pipeline at any particular time. The general thrust of these comments is the pipelines will not be able to precisely nominate or determine the amount of old gas which will be available to them at any given time, making it difficult or impossible to properly bill their customers under the proposal.

While supporting the block mechanism, many LDC commenters argue that the proposal should not be implemented at the state level.[63] Most of these commenters either do not want to continue the procedure at the state level or feel that state regulators will not approve the separation of old and new gas.

Commission Response: The block billing mechanism would not be in conflict with state authority over either natural gas production or conservation or retail sales of gas to consumers. These comments, like some of the comments supporting the proposal, appear to overstate its effect.

Part D proposes a *billing* mechanism. It would not require any producer to produce any particular source of gas in preference to any other source. It would not require action by any state agency with authority over prorationing of production or ratable take. It would not require any pipeline to pruchase any particular source of gas. It would not empower any pipeline customer to nominate its purchase by vintage. It would not require state public utility commissions to establish a block billing mechanism at the retail level nor would it prohibit them from doing so.

Part D would establish a billing mechanism for wholesale sales of natural gas by regulated interstate pipeline companies.

Thus, the decisions of what gas to purchase and take into a pipeline system would be made by the same persons who make those decisions today: pipelines and producers, subject to whatever lawful regulation as to the production of gas may pertain. To remove the confusion which this aspect of the proposal has engendered, § 154.43(a) would be revised to make it crystal clear that the billing mechanism would not—

(1) mandate sequencing of takes by pipelines;

(2) affect existing contract rights between producers and pipelines;

(3) affect state regulation of natural gas production. . . .

All the billing mechanism would do is establish how the volumes of natural gas purchased by an interstate pipeline must be billed when the pipeline resells that gas in interstate commerce.

It may well be that there would be downward pressure on current prices of gas that would be included in block 2 as those prices are conveyed more accurately to the marketplace. It may well be that a state agency may adjust its actions under lawful authority in pursuit of legitimate state objectives in a way that makes more or less block 1 gas available for purchase by interstate pipelines. Nothing in the proposed billing mechanism precludes this.

Several observations may be made, however. First, a state agency may not seek to pursue lawful state objectives by ordering an interstate pipeline what gas to purchase. See Brief of the United States and the Federal Energy Regulatory Commission in *Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Mississippi and Coastal Exploration, Inc., et al.*, No. 84-1076 (October Term 1984) (filed May 1985) (oral argument held on October 8, 1985).

Second, a state regulatory agency may find that action to conserve supplies of block 1 gas and encourage sales of block 2 gas may in fact have the unintended effect of reducing total sales and total revenues as natural gas purchasers seek increased supplies of gas from other sources. But these are judgments which are lawfully vested in state authorities, not the Federal Energy Regulatory Commission.

This proposed rule also would not affect state authority over retail distribution of natural gas by local distribution companies. The proposed block billing requirement stops at the city gate. LDCs would *not* be required to sell gas at retail by implementing a block billing mechanism. LDCs and states may choose to roll in block 1 and block 2 gas and sell it to retail consumers at an average price. They may also choose to adopt some form of the block billing mechanism at the state level. The proposed rule would not mandate either option. To make this absolutely clear, we are proposing a provision in § 154.43(a) that the billing mechanism would not "affect state regulation or retail distribution."

5. Implementation of Specific Components of Block Billing Mechanism.

(a) *Subdivision of Block 2. Comments:* Many of the commenters on the billing mechanism suggest changes in the composition of the blocks used in the mechanism. Many of these comments suggest some change in the composition of block 2 which these commenters state will have an average cost well above market-clearing levels under the proposed rule. A frequent comment from all segments of the industry is that a separate block 2A should be established for new gas which is the subject of renegotiated or market-sensitive contracts.[64] These commenters propose that block 2A gas be offered to existing customers before other block 2 gas. Under this suggestion, new gas which is the subject of so-called "problem" contracts which have not been renegotiated to reflect market conditions, would be isolated in block 2. Many commenters contend that producers will not renegotiate problem contracts unless the average cost-reducing impact of renegotiated or market-sensitive contracts is removed from block 2. These commenters contend that by revising the blocks in the manner proposed, producers will get true price signals related to the problem contracts. Some commenters argue that all contracts entered into after the effective date of the proposed rule should be included in block 2A.

Commission Response: The Commission is not proposing to adopt the suggestion advocated by commenters that the Commission divide block 2 into two sub-categories, block 2A for certain market responsive gas and block 2B for certain non-market-responsive gas. The ostensible purpose most often stated for this subdivision would be to encourage producer to renegotiate contracts in order to get their gas into block 2A or at least to ensure that those producers willing to negotiate or renegotiate market-responsive contracts are not required to subsidize the nonmarket-responsive contracts. Commenters also advocated that the Commission require pipelines to nominate gas by blocks; commenters believed that this nomination requirement could be used as a "force majeure" or an intervening governmental action defense to these contracts for gas that the pipelines cannot sell. They also believe that such a nomination requirement could operate to override state prorationing rules, to the extent that they apply to interstate pipelines.[49]

Thus, the issue of subdividing block 2 depends crucially on whether this Commission accepts the effects this subdivision would have on the contract defense and state prorationing. We do not intend to take any position on whether this Commission's action would operate as a defense to any contract freely entered into by a producer and a pipeline. That is, for the most part, an issue for state or federal courts to resolve. Similary, we do not intend to override state prorationing laws. Thus, pipelines would not be required or permitted to subdivide block 2 into market responsive and non-market responsive gas, given that we do not accept the major premises for such a subdivision.

Commenters seemed to believe that *all contracts* had to be put in block 1 or block 2. Under that reasoning, all contracts for high-cost gas would have to be put in block 2. This, in turn, might render block 2 unmarketable. Thus, the need for a separate category for unmarketable gas. Since the major premise of this argument is incorrect, we reject this argument as a reason for subdividing block 2. *A pipeline would not be required by this proposed revised rule to put the cost of unmarketable gas in block 2.* A pipeline would retain the right that it currently has to keep the cost of this gas out of block 2 by not including it in its purchased gas adjustments. Our understanding is that currently pipelines are using a myriad of mechanisms to keep their weighted average cost of gas at marketable levels. One such technique is to not take such gas, make take-or-pay prepayments, and include such costs in section 4 rate filings. Another technique is to make a lump sum buy-out of take-or-pay liabilities. *See, e.g.*, 18 CFR 2.76 (policy statement on take-or-pay buyouts) and Part B of this rule. Thus, the producer wants gas to move and if lowering his price will do that, then he will lower his price. Decisions on current pricing for current markets are, of course, independent of decisions as to whether there are any legal rights or obligations to receive or pay a different price under the terms of a contract. As noted above, in the Commission's view, block 2 would give the pipeline and its customers no greater and no lesser legal rights than they now have.

In conclusion, we emphasize that nothing in the revised proposed rule (or indeed in the existing regulations) would require a pipeline to purchase gas supplies that cannot be resold. Accordingly, nothing in the rule would prohibit a pipeline from excluding from its block 2 rate the costs of any gas which the pipeline determines to be unmarketable and therefore does not take from the producer.

(b) *Which gas supplies goes into which block. Comments:* As noted above, a number of commenters urge that particular gas supplies should be included in block 1. In particular, these commenters argue that new gas, which is still price-regulated under the NGPA, should also be included in block 1 so that all price-regulated gas would be in one block.[65] A few commenters argue that all gas produced under contracts negotiated prior to January 1, 1985 should be included in block 1.[66]

Some of the producer commenters argue that stripper well gas under section 108 of the NGPA should be placed in block 1 because they assert that Congress intended such production to receive an incentive price which will not be possible it the production is included in block 2.[67]

Commission Response: The Commission proposes that the composition of the blocks should be generally as originally proposed. The categories of gas which were placed in block 1 in the first proposed rule were those which were not allowed incentive pricing under the NGPA. All other gas was placed in block 2. The Commission believes that it is appropriate to maintain this distinction so that new customers will pay a price for gas which is not subsidized by non-incentive priced gas.

There are several special cases, however. First, there is the case of prior certificates for LNG and coal gasification issued by the Commission containing a condition that rolled-in pricing would be preserved. While not addressing the issue of whether the Commission has the power to modify such a condition, it appears appropriate for this very limited group of already issued certificates to deal with the issue on a case-by-case basis. Second, some pipelines currently produce their own gas and sell it on a cost-of-service basis. We propose special allocations for this gas on a case-by-case basis. Accordingly, the new proposal provides for case-by-case determinations of the allocation between blocks 1 and 2 for imported LNG and the Great Plains coal gasification project, and cost-of-service gas.

(c) *"As-billed" principle for fixed costs. Comments:* Many commenters expressed confusion over the third part of the block billing proposal. Some commenters believed it somehow is in conflict with the "as-billed" principle for flow-through of the fixed costs component of an upstream supplier's rate.

The most frequent suggestions for treatment of the block 3 costs are: (1) That they be allocated volumetrically to all pipeline sales volumes; [68] (2) that they be allocated on an "as-billed" basis to the pipeline's demand and commodity rates; [69] (3) that they be allocated to the customer or unit of gas which gave rise to the particular block 3 cost element; [70] and (4) that all fixed costs be allocated to block 1.[71] Some commenters suggest that this issue be reserved for case-by-case resolution.[72] Several commenters also assert that whatever method is used, producer demand charges should be reflected as gas costs.[73] In addition, there is some confusion among commenters as to what exactly will be included in block 3, and whether pipelines will continue to have traditional demand charges in addition to the three-block structure.[74] These matters are clarified in the proposed revised rule.

Commission Response: In the NOPR, the third part was proposed in order to preserve the "as-billed" principle. After reviewing the comments, it is clear that a third part is not necessary. Rather, the new proposal defines a company's "block 1 rate" as a rate designed to recover, in addition to specified gas costs, the "unit non-gas cost component of the natural gas pipeline company's own commodity charge" or one-part rate. A similar phrase is included in the definition of "block 2 rate."

Thus, the unit non-gas component of the commodity charge, or one-part rate as determined in the pipeline's rate case will be added to the other unit cost components of each block rate. This will ensure that the pipeline's non-gas costs will be treated the same under block billing as they are today.

The "as-billed" principle would be preserved by:

• including in the term "block 1 rate" the costs of purchases from another natural gas pipeline company priced at its block 1 rate; and

• including in the term "block 2 costs" the unit non-gas component included in the commodity charge for purchases from other pipelines.

These changes would preserve the as-billed treatment of non-gas costs included in pipeline commodity charges. Demand charges from upstream pipeline suppliers would continue to be flowed through the demand charge of the purchasing pipeline.

(d) *Treatment of imported gas. Comments:* In the proposed rule, the Commission asked for comments on whether all costs of imported gas should be included in block 2. Several commenters, including the National Energy Board of Canada, address this issue. Virtually all of the comments filed by Canadian entities and U.S. importer pipelines asked the Commission to treat Canadian costs on an "as-billed" basis, and place Canadian demand charges outside of block 2.[75] A few of the other U.S. commenters argue that all Canadian costs, including demand charges, should be treated as gas costs and included in block 2.[76] Further, some commenters point out that the treatment of Canadian costs on an "as-billed" basis is an issue which the Commission has already set for hearing in pending cases, and that the issue should be decided on a case-by-case basis.[77]

Commission Response: The Commission recognizes that significant changes have occurred in export/import arrangements over the last year, in large part due to the revised policies of the governments of Canada and the United States. *See* discussion in *Northwest Alaskan Pipeline Company (Eastern Leg)*, 29 FERC ¶ 61,302 (1984) at 61,622. Those changes, including the provision for a two-part rate, have resulted in numerous filings at the Commission from importer pipelines, which have requested that they be allowed to reflect in their rates charges from Canadian entities as those charges are billed to them. In five instances, the Commission set for hearing the issue of the appropriate rate treatment of those charges. See *Transcontinental Gas Pipe Line Corporation*, 29 FERC ¶ 61,149 (1981; *Northwest Pipeline Corporation*, 29 FERC ¶ 61,149 (1984); *Boundary Gas, Inc.*, 30 FERC ¶ 61,345 (1985); *ANR Pipeline Company*, 31 FERC ¶ 61,127 (1985); and *Natural Gas Pipeline*, 31 FERC ¶ 61,190 (1985).

The proposed rule, in the context of the block billing mechanism, raised generically the issue of the downstream rate treatment of charges received by importer pipelines from Canadian entities. The issue, however, stands separate and apart from the block billing mechanism, as reflected in the Commission's consideration of filings since last October. Accordingly, the Commission proposes to continue to allow purchasers of imported gas to file to reflect costs on an as-billed basis. Such filings would be subject to review on a case-by-case basis. *See* § 154.43(d)(2).

Comment: Most of the Canadian commenters point out that Canadian commodity rates are now largely market-sensitive and these commenters argue that the market-sensitive Canadian commodity charges should be placed in a separate block 2A from other block 2 costs.[78]

Commission Response: Since the Commission does not propose creating a subdivision of block 2 for domestic gas supplies, the new proposal would not adopt this suggestion for Canadian supply. Rather, all imported gas would fall within block 2 since it is not subject to a maximum lawful price under sections 104, 106(a) or 109 of the NGPA.

We reiterate, however, that just as nothing in the revised proposal would compel a pipeline to take gas which it determines is *not* market-responsive, nothing in this proposal precludes a pipeline from taking supplies of gas that it determines are priced in a market-responsive manner. Hence, if a pipeline determines that supplies of Canadian gas are priced at a level that allows them to compete for available markets, the pipeline would presumably take the gas and resell it to its customers. In this way, Canadian imports would be treated comparably to U.S. domestic gas supplies.

Comment: A few commenters state that whatever the Commission does with the proposed billing mechanism, the revenue stream associated with the pre-built portion of the ANGTS project must be guaranteed.[79]

Commission Response: Because of the special nature of the ANGTS project, nothing in the revised proposal should be construed to jeopardize the revenue stream associated with the project.

(e) *Base period for allocation of block 1 gas. Comment:* Many commenters address the historic period which will be used for purposes of developing the percentage allocation to old gas. Several commenters assert that the 1982–1984 period is an arbitrary period, and that the Commission should use some other, more reasonable period.[80] A frequently-mentioned period is 1979 through 1981. The commenters who recommend the 1979–1981 period point out that after 1981 the purchasing patterns of pipeline customers changed radically.[81] These commenters state that by 1981, the effects of industrial recession, customer conservation, increased opportunities for transportation, and other factors, forced pipeline customers to change their historic purchase patterns. Several commenters also point out that prior to 1979, the first full year under the NGPA, the impact of pipeline curtailment of deliveries to customers also distorted customer purchasing patterns.

Several commenters state that pipelines now have old gas under contract based upon efforts the pipelines made to satisfy customer requirements which predated passage of the NGPA. These commenters argue that it would be unreasonable to assign the current pipeline supplies of old gas on the basis of the distorted customer purchase patterns in 1982–1984. Other commenters argue that the use of the 1982–1984 period will discriminate against pipeline customers who arranged their own alternative supplies and transportation during the 1982–1984 period in response to the market factors during that period.

Other alternative time periods which are proposed by commenters are: (1) 1981–1983, because this period would predate the elimination of minimum commodity bills in 1984 as required by Order No. 380;[82] (2) 1975–1984, because this period would reflect long-term customer purchase patterns;[83] (3) a moving five-year period which would always include the most recent full calendar year;[84] and (4) the entire post-NGPA period of 1979–1984, because this would reflect weather and economic variations over an extended period of time.[85] Other commenters recommend that the method of allocation be developed on a case-by-case basis.

Commission Response: Based upon a review of the comments, it is clear that a majority of the commenters on this issue believe that the 1982–1984 period is inappropriate for purposes of determining the allocation of old gas because customer purchase patterns were distorted during the period of 1982–1984 due to economic factors, the availability of transportation, and for many other reasons. Also, prior to passage of the NGPA, customer purchase patterns were distorted by the impact of pipeline curtailment.

The revised proposal would reflect a more representative period of customer purchases. The base period will be extended to include total purchases during the period of December 1, 1978, the effective date of the NGPA, through December 31, 1984, and will be used for purposes of developing the allocation of old gas. This period will be long enough to provide a reasonable measure of customer purchases undistorted by short-term market variations following enactment of the NGPA. This change is reflected in the definition of base period in section 154.43(c)(5).

(f) *Limitation of allocation to firm sales customers. Comments:* Some commenters argue that interruptible as well as firm purchasers should be allocated some old gas because they have contributed to the development of pipelines, and should receive some of the benefits of the remaining old gas reserves of pipelines.[86] Other commenters argue that transportation volumes for a particular customer should be included with firm purchases to develop that customer's allocation because transportation services also pay for the use of the pipeline system.[87]

Commission Response: The Commission proposes not to extend allocations to transportation volumes since the customers did not purchase that gas from the pipeline and the pipeline did not acquire gas supplies for that service.

The situation for interuptible sales customers is different, however. Pipelines generally do include these loads in their gas acquisition planning. Indeed, in a number of instances, the pipeline was constructed in large part to serve one or more interruptible customers.

If the new proposed rule permits interruptible as well as firm sales to serve as a basis for receiving an allocation of block 1 gas, this would of course lessen or "dilute" the benefit which might otherwise be enjoyed by firm sales customers only. It should be noted, however, that many firm sales customers, particularly LDC's, also purchase significant volumes of interruptible gas in the form of overrun, emergency or excess gas purchases. Inclusion of these interruptible volumes would not necessarily greatly affect the allocation of block 1 volumes.

The bulk of the remaining interruptible sales are made to large nonjurisdictional industrial customers. To evaluate the impact of including those latter customers in the allocation of block 1 gas, Exhibit P was prepared. It shows for each major interstate pipeline the total sales to all customers in 1979–1984 and the total volumes of direct sales to large commercial and industrial customers during the same period.

These large volume direct sales are nearly all made under interruptible rate schedules.

The Exhibit indicates that for the industry as a whole, the inclusion of large volume interruptible sales would reduce the block 1 allocation factor of the resale customers by less than 6 percent.

We recognize that the impact would be concentrated on a relatively few pipelines. For example, for Florida Gas Transmission, Arkla, and East Tennessee, large volume direct industrial sales accounted for approximately 57 percent, 55 percent and 29 percent respectively.

A review of each of these companies' Form 16 indicates that the vast bulk of these direct sales were to electric utilities for use in the generation of electric power. We note that a decline in these utilities' costs of fuel will generally be reflected as a reduction in their Fuel Adjustment Clauses, thereby benefitting all of their ratepayers.

A review of each of the other pipelines where large volume direct sales exceed 10 percent of total sales reveals a similar pattern of sales to electric utilities for power generation.

One purpose of the block billing would be to isolate the distorting effects of price controls, thereby allowing the competitive market for unregulated gas to develop in an economically efficient manner. Extending an allocation of old gas to interruptible customers is not inconsistent with this goal.

A secondary goal in structuring the block billing mechanism to allocate block 1 gas as fairly as possible, is consistent with the goal of mitigating the economic distortions that ultimately harm all customers. Allowing interruptible customers to buy a portion of gas priced under the block 1 rate would serve this equitable goal by broadening the universe of eligible purchasers to all those for whom the pipeline acquired system supplies.

Finally, the billing procedure should be as administratively simple as possible. allowing all customers to purchase block 1 gas helps to minimize if not eliminate future administrative proceedings to referee disputes as to whether a given service was "really" firm or "really" interruptible.

(g) *Effect of reduction of firm sales entitlements on block 1 allocation. Comment:* Some commenters argue that a customer should lose a percentage of its allocation of block 1 gas if the customer reduces its contract demand with a pipeline udner the provisions of the NOPR.[88] These commenters assert that a customer should not be able to reduce its firm obligation to a pipeline and still receive the benefit of old gas based on a historic relationship.

Commission Response: The revisec proposal does not require a firm sales customer that reduces its contract demand to thereby forego a similar amount of its allocation of block 1 gas. The option to reduce contract demand is only available to a customer if its supplying pipeline has agreed to the reduction by accepting a blanket certificate or operating under the revised section 311 authorizations. Moreover, the reduction in contract demand involves a change in the level of service that a pipeline and its customer have agreed to, not the way in which the customer will be billed for the volumes of gas which it purchases.

The proposed rule will not penalize a customer that seeks to exercise its conditional right to reduce its level of firm sales entitlements.

Of course, a firm sales customer would have no right to purchase gas on a firm basis in excess of the level of its firm sales entitlement. Accordingly, if a customer over time lowered its firm sales entitlements from, for example, 10,000 units to 5,000 units and its allocation of block 1 gas for the same period was 6,000 units, the customer would have no right to purchase the additional 1,000 units on a firm basis. The additional 1000 units would either have to be taken on an interruptible basis or, if not taken, would be reallocated to remaining customers.

(h) *Reallocation of block 1 gas not taken. Comments:* A number of commenters seek clairification as to what happens when a customer fails to take all of the block 1 gas available to it.[89]

Commission Response: The Commission propoes that if certain customers do not take their annual allocation of block 1 gas, the pipeline would be required to reallocated the available supplies to its other eligible customers. This would be consistent with the principle of isolating distortions resulting from the availability of the old gas and preserve the benefits of the old gas for the universe of eligible customers. This clarification is set out in § 154.43(e)(3).

(i) *Block 2 presumption. Comments:* The proposed billing mechanism includes a provision that beginning no earleir than four years from the effective date of the rule, if pipelines offer non-discriminatory firm transportation to all customers and also allow customers to convert 100 percent of their sales contract demands to transportation, then the sales price for block 2 gas by the pipeline will be presumed to be just and reasonable under the Natural Gas Act.

Many commenters assert that this proposal is contary to the Natural Gas Act and to previous judicial decisions which have not approved market-based pricing at the Commission.[90] *Farmers Union Central Exchange Inc. v. FERC,* 734 F.2d 1486 (D.C. Cir. 1984), *cert. denied,* 105 S. Ct. 507, which relates to Commission regulation of oil pipelines, is cited serveral times as an example of judicial repudiation of market-based pricing at the Commission.[90]

Some commenters assert that the proposed use of market-based pricing of block 2 gas may prove to be in violation of the guaranteed passthrough of purchased gas costs provided by the NGPA, and that the Commission cannot approve a provision in a rule which violates a statute.[91]

Commission Response: After reviewing the comments on this issue, as well as the precedents on market-based pricing of service, the Commission is proposing to provide a rebuttable presumption of justness and reasonableness for the cost of block 2 gas under the specific conditions provided in the rule. Pipelines must be given the flexibility to post prices for block 2 quickly and without extensive filings in order to meet the competition of non-regulated sellers of new gas. However, the block 2 rate must be reasonably based on the acquisition cost of block 2 gas. Also, the Commission would closely monitor the developments in the natural gas markets during the next four years to make sure that competition exists. If necessary, the Commission would review this issue in a future rulemaking.

In a competitive market it is competition that imposes a reasonable relationship of price to costs. In the competitive model, price is set by market forces at a level equal to the marginal costs of supplying and additional unit of the goods or service.

Under the final rules adopted today and this proposed rule, if adopted, the market for the gas commodity should continue to be quite workably competitive. By offering its customers the full opportunity to convert to firm transportation and by providing that transportation on a non-discriminatory basis, a pipeline essentially has agreed to subject its own gas sales to competition from every other natural gas marketer, whether a producer, an independent marketer, a local distribution company, or another intrastate pipeline.

It is thus reasonable to assume that if a customer believes the rate charged by the pipeline for gas *sales* is too high, the customer's best recourse is not to institute an administrative proceeding, but rather to buy cheaper gas elsewhere and contract with the pipeline for transportation rather than sales service. See Exhibit B detailing recent out-of-cycle filings.

If the customer finds that cheaper gas is not available in the competitive commodity market, then it is not clear how, in a world where all new supplies of natural gas are completely decontrolled, the customer can expect to obtain from the regulator gas at a lower price.

If we are correct in our assessment of where the industry is moving and if we are correct in our judgment that even small customers of a pipeline will have access to a national market for gas supply, then there will be no harm in allowing a pipeline to charge a rate for block 2 gas that is different from its acquisition cost of that gas. The rate will be reasonably related to acquisition cost by the exact same mechanism by which prices of other goods are kept close to costs.

If we are wrong, however, the customers will not be adversely affected by the presumption. first, any change in the rate charged for block 2 gas is still a section 4 change in rates and comes within the various filing, notice, suspension, and refund provisions of the NGA.

Moreover, the revised proposal has been reworded to make it clear that the presumption of justness and reasonableness is subject to rebuttal.

Thus, if any customer believes, four years hence, that competitive forces are not adequate to enforce a just and reasonable rate for block 2 sales service, a traditional regulatory forum is still available with the standard tools of hearings and orders to refund charges in excess of the just and reasonable rate.

In other words, the only circumstances under which the presumption will attach are those where competition in the *commodity* market will presumptively operate to protect the customer from unlawfully high rates for gas. In instances where the pipeline retains its monopoly power over gas sales by declining to accept the open access conditions, the presumption will not apply.

(j) *System storage.* In the proposed rule, the Commission provided that the division of system supply gas in storage between blocks 1 and 2 will be in the same proportion as the pipeline's purchases of these gas supplies for firm system sales over the past twelve months. Further, the proposed rule provides that blocks 1 and 2 gas in storage will be priced, as are all other gas sales, in these two blocks respectively. The Commission asked for comments on alternative accounting treatment for storage gas. Few comments address the issue of storage gas.

Comments: Consolidated Gas Transmission (Consolidated) raises a question as to whether the Commission's proposal will be contrary to last-in, first-out (LIFO) conformity rules of the Internal Revenue Service (IRS). According to Consolidated, under the LIFO method, storage must be priced at the current year's average cost of gas, and this treatment must be consistent for book, tax, and rate purposes. Consolidated states that if block pricing is adopted, it will be essential to develop book accounting, financial reporting, PGA, and tax accounting practices which satisfy IRS rules; otherwise Consolidated will face tremendous additional tax exposure. Other comments suggest that the treatment of storage gas is an issue which will require further clarification and refinement by the Commission.[92]

Commission Response: The Commission believes that gas sold from system storage should be required to be sold according to the block billing mechanism. The Commission recognizes, however, that the accounting for gas in system storage will require some accommodating adjustments. To ease the transition to block billing, the revised proposal would allow all gas in storage on the date the pipeline implements the block billing mechanism to be included in block 2. While this would obviously have the effect of including some old gas in block 2 and thereby reduce somewhat the average cost of block 2 gas, it would make the transition accounting much simpler. Regarding the accounting adjustments, the Commission believes that pipelines should be permitted to make appropriate accounting adjustments so that the block billing for system storage is consistent with LIFO inventory accounting and the IRS tax conformity rules to the extent that any accounting adjustments are necessary. The Commission does not propose at this time to generically impose a uniform mechanism on all pipelines but will allow pipelines to propose any necessary adjustments on a case-by-case basis. Some pipelines may make such adjustments by putting only block 2 gas in storage, others may decide to expand their contract storage operations so customers can store their block 1 gas from one season to the next. In any event, we will entertain such proposals that pipelines determine are necessary to make appropriate accounting adjustments to implement the block billing mechanism for system storage.

(k) *Administration, procedure, accounting and miscellaneous matters. Comments:* The Commission asked for comments on what changes in Commission procedure and administration may be needed to implement the three-block proposal. Many comments address these issues.

Some commenters suggest that blocks 1 and 2 prices should be developed by pipelines and billed to customers on a monthly basis.[93] Other comments suggest that pipeline PGA dates should be uniform for all pipelines so that the rule can be implemented simultaneously by all pipelines.[94] A few comments state that compressor fuel charges should be equal to a pipeline's block 2 rate.[95] Other comments suggest there are so many details involved in the billing proposal that the details will have to be resolved on a case-by-case basis after the Commission implements the billing proposal.

Commission Response: The Commission realizes the adoption of block billing will involve new administrative requirements for pipelines. The revised proposal addresses the major requirements in a way which should make the transition to block billing as smooth as possible.

In particular, the new proposal provides that the block billing mechanism will be phased in over a period of time so that pipelines will reflect the inclusion of purchased gas costs in blocks 1 and 2 as these costs are flowed through to the pipeline. Accordingly, the rule requires that all block 1 gas sold to the pipeline *as* block 1 gas would go into the pipeline's block 1. Block 2 gas and all gas sold to the pipeline by another pipeline unblocked (because the selling pipeline has not yet implemented the block billing mechanism) would go in the pipeline's block 2. The Commission proposes that pipelines use the traditional PGA mechanism to reflect changes in block 1 and block 2 rates. For natural gas companies that adjust their rates to reflect changes in purchased gas costs under § 154.63, the proposed billing mechanism would become effective June 1, 1986. For companies that report purchased gas costs under § 154.38, the mechanism would become effective on the effective date of the rule or on the effective date of the company's first filing under § 154.38 that is filed after May 31, 1986.

The revised proposal also provides that upon request of a pipeline customer, a natural gas company must notify that pipeline customer of the estimated quantity of block 1 gas which will be available to the natural gas company for sale for that period. The rule would allow a pipeline and its customers to agree to any mutually acceptable delivery schedule for the customers block 1 gas. Some customers may want summer deliveries, others winter deliveries. A customer does not have a unilateral right to demand that its block 1 gas be delivered whenever it wants it. The pipeline can impose reasonable operational constraints on the delivery of block 1 gas. The pipeline's obligation would be clear, however. The pipeline would be required to deliver to its customers on an annual basis their percentage of the pipeline's annual supply of block 1 gas. If the pipeline fulfills this obligation and can deliver block 1 gas to its customers in a way that is operationally feasible and satisfactory to its customers, we believe it is not necessary to adopt a uniform requirement as to how *all* pipelines must deliver and how *all* customers must take block 1 gas. If the parties cannot agree to a mutually acceptable delivery schedule, we propose to entertain petitions under § 385.207(a)(2) of our rules of practice.

The revised proposal provides that pipelines must use a "unit-of-purchase" method of setting rates under § 154.38, a method which relies on the volumes of gas purchased for determining the amount of current adjustments and the amount of costs deferred in Account No. 191.

The revised proposal provides that the surcharge for Account No. 191 for the first filing under the block billing mechanism will be calculated by dividing the balance in the Account No. 191 subaccount to be entitled "To be Amortized" by the natural gas company's total projected sales. The surcharge will be applied to all sales made by the natural gas company during the upcoming PGA period.

Further, the natural gas company must establish appropriate clearing accounts for each block. If a pipeline owes its customers refunds attributable to periods prior to May 31, 1986, or prior to the date upon which the first PGA filing under this section becomes effective, whichever is later, the pipeline would have to refund such amounts on a cash basis applicable to the pertinent period involved. For future periods, refunds would be distributed through the appropriate clearing account of Account No. 191 attributable to any newly effective gas and non-gas rate requirement prescribed in this section.

V. Notices and Public Procedures

Parties wishing to file written comments must file an original and fourteen copies with the Secretary of the Commission by November 18, 1985. All such comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Public Reference Room, Room 1000, 825 North Capitol Street, NW., Washington, DC 20426 during regular business hours.

The Commission has determined to also provide an opportunity for oral presentation of data, views, and arguments on the proposal. A public hearing will be held in Washington, DC, on Wednesday, December 11, 1985, beginning at 9:00 a.m. The hearing will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The Commission will issue a subsequent order establishing further procedures for the December 11, 1985 hearing.

In consideration of the foregoing, the Commission proposes to amend Chapter

I, Title 18 of the Code of Federal Regulations as set forth below.

List of Subjects in 18 CFR Part 154

Natural gas.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

Footnotes to Section IV. D. Billing Procedures

[1] The references to "old" and "new" gas are necessary oversimplification. The actual dividing line between the two categories was whether or not Congress intended to create an incentive price for the gas. This is discussed further below.

[2] *But see*, United Gas Pipe Line Co. v. FERC, 649 F.2d 1110 (5th Cir. 1981), and Laclede Gas Co. v. FERC, 722 F.2d 272 (95th Cir. 1984), *discussed infra*.

[3] TIPRO and Designated Producers.

[4] *See, e.g.*, Laclede Gas Co. v. FERC, 722 F.2d 272 (5th Cir. 1984); Nueces Industrial Gas Co., 45 FPC 1224, 1230 (1971); United Gas Pipe Line Co., 14 FPC 353, 391–400 (1955); and Trunkline Gas Supply Company, 8 FPC 250, 258 (1949).

[5] United Gas Pipeline Co. v. FERC, 649 F.2d 1110 (5th Cir. 1981); and Colorado Interstate Gas Co., 19 FPC 1012, 1022 (1958).

[6] Public Service Comm. v. FERC, 642 F.2d 1335 (D.C. Cir. 1980), *cert. denied*, 454 U.S. 879 (1981).

[7] *See, e.g.*, Indicated Producers, Mobil Oil, Ashland Exploration; Panhandle Eastern, *et al.*; and INGAA.

[8] *See, e.g.*, Indicated Producers.

[9] *See, e.g.*, Indicated Producers and Amoco.

[10] *See, e.g.*, IPAA.

[11] *See, e.g.*, American Paper Institute.

[12] *See, e.g.*, Ashland Exploration.

[13] Continental Pipe Line Co. v. Belle Fourche Pipeline Co., 372 F. Supp. 1,333 (D. Wyo. 1974).

[14] ANR Pipeline Co. v. FERC, No. 84–1026 (D.C. Cir. August 13, 1985).

[15] Public Service Comm'n of New York v. Mid-Louisiana Gas Co., 463 U.S. 319 (1983).

[16] S. Rep. No. 98–205, 98th Cong., 1st Sess., "Natural Gas Policy Amendments of 1983," Committee on Energy and Natural Resources (July 29, 1983) at 6–7, 10.

"The 28 NGPA pricing categories can be classified into general types: The first was designed to stimulate production by providing incentive prices for production of new and high-cost natural gas. In order to qualify for these incentive prices, a producer must obtain a determination of eligibility from the appropriate jurisdictional agency. The incentive categories are:

New natural gas (Section 102);

New onshore production wells (Section 103);

High-cost natural gas (Section 107); and

Stripper well natural gas (Section 108).

The second type was generally designed to moderate price increases by limiting the price paid for older gas to levels generally equivalent to those in effect prior to the enactment of the NGPA. These categories essentially codified pre-existing FPC decisions establishing interstate prices and prices then being paid in the intrastate market. Qualification for these prices does not require a jurisdictional agency determination. These non-incentive categories consist of:

Natural gas under existing interstate contracts (Section 104);

Natural gas under existing intrastate contracts (Section 105);

Natural gas under "rollover" contracts (Section 106); and

Natural gas not specifically covered by any other section (Section 109) . . ." (at 6–7).

"In part the NGPA is not operating as originally designed. For example, NGPA was intended to provide gas consumers with the benefit of pre-NGPA inexpensive gas by never decontrolling this "old" gas. (Old-gas constituted 70 percent of flowing gas supplies in 1981, and is estimated to constitute 44 percent in 1985 and 22 percent in 1990.) The framers of the NGPA expected that the benefits of the old gas price "cushion" would automatically be passed through by pipelines to their gas consumers. However, that has not happened.

"What was not fully appreciated was that despite federal cost-passthrough regulations, pipelines could in effect use this "cushion" to subsidize the acquisition of new and deregulated gas supplies. This occurs as a result of "rolled-in" gas pricing whereby a pipeline's customers are charged the average price of the gas they are consuming, rather than the marginal cost of new gas supplies.

The evidence of this phenomenon is quite startling: Pipelines have purchased decontrolled deep gas for as much as $11 per Mcf, rolled that gas into the pipeline's total gas purchases, and ultimately resold that $11 gas for less than a quarter of its cost. Similarly, Algerian liquefied natural gas is imported at nearly $7 per Mcf but sold for only a fraction of its cost." (at 10);

". . . The benefit of old gas is not going to the gas consumer, but instead to certain gas producers through cross subsidies which result in above market prices for certain categories of natural gas. The old gas price cushion enables pipelines to pay higher than market clearing for new and decontrolled gas supplies." (at 12).

[17] H.R. Rep. No. 95–496 (Part 4), 95th Cong., 1st Sess. (1977); H.R. 6831, "National Energy Act," Committee on Interstate and Foreign Commerce at 98–100.

"Recent new natural gas prices have not exceeded the Btu equivalent price of crude oil in intrastate markets. Why then will deregulation of interstate natural gas sales result in such dramatically higher new natural gas prices? The answer to this question requires an appreciation of the differing characteristics of the interstate and intrastate markets.

Interstate pipelines . . . have large quantities of natural gas under long-term contracts. Thus, while average intrastate contract prices presently average as high as $1.85 per Mcf for some intrastate pipelines, the average cost of natural gas to interstate pipelines is only slightly above $0.60 per Mcf.

An analogy may be useful to illustrate this point. Conceive of an interstate pipeline system as a tub of water. In the tub are many people representing the natural gas users served by the interstate pipeline. The temperature of the water in the tub is related to the price of natural gas. The pipeline desires to fill the tub as full as possible so long as no one gets out of the tub because the water is too hot. The first person to leave the tub is the user who is most temperature sensitive. Thus, the pipeline can add comparatively small quantities of hot water, representing higher priced new natural gas, to the cool water in the tub, representing the base of old price-regulated natural gas in the system, without raising the temperature of all the water in the tub to a level at which any one gets out of the tub. In fact, if the quantities of new water added to the tub are sufficiently small, the temperature of the added water may be scalding hot but nonetheless would be rapidly diluted by the larger quantity of cooler water already in the tub.

Under this analogy, it becomes clear that an interstate pipeline will be able to bid extremely high prices for new supplies of natural gas, which even deregulation proponents concede will be relatively small as compared to the volumes of presently flowing natural gas. The interstate pipelines, unlike the intrastate pipelines, are not constrained by a limited demand for natural gas. Using rolled-in pricing, interstate pipelines can bid the price of new supplies of natural gas to unprecedented levels of $5 per Mcf or more.

. . . Using their unique ability to roll in new natural gas prices, interstate pipelines will literally suck natural gas away from the intrastate markets. This would have serious price and economic consequences for intrastate users for whom natural gas is essential."

[18] "Mr. Domenici: . . . The Senator should also remind the Senate that under this conference report that $4.50 Algerian gas is not going to get a break any more because it is not going to get rolled-in with the American cheap, old natural gas thus making it appear to be a good price. . . . In the future, they are going to bring that $4.50 gas in and it is going to be incrementally priced and it is not going to be such a bonanza for them to sit on the outside and mix it in with American natural gas and say, The consumer does not know it because it is mixed in the rest and we will charge whatever we want.' " 95 Cong. Rec. S14955 (daily ed. Sept. 12, 1978) (statement of Sen. Domenici).

[19] On October 14, 1978, the day the NGPA passed Congress, Chairman Dingell stated:

". . . [I]ncremental pricing is substituted for wellhead price controls as a market ordering device. The delay of deregulation is necessary to enable this substitute mechanism to eliminate present-day market distortions prior to deregulation.

Incremental pricing will put an upper limit on the prices pipelines will be willing to pay for gas supplies. The ability of gas hungry interstate pipeline to average-in comparatively small volumes of deregulated supplies of new gas with far greater volumes of cheaper old gas would result in a bidding war between pipelines for new gas supplies.

Incremental pricing solves this problem by focusing initial price increases on the pipelines' most price sensitive customers' historically under-priced industrial users . . .

(emphasis added)." 95 Cong. Rec. H13114 (daily ed. Oct. 14, 1978) (statement of Rep. Dingell.)

[20] This Commission discretion is reinforced by the express language of the House Committee report on the Phase II incremental pricing veto:

The committee does not intend by its veto of the Commission's phase II rule to minimize the threat to natural gas markets posed by partial deregulation in 1985 or to influence in any way, either positively or negatively, the exercise of the Commission's discretion with respect to any market ordering option available to it. The Committee notes that the Commission has made reference to other administrative measures available to it that do not require congressional approval to implement, such as the proposal to link alternative fuel ceilings to curtailment priorities and rate design initiatives to order natural gas markets. H.R. Rep. No. 96-938, 96th Cong., 2d Sess. (1980), H. Res. 655, "Incremental Pricing of Natural Gas," Committee on Interstate and Foreign Commerce, at 14.

[21] When all incrementally priced industrial facilities served by a pipeline reach the Btu-equivalency of the cost of the alternate fuel, the passthrough will operate only to the extent necessary to maintain rates and changes for industrial users at that equivalency. *Excess amounts may be allocated in whatever manner by which the pipeline or local distribution company is permitted to recover normal costs.*

The conference agreement does not include a requirement for, nor any prohibition on, any particular manner of distribution of this excess cost among the customers of the interstate pipeline, nor among those of the local distribution company. (emphasis added). Joint Explanatory Statement of the Committee on Conference, NGPA, H.R. 5289 P.L. 95-621, 95th Cong., 2nd Sess. at 99.

[22] *Op. cit.*

[23] P.L. 95-617, November 9, 1978, Joint Explanatory Statement on Conference at 102—Section 306, Public Utility Regulatory Policies Act of 1978.

[24] *E.g.*, Indicated Producers.

[25] Indicated Producers, (footnote omitted) (emphasis supplied). *See also*, Mobil Oil Corp., at 25 (the present cushion of old gas "significantly distorts" price signals "to nearly every segment" of the gas industry); Texaco, Inc., (recognizing the "debilitating and distorting" effects of continuing cushion of old gas).

[26] *E.g.*, Texaco, Inc. and Indicated Producers.

[27] *Id.*

[28] S. Rep. No. 98-205, 98th Cong., 1st Sess., S. 1715 "Natural Gas Policy Act Amendments of 1983," Committee on Energy and Natural Resources (1983) at 6-7, 10, 12.

See e.g., the prior statements of the Natural Gas Supply Association.

"The current market for natural gas in this high cost, high risk category is in some areas as high as $10.00 per million Btu's at the wellhead *because* the pipeline purchaser can "roll-in" these prices with all other gas purchases." Statement of John M. O'Connor, Chairman, Natural Gas Supply Assoc. and Vice President, Chevron, U.S.A. in 1981 Senate Hearings, at 585 (emphasis added).

Statement of H.E. (Gene) Wright, Chairman, Natural Gas Supply Assoc., 1982 Senate Hearings, at 197 (repeating same assessment);

"Those pipeline companies having committed to their systems a long term supply of low cost, permanently regulated natural gas will be able to offer above-market prices for new gas supplies, for, *since* the pipelines average all purchased gas costs together in determining their re-sale rates, a pipeline having a cushion of low cost gas can bid premium prices for new supplies without raising its average cost above competing fuels." Statement of John M. O'Connor at 1981 Senate Hearings, *supra* (emphasis added).

See also, prior statements of the Independent Petroleum Association of America:

"The argument we have is on the 104 provisions, the old gas, of which most of these people who are drilling these deep wells have none of, and the situation we have is that the deep gas is being averaged with the shallow gas and we are making is possible for these (sic) deep gas to be purchased at $8 and $10, . . . whatever these high prices are." Statement of Harold Wright, Chairman, Natural Gas Committee, Independent Petroleum Assoc. of America in 1981 Senate Hearings, at 598.

See also, prior submissions to this Commission of the Indicated Producers:

"The effect of rolled-in pricing is to average the price of *all* sources of gas to a pipeline into the single price it charges to its customers. *Thus* the high cushion pipeline can pay higher prices for decontrolled gas without increasing the price to its customers above the commodity value, so as to cause fuel switching. In so doing, the pipeline may pass on to the producer of decontrolled gas the economic benefits which Congress contemplated would be retained by the gas consumer. Under these assumptions, the consumer will pay about the same price for his gas as if all gas were decontrolled." Joint Committee of Indicated Producers, Docket No. RM82-26 (filed August 26, 1982) (Vol. 1) at 89 (footnote omitted) (emphasis added).

[29] Indicated Producers, Natural Gas Supply Assoc., Dupont/Conoco, Odeco Oil & Gas Co., (include those NGPA section 102(d) supplies for which producers would accept the NGPA section 104 price), TIPRO, Natural Gas Equal Access/Independent Petroleum Assoc. of Mountain States, and Northwestern Mutual Life Insurance Co.

[30] Comments of The Maurice L. Brown Co.; Ashland Exploration Co., and Appalachian Energy Group, August Hearing, Tr. at 501-503.

[31] Great Plains Gasification Associates and the Customer Pipeline Cos., late filed comments of North Dakota Public Service Commission, Senator Andrews.

[32] National Helium Corp., Nebraska Public Power District, American Paper Institute.

[33] Mississippi Valley Gas.

[34] Process Gas Consumers, *et al.*, at D-10-D-11; American Paper Institute, at 26-27; and American Bakers Assoc.

[35] *E.g.*, Indicated Producers.

[36] August Hearing, Tr. at 122 and 123. *See*, however, comments of HNG-InterNorth, at 25 (expressly urging the Commission *not* to order) pipelines as to which supplies should be purchased in which order.

[37] August Hearing, Tr. at 122-124; and 183-184.

[38] August Hearing, Tr. at 123.

[39] Process Gas Consumer Group.

[40] Traditional rolled-in pricing permitted a house of cards to develop; as soon as oil prices turned down, new gas prices had to collapse proportionally more. The rolled-in price, thus, exaggerated the depression in drilling, with rig count now at only 40% of 1981 levels.

[41] Wisconsin Public Service Commission, at 7 (failure to have mechanism such as block billing "created market distortions" and "led to the acquisition of new gas supplies under terms and conditions which would never have prevailed had such supplies been marketed under a "stand along" basis rather than "rolled-in" with cheap "old" gas supplies"); Arkansas Public Service Commission, at 7 (rolled in pricing "contributed greatly" to problem contracts that "would have not existed if price signals had been efficiently relayed").

[42] Columbia Distribution Cos.

[43] 15 U.S.C. 3431 (1982).

[44] Indicated Producers, Amoco, Texaco, NGSA, and the independent Petroleum Association of America all agree that rolled-in pricing of the old gas cushion is creating price distortions in natural gas markets and therefore should be expeditiously dealt with. However, all urged the Commission to raise the "just and reasonable" levels of price-controlled, old gas instead of requiring old gas to be separately billed under the proposed billing procedure. Raising old gas price levels, they argued, would remove the price distortions of the "cushion" while at the same time assuring long-term supply security.

[45] "Far from achieving its stated purpose of neutralizing 'the price distortions caused by vintaged gas' (NOPR at 43), i.e., the 'cushion' of below-market priced gas available in differing degrees to pipelines, the three-part billing procedure would merely have the effect of transferring those price distortions, in magnified form, further down the marketing chain. . . . The proposed three-part billing program would retain below market pricing for a substantial portion of the nation's proved gas reserves and would maintain prices for these supplies below the costs of replacing the gas. It could also result in a substantial loss in the amount of capital producers have available to fund the exploration and development of gas supplies." NGSA, comments (Parts A-D).

[46] Based on PGA filings through June 1, 1985, by 25 major interstate pipelines, Foster estimated the average volumes and prices of gas to be included in Block 1 and Block 2 under the block billing procedure.

Foster estimated Block 2 volumes and average prices at 5.052 trillion cubic feet and $3.73 per Mcf, respectively. Using spot market price data through mid-June 1985 and assuming that the block billing procedure would reduce Block 2 prices *all the way to the spot price levels*, Foster estimated potential producer revenue losses on the basis of three spot prices: $2.45 per Mcf (Rocky Mountain spot price), $2.58 per Mcf

(Texas-Gulf Coast spot price), and $3.15 per Mcf (Appalachian spot price). The producer revenue losses were estimated between $2.93 billion and $6.46 billion based on this calculation.

Foster then estimated the impact of this loss of revenues on gas well drilling. Assuming gas well drilling expenditures, including dry holes, totaled $11.76 billion for 15,705 gas wells in 1984, and assuming further that gas producer revenue reductions *reduce drilling investment dollar for dollar*, Foster estimated the block billing procedure would reduce drilling between 7,083 and 11,794 wells per year. Assuming gas reserve additions fall off in proportion to gas drilling activity, Foster thereby concluded future reserve additions would replace only 45 to 75 percent of future production, compared to the current 96 percent.

[47] DOE, in its comments at 47–52 and Appendix B, based its estimates on the "Two-Market Model" used to calculate alternative supply and demand projections in its Section 123 Report. In calculating the savings to consumers under the block billing procedure compared to existing regulation, DOE assumed that the gap between the current average price for all gas and the higher marginal price of decontrolled gas is the result of averaging in old gas quantities to determine consumer prices.

In its *Second DOE Section 123 Report*, at 137, 139, DOE concluded:

. . . Price controls create an incentive for pipeline companies to purchase a mix of low-cost and high-cost gas. Consumers pay an average of these prices. Price controls on low-cost, old gas allow high-cost domestic and imported gas to receive prices above the average price. The prices paid for high-cost gas will exceed the average price by an amount that results in the average price matching the price that consumers are willing to pay for natural gas. The price consumers are willing to pay for gas is equal to the cost of not using gas or the price of alternative fuels. Thus, the major beneficiaries of price controls on old gas are high-cost domestic producers and gas importers, *not* consumers.

. . . The first-year effects of comprehensive deregulation are summarized below by comparing 1984 and 1985:

The average domestic wellhead price would fall $0.54 per thousand cubic feet. . . .

Thus, in calculating the impact of the block billing procedure, DOE assumed that consumers pay a new, lower marginal price for decontrolled gas and consume a new, lower quantity of this gas, while producers receive the same lower marginal price for the quantity of gas demanded by consumers. *DOE projects the new price consumers pay for decontrolled gas is between the current average price of all gas and the current marginal price for decontrolled gas.* According to DOE,

This occurs for the following reason. Once consumers are faced with three choices, to either (a) pay a higher price for volumes they are receiving at the lower price, or (b) pay the same price for smaller volumes, or (c) choose new levels of demand below current levels, and pay a price above the current average price a price above the current average price for all supplies and below the current marginal price for decontrolled supplies. Consumers will choose (c). This choice determines a new marginal price for decontrolled supplies a new marginal price for controlled supplies that is received by producers and paid both by interruptible consumers and firm consumers with demand not satisfied by the constrained supply of old gas.

. . . *Old gas producers receive the same price and produce the same quantities.* (Emphasis added).

DOE comments at Appendix B–4.

In terms of supply impacts, DOE estimates that production of decontrolled gas would decline initially by about 400 billion cubic feet a year under the block billing procedure compared to current regulations. This difference in production would decline to about 200 billion cubic feet a year by 1990. However, DOE concludes that the block billing procedure would *not* alter the total amount of gas reserves that are ultimately recovered compared to current regulations, but would simply shift production to a schedule in which more expensive resources are produced in later periods. DOE comments at 47.

[48] Natural Gas Monthly, *supra* at Table 6 (Estimated Surplus Natural Gas); *Second DOE Section 123 Report* at Chapter 6; Comments of Process Gas Consumers at 14, n.19. *See also, The Energy Daily*, September 30, 1985, "SoCal Gas Feuding with El Paso"; October 2, 1985, "California Gas Feud Ends as El Paso Lowers its Price" (citing spot gas transactions in the California market).

[49] Comments of NGSA, Docket No. RM85–1–000 (Parts A–D) at Appendix B–5; but see *Second DOE Section 123 Report* at Chapter 2 (attributing decreased drilling to persistence of the surplus and lower demand); *Oil and Gas Journal*, "Annual Drilling Report," September 23, 1985, pp. 71–96.

[50] *Natural Gas Monthly, supra* at Table 6; Study by American Gas Association, reported in AGA *Washington Letter*, July 26, 1985; *Second DOE Section 123 Report* at Chapter 2 (summarizing estimates of surplus).

[51] *Natural Gas Monthly*, July, 1985, *supra* at Tables 3 and 5.

[52] American Gas Association, Monthly Gas Utility Statistical Report (June, 1985).

The Energy Information Administration recently reported that proved domestic reserves of natural gas declined 1.4% to 197.5 Tcf at year end 1984, but that total gas discoveries jumped 13.5% to 13.5 Tcf and total production climbed 8.9% to 17.1% Tcf for the same period. See n.67 at II Background, *supra*; see also *The Energy Daily*, September 11, 1985, p. 3 (Report Canadian gas reserves at 99.7 Tfc at the end of 1984, a 7.5 percent increase over 1983). Thus, during 1981–1984, reserve replacement averaged 98.1%, compared to 46% for the decade preceding passage of the NGPA. Similarly, the United States Department of Energy has concluded that comprehensive wellhead deregulation of all remaining price-controlled gas would reduce average wellhead gas prices $0.54 per Mcf in the first year while increasing domestic old gas reserves by 27 trillion to 48 trillion cubic feet through reduced abandonment, increased infill drilling, and enhanced well-stimulation activities. *Second DOE Section 123 Report* at 139.

[53] The report indicates a production capability in the continental U.S. of 50.961 Bcf/d during 1983–84. During peak demand days, 1.198 Bcf/d was available as surplus, most of it in Louisiana, the OCS, and New Mexico. Just over 4,000 wells were reported as unconnected to pipelines, or shut-in during the period of the study, with nearly 1,200 of these in Louisiana and states west of the Mississippi River. According to the IOCC,

While some of these wells were unable to produce during this period due to inability to compete against the pipeline pressure, the vast majority are wells which are unconnected due to market conditions . . .

The cushion provided by the large industrial market to be utilized for relief of the residential/commercial market through curtailment of service has been shrinking. Such shrinkage increases the possibility that shortages to the residential customer may occur should sustained cold periods place an undue demand on the ability of the pipelines to deliver natural gas. Should this decline be common through the U.S., it presents a serious picture during times of peak consumer demand. A reduction in the ability to call upon production capability when needed, supplemented by withdrawals from storage, could have a severe impact upon meeting essential human needs, even after interruptions in service to other customers. The surplus production capability of natural gas, while appearing to be extensive on a daily average throughout the country, is a necessity to meet needs during critical days of peak demand." Final Report, Interstate Oil Compact Commission, "Natural Gas Deliverability Study" (August, 1985).

[54] U.S. Energy Information Administration, *Domestic Natural Gas Reserves and Production Dedicated to Interstate Pipeline Companies, 1984* (Preliminary Data Report, DOE/EIA August 5, 1985).

[55] "U.S. Potential Gas Supplies," Potential Gas Committee, *Gas Energy Review* (American Gas Association; Vol. 13, No. 6, June 1985) at p. 2–3. Potential Gas Committee of the Colorado School of Mines.

[56] *Id.* at 5.

[57] The Office of Technology Assessment of the U.S. Congress states that a credible range for lower-48 production levels in the year 2000 is 9 trillion to 19 trillion cubic feet per year, assuming gas demand remains high and gas prices do not soar. OTA estimates production from new unconventional sources, including tight gas and Devonian shale gas, could range between 1–5.5 Tcf. Finally, OTA estimates the range of imports and Alaskan gas available by 2000 to be anywhere between 1 to 6 Tcf per year. *U.S. Natural Gas Availability: Gas Supply Through the Year 2000* (Wash., D.C., U.S. Congress, Office of Technology Assessment, OTA–E–245, February, 1985) at Chapter 1, pp. 6–7. DOE has estimated domestic gas production to average 17.5 Tcf by 1990 and 15.6 Tcf by 1995 under the continuation of the NGPA. *Second DOE Section 123 Report* at 117, Table 8–3.

[58] "Analysts See Gas Demand Rising Despite Continuing Price Pressure," *The Oil Daily*, September 5, 1985 (citing projections by Drexel Burnham and Merrill Lynch); see also U.S. Energy Information Administration,

Short-term Energy Outlook, (DOE/EIA, August, 1985) (projecting natural gas consumption at 18 Tcf in 1985 and 1986, and production at 17.2 Tcf both years).

[59] *Second DOE Section 123 Report* at 117, Table 8-3.

[60] Holtberg, Woods, and Ashby, *1984 GRI Baseline Projection of U.S. Energy Supply and Demand, 1983-2010*, (Chicago, Ill: Gas Research Institute, October, 1984) at 5.

[61] *E.g.*, Natural Gas Equal Access, Oklahoma Independent Petroleum Association, Texas Gas Transmission, Lone Star Gas Co., and Oklahoma Corporation Company.

[62] *E.g.*, INGAA, Transco, and Columbia.

[63] *E.g.*, Peidmont Natural Gas, UGI Corp. and Washington Natural Gas.

[64] *E.g.*, Tenneco Oil, INGAA, Panhandle Eastern/Trunkline, AGA, NIPSCO, Pacific Lighting/So Cal Cas, California PUC, Wisconsin PSC, and Arkansas PSC.

[65] *E.g.*, Indicated Producers, Natural Gas Supply Association, Natural Gas Equal Access, TIPRO, TETCO and the State of Louisiana.

[66] *E.g.*, IPAA.

[67] *E.g.*, Appalachian Energy Corp., Ashland Exploration, and the Energy Consumers and Producers Assoc.

[68] *E.g.*, Tenneco Oil, United Gas Pipe Line, Pacific Lighting/So Cal., APGA, and NI Gas.

[69] *E.g.*, ANR Pipeline, Transco, Peoples Gas Light & Coke/North Shore Gas Co., and Equitable Gas Co.

[70] *E.g.*, AGA, Mtn Fuel Resources, Colorado Interstate, Minnegasco, and Maryland People's Counsel, and the Iowa State C.C.

[71] *E.g.*, Texas Gas Transmission.

[72] *E.g.*, Texas Gas Transmission, Mountain Fuel Resources, and Southern Natural Gas.

[73] *E.g.*, Public Service Electric & Gas.

[74] *E.g.*, INGAA, Williston Basin Interstate Pipeline Co., and Baltimore Gas & Electric Co.

[75] *E.g.*, Kann Gas, PG&E, Mich-Con, DOE, and West Coast Transmission Co.

[76] *E.g.*, Natural Gas Equal Access, Public Service Co. of Colorado, Illinois Power Co., and Consumers Power.

[77] *E.g.*, PECO, ANR Pipeline, and Colorado Interstate Gas.

[78] *E.g.*, Alberta Petroleum Marketing Comm., Independent Petroleum Association of Canada, Trans Canada Pipeline, and the National Energy Board.

[79] *E.g.*, Canadian Petroleum Assoc. and the National Energy Board.

[80] *E.g.*, Arco, El Paso, HNG-InterNorth, KN Energy, PECO, Md Industrial Group, and the New England Energy Group.

[81] *E.g.*, Columbia Distribution Co., PECO, Commonwealth, Philadelphia Gas Works, and Maryland People's Counsel.

[82] Mountain Fuel Resources.

[83] City of Wilcox.

[84] Southern Natural Gas.

[85] PG&E.

[86] *E.g.*, Mobil Oil, Southern Natural Gas, NW Central, and American Paper Institute.

[87] *E.g.*, Miss. Valley Gas/Mobile Gas Service and South Carolina Pipeline.

[88] *E.g.*, INGAA, Panhandle Eastern/Trunkline, TETCO, and APGA.

[89] *E.g.*, Tennessee Valley Municipal Gas Assoc.

[90] *E.g.*, INGAA, APGA, Peoples Gas Light & Coke/North Shore Gas Co., Iowa Gas Co., Elizabethtown Gas Co., Laclede Gas Co., Wisconsin Distribution Group, American Paper Institute, and Air Products.

[91] *E.g.*, INGAA and Texas Gas Transmission.

[92] *E.g.*, Williston Basin Interstate Pipeline Co. and MRT.

[93] *E.g.*, Tennessee Gas Pipeline and Niagara Mohawk Power.

[94] *E.g.*, Williston Basin Interstate Pipeline and Peoples Gas Light & Coke/North Shore Gas Co.

[95] *E.g.*, Tennessee Gas Pipeline and East Tennessee Natural Gas Co.

Amendments to 18 CFR Part 154

PART 154—[AMENDED]

1. The authority citation for Part 154 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 15 U.S.C. 791a–828c (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

2. In § 154.38, the first four sentences in paragraph (d)(4) are proposed to be removed and replaced by six sentences to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) *Statement of rate.* * * *

(4) A natural gas pipeline company may flow through changes in its cost of purchased gas pursuant to a purchased gas adjustment clause (PGA clause). The proposed clause must be filed with the Commission and shall not be effective until approved by the Commission. A request for approval of a PGA clause will not be considered unless the proposed clause meets the requirements in paragraphs (d)(4)(i) through (viii) of this section and requirements in § 154.43. Any PGA clause approved by the Commission is subject to the conditions in clause (ix) of this subparagraph. The first PGA rate adjustment to become effective on or after January 1, 1979, may reflect the calculation specified in clause (x). As required in § 154.43, a proposed PGA clause and any related filings must provide separate rates for its gas costs. The natural gas pipeline company must establish separate deferred purchased gas cost accounts as described in clause (iv)(*b*) of this subparagraph and separately show the derivation of the Current Adjustment as described in clause (v) of this subparagraph.

* * * * *

3. A new § 154.43 is proposed to be added, to read as follows:

§ 154.43 Billing procedure for gas purchases.

(a) *General rule.* Any natural gas pipeline company that files a change in a rate for sales services under § 154.63 of this chapter or a change in rate attributable to its gas purchase costs under § 154.38 of this chapter must bill its customers in accordance with this section and must file with the Commission a conforming tariff. This section does not (1) mandate sequencing of takes by pipelines; (2) affect existing contract rights between producers and pipelines; (3) affect state regulation of natural gas production; or (4) affect state regulation of retail distribution.

(b) *Effective date.* (1) Any filing after May 31, 1986 by a natural gas pipeline company to adjust its rates to recover its gas costs under § 154.63 of this chapter must comply with the billing procedure in this section.

(2) Any filing after May 31, 1986 by a natural gas pipeline company to adjust its rates to recover its gas purchase costs under § 154.38 must comply with the billing procedure in this section.

(3) Any natural gas pipeline company may file tariffs under this section prior to June 1, 1986.

(c) *Definitions.* For purposes of this section:

(1) "Block 1 costs" means a natural gas pipeline company's:

(i) Cost of purchases from gas producers of any natural gas determined on the basis of heating value that is subject to a maximum lawful price prescribed by sections 104, 106(a), or 109 of the Natural Gas Policy Act of 1978 (NGPA);

(ii) Costs of purchases from another natural gas pipeline company priced at its Block 1 rate; and

(iii) Costs attributable to any fixed-cost minimum bill payments paid to another natural gas pipeline company, allocated between Block 1 costs and Block 2 costs based on the relative proportion of volumes in those blocks.

(2) "Block 2 costs" means a natural gas pipeline company's:

(i) Costs of all purchases from gas producers or from other suppliers of natural gas, determined on the basis of heating value, that are not included in Block 1 costs;

(ii) The unit non-gas cost component included in the commodity charge for such purchases; and

(iii) Costs attributable to any fixed-cost minimum bill payments paid to another natural gas pipeline company, allocated between Block 1 costs and Block 2 costs based on the relative proportion of volumes in those blocks.

(3) "Block 1 rate" means a rate designed to recover:

(i) The weighted average of Block 1 costs;

(ii) Any applicable surcharge allowed by § 154.38(d)(4) (iii)(*d*); and

(iii) The unit non-gas cost component of the natural gas pipeline company's own commodity charge or one part rate.

(4) "Block 2 rate" means:

(i) The weighted average of Block 2 costs;

(ii) Any applicable surcharge allowed by § 154.38(d)(4) (iii)(*d*); and

(iii) The unit non-gas cost component of the natural gas pipeline company's own commodity charge.

(5) "Based period" means the period between December 1, 1978, and December 31, 1984.

(6) "Allocation factor" means the percentage derived by dividing each current customer's firm and interruptible purchases from a natural gas pipeline company during the base period by the total firm and interruptible sales by that pipeline to all its current customers during the base period.

(7) "Non-gas costs" means the non-gas fixed and variable cost component of the natural gas pipeline company's commodity charge, including the costs of fuel, shrinkage, and line loss.

(d) *Separate statement of rates.*—(1) *General rule.* Except as provided in paragraph (d)(4) of this section, all rate schedules for the sale of natural gas must separately identify a Block 1 rate and a Block 2 rate.

(2) *Imported gas.* A natural gas pipeline company that purchases imported natural gas may file to include in its demand charge the cost of any demand charge it paid in purchasing that gas. Such a filing will be reviewed on a case-by-case basis.

(3) *System storage.* (i) A natural gas pipeline company must file with the Commission separate rates to recover block 1 and block 2 average cost of gas, determined on the basis of heating value, that the natural gas pipeline company sells from its system supply storage supply.

(ii) A natural gas pipeline company may classify all gas in system storage, as of the implementation date of block billing, as block 2 gas.

(4) *Exception.* In any rate filing, the natural gas pipeline company may propose, for case-by-case determination by the Commission, an allocation between the Block 1 rate and the Block 2 rate of the cost of purchasing the following categories of natural gas:

(i) Imported liquefied natural gas sold under any certificate issued under section 7 of the Natural Gas Act prior to November 1, 1985 that expressly requires that the gas be sold on a rolled-in basis;

(ii) Synthetic natural gas purchased from the Great Plains Coal Gasification plant authorized by the Commission in Opinion No. 119, 15 FERC ¶ 61,106 (1981); and

(iii) Gas priced on a cost-of-service basis under § 154.63.

(e) *Allocation of Block 1 gas.* (1) *General.* Unless the company and its customers agree otherwise in an uncontested settlement, a natural gas pipeline company must, for rate purposes only, annually allocate to its current customers the volumes of natural gas subject to the Block 1 rate. Each customer's allocation will equal its allocation factor times the volumes subject to the Block 1 rate that are projected to be available on an annual basis.

(2) *Delivery and billing schedule.* A natural gas pipeline company must tender to its customers on an annual basis the customers' annual allocation of natural gas. A natural gas pipeline company and any customer may agree on the delivery schedule under which that customer will take gas subject to the Block 1 rate.

(3) *Reallocation of gas not taken.* If any natural gas pipeline company customer chooses not to take its full annual allocations of gas under this paragraph, the natural gas pipeline company must reallocate the gas not taken to the other customers according to their allocation factor for gas subject to the Block 1 rate.

(4) *Notification to the Commission of tariff statements.* Subject to review and approval by the Commission, a natural gas pipeline company must include in its conforming tariff required in paragraph (a) of this section, a statement indicating:

(i) How it will reconcile any differences between the projected annual volumes of gas subject to the Block 1 rate and the actual amount of such gas produced and purchased in that annual period; and

(ii) The delivery schedules agreed to by its customers for allocations of gas subject to the Block 1 rate.

(f) *Notification to its customers.* Upon request of any customer, the natural gas pipeline company must notify that customer of its allocation factor and the annual volumes of gas subject to the Block 1 rate that are projected to be available to the natural gas pipeline company for sale.

(g) *Limitation.* (1) A firm sales customer has no right under its firm sales service agreement to purchase volumes of gas subject to the Block 1 rate in amounts that exceed its firm sales entitlements on an annual basis.

(2) A customer may purchase on an interruptible basis volumes of gas subject to the block 1 rate in amounts that exceed its firm sales entitlements on an annual basis.

(h) *Adoption of unit-of-purchase methodology.* For purposes of computing rates under § 154.38, the natural gas pipeline company must use a unit-of-purchase methodology, which relies on the volumes of gas purchased to determine both the amount of the current adjustment and the amount of the costs deferred in Account No. 191.

(i) *Block 2 presumption.* Effective January 1, 1990, if a natural gas pipeline company provides transportation service subject to the conditions in Subpart A of Part 284, a rate charged to all customers that is reasonably related to the acquisition cost of volumes of gas subject to the Block 2 rate is presumed, subject to rebuttal, to be just and reasonable under the Natural Gas Act.

(j) *Amortization of the deferred account.*—(1) *General rule.* Except as provided in paragraph (j)(2), a natural gas pipeline company must establish appropriate clearing accounts for gas costs included in the Block 1 rate and the Block 2 rate. Any overcollection or undercollection in the subaccount, to be entitled "That was amortized," in the PGA filing prior to the first filing under this section must be allocated on a pro rata basis between deferred accounts relating to Block 1 costs and Block 2 costs.

(2) *Exception.* In the initial filing under this section, a surcharge for Account No. 191 must be calculated by dividing the balance in the Account No. 191 subaccount, to be entitled "To be amortized," in that filing by the natural gas pipeline company's total projected sales. Such surcharge must be applied to all sales made by the natural gas pipeline company during the PGA period immediately following the filing. Any remaining balance must be debited to the Account No. 191 subaccounts for Block 1 and Block 2 pro rata.

(k) *Refunds.* A natural gas pipeline company must refund to its customers, on a cash basis, any refunds that it owes and that are attributable to rates charged by its suppliers during any period prior to May 31, 1986, or prior to the effective date of its first PGA filing after November 1, 1985, whichever is later. For future periods, refunds must be distributed to the appropriate deferred accounts.

Exhibit S—An Economic Analysis of Supply Adequacy in the Natural Gas Industry

Note.—Exhibits will not be shown in the Code of Federal Regulations.

Economic models are like prescription medicines: they are created for a purpose and directions for use should always accompany them. This one is designed to address two concerns in as simple terms as possible: what are the effects of block billing on (1) the sharing of economic rents, and (2) supply behavior in the natural gas industry. The model is not intended to describe the countless perturbations that affect short-term market interactions of the gas industry, but to focus on fundamental tendencies at work in the natural gas market.

The discussion is divided into three parts. In Part One, certain assumptions are formalized, and an economic analysis of the distribution of scarcity rents and of supply adequacy is presented. The principal objective of this analysis is to emphasize key gas market relationships and how Commission actions may affect those relationships. The analysis especially attempts to clarify which gas market structural elements and variables the Commission can and cannot control. In Part Two, the economic analysis is extended to recognize monopoly rents. In Part Three, a formal statement of the model used in Parts One and Two is presented.

The four principal conclusions of the analysis are:

1. Block billing will not create a natural gas shortage.

2. It is important to distinguish between monopoly rents and scarcity rents when speaking of economic rents.

3. Block billing combined with open transportation should encourage competition and eliminate monopoly rents and should moderate the boom and bust cycle currently complicating gas wellhead markets. Supply incentives, consequently, will be more accurately communicated from end users to producers of current vintage gas, and the risk of supply deficiencies currently in the system will be reduced.

4. Changing pipeline billing practices from rolled-in to block billing would have no systematic effect on the allocation of scarcity rents between end users and producers if retail rates continue to be set on a rolled-in basis. If retail rates are also changed to a block billing method the effect on the distribution of scarcity rents is uncertain. However scarcity rents are distributed, conclusions one, two and three hold.

Part One. An Analysis of Supply Consequences of Block Billing and Open Transportation in the Absence of Monopoly Rents

Scarcity rents are defined as the income received from a resource over and above the minimal amount necessary to keep the resource voluntarily committed to an activity. Obviously, "scarcity rents" is an elastic concept that must take its meaning from the context of the discussion since the magnitude of scarcity rents will vary with the breadth of activity defined. For example, a natural gas producer who sells gas in the interstate market at $3.00 per Mcf, when the next best alternative is selling in the intrastate market at $2.50, is earning $.50 per Mcf in scarcity rent from the interstate activity. But if the activity is defined as selling existing gas supplies in the interstate market or not selling gas at all and the marginal cost of producing an increment of gas is $.10 per Mcf, he can be described as earning $2.90 per Mcf in scarcity rent from selling gas.

Economists sometimes divided scarcity rents into two categories: "quasi rents" and "land rents." At other times the term "scarcity rents" is used synonymously with "land rents" where "land" is defined broadly to mean resources that are "gifts of nature." This definition follows from the common categorization of productive resources as land, labor and capital. Quasi rents are incomes received above the minimal amount needed to keep a reproducible resource devoted to an activity. An ideal example of quasi rent is the income received by an oil super tanker (a highly specialized piece of capital) above the minimal amount necessary to keep it voluntarily committed to hauling oil. An ideal example of a land rent is income received above the minimal amount necessary to keep a gift of nature, such as a segment of the electromagnetic spectrum or an urban parcel of land, devoted to use.

One important difference between the two concepts is in their incentive effects. If super tankers are to continue to be produced, the prospective owners of new tankers must expect to receive a stream of quasi rents sufficiently large to compensate for the capital cost and risk of construction. One economic indicator of the likelihood of that event is the stream of quasi rents being earned on existing super tankers. Quasi rents, therefore, are an important part of the market communication system, signaling which assets need expanding or contracting to meet final demands. Land rents serve no such purpose by the fact that they are earned on resources that are not reproducible. Consequently, incentives to produce more or less of them is of little relevance. This statement does not mean that differential land rents do not play an important allocative role. The owner of a downtown lot in Wasington, D.C. earning $1,000,000 a year from the lot might not withdraw it from use if his rent were reduced to $100, but his attempts to maximize the rents he receives, and similar attempts by other resource owners, are important in determining how resources will be used. The essence of the difference between the two rents is that in principle it is possible to tax away land rents without significantly affecting the quantity or allocation of resources but it is not possible to tax away quasi rents without significantly affecting resource allocation.

When discussing rents off "low priced" old vintage gas in the remainder of this paper, the term "scarcity rents" will be used. Most of the old vintage prices and the time pattern for their escalation is specified in the NGPA. It serves no purpose of this paper to try to separate the rents off such gas into land rents and quasi rents.

Overlapping the concept of scarcity rents, whether narrowly or broadly defined, is the concept of monopoly rents. Monopoly rents are incomes earned above what could be earned in a competitive market. An example of monopoly rents would be income earned above competitive market levels by a cartel that owned all super tankers and had a right to block others from building such tankers. Such a cartel could, under normal economic circumstances, earn rents above those permitted by competitive markets for as long as technological change or some other force did not subvert its monopoly power. While monopoly rents may sometimes be acceptable consequences of public policy (patents offer a limited opportunity to earn monopoly rents in exchange for new products or improvements on old ones), a common expectation is that competitive markets will compete away monopoly rents, and collusive attempts by producers to stop or slow this competing away is normally considered to be a violation of antitrust laws. Competition that eliminates monopoly rents can be seen as a process where those rents are converted into lower prices for end users and/or increases in rents for other resource owners.

One interpretation of the just and reasonable earnings requirement in economic regulation is that regulators must normally permit quasi rents on assets devoted to regulated activity sufficient to induce regulated firms to voluntarily keep assets needed for efficient production devoted to the regulated activities, but should not allow the regulated firm to earn monopoly rents.

While the term "monopoly rents" did not appear in any of the comments and only appeared in the discussion of scarcity rents briefly in the public conference, it appears that monopoly rents and the consequence on the distribution of monopoly rents now existing in the system was a part of the concern of some commenters. Whether this reading of those concerns is or is not correct, it is important for proper rulemaking that this distinction be sharpened and kept in mind. Consequently, this distinction is emphasized in the following analysis.

Development of the economic model. The natural gas industry is conveniently and traditionally divided into three segments; the producing sector, the pipeline sector, and the distribution sector. While this division draws clear lines that reality does not observe and the model developed below draws other clear distinctions which reality does not reveal, these distinctions are useful for analysis. The defense for drawing such lines is obvious. The natural gas industry is complex, and it is only one industry in a complex economy. In order to discuss fundamental relationships, it is necessary to consciously abstract from many other relationships.[1]

A useful place to start the analysis is with the assumption of an end-to-end regulated interstate industry with vintage well-head pricing and rolled-in city gate pricing. The issue to supply adequacy and the distribution of scarcity rents in that system can then be examined and compared to circumstances where some of all gas is deregulated and the still more complex case where rolled-in pricing is replaced with block pricing with and without non-discriminatory transportation, with some gas prices regulated and some not.

The model developed is a simple supply and demand model.[2] It differs from the typical textbook model in two important respects. First, the supply side is carefully crafted to recognize essential characteristics of the natural gas industry, and second, the demand side recognizes that institutional forces, primarily price ceilings on old vintage gas and regulatory restriction on gas sales by interstate pipelines, limit arbitrage between interstate markets, called jurisdictional markets below, and interstate markets, called non-jurisdictional markets below. The key constraint on arbitrage is the inability of old gas to be bid into the non-jurisdictional market. Prices in the two markets are not always, therefore, forced to quality. Recognizing these characteristics make the model somewhat more complex than the traditional model and therefore somewhat more difficult to use for analysis.

The demand function. The model assumes two demand functions. The demand functions are the usual ones utilized in abstract economic analysis. The quantity of natural gas that end users will purchase is assumed to vary inversly with the price presented to them and upon a host of "shift variables" that are commonly recited, e.g., national income, the price of substitute fuels, etc. In the interstate, i.e., jurisdictional, market the price (hereinafter called the jurisdictional demand price or simply the demand price) is assumed to be a weighted average of old vintage prices and current vintage prices plus a markup for pipeline and local distribution company (LDC) services. In the intrastate, i.e., the non-jurisdictional, market the price presented to end users is assumed to be the current vintage price plus a markup for pipeline and, perhaps, LDC services. The quantity demand in the system is the sum of quantities demanded in the two markets. The model permits one to recognize that some potential buyers may be prohibited by law from buying, i.e., by curtailment policies. Either demand can, therefore, be shifted by curtailment or decurtailment actions.

In the development of the model, it is assumed that pipelines and LDCs are passive transmitters of end users' demands to the producer, that is, regulation limits their exercise of monoply power. Before providing more content to the concept of demand prices, it is useful to introduce the supply hypothesis and the concept of a supply price.

The supply curve. The supply curve is somewhat different from the customary one used in abstract economic analysis, so it is necessary that it be developed carefully. First, when focusing on the natural gas industry, it is not useful to postulate a so-called "short-run supply hypothesis" where the quantity of natural gas offered by sellers depends upon the price of natural gas and the host of shift variables normally included in short-run supply functions, e.g., short-run marginal costs of inputs to producers, etc.

Instead, it is useful to postulate that in the short-run, demand is met by a flow out of "inventories." Inventories are assumed to include both storage fields and currently producing fields. To keep the argument simple, supply enhancing facilities such as Synthetic Natural Gas (SNG) plants will be ingored.[3] Incorporating them in the argument would complicate the terminology and analysis substantially, but would not change the principles to be deduced.

A second postulate is that the transfer of old vintage gas from inventories to interstate end users occurs at regulated prices which do not change in the short-run in response to changing demand conditions. Moreover, a strong simplifying assumption is added that the quantity of old vintage gas flowing into the jurisdictional market in the period of analysis does not change in response to market variables.[4] The transfer of new gas, i.e., current vintage gas, occurs at prices determined by the market except when constrained by a ceiling price or an institutional floor. These cases are especially emphasized below.

The supply hypothesis concerns the flow of currently discovered and developed gas into inventories. The hypothesis is straightforward, namely, new discoveries depend on a "price," which will be called the "incentive price," of natural gas and a host of shift variables, most of which will be ignored since an analysis of them is not necessary for the argument. A not so obvious assumption is built into the supply hypothesis, namely, pipelines do not exercise monopsony power. This assumption is incorporated in the hypothesis that there is one supply curve, i.e., pipelines do not segment their supply curves into two or more supply curves and offer different prices to different suppliers at a single point in time.

Since the concept of an "incentive price" is crucial to the analysis, in that the hypothesis that the quantity of gas producers will voluntarily develop and offer for inventories varies directly with the incentive price, it is important that it be defined carefully.

Before turning to a clarification of the concept of an "incentive price" it is

[1] Compare: "In order to know anything, it is necessary to know everything, but in order to talk about anything, it is necessary to ignore a great deal." Joan Robinson, "Rising Supply Price," *Readings in Price Theory*, eds. George J. Stigler and Kenneth E. Boulding, (Richard D. Irwin, Homewood, Il., 1952) p. 241.

[2] The model is formally stated in Part Three.

[3] Incentives to produce SNG are discussed briefly at the end of this Part.

[4] This is a strong assumption, but the model is not being used to evaluate the social gains or losses from deregulation of old vintage prices. It is being used to analyze only the narrow questions mentioned earlier. See also footnote 14 below.

useful to emphasize that while the incentive price is hypothesized to influence the quantity supplied of both associated and non-associated gas, it is recognized that the significance of the concept comes primarily because of its importance in determining the quantity supplied of non-associated gas.

The view taken is that the quantity of associated gas flowing into inventories and/or to end-uses will be determined primarily by market incentives for producing oil. It is non-associated gas which must be enticed into the market to fill any gap between quantity demanded by end users and quantity supplied by associated gas producers. It is, therefore, primarily the responsiveness of non-associated gas discoveries to the incentive price to which the nation must look for filling supply deficits.

In defining the incentive price to producers it is recognized that a producer who enters a long-term, price-specified contract with a pipeline is contracting to exchange a part or all of his present or expected stock, i.e., his inventory or expected inventory of gas, for a stream of income.[5] The value he expects to receive for this ability to deliver tis stream of gas is the discounted volume of the income stream. Since the present value of the income stream varies inversely with the producer's discount rate, which is assumed to vary directly with the interest rate, the following two generalizations are supportable: (1) The reward to a producer who delivers his gas over several periods varies directly with the contract price of gas and inversely with the rate of interest, and (2) the longer the life of the income stream and the higher the interest rate, the less important is the contract price relative to the interest rate as an influence on producer incentives.

This generalization can be made conceptually precise by defining the "incentive price" facing a producer as the ratio of the "present value of the contract" to "the quantity of gas to be delivered over the lifetime of the contract."

A simple example may clarify the concept. Assume a producer contracts to deliver 200,000 MCF per year for 20 years at a contract price of $5 per MCF. He will receive a stream of income of $1,000,000 per year, or a total of $20,000,000. At a 15 percent discount rate the present value of that 20 year stream is $6,259,331. Dividing that present value by the total of 4,000,000 MCF of gas to be delivered over the 20 years gives an incentive price of $6,259,331/4,000,000=$1.565 per MCF. So, while the contract price is $5, the incentive price is less than one-third that amount.

Three assertions about the incentive price are easily proven:[6]

Theorem one.[7] The percentage change in the incentive price induced by a change in the contract price will equal the percentage change in the contract price, for a given discount rate and delivery pattern.

Theorem two. The percentage change in the incentive price induced by a change in the interest rate is inversely proportional to the percentage change in the interest rate, for a given contract price and delivery pattern. The constant of proportionality varies directly with both the length of deliveries and the initial interest rate.

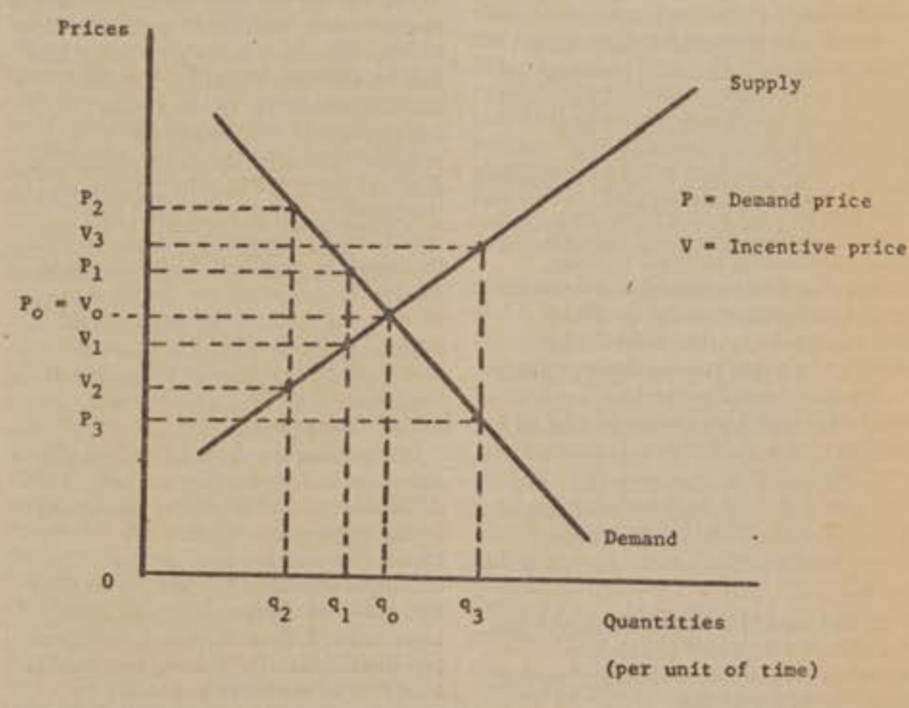
Theorem three. For a given contract price and interest rate a "faster" pattern of delivery will increase the incentive price and a "slower" one will decrease it.

Figure 1 will help summarize the first part of the argument and provide the groundwork for the second part.[8] Figure 1 depicts a demand hypothesis and a supply hypothesis for an increasing cost industry. In this Figure, it is assumed that quantity demanded responds to demand price (symbolized by P) and quantity supplied responds to the incentive price (symbolized by V).

Two behavioral hypotheses, however, do not a market theory make. If one wants to use these two hypotheses to gain insight into the functioning of the wellhead market, he must add one or more hypotheses about how these two groups of parties interact to determine prices and quantities.

Figure 1

DEMAND AND SUPPLY FOR NATURAL GAS



[5] The term "price-specified" is intended to be broad enough to include "price-fixed" or "escalated or de-escalated by formula" or "periodically adjusted prices."

[6] Proof is not presented because the theorems appear obvious.

[7] The term "theorem" is used in the normal dictionary sense of a statement deduced from other propositions or formulas." It is used herein to emphasize the distinction between assumptions such as the demand and supply assumptions and a conclusion deduced from those assumptions.

[8] Because the model contains two demand functions, it is difficult to reduce it to two dimensions and represent it in a simple graph. Consequently, Figure 1 should be interpreted as a special case. It can be interpreted as the case in which the non-jurisdictional market does not exist, or it can be interpreted as the special case in wich the price confronting both sets of end users are equal. In either case, it is important to recognize that the market analysis of the text is based on the model constructed in Part Three and that Figur? 1 is used for heuristic purposes only.

Equilibrium conditions postulated. As a first step in understanding the complex interrelationships between the market participants, some consequences of the demand and supply hypotheses can be illustrated. It will be assumed until otherwise noted that interstate pipelines do not transport gas for anyone but themselves. The conclusion to be supported is that two hypotheses must be added to the two already present to gain useful insights about the workings of a free, partially free or regulated wellhead market. One hypothesis must describe the relationships between the demand price and the incentive price, and the second hypothesis must describe the inventory preferences of the parties.

It is through these last two hypotheses that important public policy questions enter. It can be persuasively argued that the demand curve(s) reflects the preferences of end users and should be taken as given by regulators, subject always to curtailment and rate design policies. It can also be persuasively argued that the supply curve reflects certain realities of nature and profit-maximizing behavior of producers, both of which must be taken as given by regulators.

The model supports the conclusion that inventory levels can, however, be reflections of public policy. The model also supports the conclusion that inventory policies influence the relationship between demand prices and incentive prices and, therefore, regulators must formulate policies with that relationship in mind. Before supporting these assertions it is useful to gain familiarity with the model by examining the market described in Figure 1 in a few special circumstances.

It is convenient to start the analysis of the behavioral hypotheses embodied in Figure 1 with the following assumptions:

1. All market participants and regulators are satisfied with the size of inventories, and the determinants of inventory demands are exogenous to the model.

2. The market is in equilibrium in that the quantity supplied equals the quantity demanded, which implies that inventories are stable.

3. Wellhead price regulation has two dimensions, (1) ceiling prices are imposed on "old" and possibly "current" vintage gas, and (2) the principal control variable available to regulators is assumed to be the price of current vintage gas. This last assumption is interpreted to mean that "old" prices are embodied in contracts between pipelines and producers and can be changed at the initiative of regulators only by extraordinary procedures. The first assumption permits pipelines to enter into contracts for current vintage gas at any price at or below the current vintage price ceiling. There is, then, always one "new" gas price (called the current vintage price or new price) and many "old" gas prices.

Figure 1 shows three out of an infinite number of possible market equilibrium conditions:

(i) If P_0 and V_0 exists, then q_0 is a possible equilibrium rate of output.

(ii) If P_1 and V_1 exist, then q_1 is a possible equilibrium rate of output.

(iii) If P_2 and V_2 exist, then q_2 is a possible equilibrium rate of output.

The essence of each of these possible equilibrium positions is that demand is "satisfied" by the flow out of inventories and supply is "satisfied" in that the flow into inventories exactly equals the flow out. Inventories, therefore, remain unchanged in size. The model as constructed at this time has five endogenous variables; three prices (the demand price, the incentive price, and the current vintage price) and two quantities (the quantity demanded and the quantity supplied). Two important exogenous variables are the level of inventories and the "average" of old prices. "Old prices" in this context means all prices on old vintage gas in existence when the equilibrium is initially disturbed.

Interpreting the demand and supply curves as having stochastic shift determinants and the curves shown as being mean values permits the conclusion that the equilibrium condition reflects a tendency over time and does not change any qualitative conclusion. It does, however, introduce one justification for holding inventories over and above those necessary to provide the maximum efficient flow out of wells.

Some comparative static theorems.[9] In order to introduce the problem of shifts in desired inventories, it is useful to choose one of the possible equilibrium positions as the initial condition and ask what happens if a pipeline decides to seek larger inventories. One such initial position is where $P_6 = V_6$ and the output rate is q_6. This is not a particularly plausible set of circumstances, but it is not an impossible one in an industry with a vintage price system at the wellhead and rolled-in prices at the city gate. In fact, it is possible for the demand price to be below the incentive price. The arithmetic example given earlier can illustrate this possibility. In that example the current vintage price was $5.00 and the incentive price was $1.56. If the historically determined rolled-in price on old vintage gas, which would largely determine the demand price if new vintage quantities are insignificant, is below $1.56 the demand price could be below the incentive price. Figure 1 illustrates this possibility with the triplet of values, V_3, P_3 and q_3.

Starting from the equilibrium position, for example, $P_6 = V_6$, assume regulations permit and pipelines act to increase their purchase price of new gas in order to gain larger inventories.[10] The immediate consequence of the increased current vintage price is to increase the incentive price by the same proportion. This can be expected to induce, after producers have had time to respond, an increase in the rate of production of new gas. As this current production flows into and out of inventories, the demand price to end users increases. As demand price increases, the quantity demanded decreases. Since quantity demanded is now less than q_6, and decreasing, and quantity supplied is greater than q_6, it is obvious that the flow into inventories exceeds the flow out of inventories and inventories are, therefore, rising.

Rising inventories will be reflected in pipeline demands for stretched out deliveries and longer term supply security from producers. This will, in turn, for a given contract price and interest rate, cause a reduction in the incentive price. The failing incentive price will dampen and then reverse the discovery rate.

The simultaneous process of rising demand prices, lengthening delivery patterns, falling incentive prices and falling discovery rates will continue until quantity demanded again equals quantity supplied. The second equilibrium condition, described possibly by P_1, V_1, and q_1, will differ from the first one in that demand price will be *higher*, current vintage price will be *higher*, inventories will be *higher*, *incentive price will be lower* and the discovery rate will be *lower*.[11]

It is important to recognize that in this model the rate of production is fundamentally determined by end-users' demands, and the quantity demanded is determined by the prices seen by end users. It follows inescapably from this construction that an increase in the desired level of inventories, that is, in one measure of supply reliability, will lead to an increase in the current vintage price and to a decrease in the new gas discovery rate. Conversely, a decrease in the desired level of inventories leads to a decrease in the current vintage price and to an increase in the rate of discovery.

These conclusions are intuitively plausible and rather obvious once thought about. They are, however, highlighted because they are useful in emphasizing that producer incentives are not connected in a simple direct way with the price paid by end users. While it may be a useful observation, that, ceteris paribus, an increase in current vintage price for new gas will encourage producers to increase the quantity of gas supplied, it is also important to recognize that the ceteris paribus assertions about the supply hypothesis cannot be extended to statements about market relationships. In this case it is obvious that the higher current vintage price for new gas accompanies a reduction in the quantity of new gas discovered.

As a preface to the discussion of scarcity rents it is useful to examine the implications of the model in another respect. Again, starting with the initial equilibrium position, perhaps $P_1 = V_1$ and an ouput rate of q_1, assume old vintage prices are increased. What are the consequences? By construction of the model, it is plausible to argue that the demand price increases immediately but the incentive price, immediately, remains unchanged. This disequilibrium condition sets in motion forces which reduce quantity demanded, which, in turn, temporarily increase inventories which lengthen delivery patterns which, in turn, reduce the incentive price and current vintage contract price which, in turn, reduce the rate of discovery. This simultaneous process continues until the inventories return to the desired level and the rate of production again equals the quanity demanded. Inventories can be larger than optimum only during the transition from the first to the second equilibrium.

The comparative static theorems assert unambiguously that market pressures created by increasing (decreasing) ceiling prices on old flowing gas will, when adjustments are complete, *increase* (decrease) demand prices, *decrease* (increase) current vintage prices, *decrease* (increase) incentive prices for producers of new gas, and *decrease* (increase) the rate of new discoveries.[12]

A brief recapitulation at this point can serve as a preface for an analysis of the distribution of scarcity rents. The partially developed model displayed in Figure 1 is complete when two hypotheses are added, one about desired inventory levels of market participants and a second about relationships between the demand price, the current vintage price and the incentive price. Since market participants and regulators will determine desired inventory levels and the Congress and the regulators will determine old vintage gas prices and the relationship between well head and burner-tip prices, e.g., rolled-in or block pricing, there exist a determinate set of relationships, i.e., a unique set of equilibrium values. Given the model, tentative answers can be given to the two questions of importance.

Question One: What Could Regulation of All Wellhead Prices by the FERC Accomplish?

Partial answers fall out of the model when it is recalled that, by hypothesis, regulators could raise or lower ceiling prices on current vintage gas. Pipeline/producer old contracts, on the other hand, contain "old" prices limited by past decisions of the FERC and/or Congress and, by hypothesis, are not subject to regulatory change except in extraordinary circumstances. The first consequence of such regulation is the

[9] Part Three contains formal derivations of selected comparative static theorems, including this one.

[10] This is an assumption that the ceiling price on current vintage gas is not constraining.

[11] A formal derivation of these theorems is presented in Part Three. That formal derivation makes clear that these results do not depend upon the special cases discussed in footnote 8. They hold when both markets exist and whether prices presented end users in the two markets are different or identical.

[12] See Part Three for a formal derivation of these results, and see footnote 14 for further interpretation of the results. Again, it is worth noting that these results hold in the model with bifurcated markets even though these results say that the demand price, the price seen by jurisdictional end users, increase (decrease) and current vintage price, the price seen by non-jurisdictional end users, decrease (increase). Clearly, the qunatity purchased by jurisdictional end users decreases (increases) and the quantity purchased by non-jurisdicitonal end users increases (decreases). The total quantity purchased by all end users, however, decreases (increases).

legitimatization of a vintage price structure for a depleting resource industry and/or an inflationary economy.

In such a regulatory system, either the current vintage ceiling price is constraining or it is not. If it is not constraining, then, in effect, current vintage prices are deregulated, and the most notable direct effect of regulation is to enforce the vintage price structure and to deny scarcity rents off "old" gas to owners of that gas. The noteworthy consequence of the vintage price system and rolled-in prices at the burner-tip when inflation exists or the depleting resource forces higher costs for incremental supplies is that the current vintage price must be expected to be substantially higher than the demand price presented to jurisdictional end users, since the demand price will be the weighted average of the average of old vintage prices and current vintage price plus a markup for pipeline and LDC service. Since the current vintage price will reveal the marginal social cost (MSC) of gas, it follows that regulation makes it likely that end users will, in these circumstances, be presented with prices lower than the MSC of gas. This underpricing of gas induces, ceteris paribus, uneconomic uses of the resource and unduly rapid depletion of the resource by economic efficiency standards.

If the ceiling price on current vintage gas is constraining, then, by hypothesis, it is lower than the price which an unconstrained market would bring into existence. By construction, the price of current vintage gas becomes an exogenous variable, i.e., not market determined, and it will not be possible for inventory demands, market demands and supply constraints all to be simultaneously satisfied. Since the constraining ceiling price means that pipelines cannot bid up current vintage prices to expand inventories, it is plausible to assert that inventories assume a level below the preferred level if pipelines act to satisfy both supply and demand conditions. In recapitulation, and in answer to the question posed, by imposing constraining ceiling prices the FERC could limit the size of inventories. If regulatory-imposed constraining prices induced inventories to fall sufficiently far below industry-preferred levels, the industry would likely refuse to make long-term commitments to their customers and curtailments would occur, formally imposed by government or by a failure to serve.

Question Two. Are Scarcity Rents Off "Low Priced" Old Vintage Gas Shared Between End Users and Owners of High Priced Old Gas and Producers of Current Vintage Gas in This Closed Transportation Interstate Industry With Rolled-in Pricing?

Earlier, it was stated that when the price of current vintage gas is not constrained, i.e., it is free to rise or fall in response to market forces, an increase in the ceiling price of old vintage gas would *increase* demand prices, *decrease* current vintage prices, *decrease* incentive prices and *decrease* the rate of new gas production.[13] Not especially the counterintuitive result. Raising the ceiling price on old vintage gas induces a decrease in the current vintage price and in the supply of gas brought to the market. A moment's contemplation resolves this paradox.[14] New supplies are sought for the reward in selling them. That reward is the incentive price received for it. That incentive price is induced to decrease by market interactions.

Since this theorem asserts that an *increase* in an old vintage ceiling price will *increase* prices to jurisdictional end users and *decrease* current vintage and incentive prices to producers of new gas, it must be concluded that both end users and producers of new gas were, by market induced allocation, "sharing" in scarcity rents previously denied owners of the old gas.[15] It should be noted, however, that the model does not assert that the gains in scarcity rents by owners of old gas as a result of the increase in old gas prices equals the loss in scarcity rents to the two losing groups. The model is silent on this issue.

Effects of block billing on the distribution of scarcity rents. In analyzing the consequences of moving from a system of rolled-in pricing by interstate pipelines to a system of block billing, it is useful to proceed by steps. First, let the assumption that all gas sold to LDCs is purchased by pipelines and resold to LDCs be continued. Let it further be assumed that LDCs are constrained by city gate tariffs from shifting purchasers from one pipeline to another and that LDCs continue to price on a rolled-in basis. Block billing would not, therefore, change the rolled-in price to end users. Such a change in billing procedures by the pipeline would not shift either the demand or supply curves, nor is there any reason to believe that it would change the level of desired inventories. Consequently, one must conclude that changing from rolled-in pricing to block billing will not affect demand prices, current vintage prices, incentive prices, or quantities produced and sold. The change, therefore will not affect the allocation of scarcity rents.

Second, let the previous assumptions hold except that LDCs do not continue to price a rolled-in basis, but that they segment the gas supply. There are many ways they might do this. If they direct the low priced gas to price-elastic markets and the high priced gas to the price-inelastic markets, the effect is the analytical equivalent of increasing demand, i.e., increasing the quantity demanded at the average price.[16] The consequence in the model is to *increase* demand price, *increase* current vintage price, *increase* incentive price and *increase* the sale and production of new gas.[17] The model is silent as to whether the amount of scarcity rents increases or decreases; it does, as stated above, suggest that producers of new gas receive both current vintage and incentive price increases. Whatever scarcity rents exist are still being shared since the theorem stated earlier that an increase in old vintage prices would

[13] See discussion above for the earlier statement of these theorems and Part Three for the formal derivation of the theorems.

[14] It is important to recognize that the conclusion that an increase in old vintage gas prices will decrease the quantity of gas bought and sold depends crucially on the assumption made earlier, namely, the quantity of old vintage gas supplied is invariant with respect to old gas prices.

It is also important to recognize that if that assumption is relaxed, and it is assumed that old vintage supplies increase when old vintage prices are increased, the current vintage price and the incentive price for new gas production would fall even more than this model predicts. Moreover, if supply elasticities on old gas are sufficiently large, the total scarcity rent received by end users could increase even though the per unit amount would decrease. Since the subject of this analysis is not the effects on gas supply of lifting prices on old gas, but the effects on supply from block billing, with or without open transportation, the simplifying assumption about old gas supplies is useful in focusing attention on the topics at hand.

[15] The sense in which current vintage gas producers were receiving scarcity rents deserves careful delineation. A producer may have developed gas for the first equilibrium which had a unit cost exactly equal to that price. In a strict sense of the term that producer would not be receiving scarcity rents. On the other hand, his gas would not have found a market at that price if scarcity rents had not been denied to owners of old gas. In that sense, even the marginal producer postulated above is "sharing" in scarcity rents. Clearly, all infra marginal producers were "sharing" in scarcity rents before the price reduction. After the price reduction, the marginal producer, and possibly some formerly infra marginal producers, will not receive sufficient quasi rents to induce a repetition of his gas production activity. That result conforms to market signals which say that his marginal market activity is not any longer needed to satisfy demand.

[16] This is a theorem of elementary economics and is not derived herein.

[17] These conclusions are formally derived in Part Three.

lower current vintage prices and raise demand prices still holds.

Obviously, the converse holds also; if LDCs direct low priced gas to price-inelastic customers and high priced gas to price-elastic customers, demand is decreased and the qualitative conclusion of the previous sentences are reversed. Scarcity rents, however, whatever their magnitude, will still be shared.

Third, let the assumption stated earlier hold except that LDCs block bill each customer. This will not, on first impact, change the average price of gas as to the customer, but it would present to him a higher price on marginal purchasers. It must be expected, therefore, that each customer would decrease the quantity purchased of the high priced gas and, thereby, lower the average price of gas to himself. In so doing, the quantity demand of gas would initially fall. While the model cannot address the consequences of this action on all the variables in the market, since the demand hypothesis assumed a single price for gas, it appears plausible to treat it as the analytical equivalent of a decrease in demand. Consequently, the analysis of the immediately preceding paragraph can be repeated.

Fourth, let the assumption that all gas sold to LDCs is first purchased by the pipeline and resold to LDCs be continued, but also assume that some LDCs have the ability to shift purchases from pipeline to pipeline. In this case, one would expect pipelines with tier two prices higher than their competitors to lose sales and those with tier two prices below their competitors to gain sales. End users behind some LDCs will experience decreases in demand prices and end users behind other LDCs will experience increases in demand prices. Such competition should be expected to coerce competing pipelines toward equality in their tier two prices. Clearly, some end users will gain lower prices and some will suffer higher prices, but there is no reason to believe that the increases in quantities purchased by the first group will be significantly different that the decreases in quantities purchased by the second group. Consequently, there is no reason to believe that the average of all demand prices will change or that the total demand for gas will change. It follows, therefore, that there is no reason to expect the distribution of scarcity rents between end users and current vintage gas producers to change. Obviously there may be redistribution of scarcity rents among end users. Moreover, there may be a redistribution among current vintage producers if the current vintage market is not sufficiently competitive to impose homogenous prices on wellhead markets.

In summary, the assertions made earlier hold, namely, while demand shifts, which may or may not result from introducing block billing, may induce changes in both the amount of scarcity rents to be distributed and their allocations, there is no reason in the analysis to believe that either the share going to end users or that going to current vintage gas producers will be affected significantly by such shifts.[18] Moreover, the addition of block billing to a system in which interstate pipelines buy and resell all gas to jurisdictional end users, in and of itself, even when LDCs can shift purchases among pipelines, does not induce any significant reallocation of scarcity rents between end users and current vintage producers. Obviously, in the analysis as developed up to this point, the owners of "high priced" old gas would not have lost any scarcity rents they might have been receiving, since, by hypothesis, the prices and quantities of old gas are fixed.

Before leaving this simple model it is useful to use it to examine the fundamental issue, that is, the supply implications of vintage wellhead pricing with rolled-in city-gate pricing by interstate pipelines and how block billing changes those implications. In doing so, certain issues can be raised for further analysis when certain of the simplifying assumptions are removed.

Supply responses in the pipeline sales model. In analyzing likely supply responses in the gas industry, one is concerned with how the market will react to changes in demand, in supply, in desired inventory holdings and to increases in old vintage prices. It is convenient to first conduct the analysis under the assumptions previously used, that is, all gas in the interstate market is purchased by pipelines and resold to LDCs or end users and old gas flows in fixed quantities at fixed prices; this last assumption requires that all shocks to the system be absorbed by current vintage prices and quantities.

Within these assumptions, supply analysis can proceed with the theorems already stated, namely, the market will convey sufficient signals between end users and producers to insure supply adequacy for demand shifts, inventory shifts and increases in the ceiling prices of old gas; that is, recapitulating, demand increases (decreases) induce, by market interactions, increases (decreases) in the price of current vintage gas, increases (decreases) in the demand price, decreases (increases) in the quantity sold and decreases (increases) in the quantity supplied by producers of current vintage gas. Increases (decreases) in desired inventory levels increase (decrease) demand prices, decrease (increase) quantities demanded and decrease (increase) quantities supplied by producers of current vintage gas.[19] All these exogenous shocks to the market set in motion forces that require the participants to adjust their behavior so as to equate quantities supplied and quantities demanded at inventory levels desired by the participants. That adjustment process is a necessary condition for desired supply objectives.

The type of shock not addressed so far is a shift of the supply curve. Supply might increase, i.e., the quantity supplied increases at each incentive price, because, perhaps, of technological improvements, or it might decrease, i.e., the quantity supplied decreases at each incentive price, because, perhaps, of increases in search and drilling costs. The results of such a change, according to the model, are what one would intuitively expect. An increase (decrease) in supply will induce, by market interactions, decreases (increases) in demand price, decreases (increases) in current vintage prices, increases (decreases) in quantities demanded and supplied, and the incentive price will decrease (increase).[20] Parties will be induced by market interactions to adjust to the change and restore an equality between production and use at desired inventory levels. In short, solutions to the problem of providing adequate supplies is provided by market incentives.[21]

One characteristic of this model deserves emphasis because to the extent that it usefully describes the current industry, it has troublesome consequences for producers of new gas and to regulators. Up to this point the discussion has preceded in qualitative terms. No attempt has been made to quantify any change or to compare the relative magnitude of changes. For example, demand increases (decreases) were deduced to induce increases (decreases) in both demand price and current vintage price, but no assertions were made about which increase

[18] Recall that the analysis of this part is proceeding under the assumption that monopoly rents are not present in the system.

[19] These theorems are formally derived and interpreted in Part Three.

[20] These results are formally derived in Part Three.

[21] This conclusion will be revisited in Part Two where monopoly rents are admitted to the analysis.

(decrease) would be larger, either absolutely or in percentage terms. This level of generality was chosen so as to have relevance over as many possible states of nature and behaviorial characteristics of participants as possible.[22]

Even at this level of generality it is important to note that the model does not require that the current vintage price for new gas be higher than the average of old vintage gas prices. Although one can plausibly argue that under normal demand growth conditions one implication of the supply hypothesis is that current vintage prices will be higher than an average of old vintage prices, the model suggests that a demand reduction, such as might occur in a serious recession, might drive the current vintage price below the average of old gas prices.

Adding a quantitative assumption can illustrate how the magnitude of change in current vintage prices relative to the demand price will depend on the relative proportions of current to old gas in the end-user mix.

Assume that current vintage gas, i.e., gas whose price is not constrained by either a ceiling or a floor and therefore free to equilibrate to market forces, makes up 20 percent of the total gas supply and old gas makes up 80 percent. The price of gas at the burner-tip in jurisdictional markets would then be described as a weighted average of old and new gas prices plus pipeline and LDC services charges, i.e.,

$P = W_1C + W_2A + T$

where:

P is demand price
C is current vintage price
A is old vintage average price
T is pipeline and LDC service charge per unit of gas.
W_1 and W_2 are weights, where $W_1C + W_2 = 1$.

In the example under consideration it was assumed that $W_1 = .2$ and $W_2 = .8$. Using a conclusion stated earlier, an increase (decrease) in demand will induce increases (decreases) in both P and C, by hypothesis. A does not change, and, for simplicity let it be assumed that T and W_1 and W_2 do not change.[23] It follows, therefore, that for the relation "the change in P" must equal W_1 times "the change in C" to hold the change in the current vintage price must be 5 times as large as the change in demand price.

This example illustrates how the market concentrates equilibrating forces on producers of current vintage gas when old vintage prices and quantities are not permitted to respond to those forces. With a price and regulatory structure of this type it must be expected that current vintage prices will vary substantially over the business cycle, perhaps falling below the average of old vintage prices during a recession and perhaps rising to multiples of that price furing economic booms. Clearly, if such results are deemed not to serve the public interest, changes in the regulatory system that supports such results should be made.

Current vintage producers are "sharing" in the scarcity rents off old gas when they are being induced to sell gas at below the average cost of old gas only in the sense that current vintage prices would be still lower if old vintage prices were perrmitted to rise.[24] Those rents are, however, being shared by owners of "high prices" old vintage gas. This conclusion follows from the recognition that if the "high priced" old gas price were free to adjust to market forces, those prices would fall.

Building on the conclusions reached earlier that shifting from rolled-in billing to block billing may increase/decrease or leave demand unchanged depending on how LDCs respond, and recognizing that the preceding paragraphs demonstrate that the market will induce adjustments to those changes by creating incentives to restore equality between quantities demanded and quantities supplied at desired levels of inventories, one must conclude that shifting from rolled-in billing to block billing will do nothing to adversely affect the ability of the market to create adequate supplies whatever the allocation or reallocation of the benefits of scarcity rents.

The role of transportation in a system of vintaged wellhead pricing and rolled-in city gate pricing. The preceding paragraphs are useful in understanding one source of demand for transportation rights on interstate natural gas pipelines. It is obvious from those paragraphs that if current vintage prices fluctuate dramatically in response to demand changes, a recession in which current vintage prices fell below the average of old gas prices would generate demands by jurisdictional end users to have current vintage gas they purchase directly from producers transported to them. Conversely, if demand increases induced current vintage gas prices significantly above the average of old gas prices, these same end users should be expected to cease demanding transportation services and demand instead to buy gas from the pipeline at its demand price. If the regulator permits both demands to be exercised, the demand for pipeline-owned gas might fluctuate dramatically over the business cycle. If such fluctuations are deemed not to be in the public interest, perhaps because they tend to create unnecessary instability in the gas market, the regulator must contemplate alternative regulatory structures that would induce greater economic efficiency in both pipelines and gas producers.

One important consequence of end users' right to transport gas in a system with rolled-in prices and reduce or eliminate their purchases from interstate pipeline would be to put a floor under current vintage prices. This floor would be equal to or above the average of old vintage prices.[25] If the price of current

[22] Compare note: "[The] faults and virtues [of microeconomic theory] stem from . . . the economist's lack of precise knowledge concerning the characteristics of individual tastes and the technological possibilities available to producers. In the absence of such detailed information on these aspects of the economy, economists have found it necessary to construct theories that hold under very general conditions. Because of the relative weakness or generality of the assumptions that are employed in microeconomics, theories are developed that apply to a wide range of possible "worlds," *an outstanding virtue of economic theory.* The price that is paid for this wide applicability is that the theorems of economics are correspondingly nonspecific." (Emphasis added.) James Quirk and Rubin Saposnik, *Introduction to General Equilibrium Theory and Welfare Economics,* (McGraw-Hill Book Co., New York, NY, 1968) p. 2.

[23] The assumption that W_1 and W_2 remain fixed is a strong one if demand changes are large. If demand increases (decreases) substantially the proportion of current vintage gas in the mix would increase (decrease) and the weight assigned to C would increase (decrease). This permits the assertion that demand decreases would require current vintage prices to change by larger multiples of demand price changes than demand increases would require.

The existence of a non-jurisdictional market, i.e., the intrastate market where prices are free to respond to market incentives, tends to moderate these results and add stability to new gas prices. When current vintage prices fall in such markets, all gas prices fall, and when current vintage prices rise, all gas prices rise. Consequently, the ability of interstate pipelines to tap intrastate markets when demand in the interstate markets increases imposes price increases on intrastate markets and moderates the price increases necessary to restore equilibrium in the interstate markets.

The formal model developed in Part Three recognized the existence and interdependence of the two markets.

[24] Again, the distinction emphasized in footnote 15 should be recognized.

[25] The existence of the non-jurisdictional market for gas, e.g., the intrastate market, also imposes a floor. That floor might be higher or lower than the average price of old vintage gas in the interstate market in the absence of open access transmission. With open access transportation, and the resulting ability of interstate pipeline end users to buy directly from current vintage producers insures that the floor price for new gas would not be below the average price of old vintage gas. In drawing the above conclusions, it is assumed that service charges by pipelines and LDCs on sales tariffs are equal to the service charge in transportation tariffs.

vintage gas fell below the average of old vintage gas, end users with access to pipeline transportation would shift purchases from the pipeline to current vintage producers and bid the price up to the floor. There would not, however, be a ceiling. If demand increases led pipeline customers to temporarily bid new vintage prices above the average of old vintage prices, some end users, those served by pipelines with rolled-in prices, would shift purchases back to the pipeline, which would, in turn, be required to purchase the current vintage gas and roll its price in for city gate sales. Demand increases would then tend to shift the source of sales by current vintage producers from end users to pipelines. Consequently, the market for direct sales from producers to end users who could shift to pipeline suppliers would dry up.

How would the replacement of rolled-in city gate pricing by block pricing change the results already described for a system of open access transportation? First, the answer must be within the confines of the model. One conclusion is obvious, the floor established for current vintage prices may be increased. With block billing, it would be equal to or above the average price of the old vintage gas included in the tier with the highest price, i.e., tier two. This conclusion follows from the assumption that pipeline customers would shift purchases from pipelines to current vintage producers if the current vintage price were below the pipeline's tier two price.

Further analysis can best proceed by steps. First, if LDCs continue to price on a rolled-in basis, end users are confronted with a single price and the model as constructed is still useful for analysis. Conclusions already stated can be restated, the introduction of block billing does not shift demand, supply, or desired inventories and, therefore, demand prices, incentive prices, current vintage prices and equilibrium quantities would not change. Competition would be expected, however, to equalize tier two prices among pipelines and that might induce a reallocation of the benefits of scarcity rents among end users by increasing prices in some end user markets and reduce them in others. Obviously, the supply adequacy theorems stated earlier still hold.

Second, if LDCs segment gas supplies by price elasticity, then the analysis of earlier pages can be repeated; demand increases will result if low priced gas is "directed" to price-elastic markets and demand decreases will result if low priced gas is "directed" to price-inelastic markets. In either case the supply adequacy theorems remain valid whatever the effects on the allocation of the benefits of scarcity rents.

Third, if LDCs block bill their customers, those customers will be confronted with two prices. Consequently their average price and marginal price will differ. The model cannot be rigorously applied to analyze this case. Since the marginal price, i.e., tier two price, will initially be higher than the pre-existing demand price, it should be expected that the quantity demanded will decrease. Within the framework of the model used herein that is analytically equivalent to a demand decrease. The model, therefore, permits the deduction that the market will adjust as if to a demand reduction. As long as neither ceiling nor floor prices prevent adjustment, the supply adjustment mechanism described in the model will continue, and the supply adequacy conclusions remain valid whatever the allocation of the benefits of scarcity rents.

In summary, as long as end users' demands for gas will absorb all the current vintage gas offered at the floor price or a higher price, the analysis offered earlier about supply adequacy holds. The combination of block pricing and open transportation should be expected to produce no significant differences in the market adjustment process from that which would occur with transportation and rolled-in pricing or with no transportation and rolled-in pricing.

The argument has so far assumed that demand is adequate to absorb sales of both old gas and all current vintage gas offered at the floor price. What happens if demand decreases, or pipelines unwisely commit to take so much gas at prices at or above the floor that that cannot occur? The analysis will first assume the existence of rolled-in billing. The model cannot unambiguously describe what happends as a consequence. Institutional constraints have placed a floor under the demand pirce, a key equilibrating variable in the model. Presumably pipelines would be required to curtail purchases to equate quantity demanded and quantity supplied at a demand price higher than the equilibrium price or act to lower the demand price by lowering old vintage prices.[27]

One further implication of this model should be noted. It is likely that the production of synthetic natural gas (SNG) will play an increasingly important role in meeting demands at some time in the next decade or so. It is difficult to see how that part of the industry can make sensible long-term plans when current vintage natural gas prices fluctuate dramatically over the business cylce. In boom periods, when the new gas price exceeds the pipelines' weighted average cost of gas, LDCs and end users would see SNG as more expensive than interstate pipeline gas, and in recessions they might see SNG more expensive than current vintage gas. Interstate pipelines would, during booms, see SNG less expensive than current vintage gas but they should also be expected to extrapolate from recent experiences and recognize that an SNG project that looks attractive during a boom could be extremely unattractive in the next recession if current vintage prices fall.

One must, therefore, conclude that a system of pricing and regulation that focuses market pressures on current vintage prices and production and isolates old vintage prices from those pressures serves to increase the risk of SNG projects substantially. Moreover, this pattern of price behavior removes almost completely incentives of LDCs and end users served by interstate pipelines to explore this technology. Such incentives do not bode well for creating a competitive market for natural and synthetic gas.

Recapitulation. The key question that motivated the preceding analysis, namely: will block billing, or a combination of block billing and open transportation induce a shortage of natural gas, has been answered at the level of abstraction at which it was stated, namely, logic supports the conclusion that moving from a system of vintage wellhead pricing, rolled-in city gate pricing and no transportation to a system of vintage wellhead pricing, block billing, with or without transportation, should be expected to have no adverse effects on incentives to maintain supplies adequate to meet demands and desired levels of inventories. Moreover, the model supports the conclusion that a market in which current vintage prices are unconstrained will induce adequate supplies no matter what the allocation of scarcity rents.

In conducting the analysis two important issues were highlighted that could not be properly addressed with the model as formulated. Those issues are (1) a market in which only a small segment of supplies is market responsive requires suppliers of that segment to experience dramatic variations in prices and quantities sold when demand fluctuates, and (2) the

[27] This topic is revisited and the analysis extended in Part Three.

analysis emphasizes that institutional and regulatory practices impose a floor price, and if demand decreases or supply increases so much that the equilibrium price is below the floor price, buyers will not be willing to buy all that producers are willing to sell at the floor price at desired inventory levels.

It is important to realize, however, that the floor price exists as a consequence of the assumption that old vintage gas enters the system at fixed prices. Consequently, the floor exists whether block pricing or rolled-in pricing is practiced and whether pipelines transport gas only for themselves or for themselves and others. The only consequence of open transportation is that it raises the floor for current vintage prices and the combination of open transportation and block billing raises that floor still higher. These consequences are not unimportant. They are discussed in the next part.

Part Two: Effects of Monopoly Rents on Gas Markets

It was emphasized above that the existence of vintage pricing, when ceiling prices become actual prices, results in floor prices being established in the gas market. The level of the floor depends upon how interstate pipeline city gate prices are established and whether there is or is not open transportation. In all cases it is possible for a reduction in demand, or contracts unwisely signed by pipelines, to create the circumstances where end users will not purchase all that is being offered at the floor price. When this condition exists for any significant period, one must conclude that monopoly rents are being received by sellers of gas when viewed as a group.[28] If the market were effectively competitive, the floor price would not exist and prices would fall to the equilibrium price, i.e., the price at which quantities sellers want to sell are being purchased by buyers who purchase all they want to purchase at that price.

Such above equilibrium prices and, therefore, the existence of monopoly rents, may arise from the exercise of unconstrained monopoly power, they may arise from unwise pipeline contracting actions, they may arise from conscious regulatory policy or they may arise as unanticipated consequences of regulatory policies focused on other objectives. However they arise, they must be distinguished from scarcity rents.

Regulatory actions taken to lower prices toward the market equilibrium level should be seen as actions that eliminate monopoly rents, although it may well be the case that actions taken to lower prices so as to eliminate monopoly rents will, as a side consequence, redistribute scarcity rents.

The economic model is a useful starting point for analyzing one strategy for lowering the floor price. It was noted earlier that a decrease in the average price of old vintage gas would, when prices are at the equilibrium level and, therefore, a floor is not constraining, decrease demand price and increase the quantity bought and sold.[29] It is only a small step to conclude that if the first price is a floor price, and the pipeline has curtailed purchases, the reduction in the average price of old gas could lower demand prices, lower the floor price, stimulate sales and make possible a market equilibrium price below the old floor price. In that case it seems proper to conclude that the reduction in the average price of old vintage gas induced market adjustment that eliminated monopoly rents.

If the regulator decides to act to eliminate monopoly rents from the system by lowering the price of old vintage gas, how should he do it? Obviously, an economic model cannot answer that question. It can, however, suggest alternatives. First, one might expect interstate pipelines to correct the disequilibrium by negotiating lower prices with owners of old gas. Moreover, since the average price of old gas is a volume weighted average of all the old vintages, the average price of old gas can be lowered by reducing the proportions of "high priced" old gas in the mix. Granting LDCs the right to shift purchases among pipelines should be expected to increase incentives for pipelines to succeed in lowering prices.

Secondly, regulators might open the system for transportation and increase the pressure on interstate pipelines to negotiate lower prices with the owners of old gas. Opening the system for transportation, as stated before, raises the floor price for current vintage gas by permitting end users to bid the price of current vintage gas up to the average price of old vintage gas. In so doing, interstate pipeline sales would be further reduced if they failed in negotiations. Again, granting LDCs the right to shift purchases among pipelines would further increase pipeline incentives to succeed in such negotiations. In either of these solutions, the desired result of creating equilibrium prices could be achieved by lowering either "low priced" old vintage gas or "high priced" old vintage gas.

Third, one might simultaneously open the system for transportation, convert the rolled-in billing system to block billing and permit LDCs to shift purchasers among pipelines. This strategy raises the floor even higher than the second one and further increases pressure on pipelines to negotiate lower prices on old vintage gas. This strategy differs from the second one in that the pipeline is now encouraged to negotiate for lower prices only on those old vintage categories included in block two, i.e., the high priced block.

The key question of concern herein is the supply consequences of the third strategy. In approaching these concerns the first point to be re-emphasized is that the objective is to use competitive forces to eliminate monopoly rents. To do that it is necessary for some old vintage prices to fall. If old vintage prices do fall, two important results follow. First, the falling prices of "high priced" block two gas, increases the proportion of market responsive gas in the system and, therefore, makes the system less sensitive to demand shocks. Second, monopoly rents are eliminated and the supply analysis of Part Two will hold because floor and ceiling constraints will have become nonbinding. Consequently market forces will tend to induce prices that will permit sellers to sell and buyers to buy and inventory holders to hold the desired quantities. Any change in those desires will be reflected in shifts in the demand, shifts in supply, or changes in the level of desired inventories. The market will then adjust the endogenous variables to restore equilibrium. This is what is meant by supply adequacy.

In conclusion, the preceding analysis has demonstrated that moving from a system of rolled-in billing and no transportation to one with block billing and open transportation will not threaten long-term supply. In fact, it will tend to eliminate monopoly rents from the system, moderate the boom-bust cycle for current vintage producers by limiting depths to which current vintage prices can fall and improve the workings of the natural gas market and make long-term supply planning less risky for both natural and synthetic gas producers.

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[28] The assumption here, as elsewhere in the paper, is that regulations keep interstate pipelines and LDCs from receiving monopoly rents. It may, however, be the existence of monopoly power in interstate pipelines that makes it possible for gas producers to receive monopoly rents.

[29] See Part Two. The theorems in this paragraph are formally derived in Part Three.

Part Three: The Simple Model Formally Stated

The economic model on which much of the argument in Parts One and Two is based is formally stated as follows:

1

a. $q_d = D_1(P,a) + D_2(C)$; $\partial q_d/\partial P < 0$, $\partial q_d/\partial a < 0$, $\partial q_d/\partial C < 0$

b. $q_s = S(V,b)$; $\partial q_s/\partial v > 0$

c. $V = V(C, r, I)$; $\partial V/\partial C > 0$, $\partial V/\partial r < 0$, $\partial V/\partial I < 0$

d. $P = P(C, A)$; $\partial P/\partial C > 0$, $\partial P/\partial A > 0$

e. $q_d = q_s = q$

where:

q_d=quantity demand, an endogenous variable

q_s=quantity supplied, an endogenous variable

q=equilibrium production rate, an endogenous variable

v=the incentive price, an endogenous variable

p=the jurisdictional market demand price, an endogenous variable

C=current vintage price, an endogenous variable

r=the interest rate, an exdogenous variable

I=inventories, an exogenous variable

A=the "average" of all "old" vintage prices, an exogenous variable

a=a shift parameter in the jurisdictional demand function

b=a shift parameter in the supply function

Equation (1.a) is a formal statement of the demand assumption. It assumes that demand is bifurcated. One part of the market is served at demand prices determined by averaging old vintage and current vintage prices. A second part of the market is served at current vintage prices only. For shorthand, the first market will be labeled "jurisdictional" of "interstate" and the second one "non-jurisdictional" or "instrastate." Both demand hypotheses incorporate the traditional assumption that the quantity of gas that end users will voluntarily purchase varies inversely with the price. In the jurisdictional market, that price is called the "demand price." In the non-jurisdictional market that price is the current vintage price. The parameter "a" represents all variables exogenous to the model that affect demand, variables such as the price of oil, the price of electricity, gross domestic product, etc. For analytical convenience that parameter is included in the jurisdictional demand hypothesis only. The analysis does not include consequences of demand shifts in the non-jurisdictional market since the results are parallel to those of shifts in jurisdictional demand.

Equation (1.b) is a formal statement of the supply hypothesis. It incorporates the assumption that the quantity of gas that new gas producers will develop and offer to the market varies directly with the incentive price. The parameter "b" represents all variables exogenous to the model other than the interest rate and the level of inventories that effect new gas producers' willingness to develop new gas supplies and offer them to the market, variables such as the cost of labor, the cost of search and development equipment, etc. Included in this hypothesis is the assumption that the quantity offered of old vintage gas is invariant with respect to any variable in the model.

Equation (1.c) is a formal statement of the incentive price function. It incorporates the assumptions that, ceteris paribus, the incentive price varies directly with the current vintage price, inversely with the interest rate and inversely with inventory levels. This equation is a generalization of the present value discounting equation which asserts that the present value of a stock of gas varies directly with the price or prices at which the gas will be sold, inversely with the interest rate used to discount the income stream and inversely with the length of time it will take to sell the gas. The variables "r", the interest rate, and "I", the level of inventories that serves as an index of the length of the period over which new gas producers must sell their gas, are assumed to be exogenous to the model.

Equation (1.d) is a formal statement of the relationship between demand prices and wellhead prices. It asserts that demand prices vary directly with both current vintage prices (C), and the average of old vintage prices (A). The equation is a generalization of the view that demand price is a weighted average of current vintage prices and old vintage prices plus pipeline and LDC service charges. The weights on the two prices are their relative proportions in the jurisdictional supply mix. In the model old vintage ceiling prices are assumed to be determined by past decisions of regulators and/or the Congress. It is also assumed that pipelines and producers have incorporated these ceiling prices into contracts so that ceiling prices are actual prices in the current period. For analytical simplicity, it is further assumed, as stated when describing Eq. (1.b), that in the current period, i.e., the period of analysis, the quantity of old gas produced does not vary with any price. This is a strong assumption but the gains in simplicity are large.

Equation (1.e) is the equilibrium, or market clearing, hypothesis. It asserts that only when this condition is satisfied will there be a tendency for the endogenous varibles in the model to remain stable. An alternative, and more precise way of describing this equation is to say that when this condition holds, the quantity of gas end users are willing to purchase equals the quantity of gas that current vintage producers are willing to offer to the system.

The basic hypothesis underlying the market analysis is that all parties in the natural gas market act in their own interest without collusion. This implies that all equations tend to be satisfied at all times unless constraints not recognized in the model block that possibility. The possibility of such constraints are recognized and discussed in the detailed analysis.

The model as stated in (1) contains 5 equations and 5 variables to be determined, namely q_s, q_d, V, P, and C, three prices and two quantities. History gives a value for A, and the money markets determine a value for r. It is assumed that the desired level of inventories, i.e., I, is determined by variables exogenous to this model, e.g., by regulatory policies.

In order to simplify the derivations of comparative static theorems, it is convenient to substitute (1.a) and (1.b) into (1.e) and obtain the following:

2. a. $D_1(P,a) + D_2(C) - S(V, b) = 0$

b. $V - V(C, r, I) = 0$

c. $P - P(C, A) = 0$

Equation (2) logically implies the following comparative static theorems:

For an exogenous change in I:

$dP/dI > 0$, $dC/dI > 0$, $dV/DI < 0$, and $dq/dI < 0$

Translating these results into words gives the following: If the demand and supply functions remain fixed *and* the price of current vintage gas is not constrained *and* the desired level of inventories increase (decrease) *and* market participants act to make actual inventory levels rise to desired levels, the market will induce the following results: (i) the demand price to jurisdictional end users will increase (decrease), (ii) the current vintage price to producers of current vintage gas will increase (decrease), (iii) the incentive price to producers of current vintage gas will decrease (increase) and (iv) the quantity of gas produced and sold will decrease (increase).

For an exogenous change in A:

$dP/DA > 0$, $dC/dA < 0$, $dV/dA < 0$, and $dq/dA < 0$

Translating these results into words gives the following: If the price of current vintage gas is not constrained *and* the demand for gas remains fixed *and* supply remains fixed *and* desired level of inventories remains fixed *and* market participants act to keep actual inventories at the desired level *and* the average price for old gas increases (decreases), the market will induce the following results: (i) The demand price to jurisdictional end users will increase (decrease), (ii) the current vintage price to producers of current vintage gas will decrease (increase), (iii) the incentive price to producers of current vintage gas will decrease (increase), and (iv) the quantity of gas produced and sold will decrease (increase).

For an exogenous change in a:

$dP/da > o$, $dC/da > o$, $dV/da > o$, and $dq/da > o$

Translating these results into words gives the following: If the price of current vintage gas is not constrained *and* the supply curve remains fixed *and* desired levels of inventories remain fixed *and* market participants act to keep actual inventories at the desired level *and* the demand for gas increases (decreases), i.e., the quantity demanded at each price increases (decreases), the market will induce the following results: (i) the demand price to jurisdictional end users will increase (decrease), (ii) the current vintage price to producers of current vintage gas will decrease (increase), (iii) the incentive price to producers of current vintage gas will decrease (increase) and (iv) the quantity of gas produced and sold will increase (decrease).

For exogenous changes in b:

$dP/db < o$, $dC/db < o$, $dV/db < o$ and $dq/db > o$

Translating these results into words gives the following: If the price of new gas is not constraining *and* the demand curve remains fixed *and* the desired level of inventories remain fixed *and* market participants act to keep actual inventories at the desired level *and* supply increases (decreases), i.e., the quantity of gas supplied at each price increases (decreases), the market will induce the following results: (i) the demand price to jurisdictional end users will *decrease* (increase), (ii) the current vintage price to producers of current vintage gas will *decrease* (increase), (iii) the incentive price to producers of current vintage gas will *decrease* (increase) and (iv) the quantity of gas bought and sold will increase (decrease).

For an exogenous change in r:

$dP/dr > o$, $dC/dr > o$, $dV/dr < o$, and $dq/dr < o$

Translating these results into words gives the following: If the price of new gas is not constrained *and* the demand curve remains fixed *and* the supply curve remains fixed *and* desired levels of inventories remains fixed *and* market participants act to keep their actual inventory levels equal to the desired levels *and* the interest rate increases (decreases), the market will induce the following results: (i) The demand price will increase (decrease), (ii) the current vintage price will increase (decrease), (iii) the incentive price to producers of current vintage gas will decrease (increase), and (iv) the quantity of gas bought and sold will decrease (increase).

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Part VIII

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, 250, 284, 375, and 381

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol; Final Rule and Statement of Policy

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 157, 250, 284, 375, and 381

[Docket No. RM85-1-000 (Parts A-D); Order No. 436]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued: October 9, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule and statement of policy.

SUMMARY: The Commission is amending its regulations in three specific areas.

Part A—Transportation

A simplified transportation program is adopted, including blanket certificates under section 7 of the Natural Gas Act (NGA), and transportation under section 311 of the Natural Gas Policy Act of 1978 (NGPA), conditioned to require non-discriminatory access to such transportation. Tariffs for such service are required to be volumetric, downwardly flexible, cost-of-service rates, differentiated by time-of-use, and consistent with sections 4 and 5 of the NGA.

A conditional opportunity is provided for customers of pipelines to modify their existing service agreements in order to reduce their contract demands for firm sales service. This customer option is only available if the pipeline held itself out as a transporter of gas for others. Pre-granted abandonment is available to the pipeline to the extent of any customer's reduction. This enables such customers to choose more freely among a portfolio of service options offered by pipelines. This also entails an adjustment in the pipeline's sales obligation under its existing service agreement and certificates, and revision of, among other things, any demand charges, minimum bills, that may be required under the firm sales tariff for the sales service being adjusted.

Traditional sales and transportation options remain available to pipelines and their customers under the Commission's existing certificate authority.

Part B—Take-or-Pay

The Commission is reaffirming its earlier policy statement regarding buy-outs of take-or-pay contracts. This flexible approach is contained in the April 10, 1985, Policy Statement in Docket No. PL85-1-000. In addition, the Commission is providing for expedited processing of producer abandonment applications under current substantive criteria.

Part C—Optional Expedited Certificates

A pipeline that assumes the risk of undertaking a venture for new services, facilities, and operations may apply for a new optional expedited certificate under section 7 of the NGA so long as the pipeline agrees to specific conditions governing the proposed services.

Appropriate abandonment is conditionally pre-granted to the pipeline to be effective at the expiration of the underlying contracts. If the customer has an alternate provider of service, the pipeline may discontinue service at the expiration of the applicable private contract. Because pipelines assumes the risk of their ventures, competing certificates may be granted. Traditional certification proceedings are still available to pipelines seeking to impose some of the risk of their venture on other parties, in order to ensure that the risk imposed involuntarily on others is required by the public convenience and necessity.

EFFECTIVE DATE: The amendments to Part 2 are effective October 9, 1985. The amendments to Part 284 are effective November 1, 1985. The amendments to Parts 157, 250, 375, and 381 are effective November 18, 1985.

ADDRESS: The environmental assessment, the exhibits, and the three maps referenced in the preamble are not being printed in the **Federal Register.** These documents are available for review in the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8118.

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Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa and Charles G. Stalon.

In the matter of Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Docket No. Rm. 85-1-000, (Parts A–D) order No. 436.

Final rule

Issued: October 9, 1985.

I. Introduction

A. The Proposed Rule

On May 30, 1985, the Federal Energy Regulatory Commission (Commission) proposed changes to its regulation of natural gas pipelines after partial wellhead decontrol of gas on January 1, 1985.[1] The May 30 Notice of Proposed Rulemaking (NOPR) was the outcome of a five month notice of inquiry begun in this docket on December 24, 1984.[2] The Commission is issuing its final rule in order to comply with the Natural Gas Act (NGA),[3] the Natural Gas Policy Act of 1978 (NGPA),[4] and the mandate of the court in *Maryland People's Counsel* v. *FERC*, Nos. 84-1019, 84-1029 and 84-1090 (D.C. Cir. 1985).

The NOPR proposed significant changes to our regulation of natural gas pipeline companies in light of the many changes in the natural gas industry over the years. These changes have included the NGPA which immediately removed market entry and exit restrictions over "first sales" of all new supplies of natural gas (NGPA section 601(a)(1)) and which removed wellhead price controls on the majority of gas supplies on January 1, 1985, pursuant to the Congressionally-mandated schedule (NGPA section 121).

The May 30th NOPR proposed a package of four interrelated parts.

Part A—Transportation

• A simplified transportation program was proposed, including blanket certificates under section 7 of the NGA and transportation under section 311 of the NGPA, conditioned to require non-discriminatory to such transportation.

• Tariffs for such service were required to be volumetric, downwardly flexible, cost-of-service rates, differentiated by time-of-use, and consistent with sections 4 and 5 of the NGA.

• A conditional opportunity was proposed for customers of pipelines to modify their existing service agreements in order to reduce their contract demands for firm sales service. This customer option would only be available if the pipeline held itself out as a transporter of gas for others. Pre-granted abandonment would be available to the pipeline to the extent of any customer's reduction. This would enable such customers to choose more freely among a portfolio of service options offered by pipelines. This would entail an adjustment in the pipeline's sales obligation under its existing service agreement and certificates, and revision of any demand charges, minimum bills, etc., that may be required under the firm sales tariff for the sales service being adjusted.

• Traditional sales and transportation options would remain available to pipelines and their customers under the Commission's existing certificate authority.

Part B—Take-or-Pay

• During a limited transition period, a rebuttable presumption of prudence would have been established for certain limited and circumscribed payments made by pipelines to extinguish all future minimum payment or purchase obligations in certain contracts.

• This presumption would have been available only to pipelines willing to offer non-discriminatory access to transportation service; this in turn would have given rise to an option for firm sales customers to reduce their contract demands.

Part C—Optional, Expedited Certificates

• Optional expedited certification procedures under section 7 of the NGA for new services, facilities and operations were proposed to be made available by choice to pipelines willing to assume the risk of these ventures by agreeing to specified conditions governing the proposed services.

• Appropriate abandonment would be conditionally pre-granted to the pipeline to be effective at the expiration of the underlying contracts. In those instances where the customer has an alternative provider of service, the pipeline would be able to discontinue service at the expiration of the applicable private contract.

• Because pipelines would knowingly assume the risk of their ventures, competing certificates would be granted.

• Traditional certification proceedings would remain available to pipelines seeking to impose some of the risk of their venture on other parties, in order to ensure that the risk imposed involuntarily on others is required by the public convenience and necessity.

Part D—Billing Mechanism for Old Gas Supplies

• A three-part gas rate was proposed for pipeline gas sales, to preserve the benefits of "old" gas for existing firm sales customers and to mitigate competitive distortions resulting from the lingering effects of existing wellhead price controls.

• The first block would contain "old gas" under sections 104, 106(a) and 109 of the NGPA and would be available first to all existing firm sales customers of the pipeline; the second block would contain all other gas. All non-gas costs associated with purchasing gas were to be billed as a third charge to be allocated between the two blocks.

• When a pipeline has permitted its firm sales customers to reduce 100 percent of their contract demands and offers those customers non-discriminatory self-implementing transportation, then, subject to a transition period, the sales price established by the pipeline for natural gas assigned to the second block was proposed to be presumed to be just and reasonable.

B. The Final Rule

Comments on the proposal were received from several hundred persons. The full Commission heard two very full days of oral argument from over one hundred commenters at the public hearing held on August 1–2, 1985. A list of those commenting and making oral presentations is attached as Exhibit A.

The comments, written and oral, have been extremely helpful. Major changes have been made in the proposal as a result. These changes include:

Part A—Transportation

• Allowing imposition of a reservation charge for firm transportation service.

• Allowing firm sales customers of a transporting pipeline a transitional option to convert from firm sales to firm transportation upon payment of a reservation fee.

• Express recognition of a pipeline's ability to impose reasonable operational conditions on requests for service and a requirement that such conditions be filed as part of the tariff.

• Providing for interim transportation rates effective November 1, 1985.

• Clarifying that projected levels of service for self-implementing transportation may be changed in rate cases.

• Providing for the "grandfathering" of certain transportation transactions and providing a smooth transition for certain other types of transportation.

• Exempting of intrastate pipelines from the rate conditions for self-implementing transportation and from the requirement to offer firm service.

• Providing for environmental review of new construction.

Part B—Take-or-Pay

• Deleting the proposed safe harbor rules for take-or-pay buy-outs and providing for review of such buy-outs under the more flexible approach contained in the April 10, 1985 Policy Statement in Docket No. PL85-1-000.

• Providing for expedited processing of producer abandonment applications under current substantive criteria.

Part C—Optional, Expedited Procedure

• Adding a requirement that an applicant seeking a certificate to provide transportation service must obtain a blanket transportation certificate under § 284.221.

• Including express rules prohibiting cost shifting.

• Clarifying the use of abbreviated procedures of section 157.7.

With regard to the billing procedure proposed in Part D, the Commission is not promulgating a final rule at this time. As detailed below, the Commission is, by separate notice issued today, requesting additional comments on a revised proposed rule which is designed to be phased-in beginning July 1, 1986. The proposed effective date is designed to be consistent with the other rate aspects of the final rule relating to transportation. The revised proposal for Part D is as follows:

Part D—Block Billing

• Eliminating "Part 3" with revisions to clarify that the "as-billed" principle continues to apply to fixed costs.

• Phasing-in the implementation of block billing beginning in the summer of 1986.

• Extending the base period to include the period between December 1, 1978 to December 31, 1984.

• Including interruptible purchases for purposes of determining block 1 allocation factors.

• Providing for case-by-case review and determination of allocation between blocks 1 and 2 of certain enumerated gas supplies.

• Clarifying that the presumption of justness and reasonableness for block 2 gas under specified conditions is subject to rebuttal and will only apply to rates that are "reasonably related" to block 2 acquisition costs.

• Various clarifications regarding implementation.

C. Statement of Commission Purposes

As will be detailed in this Preamble, the natural gas industry has changed significantly since Congress adopted the NGA in 1938 and indeed since adoption in 1978 of the NGPA.

Among the statutory responsibilities granted by Congress to the Commission is section 4(a) of the NGA which requires that all natural gas rates and practices subject to the jurisdiction of the Commission shall be just and reasonable, and any such rate or charge that is not just and reasonable is declared to be unlawful.[5] Section 5(a) of the NGA gives the Commission the power, after hearing, to determine the just and reasonable rate or practice and to fix the rate by order.[6]

Section 7(e) of the NGA authorizes the Commission to condition certificates for services and facilities in such manner as the public convenience and necessity may require.[7] Section 7(e) grants the Commission broad power because such certificate and conditioning authority is the means by which the Commission effectuates the purpose of the NGA to underwrite just and reasonable rates to the consumers of natural gas.[8]

However, what Congress has given, Congress can take away. In 1978, Congress did just that when it enacted the NGPA. The NGPA expressly removed the Commission's NGA jurisdiction to establish just and reasonable rates *at the wellhead* for new gas supplies not committed or dedicated to interstate commerce prior to enactment.[9] The NGPA also severely limited the Commission's jurisdiction to review the purchase costs of such new gas by pipelines at the city-gate.[10] The NPGA, however, did not remove or restrict the Commission's remaining NGA jurisdiction and the responsibility to establish just and reasonable rates for the transportation of all categories of gas in interstate commerce, or for the sale of natural gas committed dedicated to interstate commerce prior to enactment.[11]

In essence, sections 601 and 121 of the NPGA effected a phased partial reversal of the Supreme Court's 1954 decision in the *Phillips* case [12] (holding that independent producers are "natural-gas companies" when they make field sales of natural gas to interstate pipelines for resale). Section 601 removed all NGA jurisdiction over "new" gas, effective December 1, 1978, while section 121 removed NPGA price controls over specified gas supplies, effective November of 1979, January 1, 1985 and July 1, 1987.

These statutory changes reflect a Congressional determination that producers of natural gas do not have "natural" monopoly power.[13] In other words, the statute reflects the workably competitive nature of the production industry.

Moreover, as a result of physical and technological changes that have taken place as the industry has grown and matured over the last fifty years, a given supply of the natural gas commodity can now be transported—by front haul, back haul, exchange or displacement—to points throughout the continental United States. As a result, as a technical matter, producers of natural gas can market their supplies in an essentially national market while individual customers or resellers of gas (such as the local gas utilities) can obtain supplies from a variety of sources.

These legal and technical changes have already begun to restructure the industry.

The Commission's overriding goal in this docket is to adapt our regulations to these fundamental legal and technical changes so that we may continue to fulfill our statutory mandates under the NGA and the NPGA. Thus, the final rule adjusts, within the scope of the authority delegated by the Congress, those aspects of our current regulations that now appear to hinder the development of competition in those areas where competition will better protect the public interest than will traditional public utility regulatory rules. The final rule retains the traditional regulatory approach in areas where it is needed to protect the public from market dominance by natural gas companies.

The purpose of the final rule is to assure that commodity and transmission prices for natural gas between the wellhead and burner-tip are clear and accurate and consistent with the requirement of the NGA that rates and practices be just and reasonable and not unduly discriminatory, or preferential. The final rule also secures to consumers the benefits of competition in natural gas markets consistent with both the NGA and the NPGA. The final rule achieves these goals by establishing a framework for setting just and reasonable rates and practices for the sale and transportation of natural gas in interstate commerce, and by reasonably conditioning self-implementing interstate transportation services under the NGA and the NPGA.

Accordingly, in light of the record of comment and experience detailed herein and pursuant to sections 4, 5, 7 and 16 of the NGA, sections 311 and 501 of the NPGA and sections 402 and 403 of the DOE Organization Act,[14] the Commission is issuing the present final rule.

D. Effective Dates and Implementation Schedule in Final Rule

Because of the need to place all transportation programs on a sound and even footing prior to the expiration of certain programs on November 1, 1985, the Commission has determined for good cause that Part A of the final rule—Transportation—will generally be effective November 1, 1985. As a Statement of Commission Policy, Part B—Take-or-Pay Buy-Outs and Expedited Producer Abandonment—is effective immediately. Part C—Optional Expedited Certificates—will be effective 30 days from issuance. Part D—Block Billing—is proposed to take effect beginning June 1, 1986.

The Commission has considered whether to fix just and reasonable rates and practices by rule or on a case-by-case basis, and concluded that fairness to all natural gas consumers requires that these rates and practices be established by rule. To do otherwise would risk lengthy and time-consuming proceedings which may raise issues of undue discrimination against some consumers in later cases in favor of others whose rates and practices are fixed in earlier cases.

However, the Commission has also considered the hardships that might accrue to parties in individual circumstances during a transition period following issuance of the rule. For this reason, the Commission has determined that the final rule should provide a suitable transition period for fundamental choices in the industry, such as what services to offer, how to structure basic contractual arrangements, and how to allocate the risks and fixed costs of engaging in a particular business.

Although the transportation program in Part A is effective November 1, 1985, the Commission is providing a transition period for the various aspects of that program, such as the "grand-fathering" of existing transportation arrangements, the applications for new self-implementing transportation authority, the setting of transportation rates for new transportation service under the rate conditions, and the exercise by firm sales customers of their conditional opportunity to reduce or convert their firm sales entitlements.

The schedule for implementing the transportation program is as follows:

1. *Effective Date of Part A—Transportation.* Effective November 1, 1985 unless specifically indicated otherwise.

2. *"Grandfathering" of Ongoing NGPA Section 311 Transportation.* Sections 284.105 (for interstate pipelines) and 284.125 (for intrastate pipelines) provide that self-implementing transportation service authorized under NGPA section 311 prior to November 1, 1985 may be continued after that date, without additional filings, until the earlier of (1) the expiration of the original term of the transportation agreement as it was in effect on the date of issuance of the final rule, or (2) October 31, 1987. The rate conditions of § 284.7 (including the provision for interm rates) will apply to previously authorized transactions by interstates. The new reporting requirements will apply effective November 1, 1985.

The final rule does not affect any transportation arrangement authorized under §§ 284.107 or 284.127, again except with regards to the rate conditions (for interstate pipelines) and the reporting conditions (for both interstate and intrastate pipelines).

3. *"Grandfathering" of Order No. 319—Blanket Certificate Transportation on Behalf of High-Priority End-Users.* Section 284.223(g)(1) provides that transportation on behalf of high-priority end-users that commenced under existing § 157.209(a) prior to November 1, 1985 is deemed to be authorized in the full term originally certificated. The rate conditions of section 284.7 (including the provisions for interim rates) will apply November 1, 1985 consistent with the general rule above (since no other date is specifically provided).

4. *"Grandfathering" of Order No. 234 Series—Blanket Certificate Transportation on Behalf of Other End-Users.* Paragraphs (g)(2) and (g)(3) of § 284.223 provide a *brief* transitional arrangement for ongoing transportation under the Order No. 234–B program which must otherwise halt on October 31, 1985. The section provides that the transportation may continue after November 1, 1985 if several conditions are met. Most important is the condition that the transporting pipeline must file, prior to November 1, 1985, a statement that it will, effective November 1, 1985, comply with the express non-discriminatory access condition spelled out in §§ 284.8(b) and 284.9(b) and with the rate conditions in § 284.7. Paragraph (g)(3)(ii) makes it clear that transportation under the transitional rule is subject to the non-discrimination and rate conditions of the final rule. The remaining provisions allow for continuous authorization so long as the notice and protest procedure has been followed or where the transaction is within a 120-day automatic authorization period that has not expired.

The authorization under § 284.223(g)(2) ends on December 15, 1985 unless the pipeline has filed for a new blanket certificate prior to that date.

5. *Pipeline Choice to Participate in New Transportation Program.* There is no deadline for this, except to the extent a pipeline wishes to continue existing transportation.

Any pipeline may file for a new transportation certificate at any time.

6. *Interim Rates for Transportation.* Effective until the date of the new rates become effective.

"Grandfathered" transportation arrangements and new transportation services provided under the final rule may be provided by pipelines under comparable transportation rates already effective and on file at the Commission. See new § 284.7(b)(1). Such interim rates may be effective until the pipeline files and places in effect new rates which conform to new § 284.7 and which are filed to be effective no later than July 1, 1986. See new § 284.7(b)(2).

7. *New Rates for Self-Implementing Transportation.* New rates under § 284.7 must be filed to become effective no later than July 1, 1986.

8. *Exercise of Conditional Opportunity for Firm Sales Customers to Reduce or Convert Firm Sales Entitlements.* a. First notice of any reductions are due February 1, 1986. If a pipeline accepts a new blanket transportation certificate under new § 284.221 or begins a new NGPA section 311 self-implementing transportation arrangement under new Part 284, any of its firm sales customers may give it notice of an intent to exercise their conditional option to reduce firm sales entitlements up to 25 percent in the first year on February 1, 1986. Such "CD" reduction may not be effective before September 1, 1986. See new § 284.10(c).

After the initial reductions, "CD" reduction rights may be exercised only once a year, at a time specified by the pipeline and only with 150 days prior notice. See § 284.10(c)(2).

b. Notice of conversion after February 1, 1986. If a pipeline accepts a new blanket transportation certificate or begins a new section 311 transportation arrangement, any of its firm sales customers may give it notice no earlier than February 1, 1986, of intent to exercise their conditional option to convert up to 25 percent of firm sales entitlements in the first year to transportation service under new § 284.10(d). Such "CD" conversion may not be effective before 60 days following such notice. See new § 284.10(d). "CD" conversion options may be exercised at any time by a customer, subject to 60 days notice to the pipeline. See new § 284.10(d)(2).

II. Background and Discussion

A. Changes in the Industry and the "Unbundling" of Natural Gas as a Commodity

1. *The change in a nutshell and the Commission's overriding goal.* The natural gas industry has changed in fundamental ways over the nearly 50 years since the Natural Gas Act was adopted in 1938. The changes have been accelerated over the last seven years by the phased removal of wellhead price controls under the Congressionally mandated schedule set out in the Natural Gas Policy Act of 1978.

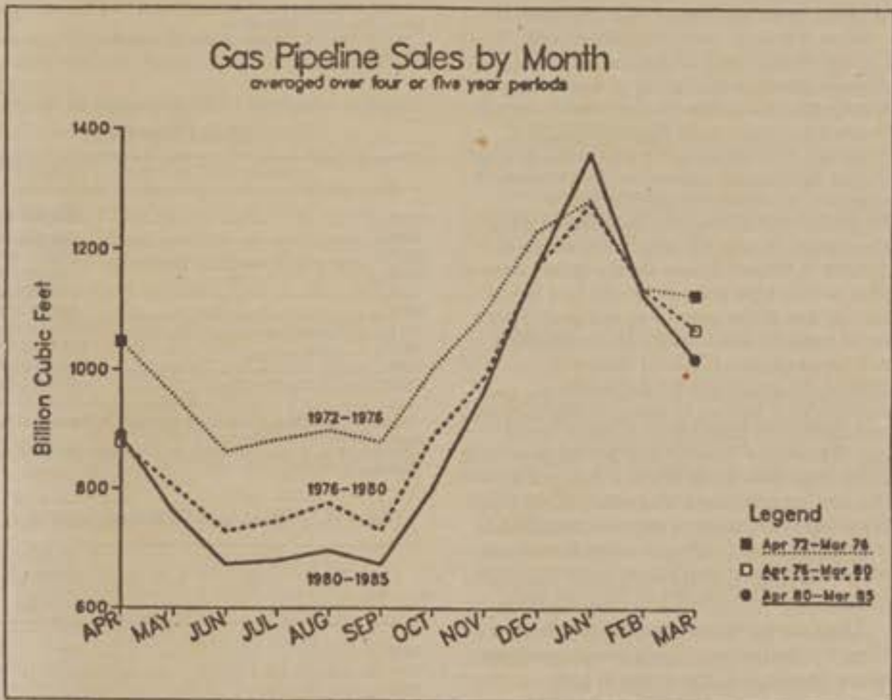
In a nutshell, the single most important economic change has been that natural gas has become a separate and distinct economic *commodity*: distinct from oil, distinct from transportation, and distinct from storage and various load balancing services. Around the commodity has evolved a highly competitive and rapidly growing spot market, with a thriving infrastructure of brokers and marketers, electronic information exchange services, and trade publications tracking price and market movements. Moreover, the Congressional decision in the NGPA to remove both price (NGPA section 121) and non-price (NGPA section 601(a)(1)) regulation over "first sales" of most natural gas—whether in interstate or intrastate commerce—has meant that these supplies of gas can now generally be sold by producers or marketers without the need for prior regulatory approval of market entry, market exit or price.

With regard to the availability of interstate pipeline *transportation*, the situation has also changed in significant ways. There are some geographic areas where there is but a single pipeline supplier, as was the case for the vast majority of markets in 1938. But in many other markets, there are two or more pipeline suppliers capable of serving a customer. The presence of pipeline-to-pipeline competition in these markets has radically altered the role of the Commission as well as the ability of utility-type regulation to tightly control regulated price levels.

Moreover, the maturing of the pipeline industry in recent decades has meant that there is now an interconnected nationwide pipeline grid. This enables increasingly efficient transportation transactions through backhauls, displacement and exchanges, enabling the "transportation" of a particular supply to a particular purchaser who is far removed from the supply and indeed may not even be directly physically connected with the field supply source. Thus, even where a pipeline is the only supplier to a given customer, that customer—given non-discriminatory access to the transportation service and proper rate treatment for all pipelines—has access to supplies of the *commodity* located in virtually any producing area in the Nation. Conversely, a producer of gas can now—given the same non-discriminatory access to the *transportation* grid—seek markets for his gas virtually anywhere in the Nation. As is demonstrated later, this is not economic theory but bustling commercial reality.

Finally, there is the question of capacity. While it is true that pipelines generally continue to be fairly fully utilized during peak period operations, total deliveries through their systems have fallen sharply from the 1972–1973 period. This is illustrated in Chart 1 below.

Chart I



Source: FERC Form 11's.

This phenomenon has been reflected in lower annual load factors for interstate pipelines and higher *unit* costs of providing service. It has also meant a significant increase in the amount of capacity available for transportation outside of the periods of peak demand. The chart further indicates that pipeline utilization for sales during the peak winter period has remained high and indeed has even increased. This indicates that firm capacity is generally being utilized on peak by those customers who have contracted for (or "booked") such service.

In short, the Commission is confronted with:

(1) A generally competitive market in the *commodity* of natural gas, most of which has been removed by Congress from all federal regulation as to market entry, exit and price, although such regulation has been retained by Congress over substantial amounts of gas; and

(2) A highly integrated *transportation* network, highly monopolistic in some markets, fairly competitive in others; over which Congress has generally determined to retain utility-type regulation over market entry, exit and price; but for which Congress has also allowed an alternative approach (under NGPA § 311) in which there may be no restrictions as to market entry and exit, but for which Congress expressly retained regulation as to rates.

Thus, in the words of one recent court decision:[1]

> In its oversight of the natural gas market, FERC confronts baffling problems.

But these problems are not unique to the natural gas industry.[2] Nor are they insurmountable. What is required is to adapt our regulatory framework to the changed circumstances in order to implement our statutory responsibilities in ways that further Congressional goals of the lowest reasonable rate for natural gas customers consistent with reliable, long-term service.

Accordingly, our overriding goal in this docket is to adjust our regulatory framework for natural gas in ways which:

(1) Retain and revise utility-type regulation over the interstate *transportation* function—that function which the Congress has deemed sufficiently uncompetitive so as to require such regulation in the public interest—yet

(2) Allow the *commodity* market for natural gas to continue to develop in a competitive fashion.

In this way, regulation will allow competitive forces to operate in those areas where Congress has determined they will better protect the public interest than traditional utility-type regulation, while retaining the traditional-type regulation in those areas where competitive forces have been found inadequate by the Congress.

To do this, the final rules generally seek to provide additional market options for suppliers, pipelines and customers. Thus, where a pipeline offers *transportation* as an "unbundled" service, the customer will be able to purchase *gas* in what Congress has determined (and which experience increasingly demonstrates) to be a workably competitive market. The terms and conditions of that transportation service remain fully subject to regulations under the NGA.

Moreover, where an interstate pipeline offers a "bundled" service in which the gas commodity is offered only as part of a package of services which includes a transportation component, the Commission presently concludes that the potential for market dominance by the pipeline is so great that more traditional utility-type regulation is required to satisfy the Congressional mandate set out in the NGA.

The various components of the final rule are designed to implement these general goals. In promulgating this rule, we are mindful of our obligation "to take into account what is known as to past experience and what is reasonably predictable about the future."[3] Accordingly, the remainder of the preamble sets forth in some detail the factual, logical and legal bases for the above conclusions and explains how the final rule will operate to advance these goals.

2. *Natural gas is a separate commodity from oil.* At the time of enactment of the NGA, natural gas was primarily a by-product of oil production. According to the Federal Trade Commission Report of 1935, approximately 60 to 70 percent of all natural gas (including both associated and non-associated natural gas) was found as a result of exploration for oil.[4]

Over the years, advanced exploratory knowledge and techniques gradually have made it possible for producers to explore for gas separately from crude oil.[5] Prior to the development of such techniques, the natural gas resource base which supported the rapid expansion of gas use in the 1950's and 1960's had been developed for the most part as a result of drilling for oil rather than gas and the role of gas prices as an incentive for developing new gas reserves had been secondary.[6] The advanced exploratory techniques sharply increased the importance of price as an incentive for further drilling of natural gas and helped establish gas as a separate economic commodity.[7] Indeed this economic fact played a major role in the Commission's decision in 1965 to adopt two separate "vintages" of "old" and "new" gas, each subject to a separate ceiling price.[8]

The key conclusion which flows from this fact is that *price* signals for natural gas play the same role in stimulating or dampening supply as they play in other commodity markets. Accurate, responsive price signals are thus not a matter for mere academic concern but a matter of commercial life and death for the production industry.

3. *Development of the transmission grid.* The interstate natural gas transmission industry has matured over the last 50 years, developing from a series of essentially individual, separated systems into an extensive integrated transportation grid.

In 1935, when the Federal Trade Commission completed its exhaustive study of the industry, interstate natural gas pipeline companies were largely separate systems, dependent on a few fairly well localized sources of supply. This is well illustrated by the attached 1934 map of the industry and by the FTC's detailed discussion of each of the industrial systems.[9]

The industry of the time was succinctly described by the FTC Report:[10]

> The function of transmission or transportation of natural gas in bulk over the long distances commonly required to market any considerable volume of gas is, on the other hand, one of the least competitive situations to be found involving commodities or public utility service. There is no known method by which gas in large quantities can be transported except by pipe lines. Oil may be moved in pipe lines, tank cars, trucks, and water-floated barges or "tankers" and packaged in barrels and other small containers for transport by various means. Most, if not all, commodities can be moved from points of origin to points of destination with a choice of routes, containers, and volumes to be handled at any one time.
>
> Most, if not all, commodities, except electric power, may be accumulated in storage previous to, during, or following transportation and drawn from such storage to meet intermittent or variable quantity demands. Except for some incidental storage in pipe lines under considerable pressure, commercial storage of natural gas is inconsequential after it is withdrawn from the ground. Again the large investment of $20,000 to $35,000 a mile for the larger sizes of pipe in long pipe lines generally laid below the surface of the ground as contrasted with overhead wire circuits ($1,000 to $15,000 a mile) and various physical means of transportation of other commodities constitutes a barrier to direct competition in transportation through the installation of competing pipe lines by any but large-volume purveyors, which has led to a demand from the smaller producers that existing gas pipe lines be made common carriers obligated to transport gas of producers other than those affiliated with, or making satisfactory terms for sale with the owners of the pipe line.

Thus, even where opportunities for direct pipeline-to-pipeline competition were presented, the natural gas companies in the 1920's and 1930's generally preferred to enter a new market by way of joint ventures.[11]

Over the decades the system has changed immensely. Even superficially the development of a farm more integrated system is readily apparent as illustrated by the attached 1982 map.

Moreover, the integration of the system is vividly illustrated by the increase in the amount of gas which interstate pipelines transport or exchange for each other (Table I below) and by the increase in costs incurred by pipelines in purchasing transportation services from other pipelines (Table II below).

The storage situation has also changed completely. Whereas the FTC in 1935 found commercial storage to be "inconsequential," storage now plays an integral role in the industry. As indicated by Table III below, the amount of storage capacity has continued to increase over the years.

TABLE I.—DELIVERIES OF INTERSTATF PIPELINE GAS FOR TRANSPORTATION OR COMPRESSION BY OTHERS

[MMcf]*

Year	
1975	1,677,260
1976	1,888,642
1977	2,285,530
1978	2,909,314
1979	4,065,743
1980	5,057,677
1981	5,850,408
1982	5,742,003
1983	4,885,770
1984	5,094,561

* Major Class A and B companies.

Sources: *Statistics of Interstate Natural Gas Pipeline Companies* (for 1975-1983 data).

FERC Form 2 (Annual report of interstate pipelines (for 1984 data)).

TABLE II.—ACCOUNT 858 BALANCES OF MAJOR INTERSTATE PIPELINES

Year	Dollars
1975	$228,308,000
1976	283,951,000
1977	358,990,000
1978	454,263,000
1979	671,687,000
1980	790,160,000
1981	1,038,717,000
1982	1,354,935,000
1983	1,709,063,000
1984	1,640,551,000

Sources: *Statistics of Interstate Natural Gas Pipeline Companies* (for 1975-1983 data).

FERC Form 2 (Annual report of interstate pipelines (for 1984 data)).

TABLE III.—TOTAL U.S. STORAGE CAPACITY

Year	Storage capacity
	Bcf
1935	38
1940	232
1945	416
1950	770
1955	2,084
1960	2,854
1965	4,086
1970	5,178
1975	6,644
1980	7,488
1981	7,581
1982	7,728
1983	7,986
1984	8,043

Sources: 1960-1982 American Gas Association. 1983-1984 Energy Information Administration.

The availability of this storage capacity means that gas does not have to be produced and consumed at identical rates (with resulting reliance either on shutting in of production in field or in "dump" sales of gas in markets). Rather, delivery of volumes can be taken in many instances even where there is no immediate use for the gas.[12] Operational constraints remain a limitation, of course. But operational flexibility has increased enormously.[13]

This is also reflected in changes in corporate structure. Thus, we note that the recent mergers and acquisitions[14] have given the companies involved much greater operational flexibility. These mergers have allowed companies access to new markets,[15] to new sources of supply,[16] as well as to storage capabilities.[17]

TABLE IV.—MERGERS AND ACQUISITONS INVOLVING FERC-REGULATED PIPELINES FROM 1982 TO PRESENT

Parent company	Acquired pipeline	Date	Acquired markets by State
	Acquisitions by Non-pipelines		
Burlington Northern	El Paso Natural Gas Co	1982-1983	AZ, CO, NM, OK, TX, UT.
Goodyear Tire & Rubber Co	Celeron Corp. (included Mid Louisiana Gas Co., Louisiana Intrastate Gas Corp., & Tuscaloosa Pipeline Co.).	1983	LA.
CSX Corp	Texas Gas Transmission	1983	AR, CO, IL, IN, KY, LA, MS, OH, OK, TN, TX.
Williams Cos	Northwest Energy Co	1983	CO, ID, MN, OR, UT, WA, WY.
	Acquisitions by Pipelines		
Northwest Energy Co. (Northwest Pipeline Corp.)	Cities Service Gas (now Northwest Central Pipeline Corp.)	1982	CO, KS, MO, NE, OK, TX, WY.
MidCon Corp. (Natural Gas Pipeline Co. of America)	Mississippi River Transmission Corp	1983	AR, IL, LA, MO, OK, TX.
Houston Natural Gas Corp. (Houston Pipe Line Co.)	(1) Transwestern Pipeline Co	1984	AZ, KS, NM, OK, TX.
	(2) Florida Gas Transmission Co	1984	AL, FL, LA, MS, TX.
MidCon Corp. (Natural Gas Pipe Line Co. of America) & Texas Oil & Gas Corp.	Tatham Corp. pipelines including Sugar Bowl Gas Corp. (renamed Acadian Gas Pipeline System), Pelican Interstate Gas Corp., Bayou Interstate Pipeline Corp., West lake Arthur Corp. and Tidal Transmission Co.	1984	LA, TX.
MidCon Corp. (Natural Gas Pipe Line Co. of America), in conjunction with Transok, Inc., and Houston Pipeline Co.	Conversion of 457 mile crude oil pipeline (formerly Texoma Pipeline Co.) to naltural gas service 40 mile "interstate segment" owned by Natural Gas Pipe Line Co. of America).	1984	TX.
Coastal Corp. (Colorado Interstate Gas Co.)	American Natural Resources (ANR Pipeline Co., Great Lakes Gas Transmission Co. (50%)).	1985	IL, IN, IA, KS, LA, MI, MO, OH, TN, WI, WY.
InterNorth, Inc. (Northern Natural Gas Co.)	Houston Natural Gas Corp. (Houston Pipeline Co.)	1985	TX, NM.
MidCon Corp. (Natural Gas Pipeline Co. of America)	United Gas Pipe Line Co	[1]1985	AL, FL, LA, MS, TX.
Tenneco Corp. (Tennessee Gas Pipeline Co)	Mid-Louisiana Gas Co, Louisiana Intrastate Gas Corp., Tuscaloosa Pipeline Co. (from Goodyear Corp.).	1,985	LA.
Phillips Gas Pipeline Co	Conversion of 500 mile crude oil pipeline (formerly Seaway System) to natural gas service.	1984	TX.

[1] Not yet consummated proposed, August 1985.

4. *The effects of rolled-in pricing of gas supply.* The Commission has generally adopted rolled-in pricing for natural gas supplies. Since this document proposes a variant of full rolled-in pricing, some background may be appropriate.

a. What is rolled-in pricing

"Rolled-in" pricing of natural gas simply means that a pipeline sells its gas supply at the weighted average cost of gas (or "WACOG") even though it may purchase gas at a variety of differing prices. In effect what it means is that a pipeline can pay $7.00 for a unit for gas, resell it at $3.00 because it pays lower prices for other supplies—and still make a profit transporting the $7.00 gas to the $3.00 purchaser.

Rolled-in pricing of *gas* purchases should be distinguished from rolled-in ratemaking treatment for new *facilities.* The Commission has generally followed rolled-in treatment for new facilities except where the costs of the new facilities are more appropriately assigned to a particular customer or group of customers. Thus, new pipeline construction or looping of some portion of a mainline transmission system in order to provide increased services to some particular customer downstream has been granted rolled-in treatment on the grounds that the new looping will also benefit all system customers through greater reliability of service.[18]

On the other hand, where the facilities were sufficiently segregated according to particular markets, costs have generally been assigned to the particular customers involved.[19]

Obviously, some filings present circumstances where large amounts of judgment are required and where reasonable minds may differ. The courts have generally recognized the need for deference to the Commission's balancing of the principles of cost responsibility, fairness and the need for administrative simplicity in this area.[20]

b. Adoption of "vintaging"

With regard to rolled-in pricing of gas, the situation has been somewhat different. Prior to 1954, when wellhead purchases were unregulated, the fact that individual purchases of gas were made under contract at differing levels was not particularly troublesome.[21] But after the *Phillips* decision and the adoption by the FPC of "vintaging" of gas in the Permian Basin Area Rate Proceedings,[22] the situation changed. Under vintaging, separate prices were set for "old" gas and "new" gas with the price of the "new" gas designed, at least in theory, to be high enough to reflect current costs of new supply.

But all the gas was sold at the lower, rolled-in average price.

Under this regulatory approach, purchasers were encouraged to demand gas at a different price than producers were being encouraged to supply it.

Under the area and national rate approach to producer price regulation, the price of the new gas was set on a modified cost-of-service approach based primarily on adjusted historical costs. These costs were generally below both replacement costs and market value. The result was a continuing increase in demand, a decline in supply, and a resulting shortfall which was rationed among customers through curtailment plans.[23]

The adoption by Congress in the NGPA of rapidly increasing price ceiling for some new gas, deregulation of 1979 of deep gas—and the Commission's retention of full rolled-in pricing—ended the shortage, but not the distortions.

c. Effects on alternative gas supply projects

As a result in part of full rolled-in pricing, consumers were investing too little in conservation and too much in purchasing gas. Producers were investing too much in high-cost gas prospects and in a variety of supplemental supply alternatives.

There were quite literally billions of dollars committed to alternative gas supply projects including:

• Liquefied natural gas from Algeria with regasification plants constructed in Elba Island, Georgia (service terminated in April 1980); Lake Charles, Louisiana (service terminated in December 1983); Cove Point, Maryland (service terminated in April 1980); and Everett, Massachusetts (sponsor filed for Chapter 11 on September 30, 1985); and

• synthetic or manufactured gas derived from coal with a facility constructed in North Dakota by the Great Plains consortium of pipelines (sponsors withdrew from project in August 1985).[24]

In each of these projects, the question had been debated as to whether the new supply source should be billed to customers on a rolled-in or separate basis. On a number of occasions the FPC initially required separate billing of the supplemental source.[25] In each of these instances the sponsors objected and asserted that the project could not be financed without rolled-in pricing of the gas. In each instance the Commission ultimately allowed the project to go forward on a rolled-in basis.[26]

In nearly every one of these instances where rolled-in pricing was used, the project ultimately failed the economic test—but only after several billion dollars had been expended. In 1984 *alone*, minimum bills imposed over $100 million of the costs of these projects on pipeline customers.[27]

d. *Effects on deep gas drilling*

A similar phenomenon took place with drilling for deep gas. Under the NGPA, this category of gas was deregulated in 1979. Prices rose sharply, passing the $10.00 per MMBtu level by 1981. Many millions of dollars were spent on exploring for gas that the market seemed to be saying could be sold for as much as $10.00 per MMBtu. In fact, it was being sold for between $3.00 to $4.00 per MMBtu.

Now, the extent of the distortion of rolled-in pricing tends to be inversely proportional to the deregulated volumes.

Suppose for example a pipeline whose market will absorb 100 units of gas at an average price of $3.00. Assume that there are only two categories of gas, one regulated at a price of $2.22 and the other unregulated. Assume further that the pipeline has 90 units of regulated gas and needs to purchase 10 additional units of deregulated gas. The pipeline will be able to pay up to $10.00 per unit of deregulated gas.[28]

Assume now that demand begins to fall as a result of an economic recession, warm weather and the customers' reaction to the high prices. Assume that the pipeline must lower the rolled-in price by 20¢ to maintain the same level of sales. Assume the pipeline cuts back its higher priced gas supply first. Under those circumstances, a 20¢ reduction in the resale value of gas will require a decrease in the marginal unit that is 10 times greater (since the volumes of deregulated gas make up only one-tenth of the total). Thus, the 20¢ decrease in the market value of gas requires a $2.00 decrease in the price paid for deregulated gas.

Similarly, if demand picks up and the resale value rises, then the pipeline would be able to pay 10 times more to the deregulated producer.

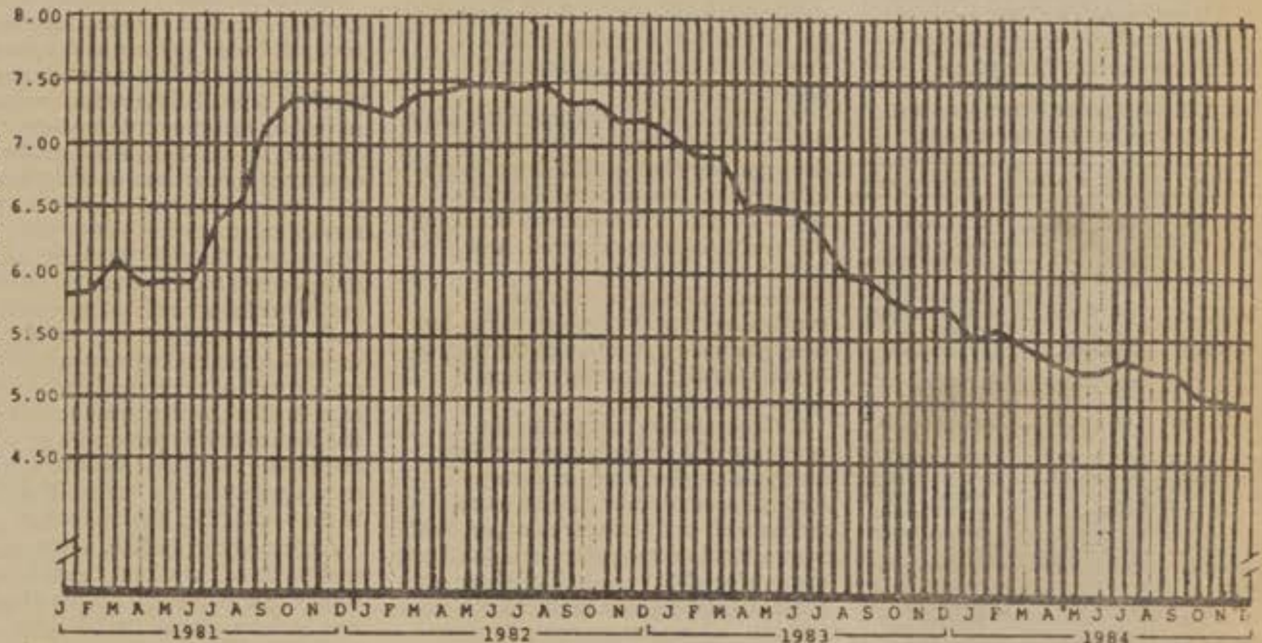
The real world under the NGPA is of course considerably more complicated than the simplified example. And the fact that a pipeline is theoretically able to pay a higher price is no indication that it will in fact pay the theoretical maximum. But the basic price relationships illustrated in the examples clearly reflect much of the experience of the last seven years.

The average price of "old" gas in November of 1978 was around $0.90 [29] rising to about $1.56 by July of 1985. The average price of "new" gas rose from about $2.03 in December of 1978 [30] to $3.77 in December of 1984.[31]

But the average price of NGPA section 107 gas follows a different path. It rose sharply from December 1979 to the summer of 1981 and then hit a plateau, as shown in Chart II below. As pipelines began to exercise market out clauses in the summer of 1982, the price of section 107 gas began to fall, first slowly, then more rapidly.

Chart II

Average Price of Total Section 107 Gas for
Twenty Interstate Natural Gas Pipelines
1981 - 1984



Source: Based on Foster Associates' *Bulletin on Deregulated Natural Gas,* 1981—1984 issues.

Notwithstanding the price decline, the total amount of revenue received by sellers of section 107 gas still increased in 1982 and 1983 as increased volumes more than made up for decreased prices. But by 1984 the amount of revenue received by these producers had fallen by over $1.3 billion, as shown in Table V. The first six months of 1985 indicate an acceleration of this trend, with the annual rate running some $2 billion below the 1983 level.

TABLE V.—TOTAL REVENUES RECEIVED FROM SALES OF SECTION 107 GAS

	Average price (per Mcf)	Quantities (Bcf)	Total revenues (millions)
1981	$6.58	382	$2,514
1982	7.31	709	5,183
1983	6.25	942	5,888
1984	5.39	838	4,516
1985 (six month)	4.98	386	1,924

Source: EIA Natural Gas Monthly, Table 5 (July 1985) (published September 1985).

Table VI indicates that revenues lost by the high cost producers have been received instead by producers of other "new" gas supplies. The total amount of revenue received by producers as a group has remained basically unchanged.

For example, as shown below, while total amounts paid to producers for all gas by the major pipelines in 1984 *rose* by $370 million over the prior year, payments to high cost producers *fell* by more than $1.2 billion. Revenues of producers selling other new gas supplies rose by about $1.5 billion. When 1984 is compared to 1982, the disparity is even more pronounced.

TABLE VI.—PRODUCER REVENUE FROM SALES TO MAJOR INTERSTATE PIPELINES (1981–1985)

[In billions of dollars]

	Old Gas	New Gas	Section 107	Total
1981	$6.77	$8.70	$2.51	$17.98
1982	7.56	12.13	5.18	24.88
1983	6.23	12.94	5.88	25.14
1984	6.29	14.26	4.62	25.51
1985*	6.25	15.18	3.85	25.28

*Based on annualizing first six months of 1985.

Source: EIA Natural Gas Monthly, Table 5 (July 1985) (published September 1985).

In other words, while total wellhead revenues from major pipelines have gone up marginally over the last three years, revenues of high cost producers have plummeted while revenues of other new gas producers have been up strongly.

The legacy of distortions from rolled-in pricing of deep gas can still be seen. A great deal of the deep gas drilling was in the Anadarko Basin in Oklahoma. When the "bust" hit in 1982, dozens of producers in that area were forced into bankruptcy.[32]

Banks that had loaned money, particularly in the Anadarko Basin, based on the artifically high prices prevailing during the boom also suffered as debtors were unable to repay the loans. Some banks collapsed (at times taking larger downstream banks with them) while other banks survived, but with substantial losses.[33]

e. Effects on pipelines and producers

But while the inequities and inefficiencies may have been starkest in the case of deep gas, coal gas and LNG, the problems affected the entire industry. The interstate pipeline industry has estimated that the bill for natural gas that was contracted for but not taken is something on the order of $7 billion.[34]

These amounts are not being currently paid, however. Most major pipelines are reported to have invoked *force majeure* or similar contract defenses regarding their gas purchase contracts from both producers as well as pipeline suppliers. Table VII below lists at least some of the actions that have been publicly reported over the last three years.

TABLE VII.—REPORTED FORCE MAJEURE ACTIONS BY INTERSTATE PIPELINES

Company	Date of action	Against whom
United Gas Pipe Line.	July 9, 1985	Pan Alberta & Northwest Alaskan Pipeline.
Do	July 2, 1985	Domestic Producer Suppliers.
Do	Feb. 2, 1983	Northwest Alaskan Pipeline.
Columbia Gas Trans.	April 1983	3,000 producers.
Do	Aug. 8, 1982	Five pipeline companies.
Natural Gas Pipe Line.	July 8, 1985	Certain producers.
Do	Mar. 4, 1983	GHR Energy.
Northern Natural Gas.	March 1983	Consolidated Oil & Gas for Canadian gas transported by TransCanada
Do	June 1983	Texaco.
Tennessee Gass Pipeline.	May 31, 1983	Producers via the "Energy Gas Purchasing Program."
Consolidated Natural.	April 4,1983	Pipeline suppliers.
Panhandle Eastern	March/April 1983.	Pan Alberta.
Transwestern	November 1984	Producers.
Do	July 1985	Producers.
Trunkline Gas	December 1983	Trunkline LNG & Sonatrach.
Northwest Alaskan Pipeline.	Feb. 1983	Pan Alberta Gas.
ANR Pipeline	June 27, 1985	Producers.
Texas Gas Transmission.	May 31, 1985	Amoco Production.
Colorado Interstate Gas.	Spring 1984	Northwest Pipeline.
Transcontinental Gas Pipe Line.	July 25, 1985	1,400 producers.

Source: Exhibit Q.

The producers tell a similar story. One study conducted about a year ago indicates that over 70 percent of the independent producers sampled reported that they were not receiving their full contract price for new gas.[35] Producers testifying at the public hearing in August similarly indicated that they were not receiving full contract price for full contract quantities.[36]

f. Effects on gas supply

As detailed in section IV.D. of the Comment Analysis in this docket, full rolled-in pricing has contributed to establishing an exaggerated "boom and bust" cycle for the natural gas production industry. These distortions have led to serious problems in the industry and extensive debate among all segments of the industry as to the appropriate national policy to be followed to mitigate or remove these distortions.

With removal of price controls over most new gas on January 1, 1985 (and with the fact that the regulated ceiling prices on still other categories are considerably above what the market will bear) the extreme volatility on deregulated prices that characterized the 1979 to 1984 period should be diminished. But the fundamental distortions remain.

With the light of experience it is plain that the supra-competitive prices for deep gas were being subsidized by the infra-competitive prices allowed for regulated gas. Without rolled-in pricing this could not have occurred. And indeed, virtually none of the commenters disagree with the conclusions that (1) the high prices for deep gas were a function of the rolling-in policy and (2) massive economic distortions resulted.

5. *Congress has recognized the existence of a workably competitive wellhead market, and has removed Federal controls over market entry, market exit and price for new gas.* With regard to all new supplies of natural gas, comprising about one-half of al gas at present, the Congress in the NGPA removed all regulatory controls over market entry (NGA section 7(c) certification) market exit (NGA section 7(b) abandonment) and price (NGPA sections 102–109 and section 504).[37] See NGPA section 121 and section 601(a). Indeed, in NGPA section 601(c) Congress removed from the Commission any power to prevent interstate pipelines from "flowing through" to their customers the costs of purchasing the gas commodity absent "fraud and abuse or similar grounds."

Thus, in the words of one court:[38]

The NGPA is a fundamental change in regulatory outlook. Contrary to the Supreme Court's assumption in *Phillips Petroleum Co. v. Wisconsin*, 357 U.S. 672, 74 S.Ct. 672, 98 L.Ed. 1035 (1954), which subjected gas producers to utility-type regulation under the NGA, Congress apparently decided that gas producers do not have "natural" monopoly power; that is, the industry does not possess the inherent technical characteristics that prevent its efficient and economical operation unless operated as a monopoly.[36] Therefore, the theory that a regulatory agency is necessary to represent consumers when they bargain on rates with a natural monopolist like a utility no longer applies to gas production. *See generally* Goldberg, Regulation and Administered Contracts, 7 Bell J. Econ. 426 (1976).

[36] *See*, J. Bonbright, Principles of Public Utility Rates 10–13 (1961). The congressional assumption concerning lack of producer natural monopoly power is evidenced in the phased deregulation of wellhead prices and the elimination of FERC regulatory control under the NGPA over gas eligible for § 601(a)(1). The continuation of price controls on older, cheap gas reflects only a concern about preventing financial windfalls to sellers with very low-cost gas properties, and not a concern about natural monopoly power.

As a direct result of the NGPA, for example, a natural gas producer can now sell "new" gas to any purchaser—an intrastate pipeline, an interstate pipeline, a local distribution company served by an intra- or interstate pipeline, an end-user, a non-profit consumer cooperative or what have you—without federal restrictions as to market entry, market exit or price attaching to the sale. Similarly, an independent marketer can acquire a portfolio of gas purchase agreements and sell gas supply to any person, again without coming under any market entry, market exit or price regulation over the sale. In short, with respect to sales of the commodity by producers or marketers, Congress removed controls in recognition of the competitive nature of the commodity market for gas.

An interstate pipeline, however, seeking to sell gas from its system supply (a commingled stream of gas that was at the wellhead both NGA-jurisdictional and NGA-non-jurisdictional) is subject to the full panoply of statutory regulation governing market entry, market exit and price. As a result, *even for already certificated sales to existing customers*, it may change its rates only upon 30 days advance notice. It must supply extensive documentation detailing each and every source of natural gas supply, including an identification of the seller, the location, and the price. If it seeks to provide a new service to an existing customer, it must file for and obtain a section 7(c) certificate authorizing the new service. Any party opposing the new market entry has a right to explore genuine issues of material fact in a contested, trial-type hearing.

The rationale for maintaining utility-type market entry, exit, and price regulation over the sales for resale of interstate pipelines while removing that regulation for similar sales by other market entities is only implicit in the NGPA but appears plain enough: While Congress concluded that gas production was sufficiently competitive to remove regulation, the control which interstate pipelines exercised over transportation still conferred on them the same kind of market power over their customers as had existed at the time of enactment of the NGA.[39]

If customers had access to transportation for gas which they purchase directly in the competitive, commodity market, the pipeline would find itself at a serious competitive disadvantage in marketing gas in competition with producers and other entities because the regulatory rules as to market entry, exit and price would deprive it of the flexibility to meet the competition. We have *already* seen a good deal of that with the development of the spot market, the resulting decline in pipeline sales and increased use of transportation. And with the advent of repeated out-of-cycle PGA filings, we have seen what may be the beginnings of a virtual "posted price" approach to gas at the resale end where pipelines compete against other pipelines.[40]

Yet a pipeline that accepts the open access condition tendered in the final rule will have agreed to provide its customers with that access, thereby accelerating the process. This would thus require those pipelines that wish to remain merchants to seek greatly increased pricing flexibility.

6. *Evolution of the spot market.* Traditionally, natural gas in the interstate market has been bought and sold at the wellhead on the basis of long term contracts, typically for ten or twenty years.[41] This "contract market" was essentially the only way of transacting business. In part, this approach may have reflected the business needs of the parties. But regulation of market entry—and especially market exit—exerted a powerful constraint. Under a series of cases implementing the Supreme Court's *Phillips* decision, the Federal Power Commission, with the affirmance of the courts, took a progressively broader view of the scope of section 7(b) of the NGA as it applied to producers. Thus, the Commission held that the dedication of gas to the interstate purchasers survived the expiration of the wellhead contract,[42] and indeed the expiration of the underlying mineral lease.[43] Even where a producer willing to continue to sell gas in the interstate market wanted to contract, upon expiration of an earlier contract, with a different interstate pipeline purchaser, the law held that this could only be authorized after a comparative hearing in which the Commission weighed the comparative costs and benefits of the proposed change.[44]

Under these circumstances, development of an interstate spot market was precluded for essentially regulatory reasons.

In the 1970's, the situation began to change. With the onset of curtailments, parties sought supplemental sources of supply that were not subject to curtailment.[45] In the Order No. 533 series,[46] the Commission adopted a policy of granting *transportation* certificates to interstate pipelines that proposed to carry natural gas purchased from producers directly by certain end-users. As these direct sales for use were not subject to NGA rate regulation, the end users could pay a price sufficiently high to induce the producer to sell to an interstate purchaser instead of in one of the intrastate markets where gas by this time was selling for prices far higher than the regulated price. The Commission limited its transportation certificates under Order No. 533 to two years.

As a result of this step,[47] a small [48] "spot" market came into existence. But this market was essentially the result of customers seeking to avoid curtailment in a world where *all* interstate sales of gas for resale were subject to NGA certificates, abandonment and price regulation.

Accordingly, as curtailments eased in the late 1970's, the attraction of this program waned.

Enactment of the NGPA in 1978 and FERC implementation of section 311 brought a major change, however. In essence, section 311, as implemented by the FERC in 1978 and 1979,[49] created an alternative marketing scheme which was outside the Commission's NGA jurisdiction and utility-type regulation.

Nonetheless, as late as January of 1983, the president of a major pipeline company could declare flatly to the Congress that "There is no spot market for natural gas."[50]

But the situation had already begun to change.

Under the section 311 regulations, promulgated shortly after enactment of the NGPA, pipelines began increasingly transporting gas for local distribution companies for these utilities to use as part of their own "system supply."

By 1983, the volumes were increasing at an extraordinary rate as local distribution companies began increasingly to purchase gas from alternative merchants. As noted below, volumes transported "on behalf of" local gas utilities have continued to increase over the last two years. See Exhibit D.

In August of 1983, the Commission instituted Phase II Blanket Certificate rules allowing all categories of end-users to be eligible to receive blanket transportation. Immediately, substantial volumes of gas began to flow. By the end of calendar year 1984, after barely 16 full months of experience, volumes transported for end-users under the blanket certificate regulations amounted to just under four percent of *total* sales for resale of the major companies.[51] While actual data for 1985 are not available, of course, the estimates submitted with the filings indicate that the volumes are continuing to grow dramatically.

Finally, the Commission initiated its experiment with Special Marketing Programs beginning in the spring of 1983.[52] Initially, the programs were sought by pipelines or by a producer affiliated with a pipeline. The Commission encouraged producer programs, however, and by the summer of 1985 there were literally dozens of companies—most of them producers and marketers—that had filed for or received authorizations. See Exhibit E.

Thus, by the summer of 1985, the spot market was accounting for a substantial percentage of the total market. As shown by Exhibits D (summarizing experience under programs from January 1, 1985 to June 30, 1985), J (list of local gas utilities and intrastate pipelines receiving gas under section 311), and K (list of end-users receiving gas under blanket certificates), transactions under both section 311 and the blanket transportation certificates include virtually every major pipeline, hundreds of local gas utilities and hundreds of individual end-users. Customers in the great majority of the states are now benefiting from access to the national market for the gas commodity under one program or the other. The extent that these programs have been used in different regions of the country is illustrated in Map III which shows recent transactions for end-users under blanket certificates.

Estimates of the exact size of the spot market vary. A study submitted in this docket by DOE has estimated that by January of 1985, the total spot market (including intrastate transactions) has increased to between 2 to 2.5 Tcf per year (compared to total gas consumption of about 17–18 Tcf), having *tripled* in size in the space of one year.[53] Moreover, the great bulk of this growth has taken place in the interstate market. And of the total spot trading, the SMPs make up only about 15 percent.[54]

In addition, the DOE study documented several significant trends that are evident in the filings made with the Commission:

(1) The average size of the spot transaction is continuing to decrease, indicating a "broadening of the array of buyers and sellers in the market." [55]

(2) Local gas distribution utilities are increasingly involved [56] as "nearly all states have approved, or are in the process of considering gas

transportation rates" for the local utilities.

This systematic evidence of the growth of the spot market is confirmed by statements at the public hearing in which all of the marketers underlined the explosive growth in just a few short years.[57]

Further evidence of the viability and maturity of the spot market is the development of a non-profit gas marketer that has been able through spot market transactions to generate over $10 million worth of gas cost savings for low-income and elderly persons and an additional $2 million in other benefits provided to these consumers.[58]

Finally, we note that the market has over the last two years developed an infrastructure that includes trade publications following prices and market developments [59] as well as at least one electronic buy-sell exchange to which members of the public are free to subscribe.[60]

In short, the breadth and variety of this market leads us to conclude that it is not a transitory phenomenon. Rather, the development of this market is an indication of the radical change which the natural gas industry has undergone and is continuing to experience as a result of the development of distinct markets for the gas commodity and for unbundled transportation service.

7. *Legislation and regulation of carriage at the state level.* Since the NGPA was enacted in 1978, an increasing number of state legislatures and state public utility commissions have taken action that either encourages or requires public utilities to carry gas for a shipper other than themselves.

In 1983, New York enacted legislation permitting the State Public Service Commission to "order any gas corporation to transport . . . gas . . . owned by [a] consumer." [61] Similarly, in 1983 the West Virginia Legislature passed legislation stating that the state commission could "require the transportation of natural gas . . . by intrastate pipelines, by interstate pipelines with unused or excess capacity . . . or by local distribution companies for any person . . . ." [62] In 1985, the New Mexico Legislature enacted a provision authorizing the public Service Commission to "require the nondiscriminatory transportation of natural gas . . . for a seller or purchaser of natural gas to the extent of available capacity . . . ." [63] In July 1984 the Kentucky Legislature enacted a statute granting the State Commission the authority to direct intrastate utilities with excess or unused capacity to transport customer-owned gas.[64]

The Pennsylvania Public Utility Commission in 1984 stated that it was "directing that [Peoples Natural Gas Co.] provide a gas and transportation service to its industrial and commercial customers who acquire their own source of gas supply." [65] Also in 1984, the California Public Utilities Commission has instituted a proceeding to investigate "whether contract or common carriage of natural gas can be ordered . . . ." [66] No decision has been reached in the California proceedings, however.

The effect of these developments at the state level is again that purchasers of natural gas have increased flexibility and a real ability to purchase competitive gas supplies where interstate transportation is available.

B. The Problem in a Nutshell

The NGPA certainly accomplished its primary goal of increasing competition and gas supplies at the wellhead.[67] But the NGPA also aggravated price distortions between the city-gate and the wellhead. These price distortions have intensified competitive pressures on pipelines for new and lower-priced services. In turn, these competitive pressures require changes in the Commission's regulations if we are to fulfill statutory regulatory obligations over interstate pipelines in turbulent and fast-changing gas commodity markets.[68]

The problems created by the NGPA are inextricably intertwined with the Commission's administration of its remaining jurisdiction under the NGPA.

To the extent the NGPA removed the Commission's NGA jurisdiction over certain wellhead gas markets, the Commission is powerless to "turn back the clock" and restore that jurisdiction, no matter what problems and "disorders" have arisen in those markets since the NGPA.

To the extent the Commission exercises its remaining NGA jurisdiction so as to thwart the competitive commodity market for gas contemplated by the NGPA, the Commission may be negating one of the primary Congressional mandates of the NGPA.[69]

The Commission has no choice in the matter; we are required to live within the letter and spirit of both the NGA and NGPA as Congress has directed, and we must reconcile the two in changing circumstances—in terms of surplus as well as times of shortage.[70]

The NOPR summarized the current problems. The comments received in response generally support the Commission's analysis of the problem (if not necessarily all of the proposed solutions).

1. Prior to January 1, 1985, many interstate pipelines contracted for more gas supply than they could market at the prices set forth in those contracts, and do not intend to resume contracting for less expensive new gas reserves until their existing high-cost contracts are terminated or renegotiated to marketable levels.[71]

2. Producers of gas, responding to very high prices and high "take-or-pay" terms bid by pipelines for small supplies of gas deregulated following enactment of the NGPA in 1978, have developed new supply sources of gas. But gas demand has fallen off since 1981 due to recession and lower oil prices, and the market today cannot absorb these supplies at prevailing prices, even if "rolled-in" with cheaper "old" price-controlled gas.[72] A surplus of gas deliverability has been created, resulting in many wells of all vintages being shut-in.[73] In response, producers—particularly independent producers—are seeking equal and open access to pipeline transportation as an alternative to pipeline sales for marketing their gas.[74]

3. Interstate pipelines, particularly those with larger quantities of "old" price-controlled gas to "roll-in" with more expensive "new gas" supplies[75]—as well as intrastate pipelines under their limited interstate transportation and sales authority granted by section 311 of the NGPA[76]—are seeking new markets and lower prices for both surplus gas supplies and surplus pipeline capacity. Pipelines are especially seeking new sales to new or existing fuel-switchable or pipeline-switchable customers, such as industrial boiler fuel users or partial-requirements customers.[77]

But the existing interstate and intrastate customers of the pipelines are concerned that so-called "off-system" sales and "special marketing programs" will effectively transfer to the new customers a portion of the economic rent associated with the price of old, price-controlled gas when it is "rolled-in" with other, higher-priced supplies.[78] Reflecting these same concerns, the Commission generally has allowed these alternative sales and marketing programs only under somewhat restrictive conditions or on an experimental basis.[79]

In the case of the experimental "special marketing" programs" [80] and the "blanket certificate" [81] transportation programs for fuel-switchable end-users, pipeline customers have successfully challenged and overtruned the programs on judicial review on the ground they arbitrarily exclude other customers without consideration of the impacts on competition.[82]

On the other hand, the Commission has promulgated a final rule which prohibits pipelines from recovering, in minimum commodity bills, the variable costs for gas not purchased by its customers.[83] The rule has been sustained on judicial review on the grounds it permits partial requirements customers to "shop around" for gas supplies from other pipelines on a competitive basis.[84]

4. Purchasers of natural gas, seeing the availability of supplies in the field at prices below the rolled-in average cost of all gas,[85] are seeking to purchase gas directly in the field and have it transported to the city-gate or burner-tip in competiton with the system supplies which the pipeline retains under certain uneconomic long-term contracts.[85] In so doing, purchasers of gas are seeking the same opportunities to "swing" back and forth among a balanced "portfolio" of natural gas supplies [86] that "partial-requirements" customers currently enjoy, after implementation of the minimum bill rule, in "swinging" back and forth among competing pipeline suppliers.[87]

5. The pipelines have generally expressed a reluctance to provide these transportation services on a non-discriminatory basis to their existing sales customers [88] or to customers without immediate fuel-switching capability, such as residential and commercial consumers.[89]

a. With respect to incremental volumes (*i.e.*, gas that would not displace a sale by the pipeline itself from its own contracted-for supply), pipelines generally do not have adequate incentives to provide this service as long as the pipeline's rate structure requires the crediting to the pipeline's sales customers of essentially all revenues received from the transportation. The regulations allowed the pipeline to elect an option pursuant to which costs would be allocated to the transportation service (allowing retention of the revenues), but until fairly recently most major pipelines had not elected that option.[90] Moreover, the pipelines have been under no legal obligation to elect the revenue retention option. Once pipelines began to design their rates to allocate costs to the transportation service, thereby obtaining the right to retain revenue, the ratemaking rationale for declining to transport incremental volumes has diminished.

b. With regard to volumes of gas that would displace a sale by the pipeline from its own contracted-for supply, the situation has been somewhat more complex.

(i) Where the pipeline's take-or-pay exposure was so great that it believed that prepaid gas would never be able to be "made up," the pipeline faced the possibility of forfeiting the entire principal amount of the prepayment. Under these economic circumstances, even where the pipeline was able to retain the revenues received from providing transportation, the pipeline would still lose money were it to transport gas that would displace a unit of contracted-for gas. The more gas it transported, the more money it would lose. Under these circumstances the pipeline's reluctance to transport was at its height. Accordingly, it is important to provide flexibility for pipelines and producers to renegotiate these contracts, to review "buy-outs," "buy-downs" and to provide for expedited treatment of limited term and permanent producer abandonment and certificate requests.

(ii) Where the pipeline's take-or-pay exposure was *not* so great as to confront it with the prospect of forfeiting prepayments, the question was more one of fixed cost allocation. If the pipeline had to finance the prepayments, who should bear the burden of the carrying charges, the fixed costs associated with the prepayment: the sales customers, the transportation customers, the producer (by not being paid in accordance with the contract), or the pipeline's share-holders?

6. As a result of the pattern of contractual arrangements developed by the industry during previous eras of pipeline expansion [91] and supply curtailment,[92] such as take-or-pay and minimum bill provisions,[93] customers of pipelines have been allocated a large part of the risk that gas supplies deregulated by the NGPA might prove unmarketable over the life of contracts signed by producers and pipelines.

In turn, the Commission's administration of its ratemaking and certificate obligations under the NGA [94] has impeded the ability of natural gas consumers to secure the rewards of competition in natural gas markets commensurate with the risks that have been allocated to them by pipelines and producers.

In particular, the Commission's policy of full rolled-in pricing of price-controlled and deregulated gas supplies has frustrated the transmission of clear and accurate price signals between the city-gate and the wellhead,[95] and has premitted pipelines to bid up new gas prices above market-clearing levels.[96]

The Commission's policy of discouraging the flexible entry and exit of new pipeline services from natural gas markets is thwarting the expansion of the interstate pipeline system in order to provide for changing end-uses of gas [97] and changing locations of new gas fields.[98]

7. As a result, average delivered prices of gas are not adjusting downwards in line with the decline in field prices,[99] and this failure is causing unnecessarily high energy costs to consumers and a very large loss to the American economy in jobs, production, and net economic efficiency.[100]

Accordingly, the Commission has determined to make the changes set out in today's rule. We turn now to a detailed analysis of the comments filed in this docket.

III. Response to General Comments and Review of Alternatives

Although the majority of commenters addressed the specifics of Parts A–D of the NOPR, many commenters also responded in more general terms or with comments that do not fall neatly under any specific part of the rule. These general comments also included requests that the Commission consider various alternatives to the proposed rule including the alternative of issuing no final rule at all.

A. Whether To Issue Any Final Rule

Comments. The majority of commenters commended the Commission for moving forward to address the problems of the industry on a generic and expedited basis.[1] Many of these commenters echoed their comments filed in the earlier Notices of Inquiry phase as well as in earlier petitions, complaints, judicial decisions, and Congressional directions before the Commission.[2] These commenters also generally urged the Commission to act with dispatch to issue a final rule in this docket during the current conditions in gas markets.[3]

However, several commenters urged the Commission to consider issuing no final rule,[4] or else to issue a final rule governing transportation and the optional certificates while delaying a final rule on other parts of the proposed rule, such as the billing procedure.[5] Several requests were received urging the Commission to provide for further public comment on the billing procedure.

For example, some commenters pointed to the fact that delivered gas prices have remained flat for several months and suggested that gas markets were adequately adjusting to partial wellhead deregulation after January 1, 1985; therefore, the Commission's proposed rule was unnecessary except where required in response to court remand.[6] Other commenters suggested that the Commission address its regulatory obligations on a case-by-case basis rather than by rule,[7] or suggested that in any case the Commission's proposal was administratively unworkable.[8]

Commission Reponse. The Commission initiated the proceedings in this docket over nine months ago. As a practical matter, however, these proceedings also owe their origin to nearly seven years of Commission and industry experience in attempting to reconcile the NGA and the NGPA in rapidly changing gas markets which have been described as "disordered" [9] and "chaotic." [10] In response to our notices, we have received close to 200 comments in the NOI phase of the proceeding and 300 comments on the proposed rule, aggregating a record of over 10,000 pages. Some one hundred and fifty parties participated in four days of public conferences on the NOI and in two days of hearings in response to the NOPR.

In considering the alternative of taking no substantial action, the Commission has reviewed those comments and the actual experience under the present regulatory framework as detailed in Section II above. That record of comment and experience demonstrates conclusively that the natural gas industry has undergone radical changes in its structure and markets and that the regulatory framework must also be changed. Issues relating to gas-on-gas competition, access to transportation, pipeline and local distribution company "by-pass," prudency of pipeline "high-cost" gas purchases, persistence of "take-or-pay" problem contracts, shut-in of gas supplies, restrictions on entry and exit from the gas business, and allocation of fixed costs are arising with increasing frequency in filings before the Commission. (See Exhibit B showing out-of-cycle PGA filings). For reasons of administrative economy and predictability alone, the Commission could determine to deal with these issues by rule.

However, a much more compelling reason exists for the Commission's rejecting the alternative of issuing no final rule today: we have no choice under the NGA.

Section 5(a) of the NGA is mandatory, not discretionary. Once the Commission finds that an existing rate or charge or practice is unjust, unreasonable, or unduly discriminatory, it must prescribe the remedy for that situation.[11] Moreover, the Commission also has an obligation under the NGA to weigh and consider the competitive effects of our decisions,[12] especially where, as here, the Commission's regulations relating to the transportation of natural gas have been held to deviate from fundamental protections intended by the NGA.[13]

As detailed here, the Commission has found that certain aspects of the present regulatory framework are allowing rates, charges, and practices which are unjust, unreasonable, and unduly discriminatory under section 5 of the NGA. In addition, the Commission has considered the competitive effects of certain of its regulations and is adjusting those regulations in order to assure that the benefits of new competitive pressures in natural gas markets are secured to all customers consistent with the NGA.[14]

The continued persistence of a large "bubble" of surplus gas deliverability (Exhibit L) during a period of sustained recovery in the general economy demonstrates vividly the distortions created under the present regulatory framework. Moreover, the depressed state of the domestic drilling industry, now into its fourth year (Exhibits M and N), reflects the surplus of current supply but also may raise some concern as to how quickly drilling may accelerate as the surplus is dissipated. If producers are to increase drilling at the appropriate time and in efficient amounts, they *must* have more accurate price information than has been the case in the past.

One key to those more accurate prices is equal and open access to burner-tip markets. In turn, this access can only be realized if the ratemaking and certificate standards for interstate transportation are structured appropriately. This is what we have endeavored to do in Parts A and C.

B. Whether To Sever Out Parts A and C

Comments. As noted above, a number of commenters have requested the Commission to delay action on (or terminate) Parts B and D of the NOPR. They generally assert that these aspects of the NOPR (and especially Part D) have received insufficient study, will produce undesirable results and in any event should be considered separately, perhaps following a revised NOPR.

Commission Response. The Commission has considered whether to adopt such a "piecemeal" approach and issue only the transportation components of the rule. The issue in this regard is whether the identified problems and the proposed solutions (or rather mitigating measures) "are so inextricably related . . . that simultaneous resolution of the issues is required." [15] In this regard, we are well aware of the fact that a major criticism of the minimum bill rule was that the Commission had engaged in irrational "piecemeal reform" [16] by acting at the downstream nexus rather than upstream at the wellhead.

We understand the surface appeal of dealing with transportation issues alone:

- The strong mandate of the court decisions on SMPs and especially blanket transportation certificates, calling for a non-discrminatory approach to implementing interstate transportation; and
- The concern over the expiration of these programs effective November 1, 1985.

But we have concluded that many of the residual problems in the industry to a large degree *are* "inextricably related."

(1) Increased access to transportation on a non-discriminatory basis will place a pipeline in the position of competing as transporter with itself as merchant. An increase in transportation volumes inevitably exposes the pipeline to the risk of a decrease in its sales. Hence, we need to address such issues as the circumstances under which a pipeline can buy out of its wellhead contracts and the questions of how a producer that remains subject to NGA jurisdiction can obtain *regulatory* approvals to market gas which the pipeline is willing *contractually* to release. The new transportation rules are thus tied to the April 10, 1985 Policy Statement and the provision for expedited review of producer abandonment filings.

(2) Moreover, how does a pipeline customer make an informed judgement as to whether to buy gas from the pipeline or to convert to some amount of reserved transportation and buy gas from an alternative merchant *unless* the pipeline's sales price for gas reflects more accurately the cost to the customer of alternative purchases? Thus, the ultimate efficacity of the transportation rules is linked in part to the whatever final resolution is adopted to address the distortions of rolled-in pricing.

(3) How can a sole-supplied customer gain access to the competitive *commodity* market unless he can gain access to firm transmission capacity, *e.g.*, through the "unbooking" of already contracted for capacity via the CD reduction option and through the conversion option? Thus, the viability of the transmission rules (as well as the presumption of justness and reasonableness proposed in the revised Part D) is tied into the CD adjustment options of section 284.10.

(4) If the commodity market is to *remain* competitive even after the present excess of gas inventory is

"worked off," (and even if the current move towards corporate consolidation continues), then the regulatory framework must be structured in such a way that unbundled transportation will continue to be available. Thus, pipelines must bear more of the risk of underutilization of their transmission facilities than is the case when all costs are recovered from sales customers and with transportation revenues being credited to other customers rather than retained by the pipeline. Only in this way will the regulatory framework provides adequate linkage between the allocation of economic risk among industry participants and business control over those risks.

(5) "Conscious parallelism" is easiest to pursue in a market with a very small number of participants. While such activity may not run counter to the antitrust laws,[17] it certainly is not to be encouraged. A good way to help police against such behavior in a regulated market is to make sure that current market participants cannot use the regulatory structure to exclude new competitors. Thus, the viability of the transportation rules is tied into the easier market entry contemplated by the optional expedited certificates.

In short, the Commission has concluded that changes are required in several different areas concurrently. This does not mean, however, that the present rule is expected to be a panacea, or that further action in other areas is necessarily foreclosed. Rather, the three components issued today, together with the revised proposal regarding Part D, reflect a first step—albeit a major one—towards adapting our regulations to the post-NGPA world.

Accordingly, in light of the inter-relationship of the parts and the significant changes made to respond to many of the problems identified by the comments, the Commission has determined to proceed with the broader approach reflected in the final rule, while at the same time calling for further comment on a revised proposal for block billing.

C. Discussion of Other Alternatives

Since 1982, the Commission has considered a number of alternative approaches for dealing with the changes that have been be coming increasingly apparent in the industry. For example, we have considered:

- Setting new, just and reasonable rates for old gas;
- Establishing pipeline supply "cut-back" plans;
- Eliminating minimum commodity bills;
- Modifying the PGA regulations; and
- Encouraging broader access to pipeline transportation for others.

The first two options focus on the wellhead. Under the first, the Commission would raise the price of old gas under NGPA sections 104, 106(a) and 109 to "just and reasonable" levels. All aspects of this approach were aired in a Notice of Inquiry commenced in April of 1982 in Docket No. RM82-26.[18] The advantages of such an approach are that it would provide increased incentives for development of lower cost gas resources and would mitigate the distortions created by full rolled-in pricing in combination with the "cushion" of "old gas." It would put increased downward pressure on spot prices, however, and on the price of all above-average priced gas supplies. It could also involve the Commission in a most intimate way in determining the "proper" supply mix as between old and new gas. In effect the exercise of such power involves the concomitant responsibility of setting rates for the commodity that are neither too high nor too low.

The experience of 1954 to 1978 speaks eloquently to the difficulties faced by an independent economic regulatory commission in attempting to discharge that responsibility. It is the Commission's tentative judgement that Congress, through its decisions to ultimately decontrol all natural gas supplies (as old gas is depleted), determined that the workably competitive wellhead market would do a better job of setting such rates for the commodity than would a utility regulatory body.

Much of the discussion in the comments on Part D of the May 30th NOPR repeats the comment and argument received in response to the 1982 NOI in Docket No. RM82-26. For example, the Indicated Producers stressed the importance of continuing rolled-in pricing and called for action to raise the price for old gas. Similarly, their 1982 comments asserted that shortages could be expected in the not too distant future unless action was taken expeditiously to raise old gas prices.[19] The California Public Utilities Commission, on the other hand, in their 1982 comments, called for an end to full rolled-in pricing and the institution of a form of separate pricing of all old and new gas.[20] We anticipate that there will be a more refined analysis of these issues in response to our request for supplemental comments on the revised Part D.

With regard to the second basic approach, beginning in 1983, a number of interstate pipelines, distributors and state commissions of major downstream gas consuming states began urging the Commission to establish gas "cut-back" plans for interstate pipelines. In essense, they proposed for the Commission to order the pipelines as to which gas supplies should be taken and in which order. A list of these filings is attached as Exhibit R.

In many respects this option represents the "flip side" of the old gas proposal. Like it, the "cut-back" plan approach would involve the Commission ultimately in many aspects of natural gas production decisions. It would substitute the Commission's judgement for that of the commercial parties on such issues as which supplies of gas should be taken by a pipeline in managing its portfolio of gas purchase agreements.

But unlike the old gas proposal, the cut-back approach would lay the predicate for pipelines to assert to producers that supervening governmental action relieved the purchaser of all liability for breach of contracts that would otherwise exist. It would thus also raise extremely serious questions regarding the ability of private parties in the gas production industry to rely on private parties in the gas production industry to rely on private contracts as a tool for structuring basic economic relationships.

The potential effect of the Commission pursuing this option thus could well have been, by essentially a stroke of the pen, to void thousands of gas purchase agreements nationwide and to declare worthless some $7 billion worth of contract damage claims which producers might otherwise pursue against interstate purchasers. Neither the legal nor the factual basis for potentially voiding billions of dollars in freely negotiated contracts was made clear in the filings made with the Commission. In addition, a determination that effectively abrogated non NGA-jurisdictional wellhead contracts would run directly counter to the Congressional directives in the NGPA that progressively removed federal regulation of producer-pipeline transactions, and which expressly allowed the free operation of those contracts where below any applicable maximum lawful prices prescribed by statute. See NGPA section 101(b)(9). See also NGPA section 601(c). Accordingly, the Commission has declined to pursue this path.

Moreover, the Commission has sought to make it crystal clear that *nowhere* in the final rules, including in the bilateral CD reduction and conversion options, has the Commission abrogated any contracts nor created a regulatory framework predicated on any unilateral contract abrogation. In short, while the Commission has the power to abrogate NGA jurisdictional contracts where required by public interest considerations, we have not invoked that power in these rules and revised proposed rules.

A third option considered over the last two years was to shift the regulatory focus "downstream," away from the wellhead, and to the nexus between the regulated pipelines and their customers. Here the Commission found minimum commodity bills and minimum take provisions—fully regulated contract provisions that impeded competition for the natural gas commodity and allowed for receipt of revenues by the regulated pipelines in excess of their costs.

The Commission determined in May of 1984 to limit the operation of these NGA-jurisdictional provisions. Through the summer and fall of 1984 appropriate proceedings were conducted and rules were promulgated to that effect. Those rules have since been affirmed in court.

During this same time period in 1984, the question of increased access to unbundled transportation was reviewed. The Commission heard oral argument in a case which illustrated vividly the conflicting interests involved in the issue and the interaction of the existing rate structure, certificate authority and the take-or-pay provisions which limited a pipeline's flexibility in dealing with requests for transportation that would displace its own sales.[21]

In view of the inter-related nature of the problems raised, and the overhanging uncertainty raised by the approach of wellhead decontrol on January 1, 1985, no further action on the access question was taken at that time. Action on minimum bills, however, appeared sufficiently well defined so as to permit Commission action. This, of course, was the path the Commission chose. Experience since the August 1, 1984 effective date of the minimum bill rule has confirmed the powerful effects of competition among pipelines for sales to partial requirements customers. But as recognized by the Commission at the time, a major concern was with the potential for harm to customers that purchased all their gas supply from a single pipeline.

A fourth alternative course was to take action regarding pipeline PGA clauses. With the increase in competition, it seemed likely that PGA regulation might heed to be adapted to the impending arrival of partial wellhead decontrol on January 1, 1985. To review this option, the Commission issued a Notice of Inquiry in Docket No. RM84-12 (issued April 27, 1984).[22] The general thrust of the comments received, however, was that no major changes were required in the PGA regulations, at least at that time. Accordingly, no rule changes have been proposed to date.

A fifth approach was to take action to encourage broader access to the competitive, wellhead market. As noted above, in 1984 the full Commission heard oral argument on a case that raised these issues. As it was apparent that further analysis of these complex issues was required, no action was taken to allow time for further analysis and for developments in the industry to ripen. By the end of 1984, uncertainty over the likely immediate effects of partial wellhead decontrol were dissipating. On the other hand, a number of Sherman Act cases had been filed regarding access to transportation. Finally, experience under section 311 and the Order No. 234-B market certificate programs was indicating in a most concrete way the practical ability of the industry to adapt commercial practices to achieve the economic benefits of more open transportation. In short, events appeared to have progressed to where public comment on the issues was appropriate. Accordingly, the Commission commenced its Notice of Inquiry in the present docket in December of 1984 and issued the NOPR in May. This, then, in conjunction with the minimum commodity bill rule already implemented, constitutes the thrust of the Commission's policies in this area of our jurisdiction.

D. Format of Comment Analysis

Due to the very large number of comments received in response to the NOPR, the Commission's analysis of the comments has been organized under separate headings entitled "Comments" and "Commission Response." This approach is intended to help focus the response as much as possible; it does not preclude the Commission from relying on the entire record in this proceeding in responding to the many interrelated concerns raised by the commenters.

IV. Comment Analysis

A. Transportation

1. *Summary of final rule.*

a. Prohibition of undue discrimination in access to transportation.

Non-discriminatory access to self-implementing transportation services under section 7 of the NGA and section 311 of the NGPA is a cornerstone of the Commission's final rule.

Pipelines that provide transportation services on a non-discriminatory basis are assuring that the benefits of competitively priced gas supplies and transmission services are being made available to the broadest number of consumers. In addition, opening up transmission capacity on an across-the-board basis helps to achieve a traditional utility ratemaking goal of maximizing throughput in order to spread fixed costs over the greatest number of customers.[1]

On the other hand, permitting pipelines to unduly discriminate or to exclude certain consumers from transportation services is inconsistent with the fundamental goals of consumer protection and competition in the Natural Gas Act and the Natural Gas Policy Act. This is especially true where the Commission is authorizing pipelines to provide self-implementing transportation services to customers under section 7 "blanket" certificates or under section 311 authority.[2]

The self-implementing nature of such services require the Commission to more carefully scrutinize and condition the certificates and agreements which underlie the services to assure that consumers are fully protected against discriminatory or unreasonable practices associated with the individual transportation arrangements that are being authorized prospectively without further Commission review.

The final rule adopts two complementary approaches in dealing with the question of non-discriminatory access.

(i) *Rate structures.* The rule modifies the ratemaking standards governing transportation for non-owner shippers. By requiring that costs be allocated to self-implementing transportation (§ 284.7(c)(4)) and that rates to recover those costs be based on projected units of services (§ 284.7(c)(2)), the final rule establishes a ratemaking framework within which the regulated company recovers its costs (including its allowed rate of return) by providing the regulated transportation service. Moreover, the rule provides for the use of reservation charges only for firm service (§ 284.8(d)) and forbids all other provisions that have the effect of guaranteeing revenue irrespective of the level of service actually provided § 284.8(c)(1), § 284.8(d) and 284.9(d)).

In addition, by reaffirming the Commission's April 10, 1985 Policy Statement regarding take-or-pay "buy-outs" and by providing for expeditious action on producer abandonment and certification requests, the final rule provides pipelines and producers with tools to deal with so-called problem contracts.

If we have designed these rate conditions properly, there should no longer be any real incentive for pipelines operating under the new rules to engage in denying access to "unbundled" transportation. Indeed, it may be more likely that the Commission will begin to receive complaints that the new rate conditions encourage a pipeline to attempt to transport *more* gas than it can or should. For example, one shipper may complain that a pipeline has accepted for transportation for another shipper a supply of gas with too many impurities or too low a heating content. Since the gas is commingled during transportation, the first shipper may complain that the gas redelivered to him no longer meets the quality specifications of the gas he delivered to the pipeline for transportation. But since the pipeline earned its fee simply by transporting the gas, it lacked an adequate incentive to refuse transportation to the inferior quality gas.

These kinds of problems can be addressed by the business participants, as they are in similar commercial contexts, through development of reasonable quality standards, quality "banking" services, market and price clearinghouses, etc.

Moreover, these problems are the kind of commercial problems faced in *any* properly functioning industry that deals in a reasonably fungible commodity of uneven physical qualities. By and large, it is reasonable to assume that most of these types of problems will be "sorted out" by the commercial parties without need for recourse to a utility regulatory body. The *regulatory* focus will be on cost allocations, projecting levels of services, determining cost of service (including rate of return) and similar straight-forward utility issues, including ensuring that the transporting pipeline does not favor affiliates over other shippers.

(ii) Non-discriminatory access condition. While *theory* indicates that the rate conditions would preclude unduly discriminatory practices in most instances, experience teaches prudence. There may well be cases where a pipeline might nevertheless engage in discriminatory practices. For example, a pipeline might deny access to exclude a particular competitor from a given market or to disadvantage a shipper engaged in a manufacturing business in competition with a pipeline affiliate.

Accordingly, the rate conditions are complemented in the final rule by a broadly worded condition expressly prohibiting unduly discriminatory or preferential practices under the self-implementing transportation authorizations. See §§ 284.8(b) (regarding firm service), 284.9(b) (regarding interruptible service) and 284.221(c) (subjecting blanket certificates to these conditions).

Thus, the final rule prohibits undue discrimination, or preference, including discrimination in the outright selection of customers. It also precludes more subtle forms of discrimination, such as adhering to the non-discriminatory standard within a customer class while establishing numerous customer classes. It prohibits discrimination among customer classes as well as on the basis of minimum volume requirements, the quality or duration of service rendered, the end-use to which the gas is put, or the type of gas transported.

Unjustified exclusion of shippers from transportation services is inconsistent with the mandate of the court in *MPC I and II.*[3] Where a pipeline is authorized to transport gas on a self-implementing rather than a case-by-case basis, it is extremely difficult for shippers and the Commission to determine whether the exclusion of certain shippers by the pipeline is justified.

Examples of discrimination that the Commission finds to be undue or preferential within the context of the self-implementing authorizations are refusals to transport for existing sales or non-fuel switchable customers and preference for affiliates. On the other hand, the final rule makes clear that reasonable minimum operating and load management conditions imposed on shippers are not unduly discriminatory, or preferential, if imposed on all similarly situated shippers and if stated in filed transportation tariffs.

b. Increased Flexibility

The final rule is also intended to respond to the increased demand by pipelines and their shippers for increased flexibility and consistency in the Commission's regulation of transportation services. The final rule does this by eliminating restrictions on the categories of gas, shippers, end-uses, and duration of transactions eligible for self-implementing transportation. Pipelines seek this flexibility and consistency in order to respond to increased demands for transportation services by natural gas consumers, producers, and marketers.

c. Rates

Rates for self-implementing transportation by interstate pipelines must conform to specific standards set out in §§ 284.7, 284.8 and 284.9. Intrastate pipelines are not subject to these rate conditions. Interstate pipeline rates for self-implementing transportation must be volumetric and downwardly flexible between a maximum and a minimum. A reservation fee may be charged for firm service. See § 284.8(d). In order for pipelines to respond flexibly to market conditions between rate cases, rates below the maximum may be charged as long as they are not unduly discriminatory and are filed at the Commission. Such "rate discounting" must be solely at the pipeline's risk of under-recovery of costs; no pipeline is permitted to seek to recover such costs retroactively in future rate cases.

Such transportation service must be offered as a stand-alone basis, unbundled from any other services and separately tariffed. This precludes any tying arrangements between transportation and other services unless the bundled transportation services are offered as options to the stand-alone transportation service.

In order for pipelines to have the opportunity to earn rewards commensurate with any changes in their risks under the self-implementing program, pipelines are required to set projected levels for transportation service in rate cases. Costs will be allocated to be recovered through this service. Accordingly, a pipeline will be permitted to retain all transportation revenues collected for services rendered. Self-implementing transportation services by interstate pipelines are required to be offered on both a firm and interruptible basis, and capacity may be allocated by the pipeline on a first-come, first-served basis, subject to availability and without preference as between firm sales and firm transportation or between interruptible sales and interruptible transportation. "First-come, first-served" means the pipeline may offer transportation services subject to prior claims on capacity. Conforming rates under the new program must be filed to be effective no later than June 1, 1986. Any interstate pipeline that files for a blanket certificate under § 284.221 or that operates under authority of § 284.102 may charge existing transportation rates for self-implementing transportation services on an interim basis until the new rates are effective.

d. CD Reduction and Conversion Options

If an interstate pipeline chooses to provide self-implementing transportation under the final rule, it must also agree to provide its existing firm sales customers the option to convert their firm sales service to firm transportation service. As a condition of providing such firm transportation capacity, a pipeline may recover a portion of its fixed costs by requiring its customers to pay a reservation charge not in excess of the fixed-costs in the demand charge allocated to the transmission component for firm sales service. The conversion option is detailed in § 284.10(d). In addition, a conditional opportunity is available to customers to reduce their firm sales contract demands or entitlements when their pipeline chooses to provide transportation services under the self-implementing program. See § 284.10(c). Pre-granted abandonment of its certificated service obligation would be available to any pipeline to the extent of any contract demand reduction, and no customer would have any right to resume firm sales service with the pipeline absent the issuance of a new or amended certificate to the pipeline required under section 7 of the NGA. See § 284.10(f).

The purpose of the reduction and conversion options in the final rule is to allow a "freeing up" of contracted firm capacity that customers no longer wish to reserve. This will allow that firm capacity to be contracted for by parties that do wish to purchase such firm service.

e. Transportation by intrastate pipelines

Because of the NGPA exemption of intrastate services from Commission jurisdiction under the NGA, intrastate pipelines that choose to transport under the self-implementing program are exempted from the rate conditions under § 284.7. Similarly, there is no requirement that the service offered by intrastate pipelines be firm. See §§ 284.8(a)(2) and 284.9(a)(2). Finally, intrastates would not be subject to the CD reduction and conversion options.

f. Grandfathering certain transactions

Transportation arrangements under previous section 311 programs and blanket transportation certificates under certain conditions, may continue beyond November 1, 1985, in order to allow a suitable transition period for the old programs to terminate and the new program to begin without a break in services to consumers consistent with the final rule. Thus, even where a pipeline does not ultimately elect to continue to provide service under the non-discriminatory access condition of the new rules, existing blanket certificates and section 311 authorizations will allow transportation to contine during the transition period.[4] Existing 311 arrangements will be permitted to continue until the expiration of their original term or October 31, 1987, whichever is earlier. Blanket transportation for high priority end-users under existing § 157.209(a) may continue until the expiration of their terms. Similarly, transportation for low priority end-users under § 157.209(e) may also continue subject, however, to the non-discriminatory access condition.

g. Individual certificates

Finally, the final rule does not apply a generic, non-discriminatory access condition to individual transportation and sales certificates under section 7 of the NGA. The consistency of such certificates with the purposes of this final rule can and will be reviewed by the Commission on a case-by-case basis at the time such certificates are sought.

h. Overview of comments

Commenters on the Part A transportation program raised several major issues. Among these issues were the scope and authority of the non-discriminatory access condition and its applicability to intrastate pipelines and to pipeline operational or load management conditions imposed routinely on shippers. Also raised as issues were the scope of and authority for conditioning availability of self-implementing transportation on a pipeline's agreeing to allow its customers to convert firm sales services to firm transportation service or to simply reduce contract demands. These comments also addressed the reallocation of risks and revenue responsibilities that would be required when customers adjust their contract demands. Commenters also addressed the authority and design of the downwardly flexible transportation rates and the quality of service requirements for firm and interruptible transportation services. Finally, commenters addressed the transition between current programs and the new transportation program established by the rule.[5]

These comments and others are discussed in detail below.

2. *Commission authority to prescribe the non-discriminatory access condition.* a. Authority to impose on interstate transportation by interstate pipelines. The proposed rule provided that self-implementing transportation authorizations under section 311 of the NGPA and blanket transportation certificates issued under section 7 of the NGA would be subject to an express non-discriminatory access condition. The express condition provided that any interstate or intrastate pipeline that provides any transportation service pursuant to such authority or certificate shall provide such service for all shippers willing to pay the applicable tariff rate on file with the Commission for the service requested, without discrimination in the quality of service provided, the categories, prices, or volumes of natural gas transported, customer classification, or discrimination of any kind.

Comments. Some commenters misunderstood the non-discriminatory access condition to require that *all* self-implementing transportation requests, including patently unreasonable requests, be accepted by transporters.[6]

Commission Response. This was not the Commission's intent. Therefore, the non-discriminatory access condition has been revised in the final rule to insert the word "undue" to track the NGA statutory standard.[7] The final rule thus is intended to prohibit undue discrimination, or preference, including but not limited to undue discrimination or preference in the quality of service; duration of service; categories, prices, or volumes of gas transported (including as between affiliated and non-affiliated producers or shippers); and customer classification (including whether or not transportation would displace sales to an existing sales customer of the transporting pipeline).

Moreover, the final rule expressly provides that a pipeline may impose reasonable operational conditions on any request for self-implementing service. See §§ 284.8(c) and 284.9(c). Such conditions are required to be made a part of the pipeline's tariff, however, and thus will be subject to public scrutiny and Commission review. *Id.*

Comments. Most of the commenters who address the non-discriminatory access condition support the Commission's proposal. Those in favor of the proposal include a quarter of the major interstate pipelines, nearly half the intrastate pipelines, a majority of local distribution companies (LDCs) and virtually all industrial end-users, producers and public entities. The majority of interstate and intrastate pipelines oppose the proposal.[8]

Those in favor of the non-discriminatory access condition generally state that it is necessary in order to effectuate the consumer protection and competition goals of the NGA and NGPA. They assert that it is reasonable in light of the increased demands for transportation of lower-priced gas in natural gas markets, and that it should be clearly stated and broadly applied in order to avoid evasion by pipelines on a case-by-case basis. They conclude that the

Commission has legal authority to impose the condition.

The majority of commenters support the application of the non-discriminatory access condition to pipelines that choose to participate in the Commission's self-implementing transportation programs. They generally indicate the view that the Commission has sufficient authority to implement the non-discriminatory access condition under both NGA section 7(e), which grants the Commission authority to attach reasonable conditions to certificates, and NGA sections 4(b) and 5(a), which prohibit undue discrimination or preference in rates, charges, or practices.[9]

Among the cases cited in support of the Commission's authority under the NGA to impose the non-discriminatory access condition are: *Gulf Oil Corporation v. FPC*, 563 F.2d 588, 596–97 (3rd Cir. 1977) and *American Trucking Association, Inc. v. Atcheson, Topeka, & Santa Fe Railway Company*, 387 U.S. 397 (1967). Process Gas Consumers Group (PGC) also cites several cases in which the courts have read NGA section 7 very broadly to uphold certificate conditions imposed by the Commission: *Atlantic Refining Company v. PSC*, 360 U.S. 378 (1959); *Transcontinental Gas Pipeline Co. v. FERC*, 589 F.2d 186, 190 (5th Cir. 1979), *cert. denied*, 445, U.S. 915 (1980) (conditioning of certificates to ensure appropriate allocation of risk); and *Alabama-Tennessee Natural Gas Co. v. FPC*, 203 F.2d 494 (3rd Cir. 1953) (imposition of rate conditions).

The main argument of the commenters that oppose the non-discriminatory access provision is that the condition would, in effect, subject interstate and intrastate pipelines to regulation as common carriers.[10] According to these commenters, while participation in the self-implementing program may be voluntary, participation for all practical purposes is mandatory because pipelines will be forced by economic and competitive necessity to participate in the program in order to remain financially viable. Others argue that the non-discriminatory access provision could have the effect of imposing increased costs on customers, such as take-or-pay costs when transportation displaces sales.[11]

Furthermore, these commenters argue that the Commission does not have legal authority to apply the condition to either certificates issued under section 7 of the NGA or self-implementing transportation authorized under section 311 of the NGPA.

Several of the commenters point to the legislative history of the NGA in support of their view that the Commission is abusing its section 7 conditioning authority in attempting to do indirectly that which Congress has expressly declined to give the Commission authority to do directly, i.e., make pipelines common carriers.[12] These commenters point to the express omission of common carrier authority in the legislative history of both the NGA and NGPA, as well as several legislative proposals to impose non-discriminatory access or express common carrier requirements on natural gas pipelines which have been introduced in Congress but not enacted since enactment of the NGA.[13]

For example, Panhandle Eastern Pipe Line notes that there has been but one exception to what it perceives as Congress' long-standing reluctance to legislate common carriage by natural gas pipelines. That exception is the requirement in the Outer Continental Shelf Lands Act of 1978, 42 U.S. 1334 (e) and (f), that natural gas pipelines to which the Secretary of the Interior has granted authority to transport Outer Continental Shelf (OCS) gas must provide transportation on a non-discriminatory basis. Panhandle reasons that the absence of a similar provision in the NGA or NGPA demonstrates that Congress concluded that the Commission should not have the authority to require that pipelines authorized to transport natural gas under those Acts do so in a non-discriminatory manner.

Intrastate pipelines and their state regulatory bodies assert that the access condition is an unsupportable attempt to pre-empt state regulation of intrastate activities.[14]

Commission Response. In considering those comments that suggest the Commission lacks legal authority to apply the non-discriminatory access condition to interstate transportation under the NGA, the Commission has reviewed the requirements of the NGA, including legislative history and relevant case law.

Section 7(e) of the NGA states, in pertinent part, that:

> The Commission shall have the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require.

According to the Supreme Court:

> The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges . . .
>
> . . . In view of this framework in which the Commission is authorized and directed to act, the initial certification of a proposal under § 7(e) of the Act as being required by the public convenience and necessity becomes crucial. This is true because the delay incident to determination in § 5 proceedings through which initial certificated rates are reviewable appears high interminable.[15]

Thus, the Commission's certificate and conditioning authority is the means by which it effectuates the purpose of the NGA to underwrite just and reasonable rates to the consumers of natural gas.[16] Any attack on a condition in a certificate issued by the Commission must confront the well-established principle that generally the Commission has extremely broad authority to condition certificates of public convenience and necessity.

This broad conditioning authority must be examined in the context of Congress' consideration of the NGA itself. It is abundantly clear from the history of the Act and from the events that prompted its adoption that Congress considered the natural gas industry to be heavily concentrated and that monopolistic forces were determining the amount of natural gas that could be marketed by fixing the amount that could be transported.[17]

Thus, section 7(e) of the NGA gives the Commission the power to attach conditions to certificates where required by the public convenience and necessity.

Beyond section 7, however, sections 4 and 5 of the NGA also prohibit unduly discriminatory or preferential practices by natural gas companies. The Commission has determined that the practice of restricting access to transportation is unduly discriminatory and preferential; and, importantly, has prevented consumers from obtaining the lowest reasonable rates for both transmission services and gas costs. Therefore the Commission intends the final rule to be an exercise of its conditioning authority to effectuate the non-discrimination requirements of the Act and to insure that consumers will obtain gas and transportation at just and reasonable rates.

Given the breadth of our section 7 conditioning authority and our obligation under sections 4 and 5, we must ask whether the proposed non-discriminatory access condition is so broad as to impose, either directly or indirectly, common carrier obligations on pipelines in violation of the NGA.

Notwithstanding the basis of the condition in sections 4, 5 and 7 of the NGA, several commenters have asserted that Congress failed to enact amendments to the NGA which would have imposed mandatory transportation requirements on natural gas pipelines, and therefore the NGA by implication does not authorize the Commission to impose common carrier status on pipelines.[18]

Of key interest to the Commission in its review of the legislative history are sections 303 and 304 of Title III of H.R. 5423 introduced in 1935 by Representative Sam Rayburn, Chairman of the House Committee on Interstate and Foreign Commerce.[19]

Sections 303 and 304 of H.R. 5423 provided in pertinent part (emphasis added):

> Section 303(a). *It shall be the duty of every distributor to* furnish natural gas, to exchange natural gas with, and *transmit natural gas for any person* upon reasonable request therefor; and to furnish and maintain such services and facilities as shall promote the safety, comfort and conveniences of all its customers, employees, and the public, and shall be in all respects adequate, efficient and reasonable . . .
>
> Section 304. Whenever the Commission after notice and opportunity for hearing finds such action necessary or desirable in the public interest, *it may by order direct a distributor* to make additions, extensions, repairs, or improvements to or changes in its facilities, to establish physical connection with the facilities of one or more persons, to permit those of its facilities by one or more persons, or utilize the facilities of, sell natural gas to, purchase natural gas from, *transmit natural gas for,* or exchange natural gas with *one or more other persons* . . . [T]he Commission may prescribe the terms and conditions of the arrangement to be made between such persons, including the apportionment of reimbursement reasonably due to any of them.[20]

If these sections would have imposed common carrier obligations on natural gas pipelines, and therefore were rejected by Congress, a principal attribute of common carrier status must be its *mandatory* nature. Thus, section 303 would have imposed an affirmative "duty" on pipelines to "transmit" natural gas "for any person." Section 304 would have provided the Commission with the concomitant authority to "by order direct" any pipeline to "transmit natural gas for . . . one or more other persons. . . ."

Sections 303 and 304 must be read in the context of sections 4(b) and 5(a) of the NGA as enacted. In contrast to proposed section 303's affirmative duty, section 4(b) flatly prohibits "any undue preference or advantage" and "any reasonable difference" in service or as between classes of service. In contrast to proposed section 304's discretion to *order* transportation, section 5(a) contains *no express authority to order transportation.* Instead, section 5 permits the Commission to find that "any rule, regulation, practice or contract" affecting transportation rates, charges or classifications is ". . . unduly discriminatory, or preferential" and thereafter fix prospectively by order the "just and reasonable . . . rule, regulation, practice or contract" to be observed.

On the one hand, sections 303 and 304 would have imposed an affirmative duty on pipelines to transport for others and backed up that duty with discretionary authority on the part of the Commission to order such transportation.

On the other hand, sections 4, 5, and 7 of the NGA attach non-discrimination obligations to the "practices" of pipelines and back up those obligations with broad conditioning authority on the part of the Commission. But the Natural Gas Act does not expressly *require* pipelines to transport for others as an affirmative duty.

We have considered whether the non-discriminatory access condition in the final rule amounts to a "direction" or a "mandate" to pipelines to transport for others as an "affirmative duty." First, the condition is just that: A *condition* on the certification or authorization of certain self-implementing transportation services which a pipeline may *voluntarily choose to perform or not,* strictly at its own option. Thus, it does not "direct" or "mandate" a pipeline to do anything. Second, the condition, even when accepted by a pipeline as part of its self-implementing transportation program, does not impose any "affirmative duty" on a pipeline to transport. It only requires that when a pipeline *does* choose to transport on a self-implementing basis, it must provide those transportation services in a nondiscriminatory manner. Nor does the condition cover all transportation services and thus operate as mandatory *in effect.* A pipeline remains free to seek authorization for other transportation programs not covered by the condition and the Commission will review them on a case-by-case basis.

In addition, the condition expressly applies, verbatim, the statutory prohibitions on unduly discriminatory or preferential practices, rates or charges imposed by Congress when it enacted sections 4 and 5 of the NGA.[21]

The Commission need not decide in this rulemaking whether it may ever order transportation on a mandatory basis. The Commission plainly has broad powers to enforce the congressional directives and these powers are at their height when the Commission is fashioning a remedy for a violation of the statute or an existing regulation. *Niagara Mohawk Power Co. v. FPC,* 379 F.2d 153, 159 (D.C. Cir. 1967). But while these powers may be available in appropriate cases, there is no need to test their scope here, where the regulatory obligations are voluntarily assumed.[22] Further, the condition only applies with regard to each of the individual types of transportation service offered and does not cover transportation under existing individual section 7 certificates or new individual section 7 certificates filed outside of the optional expedited certificate procedure.

Judicial recognition of the Commisssion's authority to impose the non-discriminatory access condition has already been indicated in the companion cases *Maryland Peoples Counsel v. FERC,* Nos. 84–1019 and 84–1090 (D.C. Cir. 1985). In those cases, the court vacated Columbia Transmission Company's special marketing program and the Commission's rule allowing pipeline transportation for certain industrial end-users. In both instances, the court found the Commission had not justified the programs to the extent they allowed pipelines to transport gas to some customers without requiring pipelines to furnish the same service to all customers on non-discriminatory terms.

In its order on the blanket certificate program (No. 84–1090), the court noted, *id.* at n.19, that MPC's plea that blanket transportation certificates be conditioned on non-discriminatory access accords with the recommendation of the Department of Energy: "To achieve the benefits of a properly developed spot market for natural gas . . . FERC should use its authority over natural gas transportation to require pipeline companies to provide carriage on a non-discriminatory basis whenever there is idle pipeline capacity." DOE Report, *supra* p. 3, at 82. The court further noted that the Commission does not question that it has such authority, *citing Tennessee Gas Pipeline Co. v. FERC,* 689 F.2d 212, 214–15 (D.C. Cir. 1982); *Transcontinental Gas Pipe Line Corp. v. FERC,* 589 F.2d 186, 190 (5th Cir. 1979) (invoking "the well-established principle that generally the Commission has extremely broad authority to condition certificates of public convenience and necessity"), *cert. denied,* 445 U.S. 915 (1980).

Finally, we view section 311(c) of the NGPA as conferring sufficient authority to require a comparable condition under transactions authorized under that statute. The effect of NGPA section 602(b) is discussed below.

b. Authority To Impose on Interstate Transportation by Intrastate Pipelines

Comments. Interstate pipelines and state regulatory commissions cite the NGPA section 602(b) prohibition on common carrier status for section 311 transporters as an absolute ban on application of the non-discriminatory access condition to their operations.[23] They also state that the condition is illegal under NGPA section 601(a)(2)(A), which exempts transportation by intrastate pipelines under section 311(a) of the NGPA from Commission jurisidiction for purposes of section 1(b) of the NGA.[24]

These intrastate pipelines perceive the access conditions as a back door through which the Commission may intrude on their non-section 311, purely intrastate activities. They fear that the non-discriminatory access requirements ultimately will result, if they agree on any section 311 transportation, in more and more of their capacity being obligated to section 311 transportation. Consequently, they assert, the capacity available for intrastate activities would diminish, threatening their viability in the intrastate market. Further, the rate charged by a pipeline in each new section 311 transportation arrangement would be subject to regulation by the Commission under the proposed rule. Therefore, intrastate pipelines, as well as many state regulatory agencies, view the non-discriminatory access condition as an indirect but substantial threat by the Commission to preempt state authority over intrastate pipeline activities. These commenters argue that the non-discriminatory access provision, therefore, violates NGPA sections 601(a)(2)(A) and 602(b).

Commission Response. The Commission has absolutely no intention of regulating *intra*state transportation of natural gas. Rather, the intent of the proposed rule was simply that the same non-discriminatory access condition should apply to all transportation in interstate commerce, whether by an entity subject to FERC jurisdiction under the NGA or to other entities allowed by the Commission under the NGPA to engage in such interstate commerce without becoming subject to the NGA.

Several changes have been made in the final rule to clarify this intent. First, there is no requirement that intrastate pipelines under section 311 provide such transportation service on a firm basis. See § 284.8(a)(2). Firm transportation is not prohibited, however. In the event an intrastate pipeline offers firm transportation then § 284.8(b) requires that it provide "such" service on a non-discriminatory basis.

Similarly, if an intrastate pipeline offers interruptible interstate transportation (under § 284.8(a)(ii)), the only obligation is to provide "such" interruptible service on a non-discriminatory basis. See § 284.9(b).

Thus, the final rule completely avoids the situation whereby an intrastate pipeline is required to offer firm service for out-of-state shippers, thus, progressively being turned into an interstate pipeline against its will and against the will of the responsible state authorities.

With regard to the rate conditions of § 284.7, the proposed rule would have required intrastate pipelines to comply with the same conditions. The final rule makes it clear that the rate conditions of § 284.7 apply only to transportation under Subparts B, G and H and not to transportation by intrastate pipelines under Subpart C. The final rule retains the pre-existing rules regarding rates for Subpart C transportation. See section 284.123. In essence, there have been no real concerns with transportation by intrastate pipelines and therefore there is no need to modify the current rules.

With regard to the comment that the non-discriminatory access condition violates section 602(b), we note that the NGPA does not define "common carrier." Section 602(b) has scant legislative history. The only mention of the purpose of section 602(b) in the Conference Agreement merely states that the House bill had provided that "the intrastate pipeline would not have been subjected to regulation as a common carrier. . . ."[25] The Commission notes that Congress did not directly authorize section 311 transportation but gave the Commission the discretion to authorize such transportation under such terms and conditions as the Commission might prescribe under sections 311(c) and 501(a) of the NGPA.[26]

All the Commission is doing here is ensuring that where a new entity enters into the field of offering interstate transportation services, that it do so on a non-discriminatory basis. We cannot accept the premise that section 602(b) is a Congressional license to "intrastate pipelines" to enter into the field of interstate commerce on an avowedly discriminatory basis. Whatever else the prohibition regarding "common carriage" status may do, it does not sweep so broadly as to license unduly discriminatory rates or practices.[27] The same conclusion applies to interstate pipelines operating under section 311.

Further, it appears from the legislative history of the NGPA that the Commission's conditioning authority under NGPA sections 311(c) and 501(a) is coextensive with the broad discretion granted to the Commission under section 7(c) of the NGA.[28] Section 311(c) must be read in light of the fundamental intention of the NGPA to facilitate the movement of gas between the intrastate and interstate markets following a period of severe curtailment of interstate supplies coincident with ample intrastate supplies.[29]

Hence, the Commission has determined that the non-discriminatory access condition does not violate section 602(b).

The Commission emphasizes that it fully respects the bounds of its jurisdiction under section 1(b) of the NGA as reaffirmed by section 601(a)(2)(A) of the NGPA. The Commission does not intend that any aspect of the final rule intrude in any way whatsoever on the sound discretion of the states to regulate strictly intrastate transactions in the public interest. Nor does the Commission intend the final rule in any way whatsoever to impair the ability of intrastate pipelines to provide reliable service to their intrastate customers.

3. *The reasonableness of the non-discriminatory access condition.*

Comments. Some commenters complain that the non-discriminatory access condition is unreasonable, and therefore not authorized under law or otherwise appropriate, because it would interfere with pipelines' ability to make necessary and appropriate business decisions such as choosing a product/market mix of transportation and sales services, or declining to provide transportation services that would impair their ability to meet their obligations to existing sales customers.[30] Intrastate pipelines state that the non-discriminatory access condition could potentially affect their ability to provide services in the intrastate market. Several commenters suggest that the harm to the reliability of existing services to pipeline customers would outweight the benefits of the non-discriminatory access condition to new transportation customers.[31]

Some industrial end-users state that the imposition of the non-discriminatory access requirement on intrastate pipelines is unreasonable because most state agencies already have authority with respect to intrastate pipelines to accomplish the Commission's goal in proposing the condition. These commenters point to New Mexico and other states that have enacted or are considering statutes that require non-discriminatory gas transportation.

One industrial end-user, Air Products, argues that the Commission's proposal to apply the non-discriminatory access provision to intrastate pipelines would diminish the interstate-intrastate pipeline integration achieved since enactment of the NGPA. Lack of system integration would hinder the ability of interstate pipelines and their customers to gain access to reserves connected to intrastate pipelines. Accordingly to Air Products, the undesirable effects would result because intrastate pipelines would rather forego NGPA section 311 transportation altogether than expose all of their intrastate operations to possible Commission jurisdiction.

Other commenters, such as Oklahoma Natural Gas Company, suggest that the Commission revise the proposals to specifically limit application of the non-discrimination and firm transportation requirements to an intrastate pipeline's excess capacity in order to reassure intrastate pipelines and state regulatory agencies that the Commission will not intrude on local activities beyond its jurisdiction.

On the other hand, commenters supporting the non-discriminatory access condition assert that the condition is reasonable and absolutely necessary in order to ensure access, by pipeline customers and other shippers, to competitively priced gas supplies at the wellhead. They point to the proliferation of individual pipeline transportation programs and the expanded flexibility of the program proposed by the rule as direct benefits to pipelines which agree to the non-discriminatory access condition. Finally, they point to the history of pipeline gas purchasing practices over the last 30 years as justification for requiring pipelines who transport for others to do so on a non-discriminatory basis for all consumers.[32]

Commission Response. With regard to *intrastate* pipelines, we repeat what was stated above: intrastate pipelines are under no requirement to offer firm service under Subpart C, and the non-discriminatory access condition will apply only to the intrastate pipeline which provides "such" interruptible or firm service. Thus, where an intrastate pipeline offers only interruptible service, the access condition can in no way adversely affect its ability to provide firm service to intrastate customers.

With regard to *interstate* pipelines, the condition is also reasonable. First, the actual condition is voluntary. There is no requirement under the statutes or the rules that an interstate pipeline provide transportation under the self-implementing regulations. Moreover, the condition imposes, verbatim, the statutory ban against undue discrimination. The access condition, therefore, must be included in certificates and self-implementing transportation agreements in order to assure that gas supplies and transmission services are provided as broadly as possible in response to new demands from consumers and new competition in gas markets.

In addition, the final rule expressly recognizes in §§ 284.8(c) and 284.9(c) the need for reasonable operational flexibility. Finally, the condition is imposed in the context of a rate structure under §§ 284.7 and 284.8(d) which fully contemplates self-implementing transportation. Costs will be properly allocated among services to be offered; unit rates will be designed; and the pipeline will have a reasonable opportunity to recover its prudently incurred costs by providing services for its customers. This is the core of utility ratemaking.

Thus, the access and rate conditions *prohibit* a regulated pipeline from engaging in unduly discriminatory or preferential behavior and *provide* a rate structure under which the pipeline may earn its allowed return without engaging in such behavior. To assert that such a condition is unreasonable is simply not credible.

4. *Applicability of non-discriminatory access condition to pipeline operations.* The Commission intends to apply the non-discriminatory access condition broadly as an express condition of any self-implementing transportation services provided by a pipeline under the final rule.[33] The term "transportation," defined by existing § 284.1(a), includes "exchange[s], backhaul[s], displacement or other methods of transportation." No change in this definition was proposed in the May 30th NOPR or made in the final rule. As with any generic standard, the condition must be capable of being applied by pipelines and their shippers to the everyday realities of the natural gas business, particularly the reasonable, routine operational and load management decisions faced by those that provide natural gas transportation services.

a. Applicability in general

Comments. Many pipeline commenters stated that the non-discriminatory access condition as proposed in the NOPR was overly broad and could be interpreted to require pipelines to transport for shippers who were unwilling to accept the gas quality standards, minimum volume requirements, or minimal financial solvency standards set by a pipeline.[34] Would a pipeline be required to accept for transportation gas of such a poor quality that it cannot be operationally redelivered or of such a marginal quality that it may cause operational problems? Must a pipeline accept for transportation gas which may only be delivered on certain days or in very small quantities?

Others stated that certain pipeline load management activities should not be subject to the non-discriminatory access condition if they involve the pipeline's not holding itself out generally as a transporter. They assert that such services as gas exchanges, storage, backhauls, and displacement should not be subject to the access condition.[35]

Other commenters asked that the Commission clarify the non-discriminatory access condition in light of the express provision in the proposed rule that a pipeline offering firm transportation service is not required to construct or acquire new facilities in order to comply with the "firm" quality of service requirement. These commenters pointed out that pipelines could defeat the purpose of the non-discriminatory access condition by refusing to construct relatively inexpensive or minor facilities, such as sales taps and metering stations necessary to provide transportation services.[36]

One commenter, Yankee Resources Inc., suggests that pipelines currently are attempting to discourage transportation by imposing onerous conditions. In its presentation at the public conference (tr. 533), Yankee's representative stated that it had received a recently approved transportation tariff of an interstate pipeline providing for daily load balancing enforced by a $5.00/Mcf daily penalty for over-or-under delivery into that pipeline's system. As the term implies, daily load balancing means that the amount of gas entering the pipeline each day must equal the amount of gas leaving the pipeline each day. Yankee, in effect, requests that the rule prohibit such types of conditions from being included in any transportation tariffs filed under the rule.

Commission Response. The Commission has determined that reasonable operating and load management conditions imposed routinely by pipelines or shippers do not *per se* violate the non-discriminatory access provision, *provided* that such conditions are stated "up-front" in the pipeline's transportation tariffs on file at the Commission and are applied by the pipeline fairly to all similarly-situated shippers and shipments. See §§ 284.8(c) and 284.9(c). With these operating conditions required to be stated in tariffs on file at the Commission, shippers will be provided advance guidance on how the pipeline will apply the non-discriminatory access condition to routine, day-to-day operations of the pipeline system. In addition, in those circumstances where a pipeline may not be able to determine whether a particular situation is governed by the stated tariff conditions, it may impose reasonable operating conditions on a shipper as long as identical conditions are placed on all similarly situated shippers and an appropriate tariff filing is made.

A clear example is one in which a shipper requests that a pipeline transport gas of such poor quality that it may damage pipeline facilities. It would not be discriminatory for the pipeline to refuse that shipper's request to transport such gas, since the pipeline certainly would refuse any shipper's request for transportation of such gas. Furthermore, it may or may not be discriminatory for a pipeline to refuse transportation to a customer in bankruptcy proceedings. It might be appropriate for a pipeline to propose, subject to Commission review, special payment arrangements in its tariff for such a customer. However, if the pipeline determines on some basis that the shipper is nevertheless credit worthy and accepts the request for transportation, such acceptance would not be discriminatory, provided the pipeline permits like-situated shippers to demonstrate their credit worthiness on the same basis.

b. Applicability to Exchanges

Comments. A number of commenters discussed whether exchanges should be subject to the non-discriminatory access condition.[37] In a gas exchange between two parties, gas is received from (or delivered to) the first party in exchange for gas delivered to (or received from) the second party. An exchange arrangement provides a means for delivering gas supplies to a customer without the necessity of constructing and operating duplicative facilities. Central to the concept of an exchange is mutual benefits to the two pipeline systems engaging in the exchange. The transaction must involve reciprocal benefit or the trade of comparable values. If the gas exchanged by one party is not of equal value to the gas exchanged by the other party, because one party has less gas and/or gas that is of lower quality, the party receiving the lesser-valued gas volumes may also receive cash.

Most of the pipeline commenters that specifically addressed the issue of whether non-discriminatory access should apply to such transactions indicate that exchanges should not be subject to the non-discriminatory access condition. These pipeline commenters observe that these activities do not involve transportation as such. They view an exchange more as a sale than as a transportation arrangement. Several commenters point out that the purpose of exchanges is the movement of gas without the wasteful construction of facilities or longer-than-necessary transportation. They argue that there should be no condition inhibiting parties from entering into such arrangements. They believe that the non-discriminatory access provision would be an inhibiting condition.

The commenters point out, as the Commission is aware, that pipelines usually engage in exchange arrangements only with producers that are suppliers or other pipelines if there is a mutual benefit.

The commenters supporting extension of the condition to exchanges argue that exchanges are the least expensive and the most desirable form of transportation. As such, they argue that it would be inconsistent to permit exchanges to remain subject to discrimination.

Commission Response. This issue presents an excellent example of the implementation problems that would arise were the Commission to attempt to impose the non-discriminatory access condition without restructuring transportation rates. The pipelines are arguing for exemption of exchanges from the types of transportation service they must offer under the condition. In essence, they argue that opportunities to effectuate a transaction via an exchange are fact-specific and lend themselves poorly to the application of uniform rules. For the Commission to require a pipeline to seek out the most efficient exchange arrangement would probably result in hearings to determine if an alternative transportation routing would have been preferable. This could quickly, the pipelines assert, remove operational and dispatching decisions from the pipeline managements and turn them over to the Commission. To a large degree we agree.

The commenters arguing the other side assert that they ought not have to pay for a front haul transaction perhaps over hundreds of miles when the pipeline might actually be able to effectuate the same transaction via an exchange with another pipeline. Accordingly, they urge the Commission strongly to require pipelines to provide such exchange services on a non-discriminatory basis. To a large degree we agree with these commenters as well. A pipeline ought not be able to circumvent the access condition simply by characterizing a transaction by one name or another.

But we have coupled rate revisions with the access condition. In most instances, rates should be structured in such a way that the pipeline has every incentive to move gas in the most efficient way possible. For example, if one transaction could be effected via an exchange, that would typically leave the pipeline with additional capacity elsewhere in its system. That capacity would then be available for other sales or transportation, allowing the pipeline to earn revenue from *two* transactions rather than just the one.

Accordingly, the final rule does not exempt exchanges from operation of the non-discrimination conditions. Instead, existing § 284.1(a) continues to include exchanges within the definition of transportation. For example, a pipeline may wish to file with its tariffs definitions of those types of non-recurring exchange transactions that it proposes to be exempt from the non-discriminatory access condition. The Commission will review such definitions as part of its case-by-case review of the tariffs. Because of their efficiency and benefits, all other exchanges will be subject to non-discriminatory access conditions. We note that in no way does this final rule alter existing regulations dealing with those situations where costs associated with a purported exchange may or may not qualify for recovery through a PGA clause.

c. Applicability to Storage

Storage permits gas produced from one formation to be injected into another formation generally near the market. System storage facilities are considered to be within the Commission's transportation jurisdiction because they enable the pipelines to move the gas needed to meet peak requirements on their systems. The purpose of storage is normally to serve temperature sensitive requirements during peak demand periods. "System supply" storage includes facilities owned by the pipeline and used by the pipeline to store its own gas for operational reasons. In "contract" or "customer-nominated" storage, the customer owns the gas. Thus, the transaction would involve a sale accompanied by transportation of gas to a point of storage during an off-peak period and a later redelivery of the gas from storage during a peak demand period.

Comments. Storage was briefly discussed by a few commenters.[38] The commenters responding to this issue support extension of the non-discriminatory condition to storage on the grounds transportation to and from storage may be an integral part of transportation service when it is purchased or offered as a bundled service with transportation.

Commission Response. System storage facilities are essentially used for the same types of transactions as are mainline transmission facilities and the transportation rates generally reflect this relationship. Accordingly, it is reasonable to allow access to these facilities in order to assure firm transportation service. And, of course, transportation to and from contract storage would also be covered.

d. Applicability to Backhauls

Comments. Backhauls are accomplished by the pipeline's delivery of gas upstream from its point of receipt. Simplified, a backhaul can be described by the following example. A producer in Oklahoma sells gas to an end-user in Texas. An interstate pipeline, whose system flows from south to north, agrees to perform the transportation service. It picks up the end-user's gas from the producer in Oklahoma. The gas physically flows north to the interstate pipeline's market area. It delivers equivalent volumes from other sources to the end-user's plant in Texas. While all of the gas physically moves north, the effect of the transaction is to bring the end-user's Oklahoma gas to Texas. The term backhaul is used because the movement of the gas is opposite or backwards from the pipeline's flow direction.

Citizens Energy Corp. and Yankee Resources, Inc. argue for the extension of the condition to backhaul transactions. One commenter argues for the extension of the condition on the basis that backhauls are an integral part of any transportation program and are essential to efficient system supply. The commenter believes that exclusion of backhauls from the rule would disadvantage local distribution companies and would unjustifiably provide the pipelines with a highly preferred position in making gas available in a competitive environment. The commenter urges clarification of the proposed rule by development of rate provisions that take into consideration cost distinctions between forward haul versus backhaul transactions.

Commission Response. We believe it is appropriate to apply the non-discriminatory access condition to backhaul transactions. The nature and functions of backhaul transactions are not substantially different from forward hauling. Both may involve use of the pipeline's mainline transmission facilities to transport gas. Moreover, pipelines usually have tariff provisions providing rates for backhaul service as well as for forward hauls. The Commission sees no reason why the non-discriminatory access provision should not apply to backhaul services.

e. Applicability to Displacement

Displacement permits lateral movement of gas through a transportation network. The configuration of some pipeline systems is such that it may not be readily apparent whether a given movement of gas is forward or backward from the point of receipt. Nevertheless, gas is received and delivered by the pipeline using its facilities to provide the service. Displacement transactions are widespread and commonplace in that they permit efficient delivery of gas. The Commission's definition of transportation in § 284.1(a) includes displacement of gas.

Although no comments were received on this issue, the Commission believes that it is appropriate to clarify that the non-discriminatory access condition does apply to displacement transactions. As in the case of backhaul, the end result of displacement is delivery of gas. This is true for all categories of transportation. Transportation rates for displacement are normally included in the tariff provisions. To exclude displacement of gas from the non-discriminatory access condition would foster a loophole in the regulations which would serve to undermine the goal of consumer protection which the condition seeks to achieve. Accordingly, the condition applies to displacement transactions.

f. Applicability to Construction of Minor Facilities

Comments. Some commenters urged the Commission to prohibit pipelines from discriminating in the offering of transportation services by refusing to construct minor facilities, such as sales taps or metering stations.[39]

Commission Response. Sections 284.8(e) and 284.9(e) both provide that no pipeline providing self-implementing transportation is required to provide service for which capacity is not available or that would require construction or acquisition of any new facilities. These provisions are consistent with Commission and court precedents under section 7 of the NGA. The fact that construction of such facilities is not required *by rule* does not mean that the Commission may not be empowered to require such construction as a remedy in an appropriate case, however. See discussion of *Niagara Mohawk, supra.* Moreover, it is noted that § 157.208 provides self-implementing authorization for the construction of such facilities within certain dollar limits (except sales taps).

g. Applicability to Other Tariff Provisions

Comments. One commenter asserted that some pipelines impose other unreasonable conditions such as daily load balancing.[40] This commenter urged the Commission to hold that such a condition is unreasonable.[41]

Commission Response. There is no need to address this issue in the rule. There is an argument to be made that load balancing on the basis of some period of time may be reasonable. This is due to the operational effects that "banking" of the gas has on the pipeline system. If more gas enters the pipeline than leaves it, the effect is that the excess gas is "banked" or stored within the pipeline. Pipelines may argue that this amounts to a service for which they should be compensated.

Such a practice may or may not be a reasonable operational practice within §§ 284.8(c) and 284.9(c). In any event, such practices must be filed for and may be reviewed on a case-by-case basis.

h. Transactions Between Affiliates

Comments. A number of commenters express apprehension that pipelines could manipulate their corporate structure to defeat the non-discriminatory access provision. For example, Natural Gas Equal Access, an association of independent producers, asserts that if any segment or component of a pipeline system, or any affiliate, subsidiary, or division of any pipeline company, does anything that the Commission categorizes as the equivalent of holding itself out to be a transporter, then the entire system or company must comply with the non-discriminatory access provision.

As pointed out by the American Paper Institute (API) interstate pipelines could conceivably participate in, and receive the benefits of, the voluntary program and at the same time, create and require the use of the facilities of an affiliate company that could refuse to participate in the programs and effectively block non-discriminatory access to transportation. API suggests preventing such abuse by certificating any new affiliates with the non-discriminatory access condition and imposing that condition in existing certificates of the pipelines.

Panhandle Producers and Royalty Owners (PPRO) recommends that the Commission adopt regulations similar to the "Ultimate Parent Entity" concept regulations adopted in connection with the Hart-Scott-Rodino Antitrust

Improvements Act of 1976, 15 U.S.C. 18a (1973), to govern the scope of the election of a pipeline so that, once one pipeline of an "ultimate parent entity" elects to provide transportation, all pipelines under the "ultimate parent entity" should be required to perform the same transportation services. Another commenter suggests adopting the definition of "affiliate" in section 2(27) of the NGPA and requiring any of a pipeline's affiliates to perform the same services in the same manner as the certificated pipeline.

Commission response. We agree with the comments that a pipeline that has been issued a certificate under the new program should not be allowed to circumvent the conditions of the certificate or the overall objective of the program by establishing new corporate entities or by implementing some form of corporate reorganization.

The Commission expects the rate conditions under which the self-implementing transportation must be provided will sharply mitigate any incentives for a pipeline to evade the non-discriminatory access condition by manipulating its corporate structure or creating affiliated entities outside the jurisdiction of the self-implementing program. However, the Commission will not hesitate to take appropriate action to assure that the purposes of the non-discriminatory access condition are not evaded. We note that pipelines may well seek to offer gas sales service through an unregulated affiliate. While such a move would make it all the more important to prevent a pipeline *qua* transporter from conferring unlawful preferences on its affiliate *qua* merchant, the basic decision to divorce transportation from merchant activities probably would not be contrary to the public interest.

5. *Availability of access to persons outside NGA jurisdiction.*—a. *Condition distributor access to interstate transportation on requirement that they provide transportation to retail markets.*

Comments. Several commenters suggested that non-discriminatory access to transportation should be available to an LDC only as a reciprocal condition on the distributor providing access through its own facilities to self-implementing transportation services under the final rule. [42]

Commission response. The Commission declines to condition distributor access in this manner.

An argument could be made that such a condition on a non-jurisdictional entity is beyond the scope of the Commission's jurisdiction. But while we note this argument, we do not rely upon it for our ruling here. See *FPC* v. *Transcontinental Gas Pipe Line Corp.*, 365 U.S. 1 (1961) (the Transco "X–20" case) (holding that the FPC had authority to deny a transportation certificate based on the end-use of the gas at retail).

Rather, our decision is based on the fact that such a condition would bring the Commission into direct conflict with responsible state authorities. For example, as detailed above, a number of states have adopted statutes or regulations dealing with transportation services by local distribution companies. [43] In other states the issue remains under review. A federal requirement that distributors provide a certain type of transportation service as a condition to obtaining interstate transportation could put the distributor under conflicting federal and state obligations. Thus, it is not a case where the Commission might veto on federal grounds a transaction which state public utility commissions might favor as a matter of state policy. Rather, the proposed condition would essentially mandate on federal grounds a transaction that a state may wish to forbid or to structure in a different manner.

Moreover, as noted above, questions of cost allocation and rates are intimately tied into the issue of the reasonableness of a transportation obligation. Yet we wholly lack jurisdiction over the rates of local distribution companies.

Indeed it was for the express purposes of avoiding such federal-state conflicts that Congress adopted section 1(c) (the "Hinshaw Amendment") of the NGA in 1953. The legislative history of the Hinshaw Amendment makes it clear that it was enacted to essentially overturn a Supreme Court decision (*FPC* v. *East Ohio Gas Co.*, 338 U.S. 464 (1950)), that had interpreted the NGA to allow FPC regulation over local distribution companies. See Rep. No. 817, 83d Cong., 1st Sess. 2102 (1953). Since the proposed access condition on distributors would put us in the business of regulating rates and practices of the distributors in order to enforce the conditions, it would bring about exactly the kind of conflict the Congress intended to avoid. Accordingly, we decline to adopt it.

b. *Condition producer access to interstate transportation on requirement that they waive contractual rights under take-or-pay provisions*

Comments. Just as some commenters argued for conditioning distributor access, so at the other end of the pipeline, many (but not all) interstate pipelines urge the Commission to condition access by producers. These commenters assert that the Commission has the authority to require producers to waive contractual rights under the take-or-pay provisions of existing contracts as a condition to obtaining non-discriminatory transportation. They further assert that the exercise of such authority is reasonable to enhance the pipelines' bargaining leverage in renegotiating contracts with producers. [44]

Commission Response. As with the request to restrict access to non-discriminatory transportation at the distribution end of the pipeline, so the Commission declines to restrict access to only certain producers. If transportation is to be available to the public on an equal and non-discriminatory basis, we cannot allow some shippers to be "more equal" than others.

In addition, for gas that has been removed from the Commission's NGA jurisdiction, there is a serious question as to whether the Commission has the authority to require a non-jurisdictional party to give up a valid contractual right as a condition to obtaining service. At the August hearing, a number of pipeline representatives expressed the opinion that such a course of action was a "close question," [45] or one to which a "definitive answer" could not be given. [46]

This uncertainty is reinforced by the court cases defining the limits of the Commission authority over natural gas production. See *e.g. Shell Oil Co. v. FPC*, 566 F.2d 536 (5th Cir. 1978) (reversing FPC Policy Statement regarding "prudent operator" standard), and *Pennzoil v. FERC*, 645 F.2d 360, 380–82 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982) (holding that FERC lacks the power to even interpret gas purchase agreements between producers and pipelines for the sale of gas which has been removed from NGA jurisdiction).

It is one thing for the Commission to exercise its conditioning authority over regulated natural-gas companies to require them to provide access to shippers on a non-discriminatory basis. It is quite another to *deny* access to some shippers unless they agree to take action which is beyond our power to compel.

We also note that some pipelines continue to make progress in renegotiating their contracts with producers while others have been able to renegotiate much of their take-or-pay exposure, particularly for past periods. [47] For example, while the potential take-or-pay liability for pipelines as a group has been estimated at $7–10 billion, actual prepayments in rate base have been far smaller. See Exhibit O. Moreover, actual prepayments in rate base in July of 1985 were over $100 million *lower* than in December of 1982. (Exhibit O.)

In addition, as noted in Table C–1, over $470 million in take-or-pay liability has been bought out for about $80 million in amounts sought to be recovered through filings with the Commission. We also note the repeated statements in the comments [48] that negotiations remain active in this area and that the Commission's proposed "safe harbor" rule has slowed that process rather than encouraging it. It is mainly for this reason that we have determined not to promulgate rules relating to such buy-outs.

Accordingly, under these circumstances and given the fact that conditioning access would run completely counter to the whole idea of opening up the transmission grid on a non-discriminatory basis, the Commission declines to condition producer access as suggested.

6. *Withdrawal of a pipeline from self-implementing transportation.*

Comments. Some interstate and intrastate pipelines request that the final rule permit them to discontinue or abandon their self-implementing transportation authority in the future as a matter of sound business judgment and therefore avoid the non-discriminatory access condition on all subsequent individual transportation transactions.[49]

Other commenters, notably industrial end-users, urge the Commission to assure that pipelines do not use any "pre-grant" of abandonment authority for self-implementing transportation as a means of discriminating against shippers by moving "in and out" of a self-implementing transportation program initiated under the rule.

Commission Response. The Commission intends the self-implementing transportation authority in the final rule to provide incentives for pipelines to accept a conditioned certificate and to make use of Part 284 authorization. However, a pipeline's decision to do so is not irrevocable. The Commission does not intend to foreclose a pipeline from making a business decision to discontinue self-implementing transportation in the future and thus resume its status as a "merchant," only.

The rules governing a request to terminate all service under a Subpart G blanket certificate are the same basic rules as apply whenever a pipeline seeks to discontinue a particular service.[50] See 18 CFR 157.18. The Commission would review these requests on a case-by-case basis exactly as it does under the existing regulations.[51]

With regard to transportation under Subparts B and C, the Commission declines to promulgate regulations addressing termination of service. These services are not subject to section 7(b) of the NGA and we decline to impose comparable procedures by way of a condition issued under NGPA section 311(c). Instead, the Commission will view termination of service under Subparts B and C as subject to the non-discrimination condition. For example, a decision by an intrastate pipeline to cease providing interruptible service that it has been providing under Subpart C must be non-discriminatory. In other words, the decision to terminate transportation cannot be a subterfuge to avoid the regulations. But a bona fide decision to cease providing any self-implementing transportation would be non-discriminatory.

7. *Enforcement of the access conditions.*

Comments. Many producer and end-user commenters, while lauding the purpose behind the non-discriminatory access condition, nonetheless expressed doubts that its benefits would be realized without more specificity in the final rule as to what constitutes preference or undue discrimination, and how the generic standard will be enforced by the Commission on a case-by-case basis.[52]

Commission Response. As indicated above, the Commission believes that the changes in the ratemaking structure (and the tools for addressing take-or-pay obligations), once fully implemented, should avoid any need for an extensive policing mechanism. But we recognize that there may still be instances, especially initially and especially involving transactions between affiliates, where complaints of undue discrimination may be made.

Accordingly, the Commission believes it may be helpful to provide some guidance as to the types of conduct that we consider to be unreasonable and undue under the new rules.

First, it should be stressed that the Commission intends the non-discriminatory access condition imposed in this rule to be construed broadly as a first line of defense against arbitrary or exclusionary transportation practices. For example, the Commission finds that a refusal by a pipeline to transport gas in competition with its own sales services, is unduly discriminatory or preferential and in violation of the non-discriminatory access condition.

As another example, the Commission finds that transportation tariffs, terms and conditions, including but not limited to prices, minimum volume or operational requirements, or schedules, that are designed to favor pipeline affiliates over non-affiliated shippers are preferential or unduly discriminatory practices under this rule.

Similarly, the Commission finds that arrangements by pipelines that tie or "bundle" gathering, production, storage, or other services not requested by shippers to self-implementing transportation service offered under this rule would constitute undue discrimination in violation of the non-discriminatory access condition (and probably the rate conditions, as well), if the costs of such services are not properly allocable to a fully-allocated transportation rate.

In addition, § 284.12 of the final rule includes a requirement that all pipelines operating under the new rules make yearly filings showing the estimated peak day capacity of the system under reasonably representative operating assumptions. The Commission recognizes that pipeline capacity is not a single, fixed quantity, but something that varies according to time and operating conditions. Thus, the purpose of this filing is not to establish pipeline capacity, but to allow the pipeline, itself, to determine its total capacity and to submit that determination for public review.

Finally, we note that the Commission, in setting projected levels of transportation in individual rate cases, may include the express consideration of whether complaints of undue discrimination or preference have been made concerning a pipeline's transportation practices. For example, if it is determined that a pipeline has capacity available for transportation in excess of its filed for projected levels, the Commission may take into account verified complaints that such capacity is being withheld on a discriminatory basis or is being under-utilized, and set higher projected levels as a disincentive to such discrimination or under-utilization. The Commission could also disallow the inclusion in rate base of unused assets.[53]

Comments. Some commenters request assurances that there will be a mechanism that will permit reliable determinations as to whether pipelines are in fact providing transportation on a non-discriminatory basis. In this regard, some commenters recommend that each pipeline be required to file monthly reports listing all persons who requested transportation service during the prior month, the volumes for which transportation was requested and whether the pipeline agreed to transport and, if so, the volumes it agreed to transport.[54]

Commission Response. The Commission recognizes the importance of ensuring that it be made aware of pipelines that are not complying with the non-discriminatory access conditon. As noted above, the rate structures for self-implementing transportation, once fully implemented, help minimize the need for a special enforcement procedure. However, the Commission notes that shippers that believe they have been refused service in a discriminatory manner may, and can be expected to, apprise the Commission of that allegation. Such complaints may be reviewed on an expedited basis and further appropriate action taken. In addition, as noted above, a new § 284.12 has been included in the final rule requiring an annual filing by the pipeline regarding its total capacity. This filing should assist disappointed shippers in determining whether filing of a complaint may be appropriate or not.

The Commission has determined not to extend the non-discriminatory access condition on a generic basis to all section 7 transportation certificates at this time. The Commission does not consider undue discrimination or preference any more acceptable under individual section 7 transportation or sales certificates than under self-implementing transportation authority. However, individual section 7 transportation arrangements can be scrutinized in advance by the Commission on a case-by-case basis when they are applied for; whereas, self-implementing transportation authority permits such arrangements to proceed on a "blanket" or generic basis.

For this reason, the Commission will continue to review individual section 7 certificates on a case-by-case basis to determine whether they should or should not be subject to an express (as opposed to the statutory) nondiscriminatory access condition.

8. *Quality of self-implementing transportation service and allocation of capacity.* a. *Background on pipeline capacity.* Pipelines currently transport gas on a firm or interruptible basis for any of three purposes:

1. To transport their own "system supply" gas as a transportation component "bundled" with sales service to firm or interruptible sales customers;

2. To transport gas they do not own for an individual shipper, such as on behalf of an interstate pipeline or a pipeline customer, on a firm or interruptible basis under an individual transportation certificate issued by the Commission under section 7(c) of the NGA; or

3. To transport gas they do not own for shippers generally on a self-implementing and on an interruptible basis on behalf of other interstate pipelines or local distribution companies under section 311 of the NGPA or on behalf of other interstate pipelines or high- or low-priority end-users under a "blanket" transportation certificate pursuant to section 7(c) of the NGA.

The essence of firm service is that it is not subject to a prior claim by another customer or another class of service. All firm services share the same priority, which is the priority of "first-come, first-served" that pipelines have traditionally applied to firm sales and transportation service.

In general, a large percentage of a pipeline's capacity may be reserved at any given time for firm sales and firm transportation. However, customers that have reserved or "booked" pipeline capacity and thus have first claim on its use may not always use the entire amount they have reserved. Traditionally, pipelines have taken advantage of that unused (but "booked") capacity by offering a sales or transportation service that is subject to being terminated or "interrupted" by the prior claim of firm sales or transportation customers. Although this interruptible service is inferior to and less valuable than firm service, its offering seeks to maximize utilization of idle pipeline capacity and therefore is in the public interest and must be encouraged by ratemaking. *Any* pipeline capacity not in use at any given time may be used for interruptible transportation, for example.

The firmness of interruptible transportation can be expected to vary from day to day. It may approach the reliability of firm transportation in certain periods, such as periods when a pipeline's transmission facilities are not subject to maximum or "peak" demand. For example, for ratemaking purposes, pipelines with temperature-sensitive loads in the wintertime generally plan for peak demand on the coldest days of the year, and thus expect to be able to provide interruptible transportation of a quality very close to "firm" service during off-peak periods, such as the summertime.

The proposed rule required pipelines to offer self-implementing transportation services on a firm basis, but neither required not precluded that such services be offered on an interruptible basis as well. The proposal also stated that self-implementing transportation service would be subject to the same curtailment priorities and procedures established for a pipeline's sales customer, and that self-implementing transportation customers could not be discriminated against in the quality of service they receive compared to any other transportation services offered by the pipeline.

However, the proposed rule did not expressly state that firm or interruptible transportation capacity would be allocated in any particular way, and the requirement that firm transportation service be offered did not expressly state that it be offered *subject to available capacity.*

Many commenters addressed the interrelated issues of quality of transportation service, curtailment priorities for transportation service, and allocation of transportation capacity.[55] The issues can be narrowed to three major issues discussed below.

b. *Requirement to offer interruptible service.*

Comments. A number of industrial end-users criticize the Commission for not proposing to require that pipelines accept requests for interruptible transportation, as well as firm transportation, if capacity is available. Several of these commenters, such as the New England Energy Group, request the Commission to provide in the final rule that interruptible transportation is a mandatory obligation on the part of those pipelines that elect to participate in the Commission's self-implementing transportation programs. The Industrial Energy Services Corporation, Inc. (IESCO) states, further, as a rationale for this suggestion, that interruptible service is the only practical type of service for many end-users. These are end-users that have a sufficiently large load and that require the lower interruptible service rate for economical reasons. They assert that if pipelines are allowed to terminate interruptible service, the bulk of end-user transportation may become uneconomic.

Commission Response. As discussed above, one function of the non-discriminatory access condition is to prevent pipelines from discriminating among shippers of a particular class that seek transportation service. Accordingly, the non-discriminatory access condition requires that pipelines allocate available capacity to persons requesting transportation not only for gas purchased from a source other than the pipeline, but also for gas purchased from the pipeline.

Implicit in the proposed rule's requirement that self-implementing transportation be offered on a "firm" basis was the intention that pipelines be indifferent as to the benefits of transporting gas at peak and off-peak periods. The ratemaking goals of rationing capacity, maximizing throughput, and apportioning revenue responsibilities can only be achieved if transportation services of the same quality are offered at different times of the year at seasonally differentiated rates and subject only to the capacity priority of peak "firm" customers over nonpeak "interruptible" customers.

However, the use of the word "firm" may be confusing. The Commission has concluded that, in order to achieve the goal of non-discriminatory access to transportation services during off-peak as well as on-peak periods, the final rule should require that an interstate pipeline that chooses to hold itself out as a transporter should offer *both* firm and interruptible transportation service, on a non-discriminatory basis. This is reflected in the final rule in § 284.9(a)(i).

If the non-discriminatory access condition applied only to firm transportation service, only a small minority of transportation services, available only on a firm basis to shippers, would be covered, and the large majority of transportation "deals" sought by shippers today on an off-peak, interruptible basis would remain uncovered.

However, because transportation services offered by intrastate pipelines under section 311 of the NGPA are often by business nature and state regulation required to be interruptible and subject to the priority of the pipeline's strictly intrastate services and operations, the Commission has determined to *not* impose any quality of service requirement on intrastate pipelines under this rule. See § 284.9(a)(2). Thus, intrastate pipelines under the final rule are expressly free to choose whether or not to offer firm transportation, interruptible transportation, or both. Once an intrastate pipeline chooses, however, it must offer such quality of service on a non-discriminatory basis.

c. Application of sales curtailment priorities to transportation capacity

Comments. Many commenters argue that the NOPR's proposal that transportation service provided by a pipeline pursuant to the non-discriminatory access provision be subject to the same curtailment priorities and procedures as those established by the pipeline for its sales customers is infeasible. These commenters argue that this aspect of the proposal does not recognize the inherent significant differences between capacity-induced curtailment and supply-induced curtailment. For example, Tennessee Gas Pipeline (Tennessee) points out that supply-induced curtailment of firm sales service is based on the ultimate end-use of the volumes sold and is subject to the emergency allocation procedures of Subtitle A of Title III of the NGPA. Other commenters emphasize that pipeline end-use curtailment plans for sales customers were established in the 1970's to protect high priority end-uses from lower priority end-uses and were not intended to be used in a time of excess gas supplies. While some commenters indicate that capacity curtailment priorities should not give preference to some end-users over others, several LDCs take the opposite position, requesting that all LDCs be given preference during capacity curtailments, regardless of whether a particular LDC relies on a pipeline to both secure and transport gas supplies on a firm basis or relies on a pipeline only for firm transportation of gas purchased by the LDC elsewhere.

One pipeline that functions primarily as an LDC, Equitable Gas, asserts that the Commission lacks authority to establish priorities for the curtailment of pipeline transportation of gas owned by others. Equitable Gas asserts that the Commission may require curtailment plans only for the purpose of allocating pipelines' own supplies. Because gas supplies transported by a pipeline under the Commission's self-implementing transportation programs is owned by the shipper, not the pipeline, Equitable Gas concludes that the shipper should continue to receive those supplies despite the curtailment priorities established by the transporting pipeline or the Commission.

Commission Response. The Commission agrees that there is a significant difference between curtailment due to lack of gas supplies and priorities for firm and interruptible transportation due to limited capacity. Almost all of the pipeline curtailments during the 1970's related to *supply* shortages, not *capacity* allocation. Gas demand at the prevailing price level exceeded supply available at that prevailing price and supplies had to be spread equitably among all pipeline customers. Each pipeline company had a separate curtailment proceeding, and most now have curtailment priorities on file at the Commission. Nor during the supply curtailment era were gas supplies owned by individual shippers allocated among sales customers of the pipeline. In fact, the need to *encourage* "self-help" transportation of gas from areas of ample supply to areas of curtailment was a prime impetus behind Title III of the NGPA and its goal of a nationally integrated gas transportation system.

The reference to curtailment priorities in the proposed rule was intended to make clear that in any era of capacity curtailment, firm transportation service is not to be accorded any lesser priority than firm sales service. The same equality should exist as between interruptible transportation and interruptible sales service under the rule. In any future era of supply curtailment where the pipeline is unable to honor all of its firm sales contracts, as in the earlier era of supply curtailment, gas being transported normally should not be subject to curtailment by the pipeline at all, because it would be the pipeline's system supply, not the shipper's gas, that would be curtailed.

Thus, for example, capacity may have to be allocated in *force majeure* circumstances, *i.e.*, a sudden loss in capacity due to an unanticipated failure of some aspect of the pipeline's system, such as failure of a compressor station. Under these circumstances, pipelines will continue to allocate the limited capacity among its firm and interruptible customers—whether sales or transportation customers—on the same basis that it currently allocates capacity when there is a decrease in capacity.

Under the transportation program implemented by this rule, the only other form of capacity curtailment which might be expected to occur would be due to a pipeline's overbooking or overselling its capacity. With the modification in the final rule allowing for capacity reservation charges to be imposed for the reservation of firm service, overbooking of firm service is not expected to be a problem.

However, the Commission intends nothing in the final rule to affect the contractual provisions between the parties that may govern the liability and rights relating to a pipeline's overselling or overbooking transportation capacity. Normally, a pipeline's contracts for firm and interruptible transportation service will detail the rights of the shipper to reserved "firm" capacity, or "interruptible" service subject to the availability of capacity on a first-come, first-served basis.

d. Application of "first-come, first-served" principle to capacity

Comments. Many commenters request clarification as to how available capacity is to be allocated, as the NOPR did not explicitly address this issue. A majority of the commenters favor the allocation of capacity on a first-come, first-served basis rather than on a pro-rated basis.[56]

"First-come, first-served" means pipelines would only be required to provide transportation where capacity is available. "Prorated" means a pipeline would be required to provide service to all shippers and prorate capacity among all shippers to provide such service.[57]

These commenters indicate that the first-come, first-served approach would be consistent with an interpretation of the non-discriminatory access condition as a contract carriage, as opposed to a common carriage, condition. Further, these commenters oppose capacity allocation on a prorated basis because they do not believe that shippers that make early requests for firm transportation and are allocated capacity sufficient to meet their needs should be subject, once all capacity available has been allocated, to having their allocations adjusted downward because late-comers request firm transportation.

In addition, the majority of commenters oppose prorated allocation on the grounds that it would encourage customers to nominate volumes far in excess of their needs in order to assure favorable treatment in the event of a reallocation.[58] This, according to the commenters, in turn would create planning problems for pipelines especially if fully volumetric rates are mandated by the Commission. However, some commenters favor prorated allocation in order to ensure that all customers will be able to realize some benefit from the non-discriminatory access condition.[59]

Several commenters propose an "auction" of capacity allocation whereby capacity would be allocated to those shippers willing to pay the most for it, within certain minimum and maximum limits. According to the American Gas Association, there are several advantages to this approach, such as: (a) Unlike a prorated allocation, the shipper could rely on its contract rights; (b) unlike first-come, first-served allocation, there would be minimal regulatory distortions because the parties' bids would reflect the relative value of the service, so that capacity would be allocated efficiently and (c) even though some bidders might be willing to pay more for their service than others, all charges would be allocated to recover the pipeline's cost of service, thus benefiting all of the pipeline's customers.[60]

A small group of commenters, consisting of a number of LDCs and pipelines, including Natural Gas Pipeline Company and Tennessee Gas Pipeline, recommend that pipelines themselves retain the right to designate available capacity for both firm and interruptible transportation on their system.

Designated Producers suggests establishing two classes of firm service for capacity allocation purposes. The first class would be comprised of a pipeline's "existing" firm sales and transportation service—*i.e.*, firm service authorized under NGA section 7(c) certificates issued before the effective date of the proposed rules. The second class of firm service would be for existing customers, not authorized under NGA section 7(c) certificates as of the effective date of the proposed regulation. Under Designated Producers' proposal, if an interstate pipeline elected to offer transportation service separately from sales, it would be required to provide firm capacity for transportation service first to existing firm sales customers that opt to switch to firm transportation through the term of their existing contracts. In addition, Designated Producers suggests that a pipeline should be required to offer all new firm service—whether such service was regular NGA section 7 pipeline sales or transportation service or NGPA section 311(a) or blanket certificate transportation service—on a non-discriminatory basis. To the extent that sufficient firm capacity was not available to satisfy all requested new firm sales and transportation service for a particular time period or segment of the pipeline's system, the available firm capacity would be prorated among all shippers requesting new firm service.

Under this arrangement, according to Designated Producers, an interstate pipeline's existing firm sales customers would continue to receive as much transportation service as they were entitled to under their purchase contract prior to the effective date of the proposed rules. In addition, customers requesting first-time sales or transportation service would have equal access to the pipeline's remaining capacity available for firm service, which would increase as the contracts underlying existing NGA section 7(c) certificated service expired.

Commission Response. In response to these comments, the Commission clarifies what was always intended in the proposed rule: self-implementing transportation services must be offered to all shippers on a non-discriminatory basis *to the extent capacity is available, that is, on a first-come, first-served basis.*

Section 284.10 of the final rule provides a transitional rule under which existing firm sales customers of a pipeline may convert the remainder of a firm sales service agreement to firm reserved transportation through payment of appropriate reservation fees as detailed in the rule.

Thus, a distributor (or other firm sales customer) may obtain firm transportation capacity outside the general first-come, first-served rule. This results simply because a firm sales customer has *already* booked the transportation capacity currently "bundled" with, and necessary to effectuate, the sale; accordingly, there is essentially no harm to allowing a conversion of the already booked transmission capacity from transportation "bundled" with sales to "unbundled" transportation service.

Firm sales customers that convert their contract demand rights to transportation rights, as described below, will have the same priority of service under their converted transportation service as they did under their firm sales service agreements. There is no change in the quality or priority of their service, because the priority of their claim on the pipeline's capacity is unchanged by conversion.

Other customers that seek transportation service under the self-implementing transportation program (or customers that wish to utilize capacity in excess of the conversion amounts) will be offered firm transportation on a first-come, first-served basis equivalent to the quality of other firm transportation offered by the pipeline. This means that the traditional customers that receive firm transportation or sales service under traditional section 7 procedures will not be able to pre-empt those that purchase transportation service under the self-implementing procedures. Stated differently, once a customer has contracted for, or "booked," a pipeline's firm capacity under this rule, that customer will be entitled to the same firm service as any other firm customer since it is guaranteed that capacity is available.

The first-come, first-served principle has not been expressly stated in the final rule for the same reason that it is not stated in the existing rules. The scheme of regulation established by the NGA is predicated on a system of private contracts.[61] With the possible exception of Commission remedial action, the only mechanism for a customer to compel a pipeline to serve it is section 7(a). Under all other sections, the Act presupposes a contractual agreement. The present rules do the same. The only change is that the present rules make explicit in the regulations the statutory obligation that a pipeline may not unduly discriminate in deciding with whom it will contract for transportation.

The question as to how much of a pipeline's capacity will be available for other than traditional firm sales and transportation service (including converted transportation) will be determined on an as-available basis. Factors that will be considered in determining the capacity available for this service include the pipeline's overall physical capacity, firm sales capacity, adjustments and conversion of customers with contract demands and any existing firm transportation obligations. The remaining available capacity would be available for nominations by shippers for firm or interruptible service.

Once that level of capacity available for nominations has been determined, the pipeline will be able to accept nominations from customers willing to contract for the capacity. Customers making offers for that capacity will specify in their nomination relevant information such as volumes to be transported, origins and destinations of those volumes, and periods for transportation. Pipelines will review these nominations and make determinations as to available capacity. Thus, under the first-come, first-served rule, last-comers cannot jeopardize the capacity that was contracted for by the first customer. Once a pipeline and a customer agree that a portion of that capacity will be contracted to that customer, that customer should have firm or interruptible transportation rights to that capacity as contracted for, *i.e.*, no later customer will have greater priority to that capacity.

As discussed above, pipelines will be required to offer interruptible service to any customer who requests it, subject to the same non-discriminatory access provision applicable to its other activities. Customers willing to accept that available capacity on an interruptible basis may submit nominations for that capacity. Since that customer's claim to a pipeline's capacity is interruptible, its claim is inferior to that of the firm customers. Therefore, if any of the pipeline's firm customers, including customers with converted transportation rights or customers with other firm transportation rights under this rule, demand their firm transportation, the firm customer will pre-empt the interruptible customer.

The Commission has reviewed the "auction" of capacity rights proposed by AGA, and believes that the requirement that a pipeline establish downwardly flexible, seasonally differentiated transportation rates accommodates the concept of "auctioning" transportation capacity consistent with competitive conditions in the marketplace. Moreover, the provision in the final rule for reservation charges for firm service means that shippers will be able to rely on firm, reserved service. Therefore, the Commission has declined to adopt AGA's proposal for a "bidding" process.

The Commission also rejects the option proposed by some pipelines of retaining discretion to designate the capacity they would make available for self-implementing transportation. Such a designation would be inconsistent with the requirement that pipelines offer such services to all shippers on a non-discriminatory basis to the extent capacity is available in an objective, factually verifiable sense.

9. *Transitional options of firm sales customers to reduce firm sales entitlements and to convert to firm transportation.* a. Background. The final rule is intended in part to assure all pipeline customers, including customers served by or through a single pipeline, an opportunity to obtain access to the competitive market for the natural gas commodity, at least where the pipeline chooses to operate under the authority of the new rules. In order to achieve this goal, the proposed rule has been modified so that a firm sales customer will have an option to reduce its firm sales entitlements (or contract demand) (hereafter "CD") and an option to convert firm sales entitlements into firm transportation, as specified below. This option becomes available because a pipeline agrees to provide it as a condition for operating under the self-implementing rules. The options would be phased-in at up to 25 percent a year. They are not available to the customers of a pipeline which chooses not to avail itself of the benefits of the self-implementing transportation program.

Typically, a firm sales contract between a pipeline and customer obligates the pipeline to be ready to sell a certain amount of gas, say 1,000 Mcf, each day. This amount is typically called the contract demand. In the final rule, the Commission has used the broader term "firm sales entitlement." See §§ 284.10(c) and 284.10(d). For those pipelines where the application of this term may be unclear, the matter may be addressed on a case-by-case basis.

As noted above, while pipelines may have considerable capacity to transport gas on an interruptible basis (Chart I), the *firm* capacity of most pipelines is generally contracted for. Yet, with the changes in the natural gas markets over the last decade, the levels contracted for by customers on a firm sales basis may no longer correspond to what they desire to purchase.[62] This means that on some systems, interruptible transportation is *as a practical matter* virtually the same quality of service as firm. This state of affairs then raises issues as to the equity of allowing an interruptible customer to purchase essentially firm service at a substantially lower rate than that paid by firm customers. Moreover, it deprives potential customers that would be willing to contract for firm service from being able to purchase such service.

Accordingly, the CD reduction option is designed to allow a "freeing up" of presently contracted firm service so that the transmission capacity presently "bundled" with the sales entitlement may be sold separately to willing shippers. As discussed below in section IV.A.9.b.(iii)(D), the purpose of the CD reduction option is thus *not* to reduce the total fixed charges paid by a firm customer. That may or may not occur, depending on other factors. The purpose rather is to allow a freeing up of unwanted firm capacity.

The conversion option is essentially a particular type of reduction in which the firm sales customer still wishes to contract for firm capacity, but seeks firm transportation capacity, "unbundled" from gas sales service. Since the firm sales customer has already reserved the transportation capacity (when it was "bundled" with the sales service) and since the customer already has a contract with the pipeline which includes that transportation capacity, the conversion from firm sales to firm transportation is, with regards to the pipeline's transmission costs, a fairly straightforward arrangement.

With regard to the costs associated with the displacement of sales that would otherwise have been made by the pipeline, the issue is one of treatment of take-or-pay costs, discussed below, and recovery of those costs not included in any demand or reservation charge.

The transitional contract demand reduction and conversion options are essential if the goal of non-discriminatory access to transportation is to be achieved when pipelines operate under the new transportation rules. With such an option, full-requirements customers—especially small, sole-supplied local distribution companies with primary temperature-sensitive residential and commercial loads—will have access to competitively-priced supplies of the gas commodity.

Thus, they will no longer be dependent on a single merchant for their gas supplies, and will have some flexibility to swing their purchases of the gas commodity among alternative merchants, just as partial-requirements customers are already able to do under the Commission's Order No. 380, which prohibits the imposition of variable costs in pipeline minimum commodity bills for gas not taken.

To the extent full-requirements customers will be able to convert a portion of their CDs under this rule to firm transportation in order to obtain access to the competitive wellhead market, even on a limited basis, they will be provided an opportunity somewhat comparable to the opportunity enjoyed by partial-requirements customers to "swing" among pipeline suppliers under the minimum bill rule.[62] In this regard, the CD conversion option is the logical complement to the minimum bill rule.

On the other hand, the customer's right to adjust a CD is balanced with a "two-way" street of rights and obligations with its pipeline supplier. Costs must be, and are, recognized in the final rule. To accomplish this balance, the final rule allows the conversion and reduction options only to customers of pipelines that offer self-implementing transportation and gives such pipelines the right to apply for commensurate abandonment of their certificated sales obligations under § 157.18. In addition, pipeline customers who chose to adjust their CDs risk the inability to automatically "swing" back to sales service on the same pipeline without filing and approval by the Commission of new or amended sales certificate obligations under section 7 of the NGA. Thus, such decisions will not be lightly taken.

b. *Comment analysis.*

Several issues regarding the access of firm sales customers to transportation were raised by commenters. Pipeline and producer commenters who opposed the CD adjustment asserted that the Commission lacked legal authority to impose it as a condition of self-implementing transportation.[64] Commenters who supported the right to adjust CDs supported the Commission's legal authority but urged the Commission to permit customers to *convert*, as well as *reduce*, their CDs into firm transportation service upon payment of a reservation charge.[65]

Other commenters asserted that the proposed rule would allow customers to reduce CDs unilaterally, and they questioned the Commission's authority to allow such purported unilateral action, especially if the fixed costs attributable to the reduced CDs would be reallocated among the pipelines' remaining customers.[66]

Still other commenters addressed the scope of the CD adjustment rights, including the 4-year phase-in period; applicability to intrastate customers; applicability to sales service agreements entered into after a pipeline begins self-implementing transportation; and the operation of the CD adjustment rights in relation to fixed cost minimum bills, sole supplier clauses and a customer's allotment of "Block 1" gas under the block billing procedure proposed by the rule.[67]

These comments and issues are discussed below.

(i) Legal authority.

Comments. Many commenters, especially producers and pipelines, oppose the CD adjustment rights on legal grounds.[68]

Some commenters assume that the right is based on our authority under 7(e) to condition certificates. They argue that section 7(e) does not give us this authority, citing *Panhandle Eastern Pipeline Co. v. FERC*, 613 F.2d 1120 (D.C. Cir. 1979), which held that:

> the Commission may not, as a condition on a section 7 certificate, require the pipeline to adjust rates previously approved by it for customers not receiving the services to be certificated. In other words, the Commission may not tinker with rates found just and reasonable in conditioning a certificate dealing with other sales and services.

Commission Response. These comments appear based on the assumption that the proposed rule would automatically allow firm sales customers to shift cost responsibility onto other customers or onto the pipeline's shareholders. As explained more fully in section IV.A.9.b.(iii)D., this is not how the final rule operates.

First, by adding the conversion option and specifically allowing for reservation charges for firm service, the final rule recognizes cost responsibility for firm service and sharply reduces the potential for cost shifting. Second, the primary purpose of the CD reduction option is to allow a freeing up of firm capacity, not to allow existing customers to simply reduce the level of the monthly payments. The issue of establishing rate *levels* is left to individual cases; the instant rule seeks only to establish a rate *structure*.

Moreover, reliance on the *Panhandle* case is misplaced. *Panhandle* held that to adjust rates previously set, the Commission must follow the procedures specified in section 5(a) of the NGA. With regard to establishing the rate conditions, that is exactly what we are doing here.

This response is equally applicable to the argument of Panhandle Eastern and Trunkline that section 311(c) does not give us sufficient authority to issue § 284.10 (§ 157.21 in proposed rule). To the extent Panhandle Eastern and Trunkline argue that by enacting section 311 of the NGPA Congress intended to limit our authority under section 5(a), we reject the argument. Nothing in the NGPA or its legislative history suggests that Congress intended by enacting section 311 of the NGPA to limit our authority over NGA-jurisdictional transactions under section 5(a) of the NGA.

Comments. Many commenters opposing the CD adjustment right recognize that section 5(a) gives the Commission the authority to impose the rule if the requirements of the statute are satisfied. The commenters argue that the requirements of the statute cannot be satisfied. Several commenters argue that this is so because we can allow a customer to reduce its demand charge only after we have made findings concerning the impact on each pipeline and its other customers. In short, these commenters argue that we cannot impose the right on a generic basis but must proceed on a case-by-case basis.[69]

Commission Response. Again, the changes made in the final rule largely address the underlying concerns raised by these comments. We note in any event that the courts have held we can make a section 5 determination generically. *See Wisconsin Gas Co. v. FERC*, No. 84-1358 (D.C. Cir. Aug. 20, 1985). See also DOE Organization Act, section 403(c).

Comments. Other commenters, such as Amoco, argue that the CD adjustment right is inconsistent with the requirement of section 5(a) that the Commission "shall fix" the just and reasonable rate or practice to be thereafter observed. This requirement, it is argued, means that the Commission, not a customer, must decide whether a contract is in force. The CD adjustment right, it is asserted, gives the customer the discretion to make this determination.

Commission Response. The conversion and reduction options are in no way an abdication by the Commission of its section 5 responsibilities, nor do they create any "unilateral" rights to breach contracts. Rather, the regulation merely provides that, if a pipeline desires to provide service under the self-implementing transportation rules, it must also agree to provide its existing customers the CD reduction and conversion options in § 284.10. The rates charged for converted transportation will continue to be set by the Commission under the NGA. Accordingly, the Commission disagrees with the comment that § 284.10 is somehow unlawful.

Comments. Other commenters argue that we cannot make the findings required by section 5(a)—that the rate be unjust, unreasonable, unduly discriminatory, or preferential. A number of these commenters argue that this is so because the effect of the CD adjustment right is to modify contracts.

The Commission may modify contracts, these commenters argue, only "in circumstances of unequivocal public necessity," citing *Permian Basin Area Rate Cases*, 390 U.S. 747, 822 (1968).

Commission Response. The final rule does not modify these pipeline-distributor contracts. The rule provides only that if a pipeline voluntarily chooses to operate under the self-implementing rules, then it must agree to provide the reduction and conversion options to its firm sales customers as a condition on the exercise of that choice. While the Commission certainly has authority to modify jurisdictional contracts under section 5 of the NGA, *Permian Basin Area Rate Cases*, 390 U.S. at 784, that authority need not be invoked here. It is the voluntary decision of a pipeline to accept the self-implementing transportation authority that reflects the concomitant agreement to provide the contract reduction and conversion options to its customers.

(ii) Reasonableness of the CD reduction and conversion options. Other commenters argue that the CD adjustment option is an unreasonable condition to place on self-implementing transportation.[70]

Comments. These commenters note that the pipelines, having entered into a sales contract with the customer, acquired gas reserves to supply the customer and built facilities to deliver the gas to the customer. Panhandle Eastern Pipe Line Co. and Trunkline Gas Co. note that in many instances pipelines did not enter into the contract with the customer voluntarily. Instead, they entered into the contract only because the Commission, acting pursuant to section 7(a) of the NGA, ordered them to serve the customers. Panhandle Eastern and Trunkline say that 44 of their 77 firm sales customers are customers because of section 7(a) orders. Since the NGA is premised upon a continuing system of private contractual arrangements, the commenters argue that the Commission must consider the parties' reliance on their contracts and must not override the parties' expectations except in the clearest of situations.

Commission Response. The comments assume that the CD reduction right proposed in the NOPR allowed customers to simply breach contracts and avoid costs. The comments have been very helpful in emphasizing the need to articulate that this was not intended and does not result from the final rule. The comments also have helped refine the focus on the potential cost-shifting consequences of the proposal.

The final rule has been modified as a result. First, the Commission reiterates that the final rule does not override contracts. There is no requirement that a pipeline operate under the self-implementing rules. Moreover, with the inclusion of the conversion option in § 284.10(d) and the provision for reservation fees for such converted transportation, the concern that pipelines expressed over cost recovery is vastly diminished. The concern among customers of cost shifting is similarily diminished.

A discussion of the operation of the CD reduction and conversion option is useful in understanding these issues and the basic reasonableness of the conditions.

The commenter misconstrues the purpose and effect of the CD reduction option. It does not necessarily provide for a reduction in the level of demand charges paid. That result may or may not obtain, depending on many other factors.

What it does do is enable the customer to reduce the *volumetric* level of its firm sales entitlements. The effect of such a reduction must be evaluated in conjunction with the conversion option also provided for under the rule.

If all customers of a pipeline convert an equal percentage of their existing firm sales entitlements to an equal volume of firm transportation and if they pay the maximum permissible reservation fee for that service, then the level of fixed charges they pay will be essentially identical. The only difference will be the portion of the sales demand charge attributable to firm sales that is not properly allocable to firm transportation. This will be a very small amount except in those instances where the pipeline purchases gas from other pipelines and these pipeline supplies account for a significant portion of total supplies. Moreover, if in the rate proceeding these costs are reallocated back over remaining firm sales services, then the customers will pay an identical level of fixed charges as before the conversion. The difference, of course, is that they will be able to purchase the gas commodity from an alternative merchant in a competitive market. The judgment as to whether the customer is likely to be better or worse off under this arrangement is left with company managements. That is why the program is optional, both with respect to whether a pipeline wishes to operate under the new rules and whether its customers wish to exercise the options that a pipeline's participation make available.

If all customers reduce their firm sales entitlements by an amount that is, in the aggregate, greater than the amount which is converted to firm transportation, then there is an excess of reductions over conversions. Under these circumstances, the pipeline may *not* recover essentially the same level of fixed costs through fixed demand and reservation charges, depending upon whether additional firm sales or transportation can be contracted for. It may ultimately be necessary for the pipeline to file a rate case to spread the difference over all firm sales and transportation services. If such a reallocation of costs is approved by the Commission, then the level of fixed charges to the customers will change to reflect such reallocation. If the reallocation is found by the Commission to be unjust, unreasonable, unduly discriminatory or preferential, then a different allocation of costs would be prescribed.

Again, the major purpose of the CD reduction option is to allow a "freeing up" of unused firm capacity that existing customers presently have "booked" but no longer desire to reserve. This capacity is then free to be sold on a firm basis to other customers.

To the extent the risk of underutilization is assigned to customers through a reallocation of costs to them, then the pipeline has less need of flexibility in pricing its services. To the extent the risk of underutilization is assigned to the pipeline's *shareholders*, however, as some commenters appear to wish, then the pipeline must be given the maximum flexibility to price its services to meet all competition.

Three hypothetical examples illustrate more concretely how the procedure works.

The first case involves a customer's 25 percent conversion of its sales CD to firm transportation. If the customer's sales contract demand is 1,000 Mcf per day, the customer would convert 250 Mcf to firm transportation. Thus, the pipeline would be obligated to sell the customer up to 750 Mcf per day and transport up to 250 Mcf per day.

The second case is that of a firm sales customer whose contract demand exceeds its expected maximum usage. For example, if the customer's sales contract demand was 1,000 Mcf, but the customer expected to need no more than 800 Mcf on any day, the customer could reduce its contract demand to 800 Mcf. The pipeline would then not have to stand ready to sell 1,000 Mcf per day to the customer. It would only have to stand ready to sell 800 Mcf per day. This would free up the capacity for other services, including firm transportation.

Third, the firm sales customer may reduce its contract demand and buy an equivalent amount of firm sales or transportation service from another pipeline. Thus, for example, the firm sales customer may reduce its contract demand by 250 Mcf and buy 250 Mcf per day of firm sales or transportation service from another pipeline. The customer may also reduce its contract demand and take the interruptible service provided for by this rule. This is really a special case of the first situation.

In the first case, by paying a demand charge the customer bore a portion of the costs of the pipeline's demand-related production, gathering, storage, and transmission costs. When the customer converts, it will continue to be allocated the same portion of the pipeline's demand related transmission costs. But it will not necessarily be allocated the same portion of the pipeline's other demand related costs. Depending on the operation of the pipeline and the type of transportation service provided, some of the pipeline's demand-related storage costs may be allocated to the transportation service. On some pipeline companies, such as El Paso, gathering costs are significant. Hence in some cases, cost-shifting may occur. In addition to these consequences, with the loss of sales to the customer, the pipeline may incur take-or-pay liabilities. If the pipeline does incur these liabilities, the costs will, consistent with the Commission's established rules, be eligible to be included in rate base. *See* Order No. 380, slip op. at 44, n. 47. The carrying costs of the liabilities will then be recovered in the pipeline's rates.

In the second case, there would also be a change in revenue-responsibility. What will happen is the pipeline will lose the revenue produced by the customer's demand charge payments, but may be able to make them up through other services. However, should the pipeline experience a revenue deficiency, we would assume, for the sake of argument, that it seek a rate increase from its remaining sales and transportation customers.

In the third case, costs will be re-allocated among the remaining sales and transportation customers, assuming the capacity is not utilized by other services. In addition, the pipeline may incur take-or-pay liability.

We do not believe these effects will be significant. In the first case, the customer will continue to pay its share of the pipeline's fixed transmission costs, which today account for a small percentage of the overall delivered price of gas at the city gate. Fixed transmission costs are by far the largest component of pipeline's fixed costs. The amount of costs shifted to the pipeline's remaining customers will generally not be large. The opponents of the CD adjustment right recognize this, for they argue that, if the Commission adopts the rule, customers should be required to, or at least be given the right to, convert to mitigate the shifting of costs. Such a conversion option is provided for in § 284.10 of the final rule.

The second situation should be rare. Most firm sales customers need their full contract demands on peak days.

In the third case, costs will be shifted to the pipeline's remaining customers. But by switching to another pipeline, costs will be allocated away from that pipeline's other customers. Hence, viewed from a national perspective of increased competition, there may not be much of a problem. The same is true also for take-or-pay problems in the first and third cases, for the customer will continue to buy gas. If it does not buy the gas from one pipeline, it will buy it from another merchant.

Moreover, our description of the cost-shifting consequences of a reduction in contract demand assumes the pipeline will do nothing in response. As illustrated by the experience since implementation of the minimum bill rule, suppliers and customers, is not a reasonable assumption. As customers reduce their contract demands, unused pipeline capacity will be freed up for sales or transportation, or more costs will be allocated to the remaining customers, who will then reduce their contract demands, unless the pipeline lowers its costs to maximize its capacity utilization. Either way, the pipeline will seek out new business at more competitive prices. If it does the new savings will be spread among the new customers as an offset to any increased costs. Since the reduction in contract demand will make available additional capacity for firm service and since this rule gives pipelines increased ability to attract new customers and retain revenues, the pipeline should be able to expand its capacity utilization and revenue stream. If it does not, we can impute projected levels to give the pipeline an incentive to do so. Thus, the problem of cost-shifting should be small. Alternatively, the pipeline may reduce its capacity by discontinuing the use of unneeded compressor facilities or similar steps. Reductions in actual capacity would mean a reduction in the pipeline's rate base. The assets removed could then be deployed in more productive uses.

Nevertheless, there will be some cost-shifting in the short-term and, in some cases, in the long-term. Many commenters argue that this should not happen. Some, principally distributors who otherwise support the CD adjustment right argue that the pipeline's remaining customers should not bear any increased costs. Other commenters argue that neither the pipeline nor its remaining customers should bear any burden.

Fundamentally, there is no mechanism available to the Commission which will prevent all shifting of revenue responsibility (i.e., costs) among customers. A number of possible mitigating mechanisms have been considered.

One way to protect the pipeline's remaining customers is simply to prohibit the pipeline from shifting any costs to them. This, however, would put the risk of any loss on the pipeline. While we have essentially adopted this approach under the optional expedited certificates for new service, the case for applying such a rule across the board to existing facilities is not very well supported. Another way to protect the remaining customers and the pipeline would be to require the customer that converts to bear, at least until that customer or the pipeline found another customer, the same fixed cost burden it did as a sales customer. In addition, the customer would be responsible for any take-or-pay liabilities the pipeline incurred. Yet another possible way of protecting the pipeline and its remaining customers is to require the customer that converts to pay essentially an exit fee. Yet another device is to require the customer to convert rather than reduce CDs. In short, this suggestion would prohibit a customer from reducing its contract demand because it is unneeded or because the customer wants to switch to another pipeline.

The Commission concludes that each of these proposals, while mitigating cost shifting, would in effect prevent customers from making use of the transportation services provided for in this rule or protecting themselves from any adverse consequences of the pipeline's efforts to compete, particularly as a merchant.

More important, in most cases no specific pipeline facilities can be identified as being used in servicing only one customer. Instead, the pipeline is built and is operated on an integrated basis to serve all customers. Hence, it is generally appropriate for the pipeline's remaining customers to bear the burden of paying for the facilities used to serve them.

Finally, the reason costs will be shifted is because the customer that converts can get a better deal on the gas commodity from an alternative merchant. This is simply another way of saying that constructive competition exists. Hence, it cannot be said that either the pipeline or its remaining customers should be immune from feeling the "pinch of competition." Indeed, the law is just the opposite. *Atlantic Seaboard Corp. v. FPC*, 404 F.2d 1268, 1273 (D.C. Cir. 1968).

Take-or-pay costs stand on a somewhat different footing, since these costs are not incurred as a function of providing sales service but as a function of *not* providing that service. Thus, it may be possible to identify these costs as being caused by a given customer's decision to convert. If that can be done, the allocation of these costs can and will be equitably apportioned among a pipeline's transportation and sales customers in a rate case.

In adopting the conversion and reduction options as part of the final rule, we recognize that there is at least the possibility that some costs of the excess of reductions over conversions may ultimately be shifted to remaining customers. But only through such reduction can firm transportation capacity be made available; only through conversions can sole-supplied customers have access under self-implementing transportation to the national market for competitively priced natural gas supplies. Thus, for purposes of evaluating the final rule, we have determined that the benefits of § 284.10 to both sole supplied customers and all other customers outweigh these potential cost shifting detriments which might be incurred by sole-supplied customers.

We cannot gloss over the impact of the final rule. But if there is one thing nearly 50 years of Federal regulation of natural gas has taught this Commission, it is that the failure to "pragmatically adjust" our regulations in changing circumstances in the regulated industry more likely than not will harm the industry and the millions of Americans who depend on it.

Section 284.10(g) expressly provides that a pipeline must file appropriate adjustments in its rates when a firm sales customer exercises its option to reduce its CD. The rule in no way resolves the issue of how those costs will be allocated, however. Hence, the cost allocation issues will be decided on a case-by-case basis. This approach creates an overall structure which furthers the Commission's overriding goal while retaining the flexibility to make such equitable adjustments as may be appropriate in exceptional cases.

The Commission shares the concerns over the cost-shifting issues, and intends to carefully scrutinize the initial rate cases that are filed under this rule in order to assure that pipelines and their transportation customers will not "unload" fixed costs and risks disproportionately on full-requirements sales customers. In particular, the Commission fully intends to closely scrutinize projected levels of service and rates of return filed in rate cases as a means of assuring that pipelines bear their fair share of the risks of maintaining pipeline throughput.

Comments. Commenters assert that the demand charge is used to recover costs the pipeline has incurred to serve the customers. If the customer reduces the demand charge, these costs will be shifted to other customers or the pipelines. Many commenters argue that this in inequitable. Other commenters argue that this is inconsistent with the promise made in the Preamble of the proposed rule (mimeo at 34) that there will be no cost shifting as a result of this rule. These commenters argue that to avoid inequity and inconsistency with the rule we should not allow firm sales customers to reduce their demand charges.[71]

Commission Response. As noted above, the inclusion in the final rule of the conversion option and the provision for reservation charges blunts most of the thrust of these comments. But again we recognize that the costs previously recovered from the customers through demand charges do not disappear. If customers' reductions are greater than conversion and new sales of firm transportation, then someone—either the pipeline's remaining customers or its shareholders—must pay them. The question therefore is, how significant is the shifting of costs and what, if anything, should be done about it.

These are "hard choices,"[72] and the Commission has wrestled with the implications in the proposed rule for indirect effects on the allocation of risks and revenue responsibility. The provision for conversion options and for reservation charges—which will recover costs largely comparable to those recovered in the transportation component of the demand charge paid for firm sales service—vastly reduces the scope of the potential cost shifts. The provisions for the cost adjustments to be made on a case-by-case basis provides a forum for remaining issues to be discussed and decided.

Accordingly, the Commission finds that the benefits of flexibility and access to the competitive commodity market outweigh the potential harms associated with the possible shifting of fixed costs among customers.

To deny full-requirements customers the opportunity to thus adjust their sales services simply because the adjustment is accompanied by additional risks to both the customer and its pipeline supplier is to condone the fundamental form of undue discrimination by monopoly power which the NGA intended to prohibit. The record in this rulemaking demonstrates that between 1973 and 1983, total U.S. natural gas consumption declined by 24 percent and industrial consumption dropped by 35 percent. The Commission also notes that the substantial "bubble" of surplus gas deliverability that has persisted for the last 42 months (Exhibit L) and that the United States Department of Energy has estimated that adverse effects on consumers from the lack of non-discriminatory transportation are at least $9.7 billion annually. These benefits outweigh the risks of cost-shifting raised by the commenters.

(iii) *Operation of the CD adjustment options.*

A. Relationship to Block Billing Mechanism

Comments. A number of commenters address the question of the effect a reduction in contract demand will have on the proposed allocation of block 1 and block 2 gas under the block billing procedure in Part D of the final rule. Indicated Producers, for example, argue that a customer that reduces its contract demand should lose a proportional amount of its block 1 allocation. Indicated Producers argue that this is necessary to avoid giving existing firm sales customers an undue preference. Other producers argue that the customers should not be able to specify which block will be reduced. A number of other commenters, however, argue that a reduction in contract demand should result in a proportional reduction in the customer's allocation of both blocks. Still others argue that any reduction in gas allocated to the customer should first come from block 2.

Commission Response. In view of the decision to call for further comment on revised Part D, it is not necessary to respond to this comment at the present time. The Commission expects to revisit the issue in its further review of the revised Part D proposal.

B. Relationship to a Pipeline's Certificates and Its Contracts With Producers

Comments. The proposed rule provided that, when a customer reduces its contract demand, the pipeline would be able to apply for abandonment of its certificate obligations to the extent of the reduction and that abandonment would be deemed in the public convenience and necessity under section 7 of the NGA. Several commenters oppose giving the pipeline the discretion to seek abandonment. Consolidated Edison Company argues that the pipeline should be *required* to seek abandonment unless the customer pays a reservation charge to retain its right to the pipeline's gas supply. Con Ed suggests that this reservation charge could be based on the carrying costs of the pipeline's gas supplies or the pipeline's minimum bill obligation. Stating the same point in a somewhat different manner, other commenters argue that a pipeline ought not to be permitted to apply for abandonment if the customer is willing to pay a reservation charge. Another commenter takes a different tack. It argues that to prevent the pipeline from discriminating among customers, the rule should specify the conditions under which the pipeline may seek such abandonment.

Panhandle Eastern and Trunkline argue that this abandonment authority is unlawful because it grants abandonment without the searching, case-specific inquiry said to be required by section 7(b) of the NGA. INGAA, however, argues that it does not go far enough. According to INGAA, the final rule should provide that abandonment authorization will issue automatically upon the filing of the application.

Northwest Central Pipeline raises a different point. It urges us to make clear that a pipeline that abandons service to a customer under the CD adjustment right may later compete for the customer's business under the optional expedited certificate procedures.

Commission Response. The purpose of the CD reduction and conversion options is to provide both firm sales customers *and* their pipeline suppliers with increased flexibility to enjoy self-implementing transportation service in response to new demands in natural gas markets. In order for these mutual benefits to be achieved, the exercise of the option must be a "two-way street;" that is, customers who reduce their contractual obligations to buy sales service must be willing to release their pipeline suppliers from their commensurate obligations to *sell* sales service. In return, pipelines who provide self-implementing transportation service must be willing to release their firm sales customers from their CDs if the customers are willing to assume the risks that the pipeline will abandon its certificate to serve them under the NGA. Accordingly, § 284.10(f) of the final rule retains the provisions deeming such abandonment to be permitted by the public convenience and necessity.

We emphasized that this abandonment flexibility is not mandatory; a pipeline at its discretion may choose to retain its section 7 sales certificate in order to stand ready to permit its customer to "swing" back on to sales service. A pipeline may believe it appropriate to establish a "standby charge" for standing ready to provide sales service should the customer wish to automatically resume sales service. Such a charge could be sought and reviewed through an appropriate section 4 filing. In addition, a customer and its pipeline retain the flexibility, even where the certificate is abandoned, to apply for a new or amended section 7 certificate which would permit the customer to resume sales service. In either case, the pipeline in exercising its discretion must file with the Commission, and the application will be available for the public to review on a case-by-case basis.

Comments. Several commenters address the question of the circumstances under which a customer could return for pipeline sales service. INGAA urges us to make clear that former sales customers will have no special right to return. The American Public Gas Association argues that rather than permitting a pipeline to file tariffs setting forth the conditions under which it would be willing to serve, we should require the pipeline to file such a tariff.

Commission Response. The Commission has established no special rights in this regard. Thus, a customer which has left a pipeline's sales service stands in exactly the position of an entity that seeks such service for the first time. Of course, a pipeline could file a tariff sheet setting forth the conditions under which it would be willing to serve a former sales customer. Such filings would be subject to Commission review when filed. For the customer that has not left totally the pipeline's sales service, it may still retain a right to overrun service as provided in the pipeline's tariffs.

Comments. Several pipelines argue that if the Commission adopts the CD reduction option, the Commission should adopt a similar right for contracts between producers and pipelines. That is, the rule should allow pipelines to reduce their purchase obligations to producers.[73] In a similar vein, one producer, Sabine Corporation, argues that when a firm sales customer reduces its contract demand, the producer should be relieved of its contractual responsibilities to the pipeline for the affected volumes. Sabine states that this will allow the producer to market the gas to alternative buyers.

Commission Response. As noted above, the purpose of the CD reduction and conversion options is to allow a freeing up of pipeline capacity. It is not intended to override a pipeline's contracts to purchase gas from producers. Indeed the courts have held that we lack jurisdiction under the NGA to modify the wellhead contracts for gas that has been removed from the Commission's NGA jurisdiction by the NGPA.[74] Thus, the Commission is not in this rule in any way whatsoever affecting the contractual *rights and obligations* of parties under producer-pipeline contracts.

We recognize that the exercise of the reduction and conversion options by a pipeline's customers might require steps by the pipeline to adjust its "inventory" of gas supply under contract with producers. It is for this reason that Part B of the final rule reaffirms the April 10, 1985 Policy Statement on buy-outs and provides for expedited processing of producer abandonment applications in a number of instances.

Producers may argue that adjustments in pipeline service agreements with customers could affect the marketability of gas under separate producer contracts with pipelines. To the extent producers seek protection from the risk of unmarketable gas, the Commission concludes that such risks are exactly the type the parties, not the Commission, should apportion under private contracts.

However, we agreed that Commission procedures should not impede private contract renegotiation between pipelines and producers. Therefore, the Commission has included in the rule expedited procedures for the review of producer abandonment requests and take-or-pay contract "buy-outs" agreed to by the parties. These procedures should assure that producers and pipelines have flexibility to adjust their contracts in response to the changes occurring in the natural gas industry and to the exercise of the CD adjustment rights by pipeline customers. In fact, some producer commenters have pointed to the adjustment of sales customers CDs as a crucial prerequisite to increased access of producers to unused pipeline capacity for directly marketing shut-in gas to pipeline customers under the final rule's self-implementing transportation program.[75]

Comment. Another commenter, Natural Gas Pipeline Company, argues in a related way that the CD adjustment right is unlawful because this right, in conjunction with the block billing rules, has the effect of nullifying the guaranteed passthrough provision of section 601 of the NGPA and "would violate section 601(c)(1) of the NGPA which prohibits the denial or condition [of] any certificate under section 7(c) of the NGA based upon the sales price of the gas, if such price is deemed just and reasonable under section 601(b)."

Commission Response. This argument is not persuasive. Nowhere in the final rule is there a provision which denies or conditions the issuance of any section 7(c) certificate on the basis of the sales price of the gas. The Part A rules apply only to certificates for the transportation of gas owned by someone other than the pipeline. In no way is the issuance of a blanket transportation certificate under section 284.221 tied to the price of the gas to be shipped under that certificate. In addition, the block billing proposal has been revised and further comment has been requested.

C. Eligibility of Interruptible Customers, Direct-Sales Customers, and Intrastate Pipeline Customers

Comments. The proposed rule provided the right to reduce contract demand to a "firm sales customer of an interstate pipeline." Several commenters raise questions concerning this eligibility provision. Process Gas Consumers (PCC) recommends that interruptible customers should be given a similar right. PGC argues that even though interruptible customers do not pay a demand charge, interruptible customers should have the same right as firm sales customers to adjust their contracts especially where minimum commodity bills remain. Another commenter recommends that interruptible customers should be allowed to adjust contractual obligations to the extent future interruptible supply volumes are not accompanied by allocations of block 1 gas.

Commission Response. The purpose of the CD adjustment right is to provide firm sales customers, especially full-requirements customers, a transitional opportunity to adjust CDs that operate as an economic disincentive to taking advantage of transportation services or that prevent unwanted contracted-for firm capacity from being sold to willing shippers. This economic disincentive takes the form of both demand charges and fixed cost minimum bills imposed by the pipeline as a part of "standing ready" to meet the customer's CD on a firm, "booked" basis subject to no other prior claim.

Interruptible sales customers face no similar economic disincentive, even where they may be obligated to pay minimum commodity bills. This is because interruptible customers do not expect the pipeline to guarantee or "book" firm capacity on their behalf, and thus do not normally pay a demand charge for such capacity. In essence they are using capacity that has been reserved by someone else but that is not being actually used by the purchaser at that time. These interruptible customers pay either (a) a negotiated one-part rate if they are a non-jurisdictional direct sales customer or (b) the pipeline's commodity charge if they are a jurisdictional customer. On the other hand, the minimum commodity bills incurred by interruptible sales customers, at least since Order No. 380, merely recover a portion of the fixed costs of the capacity used by the pipeline to provide the customer service on a flexible, interruptible basis. As such, the extent to which these minimum commodity bills operate as a disincentive on interruptible customers enjoying self-implementing transportation need not be addressed in this rule.

Moreover, interruptible customers do not tie up *any* firm capacity. Hence, there is no need to apply CD adjustment options to these customers.

Comment. Inland notes that a "firm sales customer" could include a direct sales customer. Inland argues that our authority to modify sales contracts and rates under section 5(a) of the NGA extends only to sales for resale. Since direct sales are not sales for resale, Inland concludes that we have no rate-setting authority over direct sales and hence no authority to modify the direct sales contracts. Inland cites *FPC* v. *Louisiana Power & Light Co.*, 406 U.S. 621, 637–39 (1972) to support the argument.

Commission Response. Inland misconstrues the effect of the rule. It does not override the firm sales contracts between a pipeline and its customers, whether jurisdictional or non-jurisdictional. Rather, the provisions of § 284.10 constitute a condition imposed under both the NGA and the NGPA that a pipeline must accept if it wishes to operate under the new self-implementing rules. Accordingly, the final rule retains the conditions as it applies to all "firm sales customers" of an interstate pipeline.

Comments. Arkla argues that the eligible customers should not be limited to customers of interstate pipelines; customers of intrastate pipelines should also be eligible. This is required, Arkla argues, because intrastate pipelines will have a competitive advantage over interstate pipelines in that interstate pipelines will have to open their markets to competition but intrastate pipelines will not.

Commission Response. As indicated below, the Commission has no intention of regulating the intrastate activities of intrastate pipelines. Rather, the various conditions that do apply to intrastate pipelines under the final rule apply only to interstate transportation. Accordingly, we do not accept Arkla's suggestion.

D. Relationship to Minimum Bills, Sole-Supplier Clauses, and Other Charges Similar to Demand Charges

Comments. Several commenters raise concerns about limiting the customer's right to reducing its contract demand. One commenter points out that under some rate schedules a customer's demand charge is not based exclusively on contract demand. For example, under a modified fixed-variable rate design, a demand charge may be based on expected annual purchases or curtailment entitlements. This commenter argues that the customer ought to be able to reduce all demand charges, not just those based on contract demand.[76]

Commission Response. We reiterate what was said above. The CD reduction and conversion options are intended to allow reductions in the *volumetric* levels of service, not in the amount of fixed charges paid to the pipeline. Accordingly, we do not adopt the commenter's suggestion.

Comments. Another commenter points out that although the Preamble to the proposed rule (at p. 32) states that the rule requires adjustment to all fixed charges, such as minimum bills and minimum takes, the proposed rule speaks only of contract demand. This commenter requests clarification.[77]

Commission Response. The final rule has been revised. Section 284.10(c) makes it clear that the provision applies to reducing a customers "firm sales entitlements." Therefore, this includes not only contract demand but also other vehicles that operate as fixing firm sales entitlements, such as Annual Contract Quantities, or perhaps certain curtailment entitlements. To the extent that there may be some particular questions as to whether a specific vehicle operates to fix firm sales entitlement, these issues may be appropriately addressed on a case-by-case basis.

In addition, the final rule provides (§ 284.10(c)(4)) that any minimum commodity bill must be reduced by an amount proportionate to the reduction in firm sales entitlements. As noted above, such a reduction may or may not reduce the total bill paid by a customer for fixed charges, depending on the treatment of the remaining costs and the ultimate level of throughput.

Comments. Some commenters (for example ANR Pipeline Co.) argue that in this rule we should abolish all minimum bills to ensure that all pipelines operate on a level playing field.

Commission Response. We decline to adopt this suggestion in this rule. It goes considerably beyond our proposal. The provision in § 284.10(c)(4) is consistent with our goal of freeing up unwanted firm capacity for resale on a firm basis. The considerations raised by a proposal to eliminate all minimum bills entirely goes beyond that. We will, however, continue to examine fixed cost minimum bills for these pipelines as they are presented to us in individual cases.

Comments. Several commenters ask how the rule applies to full requirement contracts and rate schedules containing a sole supplier clause.[78] Typically, a full requirement contract provides that a pipeline will supply the customer with all of its requirements and obligates the customer to purchase its full requirement from the pipeline. A rate schedule containing a sole supplier clause provides that the rate is available only to customers that buy their full requirements from the pipeline. In most cases the pipeline will also have on file a rate that is available to customers who purchase only part of their requirements from the pipeline.

Several commenters argue that full requirements contracts and sole supplier rate schedules are inconsistent with the CD adjustment right since these contracts and rate schedules prevent a customer from making use of the transportation services offered by the rule.[79]

Commission Response. We agree with these commenters that to the extent full requirements contracts or rate schedules containing sole supplier clauses prevent a customer from making use of the rule's transportation services they are inconsistent with the CD adjustment right. Sections 284.10 (c) and (d) make this clear by providing that a pipeline subject to that section must agree to offer its customers those options. For a pipeline with sole supplier clauses, that agreement would necessarily include the agreement to modify any existing contract terms that would prevent the reduction conversion.

We do not necessarily agree, however, with the argument of these commenters that customers that previously purchased under a full requirements rate should be allowed to continue to purchase under that rate schedule even though they no longer purchase their full requirements from the pipeline. There can be differences in the costs of providing full and partial requirements service. If there are such differences, and if the rates fairly reflect these differences, we can perceive no reason why a partial requirements customer should be allowed to purchase under the full requirement rate schedule. It is a question of fact whether the existing full and partial requirements rate schedules appropriately reflect these differences in costs. If there are disagreements on this question and hence on whether the customer exercising its CD adjustment rights should be charged under the full requirement rate schedule or partial requirement rate schedule, they may be resolved in individual cases.

Comments. Northwest Central Pipeline notes that its full requirements contracts do not specify a contract demand. Accordingly, Northwest Central asks how the CD adjustment right will apply to its contracts.

Commission Response. Since Northwest Central's situation appears to be unique, it would be impossible to resolve the problem here. Rather, Northwest Central should propose a method in a rate case as to how customers will exercise their rights under this section.

iv. Transitional nature of the CD reduction and conversion options.

Comments. The propose rule did not extend the CD reduction right to customers who were not customers of an interstate pipeline "as of the effective date of the rule."

Several commenters question whether the proposal applies to sales service agreements entered into after the effective date of the rule. These commenters argue that the right should not apply to these contracts because the customer would be entering into the contract in full awareness of the transportation services available. Hence, the customer would be making knowing decision to purchase a firm sales agreement rather than a transportation service. Accordingly, these commenters argue that the customer should live with its choice.[80]

Commission Response. We agree with the substance of the comment, both with regards to the CD reduction option in the proposed rule as well as with the conversion option added in the final rule. The key date, however, is not the effective date of this rule. Rather, the key date is the date on which the pipeline accepts self-implementing transportation authority provided for in this rule, for it is only then that the customer has non-discriminatory access to the transportation services available. Accordingly, we shall modify the rule to provide that the rule does not apply to contracts entered into or re-negotiated after a pipeline accepts self-implementing authority. This is done in the definition of "eligible firm sales service agreement" in § 284.10(b) of the final rule.

Comments. The proposed rule provided that a customer may at any time reduce its contract demand upon giving the pipeline 30 days written notice. The majority of the commenters argue that some limitation should be placed on the time when the customer can reduce its contract demand.[81] These commenters argue that a limitation is necessary because continual changes in contract demand would make it impossible for a pipeline to manage its gas supply. Moreover, these commenters note, because the rule requires the pipeline to file adjustments to its rates whenever a customer reduces its contract demand, giving customers the right to reduce at any time could mean that the pipeline would continually have to file rates. To avoid these problems, the commenters recommend that all customers be required to give their pipeline notice once a year, *e.g.*, January 1. These commenters also argue that 30-day advance notice is insufficient time to allow the pipeline to adjust its system to the change. They recommend notice periods ranging from 60 days to 305 days.

Commission Response. We agree with the substance of these comments. They persuade us that the most practical approach is to require all the pipeline's customers to exercise the reduction option under § 284.10(c) on a specific date once a year. To accommodate the unique circumstances of each pipeline, we shall give the pipelines the discretion to choose the date on which the customers must exercise their rights. The date must be the same for all of the pipeline's customers. Since a pipeline requires more than 30 days to prepare a case, the customer's election will be effective six months later.

Comments. The proposed rule provides for a phasing-in of the CD adjustment right during the first four years after the effective date of the rule. The phasing-in provides that, in the first year of the rule, the customer may reduce its contract demand by 25 percent, in the next year by another 25 percent, and so on.

Some commenters interpret this exception as making the option to reduce contract demand a transitional right only. That is, the commenters read the proposed rule as allowing customers to reduce contract demand only during the first four years of the rule's operation. Some commenters argue that customers should always have the right to reduce contract demand.[82] Other commenters argue that the right to reduce is properly limited to a four-year period.[83]

Commission Response. The proposed rule intends to give only existing sales customers, not *new customers*, the right to reduce contract demand, and only with regard to existing firm sales service agreements as defined in the regulations. The effect of the phase-in period is simply to exclude new customers from the right and limit existing customers' exercise of the right during the first four years of the rule to allow pipelines the time to adjust to the new business environment created by the rule. The commenters, however, do not persuade us that the right of *existing* customers to reduce contract demand should be limited to only a four-year transitional period. The consequences of a pipeline's operating under the new transportation rules may not become clear for some time. Accordingly, the customers should retain the conversion and reduction options to be able to react to such charges, assuring adequate notice is provided. However, we will be able to revisit this question during the transition period.

Comments. A number of commenters challenge the selection of a four-year phase-in period. Some commenters argue that the phase-in period is too long.[84] They point out that under the rule pipelines will be able to compete immediately for a distributor's customers but the distributor will be tied to its sales agreement. To equalize the competitive position between the pipeline and distributor, these commenters suggest that a shorter phase-in period, such as two years, is appropriate. Other commenters argue that a four-year phase-in is too short.[85] They point out that CD adjustments may cause significant shifting of costs. This fact, the commenters contend, argues for a cautious approach. These commenters recommend that we adopt a longer phase-in, such as 10 percent of the first five years of the rule and 25 percent in the next two years.

One commenter argues that the customer's right to reduce contract demand by 25 percent in each year of the phase-in period should be cumulative. Thus, for example, if a customer had a contract demand of 100 Mcf per day, the customer might elect to reduce its contract demand by 20 Mcf in the first year. In the second year the customer will then be able to reduce its contract demand by 30 Mcf per day.

Another commenter seeks clarification of how the rule will apply to contract demands that vary each month. This commenter recommends that the contract demand in each month should be reduced by a uniform percentage.[86]

Finally, Mississippi River Transmission Corporation argues that a customer's right to reduce contract demand during the phase-in period should be in addition to any termination right the customer may have in sales contracts.

The proposed rule provided that, when a customer exercises the right to reduce contract demand, the pipeline shall file appropriate adjustments to its rates. Several commenters oppose requiring the pipeline to file an adjustment. Rather, this commenter argues, the rule should simply permit the pipelines to file adjustments.

Other commenters request clarification of the filing the company must make and the rights of customers. For example, one commenter argues that the pipeline should not be required to make a general section 4 rate filing. Other commenters urge that the customers be given the right to participate in any case. Other commenters urge that the rate filing be synchronized with PGA filings. Other commenters oppose this idea.[87]

Another commenter argues that the pipeline's rate of return must be increased to reflect the increased risk that costs will not be recovered.[88]

Commission Response. In considering these comments, the Commission has evaluated two alternatives for making self-implementing transportation services accessible to firm sales customers regardless of their CD obligations.

The first alternative would provide all firm sales customers, new and old, an immediate, permanent right under their sales service agreements to adjust their sales entitlements to respond to the changed commercial conditions in the market place and the availability of alternative natural gas merchants. Under this alternative, a pipeline that provides transportation services would be required to compete with its own firm sales service on a gas-for-gas and pipeline-to-pipeline basis immediately and permanently under the rule.

The advantage of this alternative is that it maximizes both the availability of transportation services and the distribution of the benefits of competition in natural gas markets to firm sales customers. The disadvantage is that pipelines are provided little flexibility and bargaining power to adjust their commercial risks and revenue responsibilities in an orderly fashion in response to their new role of competing with themselves as both merchant and transporter. In addition, the pipeline and its remaining customers face the increased risks that the pipeline will not be able to market the unused capacity attributable to the customer reduction in CDs. For this reason, fewer pipelines may choose to hold themselves out as transporters under this alternative than under existing law.

The other alternative considered by the Commission would establish a conditional opportunity for existing firm sales customers to "unbundle" their sales service into a transportation component and a sales component and convert their CDs to firm transportation service upon reasonable notice to their pipeline suppliers in order to take advantage of new firm transportation services made available under this rule. The conversion right would be conditional on a pipeline choosing to hold itself out as a transporter on a self-implementing basis. These adjustments could only take the form of conversion to transportation, not merely reduction of CDs to marketable levels. In no case could such conversions exceed a specific percentage of a customer's CD on a cumulative basis over a suitable phase-in period. Only existing CDs, not new or renegotiated CDs, would be subject to conversion, in order to assure that the right is only available for a suitable transition period.

The advantage of this alternative is that a pipeline's revenue stream attributable to its sales demand charge is, as explained above, little affected, because its customers' adjustment rights are limited to conversion of firm sales service into firm transportation service requiring payment of a reservation charge comparable to its demand charge for the transportation component of its sales service. In addition, the risks to a pipeline are minimized by limiting the conversion right during a phase-in period and making it available only to existing sales customers.

The disadvantage of this alternative is that a firm sales customer's access to transportation will be limited to firm converted transportation services on the same pipeline. In addition, transportation customers on the same pipeline as well as on other pipelines will not be able to "shop around" flexibly for unused transportation capacity "booked" pursuant to under-utilized CDs.

The final rule adopts a balance between these two alternatives. Thus, under the final rule, firm sales customers may adjust their CDs to convert to firm transportation, or merely to shop around for services on other pipelines and make capacity available to other shippers or buyers on their own pipeline. However, this CD adjustment right is limited to existing firm sales customers and is phased-in over the four-year transition period. For ease in implementation, the CD reduction and conversion options will be triggered by a pipeline transporting natural gas on or after January 1, 1986 under authority of a certificate issued pursuant to § 284.221 or under authority of §§ 284.102 or 284.143. See § 284.10(a).

In addition, where the amount by which CDs are reduced is in excess of the amount converted (plus the amount resold to other customers), the pipeline will file adjusted rates and the Commission will review the reallocation of fixed costs on a case-by-case basis. During this review, the Commission will strictly scrutinize a pipeline's projected levels of transportation service to assure that it is provided an adequate incentive to maximize its utilization of the unused capacity. At the same time, the Commission will scrutinize the pipeline's rates to assure that it is not loading fixed costs and risks disproportionately on any customers.

Finally, the Commission has determined that the CD adjustment rights should be triggered generally only when a pipeline chooses after January 1, 1986, to hold itself out as a transporter on a self-implementing basis, not when it is providing transportation service on an individual basis under section 7 of the NGA. This assures that any increased risks to pipelines resulting from the CD adjustment right are balanced reasonably with the increased benefits of self-implementing authority conferred upon them under the rule.

For this reason, the Commission considers the CD adjustment rights to be a reasonable condition to apply to self-implementing transportation services authorized in this final rule.

10. *Rate conditions.*—a. Background. The final rule adopts most of the rate conditions proposed in the NOPR. These conditions do not determine actual rate levels for self-implementing transportation. The determination of the actual levels will be made in individual pipeline rate proceedings. Thus, determinations as to the costs of service, allocation of costs among services and related issues will be made on a case-by-case basis.

The final rule does adopt provisions allowing transportation to be provided under interim rates until rates conforming to the new conditions can be developed. The interim rule is set out in § 284.7(b).

The rate conditions are designed to assure that rates for transportation service reflect a proper balancing of the interests of pipeline shareholders who contribute the capital assets to provide the service and the pipeline customers who ultimately utilize the assets so provided. This balancing involves an apportionment of the risk, an opportunity to earn a reasonable return on the capital assets contributed, and assurance that the cost burden reasonably approximates the cost of providing service.

Accountability is inherent in a competitive environment; each participant assumes responsibility for the success or failure of its own market participation. Accountability is ultimately achieved in the marketplace through revenue collections that are either sufficient or insufficient for cost recovery. The risk that revenues will be insufficient for cost recovery is part of what motivates the firm to recognize the potential consequences of its decisions. Efficient firms can expect to recover their costs of providing service. Inefficient firms cannot. Thus, in a competitive environment, involuntary cost shifting and cross-customer subsidies do not occur.

Clearly, the question of how risks are allocated among market participants is intimately tied to the question of accountability. Where risks are allocated by legal rules to one party to a transaction, there tends to be little accountability borne by the other party. But the more competitive environment that has begun to emerge in the natural gas industry has required firms within the industry to respond in new and innovative ways. For the Commission to allow *regulated* companies to respond flexibly and quickly to these requirements (by authorizing new ventures, or allowing companies to alter the way in which some traditional service has been rendered because of an unregulated entity's market threat), the pipeline must be held accountable for such decisions. To do otherwise is to eliminate a very powerful incentive to reasoned and rational behavior on the part of pipeline companies, and require more explicit regulatory requirements and oversight instead.

Common sense and economic theory both suggest that putting a firm at risk for the consequences of its investment and operational decisions can affect the incentives to undertake those decisions judiciously: a firm is more likely to work to minimize its costs if its financial health is at stake than if its costs, even some fraction of its costs, are guaranteed. It is generally accepted that the potential for profit and the fear of financial loss create strong incentives for firms to hold down costs. Thus, pipelines that bear significant business risk, that is, firms that are ultimately accountable for their business decisions, are more likely to operate efficiently than are those firms that bear little or no risk.

These considerations are reflected in the final rule. Thus, the risk of under recovering the costs of transportation services in question between rate periods is appropriately assigned to the pipeline. No deferred cost accounting (or cost "banking") similar in operation to the Account No. 191 for the purchased gas costs will be allowed.[89] See § 284.7(d)(5)(iii). Similarly, § 284.7(d)(1) provides that, except for firm service, volumetric rates must be used. For firm service, all minimum bill and minimum take-type provisions are forbidden; only a reservation charge may be collected.

In general, the rate conditions are designed to promote four ratemaking goals. First, ratemaking policies should lead to prices that communicate clear market signals to all participants in the gas industry. Buyers should see the current resource costs associated with purchasing services. Sellers should see the true market value of providing increments of services.

Second, the pricing system should embody strong incentives to minimize costs in order to provide services at the lowest reasonable cost consistent with reliable long term service.

Third, customers should be given maximum flexibility in making choices among services and among suppliers of these services.

Finally, the Commission must also be concerned with the development and maintenance of a regulatory framework that is appropriate under all conditions of gas supply and pipeline investment. Specifically, the Commission should not make *ad hoc* regulatory adjustments that are applicable only in periods of excess gas deliverability or reduced levels of pipeline investment in new facilities. The Commission recognizes that, ideally, its basic regulatory framework should apply equally well to different market conditions.

More particularly, rates for transportation should be designed to achieve three objectives concurrently:

—Peak rates should ration capacity;

—Off-peak rates should maximize through-put; and

—The pipeline's revenue responsibility allocated to transportation should be attained through transporting the expected peak and off-peak volumes at the maximum rates.

The final rule requires pipelines to design their transportation rates with these goals in mind. See § 284.7(b). The Commission recognizes that the goals at times pull in conflicting directions and that good ratemaking reflects large amounts of fairly subjective judgments. The purpose of promulgating these objectives as part of the rule is to provide greater focus on these goals in the ratemaking process.

The other rate elements in the final rule generally track the provisions of the proposed rule. Thus, rates under the final rule must be cost-based. The rates for self-implementing transportation must be based on the fully-allocated costs of providing the service established by the pipeline through a section 4 filing. They must also reasonably reflect any material variation in the costs of providing service due to the geographic area in which the service is provided or the time at which the service is provided. Second, the rate must be designed so that the pipeline has a reasonable opportunity to recover its costs. Third, the rates should be designed to ration capacity at the pipeline's peak. The Commission intends that at times when the pipeline's capacity is constrained, the capacity should be made available to those who value it and hence are willing to pay for it. Fourth, the rates should be designed to encourage full utilization of the pipeline. Finally, in light of the goals of this rule, rates should be so designed so that the transportation component will not differ whether the customer is purchasing sales or transportation service.

Every proposed cost allocation and rate design methodology for self-implementing transportation must meet the first requirement. The rates for firm or interruptible transportation under this rule will be based on the fully allocated, separately established cost of providing the service, and shall separately identify the cost-component attributable to transportation, storage, and gathering. These conditions are all spelled out in §§ 284.7, 284.8 and 284.9.

b. *Comment analysis.* Most commenters on the rate conditions in the proposed rule raised issues of rate design, revenue responsibility and allocation of costs and risks similar to those raised in individual rate cases before the Commission. In addition, issues relating to the design of one-part "volumetric rates" for firm transportation were raised, especially by pipeline customers that requested the ability to purchase or "book" firm transportation capacity upon payment of a "reservation charge" comparable to the demand charge component of a multi-part sales rate established under the approved ratemaking methodology applicable to individual pipelines.[90]

Commenters also raised issues regarding the Commission's authority to establish downwardly flexible rates between a maximum and minimum, especially where such rates could be offered on a "selective discount" basis to individual customers. Commenters requested clarification whether so-called "firm" transportation service purchased at off-peak periods under the one-part volumetric rate would be subject to interruption during peak periods by prior claims of firm sales and transportation customers.[91]

These comments are discussed below.

(i) *Legal authority and reasonableness of rate conditions.*

Comments. Panhandle Eastern and Trunkline contend that we have no authority to impose the rate conditions. This is so, these commenters argue, because the rate conditions are "tantamount" to initial ratemaking. Initial ratemaking is said to be beyond our authority in conditioning certificates under section 7(e). Instead, all we may do under section 7(e), these commenters argue, is to impose rate conditions until the pipeline can file a rate application under section 4. In that application the pipeline may impose any type of rate it wants.

Commission Response. There might be something to this argument if, in this proceeding, we were acting solely on the basis of section 7(c) and section 7(e). But we are not acting solely on the basis of these sections. We are also acting under section 5(a) of the NGA, section 403(c) of the DOE Organization Act, and section 311 of the NGPA. These sections give us ample authority to establish by rule rather than adjudication the ratemaking principles pipelines must follow. *Wisconsin Gas Co. v. FERC*, No. 84-1358 (D.C. Cir. August 20, 1985).

Comments. Other commenters, while not challenging our legal authority to impose the rate conditions by rule, argue that it is unwise to proceed on a generic basis. Instead, we are urged to proceed on a case-by-case basis. The reasons offered for so proceeding are the reasons usually offered for proceeding on a case-by-case basis: there are differences among pipelines and these differences should be reflected in individual rates.

Commission Response. In the final rule we establish a basic ratemaking *framework* for self-implementing transportation. Actual rates will continue to be set on a case-by-case basis as in the past.

(ii) *Volumetric rates for firm service.*

Comments. Many commenters criticize the requirement that firm transportation rates be one-part "volumetric" rates based on representive levels and therefore preclude the imposition of demand charges or "reservation" charges.[92]

A volumetric rate is simply a one-part rate. With such a rate, the customer's bill is determined by multiplying the rate by the volumes of gas transported or purchased.[93]

A volumetric rate differs from the two-part rate the Commission has traditionally used for firm service. Under a two-part rate the customer must pay a certain amount (called the demand charge) to the pipeline whether or not the customer uses the service.[94] With a volumetric rate, however, the amount the customer pays is determined simply by multiplying the rate by the amount of service used, *i.e.*, the volumes of gas transported or purchased. Thus, if the customer does not use the service, it pays the pipeline nothing, and the pipeline bears the risk of capacity utilization.

The proposed rule reinforced this point by prohibiting any billing mechanism, such as a demand charge, that has the effect of guaranteeing revenue.

The essential arguments commenters make are that a volumetric rate does not ration capacity nor does it fairly compensate a pipeline supplier that is under a legal obligation to provide the service. Thus, the commenters point out that a customer may sign a contract with the pipeline that requires the pipeline to stand ready to provide service. But because with a volumetric rate, the customer only pays for service the pipeline actually provides, the customer has no incentive to accurately contract for the service required. Thus, the customer may contract with the pipeline for service it may not need or use. Since a pipeline's capacity to provide service is limited, the commenters argue that the result will be that other customers who could use the service will be denied service, for the pipeline must continue to stand ready to honor its contract. Other commenters contend that requiring a volumetric rate will also result in the pipeline not recovering its costs. To remedy these problems, most commenters argue that we should require or at least permit pipelines to use a two-part rate in which the customer must pay a "reservation" or demand charge whether or not it uses the service. This is so, it is said, because the demand charge places the risk of overestimating usage on the customer. Hence, the customer is not likely to contract for service it does not think it will use. Moreover, a demand charge will guarantee some revenue to the pipelines. Hence, the pipeline should be more likely to recover the costs.

Commission Response. These commenters pursuade us that the opportunity for customers to "book" firm transportation capacity by payment of a "reservation" charge can be an effective and appropriate means of allocating scarce capacity and providing customers an incentive not to overbook capacity which they have little intention of using. Hence, we think that reservation charges should be permitted. Moreover, because firm sales rate schedules of most pipelines require a demand charge, permitting reservation charges for firm transportation will tend to make pipelines indifferent as to whether the customer purchases sales or transportation service.

Accordingly, §§ 284.8(d) and 284.10(d)(4) of the final rule permit use of a reservation fee for firm transportation. There is no limitation imposed in the rule as to how the fee must be billed. Thus, for example, the rule contemplates that there may be very short term (*e.g.* two weeks) firm transactions in which the reservation fee might be paid in a single lump sum. But the rule would also accommodate a long-term firm deal with the reservation charge being billed in the same fashion as a pipeline's sales rate demand charge, *i.e.* on a monthly basis. Billing schedules must, of course, be on file as part of the tariff, however.

The point is that a limit is fixed on the maximum amount of the reservation charge through the rate proceeding. Once that has been established, the Commission intends for the commercial parties to have considerable flexibility in subsequent structuring of self-implementing transportation transactions.

No reservation charges may be collected for interruptible service, however. This rule is set forth in § 284.9d).

To give the pipeline this flexibility does not, of course, give the pipeline a free hand. The Commission will apply established standards for testing any cost allocation and rate design methodology.

(iii) *Use of projected levels of service.*

Comments. Other commenters complained about the use of representative levels. These commenters argue that using representative levels will produce windfalls for the pipeline.[95]

Commission Response. The rule requires use of "projected" levels of throughput for each service. The existing regulations allow the use of "representative" levels of service as one rate option. The use of the term "projected" instead of "representative" is not intended to modify the ratemaking concepts. The change is made to underline the fact that the ratemaking approach under the final rule is intended to be forward looking. The use of representative or projected levels of service is important because it allows costs to be allocated to the service and the pipeline to be able to be retain the revenues received. This approach thus offers an incentive to provide as much service as it can. If the pipeline fails to actually transport the projected level used in designing its rates, it will fail to earn its full allowed return on equity; if it is able to market more than its projected level to willing customers, it will exceed its allowed return. This does not constitute a "windfall." For during the next rate proceeding, the level projected for the service may be adjusted to reflect the best estimate of what is likely to occur during the period of time the rates are in effect. Thus, *between rate cases,* the regulated pipeline will have an incentive to provide the maximum amount of the service to the public. *Across* rate cases, the level of the pipeline's costs and the design of unit rates will be subject to full regulatory scrutiny.

The commenters' proposed alternative is to require the crediting of revenue to various accounts. This approach gives the pipeline little or no incentive to provide service under the rule. Revenue crediting means that costs are not allocated to the service. Instead, all costs are recovered from other services, for example, sales customers. Revenues received for transportation are then credited to, to give one example, the deferred account for purchased gas, in effect paying over the revenues to customers on the basis of how much gas they buy during the period the deferred account is to be amortized. While this approach may attain a rough equity *among customers,* it gives the pipeline no incentive to provide transportation access to the commodity markets. We must, therefore, adhere to our earlier judgment that projected levels of service must be established for self-implementing transportation.

(iv) *Ability to change projected levels.*

Comments. A number of pipelines complain that the projected levels, once established, will never change. They argue that this is unfair. Projected levels, they argue, should be subject to change in either a section 4 or section 5 proceeding.[96]

Commission Response. The pipelines' complaint appears to be based on a misunderstanding of the preamble to the proposed rule. In the preamble we said that, if a pipeline undertakes to provide a service under the optional expedited certificate, it must assume full responsibility. In short, the pipeline cannot incur costs to provide a service and, if the venture turns out bad, expect other customers to pay for it. The way this is accomplished is by prohibiting the pipeline for reducing the projected levels used to allocate costs to the service.

We did not say, however, that the projected levels used to allocate costs to services provided under *other* certificates would never change. Indeed, there are instances where they must change in order to allocate accurately the cost of service. Hence, we agree with the pipelines that the projected levels for services, other than those performed under an optional expedited certificate, may be changed in a section 4 or section 5 proceeding. This is expressly stated in § 284.7(c)(2) of the final rule.

(v) *Requirement of time differentiated, mileage based rates.*

Comments. Although no commenter opposed the concept of maximum and minimum rates, many commenters complained of the specific requirements of the rates. For example, El Paso argued that, because many of the terms used—"on-peak," "incremental costs"—are terms of art and are left undefined in the proposed rule, the specific rates cannot be determined. Other commenters argue that, consistent with long-standing Commission practice concerning rate design, the off-peak rate should make a substantial contribution to fixed cost recovery. Other commenters argue that the minimum rate is too low while others argue that there is no need for a minimum rate.

Still other commenters argue that a pipeline's rates should not be set on a time-of-service basis. Other commenters argue that for some pipelines, it is inappropriate to require rates reflecting variations in the costs of providing service due to the area in which the service is provided. They recommend that we allow these factors to be considered in individual rate cases.[97]

Many commenters made a more general point. It is that, because the volumetric transportation rates are so radically different from the way sales rates are developed, customers will be biased toward either sales or transportation. The commenters argue that this defeats one of the basic purposes of the rule: to allow customers to choose gas suppliers on the basis of gas prices rather than the availability of sales or transportation service.[98]

Commission Response. The commenters' arguments are based on the assumption that we have required that rates for all self-implementing services to be mileage-based or be time-of-service rates. This is not quite the case. The final rule requires that the rate *reasonably* reflect any *material* variations in the cost of providing service. Thus, for example, if the cost of providing service does not materially differ during different periods, rates will not differ. But if the costs of providing the service in the winter season materially differ from the costs of providing service in the summer, the rate should reflect this fact. The cost issues will be determined on an individual case-by-case basis. It is only the general standard which is imposed in the rule.

To take another example, on most pipeline systems the costs of providing service are materially affected by the distance the gas is transported. The rates for such a pipeline should reflect these differences. But on other pipelines or for particular types of services distance may not materially affect the cost of providing service. In these situations the rates need not be based on mileage or zones. In short, all that is required is what is required of all rates: that they reflect the cost of providing the service. Again, the rate standards imposed by the rule will be applied in individual fact-specific cases.

A simple example of how pipelines will design volumetric rates and reservation charges in individual rate cases is useful. The final rule requires that pipelines file volumetric, seasonal, distance-sensitive rates for firm transportation.

In determining the maximum volumetric rate [*] for firm transportation services, the total fixed costs are divided between two components. The first is divided by projected requests for service that would be accepted by a pipeline while the second is divided by projected throughput. All variable costs are assigned to the second component. This can be illustrated in the following formula:

Maximum volmetric rate = A + B

where

$$A = \frac{\text{Total allocated fixed costs} \times \text{Percentage of fixed costs recovered in pipeline's sales demand charge}}{\text{Projected test period requests for firm transportation service that would be accepted by the pipeline}}$$

$$B = \frac{\text{Total projected variable costs + Fixed costs excluded in the numeration of A}}{\text{Projected test period throughput volumes}}$$

It should be noted that projected requests for firm transportation service accepted by the pipeline may exceed projected throughput volumes, since the pipeline may accept requests for service that the customer does not fully use. These rates will reasonably reflect material variations in cost due to when service is provided and distance of transportation.

The minimum rate a customer may pay is the short-run variable cost, computed as follows:

$$\text{minimum per unit rate} = \frac{\text{total projected variable costs}}{\text{projected test period throughput volumes}}$$

Pipelines may bill individual customers for transportation service at less than the maximum per unit rate, but not less than the minimum rate.

Pipelines are at risk with respect to recovery of fixed costs associated with capacity made available for firm transportation. Moreover, customers are not obligated to actually transport the volumes they have nominated. Consequently, pipelines may wish to impose a reservation fee on nominating customers. This reservation fee would be imposed at the pipeline's discretion on a case-by-case basis, and must be stated in tariffs, pursuant to § 284.7(a). However, the reservation fee may not recover any variable costs nor may it recover any fixed costs in excess of those costs that would be recovered by using the same rate-making methodology used for determining the demand charge in the pipeline's sales rates, pursuant to § 284.8(d).

Regardless of whether a pipeline elects to impose a reservation fee, it must impose a per-unit rate. This per-unit rate will recover no more than any fixed costs not recovered through the reservation fee plus the variable costs.

Pipelines also have the discretion to charge a reservation fee and an associated per-unit rate which are less that the respective maximum fee to individual customers. However, any such discounts must be filed with the Commission in the same manner as discount rates offered to individual customers under this rule and the pipelines are at risk for any under collections. This requirement is set out in § 284.7(d)(5)(iv).

In regard to the design of interruptible rates, the availability of interruptible transportation may vary between seasons. It may approach the reliability of firm transportation in certain periods. Consequently, the minimum and maximum rate for interruptible transportation might be identical to the minimum and maximum rates for firm transportation in such periods. In periods where interruptible service is materially less firm than firm service, then the maximum rate will be less than the firm service maximum rate, reflective of the inferior quality of the interruptible service. It is expected that during pipeline rate cases, pipelines may propose interruptible rates which are less than the firm maximum rate to estimate the revenues that would be generated from interruptible service.

Where an interruptible rate is established in a rate case at less than the firm maximum rate, that rate is the just and reasonable rate for that service. Therefore, the pipeline does not have the discretion to charge a higher rate for that service. The pipeline will have the discretion to adjust the price downward within that band, subject to the filing conditions set forth in § 284.7(d)(5)(iv).

Prior to offering any firm transportation services pursuant to the rule, a pipeline will make a determination of capacity available for such services. The pipeline will presumably take into account overall physical capacity, firm sales capacity, adjustments and conversions to customer CDs, and any existing firm transportation obligations. The pipeline may make any remaining capacity available for new firm services under the rule. The amount so determined will be proposed and supported in the pipeline's rate case. In fulfilling its non-discrimination obligations, a pipeline must accept nominations up to this level. As the pipeline accepts nominations for firm transportation services, the amount of remaining capacity available for firm transportation will decrease. For

[*] It may be helpful to define terms in order that there not be any semantic problems with what we are discussing. We use the terms "rate," "charge," and "fee" to mean the dollars associated with a unit of service. Thus, for example, the "rate" for transporting one Mcf of gas in the peak period within a rate zone will be $1.00.

We use the term "bill" to mean the total dollars that will be paid for providing service for the total units of service. Thus, for example, the bill or charge for transporting 25 Mcf in the peak period within a rate zone will be $25.00 ($1.00 (rate) × 25 (units of service) = $25 (bill)).

example, assume a pipeline makes 10% of its capacity available for firm transportation and it can move 1000 Mcf a day through that capacity, the pipeline would be required to accept nominations up to 1000 Mcf per day. If it accepted a nomination by a customer for 250 Mcf a day, it would then be required toaccept further nominations up to 750 Mcf. If it did not, it would be in violation of the non-discrimination condition in its blanket certificate.

Projected firm transportation volumes established in a rate case may be less than the amount of capacity the pipeline proposes to make available for firm transportation. The assignment of cost responsibility for fixed costs associated with firm transportation capacity in excess of projected firm transportation volumes will be determined in the pipeline's rate case. Options include removal of unused assets from rate base (thus decreasing the amount of pipeline capacity available for firm transportation services in excess of projected firm transportation volumes), allocation among firm services, or a combination of these.

(vi) *Maximum/minimum rates and selective discounting.*

A. *The proposed rule.* The proposed rule provided that a pipeline may charge a customer any rate between the maximum and minimum rate on file for the service. The proposed rule also stated that a pipeline may not file revised rates to recover any revenue lost as a result of charging less than the maximum rate. This sentence merely restated the prohibition against retroactive ratemaking. This restatement was included in the proposed rule to make clear that customers not receiving the discount could not be made to subsidize the customer receiving the discount. Since the rates are designed to prohibit cross-subsidizaton, selective discounting to individual customers would not be unduly discriminatory.

Under the proposed rule, the rates determined by applying the rate conditions would have been the maximum rates the pipeline may charge for a particular service at a particular place at a particular time. The minimum rate would have been the short-run variable costs of providing the service.

The proposed rule reflected a judgment that to allow pipelines to provide service at a rate that does not even recover the variable costs of the service would be pure social waste. In addition, the minimum rate was designed to serve as a check on pipeline's engaging in anti-competitive behavior.

B. General Legal Authority To Permit Selective Discounting

Comments. Many comments were received on this aspect of the proposal. A number of commenters assert that the Commission does not have the legal authority to permit a pipeline to charge one rate to one customer and a different rate to another customer as proposed in the NOPR.[99] These commenters recognize that the proposed rule was designed to ensure that all customers faced a just and reasonable cost-based rate and that no cross-subsidization was to result from the pipeline's discounting.

But the commenters opposing the selective use of discounting essentially argue that rate discounts available to some but not all customers are inconsistent with the NGA's prohibition against undue discrimination. Some commenters argue that the prohibition against undue discrimination requires the pipeline to treat all customers equally. Hence, these commenters argue that a discount offered to one customer must be offered to all customers, or all customers similarly situated in terms of distance, or to all customers in a zone or area, or any distributor serving the intended customer. More specifically they assert that: the rule as proposed does not in fact prevent cross-subsidization; that competitive harms may flow from allowing selectivity in discounting, even if customers are protected from cost shifting; and that selectivity in discounting may forestall price adjustments in the field markets for the natural gas commodity.[100]

Other commenters argued in favor of both the Commission's authority to provide for such discounting and the benefits that would result from such increased pricing flexibility.[101]

Commission Response. The Commission has reviewed its legal authority to permit selective discounting.

Section 4(b) of the NGA states that:

> No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.[102]

For transportation by interstate pipelines under section 311 of the NGPA, Congress has required that the rates must be "just and reasonable (within the meaning of the Natural Gas Act)." While a textual argument could be made that there is no ban under section 311 on any discrimination in rates among customers, the Commission does not take that position here.

There is no per se rule under the NGA for determining when a preference or advantage is "undue" or when a difference in rates is "reasonable." The general rule is that discrimination is "undue" when there is a difference in rates or service among similarly situated customers that is not justified, whether by differences in the costs of providing the service or by some other legitimate factors.

A review of the cases under the Natural Gas Act indicates that in virtually all cases, the finding of undue discrimination was predicated on actual or potential harm to the non-qualifying customer. Thus, the Commission has frequently found preferential treatment in natural gas curtailment plans or practices to be unduly discriminatory where similarly situated customers did not receive comparable amounts of gas from the pipeline. *See e.g. City of Detroit,* 6 FPC 196, 203 (1947); *Panhandle Eastern Pipe Line Co. v. Michigan Consolidated Gas Co.,* 7 FPC 48, 62 (1948); *Panhandle Eastern Pipe Line Co.,* 13 FPC 301, 310 (1954), *aff'd* 232 F. 2d 467, 472 (3d Cir. 1956), *cert. denied,* 352 U.S. 891 (1956); and 58 FPC 2795, *Louisiana Power & Light Co. v. FPC,* 526 F.2d 898 (5th Cir. 1976).

In all of these cases, the advantage conferred on the favored party came at the expense of some other customer since an increase in the quantity rationed out to one customer under a curtailment plan necessarily meant a decrease in the supplies available to all other customers.

In the few cases involving claims of undue discrimination relating to rate treatment, the touchstone again seems to be whether a preference offered to one customer or class imposes any harm to other customers that do not qualify. For example, in *Transcontinental Gas Pipe Line Corp.,* 28 FPC 979 (1962), the Commission was faced with a preferential rate offered to a customer in a precarious financial condition. The pipeline offered to absorb all the economic costs of the discount in the hope of increased future sales to the customer. 28 FPC at 981.

The Commission found, 28 FPC at 983, the preferential rate treatment to be undue, stating:[103]

> The fact that Transco, in the case now before us, is ready to underwrite the expense of assisting [the financially struggling customer] for a three-year period would not, in itself, necessarily constitute a sufficient basis of differentiation to permit denial of similar requests made by other financial distressed distribution companies whose suppliers may

not be so willing to undertake the loss involved in subsidizing their operations. (Emphasis added).

Thus, the concern there was not with the case presented but rather with a possible precedent for allowing discounts where the pipeline would *not* absorb the risk of under collection. Under the rate conditions in the final rule issued today, the pipeline is fully at risk for any under collections. Hence, the final rule does not raise the same concern as in the 1962 case regarding establishing a precedent for discounting where the pipeline is not at risk.

We find that generally allowing a pipeline to selectively discount between a ceiling and a floor set by this Commission will not result in rates that violate the non-discriminatory requirement of section 4(b) of the NGA as long as the ceiling and the floor are properly designed. We have designed three rate standards that will protect customers from undue discrimination. First, all ceiling rates will be fully allocated, cost justified, just and reasonable rates. A pipeline can *never* charge any customer any more than this ceiling rate. Thus, no customer, no matter how captive and devoid of competitive alternatives, need fear that a pipeline will exercise its monopoly power to charge more than the just and reasonable rate set by this Commission in the full exercise of its authority under section 4 of the NGA.

Second, all floor rates will be no less than the average variable costs of a pipeline in the relevant period. This is the economic test ordinarily used for determining when discount pricing becomes predatory pricing. A pipeline can never charge a customer less than the floor. Thus, a competitor of the pipeline or competitor of the customer receiving the discount need not fear that the pipeline will engage in transparent predatory pricing. We note, however, that charging the floor rate may not necessarily constitute a defense to a predatory pricing charge under the antitrust laws. We state only that the test of average variable costs for the floor rate is sufficient to ensure that the Commission has met its obligation under the NGA to ensure that rates are non-discriminatory—an important economic component of which is the prevention of predatory pricing.

Third, the Commission has structured the transportation rate conditions to prevent a pipeline from requiring a captive customer to cross-subsidize a discount to a competitive customer. A pipeline's rates are developed by establishing projected units of service. That is, how many units of service can the pipeline be reasonably held accountable for over some future period. Costs are allocated on the basis of projected units and the maximum rate is developed by dividing units into costs. The pipeline will not recover its allocated costs if it does not sell at the ceiling as many units as were projected. On the other hand, the pipeline retains any revenues over the costs allocated if it sells at the ceiling or some lesser rate more units than were projected.

Thus, a pipeline may decide to discount to one customer to collect *some* contribution to the costs allocated to the transportation service, rather than lose the customer and make *no* contribution to fixed costs. The discount, however, does not mean any customer pays a higher unit rate to make up the difference between the costs *actually* recovered and those that would have been recovered if the pipeline *could* have charged the ceiling price. This difference in costs comes out of the shareholders pockets if there is any underrecovery. Indeed, other customers paying the ceiling rate may benefit by selective discounting because, if those customers who received the discount were lost to the pipeline, it raises the spectre that the pipeline may be justified in proposing to reallocate its costs so that its captive customers bear more of the fixed costs of the system. Flexibility will be essential in the new competitive environment and all customers should benefit if the pipeline is given to tools to compete effective.

In *Sea-Land Service v. ICC*, 738 F.2d 1311 (D.C. Cir. 1984), the court suggested that the contract rate or discount must be offered to shippers who are "similarly situated" or who face "substantially similar circumstances and conditions." The court recognized that "unique competitive conditions" and "different competitive circumstances" might justify a discount contract rate what the court viewed as a "non-discrimination" requirement. The court's analysis is equally applicable, we believe, to the non-discrimination requirement of the NGA. We are confident that the may that rates are structured will ensure that this will be the case for contracts for transportation service. As noted above, pipelines are at risk for discounts below the ceiling rate. We are confident that pipelines will always seek to charge the ceiling rate in order to maximize profit and will only discount when necessary to make a sale that would not otherwise be made. Thus, two customers similarly situated with respect to their competitive conditions—if, for example, both can switch to No. 6 residual fuel oil or both can switch to a competitor pipeline offering a lower rate—can be expected to receive similar treatment from the pipeline.

Thus, we believe that selective discounting does not per se constitute a violation of the non-discrimination requirement. Nonetheless, to ensure that this general analysis is correct even in specific cases, the Commission will require a pipeline to file its selective discounts (section 284.7(d)(5)(iv)) and will entertain complaints under section 385.206 from any party who believes that a particular discount violated the non-discrimination requirement under section 4(b) of the NGA.

That Congress intended to allow a range of rates to be set under the NGA is also supported by the legislative history of the NGA. During the floor debates on the bill that became the NGA, Congressman Lea, the Chairman of the House Interstate and Foreign Commerce Committee, twice stated that under section 5, the Commission "has the power to fix a maximum, minimum or a specific rate."[104] Since the only purpose of allowing maximum and minimum rates is to allow flexibility in pricing to meet competition, Congress contemplated that pipelines could be allowed to discount rates selectively to meet competition. Furthermore, specific "customized" natural gas rates were a prevalent and well-known rate-making practice by interstate pipelines immediately prior to enactment of the NGA.

We also note that for many years *after* enactment of the NGA, pipelines sold gas at the city-gate under "sharing equation" type rate schedules where the jurisdictional rate was a stated percentage of the retail sales rate. The reason for this arrangement was the need to meet competitive conditions at the burner-tip. The Commission phased out these arrangements in 1948 by requiring that all rates be "stated" rates.[105]

Thus, the issue is not whether selective discounting is per se lawful or unlawful under the NGA. The issue is whether such discounting—at the pipeline's risk—as provided for in the final rule is reasonable in light of the relevant facts and circumstances. Accordingly, we turn first to the general pro's and con's of selective vs. uniform discounting and then to the more particular criticisms raised in the comments.

C. The Advantages and Disadvantages of Selective Discounting

In evaluating these comments, the Commission has first reviewed the economics of price discounting as a response to competitive conditions in commodity and transportation markets.

Under economic theory, price discounting is a rational policy to pursue only when the pipeline perceives it is better to earn less than a full return on a service than to risk losing the service and failing to achieve the volumes on which its rates for the period in question were based. Such flexibility will better equip the industry to respond to unregulated commodity traders who are free to change their prices at will and also to respond to the emerging competition between pipelines in transmission services.[106]

The price band within which the pipeline can vary its rates depends upon the time of use, namely, whether it is a peak, non-peak, or shoulder period. The floor in each period is the expected short-run variable cost. This price floor is consistent with both economic and antitrust theory on preventing predatory pricing.[107] When the short-run average variable cost is less than marginal cost, the pipeline which charges less than marginal but greater than short-run average variable cost is still making some contribution to its fixed costs and is covering its out of pocket expenses. Thus, short-run variable cost is an acceptable price floor. Further, and most significantly, when the pipeline prices below marginal cost, any loss of fixed cost recovery comes from the stockholders. Regulation should be limited when it comes to the specification of how stockholder's funds are used.

The rule on price flexibility also provides the pipeline the ability to lower its rates on an individual customer basis. Questions arise over whether or not this promotes economic and social efficiency. We find there are greater social and economic gains that occur under this proposed rule than the gains which arise if price uniformity is imposed on discounting.

The gains which arise under uniform discounting are that the captive customers will sometimes benefit from lower rates as the pipeline attempts to hold onto other customers who have more economical alternatives. However, due to the cost to the pipeline of uniformly discounting, this gain may only seldom be observed and only when there is the potential of severe loss of throughput. In these unique cases, the pipeline would elect to uniformly discount, provided it could not practice selective discounting. In all other cases, if discounting must be done on a uniform basis, the pipeline would not choose to discount. Rather it would charge the price ceiling, and no customer would gain greater economic welfare. Further, the firm will lose revenue that would not occur were the pipeline to selectively discount. This loss of revenue will first drive the per unit cost of serving the remaining customers up and will ultimately drive up the cost of capital to the pipeline and over time lead to an undersizing of transmission. Thus, these latter results are to the detriment of all customers. The captive customer will gain less from required uniform discounting than when selective discounting is possible.

The pipeline's use of selective discounting will permit the pipeline to hold onto greater throughput, provide certain customers with transmission service at less than the maximum price, and place the risk of under-recovery of its revenue requirement on the pipeline, as opposed to on the customers, to the benefit of all its customers. Further, because the Commission has stated that it can and will hold the pipeline responsible for any unused capacity below projected volumes, the pipeline should be given the tools legally possible such that it can reach this revenue target.

By providing the pipeline the opportunity to selectively discount, the Commission may permit the pipeline to exercise greater market power than is typically observed in a workably competitive market.

In a workably competitive market, because of consumer mobility and the inability of firms to prevent resale, the ability of the firm to selectively discount is limited except were the transaction cost of discovering prices is relatively high. Once the workably competitive firm posts a price discount, this discount is available to all in that market. However, this firm may not choose to lower its price in all the markets in which it competes. Thus, a price inelastic customer gains the benefits of price discounting only in the market in which prices have been lowered. Natural gas transmission companies possess market power over some customers in some of their geographical markets. These captive customers are not mobile and they are not generally capable of benefiting from resale. The pipeline, unlike many workably competitive firms, can more easily price discriminate among customers, yet the pipeline sells under a regulated price ceiling that constrains the price charged to the captive customer to a just and reasonable level.

We are not, however, granting the pipeline any immunity from antitrust or fair-pricing laws.[108] Further, we have coupled the ability to lower rates on an individual basis with general pricing rules such that maximum social welfare is achieved.

As indicated by section II.A., above, competition in the natural gas industry today is proliferating.[109] In these circumstances, it makes little sense to withhold from pipelines the basic weapon other businesses have to wage the competitive battle: the ability to lower prices to beat the competition.

Indeed, giving pipelines the ability makes very good sense. An example will make this clear. Suppose a pipeline, providing self-implementing transportation services, has a maximum rate of $1.00 for transportation service, based on projected levels of 1,000 Mcf, including 100 Mcf to be transported for an electric utility. Assume also that the wellhead price of gas is $2.95 and that the delivered price of residual fuel oil is $4.50. Assume also that the delivered price of residual fuel oil drops to $3.50. The utility can switch and tells the pipeline that, unless the pipeline can beat the price of residual oil, it will switch from gas.

In this situation, there are three possibilities. First, the pipeline may do nothing. In that case the pipeline will lose 100 Mcf of throughput and will fall 10% short of fully recovering its fixed costs. Second, if allowed, the pipeline will discount its transportation rate by $.50 so that the delivered price of gas is $3.45, which beats the delivered price of residual fuel oil. The pipeline will retain the 100 Mcf throughput. The pipeline will still fall short of recovering its fixed costs (including its full authorized return on equity). But the shortfall will be only 5% rather than 10%. Third, if selective discounting is not permitted the pipeline may reduce its transportation rate by $.50 to all customers. The pipeline would retain the 100 Mcf of throughput. But it would fall 50% short of recovering its fixed costs. The pipeline is not likely to be willing to do that. Instead, it will not discount at all since that will cause it to fall only 10% short.

Thus, the pipeline really has only two choices: do nothing or selectively discount. As between these two, selective discounting serves the public interest best. If the pipeline does nothing, everyone loses: the electric utility, because it has to pay $3.50 for fuel rather than $3.45; the pipeline, because it will be 10% short of recovering its fixed costs rather than 5%; and the other customers, because the pipeline's failure to recover all its costs will cause the pipeline's asset costs and eventually its rates, to increase and be reallocated among its remaining customers. If, however, the pipeline selectively discounts, everyone is better off: the electric utility, because it has gotten fuel for $.05 less; the pipeline, because it has minimized its loss; the customers, because the pipeline's cost of capital will not increase as much.

D. Whether the Rules As Proposed in Fact Will Prevent Cross-Subsidization by Customers Not Receiving the Discount

Comments. The Maryland People's Counsel (MPC), argues that the proposed rule would not preclude the possibility of all cross-subsidization. MPC points out that the customers not receiving the discount would be subsidizing the customers receiving the discount if the revenue projection for the service were based on the actual revenues to be received rather than on the revenues that would be received if the pipeline charged the maximum rate. MPC argues that we should preclude cross-subsidization of this sort by requiring base revenue projections in rate filings to assume that all sales and transportation volumes will be charged at the maximum rate.

Commission Response. The Commission agrees. This oversight has been remedied in the final rule in §284.7(c)(4). That section requires that the maximum rate must be designed to recover fully, on a unit basis, solely those costs that are properly allocated to the service to which the rate applies.

E. Whether Selective Discounting May Be Anti-Competitive?

Comments. Commenters have argued that selective discounting may be used by the pipeline to attempt to prevent new entry into a portion of the pipeline's market. This new entry could take the form of relatively short interconnections to other major pipelines with excess capacity.

Thus, Maryland's Peoples Counsel, independent producers and marketers, and several state commissions have claimed that pipelines will use selective discounting to favor their own marketing or producers affiliates, or to limit entry of new pipelines.

Other commenters—including many distributors—argue that a pipeline may offer the discount to a buyer that is currently served by a distributor but charge the distributor the maximum rate, causing the distributor to lose the sale.

Commission Response. The Commission does not agree that selective discounting will harm competition.

With respect to relatively short interconnections, the capital barriers to this entry are small. And we are removing unnecessary regulatory barriers to new entrants. See Part B. See also existing § 284.3(c) of the Commission's regulations. Thus, short-term discounting is unlikely to generate potential long-term predatory or monopoly profits as Maryland's Peoples Counsel hypothesized. Rather, in order to keep this market, the pipeline will have to perpetually discount and therefore any potential harm to customers is highly unlikely.

While we favor new entry and the resulting competition, we also recognize that the customers in these markets can gain nearly the same benefits of competition without new entry through selective discounting. That is, the existing pipeline selectively lowers its price in this one market due to potential competition. The pipeline sells above its average cost and thus is better off than leaving this market. The customers have roughly the same lower price. Society has the resources, which the new entrant would have commanded, to deploy elsewhere.

The prohibition against undue discrimination has traditionally been interpreted as prohibiting discrimination among customers simply because of the identity of the customer. We do not change that interpretation. Rather, the final rule is permitting differences in prices because of business factors, such as competitive circumstances. Hence a pipeline may not offer a discount to its affiliate simply because of the affiliation. This would be a violation of the prohibition against undue discrimination of §§ 284.8 and 284.9.

We do not believe, however, that it is appropriate to prohibit a pipeline from offering a discount to an affiliate. There may be valid, competitive reasons for a discount. Moreover, the rule we issue today provides adequate safeguards against this abuse. The pipeline must file the discount with us and the filing will be attached to the pipeline's rate schedule. See § 284.7(d)(5)(iv). Interested persons will have all the opportunities provided by the statute to challenge a discount given to an affiliate. In any such hearing, the discount would have to withstand the strict scrutiny, traditionally applied to affiliate transactions under Commission precedents.

Pipelines can undoubtedly attempt to use selective discounting in the way suggested. But the basic complaint in this situation is under the antitrust laws. *See United States v. Aluminum Company of America*, 148 F.2d 416 (2nd Cir. 1945). Our rule does not grant a pipeline immunity from the antitrust laws.[110] More important, these complaints are reviewable by the Commission under Section 5 of the NGA. *See FPC v. Conway Corp.*, 426 U.S. 271 (1976).

There may of course be situations where a short-term discount would be potentially effective in excluding entry. In that case, selective discounting might be alleged to adversely affect competition. If that can be shown, it can be scrutinized and prohibited on a case-by-case basis.

In short, the rule only provides that a discount offered because of competitive conditions is not unduly discriminatory.

F. Whether Selective Discounting in Transportation Rates May Forestall Price Adjustments in Field Markets

Comments. MPC also argues that selective discounting will adversely affect other customers by relieving competitive pressure on the wellhead price of gas. The argument can be illustrated by means of the example we used earlier to show the consequences of not permitting selective discounting. In the example, the price of residual fuel oil was $4.50, the well-head price of gas was $2.95, and the maximum transportation rate, $1.00. The price of residual fuel oil then dropped to $3.50. In the example the pipeline met the competition by reducing its transportation rate to $.50 so that the delivered price of gas was $3.45 MPC's argument is that, if selective discounting were not permitted the producer would have reduced its price to $2.45. Thus, selective discounting prevented the realignment of the well-head price to the current market price. The result is, MPC contends, that the pipeline's other customers will pay more for gas than they would if the pipeline had not discounted its rate.

Commission Response. This comment is premised on the view that the Commission is the best judge of how the net back value of gas at the city gate should be allocated as between regulated pipelines and unregulated producers. We decline to accept that premise.

Our responsibility here is to set just and reasonable rates for interstate transportation and to ensure that customers—*i.e.* shippers—are not subjected to undue disadvantage or unreasonable difference in rates.

We do not believe that a pipeline's ability to selectively discount to individual customers is likely to have an impact on the overall price levels for the commodity prevailing in the field.

But even if it did, we note that the wellhead market for gas has been determined to be sufficiently competitive to remove federal price controls on all new gas supplies.

Pennzoil v. FERC, supra. Under MPC's approach, one could argue that pipeline rates of return should be lowered to the bottom end of the range of reasonableness during periods of short supply in order to raise the net back to producers as an incentive, or that they should be raised to the maximum during periods of surplus to reduce the wellhead net back.

We do not accept the view that Congress had that sort of pipeline ratemaking in mind when it acted to remove the federal entry, exit and price controls over gas at the wellhead.

G. Whether Selective Discounting Encourages Inflated Rate Base

Comments. Maryland People's Counsel notes that because a pipeline's earnings depend on an accounting rate base, the pipeline has an incentive to inflate its rate base. Regulation generally does not constrain the pipeline from doing so, but competition does. MPC states that selective discounting removes this pressure by allowing the pipeline to reduce its rates where competition exists while continuing to charge inflated rates (because the rate base is inflated) to other customers.

Commission Response. The Commission has included in the final rule an express prohibition on a pipeline's recovering between or in rate cases any costs attributable to but not recovered from a customer charged a rate less than the maximum. The Commission intends this proscription to apply to indirect as well as direct cross-subsidization, such as the inflation of a rate base. To the extent inflation of a pipeline's rate base results in higher maximum rates prospectively, the pipeline faces increased risks that it must "absorb" the increment of fixed costs added to the difference between its former maximum rate and the selective discount rate.

H. Whether To Impose a Minimum Rate

Comments. Several pipelines argue that there should be no minimum on the transportation rates that may be charged.[111]

Commission Response. The Commission determines that to allow pipelines to provide service at a rate that does not even recover the variable costs of the service would be pure social waste. In addition, the minimum rate serves as a check on pipelines engaging in anti-competitive behavior.

I. Filing of Any Discount

In response to the comments identifying the potential for abuse, the Commission has also determined to require that every discount rate be filed with the Commission and attached to a pipeline's stated rate schedules no later than 45 days after the end of the billing period during which the discount rate is being charged. The final rule requires that this filing include the name of the transporter, the shipper, the corporate affiliation of each, the maximum rate and the rate charged. These requirements are set forth in § 284.7(d)(5)(iv) of the final rule.

(vii) Applicability to intrastate pipelines and grandfathering of existing transportation rates.

Comments. One commenter proposes that, if the Commission proceeds to impose the proposed rate conditions, they should apply only to future rate filings by intrastate pipelines for NGPA section 311 transportation. Because numerous section 311 transactions are ongoing at this time, this commenter asserts that calling all rates for such transactions into question would be unduly costly and disruptive.[112]

Transok, Inc. states that, should the new rules be made applicable to existing NGPA section 311 arrangements, intrastate pipelines may have to renegotiate existing contracts, re-file numerous reports, and re-petition for rate approval on all transactions. Since the underlying contracts for existing section 311 service did not contemplate the new conditions of the proposed rules, those contracts will have to be changed, creating an unduly burdensome task for pipelines. Transok believes that the Commission should not revise its regulations where such action will effectively force modifications of the terms and conditions of existing section 311(a)(2) transportation arrangements. Further, Transok points out the pipelines have relied on § 284.125 of the existing regulations, which provides that transportation arrangements may only be modified at the time of extension requests.

Transok alleges that it has in good faith entered into binding transportation arrangements in reliance upon the Commission's regulations which provide that approved transportation arrangements cannot be modified until expiration of the current term of the arrangement. In order to ease the transition to the requirements of the new rules and to allow the parties to realize their contractual expectations, Transok requests that the Commission grandfather existing arrangements to continue, in accordance with the conditions applicable at the time service began, until the current terms of such arrangements expire. The Commission, Transok suggests, could then provide that all renewals or extensions after the effective date of the proposed rules would be subject to the new terms and conditions. When an existing arrangement's term expires, the intrastate pipeline could determine whether it desires to re-commence the service under the new conditions.

Commission Response. The Commission has determined, for the reasons given by the commenters, that section 311 transportation arrangements commenced prior to the effective date of this rule by intrastate pipelines should be grandfathered so as to shield them for the remainder of their terms (but no later than October 31, 1987) from the non-discriminatory access condition adopted herein. This provision is contained in § 284.125 of the final rule. In addition, as discussed *supra*, the Commission has determined to exempt intrastate pipelines generally from the rate conditions.

Since the reasons given by intrastate pipelines for grandfathering their existing section 311 transportation from the access condition apply as well to such services already being provided by interstate pipelines, the Commission has determined that interstate pipelines' ongoing arrangements should also be grandfathered as to access, although not as to rates.

The final rule will allow existing section 311 transportation arrangements by both intra- and interstate pipelines to continue without becoming subject to the access condition until the expiration date of their original terms but no later than October 31, 1987. See §§ 284.105 and 284.125 of the final rule. In the great majority of instances, grandfathered section 311 transportation will end within two years of the effective date of this rule, since the current regulations limit section 311 transportation arrangements to two years, unless an application for authorization for a longer period had been approved by the Commission prior to the final rule.

After the effective date of the final rule, any continuation of currently existing section 311 transportation arrangements beyond their scheduled expiration dates shall be fully subject to all the rate, access, and other conditions adopted in the final rule.

All other self-implementing transportation under the final rule must be subject to rates on file at the Commission consistent with the rate conditions, to be effective no later than July 1, 1986. During the interim period between the November 1, 1985, expiration of the section 7 blanket transportation certificates pursuant to the court's mandate in *Maryland People's Counsel*, and July 1, 1986, a transporter may file and the Commission will authorize on an interim, temporary basis rates for self-implementing transportation that depart from these rate conditions, provided the rates are consistent with valid rates charged for such transportation prior to the final rule and provided the transportation is provided consistent with all other terms and conditions in this rule, including the non-discriminatory access condition. The provision governing interim rates for transportation are set forth in § 284.7(b) of the final rule.

The Commission intends this transition period to be available in order to provide pipelines and shippers a suitable time to flexibly plan and adapt their transportation rates in a phased and orderly fashion to conform to the conditions in the final rule.

In the case of intrastate pipelines, however, the Commission has revised the final rule to expressly exempt intrastate pipelines from the requirements that firm and interruptible transportation be offered under self-implementing authority. This exemption permits intrastate pipelines to choose what types of service to offer under section 311 transportation in order to protect their strictly intrastate operations.

The final rule retains the option for intrastate pipeline rates either to be filed at the Commission or to be on file at the relevant State regulatory agency with authority over the intrastate pipeline, provided such rates are consistent with these rate conditions in the existing regulations and thus "fair and equitable" consistent with section 311 of the NGPA.

For all these reasons, the Commission concludes that the rate conditions in the final rule are reasonable and necessary standards that should be applied to self-implementing transportation services.

11. *Flexibility of self-implementing transportation.* In consolidating the existing transportation programs under both section 7 of the NGA and section 311 of the NPGA, the Commission intends to provide pipelines increased flexibility to offer self-implementing transportation services. This flexibility should enable pipelines to tailor their services to the individual and varied needs of gas customers and in turn allow both gas customers and gas merchants the ability to transact business on a timely and competitive basis. At the same time the final rule preserves the ability of the Commission to regulate the rates charged for both pipeline sales and transportation services consistent with its statutory obligations under the NGA and NGPA.

Finally, the final rules seek generally to remove any bias against unbundled transportation that may be created by the existing ratemaking framework.

The proposed rule simplified and consolidated self-implementing transportation programs in a number of ways in order to accomplish this goal. The final rule generally tracks the proposal in these areas.

For example, the final rule eliminates restrictions on what categories of gas, what classes of shippers, and what end-uses are eligible for self-implementing transportation services under either section 7 of the NGA or section 311 of the NGPA. In order to place local distribution companies on an equal footing with pipelines in providing transportation services to direct endusers, the final rule eliminates the "system supply" test applicable to section 311 transportation. See section 284.102. The rule instead incorporates the statutory requirement that such transportation be "on behalf of" the intrastate pipeline or LDC.

The final rule also provides pipelines with flexibility to change receipts or deliveries of gas at already authorized points without prior notice. See, for example, § 284.221 (g) and (h).

Finally, the final rule simplifies application procedures, deletes restrictions on the term or duration of transportation arrangements, and provides for "grandfathering" certain existing transportation arrangements for a suitable transition period after the effective date of the final rule. Reporting requirements are also reduced.

The final rule retains the prior notice and protest procedures under the blanket certificates for new individual transactions. These protections assure that the Commission's responsibility to review pipeline transportation programs and determine whether they are in the public interest is carried out in a manner that also enables pipelines to flexibly respond to transportation requests.

Specific comments in these issues are discussed in more detail below.

a. Flexible Receipt and Delivery Points

Comments. A number of commenters address the proposal to permit flexibility in receipt and delivery points. Briefly stated, under sections 157.103 (g) and (h) and sections 284.221 (g) and (h) a pipeline may, at the request of the shipper and without prior notice, reduce or discontinue, or commence or increase, receipts or deliveries of natural gas at a particular point and may commence or increase receipts or deliveries at another point.

A number of commenters support this proposal but request modifications.[113]

Several commenters state that these sections provide the pipeline with too much discretion and create the potential for discriminatory treatment. They suggest requiring pipelines to make changes in receipt or delivery points at the request of the shipper where sufficient capacity exists on the system. They state that without the assurance of flexible delivery points, they will be "locked in" to specific delivery points where only one or a few sellers have gas available. They also fear that since the authority is permissive, some pipelines may discriminate against some shippers by refusing to construct minor facilities, such as "taps" needed to receive the gas the shipper needs transported.[114] At least one commenter suggests that pipelines should be required to construct certain types of minor facilities if the shipper requests transportation.[115]

One distribution company suggests that the regulations be amended to provide that a delivery point can be used only for the purpose specified in the blanket certificate application and as authorized after the notice and protest procedures. Without such an amendment, they are concerned that there would be no future review of the facility once it was authorized.

Some commenters request clarification as to whether the construction of new delivery points is authorized under section 284.221 or whether this section applies only to to the decrease or increase of deliveries at existing delivery points. Some commenters state that pipelines must have the authority to establish new delivery points to transportation customers, as well as flexible authority to establish new sales points for existing customers, provided the deliveries at these points do not exceed the pipeline's authorized delivery quantities. They state that this authorization is necessary if all parties are to be treated equally.[116]

Commission Response. As proposed, pipelines that transport gas under the transportation provisions will be subject to the non-discriminatory access condition. The Commission intends for this provision to prevent pipelines from discriminating against any shipper in constructing minor facilities to either accept or deliver those supplies. While we recognize that it is difficult to define precisely what type of activity or refusal would fall within the ambit of this provision, and while there is no per se requirement to construct any facilities to perform self-implementing transportation, a discriminating refusal to construct minor facilities to the undue advantage or disadvantage of a shipper would be suspect. As noted, the final rule does not require pipelines to construct any facilities. However, the Commission has broad remedial powers to enforce valid regulations. Hence, a discriminatory application of a policy regarding the construction of such minor facilities might well be found to be a violation of the terms and conditions of the self-implementing authorization. The Commission need not determine at this time whether a requirement to construct facilities might be an appropriate remedy in such a case. See discussion in section IV.A.4.f., *supra*.

We note that there is no regulatory barrier to the pipeline constructing minor facilities since their construction is automatically authorized under the current blanket certificate regulations. Moreover, where the pipeline does construct such facilities, generally there is little cost, if any, to the pipeline since the beneficiary of those facilities (*e.g.*, the shipper) usually reimburses the pipeline for its costs.

We agree that once a facility is constructed under the blanket certificate procedures for a specific purpose, the facility must be used only for the certificated purpose. If the facility is to be used for a new purpose, the pipeline should file a new prior notice application setting forth the new proposed use. This is consistent with the rule, in which authorization to construct and *operate* a sales tap is subject to the prior notice procedure. This approach will ensure that existing facilities built for one purpose will not be used for a new purpose which could by-pass an LDC or have adverse consequences on some party without an opportunity for notice and protest. This requirement is implicit in the existing prior notice provisions of §§157.205 and 157.211. No substantive changes are made in these provisions in the final rule.

By way of clarification, the final rule merely authorizes decrease or increase at receipt or delivery points. These sections do not authorize the construction of new delivery points necessary to effectuate those changes. Some of these facilities may, however, be constructed and operated under the blanket certificate authority in Subpart F of Part 157. Alternatively, an applicant may use the optional expedited procedures implemented by this rule or a traditional section 7 application.

With respect to pipelines' establishing new delivery points to transportation customers and new sales points for existing customers, we note that pipelines will have this authority under the final rule. Thus, pipelines may construct and operate sales taps to deliver gas to end-users who are or will be served directly or indirectly by the certificate holder's system supply provided the volumes are within the certificated entitlements of the customer. Under current regulations, certificate holders may add new delivery points for a customer or reassign volumes of gas to be delivered from one point to another. The combination of these two provisions, both of which are subject to the prior notice procedure, should provide pipelines sufficient authority and flexibility to meet the needs of their transportation and sales customers.

For clarification, by certificated volumes we mean volumes that are authorized by the applicant's certificate. Since the certificate authorizing service to a customer sets forth specific volumes or entitlements to that customer, any reassignment of volumes must not exceed those certification volumes.

Comments. The NOPR noted that in light of recent orders, the Commission sought comments on the "role and function" of existing §284.3(c) "including the impact on the Commission's jurisdiction and how facilities constructed under section 311 may be used in the future."

That provision, which the May 30 notice did not propose to modify, states that facilities used solely for transportation authorized by section 311(a) of the NGPA are not subject to NGA jurisdiction. Few comments were received in response to the Commission's request.[117]

Some of the commenters, including UGI, urged the Commission to leave this regulation unaltered on the grounds that the current provision promotes competition among pipelines. UGI states that it supports the Commission's recent decisions in *Columbia Gas Transmission Corporation* v. *Transcontinental Gas Pipeline Corp.*, 30 FERC ¶ 61,298 (1985) (dismissing a complaint by Columbia regarding the construction of section 311 facilities by another pipeline to serve one of Columbia's customers), and *Columbia Gas Transmission Corp.* v. *Consolidated Gas Transmission Corp.*, 31 FERC ¶ 61,057 (1985) (same). UGI believes these decisions uphold the intent and purpose of the NGPA and, therefore, that section 284.3(c) should not be altered.

Commission Response. The Commission has determined not to propose any change in the regulation. We believe this decision is appropriate because the current provision carries out the mandate of the NGPA by encouraging pipelines to engage in section 311 transportation and by assuring them that the facilities they construct to provide section 311 transportation will not become subject to the Commission's jurisdiction under the NGA. By encouraging pipelines to transport for others, the existing exemption promotes access to the commodity market by otherwise "captive" customers that may be able to acquire access to alternative transporters as well as merchants.

Also, the Commission believes that the regulation is consistent with the language and goals of NGPA sections 311(a) and 601(a)(2) because it shields from NGA jurisdiction only those facilities that are used solely for section 311 transportation.

b. Whether To Retain the "System-Supply" Requirement

Under current regulations, transportation under Part 284 is limited to gas delivered directly to an interstate pipeline, intrastate pipeline, or local distribution company that receives the gas for its "system supply for resale". The Commission proposed to eliminate this system supply test, but also noted that the transportation must still, as required by section 311 of the NGPA, be "on behalf of" the pipeline or local distribution company.

Comments. Virtually all commenters support elimination of the system supply requirement, stating that it is no longer needed in today's market. They asserted that the "system-supply" test is inconsistent with the goal of providing self-implementing transporters the maximum flexibility to provide services to all natural gas consumers for all end-uses, regardless of the status of the shipper.[118] Many commenters in the NOI and this proposed rule also stated that the "system-supply" requirement places LDCs at a unique disadvantage in obtaining transportation service in competition with pipelines serving industrial end-user shippers directly under section 7 blanket certificates.[119]

Several commenters also agree that the "on behalf of" test is a statutory test that cannot be eliminated. They believe, however, that the Commission's interpretation is too narrow. They state that the NOPR implies that the entity on whose behalf the transportation is performed must either actually take title to the gas during transportation or have a direct contractual relationship with the transporting party. They suggest that this interpretation is too narrow and that the test would be satisfied so long as the entity on whose behalf the transportation is performed receives some tangible benefit associated with the transaction, such as ultimate receipt of the gas or assistance in fulfilling a contractual obligation related to section 311 transportation.[120]

Commission Response. The final rule eliminates the "system-supply" requirement. Instead section 284.103 provides that the transportation must be "on behalf of" an intrastate pipeline or local distribution company. With regard to the meaning of the "on behalf of" requirement, we reiterate what was said in the NOPR:

> However, as we discussed in Order No. 46, which implemented section 311, this test is a legal test, not a physical test, and only requires some nexus between the transporter and the intrastate pipeline or local distribution company. Thus, the intrastate pipeline or local distribution company need not physically receive the gas, but need only have the gas transported for its account.

(NOPR, *mimeo*, at pp. 57–58) (footnote omitted).

By commenting on the "on behalf of" test, we did not intend to alter the current application of that test as it was more fully explained in Order No. 46.[121] This rule does not change our interpretation of the "on behalf of" requirement which will continue to be applied as it has been applied in the past.

c. Whether to Retain Separate Criteria for "High Priority" end-Users

Under current regulations, interstate pipelines with a blanket certificate are authorized to transport gas on behalf of "high priority" end-users, subject to certain restrictions. Such transportation is automatically authorized for a period of up to five years, if the gas was purchased from certain eligible sellers or for a period equal to the life of the reserves up to a maximum of ten years provided the end-user owns and developed those reserves.[122] The May 30th notice proposed to eliminate special treatment for these end-users and place all potential shippers on an equal footing.

Comments. Some commenters express concern that this provision would be eliminated and that transportation to these end-users would be subject to a prior notice procedure in which alternative suppliers or competitors of the end-user could protest the transportation. They state that once their current self-implementing authorization for transportation expires, high-priority end-users will be unable to continue to make direct purchases of gas if a pipeline refuses to offer transportation service. They contend that this will result in a significant decrease in regulatory flexibility for high-priority users as well as severe hardship on high priority end-users that rely on those transportation services.[123]

Commission Response. As proposed and implemented in the final rule, transportation for high priority users that has been authorized under § 157.209(a) is "grandfathered", *i.e.*, authorized to continue for the term of the transportation arrangement subject to the terms and conditions at the time it was authorized. See § 284.223(g) of the final rule.

New transportation arrangements to high-priority users, however, will be subject to the same procedures as for all other end-users. As we said with regard to the determination not to condition producer access, if we are to have a framework for equal and non-discriminatory access to transportation, all shippers must be treated equally.

We also note that the final rule eliminates a number of restrictions that currently apply to transportation for such users. Thus, there are no longer restrictions as to the type of gas the high priority end-user may purchase and from whom the gas may be purchased. Eliminating the restrictions on sources of supply will increase the pool of supplies available to high priority users and all other users. Moreover, the final rule establishes the new rate structure and the non-discriminatory access condition for self-implementing transportation. Accordingly, there is no need to retain special procedures for a limited group of shippers.

d. *Self-Implementing, 120-Day Transportation Authorization*

Section 284.223(a) automatically authorizes transportation to any end-user for a period of 120 days. During that period of time, the certificate holder must make a prior notice filing if the transaction is to continue beyond 120 days.

Comments. Many commenters state that the 120 day period is too short and should be either extended, or alternatively, authorized on a self-implementing basis without any prior notice procedure. Under current procedures, they state there is a risk that the 120 day period will expire or a protest will be filed and the transportation will be interrupted. A better approach, according to some commenters, is to permit the arrangement to extend for the period of the transportation contract without any prior notice procedure or to permit such transportation for at least six months, or possibly five years.[124]

Several commenters request clarification of proposed § 284.223(a)(3). That section authorized additional 120 day transportation terms provided that (i) the gas is transported by the same pipeline for the same shipper, and (ii) the transportation arrangement between that shipper and transporter was authorized under the prior notice procedure. They state that the prior notice procedure merely appears to authorize successive 120 day roll-over periods.

One commenter suggests that the 120 day limitation is discriminatory since transportation under NGPA section 311 is not subject to similar restrictions. Thus it argues that shippers who do not meet the "on behalf of" test under section 311, or, for other reasons, do not have section 311 transportation available to them, are subject to possible delay or interruption when their self-implementing authorization expires. It urges that the self-implementing authorization be permitted for an unlimited time period to eliminate this discrimination.[125]

Commission Response. We disagree with the suggestion to extend automatic authorization for a period equal to the duration of the contract or for periods longer than 120 days. Since implementation of the blanket certificate transportation program, pipelines have been transporting gas under the prior notice procedures in section 157.209(e). It is our experience that these procedures have been successful in achieving their purpose—to move gas quickly to a ready market while interested parties are provided the opportunity to protest.

Under section 7 of the NGA, pursuant to which the blanket certificate rule is promulgated, we have an obligation to issue certificates only where they are required by the public convenience and necessity. The blanket certificate rules set out a class of transactions, subject to specific conditions, that the Commission has determined to be in the public convenience and necessity. Experience since August of 1983 indicates that the transactions are infrequently protested, but that the protest procedure ensures the integrity of the regulatory function mandated by statute. Accordingly, the final rule retains in § 284.223 the prior notice approach for all transportation beyond 120-days. If experience under the new transportation rules demonstrates that prior notice filings for these transactions serve no useful function, the Commission may entertain petitions to modify the rules accordingly.

We wish to clarify the confusion as to the operation of proposed § 284.223(a)(3). That section was intended to prevent parties from using successive 120 day transportation arrangements to circumvent the prior notice procedures. Accordingly, it has been retained, but will be § 284.223(a)(2) in the final rule. It permits a successive 120 day transportation period between the same shipper and same transporting pipeline only if the previous transportation arrangement was approved under the prior notice procedures in § 157.205. For example, a shipper and pipeline may commence a 120-day transportation arrangement for a contract period of 18 months and satisfy the prior notice procedures for that arrangement. Several months after the 18 month contract expires, the same shipper and pipeline may wish to enter into another transportation arrangement. Since the prior arrangement was approved under the prior notice procedures, § 284.223(a)(2) would authorize that same shipper and pipeline to commence transporting for a new 120-day automatic authorization period, during which time they could file a prior notice application for their new arrangement. If their previous prior notice application for the 18 month contract was not approved, § 284.223(a)(2) would prohibit the second 120-day automatic authorization period. Thus, the effect and intent of this section is to prohibit the same shipper and pipeline from commencing a new 120-day automatic authorization arrangement if their previous transportation arrangement was not approved under the prior notice procedures.

We agree that the conditions for transportation under § 284.223 are different from those which apply to transportation under section 311 of the NGPA. However, this is in part because the statutory tests are different. Unlike § 284.223 transportation, section 311 transportation does not require a determination as to the public convenience and necessity. In addition, transportation is subject to the statutory "on behalf of" test. As discussed in more detail elsewhere, such transportation does not raise the same concern for bypass of an LDC since normally the transportation will be "on behalf of" the affected LDC. However, since no such test applies to § 284.223 transportation, it is necessary to limit the period of self-implementing authorization in order to minimize any harm and to provide a notice and protest period during which affected persons can raise their objections.

e. The "Grandfathering" of Existing Self-Implementing Transportation

Comments: With respect to transportation under current §157.209 (a) and (e), pipelines are authorized to perform transportation for certain end-users under certain conditions. Several commenters suggest that it appears from the proposed rule that transportation arrangements under §157.209(a) would be allowed to expire after the term of their authorization, which may be five or ten years, depending on the terms, and that arrangements under §157.209(e) would expire as of October 31, 1985. They request clarification on whether or not this was the Commission's intent.[126]

Commission Response. As discussed in more detail above, transportation under existing §157.209 (a) and (b)(1) would be permitted to continue under the terms and conditions of the applicable transportation authorization. Section 284.223(a)(2) of the May 30th proposed rule was intended to grandfather the remaining transportation terms that were commenced under the authority in §157.209(e) that are continuing as of November 1, 1985. Since the proposed rule was issued on May 30, 1985, however, the U.S. Court of Appeals for the D.C. Circuit has ordered that no further extensions of that program will be permitted. *Maryland People's Counsel* v. *FERC*, No. 84–1090 (issued June 28, 1985). Thus, except as provided below, all transportation under current §157.209(e) must cease as of November 1, 1985.

However, the Commission is concerned that end-users who presently rely on supplies transported under that section ought not to have service interrupted where the pipeline is prepared to operate under the new self-implementing rules. See §284.223(g).

First, under paragraph (g)(1) of §284.223, transactions that were previously certificated under Order No. 319 for a term extending beyond October 31, 1985 are allowed to continue on the same terms and conditions originally certificated; *i.e.*, the certificate holder can fulfill its existing certificate obligations without becoming subject to the access conditions contained in §§284.8 and 284.9. The rate conditions under §284.7 (including the provision for interim rates) will apply effective November 1, 1985, however.

Paragraphs (g)(2) and (g)(3) of §284.223 provide a *brief* transitional arrangement for ongoing transportation under the Order No. 234–B program which must otherwise halt on October 31, 1985. The section provides that the transportation may continue to November 1, 1985 if several conditions are met. Most important is the condition that the transporting pipeline must file, prior to November 1, 1985, a statement that it will, effective November 1, 1985, comply with the express non-discriminatory access condition spelled out in §§284.8(b) and 284.9(b) and with the rate conditions in §284.7. Paragraph (g)(3)(ii) makes it clear that transportation under the transitional rule is subject to the non-discrimination and rate conditions of the final rule.

The remaining provisions allow for continuous authorization so long as the notice and protest procedure has been followed or where the transaction is within a 120-day automatic authorization period that has not expired.

The authorization under paragraph §284.223(g)(2) ends on December 15, 1985 unless the pipeline has filed for a new blanket certificate prior to that date.

To facilitate the transition, the final rule allows the use of existing rates for an interim period. Thus, during the interim period, the transporting pipeline should charge its generally applicable tariff rate already in use for transportation under existing §157.209. Rates conforming to the new rate standard must, however, be filed to be effective July 1, 1986.

f. Filings by Shippers on Behalf of Pipelines

Comments. The NOPR proposed to permit an end-user (or its authorized agent) to make filings on behalf of the pipeline certificate holder.[127] Many commenters (mostly pipelines) object to this proposal.[128] They argue that the authority to make filings resides solely with the interstate pipeline, and that only pipelines can adequately make a determination of available capacity and complete an application in a timely and accurate manner.

Commission Response. Although the Commission believes it has the authority to permit an end-user to file on behalf of a pipeline certificate holder, we have decided not to adopt this proposal.

The proposal only has practical value where the pipeline is not as interested in selling transportation service as the shipper is in purchasing it. Under the rules adopted today, a pipeline that decides to operate under the self-implementing rules will be operating under rates and conditions which contemplate that a pipeline that moves more gas and moves it more efficiently will increase its revenues. Under these circumstances only confusion could result from allowing filings by the shipper on the behalf of the pipeline. If a potential shipper believes it is being discriminated against unduly, it may file a complaint against the pipeline, not a prior notice request on its behalf.

g. Notice and Protest Procedures

Comments. Under the current and proposed procedures, many transactions are subject to the notice and protest procedure in §157.205 by which interested parties are provided an opportunity to protest an on-going or proposed activity. Some commenters suggest that these procedures are no longer necessary and suggest they be eliminated or significantly modified. They contend that elimination of these procedures will promote pro-competitive free-market forces and enhance competition. Alternatively, one commenter suggests establishing a complaint procedure by which a party objecting to a transaction could file a complaint protesting the activity. The protesting party would be required to set forth its reasons with specificity in its complaint. It suggests that the activity would be allowed to continue, pending resolution of the complaint.[129]

Commission Response. We believe the notice and protest procedure remains an important procedure in the scope of the new program, at least for the present. While some activities are automatically authorized, such as the 120 day transportation authorization, other activities potentially could adversely affect interested parties. The notice and protest procedure serves as an effective mechanism for those parties to receive notice of the activity and to protect their interests. As noted above, it is our experience that very few activities are interrupted or delayed because a protestor has not withdrawn its protest. For those that are not withdrawn, the concerns raised by the protest must be addressed. Given the success with which this procedure has worked under the blanket certificate program, we choose to neither eliminate it nor change it.

Comment. Under proposed §284.221(g), interstate pipelines may reduce or discontinue, or commence or increase, receipts at certain receipt points without prior notice. Similarly, under proposed §284.221(h), interstate pipelines may reduce or discontinue, or commence or increase, deliveries at certain delivery points. However, in either case, the total amount of gas affected by these arrangements would not be allowed to exceed the total volume authorized under the certificate. Some commenters suggest that these sections include increases beyond certificated volumes without any prior notice requirement. They claim this will add flexibility to the market and permit timely execution of business opportunities. Alternatively they suggest a notice of increased volumes could be sent to the Commission after the arrangement is executed.[130]

Commission Response. We think it would be inappropriate to permit increases beyond certificated volumes without some procedure to permit interested parties to intervene or this Commission to review the consequences of the increase. An increase in deliveries beyond certificated volumes requires a new finding as to the public convenience and necessity under section 7(c) of the Natural Gas Act. Without some procedure to give notice of that increase and to review the impact of the increase, it would be difficult for the Commission to justify a finding that the increase meets the statutory criteria or for affected parties to intervene to protect their interests. Therefore we decline to implement this suggestion.

h. Traditional section 7 applications

Comment. A few commenters question the priority that will be given to traditional section 7 applications assuming the other procedures in Part 284 and Part 157 are implemented. Since those procedures are optional, they request clarification as to whether the Commission intends to act promptly on those transactions that are not subject to those procedures.[131]

Commission Response. The Commission believes that the concerns of the commenters are unfounded. To the extent that some traditional section 7 transactions may now qualify under the self-implementing rules or the new optional procedures, the number of section 7 applications will decrease. As for the remaining section 7 applications, the Commission will continue to process these and all applications it receives in the same manner as they were processed before the adoption of this final rule.

6. *Reporting Requirements.* The proposed rule sets forth a number of reporting requirements and requests comments on how those requirements should be modified to eliminate unnecessary filings. Many commenters support the proposed changes but also suggest that the reporting requirements be reduced to the minimum necessary to assure that pipelines are not engaged in discriminatory transportation.[132]

a. Section 311 report requirements

(i) 48-hour report.

Comment. The notice proposed to eliminate the 48-hour telegram report required by §284.4(b) for interstate pipelines engaging in section 311 transportation. One commenter states that this requirement should not be eliminated since it requires the pipeline to choose whether the transportation is performed under section 311 of the NGPA or section 7(c) of the NGA.[133] Other commenters support the elimination since the information was redundant and unnecessary.[134]

Commission Response. The Commission's experience with the 48-hour report indicates that this requirement is unnecessary. The information normally included in that report is contained in the reports submitted pursuant to the other reporting requirements in §284.106 and 284.126. Therefore, this requirement will be deleted.

(ii) Initial full reports

Comment. Sections 284.106(a) and 284.126(a) require the pipeline to file an initial full report within 30 days after commencing transportation under these sections. One interstate pipeline states that it is administratively difficult to file initial full reports within 30 days after commencing blanket certificate transportation and that this time period should be extended or the report eliminated since the final report contains the same information.[135]

Commission Response. This suggestion is not adopted in the final rule. We think it is reasonable to require initial full reports within 30 days of commencing the transportation arrangement. This requirement has been in effect since these transportation programs were implemented and pipelines do not appear to have encountered any serious difficulty in meeting this deadline. Moreover, since we are eliminating the 48-hour report and final report, the only notice of the transportation arrangement will be receipt of the initial report. Therefore, it is important that this report be received on a timely basis.

(iii) Subsequent and final reports.

Comment. Proposed §§ 284.106(b) and 284.126(b) require the pipeline to file a subsequent report within 30 days of any significant changes with respect to the initial full report. Sections 284.106(d) and 284.126(d) require the filing of a final report within 30 days after terminating a transaction authorized under those sections.

One commenter suggests eliminating the subsequent and final reports and incorporating that information into the annual report.[136] Several commenters suggest modifying Form 2 to include this information and thereby eliminate these reporting requirements.[137] Another commenter suggests eliminating § 284.106(d)(3) requiring a statement on treatment of revenues since the option to credit Account No. 191 has been eliminated.[138]

Commission Response. The Commission agrees that the final report required by proposed §§ 284.106(d) and 284.126(d) is unnecessary and should be deleted. Since the information set forth in the final report would already have been filed, in part, in the initial full report, this information will ultimately be available. However, the Commission does need to know when the transportation arrangement has terminated. This information was previously required in the final report which has now been eliminated. Therefore, §§ 284.106(d) and 284.126(d) are amended to require the pipeline to file a notification of termination stating the termination date, the total volumes transported and the revenues received. The notice may be a simple one page notice or telegram.

The Commission is retaining the subsequent report required by §§ 284.106(b) and 284.126(b) because it is necessary to know if any significant changes have been made since the filing of the initial full report. Since the Commission is eliminating the final report, the subsequent report is the only remaining vehicle to notify the Commission of any changes in a timely manner.

With respect to several commenters' suggestion that the subsequent and final reports be eliminated and that the information called for therein be incorporated into Form 2, the Commission believes its decision to eliminate the final report should substantially reduce any redundancy that may exist between the proposed filings and the Form 2 information. The Commission, however, intends to review Form 2 and make any modifications or deletions to that form and the remaining section 311 reports as appropriate to further minimize duplicative reporting requirements.

(iv) Annual report.

Comments. Sections 284.106(c) and 284.126(c) require the pipeline to file an annual report by March 1 for transportation provided during the preceding calendar year.

One intrastate pipeline requests that changes in receipt and delivery points be eliminated from the annual report. One local distribution company suggests that interstate pipelines be required to include in their annual report volumes transported, revenues received, and mileage, by month, for sales and transportation customers. Another local distribution company suggests that the reports in § 284.106 (c)(2) and (d)(3) should set forth the maximum revenue chargeable under the tariffs. Another commenter states that § 284.106(a)(1)(v) (A) through (D), requiring rate information, can be eliminated if interstate pipelines are required to file tariffs. Finally one interstate pipeline requests clarification as to whether the annual report requirement in § 284.106(c) on total volumes and revenues applies to each agreement authorized under § 284.102 or to all transportation volumes transported under that authority.[139]

They also request that a copy of any report filed with the Commission also be filed with the state regulatory commission. One commenter states that it is not feasible to file the annual report by March 1 and that the Commission should set the due date at May 1, the same date for submitting blanket certificate annual reports.[140]

Commission Response. We agree with the commenters that the information on changes in receipt and delivery points is not necessary. The final rule reflects this deletion. In contrast, we do not agree that volumes transported and revenues received should be reported on a monthly basis. Since we are requiring the information be reported for each docketed transaction, we believe it would be excessively burdensome also to require the information on a monthly basis. Similarly, the Commission does not see any need for pipelines to report the maximum chargeable revenue in their annual reports and therefore is not requiring this information.

The Commission agrees, however, that the statement in proposed § 284.106(d)(3) regarding the treatment of revenues, depending on whether a pipeline establishes representative volume or revenue levels, can be eliminated from the annual report since under the revised regulations all pipelines must establish projected levels, and, therefore, there no longer will be an option to credit Account No. 191.

We also agree with the commenter suggesting that proposed § 284.106 (a)(3)(v) (A) through (D), which require certain rate information to be filed with the initial report, can be eliminated. While the regulations have previously permitted interstate pipelines to commence section 311 transportation prior to filing rates for such service, § 284.7 requires interstate pipelines to have tariffs on file that conform with the conditions set forth in § 284.7 prior to commencing section 311 transportation. Since the regulations pertaining to the filing of rates require the information that would be required under proposed § 284.106(a)(3)(v) (A) through (D), these latter reporting requirements have been eliminated.

In addition, again because § 284.7 will require for the first time that interstate pipelines file rates prior to commencing section 311 transportation services, pipelines will no longer be able to utilize the rate election options set forth in § 284.103(c), and those provisions, therefore, are also deleted. Finally, new §§ 284.106(c) and 284.126(c) require that information be provided for each docketed transportation service provided during the previous calendar year.

The Commission also agrees that extension of the filing date for annual reports from March 1 to May 1 will permit the Commission to fulfil its regulatory responsibilities in a timely fashion. It will also give pipelines sufficient time to compile the necessary information. Furthermore, it will ensure the reporting of accurate information based on actual data. The May 1 date is reflected in §§ 284.106(c) and 284.126(c) of the final rule. Thus, the annual report will include only a docket by docket reporting of volumes and revenues.

b. Section 7 Blanket Certificate Filing and Reporting Requirements

(i) Prior notice application.

Comments. Section 284.221(c) sets forth the filing requirements for a prior notice application. One local distribution company requests that § 284.223(c) require the applicant to set forth the commencement and expiration dates of the proposed transportation, since the information is necessary to determine whether to file a protest.[141] One state commission suggests that the Commission retain the requirement that copies of the gas purchase contract with the seller be provided and that the proposed end-use of the gas be provided.[142]

Commission Response. The Commission believes this information is unnecessary. The notice of the transaction sets forth the information contained in the application. If a party wishes more information, it may review the application on file with the Commission. Further, we are not requiring the purchase contract or proposed end-use to be filed with the Commission. Since there are no restrictions on end-use of the gas and market demand will allocate gas supplies, there is little or no need for end-use information. In addition, we do not believe the purchase contract provides any useful information not already provided in the application requirements.

(ii) Initial reports.

Comments. Proposed § 284.223(e)(1) required the filing of an initial report for transportation authorized under this section within 30 days after commencing the transportation.

Several commenters suggest changing these requirements.[143] Section 284.223(c) set forth the filing requirements that a prior notice application would contain under § 284.221 transportation. One intrastate pipeline states that information required in the initial report pursuant to § 284.223(e)(1) (i), (iii), and (iv) is identical to information filed in prior notice applications in § 284.221 and, therefore, should be eliminated if an initial report has been filed. They state that there is no need to require: (1) An initial report within thirty days after commencing the 120-day automatically authorized transportation period under § 284.223(a) if a request for authorization under § 284.223(b) to transport for a period longer than 120 days is ultimately approved under § 157.205(g); (2) another initial report thirty days after (a) expiration of the forty-five day prior notice period to allow opportunity for protests to request for authorization under § 284.223(b) to transport for periods longer than 120 days, or (b) all timely protests are withdrawn, whichever occurs first. Another interstate pipeline requests elimination of the price paid by the end-user in the initial report (§ 284.223(e)(1)(vi)) since the pipeline may not have this information.

Commission Response. The Commission agrees that there is no need to file an initial report for transportation arrangements which have commenced under the prior notice procedure since information on those arrangements has already been submitted under that procedure. Therefore, § 284.223(f)(1) is amended to require initial reports within 30 days after commencing self-implementing transportation under § 284.223(a) only. Due to other changes in the rule, this provision is now paragraph (f)(1) rather than (e)(1). Finally, the information required by § 284.223(f)(1)(vi) in the initial full report relating to the price paid has been deleted.

(iii) Annual report.

Comments. Proposed § 284.223(e)(2) required the interstate pipeline to file an annual report by March 1 setting forth the information about transportation performed under this section during the preceding year.

One interstate pipeline suggests eliminating the total cost and completion dates for facilities in § 284.221 (g) and (h). However, they state that it is not possible to report the increases or decreases at those points, since no specific volume is assigned to a particular receipt or delivery point under the agreement.[144]

Commission Response. The Commission agrees that it is unnecessary to require pipelines to state in their annual report information regarding the construction of facilities to effectuate the transportation. This information is already contained in the filings required by Subpart F of Part 157 under which those facilities are constructed.

We also agree that it is not relevant to report increases or decreases at particular receipt or delivery points. Therefore, this requirement in proposed § 284.223(e)(1)(iv) is deleted in the final rule. For consistency, we are also changing the deadline for filing the report from March 1 to May 1.

c. Format for Reporting Requirements

Finally, in order that the information be reported in the same format, the Commission is issuing instructions for filing the self-implementing reports. As the format does not alter any of the filing requirements, but merely prescribes a uniform format by which the information should be submitted to the Commission, it is also being promulgated today. The instructions for filing these reports as well as the specified format are set out in new § 250.15.

B. Take-or-Pay Buy-Outs and Producer Abandonment

1. *Overview.* In Part B of the NOPR, the Commission proposed to offer pipelines a rebuttable "safe harbor" presumption of prudence for certain one-time payments made to extinguish all minimum payment or purchase obligations in certain qualifying contracts. The proposal was intended to help pipelines address take-or-pay obligations in so-called "problem contracts." The Commission proposed that this method of handling take-or-pay payments be available only to pipelines that offer transportation on a non-discriminatory basis. The Commission proposed definitions of qualifying contracts and payments, accounting and cost recovery procedures, and filing requirements. The Commission also proposed to amend § 2.76 of its regulations,[1] which called for a case-by-case resolution of recovery of take-or-pay payments.

The majority of commenters express great dissatisfaction with or reservations about the safe harbor presumption. Very few express support without proposing some modification. Many commenters object to the overall theory of the proposal as well as to its specific requirements. We are persuaded that an attempt to impose a regulatory solution at this time may actually aggravate the situation rather than improve it. Accordingly, we are persuaded by the comments that the prudent approach regarding take-or-pay buyouts is to retain the April 10, 1985 Statement of Policy and Interpretive Rule. We have also determined to establish additional procedural rules to be codified in a new § 2.77 to provide for expedited consideration of producer abandonment applications under the present substantive criteria.

2. *Summary of comments.*—a. General. The interstate pipelines generally believe the proposal is unworkable or inadequate, or will exacerbate the take-or-pay situation. They say financing these amounts will be difficult, and together with denial of carrying costs or return, pipelines' income will be affected. Pipelines point out that they have substantial take-or-pay exposure under large numbers of contracts, and it is doubtful that producers will agree to a buy-out of such large obligations for a modest percentage. Many pipelines believe it is likely that producers will hold out for the maximum obtainable in qualifying payments, thereby leaving large liabilities under remaining qualifying contracts to be recovered on a case-by-case basis anyway.[2]

Various producers state the proposal will cause problems with, *inter alia*, financing, cash flow, drainage, cancellation of leases should wells not produce in "paying quantities", state proration requirements, and royalty payments.[3] Several producers argue that without take-or-pay provisions, gas wells become, in effect, gas storage fields for pipelines. The producer cannot sell the gas since the pipeline holds the contract right to it, yet the pipeline has no obligation to take gas. According to one producer, the proposal is bad for producers as they receive some unknown percentage of a speculative unrecoupable obligation covering only two years of a contract.[4]

Distributors and customers were also generally lukewarm about the proposal, expressing opinions ranging from flat opposition to any safe harbor arrangement, to urging the Commission to encourage existing negotiation. A distributor association believes the rule will probably increase total take-or-pay liabilities, and the proposed safe harbor formula will encourage producers to demand greater buy-out amounts.[5]

According to one state commission, the Commission has not demonstrated either that a "safe harbor" is needed or that it will not cause more problems than it cures. The state commission says pipelines are now renegotiating take-or-pay, often for pennies on the dollar, and, by presuming prudent set percentages, the Commission may actually raise buy-out costs and hinder the restructuring of the industry.[6]

Another state commission references an offer of settlement made by Northern Natural Gas Company, a Division of HNG-InterNorth, in which Northern proposed a permanent tariff permitting any distributor on its system to convert sales into transportation service. The state commission notes that Northern's proposal is not conditioned on the availability of safe harbor or other NOPR incentives, the costs of which would be borne primarily by a pipeline's captive customers. It believes the simple fact that the proposal exists demonstrates that the NOPR incentives are unnecessary.[7]

Some commenters believe that the current negotiation process, market forces or both are sufficient to resolve the take-or-pay problem. The Department of Energy fears the safe harbor rule may be so mechanical as to distort ongoing and future negotiations and to undermine the efficient operation of market forces.

Many of the comments reflect the view that present procedures are working to realign contract rights and obligations. Commenters from a broad spectrum of the industry assert that the present system of renegotiating take-or-pay provisions under the guidelines of the April 10, 1985 Statement of Policy is working well, and that the Commission should encourage this process. A strong reaffirmation of the Policy Statement is recommended by several commenters.[8]

b. Legal Authority and Applicability of the Presumption

A few commenters address the Commission's legal authority to establish such a presumption. Several commenters point out that under section 4 of the NGA pipelines have the burden of proving their rates to be just and reasonable. Consequently, the safe harbor presumption conflicts with this statutory standard. One commenter says that it discerns no rational reason for a presumption that qualifying lump-sum payments would be deemed prudent. It urges that the Commission require pipelines to meet the traditional just and reasonable standard and shoulder the burden of proof.[9]

The Commission proposed that the safe harbor presumption apply to future payment or purchase obligations. However, the Commission recognized that past and/or current take-or-pay prepayments may affect a pipeline's current and future business decisions. The Commission specifically requested comments on whether the safe harbor presumption should be expanded to include previously incurred and outstanding liabilities.

Many commenters suggest, if there is to be a safe harbor presumption, the Commission should expand it for additional categories of take-or-pay obligations. A number of commenters advocate extending the presumption as the Commission proposed, with the same percentage level for qualifying payments.

Several commenters propose that neither the safe harbor presumption nor amortization of take-or-pay payments apply to any payments made by a pipeline to its production division/affiliate. They suggest the pipelines should have the burden to prove the prudence of payments to affiliates, or, payments to affiliates could be limited to the average of all other supplier payments. One distributor asserts there is no rational basis for permitting a pipeline to charge the consuming public for this buy-out of a contract it negotiated with itself.

c. Requirement That all Obligations be Extinguished

Many commenters object to the requirement that payments must extinguish *all* obligations under a contract. "Onerous," "extreme," and "unworkable" are but a few of the terms used to describe this requirement.[10] They request the Commission to consider extending the presumption to *buy-downs*, i.e., partial extinguishment, of take-or-pay obligations. Several suggest the safe harbor presumption apply to payments which lower the take-or-pay level to at least 50%. They note that take-or-pay provisions play a role in a producer's financing of its operations, maintaining of lease rights, royalty payments, etc.

Producers were especially reluctant to give up all take-or-pay. A major producer group suggests that contract provisions which set the maximum percentage of deliverability as the minimum contract quantity, e.g., the 75 percent prescribed in the 1982 Policy Statement, be eligible for the safe harbor presumption.[11]

d. Requirement That Pipelines Offer Transportation

The Commission proposed that the safe harbor presumption be available only to those pipelines that agree to offer transportation services on a non-discriminatory basis as discussed in Parts A and C of the NOPR. Relatively few persons commented on this aspect of the NOPR.

A coaltion of industrial users fully supports the condition and says the safe harbor presumption should be reserved solely for such pipelines.[12] A major producer, however, argues that the presumption should not be limited just to those pipelines which choose to be transporters, and that it would be discriminatory to differentiate among pipelines for purposes of take-or-pay settlements.[13] A major pipeline also believes the measure should be available to *all* gas purchasers, not simply those pipelines which are willing to accept consequences such as giving up their contract demand rights.[14]

e. Qualifying Contracts

Only certain first sales contracts—"qualifying contracts"—were eligible for the safe harbor presumption under the proposed rule. In § 161.2(a), the Commission defined "qualifying contract" as:

A contract for a first sale of natural gas entered into before January 1, 1982, the primary term of which will continue beyond January 1, 1986.

A significant number of commenters address the cut-off date for determining qualifying contracts. Many support the Commission's proposed January 1, 1982 date.[15]

Several commenters propose that all first sales contracts entered into prior to the effective date of this final rule should be deemed qualifying contracts. Others suggests May 30, 1985, the date of the notice issued.[16]

f. Minimum Purchase of Payment Obligation

In proposed § 161.2(b), the Commission defined "minimum payment or purchase obligation" as the mathematical product of:

(1) The minimum take-or-pay quantities specified in a qualifying contract for the time period remaining in the primary term of such contract after January 1, 1986, multiplied by

(2) The contract price for such quantities.

Many commenters believe calculation of the minimum payment or purchase obligation will be difficult, if not impossible. Several point out that many natural gas contracts do not specify a minimum take in terms of fixed volume of gas, but provide for a yearly calculation of take based on well deliverability.[17]

g. 1986–1987 Unrecoupable Obligation

The Commission defined "1986–1987 unrecoupable obligation" as those minimum payment or purchase obligations of a pipeline which are reasonably estimated to (1) obtain under all of a pipeline's qualifying contracts for a two-year period commencing January 1, 1986 and (2) not be recouped under the terms of the contract.

Many commenters complain that this term is not adequately defined. A producer states the arbitrary two-year period is not representative of the remaining years in gas purchase contracts in any event. Many commenters point out that calculating the amount likely to be unrecoupable will be difficult since no one knows now the extent of reductions in contract demand.[18]

h. Qualifying Payments

The Commission proposed to set certain percentage limitations on the amount of payments that may be deemed prudent. For qualifying contracts with a primary term remaining of five years or less on December 31, 1985, the Commission proposed that total qualifying payments be no more than X percent of a pipeline's total 1986–1987 unrecoupable obligation. For qualifying contracts with a primary term of more than five years, the Commission proposed Y percent. The Commission specifically requested comments on what the X and Y percentages should be.

Approximately half of the commenters on this issue set forth, in differing levels of detail, specific proposals on the qualifying payments formula. The proposals range from 0 to 50 percent. A sub-group of these commenters disagrees with the Commission and argues that a single X percent, rather than X and Y, should be used for ease of administration of the rule. Another small group of commenters on this issue recommends that the Commission undertake further procedures (*e.g.*, a supplemental rulemaking devoted to the development of the X and Y percentages, or an analysis of all pipelines' expected unrecoupable obligations). Another group of roughly half the commenters on this issue, predominantly pipelines, argues that no fair percentages for X and Y could be set.[19]

The majority of commenters assert that these percentages, while intended to be ceilings, would quickly become floors in the negotiations with producers.[20] Several commenters recall that NGPA Title I "maximum" lawful prices quickly became the uniform prices.

i. Allocation of Qualifying Payments

The Commission requested comments on how the costs of the qualifying payments should be allocated. The majority of commenters appear to favor some sort of allocation between sales and transportation.

A number of commenters are adamant that responsibility for the costs of buying out take-or-pay obligations rests upon the customers that caused the pipeline to incur the obligation. They argue that the pipelines procured gas supplies for the benefit of their existing customers and are experiencing the present take-or-pay problems due to efforts to augment supply and meet their service obligations.[21]

3. *Commission response.*—a. Decision not to promulgate Part B. We continue to believe that current and future take-or-pay obligations could possibly impede development of a more competitive gas market. In our April 10, 1985 Statement of Policy we responded to the information obtained through the Notice of Inquiry and our own observations of the gas market. We delineated the basic approach we intended to adopt toward solving the take-or-pay problem. As the comments to the NOPR point out, many producers and pipelines are currently renegotiating contracts under the guidance of the Policy Statement.

All segments of the industry responded to this portion of the rule. While virtually all commenters agree that take-or-pay obligations remain a problem for the industry, they are clearly unhappy with the safe harbor proposal as an additional means to resolve it. Many feel it is unworkable, or inadequate. Others are concerned that it will hinder, or even halt, the contract renegotiation that is underway between pipelines and producers. Many fault the requirements for eligibility as too rigid or mechanistic. Finally, many commenters urge us not to implement the proposed safe harbor rule, or to maintain the status quo.

As we stated briefly in the beginning of this section the imposition of a generic rule to handle take-or-pay buyouts at this time will not improve the take-or-pay problem and may actually aggravate the situation. In particular, we have no wish to upset current renegotiations. Therefore, in light of the many concerns raised by the written comments and at the public hearing, we will not promulgate Part B as proposed. Instead, and as requested by a number of commenters, we reaffirm our April 1985 Policy Statement. We shall clarify that those guidelines also apply to settlements of future take-or-pay obligations.

We note that pipelines have been successful in buying out past incurred take-or-pay liabilities in a number of instances. See Table C–1 below.

TABLE C–1.—THE LIST BELOW SHOWS COSTS OF "BOUGHT OUT" TAKE-OR-PAY SOUGHT BY PIPELINES AS OF SEPT. 30, 1985, WITH REFERENCES TO DOCKET NO., DATE OF FILING, AMOUNT SOUGHT, AND AMOUNT OF LIABILITY BOUGHT OUT [1]

Pipeline Company	Docket No.	Date of filing	Amount sought	Amount of liability bought out
ANR Pipeline Company	TA85-2-48	Mar. 29, 1985	$12,818,499	$64,092,495
Northern Natural Gas Company	RP82-71	Apr. 26, 1982	2,700,000	13,500,000
Tennessee Gas Pipeline Company	TA85-1-9-001	Nov. 30, 1984	4,436,757	22,183,785
Panhandle Eastern Pipeline Company			[2] 13,000,000	45,000,000
Trunkline Gas Company	RP83-93 *et al.*	June 15, 1983	[3] 33,219,751	166,098,755
United Gas Pipeline Company	RP72-133 (TA85-2-11)		(4)	
Prebuild (Northwest Alaskan Pipeline Co.)	RP85-6	Oct. 16, 1984	5,400,000	48,400,000
Sea Robin Pipeline Company	RP85-167-000	June 28, 1985	9,166,000	62,000,000

[1] According to published reports, Columbia Gas Transmission has proposed buy-outs to producers totalling some $800 million dollars as part of an overall approach to regain its competitive position in the market for natural gas sales.
[2] Company has not filed to recover this amount.
[3] Amount included in settlement pending in the Commission.
[4] None, except payments made to Northwest Alaskan Pipeline Co.

These arrangements appear to have provided the parties the greatest flexibility to deal with some particularly difficult contractual problems. Accordingly, we have determined that the proven course at the present time is to take no substantive action in this area.

b. Conditioning Producer Access to Transportation

Some commenters, mainly pipelines and local distribution companies, have suggested the Commission consider addressing existing high-cost take-or-pay "problem contracts" as an alternative means of removing the distortions of rolled-in pricing.[22] The Commission has before it in other dockets specific petitions which variously urge it to declare certain take-or-pay provisions in high-cost gas contracts void and unenforceable as against public policy, or to approve pipeline purchase cut-back programs.[23] In addition, many commenters have urged the Commission to require producers to waive take-or-pay claims as a condition to the producer obtaining open and non-discriminatory transportation by interstate pipelines.[24] The Commission has declined to seek to follow this approach. As the reasons were detailed in the discussion of the transportation rules above, the explanation for the decision will not be repeated here.

c. Expedition of Producer Abandonment Applications

In the April 1985 Policy Statement, the Commission recognized that the payments made to first sellers as consideration for waiving or amending take-or-pay or similar minimum payment provisions of a contract may be accompanied by a change in or termination of the first seller's service obligation.[25] In cases where a take-or-pay buy-out results in termination of the contractual service obligation and where the gas involved is subject to Commission jurisdiction under the Natural Gas Act, the first seller must obtain abandonment authorization pursuant to section 7(b) of the NGA before it can terminate its service obligation to the buyer and must obtain a section 7(c) sales certificate prior to making a subsequent jurisdictional sale in interstate commerce.[26]

The Commission stated that as a matter of general policy it would expeditiously grant abandonment authorizations necessary to implement the agreements reached by the parties under the guidelines of the Policy Statement.[27] The Commission reaffirms its intention to expeditiously grant abandonment authorizations required to implement agreements made pursuant to the Policy Statement. In addition, we will expeditiously review producer abandonment applications in those instances detailed below. Accordingly, this section outlines the policies and procedures that the Commission intends to follow in ruling on abandonment applications filed as a consequence of the Policy Statement and, more generally, applications filed in accordance with the policy objectives of this rule.

In general, the Commission intends that producer abandonment applications be considered on an expedited basis by means of existing administrative procedures in several situations.

Expeditious consideration will be appropriate in cases where the producer is subject to substantially reduced takes without payment or where the producer and pipeline have engaged in a "buy-out" as contemplated by § 2.76 of the Commission's General Policies. This policy is set out in § 2.77(a).

The procedures to be followed are spelled out in § 2.77(b). They provide that applications will be noticed promptly and a period not in excess of 15 days will be provided for comments or interventions. In cases where the applications are unopposed, they will be promptly granted by the Director of the Commission's Office of Pipeline and Producer Regulations pursuant to delegation of authority contained in § 375.307 of the Commission's regulations. In cases where an abandonment application is based on the cancellation of a contract by mutual agreement between buyer and seller upon payment of consideration by the buyer in accordance with the Policy Statement, it would be contradictory and unreasonable for the buyer to oppose the abandonment. Therefore, in cases of this nature, the Commission will consider the buyer to have waived any right to oppose the abandonment.

In cases where a proposed abandonment is opposed, the Commission will consider the objections and rule on the application if possible or, if necessary, will set the application for expedited hearing. In doing so, the Commission will establish deadlines for the conclusion of the hearing and for the issuance of an initial decision. The periods to be allowed for hearing and issuance of an initial decision will not exceed those specified in the Commission's recent abandonment hearing orders issued in *Exchange Oil & Gas Corporation*, 31 FERC ¶ 61,371 (1985) and *Felmont Oil Corporation and Essex Offshore, Inc.*, 31 FERC ¶ 61,233 (1985).[28] The Commission will, in addition, consider establishing in future cases an expedited schedule for filing of briefs on and opposing exceptions to the initial decision. Following the submission of briefs, the Commission will endeavor to issue a final decision within 60 days.

In the Commission's judgment, new § 2.77 is consistent with the policies reflected in this rule, in that producers should be able to sell shut-in gas and purchasers, to the extent possible, should be able to renegotiate or buy-out higher priced contracts so that the gas under those contracts can be sold at market-clearing prices. To this end, the Commission will consider requests for permanent, limited-term, or partial abandonment of sales subject to reduced takes irrespective of the NGPA price category of such gas.

The Commission is also concerned about the need for abandonment in cases where the underlying contract has expired. In such cases, the purchaser has no obligation to continue purchasing gas from the seller, but the seller has a continuing obligation under its certificate to continue to provide service if requested to do so. *Mississippi River Transmission Corporation*, 30 FERC ¶ 61,155 (1985); *Sunray Mid-Continent Oil Co. v. FPC*, 364 U.S. 137 (1960). The market disordering effects of reduced sales of lower-priced gas as well as the adverse economic effect on sellers in such situations, especially in the case of expired contracts, are of serious concern to the Commission.[29]

In ruling on abandonment applications under § 2.77 based on these and similar economic circumstances, the Commission intends to follow the expedited procedures previously outlined, except that purchasers will not be precluded from objecting to the proposed abandonments. Unopposed abandonments will be granted expeditiously under delegation of authority. In cases where abandonments are opposed, the Commission will likewise follow the procedures previously discussed in connection with abandonments related to the Policy Statement.

It is not possible to foresee all issues that may arise in connection with abandonment applications that are opposed and that must therefore be decided by the Commission on a formal basis consistent with the requirements of section 7(b) of the NGA. The Commission will therefore not attempt at this time to establish criteria to be applied in determining whether contested abandonment requests should be granted or denied. The standards to be applied will instead be developed on a case-by-case basis. The Commission will review the matter based on experience gained in individual proceedings and will, if it appears reasonable and desirable to do so, establish guidelines to be applied in ruling on future contested abandonments as a means of further expediting the determination of such abandonments.

In certain cases, once abandonment is granted, the abandoning seller will require a certificate under section 7(c) of the NGA prior to commencing sales to another purchaser. In the Policy Statement, the Commission stated its general policy to expeditiously grant certificate authorizations necessary to implement agreements reached under the Policy Statement guidelines. The Commission reaffirms its policy in this regard. The procedures to be followed will parallel those described for abandonment applications. Unopposed certificate applications will be expeditiously granted pursuant to delegation of authority under § 375.307 of the Commission's regulations. The Commission does not anticipate that opposition to requested certificate applications or amendments will be filed in a significant number of cases. However, any cases involving opposition will be treated generally in the same manner previously described in connection with contested abandonments. If a hearing is found to be necessary, it will be expedited to the maximum extent possible.

As a matter of procedure, and to assure implementation of the described procedures, the Commission requests that parties seeking expedited consideration of section 7(b) or 7(c) authorizations pursuant to this rule include in their applications a request for expedited consideration and a reference to Docket No. RM85-1-000.

The Policy Statement, which is codified as § 2.76 of the Commission's General Policy and Interpretations, 18 CFR § 2.76 is reaffirmed and a new § 2.77 is added to incorporate the expedited procedures outlined in this rule.

d. Pre-Granted Abandonment Authority

As noted in the proposed rule, the categories of gas eligible for transportation as proposed are broader than the current restrictions on movement of gas committed or dedicated to interstate commerce and therefore subject to producer abandonment requirements. In particular, gas from "new wells" on "old leases" in the Outer Continental Shelf (section 102(d) of the NGPA) is eligible under the proposed rule for transportation services. But this gas is "committed or dedicated to interstate commerce" and may not be transported without prior abandonment or "release." In the past few years, large quantities of this gas have been "shut-in" and therefore producers and pipelines have sought temporary producer abandonment and certificate authority to transport the gas to willing buyers in other markets at competitive prices.[30]

Comments. The comments suggest procedures to eliminate this disparity in gas eligibility and abandonment procedures. A few comments suggest that all certificate applications for producer sales become effective on the date of filing, as is the case with small producer blanket certificates, provided certain conditions are met. Such conditions might provide that the sales price not exceed the maximum lawful price and that the contract include certain market responsive provisions such as market out clauses.[31]

Some comments suggest that the abandonment be effective on the filing date if both the purchaser and seller of the gas agree to the abandonment, or alternatively, that the abandonment be subject to the prior notice procedure. They state that since abandonments are relatively routine, this procedure would expedite the process and still provide parties the opportunity to protest in relevant cases.[32]

Another commenter suggests that the Commission issue a blanket abandonment of producer commitments at the termination or expiration of all jurisdictional gas sales contracts.[33] However, another commenter suggests that such a pre-grant of abandonment should be authorized only for section 102(d) OCS gas and section 108 stripper gas, gas which is still subject to NGA regulation. This commenter goes on to suggest that section 104 "old" gas, and other low-priced, pre-NGPA gas should not be granted such abandonment authorization, however, because that gas is being preserved for the pipeline's existing customers in the billing mechanism proposed in Part D.[34]

Another commenter, the U.S. Department of Energy (DOE), also urges a pre-grant of abandonment of shut-in gas supplies because large volumes of gas, especially old gas, are being shut-in. They suggest defining shut-in gas as gas to which a "first purchaser" has a right to take, but has not taken over a specified period of time. DOE believes that the availability of this gas to consumers will provide strong competitive pressure and could replace higher priced supplies and alternative fuel.

The proposed rule provides for a parallel pre-grant of abandonment for transportation performed under self-implementing authority under the rule. One commenter suggests that this pre-grant of abandonment should depend on a customer's election not to extend the contract. It states that this additional condition would prevent pipelines from unilaterally terminating transportation service to a firm customer upon termination of the contract if the customer elects to extend the contract.

Commission Response. One of the principal goals of this rulemaking is to satisfy the mandate of the NGPA by encouraging the movement of gas from the wellhead to the burner-tip in response to the demands of natural gas consumers for reliable service at the lowest reasonable price. For this reason, the Commission intends the final rule to *increase*, not *decrease*, the flexibility of producers and pipelines to move gas supplies to meet consumer demand under self-implementing transportation programs. This is even more compelling when the gas being moved is either (1) high-cost gas being released and transported by a pipeline at more marketable prices and terms than under an existing contract for the gas, such as a contract with uneconomic take-or-pay requirements; or (2) low-cost price-controlled gas, that has been shut-in by a pipeline due to lack of demand for its system-supply or due to priority for takes of other gas supplies under more rigid contracts, and therefore is being released in order to be transported to willing buyers under more marketable conditions.

Examples of high-cost gas include gas supplies from new wells on old Outer Continental Shelf leases (subject to the ceiling price in section 102(d) of the NGPA) and gas from stripper wells, especially in Appalachia and the Southwest, which is subject to the ceiling price under section 108 of the NGPA.[35]

Examples of low-priced gas which may be "shut-in" include "old" price-controlled gas under sections 104, 106(a) and 109 of the NGPA.

Although the NGPA established incentive price ceilings for section 102(d) OCS gas, and section 108 stripper gas, it did not remove such gas from the producer abandonment and certificate requirements of sections 7(b) and 7(c) of the NGA. The NGPA also did not remove any NGA certificate or price jurisdiction over "old" price-controlled gas still regulated under sections 104, 106(a) and 109. For this reason, when a producer-pipeline contract for the purchase of any of these categories of committed or dedicated gas expires, or even when takes of these gas supplies under an existing contract are "shut-in" unilaterally by a pipeline purchaser, a producer is powerless to sell these supplies elsewhere to willing buyers unless it first obtains abandonment authority from the Commission under section 7(b) and thereafter a section 7(c) certificate to sell the gas elsewhere.

With the disorders in natural gas markets beginning in 1981 came innovative and experimental arrangements by producers and pipelines to release and transport quantities of these "shut-in" gas supplies consistent with the abandonment and certificate requirements of the NGA.[36] In addition, producers whose gas had been unilaterally shut-in by their pipelines filed increased requests for stand-alone abandonment authority to the Commission.[37]

Demands for these arrangements have increased and are likely to continue to increase after the effective date of the final rule. Thus, as many commenters pointed out, the success of the transportation flexibility provided in this final rule is directly related to the ability of producers and pipelines to receive prompt regulatory approvals at the Commission for the "release" and sale of shut-in gas supplies under section 7 of the NGA.[38] These commenters also pointed out that, to the extent their existing transportation arrangements for shut-in gas must be "converted over" to the self-implementing transportation program after the expiration of those arrangements November 1, 1985, the Commission must issue any required abandonments and new certificates as soon as possible after November 1, if producers and shippers are to avoid the gas being shut-in again during the transition period.[39] Finally, some commenters point out that abandonment authority will be necessary for additional supplies of incentively-priced gas, such as 102(d) OCS gas or 108 "stripper" gas, if they are shut-in.[40]

Based on these comments, the Commission is directing staff in this final rule to expedite the applications. For example, uncontested abandonment applications should not be delayed because the producer has not provided information pertaining to the disposition of the gas after abandonment. In addition, with regard to applications presently on file with the Commission, the staff is directed to process any abandonment and certificate applications for shut-in or untaken gas supplies, especially 102(d) OCS gas and 108 stripper gas, so that Commission decisions on all such applications are issued no later than March 1, 1986. The applications given priority should be those for gas which had limited-term abandonment and certificate authority under transportation arrangements that existed prior to the effective date of this rule; and those whose terms include take-or-pay or price relief.

As to the suggestion that pre-grant of abandonment for transportation be made dependent on a customer's election not to extend the contract, we disagree. First, in most instances, it is unlikely a shipper will be able to unilaterally extend an existing transportation contract when the transporting pipeline prefers to terminate the arrangement. Since the transportation authorization is meaningful only if transportation is available, there is no reason to extend the authorization absent a bilateral agreement to continue the arrangement. Second, by accepting a certificate under § 284.221, a pipeline will be subject to the non-discriminatory access condition applicable to that certificate. Therefore, pipelines will have an incentive to continue the arrangement if such termination would otherwise constitute discriminatory treatment.

C. Optional Expedited Certificates

1. *The proposed rule.* The NOPR proposed and the final rule now establishes optional certificate procedures providing expedited treatment of applications for new service under section 7 of the NGA.[1] A certificate and pre-granted abandonment are available under these procedures to allow any applicant to institute new jurisdictional service and to construct and operate facilities for such services. To qualify, the applicant must agree to comply with the specific terms and conditions under which the certificate is offered. Most important, the applicant must accept the full risk of the proposed venture. These procedures are completely voluntary. The alternative of applying for a certificate under conventional procedures remains available, with the conventional assignment of risks.

The rule is designed to provide consumers with greater options in the array of gas services available by giving pipelines the ability to offer new service and construct facilities on a timely basis. To this end, the rule removes certification as a barrier to entry where certain conditions are met, and thus helps ensure that pipelines propose the most efficient scale for new facilities. (Suboptimally sized facilities will have higher costs at design volumes and will be vulnerable to entry by more correctly-sized facilities.)

The rule is also designed to maximize the use of alternative market access for producers and consumers and to provide incentives for competition where none exists. Distributors that are now restricted to one pipeline, even where new hook-ups involve construction of minimal tap facilities, may gain access to more than one pipeline. Offerings of new pipeline services to off-system markets will be more readily possible, and willing competitors may enter established markets. This rule, then, removes any federal prohibition against adding new receipt or delivery points and does not permit discrimination which would permit some customer groups to add delivery points more easily than others.

A detailed discussion of the various provisions of the rule and the comments that addressed those provisions follows.

2. The Commission's Jurisdiction

a. *The jurisdiction of the states.—Comments.* The American Gas Association (AGA) states its concern that the proposed expedited certificate procedures should not replace legitimate state authority with respect to distributor by-pass issues. Citing *Panhandle Eastern Pipe Line Co. v. Michigan PSC*, 341 U.S. 329, 334 (1951), they argue that direct sales for consumptive use were left to state regulation under the Natural Gas Act and that *Panhandle Eastern Pipe Line Co. v. Indiana PSC*, 332 U.S. 507, 520 (1947), supports the view that Congress "meant to create a comprehensive and effective regulatory scheme complementary in its operation to those of the states and in no manner usurping their authority." Thus, they are concerned that the proposed rule might extend Commission authority into an area that the Natural Gas Act left to the states. This view is supported by a number of other commenters, including Commonwealth Gas Pipeline Corporation, who contend that the Commission's proposals would interfere with the states' jurisdiction and responsibility to set reasonable rates for end-user service by LDCs. They argue that the states are uniquely suited to determine whether, and under what conditions, customers of LDCs should be permitted to become customers of the pipelines. Southern Indiana Gas and Electric Company and a number of other LDCs contend that the Commission's proposal exceeds its authority or that it would preempt state law in those states which have already addressed this issue. For example, Indiana has a statute that requires by-pass proposals to be approved by the state's utility commission after a hearing. Some commenters request assurance from the Commission that such statutes will not be preempted.

While some commenters believe that the states should determine whether a by-pass should be permitted, others believe that, at a minimum, coordination with the states should be provided in the final rule. Commonwealth Gas Pipeline Corporation, for example, suggests convening a joint hearing with all state commissions pursuant to the provisions of section 17(b) of the NGA, with follow up comments from state commissions, LDCs, and other interested parties six months after the implementation of the NOPR.

Commission Response. The Commission does not intend the final rule to intrude in any way on the jurisdiction of the states over the local distribution of natural gas. The commission recognizes that under our system of federalism it is within the traditional, sound discretion of the states and local governments to regulate local distribution companies in the public interest. The states, not the Commission, have the opportunity, and indeed the right, to determine the appropriate mixture of transportation and sales service provided to customers by local distribution companies not within the Commission's jurisdiction. In order to ensure that the final rule respects this jurisdiction, the final rule, as detailed below, is intended to ensure that the optional expedited certificates do not permit "LDC by-pass" without a full notice and opportunity for those affected by the alleged by-pass to challenge the certificate application. See § 157.104. Moreover, the Commission believes the "contract demand" adjustment rights and the elimination of the "system supply" test for § 311 transportation under the new transportation regulation in Part A, *supra*, should provide pipeline customers, especially full-requirements customers, with the full panoply of competitive gas supply options recently made available to partial-requirements customers under Order No. 380.[2] For these reasons, the commission expects local distribution companies will have the flexibility and options available under the final rule to "meet the market" in most, if not all, future "by-pass" situations, and therefore to retain their industrial loads.

The Commission makes no judgment here on whether "LDC by-pass" is in the public interest or not. The Commission does, however, intend to ensure that LDCs are provided an opportunity to demonstrate any alleged adverse effects resulting from LDC by-pass in the optional certificate procedures provided in the final rule and that their state regulatory bodies have an opportunity to exercise the state's authority over these issues.

The Commission considers the fact that LDC by-pass may be an end-result of an optional certificate is not in and of itself dispositive of the public convenience and necessity under the NGA. Accordingly, the final rule retains the presumption that applications for new service that meet the conditions set out in the final rule are presumptively in the public convenience and necessity.

AGA is correct in its observation that in developing a comprehensive scheme of regulation under the Natural Gas Act, Congress left the regulation of direct sales to the states. Nothing in the final rule is intended to disturb these boundaries that Congress fixed between state and federal regulation of such sales. The rule thus includes appropriate procedures allowing protestors who will be affected by a proposal to raise material issues for consideration prior to approval of the transaction.

b. Effects on Distributors

Comments. Many LDCs and state public utility commissions commented that the procedures of Subpart E could be used to by-pass an LDC currently providing service to an end user. These commenters are concerned that an end user may secure pipeline transportation for gas purchased directly from a producer or other gas merchant and by-pass the local distribution company in whose franchised service area the end user is operating, even where the end user was previously a sales or transportation customer of the LDC.

In order to protect the local interests of the LDCs and states, a number of commenters, including Columbia Distribution Companies, Southern Indian Gas and Electric Company, and UGI Corporation, recommend that the proposal require prior notice before permitting transportation by-passing LDCs. Some commenters believe that actual notice rather than constructive notice should be required. Iowa Electric Light and Power Company suggests that the end user should be required to provide prior notice to the existing supplier so that the supplier would have an opportunity to induce the end-user to continue as a customer before losing the customer.

Commission Response. The final rule has been designed to ensure that affected parties, especially small LDCs, receive adequate notice of applications under Subpart E that may affect their interests. Specifically, paragraph (b)(1) of § 157.102 requires applications under Subpart E to contain a statement that a copy has been served on any LDC in whose service area a customer for the proposed new service is located.

Comments. A larger number of commenters expressed concern about the economic results of allowing pipelines to by-pass LDCs to serve large end users. According to these commenters, including Wisconsin Power and Light Company and UGI Corporation, the loss of a large end user would ultimately shift fixed costs to the distributor's remaining small volume commercial and residential customers and increase their rates. The problem is exacerbated, say these commenters, by the requirement, imposed by many states, that LDCs provide service to all customers that request it, even to customers who previously left the system. Accordingly, many LDCs have invested heavily in the capital equipment necessary to meet this continuing obligation. Commenters including Minnegasco and New Jersey Natural Gas Company argue that the pipelines, which have no such obligation, may "skim the cream" from a distributor's franchised service territory. This involuntary shifting of costs to the remaining customers, they contend, would run contrary to the policy objectives of the proposed rule. Citing *Atlantic Refining Co. v. PSC*, 360 U.S. 378, 388 (1959), they argue that the NGA was designed to protect consumers and that the Commission has a statutory duty to carry out its responsibilities under the NGA so as to "afford consumers a complete, permanent and effective bond of protection from excessive rates and charges."

In this connection, some commenters have suggested specific requirements for applications that will result in by-passing an LDC. For instance, UGI Corporation suggests not authorizing a by-pass unless the local distribution company refuses to provide the requested transportation or sales service to the end user; Columbia Distribution Companies suggests requiring the permission of the state regulatory agency prior to Commission approval; American Public Gas Association suggests requiring the consent of the affected LDC; and American Gas Distributors and American Gas Association suggest requiring an order from the state or local regulatory body having jurisdiction declaring the particular hook-up to be in the public interest.

Commission Response. The overall goal of the final rule is to ensure that all natural gas markets are sufficiently competitive so that consumers are provided natural gas at the lowest reasonable rates consistent with reliable, long-term service. This goal is achieved by the various elements of the final rule working together. It is true that pipelines could rely on Subpart E to by-pass LDCs. But in focusing only on the cost-shifting that could occur under certain circumstances, the commenters take a view that is too narrow and ignores the balancing effects of the other elements of the final rule. To be specific, commenters ignore the fact that the equal access provisions of Part 284 of the rule compel pipelines that transport gas for others (such as an end user previously served by an LDC) to transport gas for all. And this includes transportation for LDCs, even where such transportation would displace the pipelines own sales.

Of course, in order to be effective, the final rule must ensure that participants in the market all compete on an equal footing. No one group can be allowed an advantage over the others. Yet this is the result that would occur if LDCs are allowed to veto pipeline proposals to transport in their service areas. The LDCs could compel pipelines to displace their own sales and transport gas to the LDCs when cheaper supplies were available—in effect, "by-passing" the pipeline. At the same time LDCs could deny market access to the end users they serve. In other words, the LDCs would have the best of both worlds.[3] They could avail themselves of the benefits of competition among pipelines and producers, but would be insulated from any factors that would induce them to act competitively.

The Commission will not insulate the LDC markets from the competitive incentives that are the foundation of the final rule. In order to promote economic efficiency—a necessary factor in providing gas to consumers at the lowest reasonable rates—the rule must provide sufficient competitive incentives to all elements of the market. This means making all market participants, including LDCs, accountable for the success or failure of their market participation. Where incentives exist for producers to offer gas at market clearing prices and for pipelines to provide the necessary transportation, LDCs are in a position to compete aggressively to make gas available to their customers at the lowest possible cost. Section 157.102(b)(1) requires that applicants provide LDCs with the prior actual notice necessary to meet such competition .

Of course, if pipelines engage in unfair competitive practices or other circumstances are present that would make it unfair for a pipeline to by-pass the distributor, LDCs may present these issues for consideration at the hearing provided for by § 157.104. But the simple fact that a pipeline is offering service under more competitive terms than an LDC is not, by itself, sufficient grounds to deny a certificate, or even to hold a formal hearing.

As for the possibility that LDCs will shift costs to their other customers if large end users are lost in competition with pipelines, the Commission does not believe that this is necessarily an inevitable result. LDCs rates are regulated by the states, not the Commission. States may, if they choose, prevent such cost shifting by LDCs that fail to compete aggressively.[4] Other issues pertaining to state regulations are discussed below.

c. Protest to Abandonment of New Service

To ensure that the public interest is in no way disserved by abandonments granted under § 157.103(f), § 157.106 provides that, if a customer has received notice from a certificate holder in accordance with § 157.103(f), that it intends to abandon any part of new service being provided to the customer under Subpart E upon expiration of their contract, the customer may, within thirty days prior to such expiration date, file a petition under § 385.207 of this chapter protesting the abandonment and requesting issuance of an order by the Commission directing the certificate holder to continue the new service in accordance with the expired contractual agreement. The Commission may require the certificate holder to continue to provide the new service described in the abandonment notice, if the Commission determines that continuation is necessary because the customer is unable, after having made reasonable efforts, to arrange for alternative service and the customer will pay the rate on file for the new service.

3. *Availability.* The final rule establishes a new Subpart E to Part 157, Optional Certificate and Abandonment Procedures for New Service Under section 7 of the Natural Gas Act. New Subpart E provides, pursuant to a new § 157.100, optional procedures whereby any eligible applicant may obtain a certificate authorizing "new service." Under the certificate, the applicant may sell and/or transport natural gas, and construct or acquire the natural gas facilities necessary to provide the new service and operate those facilities. Upon request, the certificate will include pre-granted abandonment of such activities and facilities upon termination of any underlying contractual obligations.

The new Subpart E replaces the existing Subpart E, "Transportation Certificates under section 7(c)(2) of the Natural gas Act," as the regulations set forth therein, which pertained to the transportation of natural gas on behalf of certain high-priority end users, are no longer necessary. Any transactions already authorized under the superseded Subpart E, however,may continue until expiration.

4. *Definitions.* The definition of terms for purposes of Subpart E are set forth in § 157.101. Terms defined in the Natural Gas Policy Act of 1978 have the same meaning for purposes of Subpart E as they have under that Act.

"Eligible applicant" is defined in § 157.101(b)(1) as a natural-gas company or person who will be a natural gas company upon completion of any proposed construction or extension of natural gas facilities. (Section 2 of the Natural Gas Act defines "natural-gas company" as a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale.)

Comments and Commission Response. ANR Pipeline Company, Arkansas Louisiana Gas Company, and several other commenters have asked whether the expedited certificates would be available for any sales by a pipeline to any customers, including sales to a new contract demand customer. The certificates are available for such sales. Any entity can apply for an expedited certificate, as long as it agrees to comply with the specified conditions. Of course, by accepting a certificate under these procedures, a previously non-jurisdictional entity would become a "natural gas company" and therefore become subject to the jurisdiction of the Commission.

The Commission rejects a suggestion by the Indicated producers that producers should be allowed to use these optional procedures to construct or operate pipelines connecting their gathering systems to new markets without being reclassified as pipelines. The expedited procedures established by this rule, as an alternative to more conventional, less procedures, are designed to provide flexibility to respond to competition in an area of regulation where such flexibility does not currently exist. They are not intended to provide a loophole whereby a company that would otherwise be subject to federal regulation may evade it. Moreover, nothing in the rule precludes a producer from preserving its status by forming a separate corporate entity for purposes of engaging in business under an expedited certificate.

"New service," the only activities for which certification is available under the optional procedures of Subpart E, is defined in § 157.101(b)(2) as a service for which the applicant does not have certificate authority. In cases where service is being provided under a certificate issued pursuant to Subpart A of Part 157, the optional Subpart E procedures could be used to obtain certification for an increase in the existing service or an additional kind of service that might be needed pursuant to renegotiation of the contract underlying the service. Further, certification may be obtained under Subpart E only if all facilities that are to be constructed and operated satisfy the definition of "qualifying facilities" in § 157.101(b)(3) which limits certification to facilities or portions of facilities that will be used solely to provide new service.

5. *Application Procedures.* Application procedures under Subpart E are set forth in § 157.102, which requires that applicants provide all information necessary to fully describe the proposed transportation, sales, and other services to be provided and the facilities needed to provide such service. The application must also state whether pre-granted abandonment authorization is requested and, if so, to what extent.

The provisions of § 157.11 of Subpart A relating to hearings will not apply to applications for certificates under Subpart E. Hearing procedures for Subpart E are set forth in § 157.104, discussed below.

With the exceptions discussed below, Subpart E applications will be subject to the provisions of § 157.14, which require the filing of information necessary to determine a pipeline's cost of service, compliance with relevant non-federal requirements, and other matters to be considered by the Commission in determining whether proposed services, under the proposed terms, would be in the public convenience and necessity.

Paragraph (b)(1)(v) of § 157.102 requires an applicant to file a statement of rates to be charged for the proposed new service, including *pro forma* copies of the rate schedule to be included in the effective tariff, a statement explaining fully how the proposed rate was derived, showing clearly whether the proposed rate results from negotiation, cost-of-service determination, competitive factors or others, and explaining the bases for the findings and conclusions of any related studies. Any rate filed for transportation services provided under a certificate granted under Subpart E must comply with the conditions set forth in § 157.103, discussed below.

Because the statement of rates required by Paragraph (b)(1)(v) of § 157.102 requires information similar to that required by § 157.14(a)(18), the provisions of § 157.14(a)(18) will not apply to applications under Subpart E.

Since applicants under Subpart E would be required to furnish information described under § 157.6(b), they should plainly state that they are requesting consideration under the optional procedures of Subpart E and that they agree to comply with all terms and conditions specified in Subpart E. Any person wishing to intervene in the proceeding on an application or protest an application under Subpart E must include in its filing, in addition to the information required under § 157.10, which sets forth the requirements generally applicable to interventions and protests, a statement of any issues of fact that the intervenor wishes to raise. The statement must specifically identify those issues that the intervenor alleges to be material to determining whether the requested certificate will be required by the public convenience and necessity.

Paragraph (c) of § 157.102 provides that if the application requests a certificate to provide transportation or sales service for others under Subpart E, the applicant must state that it has filed for, and will accept, a blanket transportation certificate under § 284.221 and identify the docket number assigned to that application and state that it will comply with the conditions in Subpart A of Part 284. The Commission intends the benefits of the optional certificate procedures to be an incentive for pipelines to provide transportation services on a non-discriminatory, self-implement basis. In addition, the availability of such non-discriminatory transportation is one of the criteria the Commission considers relevant to the presumption that an optional certificate is in the public convenience and necessity. Accordingly, the final rule provides that an application for an optional certificate must meet the condition stated in § 157.102(c).

Comments and Commission Response. A number of commenters suggest that the filing requirements proposed in the notice were more extensive than necessary, given that the applicant assumes the risk of the project. They urge that filing requirements be minimized. The Commission agrees. Accordingly, applicants under Subpart E will not be required to supply the specific gas supply and market exhibits required by § 157.14(a) (10) and (11). Since all risks are assumed by the applicant, this information is not needed. Similarly, the annual and subsequent reports that were proposed by the Notice will not be required. Moreover, the provisions of § 157.7 of Subpart A, which permit abbreviated applications, will be available for applications under Subpart E as well.

6. *Terms and conditions.*—a. *Competing applications.* Special terms and conditions applicable to services provided under Subpart E are set forth in § 157.103. Paragraph (a) provides that a certificate issued pursuant to Subpart E will be non-exclusive and non-prejudicial to any application for any other certificate under the Natural Gas Act or for authorization under the Natural Gas Policy Act.

Comments. A number of commenters, including Colorado Interstate Gas Company, argue that this proposal ignores the requirement of *Ashbacker Radio Corp. v. F.C.C.*, 326 U.S. 327 (1946), which held that if applicants before an administrative agency have a statutory right to hearing, in situations where there are two or more competing, mutually exclusive applications, the required statutory hearings must be completed for both before either application is approved.

In this connection, Mojave Pipeline Company recommends setting a cut-off date of 90 days measured from the date of notice of a certificate application, for the filing of each certificate that competes with the initial application. After the end of the 90 day period, competing or mutually exclusive certificate applications would not be consolidated with the initial application. Applications filed after the 90-day deadline would be dismissed without prejudice, pending Commission disposition of the initial application and any timely filed competing applications.

Commission Response. In the *Ashbacker* case, the Supreme Court reversed a decision of the Federal Communications Commission not to hold simultaneous hearings concerning two applications for licenses for a broadcasting station. The Court held that since the two broadcast signals would interfere with each other, only one could be granted and therefore the applications were mutually exclusive. The heart of the holding is contained in the following language:

> We only hold that where two bona fide applications are mutually exclusive the grant of one without a hearing to both deprives the loser of the opportunity which Congress chose to give him.

326 U.S. at 333

The *Ashbacker* case does not apply under the circumstances of the current rule. This is so by virtue of Paragraph (a) of § 157.103. Under that provision, competing applications will not be considered mutually exclusive if at least one of the applicants is willing to assume all economic risks in compliance with Subpart E. This provision is supported by section 7(g) of the NGA, 15 U.S.C. 717f(g),*which states:

Nothing contained in this section shall be construed as a limitation upon the power of the Commission to grant certificates of public convenience and necessity for service of an area already being served by another natural gas company.

Accordingly, there is no need to hold competitive hearings, nor is the 90-day waiting period proposed by Mojave Pipeline Company necessary.

b. Certification Limited to Qualifying Facilities and New Service

Comments and Commission Response. Paragraph (b) of § 157.103 states that a certificate issued under Subpart E provides only for authorization to construct or acquire and operate qualifying facilities and to provide new service. Several commenters sought clarification as to whether this precluded use of existing facilities to provide new service. Maryland People's Counsel observes that most new services will require some use of existing facilities, and therefore recommends that the final rule provide for that portion of a pipelines rates for new service attributable to the use of existing facilities. The Commission agrees and has included paragraph (c) in § 157.103 to require that to the extent the new service proposed will use existing facilities, the cost of those facilities must be allocated among the services provided under Subpart E and other services provided. The rule does not preclude the use of existing facilities to provide new service under an expedited certificate. Only "qualifying facilities" may be constructed or acquired under the certificate, however, and all facilities constructed to provide the new service must be "qualifying facilities."

c. Rate Conditions

As indicated above, an essential aspect of this rule is the principle of accountability in the more competitive environment. Applicants must be willing to assume the full responsibility of their ventures in order to qualify for the expedited procedures available in Subpart E. In order to ensure this, the rule adopts four principles to prohibit applicants from shifting costs among customers in future rate cases. First, rates for new services are required to be volumetric except as provided for under § 157.103(c). Secondly, only properly allocated costs may be included in the rates for new service. Third, applicants may not reduce projected volumes in future rate cases. Finally, pipelines may not recover past losses in future rate cases. These principles, as discussed below, are reflected in the rate requirements of the final rule.

Paragraph (d)(2) of § 157.103 states the objectives of the rate requirements. Specifically, maximum rates of both peak and off-peak periods must be designed, to ration capacity during peak periods and maximize throughput during off-peak periods. In addition, the certificate holder's revenue requirement allocated to firm and interruptible services should be attained by providing projected units of service in peak and off-peak periods at the maximum rate for each service.

Paragraph (d)(3) of § 157.103, except as provided in paragraph (c), requires one-part, volumetric rates for new service. Such rates must recover costs allocated to the new service to the extent that the projected units of that service are actually purchased. Provisions such as minimum bills, minimum take requirements, or other provisions designed to guarantee revenue are not allowed.

Comments. Some commenters, primarily interstate pipelines and LDCs, maintain that volumetric rates reduce the flexibility of the pipelines to negotiate a rate design to meet changing circumstances. Tennessee Gas Pipeline Company and the Interstate Natural Gas Association of America contend that volumetric rates jeopardize a pipeline's ability to finance any project of sufficient size to require project financing, because such projects must have a demand charge that includes, at a minimum, all operation and maintenance expenses, taxes and debt principal and interest. They would prefer to leave rates to the negotiation of the parties as long as there is no impact on other customers of the pipeline.

Commission Response. These commenters miss the essense of the expedited certificate regulations. In the first place, these procedures are entirely optional, and are only meant to provide an alternative to the conventional procedures of Subpart A. Projects that cannot be accomplished without project financing can be undertaken pursuant to that subpart. Expedited certificates for new service, on the other hand, are *only* intended to be available to applicants who are willing to assume *all* the economic risks of a project. Volumetric rates and the prohibition against cost-shifting in § 157.103(d)(8) are the heart of this proposal, because they are the primary means by which this risk is imposed. Allowing applicants to impose other rates through negotiation or to include demand charges would only provide a means for shifting some portion of the risk back to the ratepayers over their objection. This would be inconsistent with the purpose of these new procedures and would eliminate the basis for the rebuttable presumption (discussed below) that a certificate issued under these conditions is in the public interest. However, the Commission does not intend the final rule to preclude the negotiation by a pipeline and any of its customers of an appropriate reservation charge for new transportation service comparable to that under the new self-implementing transportation program. If all of the affected parties agree to such a reservation charge in the certificate proceedings, then the Commission will approve it in the same manner as it would approve comparable reservation charges under the new self-implementing transportation program. For this reason, paragraph (e) of § 157.103 of the final rule modifies the proposed rule to allow for such reservation charges for new transportation service under an optional certificate.

A reservation fee for transportation is permitted because it promotes *customer* accountability, but does not significantly insulate the pipeline from risk or shift accountability away from the pipeline. Commenters who were *customers* indicated that a reservation fee should be allowed because they feared that some customers would attempt to book or reserve all of a pipeline's available capacity if it were not required to pay something for booking.

This does not, however, insulate the pipeline from all risk in the same way a demand charge would. A pipeline must still find customers who want to buy firm transportation service and are willing to pay a reservation fee to book it. Since customers are given an opportunity to nominate the duration of service, a pipeline cannot require that a customer book service for a period longer than the customer desires. This, then, does not allow a pipeline to insulate itself by requiring long term contracts with reservation fees.

The Commission does not believe reservation fees should be allowed for sales service. A pipeline would not be under an obligation similar to the obligation for transportation service to provide service to all who request it under an optional sales certificate. Thus, there is not the need to prevent *customers* from overbooking where the pipeline is obligated to serve, in order to make sure the capacity is available for use by other customers. The pipeline has much more discretion in imposing conditions other than revenue guarantees in a sales service agreement, such as a use or lose condition, so that it can protect itself somewhat from customer caprice. While we recognize that this may make optional certificates less desirable than a traditional sales certificate, we deem it essential that the pipeline bear the full risk of utilization by charging volumetric rates with no revenue guarantee of any kind, even the limited reservation fee permitted for transportation services.

Comments. Tennessee Gas Pipeline Company and several other interstate pipelines say that if volumetric rates are established, the pipeline should be allowed to reduce projected volumes in future rate cases. They assert that for various reasons no one estimate of projected levels of volumes to be sold and/or transported under a new service certificate will be appropriate over the life of the project. They state that pipelines may be reluctant to enter projects if they may never change the level of projected volumes. In this connection, Northwest Central Pipeline Corporation states that the Commission has adequate means to prevent any inappropriate cost shifting or cost bearing if and when such circumstances actually arise in any future section rate change proceeding. Maryland People's Counsel, on the other hand, believes that reductions in projected volumes should be totally precluded and is concerned that there appears to be no actual proposed regulation clearly stating that projected volumes used to set the initial rate for new service cannot be reduced.

Commission Response. The applicant's willingness to assume assumption of all risks pertaining to a project is critical to our presumption that such projects are in the public interest, and may therefore be processed with expedition. Any dilution of this assumption of risk would gravely undermine the basis for this presumption. Accordingly, the Commission will not leave this issue open for resolution in future rate cases. An applicant who voluntarily chooses to proceed under these expedited procedures must do so with the knowledge that if the project is less successful than was hoped or expected, he will not be able to reallocate the costs to his other customers in some future rate case. To this end, paragraph (d)(4) of § 157.103 states that any rate filed for new service must be designed to recover costs on the basis of projected units of service. That paragraph clearly states that the units projected for the new service in the initial rates filed under Subpart E may be increased in a subsequent rate filing but may not be decreased. We note that this is the major difference between the rate conditions applicable to the optional certificates as opposed to the rate conditions for implementing transportation under Part A of the final rule.

In order to ensure that only costs properly allocable to the new service will be included and to prevent cross-subsidization, paragraph (d)(5) of § 157.103 states that rates for new service must reasonably reflect any material variation in cost attributable to whether the service is provided in peak or off-peak periods or, if the service includes transportation, variations attributable to the distance over which the transportation is provided.

The final rule also requires that rates be flexible. Thus, paragraph (d)(7) of § 157.103 states that any rate schedule for new service must state a maximum rate and minimum rate. The certificate holder may charge any rate that is neither greater than the maximum nor less than the minimum. However, paragraph (d)(6) states that any maximum rate must be designed to recover, on a unit basis, solely those costs properly allocable to the service, and any minimum rate must be based on average variable costs allocable to the service.

Comments. Maryland People's Counsel suggests that in most cases new services will increase loads, thus making greater use of existing facilities and thereby reducing costs. Thus, Maryland People's Counsel recommends that when increases in sale and transportation owing to the provision of new service accumulate to a threshold point—such as, for example, five percent of the total representative volume established in the pipeline's last rate case—the pipeline should be required to file a new rate case within 90 days after the threshold is reached. Maryland People's Counsel believes this approach would ensure that a pipeline continue to bear an appropriate share of the economic risk associated with a project while preventing the need to change existing rates every time a new service is certificated.

Commission Response. As indicated above, paragraph (d) (4), which allows an applicant to *increase* the units of service on which the initial rates were based, would allow a pipeline to increase projected levels for a new service in a subsequent rate case. The Commission sees no need to include a specific requirement for such filings in the final rule, however. At present, jurisdictional pipelines that have purchased gas adjustment clauses in their tariffs (and this includes virtually all major pipelines) must file tariff sheets restating their rates every 36 months. 18 CFR 154.38(d)(4)(vi)(a). When a pipeline files a rate case under that section, all of its costs and revenues are reviewed and new rates may be developed. The Commission does not believe it is necessary to require more frequent rate filings simply because a pipeline decides to exercise its option to proceed under an expedited certificate. The Commission notes, in addition, that the risks entailed by an expedited certificate provide a pipeline with a strong incentive not to include excess capacity in new facilities constructed under an expedited certificate. The same incentives apply to those portions of existing facilities the costs of which will be allocated to be recovered from the new service. This incentive to construct optimally sized facilities should further limit any potential for a windfall resulting from a pipeline's providing higher levels of service than projected.

Also, to ensure that costs are not shifted to other customers contrary to the principles underlying Subpart E, paragraph (d)(8) provides that no costs originally allocated to a new service may subsequently be allocated to any other services without a filing under § 154.63 and a determination by the Commission that the costs sought to be reallocated are in fact being incurred for the benefit of the other services.

d. Conditional Pre-Granted Abandonment

Where applicable, conditional pre-granted abandonment will be provided; the period for authorization of any given service will be coterminous with the contracts governing that service.

A part of accountability in a competitive market involves the negotiation of contracts defining rights and obligations, and assigning risk among the parties. Certificate applications are geared to fulfilling these contractual obligations. It is therefore logical to make new certificates coterminous with the governing contracts. Abandonments can thus be pre-granted to be effective at the expiration of the relevant contracts *when alternate suppliers exist.*

Paragraph (f) of § 157.103 therefore provides that, upon request by the applicant, any order issuing a certificate under Subpart E shall provide conditional pre-granted authority to abandon the proposed new service and qualifying facilities at the expiration of the contracts underlying the new service. That section also provides that, under certain conditions, any pre-granted abandonment authorization will be subject to protest under § 157.106 by any customer currently receiving any service that would be abandoned. In this regard, § 157.103(f) requires that a certificate holder provide at least forty-five days written notice to a customer, if it intends to abandon any new service being provided to the customer upon expiration of their contract.

e. Flexible Receipt and Delivery Point Authority

Under paragraphs (g) and (h) of § 157.103, certificate holders are authorized, at the request of a shipper, to reduce or discontinue receipts or deliveries at a particular point and to increase or commence them at another point without prior notice, as long as the total volumes received or delivered do not exceed the total volumes the certificate holder is authorized to transport under the certificate issued under Subpart E. The receipt and delivery points to which natural gas volumes may be reassigned include facilities authorized to be constructed and operated pursuant to a blanket certificate issued under Subpart F of Part 157. This would include any sale tap authorized to be constructed and operated pursuant to a blanket certificate issued under Subpart F of Part 157.

f. Environmental Compliance

Comments. The Notice of Proposed Rulemaking solicited comments on environmental issues raised by the proposed rule. The Commission proposed in § 157.103(k) for application to optional certificates an elaborate set of environmental conditions identical to those now applied to the blanket certificate program under § 157.206 (d). As a result of the comments, the Commission now provides that, under § 157.103 (i), any certificate issued under Subpart E is subject to all the terms and conditions of § 157.206(d). This provision, which has worked well in ensuring that any construction under a blanket certificate will not adversely affect a sensitive environmental area, is appropriately applied to any construction that might arise in connection with sales or transportation arrangements approved under the new Subpart E of Part 157. Rather than restate all of these conditions in the final rule as was done in the NOPR, the rule incorporates the conditions by reference. See § 157.103(i) referencing § 157.206(d).

The Massachusetts Siting Council opposes the Commission's proposal on several grounds. The Council states its belief that the expedited certificate procedures do not provide adequate environmental safeguards and that the rule may impair the ability of state and local agencies and potentially affected individuals to participate meaningfully in the Commission's consideration of environmental matters regarding proposed construction projects. In particular, the Council is concerned that, because the proposed regulations permit more than one competing certificate, environmental impacts or harm could be magnified. The Council would deny an applicant a presumption of public convenience and necessity absent case-specific environmental review. Accordingly, the Council recommends that pipelines bear the burden of proving that the proposed project is in the public convenience and necessity and that the final rule provide strict yet timely notice and comment procedures which would allow interested state or local governments and individuals to submit environmental comments to the Commission. Finally, the Council raises a question about how the rule will protect residential subdivisions or urban areas from the adverse impacts of construction.

Commission Response. The Commission recognizes that pipeline construction or abandonments with removal of facilities can have environmental consequences. Its responsibilities under NEPA include identification of any adverse consequences, mitigation of those effects if possible, and a full analysis of all environmental impacts by the Commission, with public participation, if any proposed action is a major Federal action significantly affecting the quality of the human environment. The new procedures do not present the Commission with difficulties of environmental protection that it has not successfully addressed before in the pipeline certificate area. The procedures adopted permit case-specific environmental review by the Commission and impose on any certificate on-going requirements to protect the human environment.

Although the rule as adopted affords the applicant a presumption of public convenience and necessity, the statutory burden rests with that applicant. The Commission's responsibilities under NEPA will be discharged in conjunction with its responsibilities under the Natural Gas Act, but a proposed project is not merely presumed not to have an adverse impact.

Any applicant for a certificate under Subpart E must, under the rule adopted, file an Environmental Report under Appendix B to Part 2 of the regulations and other data, as required by § 157.14, which includes a statement concerning any facilities located in scenic, historic, recreational, or wildlife areas (Exhibit F–II), a statement that the guidelines of § 2.69 have been adopted (Exhibit F–III), and a statement concerning the requirements of the National Environmental Policy Act of 1969 (Exhibit F–IV). The exhibits contained in the application filed with the Commission become part of the public record in the case. Public notice is issued for all applications filed with the Commission, and interested persons are invited to intervene and/or protest within a stated deadline. In short, applications filed under Subpart E are treated virtually the same as other applications for purposes of ensuring compliance with applicable environmental laws.

If a certificate is issued, the certificate service is subject to § 157.206(d). That section requires a certificate holder to adopt the Commission guidelines, as set forth in § 2.69, for adverse environmental effects of a project, and to follow all other applicable laws, including the statutes, regulations, and compliance plans specifically enumerated in that section. Certificate holders are prohibited from engaging in a transaction that has a significant adverse effect on a sensitive environmental area. Moreover, although § 157.206(d) does not specifically refer to protection of the urbanized areas that concerns the Council, the Commission recognizes that *all* aspects of the human environment must be considered during environmental revisions under NEPA. If the Commission finds that, based on all available data and the application, that the transaction authorized under the requested certificate would not be a "major Federal action" under NEPA, the environmental assessment underlying the filing would be included in a public file and an appropriate finding made. For any major Federal action, an environmental impact statement would follow and extensive public comment and analysis will be solicited and used in its preparation.

The Massachusetts Siting Council presents no facts or hypothetical arguments to support its conclusion that

Subpart E procedures will magnify environmental impacts. Subpart E provides adequate case-specific review procedures to satisfy the Commission's obligations under NEPA, while accomplishing other significant regulatory objectives. The Commission declines to adopt requirements for Subpart E proceedings in addition to those that have proven to be workable in the past.

g. Commencement of New Service

Paragraph (j) of § 157.103 provides that the certificate holder must complete any authorized construction, extension, or acquisition of qualifying facilities and place such facilities in actual operation and commence all authorized services within a date specified when the certificate is issued. The certificate holder may apply to the Director of Office of Pipeline and Producer Regulation for an extension of this deadline.

6. *Hearing procedures.—Comments.* Section 157.104 sets forth the hearing procedures for Subpart E. Paragraph (a) states that the Commission will give notice of and schedule each application for public hearing at the earliest possible date, giving due consideration to statutory requirements and other pending matters.

Process Gas Consumers Group, Inc., Northern Natural Gas Company, and Mojave Pipeline Company request the Commission to establish an expedited hearing schedule. They note that no specific proposals are made in the NOPR to assure expeditious handling of applications. Therefore, Mojave Pipeline Company proposes that specific detailed pleadings be required from intervenors and protestors so that the Commission can determine and review precise issues prior to the hearing. It also proposes prompt deadline dates and expedited scheduling procedures to be followed by administrative law judges.

Commission Response. Although the Commission is committed to processing applications under Subpart E as expeditiously as possible, it declines to adopt specific procedures or deadlines that would be generally applicable to every application. The time required to process specific applications varies, depending on the specifics of the application and the nature of the opposition to it. Numerous issues will undoubtedly be eliminated by the applicant's assumption of risk. Nevertheless, the record provides no basis for predicting with any certainty the specific information needed to process every application with due regard for the rights of all parties or what minimum time periods would be suitable in all instances. However, if no protest or petition to intervene raises a general issue of material fact, paragraph (b) of § 157.104 provides that the Commission may upon request of the applicant dispose of an application in accordance with the shortened provisions of § 385.802.

a. Determination of the Public Convenience and Necessity

As provided in § 157.104, if an application by any person for the issuance of a certificate under Subpart E fully complies with the requirements of §§ 157.102 and 157.103, thereby demonstrating the applicant's willingness to assume all economic risks of the proposed activities, the Commission will presume, subject to rebuttal, that the provisions of section 7(e) of the Natural Gas Act have been satisfied and that the proposed new service is required by the present or future public convenience and necessity. Section 157.105 provides that a certificate requested under this Subpart E will be issued if the application complies with these requirements unless the presumption established by § 157.104 is rebutted.

Comments and Commission Response. Algonquin Gas Transmission Company and several other commenters argue that sections 7(c) and (e) of the NGA have imposed obligations on the Commission to determine affirmatively whether a requested certificate would be in the public convenience and necessity. Therefore, they assert that the Commission cannot presume a certificate application to be in the public convenience and necessity. The Commission disagrees for the reasons indicated below.

1. *The factors involved.* At the outset, the Commission notes that the rebuttable presumption would be available in two situations: Where a new service is being provided in an area *not* being served by a pipeline, or where a new service is being provided to an area *already* being served by a pipeline.

In the first situation, the public convenience and necessity is served in that service is being provided to consumers where such services were not formerly available in interstate commerce. In the second situation, however, new gas services may be provided to consumers who are already served or able to be served by another pipeline. Most of the comments on the rebuttable presumption in the proposed rule relate to issues raised in this latter "pipeline by-pass" situation.[6]

In one of the earliest Commission proceedings concerning an application for a certificate of public convenience and necessity, the Commission defined public convenience and necessity as meaning "a public need or benefit without which the public is inconvenienced to the extent of being handicapped in the pursuit of business or comfort or both—without which the public generally in the area involved is denied to its detriment that which is enjoyed by the public of other areas similarly situated." *Kansas Pipe Line & Gas Company, et al.*, 2 FPC 29 (1939). The Commission determined that the public convenience and necessity involved certain minimum requirements upon which the applicant must make a favorable showing.

Specifically, the applicants must show that (1) they possess a supply of natural gas adequate to meet those demands which it is reasonable to assume will be made upon them; (2) there exist in the territory proposed to be served customers who can reasonably be expected to use such natural-gas service; (3) the facilities for which they seek a certificate are adequate; (4) the costs of construction of the facilities which they propose are both adequate and reasonable; (5) the anticipated fixed charges or the amount of such fixed charges are reasonable; and (6) the rates proposed to be charged are reasonable. These factors are still relevant today (although the emphasis on specific factors has changed as conditions in the industry have changed). Applicants for certificates of public convenience and necessity must file information relevant to the determination of these issues. 18 CFR 157.14.

Although the final rule does not require an affirmative showing on each of these factors, nevertheless, the rule is designed to ensure that each of these requirements will be satisfied as they apply to individual projects. With respect to several of these requirements, the rule represents a natural extension of the evolving Commission policy.

For instance, the supply of natural gas traditionally required to support a finding of public convenience and necessity was the natural gas reserves available upon firm commitment. During times of relatively abundant supplies, a showing of dedicated gas reserves sufficient to justify the substantial capital expenditures was required. *Mississippi River Fuel Corp.*, 9 FPC 198 (1950); *Michigan Wisconsin Pipe Line Company, et al.*, 8 FPC 293 (1949). The minimum deliverability life showing required of a new pipeline was generally determined to be twenty years, and the showing required of an existing pipeline seeking to serve new or expanded markets was generally determined to be twelve years. *Midwestern Gas Transmission Company, et al.*, 21 FPC 653,657 (1959).

In 1964, the Commission promulgated § 2.61 of its regulations which relaxed the twelve year deliverability life requirement with respect to established pipelines with active gas procurement organizations whose lines extended into production areas in which exploration was continuing. For a new pipeline company seeking to initiate service, or an existing pipeline company seeking to serve major new markets or to serve major existing markets from new sources of supply over new routes, however, the deliverability life was required to be no less than twelve years. In later years, however, the Commission has issued certificates where the pipeline's deliverability life was significantly less than twelve years. In projects where the gas supply is uncertain, however, the Commission has imposed a rate condition which insulates customers from at least a portion of the risk that the probable or potential supplies would not materialize.

For instance, in *Cities Service Gas Company*, Docket No. CP76-500, 4 FERC ¶ 61,268 (1978), the Commission approved a proposal by Cities Service to convert an existing oil line to transport gas from Wyoming to Kansas, even though the applicant had no proved gas reserves under certificated gas purchase contracts. To protect ratepayers from any undue burden, the Commission approved a 100 percent commodity rate and imposed a condition requiring that the annual component for computing the unit cost of transmission must be at least 90 percent of the design capacity of the pipeline. *See also Arkansas-Louisiana Gas Company*, 47 FPC 583 (1972) (imposing a 100 percent commodity charge based on the greater of actual annual throughput or design capacity), *reh. den.*, 47 FPC 1040 (1972).

The final rule addresses the adequacy-of-supply issue by providing rate incentives, for applicants who are willing to assume the risks of the project, including the adequacy of supplies. The rate provisions of the order protect ratepayers from bearing increased costs if the facilities are used at less than capacity because anticipated supplies do not materialize. Moreover, because the applicant will bear all risks of failure, there is a strong incentive not to initiate projects based on inadequate supply estimates.

In considering whether available markets are adequate to support a project, the Commission has not required applicants to show firm commitments from each and every customer to be an accomplished fact, but only that there exist in the territory to be served customers who can reasonably be expected to use such natural gas service. *E.g., Transcontinental Gas Pipe Line Corporation*, 17 FPC 360 (1957); *Midwestern Gas Transmission, et al.*, 16 FPC 466 (1956). Where all risks are on the applicant, as they are in the final rule, however, the existence of such markets can be safely presumed.

Related to the issues of estimated supplies and markets is the adequacy of the capacity and physical character of the facilities applicants propose to construct. *See Kansas Pipeline & Gas Company, supra.* In recent years, the emphasis has focused on whether the gas supply is sufficient to justify the construction of the increased capacity. *See, e.g., Ozark Gas Transmission System*, 16 FERC ¶61,099 (1981). With respect to this issue, the same features of the rule that encourage accurate supply and market estimates provide incentive for designing facilities of optimal capacity. An applicant that builds excess capacity because he overestimates the volume of business he will do cannot reduce his representative levels in future rate cases. And because the rates are volumetric, he cannot recoup his costs through demand charges to customers who do not require the gas.

Thus, the traditional public-convenience considerations of adequate supplies, markets, and facilities are addressed by the incentives built into the final rule. Applicants have every reason to embark on projects only where these requirements are met. This is true even where another pipeline would be "by-passed" by such a project, because one of the underlying purposes of the NGA is the provision of reliable services to consumers, and certificates under the NGA to provide such services may not be exclusive.[6] Accordingly, the Commission considers it reasonable to presume these requirements have been met (subject to rebuttal) in light of the protection that the rule provides for ratepayers.

In evaluating certificate applications under conventional procedures, the Commission considers whether anticipated costs of construction are reasonable, because the rates to be filed will reflect these costs. In this regard, the record must show that estimated revenues will produce earnings sufficient to retire debt as proposed and meet interest and preferred dividend requirements. *Transcontinental Gas Pipe Line Corp.*, 9 FPC 32 (1950). The final rule is designed to minimize the need for initial scrutiny of this factor also. Because the risks of failure are entirely on the applicant, the applicant has every incentive to keep costs down. Failure to do so will render the project vulnerable to competition. This is so because volumetric rates will recover costs only to the extent that projected units of service are actually purchased and because minimum bills, demand charges, and other devices to guarantee revenue recovery are prohibited.

The NGA does not require a determination of just and reasonable rates in a section 7 proceeding as it does in one under sections 4 and 5. Nevertheless, in a section 7 proceeding, a careful scrutiny and responsible reaction to initial price proposals is required. *Atlantic Refining Co. v. Public Service Commission*, 360 U.S. 378 (1959). This issue is addressed in the rate provisions of the final rule. These provisions, which were discussed in detail above, are designed to ensure that proposed initial rates will be reasonable.

The commenters who argue that the Commission cannot presume a certificate to be in the public convenience and necessity misapprehend the function of the presumption established by § 157.104. The presumption is not a substitute for our obligation to determine whether individual applications are required by the public convenience and necessity. Rather, § 157.104 represents a determination that in the absence of countervailing circumstances, the public interest is served where an applicant perceives a market demand for a service that it can offer, is willing to attempt to enter that market by offering its services at competitive rates, and is willing to assume all the attendant economic risks itself, thereby eliminating such risks to the ratepayers. Where these factors are present and where offsetting factors that would be detrimental to the public interest are not present, then the barriers to certification should be reduced. By establishing expedited procedures and a presumption favoring complying applications, the rule provides incentives for competition where none exists, encourages willing competitors to enter established markets, and encourages pipelines to offer their services to presently off-system customers thereby turning them into on-system customers. Where this occurs, producers and consumers will both have access to greater markets and will be provided with greater options in the array of gas services available. Distributors who are now restricted to one pipeline may gain access to more than one pipeline.

These are the competitive benefits to consumers that the Commission forsees resulting from increased competition. The Commission believes that these benefits serve the public convenience and necessity as that phrase has been traditionally understood. That is to say, the benefits amount to "a public need or benefit without which the public is inconvenienced to the extent of being handicapped in the pursuance of business or comfort . . . ." *Kansas Pipe Line and Gas Company, supra.* But a prerequisite for achieving these benefits is a reduction in the administrative barriers that inhibit easy entry to and exit from the marketplace in the provision of new or expanded services.

On the other hand, the expedited procedures are not intended to provide certificates for operations that are inconsistent with the public interest. As indicated above, the final rule is designed to accommodate all of the factors that are traditionally considered in determining whether a certificate application is required by the public convenience and necessity under conventional procedures. In addition, paragraph (c) of § 157.104 provides that the presumption is rebuttable and paragraph (b)(2) of § 157.102 provides for the filing of protests to a certificate under Subpart E in accordance with the requirements for protests and interventions in § 157.10.

In evaluating applications under these procedures, the Commission will consider carefully all protests filed. Protestors should take notice, however, that the Commission will not consider speculative or unsupported allegations a sufficient basis for withholding a certificate where an applicant is willing to offer new services to customers under the optional procedure. Nor can the presumption of public convenience and necessity be rebutted simply because the protestor happens to be operating in a particular market and would prefer to continue operations insulated from all competition. In order to rebut the presumption of § 157.104, a protestor must set forth in its filing the specific allegations of unfair competition or other material harm that will result from the new service and must demonstrate why it would be inconsistent with the public convenience and necessity to issue the certificate under these circumstances. Individual protests will be addressed as they arise on case-by-case basis.

To raise issues sufficient to justify an evidentiary hearing, protestors must comply with paragraph (b)(2) of Section 157.102, which requires an intervenor to file a statement of all issues of fact raised and to identify those alleged to be material to a determination of whether the applicant's certificate is required by the public convenience and necessity. The Commission will not require evidentiary hearings to consider speculative or unsupported allegations. *See, e.g., General Motors v. FERC,* 613 F2.d 939 (D.C. Cir. 1979).

Northern Indiana Public Service Company and other commenters objected to the provision in the Notice that would have shifted the burden of proof to intervenors seeking to rebut the presumption in favor of the applicant. This provision has been deleted from the final rule. Burden of proof issues, to the extent they arise in individual cases, will be resolved in accordance with the Administrative Procedure Act.

V. Administrative Finding and Notices

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)[1] generally requires a description and analysis of final rules that will have "a significant economic impact on a substantial number of small entities." [2] Specifically, if an agency promulgates a final rule under the Administrative Procedure Act (APA),[3] a final regulatory flexibility analysis may be appropriate. Each final regulatory flexibility analysis must contain (1) a statement of need for and objective of the rule, (2) a description of significant alternatives to the rule consistent with the stated objectives of the applicable statute that the agency considered and ultimately rejected, and (3) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, and the agency response to those comments. An agency is not required to make an RFA analysis, however, if it certifies that a proposed rule will not have "a significant economic impact on a substantial number of small entities." [4]

In the NOPR, the Commission certified that the proposed rule would not have a "significant economic impact on a substantial number of small entities," since most companies that must comply with this rule do not fall within the RFA's definition of small entity. In light of that certification, the Commission was not required to prepare an initial RFA analysis. In its notice of inquiry, notice of proposed rulemaking, and in this final rule, the Commission has nevertheless detailed the reasons, objectives, and the legal basis for this rulemaking. To the extent possible, the Commission has also discussed the probable effects of the rule on the Natural gas industry and the consuming public. In addition, the Commission considered a variety of significant alternatives to the regulations that it is now adopting in this order. The reasons for rejecting those alternatives are discussed in this document.[5]

Two commenters argue that the proposed rule required an initial RFA analysis because the rule would have an adverse effect on small producers and on small businesses that market petroleum products, services, and equipment (petroleum marketers). The rule, the Maurice L. Brown Company argues, would cause, among other harms, reductions in takes of gas from producers, resulting in gas being shut-in at the wellhead and reserves being abandoned. Similarly, the Petroleum Marketers Association complains that the rule will permit natural gas companies to raid markets served by fuel oil dealers, particularly by permitting pipelines to selectively discount transportation rates, buy out future take-or-pay liabilities, and use expedited certificate procedures to enter new markets. Neither commenter questions the Commission's conclusion that most companies that must comply with this rule do not fall within the RFA's definition of small entity, however. Rather, Petroleum Marketers Association argues that the requirement to prepare an analysis arises "even when the potentially affected small entities are not the direct targets of the regulations," since the legislative history of the RFA indicates that agencies must examine both the "direct and indirect effects of proposed regulation." [6]

The Commission believes that these commenters misunderstand the intent of the RFA. Congress was not asking agencies to study any potential economic effects on small entities not subject to the rule. As noted in previous proceedings,[7] this Commission, like other agencies,[8] is required by the RFA to analyze only the effect of rules on regulated small entities to which the requirements of the rule applies.[9] Congress was clear about the reach of the statute: when an agency issues a rule that applies to small entities, the agency must consider, and try to mitigate, the burden on those small entities of compliance with the rule.[10] The legislative history also echoes this focus on burdensome reporting and compliance requirements.[11]

Although Commission regulation affects small producers directly in some ways, neither small producers nor petroleum marketers are subject to the requirements of this rule. Specifically, the transporation programs in the rule are simplified voluntary programs for interstate and intrastate pipelines. The rule also permits customers of pipelines to modify existing service agreements. Second, the Commission retains its earlier policy of reviewing the prudency of payments made by interstate pipelines to extinguish minimum payment or purchase obligations in their gas contracts. In addition, the Commission indicates that it intends to grant certain kinds of producer-requested abandonments expeditiously, and restates procedures that the Commission will follow when reviewing these requests for abandoment. But, no new requirements are imposed on any producer, large or small, by these new procedures.[12] Third, the rule establishes optional expedited certification procedures for sales or transportation services by interstate pipelines. The rule will permit a pipeline to offer new services, facilities, and operations to gas customers.

For these reasons, the Commission concludes that there is no provision of the RFA that requires an analysis of the impact of this final rule on either small producers or petroleum marketers, since neither are subject to any requirements of this rule. Accordingly, the Commission affirms its earlier conclusion that, pursuant to section 605(b) of the RFA, this rule will not have a "significant economic impact on a substantial number of small entities."

B. Finding of No Significant Impact

Under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.* (NEPA), Federal agencies must prepare an environmental analysis of "major Federal actions significantly affecting the quality of the human environment." NEPA requires that such an analysis, known as an Environmental Impact Statement (EIS), be made part of any record of decision on such major Federal actions. In order to determine the need for an EIS, agencies prepare an Environmental Assessment (EA). An EA, which is a general overview of the nature and probable effects of the action, provides the basis for a Finding of No Significant Impact (FONSI) when an EIS is not necessary or facilitates the preparation of an EIS when it is required. In preparing an EA, the agency is also able to identify potential adverse impacts and to recommend or devise mitigating measures that will enable it to make a FONSI.

In its Notice of Proposed Rulemaking, the Commission directed staff to prepare an EA. Among other things, the EA focuses on transactions under NGPA section 311.

The transportation services under revised Subparts B, C, and H of Part 284 are authorized pursuant to NGPA section 311.[13] Section 311 and the complementary provisions in NGPA section 601(a) were designed to facilitate the transportation of natural gas among interstate and intrastate pipelines and local distribution companies, without subjecting intrastate pipelines and local distribution companies to Natural Gas Act regulation. One main objective of this legislation was to "save interstate pipelines great expense by avoiding the need to duplicate intrastate pipeline routes in order to obtain natural gas. . . ."[14] Section 311 therefore aids development of a national transportation network that utilizes existing facilities to the maximum extent.

Although the Commission may condition section 311 transactions, it does not certificate facilities constructed or physically abandoned solely to implement those services. Nevertheless, the Commission has decided to impose environmental conditions under new § 284.11, on any Part 284 service authorized under section 311 that involves construction or abandonment with removal of facilities. That condition applies existing § 157.206(d), which provides for compliance with a variety of environmental laws, guidelines for planning, locating, clearing and maintenance of rights-of-way and certain construction, and prohibits any significant adverse impact on sensitive environmental areas, among other provisions. Compliance with § 157.206(d) is therefore an ongoing condition of authorization to engage in the subject section 311 transactions.

Selecting from among the alternatives presented in the Environmental Assessment, the Commission finds that imposition of the conditions under § 284.11 is a satisfactory protection from adverse impacts from facilities that could be constructed by interstate or intrastate pipelines on a self-implementing basis under NGPA section 311. It is generally expected that the services that necessitate construction will generally involve taps, metering, and interconnecting facilities.

The EA concludes, first, that two parts of the proposed programs—a policy for relieving take-or-pay obligations and a billing procedure for allocating the cost of purchased gas—do not provide authorization to construct or abandon facilities. Despite some significant economic effects, these rules and policies have no foreseeable effect on the natural and physical environment. NEPA does not require analysis of exclusively economic or social effects that may arise from a Federal action. Although the Commission has given detailed consideration to the effect of these aspects of the rule, it has not done so in the context of NEPA review. Second, the EA concludes that the proposed optional expedited certificate procedures in Subpart E of Part 157 could involve sales or transportation services that necessitate construction of facilities or abandonment with physical removal of facilities, either of which would fall within the Commission's Natural Gas Act jurisdiction. The Commission addresses that issue, as discussed above, by imposing terms and conditions and providing case-specific examination of applications. Third, the EA concludes that, although transactions authorized under NGPA section 311 (Subparts B, C, and H of Part 284) do not subject the participants to Natural Gas Act jurisdiction, they will rely largely on existing facilities. Environmental conditions will mitigate any adverse impacts.

Based upon its review of the Environmental Assessment, the record in this proceeding, and the changes made in this final rule to the proposed procedures, the Commission concludes that issuance of the final rule is not a major Federal action significantly affecting the quality of the human environment. Therefore, an Environmental Impact Statement for the rule is not required.

C. Effective Date and Paperwork Reduction Act Statement

1. Generally, a rule becomes effective not less than 30 days after it is published in the **Federal Register.** A rule may become effective sooner if it is an interpretive rule or policy statement, if it relieves a restriction or grants an exemption, or if the agency finds that there is good cause to do so.[15] As described earlier in the section entitled "Schedule of the Final Rule," the Commission finds good cause making certain parts of this rule effective November 1, 1985. The remainder of this rule will become effective 30 days (or later as specified in the "Schedule") after publication in the **Federal Register.**

The Commission's "special marketing programs" (SMPs) and one of its "blanket certificate programs" [16] were recently invalidated by the United States Court of Appeals for the District of Columbia Circuit finding them discriminatory.[17] But, the court permitted these programs to continue until October 31, 1985, to allow the Commission time to implement a nondiscriminatory transportation program in compliance with the court's decisions. As amended by this final rule, Part 284 of the Commission's regulations establishes a comprehensive transportation program that cures the infirmities that the court found in the programs it invalidated. As a means of transition, these rules provide that transportation arrangements previously approved under SMPs and the blanket certificate program invalidated by the court may continue in limited circumstances. For example, the pipeline involved in certain Order No. 234–B transportation arrangement may continue to transport up to the full term of the underlying agreement, if it files for a blanket certificate that requires transportation on a nondiscriminatory basis. The previous transportation arrangements must, however, comply with nondiscriminatory access provisions, as appropriate. *See* new § 284.223(g)(2).

The transportation program established in this proceeding is a voluntary program that relieves restrictions on interstate pipelines by providing streamlined procedures for obtaining authorization to engage in certain transactions. Specifically, it is designed to remove unnecessary regulatory obstacles and to facilitate transportation of gas to any end user that requests transportation service. As a result, interstate pipelines can transport natural gas on behalf of any interstate or intrastate pipeline or any local distribution company without prior Commission approval, provided the pipeline meets conditions imposed by the new regulations. Similarly, an interstate pipeline may seek authorization to transport gas for any customer in lieu of seeking a section 7(c) certificate for each individual transaction. In essence, the new regulations remove, among other restrictions, the two-year limitation on NGPA section 311 transactions and grant the interstate pipeline an exception to the Commission's general rules and regulations that implement the Commission's authority to grant or deny requests to tranport gas under section 7 of the Natural Gas Act. Since the invalidated programs may not continue past October 31, 1985, the Commission has decided to make its new non-discriminatory transportation program effective on November 1, 1985, in order to permit the invalidated programs to continue in modified form.

In addition, the Commission believes that the regulations implementing its new nondiscriminatory transportation program must go into effect by November 1, 1985, to prevent a serious disruption to the transportation of natural gas. Many end users rely on the invalidated transportation programs for their gas supplies and would experience serious service interruptions. Since the new program responds to the concerns of the court in MPC I, MPC II and MPC III, the Commission believes the program should be implemented without interruptions in service to these end-users. For these reasons, the Commission also finds good cause to make the amendments to Part 284 of its regulations effective November 1, 1985.

The amendments to Parts 157, 250, 375 and 381 contained in this rule become effective November 18, 1985. The amendments to Part 2 of the Commission's regulations constitute a statement of policy that articulates the Commission's policy disposition and does not have the force and effect of law. Although the Commission is mindful that application of this policy in individual cases must be supported as if the policy had not been issued, it expects that, where appropriate, this approach to disposing of the type of take-or-pay payments and applications for abandonment provided for §§ 2.76 and 2.77 of the regulations will apply to Commission proceedings. In accordance with section 4(d) of the APA (5 U.S.C. 553(d)(2)), this statement of policy is effective immediately.

2. The information collection provisions in this rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [16] and OMB's implementing regulations.[17] Interested persons can obtain information on these information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown ((202) 357–8272). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer of the Federal Energy Regulatory Commission).

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 275

Authority delegations, Seals and insignia, Sunshine Act.

In consideration of the foregoing, the Commission amends Chapter 1, Title 18 of the Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

Footnotes—I. Introduction

[1] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 24130 (June 7, 1985).

[2] Interstate Transportation of Gas for Others, 50 FR 114 (January 2, 1985) (Phase I); Natural Gas Pipeline Ratemaking, Risk, and Financial Implications After Partial Wellhead Decontrol, 50 FR 3801 (January 28, 1985) (Phases II and III).

[3] 15 U.S.C. 717–717w (1982).

[4] 15 U.S.C. 3301–3432 (1982).

[5] 15 U.S.C. 717c(a) (1982).

[6] 15 U.S.C. 717d(a) (1982).

[7] 15 U.S.C. 717f(e) (1982).

[8] *Atlantic Refining Co. v. PSC of New York,* 360 U.S. 378 (1959) (CATCO).

[9] 15 U.S.C. 3431 (1982).

[10] 15 U.S.C. 3431(c) (1982).

[11] *See generally,* Title I NGPA, 15 U.S.C. 3311–3333; 15 U.S.C. 3431 (1982).

[12] *Phillips Petroleum Co. v. Wisconsin,* 347 U.S. 672 (1954).

[13] *Pennzoil v. FERC,* 645 F.2d 360, 378–379 (5th Cir. 1981), *cert. denied,* 454 U.S. 1142 (1982).

[14] 42 U.S.C. 7101–7352 (1982).

Footnotes—II. Background and Discussion

[1] *Maryland People's Counsel v. FERC, et al.,* No. 84–1090, slip op. (D.C. Cir., May 10, 1985) at 19.

[2] As detailed below, the fundamental changes going on in the industry have been masked to a substantial degree by the deflationary pressures on natural gas prices. This downward price pressure is a phenomenon affecting many segments of American industry. *See e.g.,* "The High Cost of Low Prices," New York Times, August 11, 1985 at F 1.

[3] *Wisconsin Gas v. FERC,* _____ F.2d _____ (D.C. Cir., Aug. 20, 1985), *mimeo,* at 38 (quoting *American Public Gas Association v. FPC,* 567 F.2d 1016, 1037 (D.C. Cir. 1977)).

[4] *See* "Final Report of the Federal Trade Commission," Senate Document No. 92, 70th Cong., 1st Sess., parts 84–A (text of final report), 84–B and 84–C (legal and economic appendices) (1936) (submitted to the Senate December 31, 1935) (hereafter cited as "1935 FTC report") at 87. The FTC report lay the

Natural Gas Act of 1938. See section 1(a) of the NGA (referencing the FTC Report).

[5] *See, e.g.*, K. Landes, "Oil & Gas in Three Dimensions," in *Exploration and Economics of the Petroleum Industry* (1968) at 17–24. *See also*, Initial Decision in *Permian Basin Area Rate Proceedings*, Docket No. AR61-1 (issued Sept. 17, 1964), *mimeo*, at 53–64 (summarizing testimony regarding directionality and concluding that directional drilling capacity first became statistically apparent after 1956).

[6] Initial Decision, *Permian Basin Area Rate Proceedings, supra*, at 64–72 (comparing performance of oil and gas drilling to oil and gas prices from 1945 to 1963). For example, it was only in January of 1959 that Phillips Petroleum Company began to require that recommendations for drilling expenditures indicate whether gas or oil was the primary drilling objective. *See* testimony of Jesse H. Foster, Jr. in the *Permian* proceedings, *reprinted in* Joint Appendix in *Skelly Oil Co. v. FPC* (10th Cir. Nos. 83–85, *et al.*) at 157–176.

[7] Subsequent statistical and econometric studies have confirmed the existence of this high degree of directionality. *See e.g.*, Khazzoon, "Gas Production Directionality," Public Utilities Fortnightly (Dec. 18, 1969) at 20–25; Challa, *Investment and Returns in Exploration and the Impact on the Supply of Oil and Natural Gas Reserves* (1979) (econometric model comparing price elasticities for oil and natural gas).

[8] Area Rate Proceeding, et al. (Permian Basin Area), 34 FPC 159 (Aug. 5, 1965) at 185–188 (noting that the directional drilling capability was the "touchstone" of the Initial Decision and discussing basis for decision to adopt separate vintages for old and new gas).

[9] *See* 1935 FTC Report, 227 to 278.

[10] *Id.*, at 112.

[11] *Id.*, at 112–113.

[12] Thus, one delivery point initially proposed by the New York Mercantile Exchange for its natural gas futures contract was Bamel storage field outside Houston. The application to trade futures contracts in natural gas is on file with the Commodity Futures Trade Commission.

[13] Perhaps the most graphic experience was the industry's extraordinary efforts during the 1976–1977 winter emergency to move supply quickly to areas of greatest need. The enactment of the Emergency Natural Gas Act of 1977 in February of 1977 created temporary exemptions from market entry and exit restrictions that removed the legal barriers to this operational *tour de force*.

[14] Table IV below.

[15] *See e.g.*, Natural Gas Pipe Line Co. of America's acquisition of Mississippi River Transmission Corp. and United Gas Pipe Line Co. (providing access to the Houston Ship Channel and other Texas and Louisiana Gulf Coast markets); Tennessee Gas Pipeline Co.'s acquisition of several Louisiana intrastate pipelines (providing access to Louisiana Gulf Coast markets).

[16] For example, ANR Pipeline Co., acquired by Coastal Corp., is a major importer of Canadian gas.

[17] For example, by being acquired by Houston Natural Gas Corp., Transwestern Pipeline Co., which had virtually no storage facilities, may be able to make use of Houston Natural's extensive storage facilities.

[18] Trunkline Gas Supply Co., 8 FPC 250 (1949) (adopting rolled-in pricing of new gas and facilities over dissent of Commissioner Draper); Panhandle Eastern Pipe Line Co., 10 FPC 185, 192 (1951) (noting that new construction and supply would create "correlative benefits" for all customers through release of pipeline transportation capacity).

[19] 31 FPC 1180, 1195–1199 (1964) (finding that United's system was not yet sufficiently integrated to adopt full rolled-in treatment).

[20] *See* Pierce, Alison and Martin, *Economic Regulation: Energy, Transportation and Utilities* (1980) at 598–620.

[21] Except, of course, to the extent that these differences may have implied the exercise of monopsony power in the part of the pipeline. *See* discussion of differing field prices in 1935 FTC Report, at 127–128 and 132–133.

[22] 34 FPC 159, 185–188 (1965), aff'd., 390 U.S. 747 (1968).

[23] *See, e.g., FPC v. Louisiana Power & Light Co.*, 406 U.S. 621 (1972); *see also*, Willrich, *The Administration of Energy Shortages: Natural Gas and Petroleum* (1976) (Chapter 4).

[24] As noted at the public hearing by a representative of Process Gas Consumers Group, *et al.*, in commenting on the announcement that the Great Plains project was being terminated at a substantial loss: "If you had no rolled-in pricing it [Great Plains] would have been gone a long time ago." August Hearing, Tr. at 714.

[25] Opinion Nos. 622 and 622-A, 47 FPC 1624 (1972) (orders approving incremental pricing for Cove Point and Elba Island LNG projects) (*rev'd. sub nom. Columbia LNG v. FPC*, 481 F.2d 651 (5th Cir. 1974)); and Opinion No. 796, 58 FPC 726 (1977) (initial order requiring incremental pricing of Trunkline LNG project).

[26] Opinion No. 786, 57 FPC 354 (1977) (decision on remand of Columbia LNG case allowing projects to proceed on rolled-in basis); Opinion No. 796-A, 58 FPC 2935 (1977) (decision on rehearing allowing Trunkline LNG project to proceed on rolled-in basis); Opinion No. 119, 15 FERC ¶ 61,106 (1981) (decision allowing Great Plains gasification project to proceed on rolled-in basis).

[27] Minimum bill payments for the services of the LNG terminals in 1984 were:

Southern Energy (Elba Island) $12,829,655
Docket No. RP80-136-000

Columbia LNG (Cove Point) $12,888,398
Docket No. TA80-2-21-002 (PGA80-3)

Consolidated LNG (Cove Point) $19,270,716
Docket No. TA80-2-22-003 (PGA80-5)
(IPR80-3) (LFUT80-2) and (RD&D80-2)

Trunkline LNG (Lake Charles) $81,931,846
Docket No. CP74-138

The Columbia charges are subject to a possible refund of $13,628,398 (which would leave a net of minus $739,702); Consolidated charges are subject to a possible refund of $18,285,475 (which would leave a net of $985,241).

Trunkline LNG in 1984 delivered 3,406,059 Mcf so some of their revenue is for gas sold. At $7.50–8.50/Mcf for this gas, about $25.5–$29 million of the $82 million could be for gas sold. From July through December, when no gas was sold, the charges were about $5 million a month suggesting about $60 million in minimum charges for the year with no gas being sold.

In the case of Great Plains, as much as $2 billion may eventually be lost.

[28] Market absorption capability: 100 units × $3.00 = $300. Available old gas: 90 units × $2.22 = $200. Market absorption capability available for unregulated gas: $300 − $200 = $100. Per unit price available for unregulated gas: $100 − 10 = $10.00.

[29] *See e.g.*, U.S. Energy Information Administration, *Monthly Energy Review* at 90–91 (December 1979) (DOE/EIA-0035) (12/79). In 1978 the average wellhead price of all natural gas increased from 87.3¢/Mcf in January to 96.1¢ in December for a yearly average of 90.5¢. Interstate pipelines paid producers an average of 74.0¢/Mcf in January and 95.8¢ in December, 84.1¢ for the yearly average. The wellhead price of "old" gas is probably most accurately measured as the November 1978 price paid by pipeline to producers: 90.1¢ Mcf.

See also, U.S. Energy Information Administration, *Natural Gas Monthly*, Table 5 (June 1985) (DOE/EIA-0130) (85/06). The "old" and "new" gas prices from PGA filings were not reported until 1981 when the old gas price was $1.23/Mcf in January, $1.25 in December, year average $1.22. For July 1985 the price is reported at $1.56/Mcf.

[30] "New" gas prices as paid by purchasers were not summarized until two years after the NGPA went into operation. The ceiling prices for December 1978 new gas as shown in FERC Statutes and Regulations § 271.101, ¶ 24,111 were:

Section	Mcf	Percent
102	$2.078	(60)
103	1.969	(31)
108	2.078	(6)
109	1.630	(3)

Since most of the new gas would have been Section 102 gas (60% of the new gas was Section 102 gas in 1981 and 1982), the average price of new gas in December 1978 was about $2.03.

[31] *See e.g.*, U.S. Energy Information, *Natural Gas Monthly*, Table 5 (June 1985) (DOE/EIA-0130) (85/06). This price dropped to $3.62 in July 1985.

[32] According to the chief deputy clerk of the Bankruptcy Court in the Western District of Oklahoma, approximately 110 Oklahoma companies involved in gas drilling had filed for protection under Chapter 11 between the beginning of 1982 and April of 1983. *See* "Gas Slump in Oklahoma," *New York Times*, (April 26, 1983), at D-1.

[33] For a rather colorful account of the deep gas bust, *see* Singer, "Annals of Finance: Funny Money," *The New Yorker*, April 22, 1985, April 29, 1985 and May 6, 1985.

[34] Interstate Natural Gas Assoc. of America, "The Gas Contracts Problem: Results of an INGAA Survey (Policy Analysis 83P-1 (May 1983)).

[35] Policy Analysis of Current and Future Natrual Gas Prices Under the NGPA (Study

prepared by I. M. Olson & Associates) (September 1984).

[36] August Hearing, Tr. at 465–466; 524–525; and 526–528.

[37] An exception is section 107(c)(5). This gas is high cost gas which remains subject to and is not removed from NGA jurisdiction unless it also qualifies under one of the categories that is so removed.

[38] *Pennzoil Co., et al. v. FERC,* 645 F.2d 360, 378–379 (5th Cir. 1981), *cert. denied,* 454 U.S. 1142 (1982).

[39] *See also, Maryland Peoples Counsel v. FERC,* No. 84–1090, slip op. at 9–10 (D.C. Cir., May 10, 1985) (summarizing MPC's argument).

[40] *See* Exhibit B.

[41] *See* examples cited in Williams and Meyers, *Treatise of Oil and Gas Law,* § 722 and form of agreement in § 741.1 (Article XV).

[42] *Sun Oil Co. v. FPC,* 364 U.S. 170 (1960).

[43] *California v. Southland Royalty Co.,* 436 U.S. 519 (1978) and *United Gas Pipe Line Co. v. McCombs,* 442 U.S. 529 (1979). For a comprehensive view of the law of dedication *see* Conine and Niebrugge, "Dedication Under the Natural Gas Act: Extent and Escape," 30 *Okla. L.Rev.* 735 (1977).

[44] *Transcontinental Gas Pipe Line Corp. v. FPC,* 488 F.2d 1325 (D.C. Cir. 1973) (the "La Gloria" proceeding).

[45] Willrich, *Administration of Energy Shortages: Natural Gas and Petroleum,* at 78–79 (1976).

[46] Policy with Respect to Certification of Pipeline Transportation Agreements, Docket No. RM75–25, Order No. 533, 54 FPC 521 (1975), 40 Fed. Reg. 41,760, *rehearing granted in part and denied in part,* Order No. 533–A, 54 FPC 2058, 40 Fed. Reg. 54,724 (1975) (codified at 18 CFR § 279), *affirmed, American Public Gas Association v. FERC,* 587 F.2d 1089 (D.C. Cir. 1978).

[47] In addition, the Commission allowed 60-day "emergency" sales under Order Nos. 402 and 402–A and under the Order No. 491 series, whereby sellers could commit gas to the interstate market for short term transactions. *See* Willrich, *supra,* at 78.

[48] Over the first two years of the program, certificates had been issued authorizing the transportation of a total of 15.8 Bcf. Order No. 2 [Reg. Preambles 1979–1981] FERC Stat. & Reg. ¶ 30,005 at 30,023 and 30,036 (Appendix A).

[49] The Commission promulgated a series of transportation programs, as outlined in our Phase I Notice of Inquiry, FERC Stat. & Reg. ¶ 35,516 at 35,604–35,605. The present discussion is abridged. For a full discussion of the evolution of these programs *see* Means and Angyal "The Regulation and Future Role of Direct Producer Sales," 5 *Energy L.J.* 1 (1984).

[50] Letter dated January 14, 1983 from Ray J. Lynch, President, Michigan Wisconsin Pipe Line Co. to Philip R. Sharp, Chairman, House Subcommittee on Fossil and Synthetic Fuels, *printed in* 1983 House Hearings on Contract Problem, at 385. Less than two years later, after 18 months under the Blanket Certificate Program, Mr. Lynch's company *alone* had transported approximately 70 Bcf of spot gas during calendar year 1984, more than any other single pipeline. See Exhibit C.

[51] Exhibit C shows 1984 volumes of 350.8 MMMBtu. Exhibit C shows total sales for resale of major interstate pipelines for 1984 of 9,020 Bcf.

[52] Transcontinental Gas Pipeline Corp., 23 FERC ¶ 61,199 (1983) (letter order approving uncontested rate settlement containing first marketing program), 23 FERC ¶ 61,221 (1983) (amending certificates and authorizing limited-term and pregranted abandonment), 23 FERC ¶ 61,460 (same, for Transco gas acquisition affiliate), *rehearing denied,* 24 FERC ¶ 61,052 (1983), *amended,* 25 FERC ¶ 61,219 (1983) (imposing conditions on SMP), *clarified and rehearing granted for purpose of further consideration,* 25 FERC ¶ 61,402 (1983), *modified,* 26 FERC ¶ 61,029 (1984) (modifying conditions), *appeal docketed, Columbia Gas Transmission Corp. v. FERC,* No. 84–4040 (5th Cir. filed Jan. 18, 1984), *transferred* to D.C. Cir., No. 84–1136, *withdrawn* with approval of the Court on Jan. 4, 1985.

[53] Item 6 of DOE's "Data and Analysis Submissions for the Record," (submitted at hearing held on August 1–2, 1985): "Analysis of Gas Spot Markets: Size, Structures, and Corporate Attitudes" (January 1985). The executive summary of this study is attached as Exhibit G. Exhibit J lists the more than 230 distribution companies and intrastate pipelines that have participated in transactions under NGPA section 311. Exhibit K lists the more than 300 companies that have received gas under NGA blanket transportation certificate.

[54] *Id.* at I–1.

[55] *Id.* at I–2.

[56] *Id.* This statement was true in January. It is even more so today. *See* August Hearing Tr. at 242 (statement of Lee K. Harrington on behalf of Southern California Gas Co. indicated that commencing August 1, 1985, SoCal Gas began moving 850,000 Mcf a day of spot gas to its customers). If those volumes were taken every day it would amount to over 300 Bcf a year, about the total yearly sales of a mid-sized interstate pipeline.

[57] Transcript of Public Hearing on NOPR (August 1–2, 1985), at 608–617 and 631–640 (hereafter cited as August Hearing, Tr. at ——). *See especially* Tr. at 636 (Tenngasco exchange sales rising from 30,000 Mcf/d to 600,000 Mcf/d in two years); Tr. at 638 (Energy Marketing Exchange sales rising from 10 to 15,000 Mcf/d to nearly 200,000 Mcf/d); Tr. at 638–639 (Vesta Energy sales rising from 25,000 Mcf/d to in excess of 200,000 Mcf/d).

[58] Statement of Joseph P. Kennedy II, President, Citizens Energy Corp., August Hearing, Tr. at 237–238.

[59] *See* copies of a few representative publications contained as Exhibit H.

[60] *See generally, Yankee to Start Spot Gas Trading Unit,* The Oil Daily, Dec. 7, 1984, at 1, col. 1 (copy attached as Exhibit I).

[61] N.Y. Pub. Serv. Law § 66–d through 66–g (McKinney Supp. 1984–85).

[62] W. Va. Code § 24–3–3a (Supp. 1984).

[63] New Mexico Stat. Ann. § 62–6–4.1 (Supp. 1985).

[64] Ky. Rev. Stat. § 278.505 (Supp. 1984).

[65] *Pennsylvania Public Utility Commission vs. Peoples Natural Gas Co.,* R–832315 and L–82 0073 (Order adopted January 13, 1984 and Order entered July 11, 1984) (mimeo at 9).

[66] Public Utilities Commission of California, *Investigation on the Commission's own motion into the operations of all gas corporations regarding transportation of customer-owned gas from the California border to industrial facilities within California,* Case No. 84–04–080 (April 18, 1984) (mimeo at 4).

[67] U.S. Energy Information Administration, *U.S. Oil, Natural Gas, and Natural Gas Liquids Reserves, 1984 Annual Report* (1985 Advance Summary cited in *Oil and Gas Journal,* September 9, 1985, p. 64); H.R. Rep. No. 98–814, 98th Cong., 2nd Sess. (1984), Committee on Energy and Commerce, H.R. 4277, "Natural Gas Market Policy Act of 1984," p. 21; U.S. Department of Energy, *Increasing Competition in the Natural Gas Market: Second Report Required by Section 123 of the Natural Gas Policy Act of 1978,* pp 17–29 (1985) (hereafter *Second DOE 123 Report*); Testimony of George H. Lawrence, President, American Gas Association, before the Subcommittee on Energy Regulation and Conservation, Committee on Energy and Natural Resources, United States Senate, July 11, 1985, p. 5 (citing "the dramatic improvement in natural gas supplies since the NGPA was enacted. These supply improvements in response to the higher NGPA prices have demonstrated conclusively that interstate market gas supply problems during the 1970's reflected the inadequacies of wellhead price controls rather than the limits of the domestic gas resource base."); *Wisconsin Gas Co. v. FERC,* No. 84–1358 (D.C. Cir. 1985) slip op., at 23.

[68] *Second DOE 123 Report* at 77, 113, 137; S. Rep. No. 98–205, 98th Cong., 1st Sess. (1983), Committee on Energy and Natural Resources, S. 1715, "Natural Gas Policy Act Amendments of 1983" p. 10 ("In part the NGPA is not operating as originally designed. . . . [W]hat was not fully appreciated was that despite federal cost-passthrough regulations, pipelines could in effect use this 'cushion' [of 'old' price-controlled gas] to subsidize the acquisition of new and deregulated gas supplies. This occurs as a result of 'rolled in' gas pricing whereby a pipeline's customers are charged the average price of the gas they are consuming, rather than the marginal cost of new gas supplies."); Comments of Natural Gas Supply Association, Docket RM85–1–000 (Parts A–D), at p. 1 (NGSA "believes that current disorders in the natural gas market can only be eliminated if the industry is placed on a true competitive footing. This can be accomplished if . . . (ii) existing market distortions resulting from prior regulatory policies are eliminated."); *FPC v. Hope Natural Gas Co.,* 320 U.S. 591, 610 (1944), cited by *MPC II,* 761 F.2d 781–82 (1985); *MPC I,* 761 F.2d 770–71 ("The problem ultimately giving rise to the present litigation is that the 1978 predictions of the 1985 market were much in error. Factors ranging from the increased wellhead prices and impending total decontrol, to greater energy conservation, to the lower prices of competing fuels, have turned the natural gas shortages of the 1970's into a natural gas surplus. Thus, as early as the summer of 1983—a year and a half before the scheduled

deregulation of new gas—the formulary statutory maximum price for new gas had already reached or exceeded the market-clearing price in many geographic markets").

[69] *Pennzoil v. FERC*, 645 F.2d 360, 378–379 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982); S. Rep. No. 98–205, *supra* at 6; H.R. Rep. No. 98–814, *supra* at 21; *Public Service Commission of New York v. Mid-Louisiana Gas Co.*, 463 U.S. 319, 330–31; 103 S.Ct. 3024, 3031 (1983) (the NGPA "has been justly described as 'a comprehensive statute to govern future natural gas regulation.'"); H.R. Rep. No. 95–496 (Part 4), 95th Cong., 1st Sess. (1977), Committee on Interstate and Foreign Commerce, H.R. 6831, "National Energy Act" at 97 ("Sales of natural gas subject to the provisions of this legislation, with the singular exception of interstate sales of old natural gas under existing contracts, are 'deregulated' from the provisions of the Natural Gas Act. While the Federal Power Commission is granted substitute regulatory powers with respect to such deregulated sales, the scope of these powers is more limited than the regulatory powers of the Commission under the Natural Gas Act. The complaint of producers regarding retroactive interference by the Commission with contractual arrangements would not arise under the Committee's program. The Commission's regulatory powers are limited to prospective application to contract terms and conditions; sanctity of contract is thereby assured.").

[70] *Permian Basin Area Rate Cases*, 390 U.S. 747, 777 (1968) (". . . rate-making agencies are not bound to the service of any single regulatory formula; they are permitted, unless their statutory authority otherwise plainly indicates, 'to make the pragmatic adjustments which may be called for by particular circumstances, *FPC v. Natural Gas Pipeline Co., supra*, at 586,"); *Public Service Commission of New York v. Mid-Louisiana Gas Co.*, 463 U.S. 319, 330–31; 103 S.Ct. 3024, 3031 (1983) (in adopting the NGPA, one of the Congress' "motivating purposes" was "to eliminate the dual market that distinguished between interstate and intrastate sales of natural gas."); Testimony of C. M. Butler III, Chairman, Federal Energy Regulatory Commission, before Committee on Energy and Natural Resources, United States Senate, November 5, 1981, p. 2 (". . . the most serious deficiency of the NGPA has not been its complexity or the dependence on the active participation of state agencies, but rather the statute's establishment of a new *dual market*, that is, one in which some gas prices are regulated while others are not. . . . The market-ordering problems created by NGPA's regime of partial regulation are already evident in the prices being paid for deregulated gas and in the supply problems of some interstate and intrastate pipelines."); Executive Office of the President, *The National Energy Plan* (April 29, 1977) (GPO/040-000-00380-1) at 16–18 ("The opportunities for supplementing domestic production of natural gas imports are small. . . . Therefore, the growing imbalance between America's domestic natural gas resources and its annual consumption is of particular concern. . . . Between 1976 and 1985, total U.S. production of natural gas is projected by the model to decrease from the equivalent of 9.5 million barrels of oil per day to 8.2 million barrels. Consumption, however, is projected to be the equivalent of 9.4 million barrels of oil per day. Consumption would increase to a much greater extent if supply were not limited. The difference . . . would be made up by imports, amounting to the equivalent of 1.2 million barrels of oil per day."); *U.S. Natural Gas Availability: Gas Supply Through the year 2000* (Wash. D.C.: U.S. Congress, Office of Technology Assessment, OTA–E–245, February 1985) at 3 ("Since 1978, the national perception of future natural gas availability has changed for several reasons, to one of relative optimism."); Testimony of Theodore R. Eck, Chief Economist, Amoco Corporation, before Subcommittee on Fossil and Synthetic Fuels, Committee on Energy and Commerce, U.S. House of Representatives (July 11, 1985) at 3 ("Under FERC's proposed regulations, natural gas imports would have to increase from 1 trillion cubic feet in 1985 to 6 trillion cubic feet in 2000 in order to meet our gas requirements.").

[71] Interstate Natural Gas Association of America, "The Gas Contracts Problem: Results of an INGAA Survey" (May 1983); S. Rep. No. 98–205, *supra* at 10; *Second DOE 123 Report* at 57; United States Department of Energy, *The First Report Required by Section 123 of the Natural Gas Policy Act of 1978* (July 1984) at 3–1 to 3–8 (hereafter *First DOE 123 Report*); *MPC I*, 761 F. 2d at 771; *MPC II*, 761 F. 2d 782–83.

[72] *MPC I*, 761 F. 2d at 771–72; *MPC II*, 761 F. 2d 782–83; Comments of Independent Petroleum Association of America, Docket No. RM85–1–000 (Parts A–D) at p. 3; *First DOE 123 Report* at 1–1; U.S. Energy Informatioin Admininistration, *Natural Gas Monthly*, Tables (June 1985) (DOE EIA–0130) (85/06) (hereafter cited as *Natural Gas Monthly*) (showing decline in natural gas consumption from approximately 19.9 Tcf in 1980 to 17.5 Tcf in 1984).

[73] *Second DOE 123 Report* at 17–29; *Natural Gas Monthly, supra*, at Table 5.

[74] Comments of Natural Gas Equal Access, Docket No. RM85–1–000, (Parts A–D); *Second DOE 123 Report*, Chapters 6 and 7; *MPC II*, 761 F. 2d 782–83; H. Rep. No. 98–814, *supra* at 27.

[75] Comments of Process Gas Consumers Group, Docket No. RM85–1–000 (Parts A–D), at Attachment A, "Producer and Pipeline Marketing Progams and the Transition to Decontrol;" *Second DOE 123 Report* at 82–88; FERC Form 11 data (1985).

[76] Volumes transported under section 311 self-implementing authorizations have been increasing since the program began in late 1978, as have the number of transactions themselves. Measured in terms of the number of dockets assigned, there has been a dramatic proliferation of these transactions: 110 in 1979; 340 in 1980; 469 in 1981; 496 in 1982; 758 in 1983; and 1304 in 1984 (dates refer to fiscal years). During the period December 1, 1978, through December 1983, roughly 3.1 Tcf of gas were transported by interstate pipelines on behalf of intrastates, distributors, and Hinshaws. During the same period, more than 4.2 Tcf were transported by interstate pipelines for interstates and distributors. Approximately 6.8 Tcf were transported under interstate blanket certificates. Sales of gas by intrastate pipelines totaled approximately 2.7 Tcf during the period; *see also* Delhi Gas Pipeline Corporation, 19 FERC ¶ 61,189 (1982).

[77] Interstate Natural Gas Association of America, "Special Marketing Programs: Update 4 (April 1983 to May 1985)" (September 1985); Docket No. RM85–1–000 (Notice of Inquiry, Phase I) (listing transportation programs); See "Transmission Lines Step Up Contract Carriage," *Oil and Gas Journal* (August 26, 1985) p. 36 (citing, INGAA study showing contract carriage of 355 Bcf for distributors and end-users in first quarter 1985, up from 260 Bcf in same period 1984); *but see also* testimony of Nicholas J. Bush NGSA, before Subcommittee on Energy Regulation & Conservation Subcommittee, Committee on Energy and Natural Resources, United States Senate, July 11, 1985, p. 12 ("It is said that the level of so-called 'voluntary carriage' in 1984 was 6.8 trillion cubic feet. However, an examination of that claim reveals that only 1.1 trillion cubic feet or about 16 percent of carriage volumes—and only 6 percent of total consumption—was for end-users and distributors. The remaining bulk of the carriage volumes, that is, 5.7 trillion cubic feet, was transported between pipelines and their producer affiliates and for other pipeline shippers.").

[78] Statement of Policy on Off-System Sales, 23 FERC ¶ 61,140 at 61,306; Comments of Process Gas Consumers, *et al.*, Docket No. RM85–1–000 (Notice of Inquiry, Phase I) at p. 5, n. 1; (*citing* interventions opposing discrimination in SMPs); *see also* Columbia Gas Transmission Corp., Initial Decision of Presiding Administrative Law Judge on Purchased Gas Adjustment Filings, 21 FERC ¶ 63,100 at 65,277 (finding that the "record shows that prices paid for Columbia for its section 107 gas have exceeded current market clearing prices. Furthermore, it has been shown that Columbia would have had difficulty selling such high-cost gas, if it were not able to roll it in with its much cheaper regulated gas supplies. It would appear that if all natural gas had been deregulated and there were little or no 'cushion' of low priced gas, section 107 gas would probably have sold at a price approaching the market clearing price, rather than at the higher levels at which it was sold. It is apparent that the ability to use the rolled-in pricing method contributed to the escalation of deregulated gas prices."); Tenneco Oil Co., *et al.*, 28 FERC ¶ 61,383 at 61,687 (1984), order on rehearing, 29 FERC ¶ 61,334 at 61,699–701 (1984) (removing requirement that released gas not cost less than a pipeline's weighted average cost of gas, but continuing to require that released gas be priced above NGPA 109 price ceiling).

[79] Statement of Policy on Off-System Sales, *supra;* Tenneco Oil Co., *supra*.

[80] Tenneco Oil Co., *supra; see also* Tenneco Oil Co., 31 FERC ¶ 61,717 (establishing inquiries tailored to specific SMP dockets).

[81] Interstate Pipeline Blanket Certificates for Routine Transactions and Sales and Transportation by Interstate Pipelines and Distributors, *Order No. 234–B*, 48 FR 34872

(1983) (to be codified at 18 CFR 157.209(e), *but see also* Certificate of Pipeline Transportation for Certain High Priority Users, *Order No. 27*, 44 FR 28425 (1979) (*codified at* 18 CFR Part 157, Subpart E (§§ 157-100-157.105)); Interstate Pipeline Transportation on Behalf of Other Interstate Pipelines, *Order No. 60*, 44 FR 68819 (1979); Certain Transportation, Sales and Assignments by Pipeline Companies Not Subject to Commission Jurisdiction under Section 1(c) of the Natural Gas Act, *Order No. 63*, 45 FR 1872 (1980). Statement of Policy on Distributor Access to Outer Continental Shelf Gas, *Order No. 92*, 45 FR 49247 (1980). Sales and Transportation by Interstate Pipelines and Distributors, *Order No. 319*, 48 FR 34872 (1983), 48 FR 35635 (1983), *rehearing granted in part and denied in part, Order No. 319-A*, 48 FR 51436 (1983) (to be codified *at* 18 CFR 157.209 and 157.202(a)(13), (14)).

[82] *MPC I* and *MPC II*, and Maryland People's Counsel v. FERC, Nos. 85-1029 *et al.* (D.C. Cir. Aug. 6, 1985); *but see MPC II*, Docket Nos. 84-1019, *et al.*; (D.C. Cir. June 28, 1985) (order granting stay of mandate).

[83] Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, 49 FR 22778 (June 1, 1984) (Order No. 380); *order on reh'g*, 49 FR 31259 (Aug. 6, 1984).

[84] *Wisconsin Gas Co. v. FERC*, No. 84-1358 (D.C. Cir. 1985) slip op. at 43-45.

[85] U.S. Energy Information Administration, *Natural Gas Monthly supra* at Table 5 (citing average wellhead price of "new" gas of $3.65 in June, 1985); Comments of Natural Gas Supply Association, Docket No. RM85-1-000 (Parts A-D) at Appendix B (study by Foster Associates, Inc., citing average spot gas prices of $2.45-3.15 per Mcf in June, 1985); Foster Associates, Inc., "Analysis of High-Cost Purchases by Contract Termination Date," sponsored by American Gas Association (August 1985) (estimating that average pipeline purchase price of high-cost gas under contract by interstate pipelines is $4.49 per MMBtu, compared to $2.64 per MMBtu for all field purchases by such pipelines).

[86] *E.g.*, United Distribution Companies, ANR Pipeline, Transco, Natural Gas Pipeline of America, Process Gas Consumers, Docket RM85-1-000 (Notice of Inquiry—Phase I).

[87] *Wisconsin Gas Co. v. FERC*, No. 84-1358 (D.C. Cir. 1985), slip opinion at 38-39, 43.

[88] Comments of Process Gas Consumers, RM85-1-000 (Parts A-D) at pp. 207, footnotes 1-12 and authorities cited therein.

[89] Comments of Maryland People's Counsel, Docket No. RM85-1-000 (Parts A-D) at A-3; Second DOE 123 Report at Chapters 6, 7 and Appendix B; *e.g.* Comments of Amoco, Natural Gas Equal Access, MichCon, Yankee Resources, Illinois Commerce Commission, Con Ed, Florida Cities, Associated Gas Distributors, Docket No. RM85-1-000 (Notice of Inquiry, Phase I).

[90] As of April 1985, 13 major pipelines were utilizing the "representing levels" retention of revenues option; 9 were crediting Account 191 and 3 had not had a recent rate case in which to execise their option; *see* also comments of Columbia Gas Transmission, Baltimore Gas and Electric, INGAA, Tennessee Gas, Panhandle/Trunkline, El Paso, Consolidated Gas, United, ANR Co., Pacific Gas Transmission Co., Texas Eastern, Texas Gas Transmission Transco, and William Co., Docket No. RM85-1-000 (Notice of Inquiry, Phase I) for discussion of pipelines' reluctance to provide transportation services to their existing sales customers.

[91] *Hope Natural Gas Co.*, Opinion No. 228, 3 FPC 150, 189-91 (1942) (Establishing volumetric or straightline rates, but recognizing concepts of service quality and load factor); Tennessee Gas and Transmission Co., 3 FPC 574, 576-577 (1943) (Pipeline expansion during World War II required allotments of steel from War Production Board); *see also* 6 FPC 164 (1947) (recognizing that "a serious gas shortage exists in the Appalachian areas as well as throughout natural gas-consuming areas depending upon interstate gas transmission lines.").

[92] *United Gas Pipeline Company*, 50 FPC 1348 (1973); *First DOE 123 Report* at 3-3 ("Average take requirements increased dramatically in the 1973-1977 period as pipeline companies were encouraged to increase take requirements while bidding for scarce supplies."); Statement of Policy on Take-or-Pay Provisions in Gas Purchase Contracts, Docket No. PL-83-1-000, 3 FERC Stat. and Reg. ¶ 30,410 (1982), 47 Fed. Reg. 57,268 (1982), (*codified at* 18 CFR Part 2); Statement of Policy and Interpretative Rule on Regulatory Treatment of Payments Made In Lieu of Take-or-Pay Obligations, 50 Fed. Reg. 16,076 (April 24, 1985) (Docket No. PL85-1-000) (to be codified at 18 CFR 2.76).

[93] U.S. Energy Information Administration, *Structure and Trends in Natural Gas Wellhead Contracts* (November 1983); Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, *supra* 49 FR 22778, n.12 (*citing* Atlantic Seaboard Corp., 38 FPC 91, 95 (1967).

[94] 15 U.S.C. 717b; 15 U.S.C. 717f (1982); *See* Comments of Process Gas Consumers, Columbia Distribution Companies, Panhandle Eastern, Natural Gas Pipeline/MRT, Pacific Gas Transmission (Supporting simplification of Commission's transportation regulations), Docket No. RM85-1-000 (Notice of Inquiry, Phase I); *cf.* Permian Basin Rate Cases, *supra*, 390 U.S. at 758 and n.14, (the Commission's regulation of producers' sales is "the outstanding example in the Federal government of the breakdown of the administrative process," citing Landis, Report of Regulatory Agencies to the President-Elect, printed for use of the Senate Committee on the Judiciary, 86th Cong., 2d Sess., 54).

[95] Comments of Natural Gas Supply Association, Docket No. RM85-1-000 (Parts A-D), (also at Notice of Inquiry, Phase I) ("Current [wellhead] ceiling prices, which are below just and reasonable rates, create market distortions that give some pipelines significant competitive advantages over others. . . . Any time the Commission makes a decision which might create the opportunity for gas-on-gas competition, it must take wellhead price disparities into consideration."); comments of Maryland People's Counsel, Docket No. RM85-1-000 (Parts A-D) at D-1 to D-5; comments of Department of Energy, (Parts A-D) at 44; *Second DOE 123 Report* at 137; comments of INGAA, (Parts A-D) at 3 (conceding the "average weighted price of Block 2 gas . . . generally exceed[s] current market clearing levels."); Comments of IPAA, (Parts A-D) at 3 ("Thus, as we approached January 1, 1985, the 'drop dead' date for much of NGPA's pricing features, we found wellhead prices of natural gas ranging from 28 cents on the low end to nearly $10 on the high end. But more importantly, we had seen average wellhead prices of gas increase by 30 percent between 1981 and 1984 while alternate liquid fuel prices had dropped by 20 percent."); S. Rep. No. 98-205, *supra* at p. 10.

[96] Permian Basin Rate Cases, *supra*, 390 U.S. at 793 (1968) (*citing* the "inability or unwillingness of interstate pipelines to bargain vigorously for reduced prices."); H.R. Rep. No. 95-496 (Part 4), *supra* at 99-100 ("Using rolled-in pricing, interstate pipelines can bid the price of new supplies of natural gas to unprecedented levels of $5 per Mcf or more. . . . Using their unique ability to roll in new natural gas prices, interstate pipelines will literally suck natural gas away from the intrastate markets."); Hearings before Committee on Energy and Natural Resources, United States Senate, March 9-12, 22, 1983, S. Hrg. 98-85, Pt. 1, "Natural Gas Legislation" at 685 (testimony by NCGSA, "Eliminating the gas price 'cushion' brought about by forever-regulated gas will also end the subsidy which NGPA provides for the purchase of foreign natural gas and LGN imports."); at 691 (testimony by IPAA, "The high prices consumers are paying today are the direct result of regulatory machinations under NGPA."); at 791 (testimony of Texas Independent Producers & Royalty Owners Association, "We agree with Secretary Hodel who said that no consumer of natural gas should be forced to purchase supplies at a high price when lower priced supplies are available."); Hearings before Subcommittee on Fossil and Synthetic Fuels Committee on Energy and Commerce, U.S. House of Representatives, July 20, 26, August 6, 9, 1982, Serial No. 97-187A at 560-1, 570-590 (testimony by Petrochemical Energy Group that potential exists for pipelines to use rolled-in pricing to bid-up new gas costs after partial wellhead decontrol in 1985, citing American Gas Association, "A Statistical Analysis of Bidding Trends for Decontrolled Natural Gas under the NGPA," March 19, 1982, and Foster Associates, Inc. study concluding "The cost roll-in effects resulting from continued [wellhead price] controls on such a large volume of relatively low-priced gas [after January 1, 1985] will allow gas transmission companies to pay substantial premiums for decontrolled gas supplies."); *Natural Gas Monthly*, *supra* at Table 5.

[97] Comments of DOE at 38-40; AGA at 33; Process Gas Consumers at C-1 to C-5; Columbia Gas Transmission Corp. at 15-16; Mojave Pipeline Company, Docket No. RM85-1-000 (Parts A-D).

[98] *U.S. Natural Gas Availability: Gas Supply Through the Year 2000*, Office of Technology Assessment, *supra* at 21-22 (*citing* potential of small gas fields, new gas from old fields, and uncertanties over potential of frontier areas, such as deepwater

Gulf of Mexico, deep Anadarko Basin, and Western Overthrust Belt).

[99] *Second DOE 123 Report*, at S-2, 5-16; *Natural Gas Monthly*, *supra* at Table 5 (average wellhead prices of NGPA sections 102, 103, 108 and 109 "new" gas have dropped from $3.77 per Mcf in January, 1985 to $3.65 per Mcf in June, 1985); AGA *Monthly Gas Utility Statistical Report*, June, 1985 (average monthly gas utility prices to residential consumers have increased from $5.70 per MMBtu in January, 1985 to $6.80 per MMBtu in June, 1985); "Consumer Prices: Energy and Food," Bureau of Labor Statistics, U.S. Dept. Labor, for period ending August, 1985 (survey of 12-month changes in natural gas prices to residential consumers in 25 metropolitan areas, showing median change of −0.7 percent, increases of 0.5 percent to 7.7 percent in ten cities, declines of 0.4 percent to 12.4 percent in fourteen cities, no change in one city); Producer Price Index, Bureau of Labor Statistics, U.S. Dept. of Labor, August, 1970 to August 1985 (*cited* in *Energy Users News*, September 30, 1985 at 16):

ENERGY PRICE CHANGES: AUGUST 1970 TO AUGUST 1985

[The figures below show how much energy prices have changed from year to year, based on August components of the Producer Price Index. All figures are percentages, sometimes plus, sometimes minus. The items are steam coal, natural gas, liquefied petroleum gases (such as propane), electricity, gasoline, distillate oil and residual oil]

	Steam coal	Natural gas	Liq. P. gases	Elec.	Gasoline	Dist. oil	Resid. oil
1984-85	−0.5	−6.6	−13.1	1.5	4.6	−11.2	−16.2
1983-84	3.9	2.9	−19.2	6.9	−11.3	−6.3	0.7
1982-83	0.4	3.1	20.0	3.0	−9.5	−10.5	−1.7
1981-82	8.6	22.6	−12.8	7.5	−5.5	−6.5	−6.0
1980-81	8.1	29.1	6.5	15.6	11.7	22.2	24.7
1979-80	7.9	31.0	44.9	19.7	41.1	28.4	21.6
1978-79	8.4	34.5	34.8	9.9	52.4	72.7	63.3
1977-78	21.1	15.2	−11.5	3.7	6.5	1.2	−6.4
1976-77	12.1	45.6	30.0	14.5	6.4	14.9	14.2
1975-76	−3.3	31.8	19.3	9.4	4.7	6.5	−1.7
1974-75	−0.5	44.6	−19.6	14.4	17.7	6.5	1.6
1973-74	64.2	15.8	142.3	32.1	73.6	105.2	144.8
1972-73	12.4	9.2	33.4	5.7	15.7	30.1	14.0
1971-72	4.7	6.8	0	3.3	5.2	2.0	−5.3
1970-71	19.7	7.5	0	11.0	7.2	2.5	13.8

Source: "Energy Price Changes" is from Bureau of Labor Statistics data compiled for the Producer Price Index. Except for steam coal, the items are the same as those used in "Energy Price Trends."

[100] Comments of DOE at 3, 6, estimating proposed rulemaking, if adopted, could have net economic benefits of $1.2 to $4.9 billion (non-discriminatory transportation) and $2.2 billion (block billing procedure); Process Gas Consumers at 13 (*citing* DOE estimate that lack of non-discriminatory transportation has adverse economic effects of $9.7 billion annually), and 14-16 (discussing example of impact on specific manufacturing plants of lack of access to transportation services); *Second DOE 123 Report*, *supra* at Appendix B, Examples of Anticompetitive Behavior in Gas Transmission.

Section III. Response to General Comments and Review of Alternatives

[1] E.g., Comments of DOE, INGAA, AGA, NGSA, IPAA, PGC, United Distribution Companies, Maryland People's Counsel, Central Illinois Light Company, PEG, California Public Utilities Commission, Docket RM85-1-000 (parts A-D).

[2] See *generally*, comments in Docket No. RM85-1-000 (Notice of Inquiry, Phases I-III) especially PGC at pp. 1-16; Exhibit R (attached list of take-or-pay dockets); letter dated May 20, 1985, to Raymond J. O'Connor from the Honorable Jim Wright, Majority Leader, Robert H. Michel, Republican Leader, John D. Dingell, Chairman, Committee on Energy and Commerce, and James T. Broyhill, Ranking Minority Member, Committe on Energy and Commerce, U.S. House of Representatives; letters of December 18, 1984, and March 14, 1985, to Raymond J. O'Connor, Georgiana Sheldon, Anthony Sousa, Oliver Richard, and Charles Stalon, from the Honorable John D. Dingell and James T. Broyhill; MPC I, II, and III, *supra*; Comments in Docket No. RM84-7-000 (Impact of Special Marketing Programs on Natural Gas Companies and Consumers); Comments in Docket No. RM82-26-000 (Impact of the NGPA on Current and Projected Natural Gas Markets); Wisconsin Gas Company v. FERC, *supra*; S. Hrg. 98-95 Pts 1, 3, 98th Cong., 1st Sess., Committee on Energy and Natural Resources, United States Senate, Hearings on Natural Gas Legislation (1983); H. Rep. Serial No. 98-7, 98th Cong., 1st Sess., Subcommittee on Fossil and Synthetic Fuels, Committee on Energy and Commerce, U.S. House of Representatives, Hearings on Natural Gas Contract Renegotiation and FERC Authorities (1982); testimony in Special Marketing Program dockets Nos. CP83-452-000, CI84-332-000, CI84-374-000, CI83-269-000, CI84-485-000, CP83-333-000, CP84-244-000, CI85-36-000, CI84-510-000, CI85-99-000, CI85-51-000, CI84-556-000, CI84-555-000, CI85-17-000, CI84-571-000.

[3] E.g., Maryland People's Counsel, Natural Gas Equal Access, Docket RM85-1-000 (Parts A-D).

[4] E.g., Iowa State Commerce Commission; *but see* testimony of Christine Hansen, Commissioner, Iowa State Commerce Commission, on behalf of National Association of Regulatory Utility Commissioners, H. Rep. Serial No. 98-19, 98th Cong., 1st Sess., Subcommittee on Fossil and Synthetic Fuels, Hearings on Proposed Changes to Natural Gas Laws (1983) at 46 ("We believe it is time to look closely at alternatives which would reduce or eliminate the monopoly position of pipelines in the natural gas industry.")

[5] See Notice of Request for Supplemental Comments, Docket RM85-1-000 (Part D) (October 9, 1985).

[6] E.g., PGC at D-3 and D-6, D-14; but see at D-28 (". . . 'the market ordering' purpose of [NGPA Title II] incremental pricing has been a dismal failure . . .".)

[7] E.g., Colorado Interstate Gas Co.

[8] E.g., ANR.

[9] *See generally* Docket No. RM85-1-000 (Notice of Inquiry, Phases I-III).

[10] MPC I, *supra* at 6.

[11] American Smelting and Refining Company v. FPC, 494 F.2d 925, 940-941 (1974), cert. denied, 419 U.S. 882 (1974).

[12] See, e.g., MPC II, *supra* at 15, citing Gulf States Utilities Co. v. FPC, 411 U.S. 747, 760 (1973); Northern Natural Gas Co. v. FPC, 399 F.2d 953, 958 (D.C. Cir. 1968).

[13] MPC I, *supra* at 17; MPC II, *supra* at 15.

[14] Wisconsin Gas Co. v. FERC, No. 84-1358, slip. op. at 23-24 (D.C. Cir., August 20, 1985).

[15] *Id* at 41.

[16] *Id* at 40.

[17] *See generally* L. Sullivan, Antitrust 354-65 (1977).

[18] Impact of the NGPA on Current and Projected Natural Gas Markets, 47 FR 19157 (May 4, 1982) (Docket No. RM82-26).

[19] Indicated Producers, initial comments filed in Docket No. RM82-26.

[20] California Public Utilities Commission, initial comments filed in Docket No. RM82-26.

[21] Columbia Gas Transmission Corp. RP84-11 (Oral Argument held on March 7, 1984).

[22] Revisions to PGA Regulations, 49 FR 18539 (May 1, 1984).

Section IV. A. Transportation

[1] Bonbright, J., *Principles of Public Utility Rates*, 287-316 (1961) (New York: Columbia University Press).

[2] Maryland People's Counsel v. FERC, 761 F.2d 768 (D.C. Cir. 1985); Maryland People's Counsel v. FERC, 761 F.2d 780 (D.C. Cir. 1985).

[3] *Id.*

[4] *See* §§ 284.105 and 184.125.

[5] Transok, Inc., for example, states that, if the new rules are made applicable to existing NGPA section 311 arrangements, intrastate pipelines will face an unduly burdensome task since they may have to renegotiate existing contracts, refile numerous reports, and re-petition for rate approval on all transactions. Transok believes that the Commission should not revise its regulations where such action will effectively force modifications of the terms and conditions of existing section 311(a)(2) transportation arrangements. Further, Transok points out the pipelines have relied on § 284.125 of the existing regulations which provides that transportation arrangements may only be modified at the time of the extension requests.

As discussed, *infra*, the Commission has determined, for the reasons given by Transok and other commenters, that NGPA section 311 transportation arrangements commenced prior to the effective date of this rule should be grandfathered to shield them, for the remainder of their current two-year terms only, from the transportation access conditions, but not the rate conditions adopted herein.

As another example, several commenters were concerned because the proposal was not clear as to how the access requirements could affect existing customers' contract demand rights. Designated Producers, for example, suggests that, if sufficient firm capacity is not available to satisfy all requested new firm transportation service, only the available firm capacity would be pro-rated among shippers requesting new firm service. Designated Producers believes such a qualification to the access requirements is necessary and appropriate to ensure that a pipeline's existing firm sales customers would continue to receive as much transportation service as they were entitled to under their gas purchase contracts prior to the effective date of the proposed rules.

[6] *E.g.*, INGAA.

[7] Section 4(b) of the Natural Gas Act, 15 U.S.C. 717c(b), provides that,

No natural-gas company shall, with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission, (1) make or grant any *undue preference or advantage* to any person or subject any person to any *undue prejudice or disadvantage*, or (2) maintain any unreasonable difference in rates, charges, service, facilities, or in any other respect, either as between localities or as between classes of service.

Section 5(a) of the Natural Gas Act, 15 U.S.C. 717d(a), provides that,

Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, municipality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order.

[8] Some of those commenters that support the non-discriminatory access condition as proposed or subject to certain clarifications include Indicated producers, NGS Association, Texaco, Association for Equal Access to Natural Gas Markets and Supplies (NGEA), Independent Producers Association of America (IPAA), Panhandle Producers, Oklahoma Independent Petroleum Association, Delhi Gas, Acadian Gas, Williston Basin, Valero, Great Lakes Transmission, Texas Gas Transmission, CIG, Process Gas Consumers, American Paper Institute, B. F. Goodrich, Fertilizer Institute, New England Energy Group, Petrochemical Energy Group, American Bakers Association, Aluminum Company of America.

Those that oppose the non-discriminatory access condition include INGAA, Tennessee Gas, Panhandle Natural Gas, Pacific Gas Transmission, Northern Natural, TETCO, Texas Gas Transmission, Air Products, Texas Railroad Commission, Association of Texas Intrastate Pipelines, Transco, Mountain Fuel Resources, and Algonquin Gas Transmission.

[9] *Id.*

[10] CIG, Panhandle, Louisiana Resources, City of Wilcox, Arizona, and INGAA.

[11] *See* comments of those persons listed *supra*, note 8, as opponents of non-discriminatory access condition.

[12] INGAA, CIG, and Panhandle. In support of this position, CIG and several other comments cite Central West Utility Co. v. FPC, 247 F.2d 306 (3rd Cir., 1957), and Northern California Power Authority v. FPC, 514 F.2d 184, 189 (D.C. Cir. 1975). In addition, several commenters, including Panhandle, cite Manhatten General Equipment Co. v. Commission of Internal Revenue, 297 U.S. 133 (1936), and Campbell v. Galeno Chemical Co., 281 U.S. 599 (1930), for the proposition that non-discriminatory access to firm transportation condition would modify and extend the statutory provisions of the NGPA; i.e., make law rather than merely administer the statute and prescribe implementing rules.

[13] Panhandle and Amoco Production Company.

[14] Oklahoma Natural Gas Company, Amoco, Louisiana Intrastate, Louisiana Resources Company, Transok, Algonquin, Commonwealth Gas, Monterey, Producer's Gas, Mesa, Texaco, Inc., and Mustang, Fertilizer Institute, American Bakers Assoc., Air Products, Association of Texas Intrastate Pipelines, and Indicated Producers.

[15] Atlantic Refining Co. v. Public Service Commission of New York, 360 U.S. 378, 388–89 (1959) (CATCO).

[16] *Id.* at 389.

[17] *See* "Final Report of the Federal Trade Commission," Senate Document No. 92, 70th Cong., 1st Sess., Parts 84–A (text of final report), 84–B and 84–C (legal and economic appendices) (1936) (submitted to the Senate December 31, 1935) (hereafter cited as "1935 FTC report") at 87. The FTC report lay the basis for the legislative proposals that soon became the Natural Gas Act of 1938). *See* section 1(a) of the NGA (referencing the FTC Report). *See also*, Memorandun on the Necessity for Federal Regulation of Interstate Transportation of Natural Gas, as Discussed by Reports of the Federal Trade Commission, Other Reports Made Pursuant to the authority of Congress and Decisions of the Supreme Court of the United States, submitted by Dozier A. DeVane, Solicitor.

[18] *E.G.*, INGAA.

[19] H.R. 5423, introduced February 6, 1935, 74th Congress 1st Sess.

[20] *Id.* at 143–44.

[21] 15 U.S.C. 717c and 717d (1982).

[22] *See* Consolidated Gas Transmission Corp. v. FERC, Nos. 84–1240, *et al.*, slip op. (D.C. Cir. Sept. 17, 1985) ("FERC has the authority under section 16 of the Natural Gas Act to order retroactive refunds to enforce conditions in certificates.")

[23] *E.g.*, Lousiana Intrastate Pipeline Company.

[24] *Id.*

[25] Joint Explanatory Statement of the Committee on Conference, H.R. 5289, Natural Gas Policy Act of 1978, at 106.

[26] Section 311(c) provides that "any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe." Section 501(a) provides in part that the Commission "is authorized to perform any and all acts," and "to prescribe, issue, amend, and rescind such rules and orders as it may find necessary or appropriate to carry out its functions under this Act."

[27] Neither NGPA section 601(a)(2)(A)(ii) nor 311(a)(2)(B) exempt intrastate pipelines transporting under section 311 from the NGA prohibitions on undue discrimination.

[28] 124 Cong. Rec. H. 13,118–13, 119 (Oct. 14, 1978).

[29] Committee on Interstate and Foreign Commerce, Report on *H.R. 6831*, "National Energy Act" (July 19, 1977) at 92–95.

[30] Algonquin Gas Transmission Co.

[31] Valero Transmission Co.

[32] Department of Energy, pp 14–17.

[33] *See* § 284.8(b) and 284.9(b).

[34] Great Lakes Transmission Co., Texas Gas Transmission Co. and Colorado Interstate Gas.

[35] *E.G.*, El Paso Natural Gas Co., the Iowa State Commerce Commission, Inland Gas Co., Natural Gas Pipeline Co., Mountain Fuel Resources Co., Pacific Gas Transmission Co., Phillips Petroleum Co., Tennessee Gas Pipeline Co., Texas Eastern Transmission Co. and Williston Basin Interstate Pipeline Co.

[36] *E.g.*, Citizens Energy Corp.

[37] *E.g.*, Natural Gas Equal Access, Seagull Energy Corporation, NGS Association, Washington Water Power Co., National Fuel Gas Corp., Citizens Energy Corporation, Northridge, American Paper Institute, Terra Chemicals, Inc.; Dept. of the Air Force, Tennessee Gas Pipeline Co., El Paso Natural Gas Co., Northern Natural Gas (HNG—Internorth), Pacific Gas Transmission Co., Natural Gas Pipeline Co., Texas Eastern Transmission Co. and Williston Basin Interstate Pipeline Co.

[38] *E.g.*, Natural Gas Equal Access and Yankee Resources Inc.

[39] *E.g.*, Public Service Electric Gas Co.

[40] *See* Transcript, Public Conference, RM85–1–000, p. 533 (August 1, 1985)

[41] *Id.* at p. 533.

[42] Process Gas Consumers Group.

[43] *E.g.*, Fertilizer Institute.

[44] Transcript, Public Conference, RM85–1–000 (Aug. 1, 1985) p. 128.

[45] *Id.* at 188.

[46] *See* Comments of Process Consumers, Docket No. RM85–1–000 (Parts A–D) at B–2 to B–4, and Appendix F; *Second DOE 123 Report* at Chapter 5.

[47] *See* Table C–1, discussed in Part B, *infra.*; see also Process Gas Consumer Comments at Appendices B and F.

[48] *E.g.*, INGAA.

[49] *E.g.*, Mustang Fuel Corporation.

[50] *See*, § 284.223(c)(4).

[51] *Id.*

[52] *E.g.*, Designated Producers.

[53] Tennessee Gas Pipeline Co., 21 FERC ¶ 61,004 (1982). *See also*, MPC I *supra*, 761 F.2d at 781–8.

[54] *E.g.*, Oklahoma Independent Petroleum Association.

[55] The majority of these commenters were local distribution companies but also included a substantial number of interstate pipelines, industrial end-users and public

[56] E.g., American Gas Association, Northern Border Pipeline Co., Petrochemical Energy Group, Tennessee Gas Pipeline, Tenneco Oil Co., and Texaco Inc.

[57] E.g., Process Gas Consumers.

[58] E.g., Algonquin Gas Transmission Co.

[59] Seagull Energy Corporation.

[60] American Gas Association.

[61] H.S. Phillips v. FERC, 586 F.2d 465, 469 (5th Cir. 1978) (5th Cir. 1978) and authorities cited therein.

[62] For example, Columbia Gas Transmission Corp., *et al.*, 31 FERC ¶ 61,307 *modified on rehearing*, 31 FERC ¶ 61,372 (1985), the Commission approved a reallocation of total daily entitlements (TDE) on the Columbia system, resulting in many customers cutting the TDE by as much as 15 percent. In recent years the Commission has dealt with a number of similar cases in which firm sales entitlements were plainly in excess of that which the customers custoemrs desired to purchase. *See* Transcontinental Gas Pipe Line Corp., Docket No. CP85-264-000 (application filed Feb. 4, 1985), Northern Natural Gas Co., Docket No. CP85-183-000 (application filed Dec. 17, 1984).

[63] Elimination of Variable Cost From Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, 49 Fed. Reg. 22,778 (June 1, 1984); *reh'g denied*, 49 Fed. Reg. 31,259 (Aug. 6, 1984).

[64] E.g., Indicated Producers, Mobil Oil Corp., Pan Alberta Gas Ltd., Natural Gas Pipeline Co., INGAA, and ANR Pipeline Co.

[65] E.g., Pacific Gas & Electric, Consolidated Edison, and Mountain Fuel Resources.

[66] E.g., INGAA, Panhandle Eastern Pipeline Co., and Trunkline Gas Co.

[67] E.g., Indicated Producers, Texaco, Inc., INGAA, Tennessee Gas Pipeline, T.W. Phillips, Panhandle Eastern/Trunkline Gas Co., Natural Gas Pipeline, Transco, Arkla, KN Energy, Memphis Light, Gas, and Water, and APGA.

[68] *See supra* note 64.

[69] E.g., Tennessee Gas Pipeline Co.

[70] INGAA, Panhandle Eastern Pipeline Co., Trunkline Gas Co., Natural Gas Pipline Co., Columbia Gas Transmission Co., and Marathon Oil Co.

[71] INGAA, Panhandle Eastern Pipeline Co., Trunkline Gas Co., and Natural Gas Pipeline Co.

[72] Wisconsin Gas Company v. FERC, —— F.2d ——, Docket Nos. 84-1358 *et al.* (D.C. Cir. Aug. 20, 1985) slip op. at 44.

[73] E.g., Columbia Gas Transmission Co.

[74] Pennzoil v FERC, 645 F.2d 360, 381 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982).

[75] Producer access via CD adjustments.

[76] Memphis Light, Gas, and Water.

[77] Cincinnati Gas & Electric Co., and Southern Natural Gas Co.

[78] Memphis Light, Gas and Water, APGA, CILCO, and SIEGCO.

[79] *Id.*

[80] Tennessee Gas Pipeline Co., Natural Gas Pipeline Co., Arkla, MRT, and INGAA.

[81] E.g., Columbia Gas Transmission Co., Natural Gas Pipeline Co., INGAA, and Tennessee Gas Pipeline Co.

[82] Arkla.

[83] Panhandle Eastern Pipeline Co./ Trunkline Gas Co., MRT, and Tennessee Gas Pipeline Co.

[84] SIEGO, and T.W. Phillips.

[85] APGA, and Sabine Corp.

[86] Panhandle Eastern Pipeline Co., and Trunkline Gas Co.

[87] Northwest Central Pipeline Co., and Entex, Inc.

[88] Northwest Pipeline Co.

[89] 18 CFR Part 201 (1985), Account 191, Unrecovered purchased gas costs.

[90] Indicated Producers, Department of Energy, Illinois Commerce Commission, Process Gas Consumers, California Public Utility Commission, Kentucky Public Service Commission, Southern Natural Gas Co., Fertilizer Institute, United Distribution Companies, NI Gas, Baltimore Gas & Electric Co., AGA, Iowa Southern Utilities Co., and Northern States Power Co.

[91] E.g., NIPSCO, APGA, Associated Gas Distributor Co., South Carolina Pipeline, NI Gas, and American Paper Institute.

[92] *See supra* note 91.

[93] *See generally*, Williams *et al.*, Staff Report on *Interstate Gas Pipeline Ratemaking* (Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation) (September 1982).

[94] For a discussion of the history of two-part rates, *see id* at Part III and Tab A.

[95] Peoples Gas Light & Coke Co., Associated Gas Distributors, United Distribution Companies, Southern Indiana Electric & Gas Co., Niagara Mohawk Power Co., Department of Energy, State of Michigan and the Michigan Public Service Commission.

[96] INGAA, Panhandle Eastern Pipeline Co./Trunkline Gas Co., Consolidated Natural Gas Co., ANR Pipeline Co., Northwest Central Pipeline Co., Commonwealth Gas Co., New England Energy Group, and Seagull Energy Corp.

[97] INGAA, Columbia Gas Transmission Co., Texas Eastern Transmission Corp., AGA, National Fuel Gas Co., and Northern States Power Co.

[98] Northwest Pipleline Co., Northwest Central Pipeline Co., Peoples Gas Light & Coke Co., New York Public Service Commission, and Kentucky Public Service Commission.

[99] Southern Indiana Electric & Gas Co., and California Public Utility Commission.

[100] Czar Resources, Arkla, Consolidated Edison Co., United Distribution Companies, Southern Indiana Electric & Gas Co., NI Gas, City of Wilcox, Consolidated Fuel Supply Inc., and Process Gas Consumers.

[101] Indicated Producers, NGS Association, Natural Gas Pipeline Co., Williston Basin Interstate Pipeline Co., Northern States Power Co., Air Products, and Department of Energy.

[102] 15 U.S.C. 717(c)(1982).

[103] 28 FPC at 983.

[104] 81 Cong. Rec. 6722 and 6727 (1937).

[105] For a discourse of the rate practices prior to the enactment of the NGA, *see* 1935 FTC Report, *supra*, n.17. For a discussion of the Commission's industrial use rate, *see generally*, Marston, P., *An Historical Perspective on Industrial Natural Gas*, Pub. Util. Fort. July 11, 1985, at 13.

[106] *See generally*, *Second DOE 123 Report*, *supra* at ch. 6.

[107] *See* Areeda and Turner, Predatory Pricing and Related Practices under Section 2 of the Sherman Act, 88 Harv. L. Rev. 697, 716-720 (1975).

[108] *See generally* Sherman Antitrust Act, 15 U.S.C. 1-7 (1982); Robinson-Patman Act, 15 U.S.C. 13, 13a, 13b, 21a (1982).

[109] *See supra* pp. II-32-35.

[110] E.g., Ottertail Power Co. v. United States, 410 U.S. 366 (1973) (congressional rejection of comprehensive regulatory scheme for electric industry supports rejection of anti-trust exemption claim). *See also* Gulf States Utilities Co. v. FPC, 411 U.S. 747 (1973).

[111] E.g., Texas Eastern Transmission Corp.

[112] E.g., Transok, Inc., Assn. of Texas Intrastate Pipelines, Monterey Pipeline, and INGAA.

[113] E.g., Valero Transmission Co. Indicated Producers, Michigan Consolidated Gas Co., Public Service Electric and Gas Co., NI-Gas, Seagull Energy Crop., and Maryland People's Counsel.

[114] E.g., Public Services Electric and Gas Co.

[115] Indicated Producers.

[116] Mountain Fuel Resources Inc.

[117] Maryland People's Counsel, Process Gas Consumers Group, and UGI Corp.

[118] E.g., Valero Transmission Co. Baltimore Gas & Electric, Alcoa, Northwest Pipeline, The Fertilzer Institute, Michigan and Consolidated Gas Co.

[119] E.g.., Comments to the Notice of Proposed Rulemaking of Baltimore Gas and Electric Co. and United Distribution Cos. and the Comment to Phase I of the Notice of Inquiry of Indicated Producers, TRANSCO and Baltimore Gas and Electric Co.

[120] E.g., Seagull Energy Corp., and Alcoa.

[121] Sales and Transportation of Natural Gas, 44 FR 52179 (Sept. 7, 1979).

[122] 18 CFR 157.209(a)(1985).

[123] E.g., Seagull Energy Corp, Air Products, Michigan Paperboard Co., and the New England Energy Group.

[124] E.g., Northwest Pipeline Co., N.Y. Mercantile Exchange, Process Gas Consumers Group, DuPont de Nemours Carolina Utility Customers Assoc., Inc., National Fuel Gas Distribution Corp., and Yankee Resources, Inc.

[125] Oklahoma Independent Petroleum Association. Also, see Northwest Pipeline Corporation, New England Energy Group, and DuPont.

[126] E.g., Texas Gas Transmission Corp., ANR Pipeline, and Yankee Resources, Inc.

[127] *See* proposed § 284.223(b).

[128] E.g., INGAA, Northwest Pipeline and El Paso Natural Gas Co.

[129] Yankee Resources, Inc. and Seagull Energy Corp.

[130] Yankee Resources, Inc.

[131] E.g., ANR Pipeline Co., Great Lakes Gas Transmission Co. and Northridge Petroleum Marketing, Inc.

[132] E.g., Mesa Petroleum, Seagull Energy Corp., NI-Gas, Acadian Gas Pipeline System, Williston Basin Interstate Pipeline Co., National Gas Pipeline Co., Texas Gas Transmission Co., Natural Gas Pipeline Co., and Michigan/Michigan PSC.

[133] Mesa Petroleum Co.

[134] Seagull Energy Corp., NI-Gas, and Acadian Gas Pipeline System.

[135] Williston Basin Interstate Pipeline Co.

[136] Natural Gas Pipeline Co. and Texas Gas Transmission Corp.

[137] *E.g.*, Natural Gas Pipeline Co. And Michigan/Michigan PSC.

[138] NI-Gas.

[139] Seagull Energy Corp., Michigan Consolidated Gas Co., NI-Gas Co. and Texas Gas Transmission Co.

With regard to the suggestion of commenters to modify FERC Form No. 2 to provide for reporting of this information, we note that page 312, Account 489, Revenue From Transportation of Gas of Others, currently requires certain details concerning revenue from transportation transactions under proposed Subparts B, C, and G of Part 284. The Commission is considering whether to revise FERC Form No. 2.

[140] State of Michigan/Michigan PSC and El Paso Natural Gas Co.

[141] National Fuel Gas Distribution Corp. and National Fuel Gas Supply Corp.

[142] State of Michigan/Michigan PSC.

[143] *E.g.*, Seagull Energy Corp. and Natural Gas Pipeline Co. of America.

[144] Texas Gas Transmission Corp.

Section IV. B. Take-or-Pay/Producer Abandonment Policy Statement

[1] Section 2.76 was promulgated in the Commission's Statement of Policy and Interpretative Rule issued April 10, 1985, 50 FR 16,076 (Apr. 24, 1985) (to be codified at 18 CFR § 2.76) (Docket No. PL85–1–000) (Policy Statement).

[2] *E.g.*, Columbia HNG-InterNorth, ANR Pipeline, INGAA, El Paso Natural Gas Co., Tetco, Texas Gas Transmission Co., Transcontinental Gas Pipeline Corp., Southern, and N.W. Central.

[3] ANR Production, Coastal Oil & Gas Corp., Pennzoil, Indicated Producers, Tenneco, and Texaco.

[4] *E.g.*, Amoco.

[5] *E.g.*, New York Public Service Commission, CPUC, and American Gas Association.

[6] Illinois Commerce Commission.

[7] Iowa State Commerce Commission.

[8] *E.g.*, Amoco, Tenneco, DuPont, Mesa Petroleum Co., Oklahoma Independent Petroleum Association, Consolidated, Columbia, HNG-InterNorth, ANR Pipeline, NGSA, Texaco, Inc., Mobil, United Distribution Companies, NSP Cos., Connecticut Utilities, DOE, C/LEC, Great Lakes, and APGA.

[9] INGAA, Minnesota Department of Public Service, *et al.*, NGSA, AGD, and Missouri PSC.

[10] ANR Pipeline, Tennessee, DOMAC, ANR Production, Indicated Producer, Elizabethtown, Coastal, Amoco, HNG–InterNorth, Process Gas, Oklahoma Industrial Petroleum Association, Columbia, and Mobil.

[11] DuPont, Texaco, and Indicated Producers.

[12] Process Gas Consumers Group.

[13] Amoco.

[14] ANR Pipeline.

[15] Process Gas Consumers Group, Mountain Fuel Resources, NI–Gas, Utah Division of Public Utilities, and Columbia Gas Distribution Cos.

[16] Panhandle Eastern Pipe Line Co., Northern Natural, and Trunkline Gas Co.

[17] Maryland People's Counsel, Texas Gas Transmission, Commonwealth, Utah Division of Public Utilities, APGA, and Pogo Producing Co.

[18] Elizabethtown, Tenneco, Maryland People's Counsel, Commonwealth, Louisville Gas, and Electric, and Pogo Producing Co.

[19] American Paper Institute, APGA, Northwest Pipeline, NI–Gas, Utah Division of Public Utilities, Air Products, ANR Pipeline, HNG–InterNorth, Texas Gas, Maryland People's Counsel, Texaco, Mountain Fuel Resources, AGA, Natural, Owens Corning, Tetco, Missouri PUC, Panhandle/Trunkline TIPRO, Indicated Producers, Mesa Petroleum Co., AGD, Cascade Natural Gas Corp., UGI Corp., Process Gas, *et al.*, Air Products, Department of Energy, Pennzoil, and Michigan/Michigan PSC.

[20] Panhandle/Trunkline, Columbia, Department of Energy, N.W. Central, United Gas Pipe Line, HNG–InterNorth, Natural Gas, AGA, Texas Gas, Consumers Power Co., Columbia Distribution Cos., Great Lakes, Process, *et al.*, Commonwealth Gas, Illinois Commerce Commission, APGA, AGD, Piedmont Natural Gas., Mich Con, and NI–Gas.

[21] Natural Gas, East Tennessee Group, Elizabethtown, Commonwealth, Columbia, N.W. Central, New England Energy Group, Peoples Gas/North Shore, and Laclede.

[22] *E.g.*, INGAA, Tenneco and Panhandle Eastern Pipeline Co.

[23] *E.g.*, Petition for Rulemaking in the Matter of Take-or-Pay Clauses in Producer/Pipeline Contracts, Docket No. RM83–46–000; Petition Requesting Re-Evaluation of Policy Requiring Rate Base Treatment of Prepayments Made Under Take-or-Pay Contracts, Docket No. RM83–54–000; Petition for Declaratory Order and Expedited Rulemaking in the Matter of Take-or-Pay Provisions in Producer/Pipeline Contracts, Docket No. RM83–55–000; Petition for Rulemaking in the Matter of Reformation of Take-or-Pay Clauses, Docket No. RM84–17–000.

[24] *E.g.*, INGAA.

[25] *See supra* note 1.

[26] *See also*, Mississippi River Transmission Corp., 30 FERC ¶ 61,155 (1985); Sunray Mid-Continent Oil Co. v. FPC, 364 U.S. 137 (1960). Policy Statement, 50 FR at 16079; Tenneco Oil Co. *et al.*, 28 FERC ¶ 61,383 *order on reh'g*, 29 FERC ¶ 61,334 (1984).

[27] Policy Statement, 50 FR at 16080 (to be codified at 18 CFR 2.76(e)).

[28] These orders required the presiding judge to: (1) Conduct the hearing provided by the order on an expedited basis, (2) set a deadline for closing the hearing record approximately 40 days after issuance of the order, and (3) issue the initial decision not later than 60 days after the record was closed.

[29] *See supra*, notes 25 and 26.

[30] *See e.g.*, Tenneco Oil Co. *et al.*, 28 FERC ¶ 61,383, *order on reh'g*, 29 FERC ¶ 61,334 (1984); Columbia Gas Transmission Corp. et al., 25 FERC ¶ 61,220 (1983) (certification Columbia SMP). *See also*, Mesa Petroleum Co., 28 FERC ¶ 61,081 (1984).

[31] *E.g.*, Northern Natural Gas (HNG-InterNorth), Seagull Energy Corp., Mountain Fuel Resources, Inc., and Michigan Consolidated Gas Co.

[32] *E.g.*, Maurice L. Brown.

[33] Natural Gas Supply Association.

[34] Columbia Gas Transmission Corp.

[35] 15 U.S.C. 3312(d) and 3318 (1982).

The rule provides, as proposed, for high cost, but still regulated, gas to be included in Block 2. Gas in the high cost categories specified by the NGPA were allowed incentive prices in order to accelerate new gas discoveries, encourage development of supply sources that are expensive to bring into production, avoid underrecovery of marginal wells, or encourage the flow of intrastate gas into the intersate market. High cost gas includes:

Section 102(d) gas: gas produced from old leases on the Outer Continental Shelf (OCS) from reservoirs which were not discovered before July 27, 1976;

Section 103(c) gas: gas which still includes gas from new onshore production wells that (1) was committed or dedicated to interstate commerce on April 20, 1977, and uncommitted gas produced from wells less than 5,000 feet;

Section 105 gas: gas subject to intrastate contracts on the date of enactment of the NGPA;

Section 106(b) gas: gas subject to intrastate rollover contracts on the date of enactment of the NGPA;

Section 107(c)(5) gas: gas that was not produced under the conditions described in sections 107(c)(1)–(4); and

Section 108 gas: gas produced from stripper wells.

[36] Tenneco Oil Co., *supra*, note 26.

[37] Application of Getty Oil for permission to abandon sale of Gas AR LA Gas Co., filed October 3, 1983. Cities Service Oil & Gas Corp., application for limited-term partial abandonment and cancellation of service under FERC Gas Rate Schedule 42.

[38] *E.g.*, Coastal Oil and Gas.

[39] *E.g.*, Sabine Corporation.

[40] *E.g.*, Indicated Producers, Texaco, Amoco, Dupont, Department of Energy (DOE), and INGAA.

Section IV. C. Optional Expedited Certificate

[1] 15 U.S.C. 717f (1982).

[2] Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, 49 FR 22778 (1984), 3 FERC Stat. & Reg. ¶ 30,571, Docket No. RM 83–71–000, affirmed in part and remanded in part, Wisconsin Gas Company v. FERC, No. 1358 (D.C. Cir., August 20, 1985); 18 CFR 154.111 (1985).

[3] *Cf.* Maryland People's Counsel v. FERC, No. 85–1029 (D.C. Cir. August 6, 1985). (In this case the court ruled that the Commission's special marketing programs were unduly discriminatory because they allowed pipelines to insulate their core markets (the high priority markets served by LDCs) from competition where cheaper SMP gas was available to LDCs.

[4] Subpart E is specifically designed to prevent pipelines, who must assume the economic risks in order to qualify for an expedited certificate, from shifting costs among their customers if the project is not successful. Since LDC rates are not subject to federal jurisdiction, the final rule does not

address cost allocations among LDCs customers.

[5] Natural Gas Pipeline Company of America, 30 FERC ¶ 61,017 (1985), *reh'g denied*, 32 FERC ¶ (1985).

[6] 15 U.S.C. 717f(g) (1982).

Section V. Administrative Findings and Notices

[1] 5 U.S.C. 601–612 (1982).

[2] *Id.* 603(a).

[3] *Id.* 553.

[4] *Id.* 605(b).

[5] *See* Section III. Response to General Comments and Review of Alternatives.

[6] Petroleum Marketers Association of America (quoting remarks of Senator Culver) (emphasis in original removed).

[7] Construction Work in Progress for Public Utilities; Inclusion of Costs in Rate Base, 48 FR 24323 (June 1, 1983) (Docket No. RM81–38–000, Order No. 298), *rehearing granted in part and denied in part*, 48 FR 46012 (Oct. 11, 1983); Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, 49 FR 22778 (June 1, 1984) (Docket No. RM83–71–000, Order No. 380), *reh'g denied*, 49 FR 31259 (Aug. 6, 1984).

[8] *See, e.g.*, 47 FR 5215 (Feb. 4, 1982) (final rule of Securities and Exchange Commission).

[9] Mid-Tex Electric Cooperative, Inc., *et al.* v. FERC, Nos. 83–2058, *et al.* (decided Sept. 24, 1984). Slip op. at 26–31 (No RFA analysis is necessary when the agency determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule).

[10] *See* Congressional Findings and Declaration of Purpose, section 2, Pub. L. No. 96–354, codified at 5 U.S.C. 601, note (1982).

[11] For a discussion of the legislative history, *see* Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, *supra*, note 7, 49 FR at 22791.

[12] These procedures are set forth as general statements of policy. *See* new §§ 2.76 and 2.77.

[13] Transactions under new § 284.221–.223 (Subpart G) are not subject to new § 284.11 because any facilities that might be constructed to implement such transactions must be authorized under Subparts E or F of Part 157. Other environmental procedures, including § 157.206(d), will apply in that event. Any construction or abandonment of facilities by local distribution companies that is incidental to services under new § 284.224 is subject to state or local regulation.

[14] H.R. Rep. No. 95–543, 95th Cong., 1st Session 45 (1977). *See* 123 Cong. Rec. 31163, 31165 (September 27, 1977).

[15] 5 U.S.C. 553(d) (1982). *See* Attorney General's Manual on the APA, at 37 (1947). (The purpose of the exception to the delayed effective date for a rule that relieves a restriction "would appear to be that the person affected by such rules are benefitted by them and therefore need no time to conform their conduct so as to avoid the legal consequences.

[16] *See* 28 FERC ¶ 61,383 (1984), *order on rehearing*, 29 FERC ¶ 61,334, and Order No. 234–B, 48 FR 34,872 (Aug. 1, 1983) (codified at 18 CFR 157.209(e) (1985)). Under these programs, producers are permitted to sell gas committed to a particular pipeline to another purchaser, while crediting the volume of such sale to the pipeline's high-priced purchase obligations. Similarly, these programs expanded an interstate pipeline's authority to transport gas for end users, including those who use gas as a boiler fuel of violation." *Id.*

[17] Maryland People's Counsel v. FERC, 761 F.2d 768 (D.C. Cir. 1985) (MPC I); Maryland People's Counsel v. FERC, 761 F.2d 780 (D.C. Cir. 1985) (MPC II); Maryland People's Counsel v. FERC, No. 85–1029 (D.C. Cir. Aug. 6, 1985) (MPC III).

[18] 44 U.S.C. 3501–3520 (1982).

[19] 5 CFR 1320.13 (1985).

PART 2—[AMENDED]

1. The authority citation for Part 2 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR Part 142 (1978); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); and the National Environmental Policy Act, 16 U.S.C. 4321–4361 (1978), unless otherwise indicated.

2. In § 2.76, paragraph (e) is revised to read as follows:

§ 2.76 Regulatory treatment of payments made in lieu of take-or-pay obligations.

* * * * *

(e) *Certificate amendments and abandonment.* With regard to natural gas the sale of which is subject to the Commission's jurisdiction under the Natural Gas Act, if any payments referred to under paragraph (a) of this section are accompanied by a change in or a termination of, the first seller's contractual obligation to provide natural gas service, the Commission will, as a general policy under sections 7(c) and 7(b) of the Natural Gas Act, expeditiously grant any certificate amendments or abandonment authorizations, required to effectuate such contractual or service modifications.

In cases where a producer abandonment application is based on payments made pursuant to this policy statement, the interstate pipeline making the payments will be deemed to have waived any right to oppose the abandonment.

3. Part 2 is amended by adding new § 2.77 to read as follows:

§ 2.77 Policy on expedited producer abandonment.

(a) *Situations in which expedited producer abandonment will be appropriate.* Abandonment, including partial or temporary abandonments, of service by a producer will be reviewed on an expedited case-by-case basis and will be granted where permitted by the public convenience and necessity, in cases where:

(1) The producer is subject to substantially reduced takes without payment; or

(2) The parties have entered into a take-or-pay buy-out pursuant to § 2.76.

(b) *Procedures.* Certificate and abandonment applications related to this policy statement will, as a general policy, be considered on an expedited basis under existing administrative procedures as follows:

(1) Applications will be noticed promptly and a period not to exceed 15 days will be provided for comments or interventions.

(2) In cases where the applications are unopposed, as a matter of policy they will be promptly granted by the Director, Office of Pipeline and Producer Regulation, pursuant to delegation of authority contained in 18 CFR 375.307 (1985).

(3) In cases where certificate or abandonment applications are opposed, the Commission will consider the objections and rule on the applications if possible or, if necessary will set the applications for expedited hearing. The Commission will require that initial decisions be issued not more than 60 days following the close of the record and will endeavor to issue a final decision within 60 days following issuance of the initial decision.

(4) Parties requesting expedited consideration under these procedures should include in their application a request for expedition and a reference to Docket No. RM85–1–000.

4. The authority citation for Part 157 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); Executive Order No. 12,009, 3 CFR Part 142 (1978).

5. The table of contents for Part 157 is amended by revising Subpart E to read as follows:

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

* * * * *

Subpart E—Optional Certificate and Abandonment Procedures for New Service Under Section 7 of the Natural Gas Act

Sec.
157.100 General.
157.101 Definitions.
157.102 Contents of application and other pleadings.
157.103 Terms and conditions; other requirements.
157.104 Hearings.
157.105 Issuance of certificate.
157.106 Protests to abandonment of new service.

* * * * *

6. In Part 157, Subpart E is revised to read as follows:

Subpart E—Optional Certificate and Abandonment Procedures for Applications for New Service Under Section 7 of the Natural Gas Act

§ 157.100 General.

This subpart establishes optional procedures whereby any eligible applicant may obtain, for the purpose of providing new service, a certificate authorizing the following activities subject to the Commission's jurisdiction:

(a) The transportation of natural gas;

(b) Sales of natural gas;

(c) The construction and operation of natural gas facilities;

(d) The acquisition and operation of natural gas facilities; and

(e) Conditional pre-granted abandonment of such activities and facilities upon termination of its contractual obligations to provide the services.

§ 157.101 Definitions.

(a) *Statutory terms.* Any term defined under the Natural Gas Policy Act of 1978 (NGPA) means the same under this subpart as under the NGPA.

(b) *Subpart E definitions.* For purposes of this subpart:

(1) "Eligible applicant" means any natural gas company or person that will be a natural gas company upon completion of any proposed construction or extension of natural gas facilities.

(2) "New service" means a service for which the applicant for a certificate under this subpart does not have certificate authority. If a contract for service provided under a certificate issued pursuant to this subpart or Subpart A of this Part is renegotiated to provide for an increase in existing service or an additional kind of service, only the additional increment of service or the different service qualifies as "new service."

(3) "Qualifying facility" means a facility or a portion of a facility that will be used solely to provide new service.

§ 157.102 Contents of application and other pleadings.

(a) *General contents.* (1) Any application under this subpart must contain all information necessary to advise the Commission fully concerning the transportation, sales, and other services, and facilities, construction, extension, or acquisition and operation for which a certificate and conditional pre-granted abandonment authorization is requested.

(2) Except as otherwise provided in paragraph (b) of this section, any application under this subpart must conform to the requirements of Subpart A of this part. Section 157.11 does not apply to applications under this subpart.

(b) *Specific contents.* (1) Any application under this subpart must contain:

(i) A statement plainly requesting that the application be considered under the optional procedures of this subpart;

(ii) A statement that the applicant agrees to comply with all terms and conditions specified in § 157.103 of this chapter;

(iii) All exhibits required under § 157.14, except for the information required by § 157.14(a) (10), (11) and (18);

(iv) If the proposed new service would be provided to a customer that is located in the service area of a local distribution company, a statement that the applicant has served a copy of this application on that local distribution company;

(v) An environmental report, as specified in Appendix B to Part 2 of this chapter; and

(vi) A statement of the rates to be charged for the proposed new service, including *pro forma* copies of the rate schedule to be included in the effective tariff, a statement explaining fully how the proposed rate was derived, showing clearly whether the proposed rate results from negotiation, cost-of-service determination, competitive factors or others, and explaining the bases for the findings and conclusions of any related studies. Any rate filed under this paragraph for new service must comply with the conditions set forth in § 157.103.

(2) Any person filing a petition to intervene, notice of intervention, or protest in a proceeding initiated by a certificate application under this subpart must:

(i) Comply with § 157.10; and

(ii) Provide in its filing a statement of all genuine issues of fact raised by such person, identifying those alleged to be material to a determination of whether the applicant's requested certificate is or will be required by the present or future public convenience and necessity.

(c) *Transportation for others.* If the application requests a certificate to provide transportation service under this subpart, the applicant must state that it has filed for and will accept a blanket transportation certificate under § 284.221 of this chapter, identify the docket number assigned to that filing, and state that it will comply with the conditions in Subpart A of Part 284.

§ 157.103 Terms and conditions; other requirements.

(a) *Non-exclusivity of certificates issued under this subpart.* A certificate issued pursuant to this subpart must be non-exclusive and must provide that it in no way prejudices any application for any other certificate under the Natural Gas Act or for authorization under the Natural Gas Policy Act.

(b) *Certificate limited to qualifying facilities and new service.* A certificate issued under this subpart provides only for authorization to construct or acquire and operate qualifying facilities and to provide new service.

(c) *Allocation of joint costs.* To the extent the service proposed will utilize existing facilities, the cost of those facilities will be allocated among the services provided under this subpart and other services provided.

(d) *Rates.*—(1) *General.* Any rate filed for new service under this subpart must comply with the conditions of this paragraph.

(2) *Rate objectives.* Maximum rates for both peak and off-peak periods must be designed, to the maximum extent possible, to achieve the following three objectives:

(i) Rates for service during peak periods should ration capacity;

(ii) Rates for firm service during off-peak periods and for interruptible service during all periods should maximize through-put; and

(iii) The certificate holder's revenue requirement allocated to firm and interruptible services should be attained by providing the projected units of service in peak and off-peak periods at the maximum rate for each service.

(3) *Volumetric rates.* Except for a reservation charge for firm transportation service consistent with the conditions in § 284.8(d), any rate filed for new service must be a one-part rate that recovers the costs allocated to the new service to the extent that the projected units of that service are actually purchased and may not include a demand charge, a minimum bill or minimum take provision or any other provision that has the effect of guaranteeing revenue.

(4) *Based on projected units of service.* Any rate filed for new service must be designed to recover costs on the basis of projected units of service. The units projected for the new service in the initial rates filed under this subpart may be increased in a subsequent rate filing but may not be decreased.

(5) *Differentiation due to time and distance.* Any rate filed for new service must reasonably reflect any material variation in the cost of providing the service due to:

(i) Whether the new service is provided during a peak or an off-peak period; and

(ii) The distance over which the new service is provided.

(6) *Cost basis for rates.*

(i) Any maximum rate filed for new service must be designed to recover, on a unit basis, solely those costs which are properly allocated to that service.

(ii) Any minimum rate for new service must be based on the average variable costs which are properly allocated to that service.

(7) *Rate flexibility.*

(i) Any rate schedule filed for new service must state a maximum rate and a minimum rate.

(ii) The certificate holder may charge an individual customer for new service any rate that is neither greater than the maximum rate nor less than the minimum rate on file for that service.

(iii) The certificate holder may not file a revised or new rate designed to recover costs not recovered under rates previously in effect.

(iv) If, during any billing period, a certificate holder charges a rate or collects a reservation fee that is less than the maximum rate or fee that could be charged, the certificate holder must, within 45 days of the close of the billing period, file a report with the Commission identifying:

(A) The maximum rate or fee and the rate or fee actually charged during the billing period;

(B) The customer; and

(C) Any corporate affiliation between the customer and the certificate holder.

(8) *Prohibitions against cost shifting.* No costs originally allocated to a new service may subsequently be allocated to any other services without a filing under § 154.63 of this part and a determination by the Commission that the costs sought to be reallocated are in fact being incurred for the benefit of the other services.

(e) *No revenue guarantees for new sales service.* No demand charge, reservation fee, minimum bill provision, minimum take provision, or any other provision that has effect of guaranteeing revenue may be imposed for firm or interruptible sales service provided under this subpart.

(f) *Conditional pre-granted abandonment authority.*

(1) Subject to paragraph (f)(2) and (f)(3) of this section, if requested by the applicant in its application, any order issuing a certificate under this subpart must provide conditional pre-granted authority to abandon the proposed new service and qualifying facilities at the expiration of the contracts under-lying the new service.

(2) At least forty-five days prior to the expiration of any contractual agreement with a customer to provide new service, a certificate holder that intends to abandon any part of the new service upon expiration of the contractual agreement for that service must provide the customer and the Commission with written notice of the proposed abandonment.

(3) A customer receiving notice of a proposed abandonment of new service to it may file a protest under § 157.106 of this subpart.

(g) *Flexible receipt point authority.* (1) A certificate holder authorized to transport gas under a certificate issued pursuant to this subpart may at the request of the shipper and without prior notice:

(i) Reduce or discontinue receipts of natural gas at a particular point from a supplier, and

(ii) Commence or increase receipts at a particular point from that supplier or any other supplier. The total natural gas volumes received by the interstate pipeline following any such reassignment must not exceed the total volume of natural gas that the certificate holder is authorized under the certificate issued pursuant to this subpart to transport on behalf of the shipper.

(2) The receipt points to which natural gas volumes may be reassigned under this paragraph include eligible facilities under § 157.208 of this part which are authorized to be constructed and operated pursuant to a certificate issued under Subpart F of this part.

(h) *Flexible delivery point authority.* (1) A certificate holder authorized to transport gas under a certificate issued pursuant to this subpart may at the request of the shipper and without prior notice:

(i) Reduce or discontinue deliveries of natural gas to a particular delivery point; and

(ii) Commence or increase deliveries to a particular delivery point.

(2) The total natural gas volumes delivered by the certificate holder following any such reassignment must not exceed the total amount of natural gas that the certificate holder is authorized under the certificate issued pursuant to this section to transport on behalf of the shipper.

(3) The delivery points to which natural gas volumes may be reassigned under this paragraph include facilities authorized to be constructed and operated pursuant to a certificate issued under Subpart F of this part.

(i) *Environmental compliance.* Any certificate issued under this subpart is subject to the terms and conditions of § 157.206(d) of this chapter.

(j) *Commencement of new service.* Any authorized construction, extension, or acquisition of qualifying facilities must be completed and in actual operation by the applicant and any authorized operation, service, or sale must be actually undertaken and regularly performed by the applicant (within a period of time to be specified by the Commission in each order) from the issue date of the order issuing the certificate. The certificate holder may apply to the Director of the Office of Pipeline and Producer Regulation for an extension of this deadline.

§ 157.104 Hearings.

(a) *General.* The Commission will schedule each application for public hearing at the earliest possible date giving due consideration to statutory requirements and other matters pending, with notice thereof as provided by § 157.9 and § 385.2009 of this chapter.

(b) *Shortened procedure.* If no protest or petition to intervene raises a genuine issue of material fact, the Commission may upon request of the applicant dispose of an application in accordance with the provisions of § 385.802 of this chapter.

(c) *Presumption.* If an application complies fully with the requirements of § 157.102 and § 157.103, it is presumed, subject to rebuttal that:

(1) The applicant is qualified to perfrom all the activities for which certificate authorization is requested;

(2) The applicant is willing and able to perform acts and provide service, as proposed, and to comply with the Natural Gas Act and any applicable regulations thereunder; and

(3) The proposed new service is or will be required by the present or future public convenience and necessity.

§ 157.105 Issuance of certificate.

A certificate requested under this subpart will be issued if:

(a) The application for the certificate complies fully with §§ 157.102 and 157.103; and

(b) The presumptions established under § 157.104 are not rebutted.

§ 157.106 Protests to abandonment of new service.

(a) *Notice by certificate holder under § 157.103(f).* Any authority pre-granted to a certicate holder to abandon any new service or qualifying facilities authorized by a certificate issued under this subpart upon the expiration of any contract for such new service, is conditional and subject to protest by any customer to which the new service is provided.

(b) *Protest procedure.* (1) If a new service customer received notice of a proposed abandonment from a certificate holder in accordance with § 157.103(f), the customer may, within 30 days prior to such expiration date, file a petition under § 385.207 of this chapter to protest the abandonment and request the Commission to direct the certificate holder to continue the new service in accordance with the expired contractual agreement.

(2) The Commission may require the certificate holder to continue to provide the new service described in the abandonment notice under § 157.103(f) where the Commission determines that:

(i) Continuation of the new service is necessary because the customer is unable, after having made all reasonable efforts, to arrange for alternative service, and

(ii) The customer will pay the rate on file for the new service.

7. Section 157.201 is amended by removing the word "transportation," from paragraph (a) and by revising paragraph (c) to read as follows:

§ 157.201 Applicability.

* * * * *

(c) *Cross-reference.* The procedures applicable to transportation by interstate pipelines under blanket certificates are set forth in Subpart G of Part 284 of this chapter.

* * * * *

8. In § 157.202, paragraph (b)(2)(i) is revised to read as follows:

§ 157.202 Definitions.

* * * * *

(b) *Subpart F definitions.* For purposes of this subpart:

* * * * *

(2)(i) "Eligible facility" means, except as provided in paragraph (b)(2)(ii) of this section, any facility subject to the Natural Gas Act jurisdiction of the Commission that is necessary to provide service within existing certificated volumes, or any gas supply facility. Eligible facility includes any facility needed by the certificate holder to receive gas from a supplier and interconnecting points between transporters that transport natural gas under § 284.221 of this chapter.

* * * * *

§ 157.203 [Amended]

9. In § 157.203, paragraph (b) is amended by removing the term "157.209(a)," and paragraph (c) is amended by removing the term "157.209(b),".

§ 157.204 [Amended]

10. In § 157.204, paragraph (d)(4) is amended by removing the term "157.209,".

11. In § 157.205, the initial sentence of paragraph (a) is revised, new paragraph (b)(6) is added, and paragraph (h) is revised to read as follows:

§ 157.205 Notice procedure.

(a) *Applicability.* No activity described in §§ 157.208(b), 157.210, 157.211(a)(2), 157.212, 157.213(b), 157.214, 157.216(b) or 284.223(b) is authorized by a blanket certificate granted under this subpart or by Part 284, unless, prior to undertaking such activitiy:

* * * * *

(b)(6) Identities and docket numbers of other applications related to the transaction. All related filings must be made within 10 days of the first filing. Otherwise, the applications on file will be rejected under paragraph (c) of this section without prejudice to refiling when all parties are ready to proceed.

* * * * *

(h) *Final authorization.* (1) If no protest is filed within the time allowed by the Secretary, the certificate holder is authorized to conduct the activity under its blanket certificate, effective on the day after time expires for filing protests and interventions unless, during that time, the certificate holder withdraws its application in accordance with § 385.216 of this chapter.

(2) If any protest is filed within the time allowed for protest and interventions and is subsequently withdrawn under paragraph (g) of this section, the certificate holder is authorized to conduct the activity under its blanket certificate, effective upon the day after the withdrawal of all protests, unless the certificate holder withdraws its application in accordance with § 385.216 of this chapter prior to that date.

12. In § 157.206, the initial sentence and paragraph (h) are revised to read as follows:

§ 157.206 Standard conditions.

Any activity authorized under a blanket certificate issued under this subpart is subject to the following conditions:

* * * * *

(h) *Treatment of revenues.* (1) Except as provided in paragraph (h)(2) and (3) of this section, all revenues received for storage services authorized under § 157.213 or for sales for resale authorized under § 157.210 in excess of an allowance of one cent per MMBtu shall be credited to Account No. 191 and flowed back to the certificate holder's customers.

(2) A certificate holder is not required to credit revenues to Account No. 191 pursuant to paragraph (h)(1) of this section:

(i) If representative levels of revenues attributable to such services have been credited in arriving at a test period cost of service; or

(ii) If representative levels of volumes for such services have been included in billing determinants for the purposes of establishing rates.

(3) The certificate holder may elect to forego the one cent per MMBtu allowance provided in paragraph (h)(1) of this section. If the certificate holder so elects, it is not required to credit to Account No. 191 any amount which, upon application, is demonstrated to represent the out-of-pocket expenses of the certificate holder in connection with a transaction authorized under this subpart.

13. Section 157.207 is revised to read as follows:

§ 157.207 General reporting requirements.

On or before May 1, of each year, the certificate holder must file an annual report signed under oath by a senior official of the company, that lists for the previous calendar year:

(a) For each new facility authorized as by § 157.208, the information specified in § 157.208(e);

(b) For each sales tap authorized under § 157.211(a)(1), the information required by § 157.211(c);

(c) For each storage service authorized under § 157.213(a), the information specified in § 157.213(c);

(d) For each storage project tested or developed under § 157.215, the information specified in § 157.215(b)(1);

(e) For each abandonment authorized under § 157.216(a), the information specified in § 157.216(d);

(f) For each change in rate schedule authorized under § 157.217, the information specified in § 157.217(b);

(g) For each change in customer name authorized under § 157.218, the information specified in § 157.218(b); and

(h) If any activity required to be reported under this section was not undertaken, a statement to that effect.

§ 157.209 [Removed]

14. Section 157.209 is removed.

15. Section 157.211 is revised to read as follows:

§ 157.211 Sales taps.

(a) *Construction and operation.*—(1) *Automatic authorization.* The certificate holder may construct and operate sales taps for the delivery of gas to an end-user, if:

(i) The natural gas is ultimately delivered to, and consumed by, a right-of-way grantor; and

(ii) Not more than 200 MMBtu of natural gas per day are to be delivered to the right-of-way grantor.

(2) *Prior notice.* Subject to the notice procedure of § 157.205, the certificate holder may construct and operate sales taps for service to end-users other than a right-of-way grantor, if:

(i) The natural gas is ultimately consumed by an end-user that is, or will be, served directly or indirectly from the general system supply of the certificate holder, or the natural gas is being delivered to a shipper for whom the certificate holder is, or will be, authorized to transport gas;

(ii) The volumes delivered are within the certificated entitlements of the customer; and

(iii) The certificate holder's tariffs do not prohibit the addition of new delivery points.

(b) *Contents of request.* In addition to the requirements of § 157.205(b), requests for activities authorized under paragraph (a)(2) must contain:

(1) The name of any distributor or the end-user and the location of all proposed sales taps;

(2) The authority for the current service to the distributor or end-user;

(3) The quantity of gas to be delivered through the proposed facility;

(4) The rate or rate schedules applicable to the service made through the proposed tap; and

(5) A description, with supporting data, of the impact of the service rendered through the proposed sales tap upon the certificate holder's peak day and annual deliveries.

(c) *Reporting requirements.* As part of the certificate holder's annual report of projects authorized under paragraph (a)(1) of this section, the certificate holder must report:

(1) The name of the end-user;

(2) The maximum daily volumes to be sold; and

(3) The actual cost of the sales tap and date placed in service.

(d) *Indirect customers.* The authorization in paragraphs (a) and (b) of this section applies irrespective of whether the certificate holder sells the natural gas directly to the end-user or the natural gas is delivered to the end-user for the account of a local distribution company.

Appendices I and II [Amended]

16. In Appendices I and II to Part 157, the initial sentence is amended by removing the term "Subpart F of Part 157" and inserting in its place the term "Subparts E or F of Part 157 and to any other service subject to § 157.206(d)".

PART 250—[AMENDED]

17. The authority citation for Part 250 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12,009, 3 CFR Part 142 (1978); Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

18. Part 250 is amended by adding a new § 250.15 to read as follows:

§ 250.15 Form of Self-Implementing Transportation Filing.

[FERC Format No. 549–ST]

Self-Implementing Transportation by Interstate, Intrastate, and Hinshaw Pipelines and by Local Distribution Companies Under Natural Gas Act Blanket Certificates and Under the Natural Gas Policy Act of 1978 and Related Authorities

1. Type of Report (check one):
☐ Initial ☐ Subsequent*

2. Applicable Regulation Section (check up to two):
☐ 284.106(a) ☐ 284.106(b)*
☐ 284.222
☐ 284.126(a) ☐ 284.126(b)*
☐ 284.224
☐ 284.223(f)(1) ☐ 284.223(f)(2)

*Report only the changes with respect to information filed in the initial report. Complete only items 1 through 5 and item 8 for identification purposes.

3. Reporting Company: ______

4. ST Docket No. (subsequent report only): ST______

5. Report Date: ______

6. Date Received by Commission (leave blank): ______

7. Affiliation of Reporting Company, if any, with other entities involved in the transaction (284.106 and 284.222 initial filings only):

______

8. Communications concerning this transaction should be addressed to:
Name: ______
Title: ______
Mailing Address: ______
Phone Number: ______

9. General description of applicant's existing operations (initial reports under 284.106(a), 284.126(a), 284.222, and 284.224):

______

10. Description of the Transportation (including, but not limited to):

(a) Identity and type of the parties to the transaction:
(i) Intrastate Pipeline recipient of transportation service:
(ii) Local Distribution Company recipient of transportation service:
(iii) Interstate Pipeline recipient of transportation service:
(iv) End User:
(b) Commencement date: ______
(c) Projected termination date: ______

[NOTE: Section 284.223 transactions are limited to a single 120-day term]

(d) Estimated total quantity to be transported: ______ MMBtu
(e) Estimated maximum daily quantity: ______ MMBtu
(f) Points between which gas is transported: ______
(g) The location (state) of the original source of the gas: ______
(h) The location (state) of the ultimate delivery point of the gas: ______
(i) Rate to be charged: ______ ¢/MMBtu

(INTRASTATE PIPELINES ONLY)

(i) If the rate is pursuant to § 284.123(b)(1)(i) (i.e., an appropriate state regulatory agency approved rate for city gate service), an explanation of how the rate is computed. Attach necessary supporting information as justification:

(ii) If the rate is pursuant to § 284.123(b)(1)(ii), a statement of the basis for determining the rate schedule used was for service comparable to that being described herein (citation to an appropriate SA docket approved rate). Attach necessary supporting information as justification:

(iii) If the rate is pursuant to § 284.123(b)(2) (e.g., a FERC approved rate), a statement to that effect. Attach necessary supporting information as justification:

11. The undersigned certifies that the contract provides that the transportation arrangement is subject to the provisions of this subpart.

12. Intrastate Pipelines only:

The undersigned certifies that the appropriate state regulatory agency has been notified that the Commission has presumed that all revenues received by an intrastate pipeline in connection with the transportation arrangement authorized under § 284.122 and computed in accordance with § 284.123(b), have been or will be taken into account by the appropriate state regulatory agency for purposes of establishing transportation rates charged by the intrastate pipeline for service to intrastate customers:

______
Name ______
Title ______
Address ______
Phone Number ______

OATH STATEMENT

______, being duly sworn on his/her oath, deposes and says that he/she has read the foregoing filing and that the statements contained therein are true and correct to the best of his/her knowledge, information and belief.

______
Name ______

Title ______________________

Subscribed and sworn to before me this ________ day of ________,

198—.

____

Name ______________________

Title ______________________

My Commission Expires ________

Instructions for Filing Self-Implementing Transportation Reports

[FERC Format No. 549-ST]

General Information

I. Purpose

The report is the primary source of specific data on self-implementing natural gas transportations. The information is necessary to assure that a transaction is in compliance with the Commission's regulations. The standardized format minimizes industry filing burden and facilitates both staff review of the transactions and the application of automatic data processing techniques. This format does not in any way modify existing reporting requirements as provided by the Commission's Regulations, nor does it relieve any respondent from filing additional information necessary to support the reporting elements.

II. Who Must File

Any interstate or intrastate pipeline, Hinshaw company, or local distribution company undertaking a transportation transaction under 18 CFR Part 284.

III. When to File

Initial reports are to be filed within thirty (30) days after commencing a covered transportation. Subsequent reports are to be filed within thirty (30) days of the change being reported.

IV. What to File

Each reporting company must submit an original and five copies of the applicable report specified in Part 284, and the necessary support for the required reporting elements. If a reporting company is unable to supply a data element, it should attach an explanation.

V. Where to Submit

1. Submit an original and five copies of these reports to:

Office of the Secretary, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426.

2. Hand deliveries of an original and five copies may be made to:

Office of the Secretary, Federal Energy Regulatory Commission, Room 3110, 825 N. Capitol Street NE., Washington, DC 20426.

General Instructions

The attached reporting format is to be used to make initial and subsequent reports covering the following types of transactions under Part 284:

1. Interstate pipelines transporting natural gas on behalf of other interstate pipelines, intrastate pipelines, or local distribution companies (LDCs) under either Subpart B of Part 284 (§ 284.102) or Subpart G (§ 284.222). Note that reports under § 284.222 covering blankets certificate transportation for other interstate pipelines must include all data elements required by § 294.106.

2. Intrastate pipelines (or persons holding blankets certificates) transporting natural gas on behalf of interstate pipelines or local distribution companies served by an interstate pipeline under Subpart C of Part 284 (§ 284.122) or Subpart G (§ 284.224). Note that reports under § 284.224 covering blanket certificate transportation must include all data elements required by § 284.126.

3. Interstate pipelines transporting natural gas for any end user under a blanket certificate (§ 284.223).

Definitions

1. "Comparable Service" means for service by interstate pipelines, a transaction utilizing similar parts of the company's system for a similar number of miles, etc.; and for service by intrastate pipelines, "comparable service" has been determined to refer to city-gate service.

2. "Hinshaw Pipeline" means a person not subject to the jurisdiction of the Commission, by reason of section 1(c) of the Natural Gas Act. A Hinshaw Pipeline or LDC with a blanket certificate is authorized to engage in the transportation of natural gas in the same manner that intrastate pipelines are authorized by Subpart C of Part 284.

3. "LDC" means a local distribution company as defined in Section 2(17) of the NGPA (including Hinshaw Pipelines).

4. "Parties" means all persons who either sell, transport, or take title to gas, on whose behalf the service is rendered, or who receive gas in a transaction which is the subject of the filing made under the applicable subpart.

5. "Representative Levels" means representative levels of volumes or revenues used in setting test period, cost-based rates, and approved by the Commission in a company's currently applicable rate case.

6. "SA" means a Staff Adjustment pursuant to section 502(c) of the NGPA requesting an adjustment from the provisions of § 284.123. Once approved by the Commission the SA would allow the intrastate pipeline to have its rates designed by an appropriate state regulatory agency.

For any other definitions needed in completing these reports, refer to the Commission's regulations in 18 CFR, §§ 157.201 through 157.204 and §§ 157.206 and 157.208; and in §§ 284.1 through 284.126 and §§ 284.221 through 284.224.

Specific Instructions

Although this format is provided to expedite the submittal and processing of reports, it is not conclusive as to the level of detail necessary in all cases. Reporting companies are encouraged to attach additional supporting information as justification as deemed necessary.

The format begins with "applicable regulation section" check off boxes. These items help the Commission identify the type of report that is being filed. This format can only be used to satisfy the filing requirements for the sections of the regulations listed by its check off boxes.

Note that in the case of a blanket certificate holder operating under §284.222, § 284.223, or § 284.224, check the box next to one of those sections as well as the box next to the specific reporting requirement that is incorporated by reference. For example, an interstate pipeline transporting gas under the blanket certificate authority of § 284.222 must file an initial report specified in § 284.106(a). In such a case, the §284.222 box should be checked along with the § 284.106(a) box.

Every interstate pipeline transporting natural gas must have an approved tariff on file with the Commission prior to commencing such transportation.

Every interstate pipeline transporting natural gas must make a rate election at the commencement of a transaction. Different information is required under each alternative. Below is a summary of the rate election options available to intrastate pipelines or persons holding blanket certificates issued pursuant to § 284.224.

§ 284.123(b)(1)(i)—A rate derived from a city gate sales tariff on file with an appropriate state regulatory agency, i.e., sales less gas costs.

§ 284.123(b)(1)(ii)—A rate determined by FERC in an approved Staff adjustment under NGPA section 502(c) to be for comparable service, such rate then being approved by the appropriate state regulatory agency.

§ 284.123(b)(2)—A cost of service based rate requested of and approved by FERC. This rate application must be filed prior to or upon commencement of the specific transportation service and must include a full cost of service, with workpapers and a system map clearly delineating the facilities to be used in the specific transaction. The information should illustrate that the proposed rate is "fair and equitable".

19. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); Executive Order No. 12,009, 3 CFR Part 142 (1978).

20. The table of contents for Part 284 is amended by revising the title of Subpart A and adding under Subpart A new §§ 284.7 284.8, 284.9, 284.10, 284.11, and 284.12, removing §§ 284.103, 284.104, 284.107 and 284.127, removing and reserving Subpart F, revising the title of Subpart G and the titles of §§ 284.221 and 284.222, and by adding new §§ 284.223 and 284.224 to read as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS ACT AND THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

Subpart A—General Provisions and Conditions

Sec.

* * * * *

284.7 Rates.
284.8 Firm transportation service.
284.9 Interruptible transportation service.
284.10 Reductions in firm sales entitlements and conversions to firm transportation.
284.11 Environmental compliance.
284.12 Filing of capacity.

* * * * *

SUBPART F—[Reserved]

* * * * *

Subpart G—Blanket Certificates Authorizing Certain Transportation by Interstate Pipelines on Behalf of Others and Services by Local Distribution Companies

284.221 General rule: transportation by interstate pipelines on behalf of others.
284.222 Transportation by interstate pipelines on behalf of other interstate pipelines
284.223 Transportation by interstate pipelines on behalf of shippers other than interstate pipelines.
284.224 Certain transportation, sales, and assignments by local distribution companies.

* * * * *

§ 284.4 [Amended]

21. In § 284.4, the designation "(a)" is removed from the first paragraph and paragraph (b) is removed.

22. Part 284 is amended by adding new §§ 284.7, 284.8, 284.9, 284.10, 284.11 and 284.12 to read as follows:

§ 284.7 Rates.

(a) *Applicability.* Any rate charged for transportation service under Subparts B, G and H of this part must be established under a rate schedule that is filed with the Commission prior to commencement of such service and that conforms to the requirements of this section.

(b) *Interim rates for Part 284 transactions.*

(1) Any person providing transportation service under Subpart B, G or H of this part may charge an interim rate for that service until an appropriate rate is established in accordance with this section, if the interim rate is a one part rate filed and included in an appropriate rate schedule on file with the Commission and effective prior to November 1, 1985, for transportation authorized under this part or § 157.209, as effective prior to November 1, 1985, and provided such person complies with paragraph (b)(2) of this section.

(2) Any person offering a transportation service subject to this section must file rates in accordance with paragraph (a) of this section to be effective not later than July 1, 1986. Any interim rate under this paragraph may be charged only until new transportation rates under this section are effective.

(c) *Rate objectives.* Maximum rates for both peak and offpeak periods must be designed to achieve the following three objectives:

(1) Rates for service during peak periods should ration capacity;

(2) Rates for firm service during off-peak periods and for interruptible service during all periods should maximize throughput; and

(3) The pipeline's revenue requirement allocated to firm and interruptible services should be attained by providing the projected units of service in peak and off-peak periods at the maximum rate for each service.

(d) *Rate design.*—(1) *Volumetric rates.* Except as provided in § 284.8(d), any rate filed for service subject to this section must be a one-part rate that recovers the costs allocated to the service to the extent that the projected units of that service are actually purchased and may not include a demand charge, a minimum bill or minimum take provision or any other provision that has the effect of guaranteeing revenue. Such rate must separately identify cost components attributable to transportation, storage, and gathering costs.

(2) *Based on projected units of service.* Any rate filed for service subject to this section must be designed to recover costs on the basis of projected units of service. The fixed costs allocated to capacity reservations, as determined in accordance with § 284.8(d), should be used along with the projected nominations accepted by the pipeline to compute the unit reservation fee. The remaining fixed costs and all variable costs should be used to determine the volumetric rate computed on the basis of projected volumes to be transported. The units projected for the service in rates filed under this section may be changed only in a subsequent rate filing under Section 4 of the Natural Gas Act.

(3) *Differentiation due to time and distance.* Any rate filed for service subject to this section must reasonably reflect any material variation in the cost of providing the service due to:

(i) Whether the service is provided during a peak or an off-peak period; and

(ii) The distance over which the transportation is provided.

(4) *Cost basis for rates.*

(i) Any maximum rate filed under this section must be designed to recover on a unit basis, solely those costs which are properly allocated to the service to which the rate applies.

(ii) Any minimum rate filed under this section must be based on the average variable costs which are properly allocated to the service to which the rate applies.

(5) *Rate flexibility.*

(i) Any rate schedule filed under this section must state a maximum rate and a minimum rate.

(ii) The pipeline may charge an individual customer any rate that is neither greater than the maximum rate nor less than the minimum rate on file for that service.

(iii) The pipeline may not file a revised or new rate designed to recover costs not recovered under rates previously in effect.

(iv) If, during any billing period, a pipeline charges a rate or collects a reservation fee that is less than the maximum rate or fee, the pipeline must, within 45 days of the close of the billing period, file a report with the Commission identifying:

(A) The maximum rate or fee and the rate or fee actually charged during the billing period;

(B) The shipper; and

(C) Any corporate affiliation between the shipper and the transporting pipeline.

§ 284.8 Firm transportation service.

(a) *Firm transportation availability.* (1) An interstate pipeline that provides transportation service under Subpart B, G or H must offer such transportation service on a firm basis.

(2) An intrastate pipeline that provides transportation service under Subpart C may offer such transportation service on a firm basis.

(3) "Service on a firm basis" means that the service is not subject to a prior claim by another customer or another class of service and receives the same priority as any other class of firm service.

(b) *Non-discriminatory access.* An interstate pipeline or intrastate pipeline that offers transportation service on a firm basis under Subpart B, C, G or H must provide such service without undue discrimination, or preference, including undue discrimination or preference in the quality of service provided, the duration of service, the categories, prices, or volumes of natural gas to be transported, customer classification, or undue discrimination or preference of any kind.

(c) *Reasonable operational conditions.* Consistent with paragraph (b) of this section, a pipeline may impose reasonable operational conditions on any service provided under this part. Such conditions must be filed by the pipeline as part of its transportation tariff.

(d) *Reservation fee.* Where the customer purchases firm service, a pipeline may impose a reservation fee or charge on a shipper as a condition for providing such service. The reservation fee may not recover any variable costs or any fixed costs in excess of those costs that would be recovered by using the same ratemaking methodology used for determining the demand charge in the pipeline's sales rates. Except as provided in this paragraph, the pipeline may not include in a rate for any transportation service provided under Subpart B, C, G or H any minimum bill or minimum take provision, or any other provision that has the effect of guaranteeing revenue.

(e) *Limitation.* A person providing service under Subpart B, C, G or H of this part is not required to provide any requested transportation service for which capacity is not available or that would require the construction or acquisition of any new facilities.

§ 284.9 Interruptible transportation service.

(a) *Interruptible transportation availability.* (1) An interstate pipeline that provides firm transportation under Subpart B, G or H must also offer transportation service on an interruptible basis under that subpart or subparts.

(2) An intrastate pipeline that provides transportation service under Subpart C may offer such transportation service on an interruptible basis.

(3) "Service on an interruptible basis" means that the capacity used to provide the service is subject to a prior claim by another customer or another class of service and receives a lower priority than such other classes of service.

(b) *Non-discriminatory access.* An interstate or intrastate pipeline that offers interruptible service under Subpart B, C, G or H must provide such service without undue discrimination, or preference, including undue discrimination or preference in the quality of service provided, the duration of service, the categories, prices, or volumes of natural gas to be transported, customer classification, or undue discrimination or preference of any kind.

(c) *Reasonable operational conditions.* Consistent with paragraph (b) of this section, a pipeline may impose reasonable operational conditions on any service provided under this part. Such conditions must be filed by the pipeline as part of its transportation tariff.

(d) *Reservation fee.* No reservation fee may be imposed for interruptible service. A pipeline's rate for any transportation service provided under this section may not include any minimum bill provision, minimum take provision, or any other provision that has the effect of guaranteeing revenue.

(e) *Limitation.* A person providing service under Subparts B, C, G or H of this part is not required to provide any requested transportation service for which capacity is not available or that would require the construction or acquisition of any new facilities.

§ 284.10 Reductions in firm sales entitlements and conversions to firm transportation.

(a) *Agreement to offer reduction and conversion options.* An interstate pipeline that, beginning December 15, 1985:

(1) Commences a new transportation arrangement under authority of § 284.102 or § 284.243 of this chapter; or

(2) Accepts a certificate issued under § 284.221 of this chapter

is deemed to have agreed to offer its firm sales customers the options set out in paragraphs (c) and (d) of this section.

(b) *Definition.* For purposes of this section, "eligible firm sales service agreement" means an agreement, between an interstate pipeline subject to this section and a customer, that was entered into before the date the pipeline accepted a certificate issued under § 284.221 of this chapter or began transporting natural gas under authority of § 284.102 or § 284.243 of this chapter, as those sections were revised effective November 1, 1985.

(c) *Option to reduce certain firm purchase obligations.*—(1) *Customer option.* An interstate pipeline subject to this section agrees to offer each firm sales customer the option to reduce the level of the customer's firm sales entitlements under any eligible firm sales service agreement with that pipeline.

(2) *Notice.* Unless the pipeline agrees otherwise, a customer that wishes to exercise its option under this paragraph must provide the pipeline written notice, not later than 150 days before the proposed reduction, of the level of the reduction. The pipeline may establish a single date during each calendar year for such reductions to take effect.

(3) *Level of reduction.*—(i) In any 12-month period beginning February 1, 1986, a customer of a pipeline subject to this section may elect to reduce, by up to 25 percent, the level of its firm sales entitlements under any eligible firm sales service agreement with that pipeline.

(ii) Beginning February 1, 1986, a pipeline subject to this section may, at any time, permit a firm sales customer to reduce its firm sales entitlements by more than 25 percent.

(4) *Effect of reduction on minimum bills.* If a customer reduces its firm sales entitlements under this paragraph, any minimum commodity bill that requires the customer to pay the fixed cost component of a certain percentage of the customer's firm sales entitlements must be reduced by an amount proportionate to the reduction in the firm sales entitlements.

(d) *Option to convert to firm transportation.*—(1) *Customer option.* An interstate pipeline subject to this section agrees to offer each firm sales customer the option, under this paragraph, to convert a portion of its firm sales entitlement under each eligible firm sales service agreement to a volumetrically equal amount of firm transportation service.

(2) *Notice.* Unless the pipeline agrees otherwise, a customer that wishes to exercise its option under this paragraph must provide the pipeline written notice, not later than 60 days before the proposed conversion.

(3) *Level of conversion.*—(i) In any 12-month period beginning February 1, 1986, a customer of a pipeline subject to this section may convert to firm transportation up to 25 percent of the level of its firm sales entitlements under any eligible firm sales service agreement with that pipeline.

(ii) Beginning February 1, 1986, a pipeline subject to this section may, at any time, permit a firm sales customer to convert more than 25 percent of its firm sales entitlements to firm transportation.

(4) *Reservation fee.* Where a customer exercises its option under this paragraph to convert to firm transportation service, the pipeline may impose a reservation fee as provided in § 284.8(d) of this subpart.

(5) *Effect of conversion on minimum bills.* If a customer converts under this paragraph any portion of its firm sales entitlements from a pipeline, each unit of firm transportation service purchased must be credited to any minimum commodity bill obligation that the customer may have under its firm sales service agreements with that pipeline.

(e) *Limitation.* Reductions of firm sales entitlements under paragraph (c) of this section and conversions of firm sales entitlements under paragraph (d) of this section may not, in combination, affect more than 25 percent of a customer's eligible firm sales service agreements in any 12-month period, without the consent of the pipeline.

(f) *Abandonment.*—(1) If a firm sales customer exercises an option under paragraph (c) or (d) of this section, the pipeline may file under §157.18 of this chapter to abandon sales service to the extent of the reduction or conversion.

(2) Exercise by a customer of an option under paragraph (c) or (d) of this section constitutes consent by that customer to the proposed abandonment under this paragraph.

(3) Abandonment of a sales service under this paragraph is deemed permitted by the present or future public convenience and necessity.

(g) *Rate adjustments.* If a customer's firm sales entitlement in its eligible firm sales service agreements is changed under this section, the pipeline must file appropriate adjustments to its rates.

§ 284.11 Environmental Compliance.

Any authorization granted under Subparts B, C and H of this part that involves construction or abandonment with removal of facilities is subject to the terms and conditions of § 157.206(d) of this chapter.

§ 284.12 Filing of Capacity.

Each interstate pipeline that provides transportation subject to the provisions of Subpart A of this part must make an annual filing by May 1 of each year showing the estimated peak day capacity of the pipeline's system under reasonably representative operating assumptions and the respective assignments of that capacity to the various firm services provided by the pipeline.

23. Section 284.102 is revised to read as follows:

§ 284.102 Transportation by interstate pipelines.

(a) Subject to the provisions of this subpart and the conditions of Subpart A of this part, any interstate pipeline is authorized without prior Commission approval, to transport natural gas on behalf of:

(1) Any intrastate pipeline; or

(2) Any local distribution company.

(b) Any rates charged for transportation under this subpart may not exceed the just and reasonable rates established under Subpart A of this Part.

(c) Any interstate pipeline that engages in transportation arrangements under this subpart must file reports in accordance with § 284.106 of this chapter.

§§ 284.103 and 284.104 [Removed]

24. Sections 284.103 and 284.104 are removed.

25. Section 284.105 is revised to read as follows:

§ 284.105 Effectiveness of existing transportation arrangements.

(a) Any transportation service authorized under this subpart before November 1, 1985, may be continued under the terms and conditions that applied prior to November 1, 1985, with the exception of the requirements of §§ 284.7 and 284.106, until the earlier of:

(1) The expiration of the original or extended term of any transportation agreement as it was in effect on the date of issuance of this order; or

(2) October 31, 1987.

(b) Effective November 1, 1985, the reporting requirements of § 284.106 apply to all transportation authorized under this subpart which commenced either prior to, or subsequent to, November 1, 1985.

26. Section 284.106 is revised to read as follows:

§ 284.106 Reporting requirements.

(a) *Initial full report.* Within thirty days after commencing transportation under § 284.102, an interstate pipeline must file with the Commission an initial full report, signed under oath by a senior official of the company, consisting of an original and five conformed copies, containing the following information:

(1) The identity of the interstate pipeline and its affiliation, if any, with the other entities involved in the transaction and the identity, title, mailing address, and phone number of the person or persons with whom to communicate about the transportation arrangement;

(2) A general description of the interstate pipeline's existing operations;

(3) A description of the transportation including:

(i) The identity of the parties;

(ii) The dates of commencement and projected termination of the service;

(iii) The estimated total and maximum daily quantities of natural gas to be transported by the interstate pipeline;

(iv) The points between which the natural gas is to be transported by the interstate pipeline;

(v) The location (*i.e.*, state) of the original source and the location (*i.e.*, state) of the ultimate delivery point of the gas; and

(vi) A statement that the contract provides that the transportation arrangement is subject to the provisions of this subpart.

(b) *Subsequent reports.*—(1) An interstate pipeline that files an initial report under paragraph (a) of this section must amend that report to reflect any material change in the pertinent transportation arrangement.

(2) Any changes in the initial report required by this paragraph must be filed with the Commission within thirty days of the related changed circumstances, and must be signed under oath by a senior official of the company, and consist of an original and five conformed copies.

(c) *Annual report.* Not later than May 1 of each year, an interstate pipeline must file with the Commission an annual report that contains, for each docketed transportation service provided during the preceding calendar year under § 284.102, the following information:

(1) The docket number assigned to the transaction;

(2) Total volumes transported for the transaction; and

(3) Total revenues received for the transaction.

(d) *Notification of termination.* Not later than thirty days after the termination of any transportation arrangement under § 284.102, the interstate pipeline must file with the Commission an original and five conformed copies of a statement including the following information:

(1) The docket number assigned to the transaction and the date the transaction was terminated;

(2) The total volumes transported under the arrangement;

(3) The total revenues received; and

(4) A statement certifying that the service was provided under the terms and conditions previously reported in that docket.

(e) *Filing fees.* Each initial full report required by paragraph (a) of this section must be accompanied by the fee prescribed in § 381.404 of this chapter or by a petition for waiver under § 381.106 of this chapter.

(f) *Reporting format.* Each initial report filed under paragraph (a) of this section and each subsequent report filed under paragraph (b) of this section must utilize FERC Format No. 549–ST.

§ 284.107 [Removed]

27. Section 284.107 is removed.

28. Section 284.122 is revised to read as follows:

§ 284.122 Transportation by intrastate pipelines.

(a) Subject to the provisions of this subpart and the applicable conditions of Subpart A of this part, any intrastate pipeline may, without prior Commission approval, transport natural gas on behalf of:

(1) Any interstate pipeline; or

(2) Any local distribution company served by an interstate pipeline.

(b) No rate charged for transportation authorized under this subpart may exceed a fair and equitable rate under § 284.123.

(c) Any intrastate pipeline engaged in transportation arrangements authorized under this section must file reports as required by § 284.126.

29. In § 284.123, the initial sentence of paragraph (b) is revised to read as follows:

§ 284.123 Rates and changes.

* * * * *

(b) *Election of rates.* Subject to the conditions in §§ 284.8 and 284.9 of this chapter, an intrastate pipeline may elect to: * * *

* * * * *

30. Section 284.125 is revised to read as follows:

§ 284.125 Effectiveness of existing transportation services.

(a) Any transportation service authorized under this subpart before November 1, 1985, may be continued under the terms and conditions that applied prior to November 1, 1985, with the exception of reporting requirements, until the earlier of:

(1) The expiration of the original term of any transportation agreement as it was in effect on the date of issuance of this order.

(2) October 31, 1987.

(b) Effective November 1, 1985, the reporting requirements of § 284.126 apply to all transportation authorized under this subpart which commenced either prior to, or subsequent to, November 1, 1985.

31. Section 284.126 is revised to read as follows:

§ 284.126 Reporting requirements.

(a) *Initial full report.* Within thirty days after commencing transportion under by this subpart, an intrastate pipeline must file with the Commission and the appropriate state regulatory agency an initial full report, signed under oath by a senior official of the company, consisting of an original and five conformed copies to the Commission, containing the following information:

(1) The identity of the intrastate pipeline and the identity, title, mailing address, and phone number of the person or persons with whom to communicate about the transportation arrangement;

(2) A general description of the intrastate pipeline's existing operations;

(3) A description of the transportation including:

(i) The identity of the parties;

(ii) The dates of commencement and projected termination of the service;

(iii) The estimated total and maximum daily quantities of natural gas to be transported by the intrastate pipeline;

(iv) The points between which the natural gas is to be transported by the intrastate pipeline;

(v) The location (*i.e.*, state) of the original source and the location (*i.e.*, state) of the ultimate delivery point of the gas; and

(vi) The rate to be charged.

(4) A statement of the basis upon which the intrastate pipeline determined that the service provided is comparable to service provided for under that rate schedule, if the intrastate pipeline is charging a rate under § 284.123(b)(1)(ii) of this chapter; and

(5) A statement that:

(i) The appropriate state regulatory agency has been notified that the Commission presumes that all revenues received by an intrastate pipeline under rates for transportation under § 284.122 established under § 284.123(b)(1) of this chapter, have been or will be taken into account by the appropriate state regulatory agency for purposes of establishing transportation rates charged by that intrastate pipeline for service to intrastate customers; and

(ii) Any contract for the transportation arrangement provides that it is subject to this subpart.

(b) *Subsequent reports.* (1) An intrastate pipeline that files an initial report under paragraph (a) of this section must amend that report to reflect any material change with pertinent transportation arrangement.

(2) Any changes in the initial report required by this paragraph must be filed with the Commission and the appropriate state regulatory agency within 30 days of the material change, and must be signed under oath by a senior official of the company, and consist of an original and five conformed copies to the Commission.

(c) *Annual report.* Not later than May 1 of each year, each intrastate pipeline must file an annual report with the Commission and the appropriate state regulatory agency that contains, for each docketed transportation service provided during the preceding calendar year under § 284.122, the following information:

(1) The docket number assigned to the transaction;

(2) Total volumes transported for the transaction; and

(3) Total revenues received for the transaction.

(d) *Notification of termination.* Not later than thirty days after the termination of any transportation arrangement authorized under § 284.122, the intrastate pipeline must file with the Commission and with the appropriate state regulatory agency a statement, consisting of an original and five conformed copies to the Commission, including the following information:

(1) The docket number assigned to the transaction and the date the transaction was terminated;

(2) The total volumes transported under the arrangement;

(3) The total revenues received; and

(4) A statement certifying that the service was provided under the terms and conditions previously reported in that docket.

(e) *Filing fees.* Each initial report required by paragraph (a) of this section must be accompanied by the fee set forth in § 381.404 of this chapter, or a petition for waiver under § 381.106 of this chapter.

(f) *Reporting format.* Each initial report filed under paragraph (a) of this section and each subsequent report filed under paragraph (b) of this section must utilize FERC Format No. 549–ST.

§ 284.127 [Removed]

32. Section 284.127 is removed.

§§ 284.200-284.208 [Removed]

33. Subpart F (§§ 284.200-284.208) is removed.

34. The title of Subpart G of Part 284 is revised to read as follows:

Subpart G—Blanket Certificates Authorizing Certain Transportation by Interstate Pipelines on Behalf of Others and Services by Local Distribution Companies

35. Section 284.221 is revised to read as follows:

§ 284.221 General rule; transportation by interstate pipelines on behalf of others.

(a) *Blanket certificate.* Any interstate pipeline may apply under this section for a single blanket certificate authorizing the transportation of natural gas on behalf of others in accordance with this subpart. A certificate of public convenience and necessity under this section is granted pursuant to section 7 of the Natural Gas Act.

(b) *Application procedure.* (1) An application for a blanket certificate under this section must include:

(i) The name of the interstate pipeline; and

(ii) A statement by the interstate pipeline that it will comply with the conditions in paragraph (c) of this section.

(2) Upon receipt of an application under this section, the Commission will conduct a hearing pursuant to section 7(c) of the Natural Gas Act and § 157.11 of this chapter and, if required by the public convenience and necessity, will issue to the interstate pipeline a blanket certificate authorizing such pipeline company to transport natural gas, as provided under this subpart.

(c) *General conditions.* Any blanket certificate under this subpart is subject to the conditions of Subpart A of this part.

(d) *Pre-grant of abandonment.* Pursuant to section 7(b) of the Natural Gas Act abandonment of transportation services is authorized upon the expiration of the contractual term of each individual transportation arrangement authorized under a certificate granted under this section.

(e) *Availability of regular certificates.* This subpart does not preclude an interstate pipeline from applying for an individual certificate of public convenience and necessity for any particular transportation service.

(f) *Cross references.* (1) Any local distribution company served by an interstate pipeline may apply for a blanket certificate to perform certain services under § 284.224 of this chapter.

(2) Any interstate pipeline may apply under Subpart F of Part 157 of this chapter for a blanket certificate to construct or acquire and operate certain natural gas facilities that are necessary to provide transportation under § 284.222 or § 284.223.

(3) Section 157.208 of this chapter provides automatic authorization for the construction, acquisition, operation, and miscellaneous rearrangement of certain eligible facilities, as defined in § 157.202 of this chapter, subject to limits specified in § 157.208(d) of this chapter and § 284.11.

(4) Authorization for sales taps is subject to the prior notice procedures under §§ 157.211(b) and 157.205.

(g) *Flexible receipt point authority.*—(1) An interstate pipeline authorized to transport gas under a certificate granted under this section may, at the request of the shipper and without prior notice:

(i) Reduce or discontinue receipts of natural gas at a particular receipt point from a supplier; and

(ii) Commence or increase receipts at a particular receipt point from that supplier or any other supplier.

(2) The total natural gas volumes received by the interstate pipeline following any such reassignment under this paragraph must not exceed the total volume of natural gas that the interstate pipeline may transport on behalf of the shipper under a certificate granted under this section.

(3) The receipt points to which natural gas volumes may be reassigned under this paragraph include eligible facilities under § 157.208 which are authorized to be constructed and operated pursuant to a certificate issued under Subpart F of Part 157 of this chapter.

(h) *Flexible delivery point authority.*—(1) An interstate pipeline authorized to transport gas under a certificate issued pursuant to this section may at the request of the shipper and without prior notice:

(i) Reduce or discontinue deliveries of natural gas to a particular delivery point; and

(ii) Commence or increase deliveries at a particular delivery point.

(2) The total natural gas volumes delivered by the interstate pipeline following any such reassignment must not exceed the total amount of natural gas that the interstate pipeline is authorized under a certificate issued pursuant to this section to transport on behalf of the shipper.

(3) The delivery points to which natural gas volumes may be reassigned under this paragraph include facilities authorized to be constructed and operated only under §§ 157.211 and 157.212 and the prior notice conditions of § 157.205 of this chapter.

36. Part 284 is amended by redesignating § 284.222 as new § 284.224, adding new § 284.222 and new § 284.223 and revising paragraphs (b), (d)(1), (e)(1), and (g) of redesignated § 284.224 to read as follows:

§ 284.222 Transportation by interstate pipelines on behalf of other interstate pipelines.

An interstate pipeline issued a certificate under § 284.221 may transport natural gas on behalf of another interstate pipeline subject to the same terms and conditions, rates and charges, and reporting requirements as apply to transactions authorized under Subpart B of this part.

§ 284.223 Transportation by interstate pipelines on behalf of shippers other than interstate pipelines.

(a) *Automatic authorization.*—(1) An interstate pipeline issued a certificate under § 284.221 may for one period that may not exceed 120 days, transport any natural gas for any shipper for any end-use by that shipper or any other person without prior notice to the Commission.

(2) If an interstate pipeline and a shipper at any time conducted a transportation arrangement under paragraph (a)(1) of this section or previously-effective §157.209, an additional 120-day transportation authority is permitted only if, after the commencement of the previous 120-day transportation term and prior to the commencement of the new 120-day transportation term under this subparagraph, the transportation arrangement was authorized under the prior notice procedures of § 157.205 of this chapter.

(b) *Prior notice.* Subject to the prior notice requirements of § 157.205 of this chapter, an interstate pipeline issued a certificate under § 284.221 may transport any natural gas for any shipper for any end-use for any duration by that shipper or any other person.

(c) *Contents of prior notice filings under § 284.223.* In addition to the requirements of § 157.205(b) of this Chapter, prior notice filing under § 284.223 for transportation under paragraph (b) of this section must contain:

(1) The name of the shipper;

(2) The volumes of gas to be transported on a peak day, on an average day, and on an annual basis;

(3) A copy of the executed transportation agreement;

(4) A separate clear description of any agency relationship under which a local distribution company or affiliate of the shipper will receive natural gas on behalf of the shipper, unless such agency relationship is clearly described in the executed transportation agreement;

(5) A statement of the projected costs of any facilities that will be constructed in order to provide the transportation service, as well as any other facilities that will be utilized together with an identification of the location of such facilities; and

(6) If the interstate pipeline has transported for the same shipper under the 120-day automatic authorization provisions of paragraph (a) of this section, the docket numbers under which the pipeline or any person acting on its behalf made any filings required with respect to such transportation.

(d) *Fees.* When filed with the Commission, each initial report required by paragraph (f)(1) of this section must be accompanied by the fee set forth in § 381.404 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

(e) *Reporting format.* Each initial report filed under paragraph (f)(1) of this section and each subsequent report filed under paragraph (f)(2) of this section must utilize FERC Format No. 549–ST.

(f) *Reporting requirements.*—(1) *Initial full report.* Within thirty days after commencing transportation authorized by paragraph (a) of this section, an interstate pipeline must file with the Commission an initial full report, signed under oath by a senior official of the company, consisting of an original and five conformed copies containing a description of the transportation service, including:

(i) The identities of the parties;

(ii) The dates of commencement and projected termination of the service;

(iii) The estimated total and maximum daily quantities of natural gas to be transported by the interstate pipeline;

(iv) The points between which the natural gas is to be transported by the interstate pipeline; and

(v) The location (*i.e.*, state) of the original source and the location (*i.e.*, state) of the ultimate deliver point of the gas.

(2) *Subsequent reports.* (i) An interstate pipeline that files an initial report under paragraph (f)(1) of this section must amend that report to reflect any material change in the pertinent transportation arrangement.

(ii) Any changes in the initial report required by this paragraph must be filed with the Commission within thirty days of the related changed circumstances, and must be signed under oath by a senior official of the company, and consist of an original and five conformed copies.

(3) *Annual report.* Not later than May 1 of each year, each interstate pipeline must file with the Commission an annual report that contains, for each docketed transportation service provided during the preceding calendar year under authority of paragraph (a) and (b) of this section, the following information:

(i) The docket number assigned to the transaction;

(ii) Total volumes transported for the transaction; and

(iii) Total revenues received for the transaction.

(4) *Notification of termination.* Not later than thirty days after the termination of any transportation arrangement under § 284.223(a), the interstate pipeline company must file with the Commission an original and five conformed copies of a statement including the following information:

(i) The docket number assigned to the transaction and the date the transaction was terminated;

(ii) The total volumes transported under the arrangement;

(iii) The total revenues received; and

(iv) A statement certifying that the service was provided under the terms and conditions previously reported in this docket.

(g) *Transitional rule for transportation arrangements.*—(1) In the case of transportation authorized under § 157.209(a)(1) which commenced prior to November 1, 1985, such transportation is deemed to be authorized under this section for the full term originally certificated subject to the provisions of § 284.7 of this chapter. In all other respects, the terms and conditions existing prior to November 1, 1985, shall continue for this period.

(2) Except as provided in paragraph (3) of this section, a transportation service authorized under § 157.209(e) prior to November 1, 1985, is authorized under this section for the full term of the underlying agreement if:

(i) The interstate pipeline company files before November 1, 1985, a statement of notification that it will, beginning November 1, 1985, comply with §§ 284.8(b) and 284.9(b) and § 284.7; and

(ii) The existing transportation service was—

(A) Subject to the notice and protest procedures of § 157.205 and the application was not protested or any protest was withdrawn; or

(B) Authorized on a self-implementing basis pursuant to § 157.209(e)(1) for 120 days, and time remains in that 120-day term past October 31, 1985.

(3) Authorization for transportation service under paragraph (g)(2) of this section:

(i) Ceases on December 15, 1985, unless the pipeline files for a blanket certificate under § 284.221 before that date; and

(ii) Is subject to compliance with the requirements of § 284.8(b), § 284.9(b), as appropriate, and § 284.7.

(4) Effective November 1, 1985, the reporting requirements of § 284.223(f) apply to all transportation authorized under this subpart which commenced either prior to, or subsequent to, November 1, 1985.

§ 284.224 Certain transportation, sales, and assignments by local distribution companies.

* * * * *

(b) *Blanket certificate.*—(1) Any local distribution company served by an interstate pipeline or any Hinshaw pipeline may apply for a blanket certificate under this section.

(2) Upon application for a certificate under this section, a hearing will be conducted under section 7(c) of the Natural Gas Act, § 157.11 of this chapter, and Subpart H of Part 385 of this chapter.

(3) The Commission will grant a blanket certificate to such local distribution company or Hinshaw pipeline under this section, if required by the present or future public convenience and necessity. Such certificate will authorize the local distribution company to engage in the sale, transportation, or assignment of natural gas that is subject to the Commission's jurisdiction under the Natural Gas Act, to the same extent that and in the same manner that intrastate pipelines are authorized to engage in such activities by Subparts C, D, and E of this part, except as otherwise provided in paragraph (e)(2) of this section.

* * * * *

(d) *Effect of certificate.* (1) Any certificate granted under this section will authorize the certificate holder to engage in transactions of the type authorized by Subparts C, D, and E of this part.

* * * * *

(e) *General conditions.* (1) Except as provided in paragraph (e)(2) of this section, any transaction authorized under a blanket certificate is subject to the same rates and charges, terms and conditions, and reporting requirements that apply to a transaction authorized for an intrastate pipeline under Subparts C, D, and E of this part.

* * * * *

(g) *Hinshaw pipeline without blanket certificate.* A Hinshaw pipeline that does not obtain a blanket certificate under this section is not authorized to sell, assign, or transport natural gas as an intrastate pipeline actions by Subparts C, D, and E of this part.

* * * * *

37. Section 284.243 is revised to read as follows:

§ 284.243 Statement of policy.

(a) *Interstate pipelines.* Any interstate pipeline, or eligible distributor acting on behalf of an interstate pipeline, may file an application under § 284.244 for covered transportation under either section 7(c) of the Natural Gas Act or section 311(a)(1) of the Natural Gas Policy Act (NGPA). The Commisson will consider such applications on a priority basis. Covered transportation is subject to the terms and conditions under § 284.245.

(b) *Interstate pipelines.* Any intrastate pipeline may, without application or prior Commission approval, transport natural gas for ultimate delivery into the service area of an eligible distributor under section 311(a)(2) of the NGPA, subject to the conditions applicable to transportation by interstate pipelines under section 311 of the NGPA and under Subparts A and C of this part.

38. In § 284.244, the initial sentence and paragraphs (a) and (b) are revised to read as follows:

§ 284.244 Application requirements for interstate pipelines.

An application by an interstate pipeline for covered transportation must include the following:

(a) A stated preference for authorization under either section 7(c) of the Natural Gas Act or section 311(a)(1) of the NGPA. If section 7(c) authorization is preferred, the application must also comply with Part 157. If section 311(a)(1) authorization is preferred, the application must comply with the requirements of Subpart B of this part.

(b) A statement that all of the natural gas transported under this subpart, other than normal compressor fuel and loss allowance, will ultimately enter the eligible distributor's service area.

* * * * *

39. In § 284.245, paragraph (a) is revised, paragraphs (b) and (c) are removed, and a new paragraph (b) is added to read as follows:

§ 284.245 Terms and conditions.

(a) *Interstate pipelines.* (1) *General.* Covered transporation by an interstate pipeline authorized under section 7(c) of the Natural Gas Act or under section 311(a)(1) of the NGPA, is subject to the terms and conditions, rates and charges, and reporting requirements of Subparts A and B of this part that apply to transportation by interstate pipelines under section 311 of the NGPA.

(2) *Natural gas supply emergency.* If the President declares a natural gas supply emergency under secton 301 of the NGPA in the United States or in a region served by the interstate pipeline, the authorization of the covered transportation may be suspended or terminated by order of the Commission.

(b) *Intrastate pipelines.* Any intrastate pipeline may, without application or prior Commission approval, transport natural gas under § 284.243 for ultimate delivery into the service area of an eligible distributor under section 311(a)(2) of the NGPA, subject to the conditions applicable to transportation by intrastate pipelines under section 311 of the NGPA and under Subparts A and C of this part.

40. The authority for Part 375 is revised to read as follows:

Advisory: Department of Energy Organization Act (42 U.S.C. 7101-7352), E.O. 12009, 3 CFR, 1977 Comp., p. 142; Administrative Procedure Act (5 U.S.C. 553); Federal Power Act (16 U.S.C. 791-828c), as amended; Natural Gas Act (15 U.S.C. 717-717w), as amended; Natural Gas Policy Act of 1978 (15 U.S.C. 3301 et seq.); Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.) unless otherwise noted.

40a. Section 375.307(a)(15) is amended by adding before the term "Subpart F of Part 157," the phrase "Subpart G of Part 284 and".

41. In § 375.307, new paragraphs (v) and (w) are added to read as follows:

§ 375.307 Delegation to the Director of the Office of Pipeline and Producer Regulation.

* * * * *

(v) Grant any producer's uncontested application for abandonment, in accordance with § 2.77 of this chapter.

(w) Pass upon any uncontested application for a blanket certificate under § 284.221 of this chapter.

42. The authority for part 381 continues to read as follows:

Authority: Department of Energy Organization Act (42 U.S.C. 7101-7352), E.O. 12009, 3 CFR, 1977 Comp., p. 142; Federal Power Act (16 U.S.C. 791-828c), as amended; Natural Gas Act (15 U.S.C. 717-717w), as amended; Natural Gas Policy Act of 1978 (15 U.S.C. 3301 et seq.); Public Utilities Regulatory Policies Act of 1978 (16 U.S.C. 2601 et seq.); Independent Offices Appropriations Act (31 U.S.C. 9701 (1982)); Interstate Commerce Act (49 U.S.C. 1-27), unless otherwise noted.

43. Section 381.404 is revised to read as follows:

§ 381.404 Initial or extension reports for Title III transactions.

The fee established for an initial or extension report is $800. Such fee must be submitted in accordance with Subpart A of this part and §§ 284.106(e), 284.126(e), 284.148(c), 284.165(d), and 284.223(d).

[FR Doc. 85-24943 Filed 10-17-85; 8:45 am]

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Friday
October 18, 1985

Part IX

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

October 1, 1985.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of October 1, 1985, of 23 deferrals contained in the first special message of FY 1986. There were no rescissions proposed. This message was transmitted to the Congress on October 1, 1985.

Rescissions (Table A and Attachment A)

As of October 1, 1985, there were no rescission proposals pending before the Congress.

Deferrals (Table B and Attachment B)

As of October 1, 1985, $1,614.4 million in 1986 budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1986.

Information From Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** listed below: Vol. 50, FR p. 41100, Tuesday, October 8, 1985

James C. Miller III,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1986 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	0
Accepted by the Congress	0
Rejected by the Congress	0
Pending before the Congress	0

****

TABLE B

STATUS OF 1986 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$1,628.8
Routine Executive releases through October 1, 1985	-14.3
Overturned by the Congress	0
Currently before the Congress	$1,614.4

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1986

As of October 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
None.								

Attachment B - Status of Deferrals - Fiscal Year 1986

As of October 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 10-1-85
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs...	D86-1	10,000		10-1-85					10,000
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal.....................	D86-2	77,913		10-1-85					77,913
Timber salvage sales.........................	D86-3	22,854		10-1-85					22,854
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, all services.........	D86-4	353,079		10-1-85	5,298				347,781
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation........................	D86-5	1,168		10-1-85					1,168

Attachment B - Status of Deferrals - Fiscal Year 1986

As of October 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 10-1-85
DEPARTMENT OF ENERGY									
Energy Programs									
Fossil energy research and development......	D86-6	9,247		10-1-85					9,247
Fossil energy construction..................	D86-7	7,038		10-1-85					7,038
Naval petroleum and oil shale reserves......	D86-8	155,668		10-1-85					155,668
Energy conservation.........................	D86-9	9,880		10-1-85					9,880
SPR petroleum account.......................	D86-10	536,958		10-1-85					536,958
Alternative fuels production................	D86-11	1,149		10-1-85					1,149
Power Marketing Administration									
Southeastern Power Administration, Operation and maintenance..................	D86-12	25,344		10-1-85	536				24,808
Southwestern Power Administration, Operation and maintenance..................	D86-13	5,000		10-1-85					5,000
Western Area Power Administration, Construction, rehabilitation, operation and maintenance..........................	D86-14	27,095		10-1-85					27,095
Departmental Administration									
Departmental administration.................	D86-15	8,501		10-1-85	8,501				0
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program)........	D86-16	3,000		10-1-85					3,000
DEPARTMENT OF JUSTICE									
Bureau of Prisons									
Buildings and facilities....................	D86-17	20,000		10-1-85					20,000
Office of Justice Programs									
Crime victims fund..........................	D86-18	100,000		10-1-85					100,000

Attachment B - Status of Deferrals - Fiscal Year 1986

As of October 1, 1985 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 10-1-85
DEPARTMENT OF STATE									
Bureau of Refugee Programs									
United States emergency refugee and migration assistance fund, executive.......	D86-19	18,082		10-1-85					18,082
Other									
Assistance for implementation of a Contadora agreement.........................	D86-20	2,000		10-1-85					2,000
DEPARTMENT OF TRANSPORTATION									
Urban Mass Transportation Administration									
Discretionary grants.........................	D86-21	223,600		10-1-85					223,600
OTHER INDEPENDENT AGENCIES									
Pennsylvania Avenue Development Corporation									
Land acquisition and development fund.......	D86-22	10,947		10-1-85					10,947
Railroad Retirement Board									
Milwaukee railroad restructuring, administration.............................	D86-23	243		10-1-85					243
TOTAL, DEFERRALS.............................		1,628,765	0		14,335	0		0	1,614,430

[FR Doc. 85-24904 Filed 10-17-85; 8:45 am]

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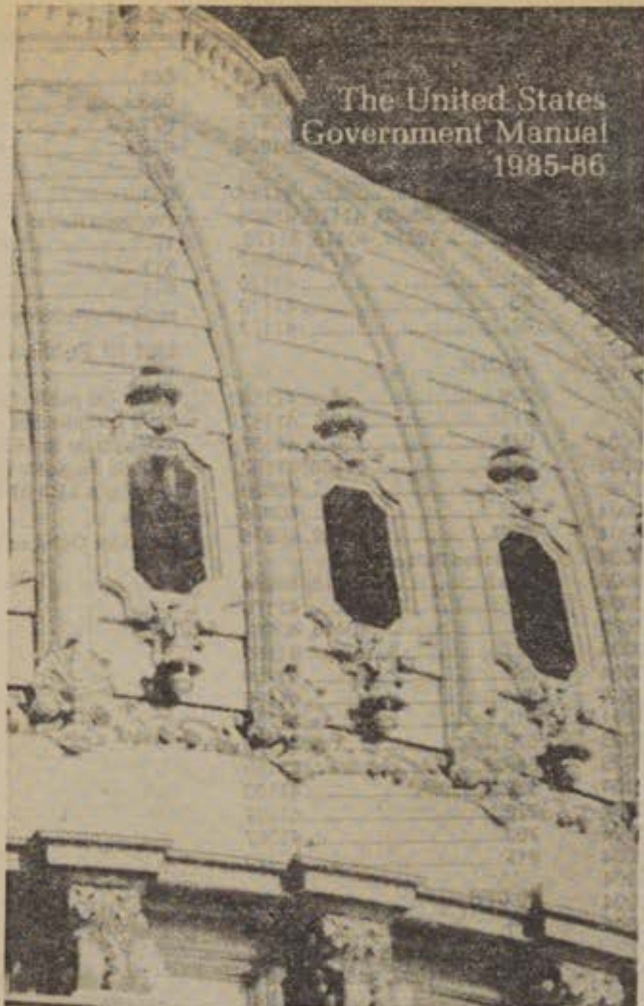

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