

# Transportation Digest Federal Register

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Monday  
February 10, 1986

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## Selected Subjects

### **Air Pollution Control**

Environmental Protection Agency

### **Aviation Safety**

Federal Aviation Administration

### **Bridges**

Coast Guard

### **Electric Utilities**

Federal Energy Regulatory Commission

### **Freight**

Maritime Administration

### **Marine Safety**

Coast Guard

### **Maritime Carriers**

Maritime Administration

### **Marketing Agreements**

Agricultural Marketing Service

### **Motor Carriers**

Interstate Commerce Commission

### **National Banks**

Comptroller of Currency

### **Natural Gas**

Federal Energy Regulatory Commission

### **Navigation (Water)**

Engineers Corps

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## Selected Subjects

### Radio Broadcasting

Federal Communications Commission

### Railroads

Interstate Commerce Commission

### Securities

Comptroller of Currency

### Television Broadcasting

Federal Communications Commission

### Trade Practices

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# Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 991

#### Hops of Domestic Production, Marketing Order 991; Suspension of Certain Provisions

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Suspension Order.

**SUMMARY:** This action suspends certain provisions of Marketing Order 991, Hops of Domestic Production, for an indefinite period, because the Secretary of Agriculture has determined that such provisions obstruct and do not tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended (Act) (7 U.S.C. 601-674).

**EFFECTIVE DATE:** February 10, 1986.

**FOR FURTHER INFORMATION CONTACT:** Joseph A. Gribbin, Director, Fruit and Vegetable Division, AMS, USDA, Washington, DC 20250. Telephone: (202) 447-4722.

**SUPPLEMENTARY INFORMATION:** This action is governed by the provisions of section 8c(16)(A) of the Act (7 U.S.C. 608c(16)(A)), and section 991.78 of the Hop Marketing Order (7 CFR 991.78).

The Department published an order in the *Federal Register* on July 1, 1985, which stated that: "Marketing Order No. 991 (7 CFR Part 991) regulating the handling of domestically produced hops, issued under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and all rules and regulations and supplementary orders heretofore issued thereunder and now effective, are hereby terminated effective December 31, 1985." 50 FR 26977.

It was the Secretary's determination that the Hop Marketing Order obstructs

and does not tend to effectuate the declared policy of the Act. The reasons supporting such determination are explained in detail in the text of the July 1, 1985, termination order.

The Food Security Act of 1985 which was signed into law on December 23, 1985, provides that: "The Secretary of Agriculture may not terminate any marketing order under section 8c(16) of the Agricultural Adjustment Act (7 U.S.C. 608c(16)), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, if such termination becomes effective before January 16, 1986."

In enacting this provision, Congress intended that the Hop Marketing Order not be terminated as announced on July 1, 1985. It has, therefore, been determined that the Hop Marketing Order did not terminate and currently remains in effect.

For the reasons set forth in the July 1, 1985, termination order, the Hop Marketing Order now in effect has not achieved the statutory purposes. The principal operative provisions of the order such as the base allotment system which determines the market share of hops allocated to each producer, the "bona fide" effort requirement, and the transfer provisions have clearly failed to achieve the marketing goals contemplated by the Act. Entry of new producers has been severely restricted, a secondary market has developed which focuses more on allotment base trading than on production and marketing, and there remains an imbalance between supply and demand.

Therefore, since the order obstructs and does not tend to effectuate the declared policy of the Act, this suspension of the principal operative provisions is issued.

It is hereby found and determined that provisions of the order dealing with volume limitation, pooling, and transfers, and the administrative rules and regulations promulgated to effectuate such provisions, obstruct and do not tend to effectuate the declared policy of the Act. Specifically, such order provisions are found in §§ 991.36 through 991.41 and §§ 991.45 and 991.46.

The hop industry and other interested persons have been on notice of the Secretary's findings and determination regarding the Hop Marketing Order since the termination order which was published on July 1, 1985. Therefore,

good cause exists for making this suspension order effective upon publication in the *Federal Register*.

#### List of Subjects in 7 CFR Part 991

Marketing agreements and order.

It is therefore ordered, that the following provisions of the Hop Marketing Order (Part 991—Hops in Domestic Production) are suspended until further notice.

#### PART 991—HOPS IN DOMESTIC PRODUCTION

1. The authority citation for 7 CFR Part 991 continues to read as follows:

**Authority:** Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. The following sections are suspended:

a. Sections 991.36 through 991.38—Volume Limitations.

b. Sections 991.39 through 991.41—Pooling.

c. Sections 991.45 through 991.46—Transfers.

3. The following sections of the Subpart Administrative Rules and Regulations are suspended:

a. Sections 991.132, 991.138, 991.139, 991.139a, 991.141, 991.146, 991.205, 991.219, and 991.220.

Signed at Washington, DC on: Tuesday, February 4, 1986.

**Raymond D. Lett,**

*Assistant Secretary, Marketing and Inspection Services.*

[FR Doc. 86-2827 Filed 2-7-86; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Comptroller of the Currency

#### 12 CFR Part 11

[Docket No. 86-3]

#### Securities Exchange Act Disclosure Rules; Technical Amendments

**AGENCY:** Comptroller of the Currency, Treasury.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** The Office of the Comptroller of the Currency ("Office") is publishing technical amendments to its Securities Exchange Act Disclosure Rules codified at 12 CFR Part 11. The technical

amendments involve the correction of errors in some of the section or subsection designations and cross references in Part 11. This action is necessary because the Office recently adopted final amendments to Part 11 which included a complete reformatting and reorganization of Part 11, and which became effective on December 30, 1985. The intended effect of the technical amendments is to facilitate compliance by national banks with the requirements of amended Part 11.

No collection of information requirements are involved in the technical amendments.

**EFFECTIVE DATE:** December 30, 1985.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Dugas, Securities & Corporate Practices Division, telephone (202) 447-1954, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The Office is publishing technical amendments to its Securities Exchange Act Disclosure Rules, 12 CFR Part 11, to correct errors in some of the section and subsection designations and cross references.

On Wednesday, October 30, 1985, the Office published in the *Federal Register* final amendments to Part 11 at 50 FR 45276 (1985). These amendments, which became effective on December 30, 1985, included a complete reformatting and reorganization of Part 11. Errors in some of the section or subsection designations and in some of the cross references have come to the attention of the Office. This final rule is intended to correct those errors.

**Regulatory Impact Analysis**

Pursuant to Executive Order 12291, the Office has determined that these amendments do not constitute a major rule. Therefore, a regulatory impact analysis is not required.

**Regulatory Flexibility Act**

The Comptroller of the Currency has certified that this final rule will not have a significant impact on a substantial number of small banks or other entities.

**Adoption Without Notice and Comment**

The Office has found that notice and comment procedures concerning this rulemaking are unnecessary. This rulemaking merely makes technical changes intended to eliminate confusion. There is no substantive effect.

**List of Subjects in 12 CFR Part 11**

National banks, Securities disclosure rules.

For reasons set out in the preamble, Part 11 of Chapter I of Title 12 is amended as follows:

**PART 11—[AMENDED]**

1. The authority citation for 12 CFR Part 11 continues to read as follows:

Authority: 15 U.S.C. 781, 78m, 78n, 78p, 78w

2. The cross reference table is amended by revising the following entries to read as follows:

<b>SUBPART B—REGISTRATIONS</b>			
Deregistration.....	11.4(y)	(1) (21)–(3)	11.207 (a), (b)
<b>SUBPART D—TRANSACTIONS BY CERTAIN SHAREHOLDERS</b>			
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Exemption of certain securities from section 16(c) of the Exchange Act.....	11.6	(t)–(v), (s)	11.412 (a)–(d)

**§ 11.102 [Amended]**

3. Section 11.102 is amended by removing the asterisks following the computational note in paragraph (ii)(4).

**§ 11.105 [Amended]**

4. Section 11.105(c) is amended by changing the reference from "paragraph (c)(2)" to "paragraph (b)."

**§ 11.106 [Amended]**

5. Section 11.106(b)(2)(iii) is amended by changing the reference from "§ 1.832" to "§ 11.832."

**§ 11.202 [Amended]**

6. Section 11.202(b) is amended by changing the reference from "paragraph (p)" to "§ 11.724."

**§ 11.390 [Amended]**

7. Section 11.390 (Form F-2), General Instruction E(3) is amended by changing the reference from 11 "Part III (Items 10, 11, and 12)" to "Part III (Items 10, 11, 12 and 13)."

8. Section 11.390, Item 14 is amended by redesignating the last paragraph of that Item from (b) to (d).

**§ 11.392 [Amended]**

9. Section 11.392, Item 4 is amended by redesignating the last paragraph of the body of that Item from (b) to (d).

**§ 11.401 [Amended]**

10. Section 11.401(b)(1), introductory text is amended by changing the reference from "paragraph (i)" to "paragraph (a)."

11. Section 11.401(b)(2) is amended by changing the reference from "§ 11.401(a)" to "§ 11.401(c)."

12. Section 11.401(b)(3)(i)(A) is amended by changing the reference from "§ 11.401(b)(1) (i) or (ii)" to "§ 11.401(b)(1) or (2)."

13. Section 11.401(b)(3)(i)(C) is amended by changing the reference from "§ 11.401(a)" to "§ 11.401(c)."

**§ 11.403 [Amended]**

14. Section 11.403(d)(1)(i) is amended by changing the reference from "paragraph (ii)" to "paragraph (b)."

15. Section 11.403(d)(1)(ii) is amended by changing the reference from "Paragraph (1)(i)" to "Paragraph (d)(1)(i)," and by changing the reference from "§ 11.401(a)" to "§ 11.401(c)."

16. Section 11.403(d)(3)(ii) is amended by changing the reference from "§ 11.401" to "§ 11.401(b)(1)(ii)(G)."

**§ 11.410 [Amended]**

17. Section 11.410(e)(3) is amended by changing the reference from "§ 11.411(b)" to "§ 11.411(c)."

17a. Section 11.410(g)(2) is amended by changing the reference from "§ 11.410(h)(1)(ii)" to "§ 11.410(g)(1)(ii)."

18. Section 11.410(g)(3) is amended by changing the reference from "§ 11.410(h)(1) or (2)" to "§ 11.410(g)(1) or (2)."

**§ 11.411 [Amended]**

19. Section 11.411(b)(2) is amended by changing the reference from "this paragraph (b)" to "§ 11.411(a)."

20. Section 11.411(c)(5)(V) is amended by changing the reference from "section 16(d)" to "section 16(b)."

21. Section 11.411(d) is amended by changing the reference in § 11.411(d)(1) from "paragraph (m)(2) of this section" to "§ 11.411(c)(2)"; changing the reference in § 11.411(d)(2) from "paragraph (m)(1) of this section" to "§ 11.411(c)(1)"; and changing the reference in § 11.411(d)(2) from "this paragraph m" to "this paragraph (d)."

22. Sections 11.411(d)(4) and (5) are amended by changing the references

from "this paragraph (c)" to "this paragraph (d)."

§§ 11.411 and 11.412 [Amended]

23. Section 11.411(i) is amended by redesignating it as § 11.412(d).

§ 11.412 [Amended]

24. Section 11.412(b)(1) is amended by redesignating paragraphs (1) and (2) as (i) and (ii).

§ 11.491 [Amended]

25. Section 11.491, Item 3 is amended by changing the reference in Item 3(g) from "§ 11.401(a)(1)(ii)(G)" to "§ 11.401(b)(1)(ii)(C)" and by changing the reference in Item 3(h) from "11.401(a)(1)(ii)(H)" to "§ 11.401(b)(1)(ii)(H)."

26. Section 11.491, Item 4 is amended by changing the reference from "§ 11.401" to "§ 11.401(b)(2)."

§ 11.507 [Amended]

27. Section 11.507(b)(2) is amended by redesignating (A) and (B) therein as (i) and (ii).

§ 11.511 [Amended]

28. Section 11.511(d) is amended by changing the reference from "§ 11.509(c)" to "§ 11.511(c)."

§ 11.590 [Amended]

29. Section 11.590, Item 4(b)(1) is amended by changing the reference from "§§ 11.511(b)(1) (ii), (iii), (iv), (v) and (vi)" to "§ 11.511(b)(1) (ii), (iii), (iv), (v) and (vi)."

30. Section 11.590 (Form F-5), Item 7 is amended by changing the reference from "Instruction 4 to § 11.813" to "Instruction 2 to § 11.813."

31. Section 11.590, Item 9, Instruction 1, Item 10, Instruction 1 and Item 11, Instruction 1 are amended by changing the reference from "Instruction 5 of § 11.842" to "Instruction 3 to § 11.842(b)."

32. Section 11.590, Item 9, Instruction 4 is amended by changing the reference from "§ 11.506" to "§ 11.506(a)."

§ 11.592 [Amended]

33. Section 11.592, Item 4 is amended by changing the reference from "Item 7(f) of Form F-5" to "§ 11.844(a)."

§ 11.602 [Amended]

34. Section 11.602(b) is amended by changing the reference from "§ 11.604(b)(3)" to "§ 11.602(b)(3)."

§ 11.603 [Amended]

35. Section 11.603(a)(3) is amended by changing the reference from "§ 11.606(e)(2) (i) and (2)" to "§ 11.606(e)(2) (i) and (ii)."

§ 11.611 [Amended]

36. Section 11.611(b) is amended by changing the reference from "§ 11.608" to "§ 11.606."

§ 11.724 [Amended]

37. Section 11.724(d)(2) is amended by changing the reference from "Form 8" to "Form F-20."

§ 11.832 [Amended]

38. Section 11.832(c)(1)(ii)(B)(5)(i) is amended by changing the reference from "paragraph (5)(i)(C)(2)(iv)" to "paragraph (c)(1)(ii)(B)(4)."

§ 11.841 [Amended]

39. Section 11.841(a) is amended by changing the reference from "§ 11.102(q)" to "§ 11.102(o)."

§ 11.841 [Amended]

40. Section 11.841(d)(1) is amended by changing the two references from "paragraph (c)" to "paragraph (b)."

§ 11.841 [Amended]

41. Section 11.841(e), Instruction 2 is amended by changing the reference from "subparagraph (d)" to "subparagraph (e)."

42. Section 11.841(e), Instruction 4 is amended by changing the reference from "§ 11.841(d)" to "this paragraph (e)."

§ 11.844 [Amended]

43. Section 11.844(c)(1)(iv)(D) is amended by changing the reference from "§ 11.844(c)(1)(A) or § 11.844(c)(1)(B)" to "§ 11.844(c)(1)(iv)(A) or § 11.844(c)(1)(iv)(B)."

44. Section 11.844(c)(1)(iv)(E) is amended by changing the reference from "paragraphs (c)(1) (A) and (B)" to "paragraphs (c)(1)(iv) (A) and (B)."

45. Section 11.844(c)(1)(iv)(F) is amended by changing the reference from "paragraph (c)(1) (A) or (B)" to "paragraph (c)(1)(iv) (A) or (B)."

46. Section 11.844(c) is amended by changing the reference in Instruction 2.D from "(A), (B), (C), (D), or (E)" to "(A), (B), (C), (D), (E), or (F)."

47. Section 11.844(c), Instruction 2(D), Note is amended by changing the reference from "paragraphs (d)(1) (iii) and (iv)" to "paragraphs (c)(1) (iii) and (iv)."

Dated: January 31, 1986.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 86-2532 Filed 2-7-86; 8:45 am]

BILLING CODE 4810-33-M

12 CFR Part 11

[Docket No. 86-4]

Securities Exchange Act Disclosure Rules; Correction

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule, corrections.

**SUMMARY:** The Office of the Comptroller of the Currency ("Office") is publishing corrections to its Securities Exchange Act Disclosure Rules codified at 12 CFR Part 11 ("Part 11"). The corrections involve the insertion or deletion of words or minor wording changes, and in one instance, the redesignation of a subsection, none of which have any substantive effect. In addition, four instructions which should have accompanied § 11.841(a), and which were missing in the proposed and final versions of the amended Part 11, are being added. Also, § 11.410(f) is being deleted and replaced with a new § 11.410(f) which corresponds to the material in § 11.6(f) under the previous format of Part 11. This action is necessary because the Office recently adopted final amendments to Part 11 which included a complete reformatting and reorganization of the regulation, and which became effective on December 30, 1985. The intended effect of the technical amendments is to facilitate compliance by national banks with the requirements of amended Part 11.

No collection of information requirements are involved in the technical amendments.

**EFFECTIVE DATE:** December 30, 1985.

**FOR FURTHER INFORMATION CONTACT:**

Michael C. Dugas, Securities & Corporate Practices Division, telephone (202) 447-1954, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The Office is publishing corrections to its Securities Exchange Act Disclosure Rules, 12 CFR Part 11, to insert or delete words or make minor wording changes, and in one instance to redesignate a subsection. The Office is also adding four instructions to § 11.841(a) which clarify that section. All these instructions with the exception of Instruction 5 had previously accompanied Item 6(a) of 12 CFR § 11.51, the portion of the old Part 11 to which new § 11.841(a) corresponds. Also, § 11.410(f), which repeats § 11.410 (e), is being deleted and replaced with a new § 11.410(f). The new § 11.410(f) corresponds to the material in § 11.6(f) under the previous format of Part 11.

which was not proposed for substantive change. Thus there is no substantive effect.

On Wednesday, October 30, 1985, the Office published a final rule at 50 FR 45276 amending Part 11. That final rule which became effective on December 30, 1985, included a complete reformatting and reorganization of the regulation. In the process of administering the amended Part 11, certain missing words or minor errors have come to the attention of the Office. Immediate publication of the corrections in the **Federal Register** is necessary to facilitate compliance by national banks with the requirements of amended Part 11.

For the same reasons, the Office is adding four instructions to § 11.841(a) to clarify that section, and is amending § 11.410(f). The instructions being added to § 11.841(a) are similar to Instructions 2-5 to Item 401(a) of Securities and Exchange Commission (SEC) Regulations S-K, 17 CFR 229.401(a), on which § 11.841(a) is based. The Securities Exchange Act of 1934 requires the Office to issue regulations substantially similar to those adopted by the SEC or publish its reasons for not doing so. The addition of the four instructions would comply with this requirement. In addition, as noted above, all of these instructions, with the exception of Instruction 5, as well as § 11.410(f) as it is being amended, were contained in the comparable provisions of Part 11 in effect prior to December 30, 1985.

#### Special Studies

A. *Competition.* The corrections will have no effect on competition.

B. *Regulatory Impact Analysis.* Pursuant to Executive Order 12291, the Office has determined that this final rule is not a major rule. Therefore, a regulatory impact analysis is not required.

C. *Regulatory Flexibility Act.* The Comptroller of the Currency has certified that this final rule will not have a significant impact on a substantial number of small banks or other entities.

D. *Paperwork Reduction Act.* Pursuant to the Paperwork Reduction Act of 1980, the reporting and recordkeeping requirements of 12 CFR Part 11 were submitted to and approved by the Office of Management and Budget and assigned control number 1557-0106.

E. *Adoption Without Notice and Comment.* The Office has found that notice and comment procedures concerning this rulemaking are unnecessary. This rulemaking merely makes technical changes intended to

eliminate confusion. There is no substantive effect.

#### List of Subjects in 12 CFR Part 11

National banks, Securities disclosure rules.

For the reasons set out in the preamble, Part 11 of Chapter I of Title 12 is being corrected as follows.

#### PART 11—[AMENDED]

1. The authority citation for 12 CFR Part 11 continues to read as follows:

Authority: 15 U.S.C. 781, 78m, 78n, 78p, 78w.

#### § 11.390 [Amended]

2. Section 11.390 General Instruction E(3) is amended by removing the last sentence of that instruction, which reads "See Instruction 4 to § 11.841(b)."

#### § 11.401 [Amended]

3. Section 11.401(a) last sentence, first two words and § 11.401(b)(1), introductory text are amended by changing the words "three copies" to "four copies."

4. Section 11.401(b)(3)(ii) is amended by changing the phrase "bank of such" to "bank issuing such."

5. Section 11.401(c) is amended by changing "December 31, 1979" to "December 31, 1978" and by changing "December 22, 1970" to "December 20, 1970."

#### § 11.402 [Amended]

6. Section 11.402(b) is amended by changing the first two words of the second sentence from "Three copies" to "Four copies."

#### § 11.403 [Amended]

7. The parenthetical citation to Regulation T in § 11.403(b)(3)(iii)(B) should read "(12 CFR 220.1 to 220.130)."

#### § 11.405 [Amended]

8. Section 11.405(b)(2)(iii) is amended by changing the phrase "specific purpose involved" to "specific purchase involved."

9. Section 11.410 is amended by revising paragraph (f) to read as follows:

§ 11.410 **Reports of directors, officers and principal stockholders pursuant to Section 16(a) of the Exchange Act.**

(f) *Exemption from Section 16 of securities purchased or added by odd-lot dealers.* A bank's securities purchased or sold by an odd-lot dealer (1) in odd-lots so far as reasonably necessary to carry on odd-lot transactions, or (2) in round lots to offset odd-lot transactions previously or simultaneously executed or reasonably anticipated in the usual course of

business, shall be exempt from the provisions of section 16 with respect to participation by such odd-lot dealer in such transactions.

#### § 11.411 [Amended]

10. Section 11.411(c)(4)(ii) is amended by changing the phrase "parenthetical clause" to read "first sentence."

#### § 11.490 [Amended]

11. Section 11.490 is amended by removing "(C) or (D)" from the instruction relating to persons who have previously filed on Form F-11A, immediately preceding the first NOTE.

#### § 11.504 [Amended]

12. Section 11.504(b)(4)(i) is amended by adding the word "part" between "integral" and "of."

#### § 11.590 [Amended]

13. Section 11.590, Item 2 is amended by changing "indicated" to "indicate" in the first sentence.

14. Section 11.590, Item 7 is amended by changing the reference from "Instruction 4 to § 11.813" to "Instruction 2 to § 11.813" and by changing the phrase "in which any executive director" to read "in which any executive officer, director."

#### § 11.690 [Amended]

15. Section 11.690 Cover Page, Disclosure (5) should be changed from "Citizenship of Place of Organization" to "Citizenship or Place of Organization."

16. Section 11.690, Item 9, Instruction 1 is amended by changing the reference from "(17 CFR 349.210)" to "(17 CFR 249.210)" and by changing the reference from "SEC Form F-20 (17 CFR 249.200)" to "SEC Form 20-F (17 CFR 249.220f)."

17. Section 11.690, General Instruction B, second sentence, is amended by changing "indentified" to "identified."

18. Section 11.690, General Instruction G(ii) is amended by changing "securites" to "securities."

#### § 11.691 [Amended]

19. Section 11.691, Item 6, paragraph (a) is amended by changing "affected" to "effected."

20. Section 11.841(a) is amended by revising the instructions, to read as follows:

#### § 11.841 Directors and executive officers.

(a) \* \* \*

#### Instructions

1. Do not include any arrangements or understandings with directors or officers of the bank acting solely in their capacities as such.

2. No nominee or person chosen to become a director who has not consented to act as such should be named in response to this paragraph.

3. No information need be given respecting any director whose term of office as a director will not continue after the meeting to which the statement relates.

4. In connection with action to be taken concerning the election of directors, if fewer nominees are named than the number fixed by or pursuant to the governing instruments, state the reasons for this procedure and that proxies cannot be voted for a greater number of persons than the number of nominees named.

5. With regard to proxy statements in connection with action to be taken concerning the election of directors, if the solicitation is made by persons other than management, information shall be given as to nominees of the persons making the solicitation. In all other instances, information shall be given as to directors and persons nominated for election or chosen by management to become directors.

\* \* \* \* \*

**§ 11.841 [Amended]**

21. Section 11.841(c) is amended by changing "chosed" to "chosen."

22. Section 11.841(g) is amended by changing the word "of" to "on," the last time that it occurs.

**§ 11.842 [Amended]**

23. Section 11.842(b) is amended by removing the words "of this section" from Instructions 2 and 4 thereunder, the first and third times they occur in Instruction, 2 and the first time they occur in Instruction 4.

24. Section 11.842(b) is amended by changing the word "these" to "those" in Instruction 1 thereunder.

**§ 11.843 [Amended]**

25. Instruction 6 to § 11.843(b) is removed and Instruction 7 is redesignated as Instruction 6.

**§ 11.844 [Amended]**

26. Section 11.844(a) is amended by changing the phrase "subsidiaries was or to be" to "subsidiaries was or is to be."

27. Section 11.844(b)(1)(i) is amended to remove "or other entity's."

28. Section 11.844(b)(2)(i) is amended to remove "or other entity's."

29. Section 11.844(c) is amended by removing the words "or collectibility" from Instruction 3.

30. Section 11.844, Instruction 1 at the end of the section is amended by inserting the word "or" after "§ 11.842 the first time "§ 11.842" appears.

**§ 11.911 [Amended]**

31. Section 11.911(e) is amended by changing "134" to "135."

**§ 11.912 [Amended]**

32. Section 11.912(b) is amended by changing the parenthetical from "(FFIEC 033)" to "(FFIEC 032, 033, 034, as applicable)."

**§ 11.931 [Amended]**

33. Section 11.931, line item 22 is amended by inserting "(a)" after "Limited-life preferred stock" and, in line item 22(b) by changing the phrase "in the event of a required dividend" to read "in the event that a required dividend."

Dated: January 31, 1986.

Robert L. Clarke,

Comptroller of the Currency.

[FR Doc. 86-2531 Filed 2-7-86; 8:45 am]

BILLING CODE 4310-33-M

**FARM CREDIT ADMINISTRATION**

**12 CFR Part 614**

**Loan Policies and Operations; Effective Date**

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of Effective Date.

**SUMMARY:** The Farm Credit Administration (FCA) published an amended Regulation § 614.4330 that deals with loan participation agreements containing required repurchase provisions. The former regulation prohibited Farm Credit System (System) institutions from entering into such agreements with required repurchase provisions. The amended regulation lifts this restriction for System institutions and also applies to loan participation agreements between System sellers and commercial lenders.

The final rule was published in the November 14, 1985, *Federal Register*, and provided that notice of the actual effective date would be subsequently published (50 FR 47043). In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the *Federal Register* during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress the effective date of this rule was January 21, 1986.

**EFFECTIVE DATE:** January 21, 1986.

**FOR FURTHER INFORMATION CONTACT:** Kenneth L. Peoples, Office of the General Counsel, (703) 883-4024, Farm

Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

(Secs. 5.9, 5.12, 5.18, Pub. L. 92-181, Stat. 619, 620, 621 (12 U.S.C. 2243, 2252))

Donald E. Wilkinson,

Acting Chairman.

[FR Doc. 86-2805 Filed 2-7-86; 8:45 am]

BILLING CODE 6705-01-M

**12 CFR Part 615**

**Funding and Fiscal Affairs; Effective Date**

**AGENCY:** Farm Credit Administration.

**ACTION:** Notice of Effective Date.

**SUMMARY:** The Farm Credit Administration (FCA) published an amended Regulation § 615.5150 that deals with the acquisition and disposition of real and personal property by Farm Credit System (System) banks and of System bank board policies on electronic data processing and word processing programs. The amendment eliminates the prior approval requirements in these areas and provides instead regulatory guidance for the district boards and supervising banks to follow in evaluating, documenting, and approving such activities.

The final rule was published in the November 26, 1985, *Federal Register*, and provided that notice of the actual effective date would be subsequently published (50 FR 48553). In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the *Federal Register* during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of this rule was January 31, 1986.

**EFFECTIVE DATE:** January 31, 1986.

**FOR FURTHER INFORMATION CONTACT:**

Joseph M. Beltramo, Office of Examination and Supervision, (703) 883-4441;

or

Dorothy J. Acosta, Office of the General Counsel, (703) 883-4023, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22101-5090.

(Secs. 5.9, 5.12, Pub. L. 92-181, 85 Stat. 619, 620, and 621 (12 U.S.C. 2243, 2252))

Donald E. Wilkinson,

Acting Chairman.

[FR Doc. 86-2806 Filed 2-7-86; 8:45 am]

BILLING CODE 6705-01-M

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 85-ANE-8; Amdt. 39-5219]

## Airworthiness Directives; Pratt &amp; Whitney (PW) JT9D-7R4D, -7R4E, and -7R4E4 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) which requires flow checking fuel nozzles following on-wing cleaning and starting difficulties, and requires ground starts using single ignition on PW JT9D-7R4 series engines. The AD is needed to prevent carbon build up on the fuel nozzles which could result in engine surge and the inability to restart in flight.

**DATES:** Effective—March 14, 1986.

Compliance schedule—As prescribed in body of AD.

Incorporation by Reference—Approved by the Director of the Federal Register on March 14, 1986.

**ADDRESSES:** The applicable PW Maintenance Manual P/N 785050 may be obtained from: Pratt & Whitney, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108.

A copy of the PW Maintenance Manual P/N 785050, Chapter 73-13-07, Cleaning/Painting Section is contained in Rules Docket No. 85-ANE-8 in the Office of the Regional Counsel, New England Region, and may be examined between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Diane Kirk, Engine Certification Branch, ANE-142, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7082.

**SUPPLEMENTARY INFORMATION:** A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD which requires flow checking fuel nozzles following on-wing cleaning and starting difficulties, and requires ground starts using single ignition on certain PW JT9D-7R4 series engines was published in the *Federal Register* on May 21, 1985, (50 FR 12172). The FAA has determined that carbon accumulation in internal flow passages and orifices of the primary flow path, and external carbon build up on certain

JT9D-7R4 series engine fuel nozzles, can alter the spray cone angle characteristics and reduce combustion efficiency and stability. The condition has caused instances of engine sub-idle speeds, lack of response to throttle advance, overtemperature, surge, and the inability to start the engine in flight.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Three comments were received. The first commenter recommended that paragraph (b) of the proposed AD be modified to address the pilot via the flight manual and require log book entries to assure that timely maintenance procedures are followed within the 25 flight cycles.

The FAA does not concur with the first commenter's proposal. Paragraph (b) of the AD addresses the requirements and compliance of flow checking the fuel nozzles. The implementation of the requirements is the responsibility of the operator to be accomplished through their maintenance and flight crew notification procedures. Therefore, the FAA did not modify the original proposal.

The second commenter proposed to allow continuation of flight with single ignition start and to restore single ignition start capability at the first maintenance opportunity. The FAA reviewed the commenter's recommendation but did not modify the original proposal. Any unresolved aborted ground start with 20 percent or greater flow reduction may be significant enough to cause possible instances of engine sub-idle speeds, lack of response to throttle advance, overtemperature, surge, and the inability to start the engines in flight. The FAA has concluded that five flight cycles are adequate to reach a maintenance base where the AD can be accomplished.

The third commenter requested that the Boeing Maintenance Manual procedure for nozzle cleaning and flow check be included as an alternate to the PW Maintenance Manual. The PW Maintenance Manual may not be readily available to the operator. However, the Boeing Maintenance Manual is available to all operators. Boeing incorporates the PW Maintenance Manual into the Boeing Maintenance Manual and any revisions to the PW Maintenance Manual are directly reflected in the Boeing Maintenance Manual.

The FAA agrees with the commenter's request and will reference the Boeing Maintenance Manual procedure for nozzle cleaning and flow check as an equivalent means of compliance.

## Conclusion

The FAA has determined that this regulation involves 29 Boeing 767 aircraft and will cost approximately \$1,600 per aircraft. These aircraft are not operated by small entities. 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 person identified under the caption "FOR FURTHER INFORMATION CONTACT".

## List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety, Incorporation by reference.

## Adoption of the Amendment

## PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the FAA amends 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 to § 39.13:

**Pratt & Whitney:** Applies to Pratt & Whitney model JT9D-7R4D, 7R4E, and -7R4E4 turbofan engines.

Compliance is required as indicated unless already accomplished.

To prevent deterioration of fuel nozzle flow and spray-cone angle characteristics which could lead to engine surge, overtemperature, or the inability to request inflight, accomplish the following:

(a) Conduct a flow check on JT9D-7R4 series engine incorporating PW P/N 792842 and/or 794731 fuel nozzles following any on-wing cleaning procedure prior to returning the aircraft to service in accordance with PW Maintenance Manual P/N 785050, Chapter 73-13-07, Cleaning/Painting Section as revised by Temporary Revision 73-3, or FAA approved equivalent.

(1) A flow reduction of 10 percent or less is acceptable.

(2) A flow reduction greater than 10 percent but less than 20 percent requires selected fuel nozzles to be replaced with new or ultrasonically cleaned nozzles within 300 flight cycles. The fuel nozzles may be replaced in quantities and locations as needed to restore the flow to 10 percent flow reduction or less.

(3) A flow reduction of 20 percent or greater requires selected fuel nozzles to be

replaced with new or ultrasonically cleaned nozzles within 25 flight cycles. If there have been any unresolved aborted ground starts (since the last cleaning and flow check) that are not attributed to an ignition system fault or a mechanical problem which is unrelated to the fuel nozzles, fuel nozzles must be selectively replaced within 5 cycles. The fuel nozzles may be replaced in quantities and locations as needed to restore the flow to 10 percent flow reduction or less.

(b) Ground starts must be initiated using single ignition, either ignition selector position 1 or 2. If an aborted start is experienced using single ignition that is related to a fuel nozzle problem, the engine may be started on the opposite ignition system or dual ignition and the fuel nozzles must be cleaned and flow checked within 25 flight cycles in accordance with PW Maintenance Manual P/N 785050, Chapter 73-13-07, Cleaning/Painting Section as revised by Temporary Revision 73-3, or FAA approved equivalent.

The flow check limits in Paragraph (a) are applicable to Paragraph (b).

Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

Upon request, an equivalent means of compliance with the requirements of this AD may be approved by the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803.

Upon submission of substantiating data by an owner or operator through an FAA maintenance inspector, the Manager, Engine Certification Office, Aircraft Certification Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts, 01803 may adjust the compliance time specified in this AD.

PW Maintenance Manual P/N 785050, Chapter 73-13-07, Cleaning/Painting Section as revised by Temporary Revision 73-3 is incorporated herein and made a part hereof pursuant to 5 U.S.C. 552 (a)(1). (Boeing Maintenance Manual, Chapter 73-11-05, Cleaning/Painting Section is an equivalent means of compliance.) All person affected by this directive who have not already received this document from the manufacturer may obtain copies upon request to Pratt & Whitney, Commercial Products Division, 400 Main Street, East Hartford, Connecticut 06108. This document also may be examined at the Office of the Regional Counsel, Rules Docket 85-ANE-8, Federal Aviation Administration, 12 New England

Executive Park, Burlington, Massachusetts 01803.

This amendment becomes effective on March 14, 1986.

Issued in Burlington, Massachusetts, on January 11, 1986.

**Robert E. Whittington,**  
Director, New England Region.

[FR Doc. 86-2775 Filed 2-7-86 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 86-ASO-1]

#### Alteration of Transition Area, Atlanta, GA

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

**SUMMARY:** This amendment alters the Atlanta, Georgia, transition area by raising the floor of controlled airspace from 700 to 1,200 feet, in the vicinity of Stone Mountain, Georgia. This action will provide relief to those aircraft operating to and from the Stone Mountain-Britt Memorial Airport during Visual Flight Rule conditions. This reverses an action which became effective, under Airspace Docket No. 85-ASO-21, on January 16, 1986.

**EFFECTIVE DATE:** 0901 UTC, March 13, 1986.

**FOR FURTHER INFORMATION CONTACT:** Donald Ross, Supervisor, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

#### SUPPLEMENTARY INFORMATION:

##### History

On Thursday, January 16, 1986, the FAA amended Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by increasing the size of the Atlanta, Georgia, transition area (50 FR 49528). This action was intended to provide additional controlled airspace for use by Air Traffic Control in radar vectoring of aircraft in the vicinity of Stone Mountain and DeKalb-Peachtree Airport. Due to internal FAA mail distribution problems, interested parties were not invited to participate in this rulemaking procedure. No comments objecting to the proposal were received and the legitimate concerns of operators at Stone Mountain-Britt Memorial Airport were not disclosed until after publication of the Final Rule. Alternative means to provide the

necessary airspace for radar vectoring have been developed; thus, the need for the additional controlled airspace has been resolved.

#### The Rule

This amendment to Part 71 of the Federal Aviation Regulations reduces the size of the Atlanta, Georgia, transition area and increases the base of controlled airspace in the vicinity of Stone Mountain 700 to 1,200 feet above the surface.

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

#### List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

#### Adoption of the Amendment

#### PART 71—[AMENDED]

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

1. The authority citation of Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); [14 CFR 11.69]; 49 CFR 1.47

2. By amending § 71.181 as follows:

#### § 71.181 Atlanta, GA—[Amended]

By removing the words "within a 6.5-mile radius of Stone Mountain (lat. 33°48'22"N., long 84°08'47"W).";

Issued in East Point, Georgia, on January 29, 1986.

**James L. Wright,**  
Acting Air Traffic Manager, Southern Region.  
[FR Doc. 86-2773 Filed 2-7-86 8:45 am]

BILLING CODE 4910-13-M

**14 CFR Part 91**

[Docket No. 24861; Amdt. 91-193]

**Change in Airspace Definition of Minimum Navigation Performance Specification***Correction*

In FR Doc. 85-29517, appearing on page 51193 in the issue of Friday, December 13, 1985, make the following correction in the first column under **Background:**

In the second paragraph, the last line should read, "south of 38° 30'N".

BILLING CODE 1505-01-M

**FEDERAL TRADE COMMISSION****16 CFR Part 13**

[Docket No. 8960]

**National Talent Associates, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions****AGENCY:** Federal Trade Commission.**ACTION:** Modifying Order.

**SUMMARY:** The Federal Trade Commission has modified a 1975 consent order with National Talent Associates, Inc., et al., amending the provisions of the order that tell the company what disclosures it must make to consumers about its success in obtaining paid employment for clients. The consent order prohibited the respondents from misrepresenting their ability to obtain modeling positions for young children and required them to disclose specified information to prospective clients.

**DATES:** Consent Order issued November 26, 1975. Modifying Order issued January 21, 1986.

**FOR FURTHER INFORMATION CONTACT:** Jerry McDonald, FTC/B-425, Washington, DC 20580, (202) 376-3484.

**SUPPLEMENTARY INFORMATION:** In the Matter of National Talent Associates, Inc., a New Jersey corporation, National Talent Associates, Inc., an Illinois corporation, National Talent Associates, Inc., a California corporation, Sanford Storm and Jerome P. Ashfield, individually and as officers of said corporations, William Schuller Agency, Inc., a corporation, and Monica Stuart, individually and as an officer of said corporation. The prohibited trade practices and/or corrective actions, as set forth at 40 FR 59591, remain unchanged.

**List of Subjects in 16 CFR Part 13**

Modeling agencies, Trade practices.

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

**Before Federal Trade Commission**

Commissioners: Terry Calvani, Acting Chairman, Patricia P. Bailey, Mary L. Azcuenaga.

In the Matter of National Talent Associates, Inc., a New Jersey corporation, National Talent Associates, Inc., an Illinois corporation, National Talent Associates, Inc., a California corporation, Sanford Storm and Jerome P. Ashfield, individually and as officers of said corporations, William Schuller Agency, Inc., a corporation, and Monica Stuart, individually and as an officer of said corporation.

[Docket No. 8960]

*Order Reopening the Proceeding and Modifying Cease and Desist Order*

On September 20, 1985, National Talent Associates, Inc., a New Jersey corporation; National Talent Associates, Inc., an Illinois corporation; National Talent Associates, Inc., a California corporation; and Sanford Storm and Jerome P. Ashfield, individually and as officers of said corporations (Petitioners) filed a request to reopen and modify the consent order entered against them by the Commission on November 26, 1975, in Docket No. 8960 (86 F.T.C. 1202).<sup>1</sup>

The request to reopen and modify the consent order was placed on the public record on September 20, 1985, and a press release regarding the request was issued on October 2, 1985. The public comment period ended on November 1, 1985, and no comments were filed. The deadline to rule on Petitioners' request was January 20, 1985.

Petitioners sell five year contracts to parents of young children under which they arrange to have the children photographed annually for five years. They then submit the photographs to talent agencies for consideration for employment as models. The order prohibits various misrepresentations including those relating to the employment opportunities and potential earnings available to children placed under their contracts. It further imposes affirmative obligations on Petitioners, including a requirement that they give to each prospective purchaser an "Important Information" document disclosing the number of children signed to their contracts during the immediately preceding two calendar year period, and information reflecting the success rates

<sup>1</sup> Other respondents under the order are not bound by Part I of the order, with which the petition is concerned, and are not Petitioners.

of these children in the modeling business.

Petitioners requested that several paragraphs of Part I of the order be modified or replaced with new paragraphs and that three new paragraphs be added to the order. They assert that changed conditions of fact since the order was issued require that paragraph 13 be modified. They state further that the public interest requires that the first and second "IT IS FURTHER ORDERED" paragraphs of the order be replaced with new paragraphs and that new third, fourth and fifth "IT IS FURTHER ORDERED" paragraphs be placed in the order.

*Paragraph 13 of the Order*

Under paragraph 13 of the order, Petitioners are prohibited from representing that:

National Talent Associates, Inc., a New Jersey corporation, arranges for professional photographs to be taken of each person placed under its contract by an independent photographic studio.

Petitioners state that at the time that the order was issued, the individual respondents owned an interest in a photographic studio. This is no longer true, and Petitioners now arrange for NTA clients to have photographs taken by independent photographic studios. Based on this changed condition of fact, Petitioners ask that the words, "unless such is in fact true", be added to the end of the paragraph.

The Commission agrees with the Petitioners that paragraph 13 should be modified to reflect the stated changed factual condition. Petitioners should not be prohibited from making a truthful representation. If they acquire an interest in a photographic studio to which they refer clients in the future, the modified paragraph would prohibit them from representing that the photographic studio is an independent photographic studio.

*First "It Is Further Ordered" Paragraph of the Order*

Petitioners ask that the first "It Is Further Ordered" paragraph of the order, with the exception of the last subparagraph therein, be replaced with a new first "It Is Further Ordered" paragraph. The first "It Is Further Ordered" paragraph reads as follows:

It Is Further Ordered that respondents shall disclose the following information, in writing, in a clear and conspicuous manner to each person who is a prospective purchaser of any of their products or services, prior to entering into any agreement for the furnishing of such products or services, including the photographing of, or assistance to, any such

persons in seeking or obtaining employment opportunities as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

a. The number of persons who contracted with respondents for the purchase of photographs or services to be used in connection with the selection, placement or employment of persons in the commercial advertising, talent, modeling or entertainment industries, as models, actors, actresses or entertainers, within the two calendar years immediately preceding the year in which the prospective purchaser was contacted, the number and percentage of such persons who obtained paid employment through the auspices of respondents, as well as the number of paid jobs and agency contracts obtained by such persons.

b. The total number of persons placed under contract by respondents in each of the following categories of gross annual earnings, derived from paid employment in the commercial advertising, talent, modeling or entertainment industries, as models, actors, actresses or entertainers, during the two calendar years immediately preceding the year in which the prospective purchaser was contacted by respondents: Under \$100, \$100-\$250, \$250-\$500, \$500-\$1,000, \$1,000-\$2,000, \$2,000-\$4,000, \$4,000-\$6,000, \$6,000-\$8,000, \$8,000-\$10,000, \$10,000 and above.

c. Whether any financial agreement, arrangement or connection, exists between respondents and any photographic studio to which they may refer prospective purchasers of their photographs or services.

d. Whether any financial agreement, arrangement or connection, exists between respondents and any person, firm or agency to whom photographs, or any other information, concerning the prospective purchaser, of their products or services may be sent by respondents.

e. The source or sources from which the names, addresses, or any other information about prospective purchasers, or about any other members of their immediate family, was obtained by respondents.

Petitioners' proposed first "It Is Further Ordered" paragraph of the order would effect several significant changes in the "Important Information" document. The document now relates to the success rates of children signed by NTA during the immediately preceding two calendar years. The modified paragraph would change the time period covered to the immediately preceding five calendar years. Petitioners argue that the information required to be disclosed does not accurately reflect NTA client opportunities during the term of their contracts with NTA. "Of significant importance", Petitioners state, "NTA's agreements with clients are for five years; whereas, the order provisions require disclosure for two years. Depending on the date on which a client is signed during the two-year period, it is often impossible for a client to be processed by NTA, signed by a talent agency, obtain a job assignment

and receive payment for the assignment in sufficient time to be included in all subparagraph a. data disclosure categories." Thus, to make the data more relevant to prospective purchasers, Petitioners propose to enlarge the two year period to five years.

The items of information to be disclosed on the "Important Information" document would be reduced from five to three. The order requires the disclosure of the number of children signed to NTA contracts, the number of these children who were accepted by talent agencies, the number and percentage who obtained paid employment, the number of paid job assignments that they obtained and their earnings. Data concerning the number who were accepted by talent agencies and the number of paid job assignments that they obtained would no longer be disclosed. According to the Petitioner, these items of information are confusing and not easily relatable to the total number of persons contracting with NTA. Furthermore, the Petitioners assert that this data is extremely burdensome to compile.

The disclosure of earnings prescribed by subparagraph b. of the first "It Is Further Ordered" paragraph would be substantially altered by Petitioners' proposed modification. The proposed categories of gross annual earnings are as follows: Under \$500, \$500-\$5,000, \$5,000-\$10,000 and above \$10,000. Additionally, cumulative earnings would be permitted rather than annual earnings during the five calendar year period. In support of this modification, Petitioners assert that the public interest requires the elimination of unnecessary detail, and the four categories of earnings are more concise and easier to understand. Additionally, Petitioners argue that the physical counting and compilation of this data has been extremely burdensome and costly to NTA. To continue the ten categories of earnings with five year computations would be even more burdensome.

Petitioners' proposed modifications would permit two footnotes to be placed on the "Important Information" document. A footnote to items one and two, the number of persons signed to NTA's contracts and the number and percentage of those persons who received payment for employment, would read:

Of the children signed during the past five years, only a few have had the opportunity to complete the full term of their five-year agreement.

A footnote to item three, the number of persons who earned income and their gross earnings, would read:

These figures do not include those children signed by NTA prior to (Year) who received earnings during the past five years.

Petitioners state that the footnotes are needed to "further clarify and explain the coverage of items, 1, 2 and 3 on the disclosure document."

Subparagraph c. of the first "It Is Further Ordered" paragraph requires Petitioners to disclose whether "any financial agreement, arrangement or connection exists between Petitioners and any photographic studio to which they may refer prospective purchasers of their photographs or services." Subparagraph d. requires the disclosure of any such arrangement with firms or agencies to whom photographs, or any other information concerning prospective purchasers of their photographs or services are sent. Petitioners ask that subparagraphs c. and d. be combined into subparagraph (4) in the paragraph that they propose. These disclosures would be necessary only if such financial arrangements exist. Petitioners assert that the public interest requires this modification for clarification purposes.

The Commission has concluded that, taken together, the modifications proposed by Petitioners to the first "It Is Further Ordered" paragraph of the order serve the public interest. The "Important Information" document does not accurately reflect the success rates of Petitioners' clients if it is limited to only two of the five years that they are under contract. Moreover, some less significant information would be eliminated. The essential information is the number of children signed to Petitioners' contracts, the number and percentage who obtained employment and their earnings. This information would be retained. Similarly, the reduction of categories of income from ten to four serves to make the document more concise and understandable. Unless a financial agreement, arrangement or connection exists between Petitioners and the photographic studios to whom they refer clients or the talent agencies to whom the photographs are submitted, there is no need to clutter the document with the disclosures required by subparagraphs c. and d. of the order. The footnotes, which would be permitted to appear on the document, would assist prospective purchasers in understanding the statistical data. Finally, the modified order paragraph is clearly drafted, and ambiguities have been eliminated.

*Last Subparagraph of the First "It Is Further Ordered" Paragraph and the Second "It Is Further Ordered" Paragraph of the Order*

Petitioners request further that the order be modified by deleting therefrom the last subparagraph of the first "It Is Further Ordered" paragraph and the second "It Is Further Ordered" paragraph and replacing them with the second "It Is Further Ordered" paragraph set forth in their petition. The subparagraph and paragraph proposed to be deleted from the order are:

At the time when the foregoing disclosures are made, respondents shall furnish the prospective purchaser of any of their products or services with a retainable duplicate copy of the disclosure document, and secure from such prospective purchaser a signed acknowledgment of the receipt thereof on the properly dated original copy. The document containing the disclosures shall be headed "Important Information", and shall not contain information or representations other than those set forth above.

It is further ordered that respondents maintain, for a five year period following the execution thereof, the originals of the signed acknowledgments of receipt of the disclosures described in the preceding paragraphs and make them available for examination and copying, if necessary, by a duly authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

The modification requested by respondents would replace the words "prospective purchaser", with the word, "purchaser". Additionally, respondents' representative would be required to sign the copy of the "Important Information" document that is retained for Commission staff inspection.

The Commission considers the proposed modifications, taken together, to be in the public interest. The first subparagraph of the proposed first "It Is Further Ordered" paragraph retains the obligation to give the "Important Information" document to each prospective purchaser of Petitioners' services. However, enforcement problems are brought about by a requirement that a signed acknowledgment of receipt be retained from each prospective purchaser. Additionally, the requirement that respondents' representative must also sign the copy of the document that is retained for staff inspection should serve to make those representatives aware of the importance of the document and the need to obtain a signed acknowledgment of receipt from each purchaser and to retain it.

*Proposed Third "It Is Further Ordered" Paragraph of the Order*

Petitioners ask that a new third "It Is Further Ordered" paragraph be placed in the order. It would prohibit them from making any claim or other representation, in advertising or promotional material, or in any oral sales presentation, that contradicts any of the information required to be disclosed in the "Important Information" document. In the view of the Commission, the public interest requires this prohibition to prevent overstatements of the employment opportunities and financial gains that may be anticipated by purchasing Petitioners' services.

*Proposed Forth "It Is Further Ordered" Paragraph of the Order*

A new fourth "It Is Further Ordered" paragraph, which Petitioners to have up to sixty days after the close of each calendar year to update the "Important Information" document for the immediately preceding five calendar year period. In compiling the information required in the first item of information on the disclosure document, a tolerance of one quarter of one percent would be permitted and a tolerance of one percent would be permitted in compiling the information for the third item of information, if such variances resulted from a good faith effort to accurately compile the required information.

In support of their request that the order be modified by adding the above-described paragraph, Petitioners contend that the public interest requires the "collection, assimilation and dissemination of accurate data; however, contrary to the public interest, the order does not allow sufficient time to collect the required data nor provide for good faith human error in assembling the data for display on the "Important Information" document. The proposed order paragraph, Petitioners continue, "takes into account the necessary time needed to accurately complete the "Important Information" document and allows for good faith error, should the physical counting and compilation of statistical data (including determining five year cumulative earnings figures for each eligible client) result in insignificant errors.

We agree with Petitioners that adequate time should be provided in the order to update the information on the "Important Information" document from one calendar year to the next. The sixty days requested by Petitioners is reasonable. We agree also that small tolerances should be permitted for

errors made in good faith in compiling the statistical data showing the number of children signed to their contracts and their earnings. No tolerance would be permitted for the information showing the number and percentage who were successful in being employed through Petitioners' auspices since this information involves fewer numbers and less difficult calculations.

*Proposed Fifth "It Is Further Ordered" Paragraph of the Order*

Petitioners further request that a fifth "It Is Further Ordered" Paragraph be placed in the order. It would require Petitioners to "maintain, and, upon request, make available to the Federal Trade Commission records substantiating the statistical information contained in each 'Important Information' document then in use." As the "Important Information" document relates to a period of five calendar years, the records substantiating the information would be maintained for five years. Petitioners assert that the proposed fifth "It Is Further Ordered" paragraph is in the public interest as it provides "additional compliance safeguards by establishing data substantiation and recordkeeping requirements which will allow the Commission's staff to effectively monitor Respondents' compliance with the first "It Is Further Ordered" provision.

The Commission has concluded that the public interest clearly requires that records substantiating the information on the "Important Information" document be maintained for compliance monitoring purposes.

*Conclusions*

Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), requires that an order be modified or set aside upon a satisfactory showing that changed conditions of law or fact require that the order be altered, modified or set aside. The Commission's rules implementing this statute amplify on this by providing that an order should be altered, modified or set aside if "the public interest so requires." The Commission has concluded that Petitioners have adequately shown that changed conditions of law and public interest considerations require that the order be modified in the manner requested by Petitioners.

The "Important Information" document, if prepared in accordance with the terms of the modified order, will more accurately reflect the success rates of Petitioners' clients. By the elimination of unnecessary information

the document will be more understandable and meaningful to prospective purchasers of Petitioners' services. The burden and expense of compiling the statistical data for the document will also be substantially reduced. Moreover, the modifications strengthen the order by requiring substantiation for the information on the "Important Information" document and prohibiting representations that may contradict this information.

It is therefore ordered that the proceeding is hereby reopened and the Decision and Order issued on November 26, 1975, is hereby modified to read as follows:

#### Order

It is ordered that National Talent Associates, Inc., New Jersey, Illinois and California corporations, their successors and assigns, and Sanford Storm and Jerome P. Ashfield, individually and as officers of said corporations, and said respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale and distribution of products or services in connection with the placement and employment of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or indirectly, orally or in writing, that:

1. Respondents have received information that a person may possess the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

2. Referrals from past purchasers of their products or services are a significant source from which the names of potential purchasers have been obtained.

3. Respondents have obtained the names of potential purchasers from a source which cannot be divulged.

4. Respondents, when requested, will provide persons with the source from which the information referred to in their solicitation letters, solicitation phone calls, or in any other means of solicitation was obtained and the nature of such information, unless respondents provide such information when requested.

5. National Talent Associates, Inc. has the expertise essential for the judging and selection of the most qualified

persons to be used as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

6. National Talent Associates' salesmen, agents or representatives have the expertise essential to select and judge the suitability of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries.

7. Persons who prior to an in-person interview have been solicited by National Talent Associates, Inc., have been selected on the basis that they may have the necessary personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

8. The majority of National Talent Associates' income is derived from its personal management contracts and its ability to place persons under contract with the leading advertising modeling, talent or entertainment agencies.

9. Persons are selected and offered contracts by National Talent Associates, Inc., only on the basis that they may possess the personal or physical characteristics or other qualifications suitable for success in the commercial advertising, talent, modeling or entertainment industries.

10. A person's chances for selection by Monica Stuart, the William Schuller Agency, Inc., or by any person or agency, will be aided, increased or enhanced, by entering into a contract with National Talent Associates, Inc.

11. Access to Monica Stuart or to the William Schuller Agency, Inc., is available only to persons who contract with National Talent Associates, Inc.

12. Monica Stuart or the William Schuller Agency, Inc., review photographs of only those persons who have contracted with National Talent Associates, Inc.

13. National Talent Associates, Inc., a New Jersey corporation, arranges for professional photographs to be taken of each person placed under its contract by an independent photographic studio, unless such is in fact true.

14. Persons who contract with National Talent Associates, Inc. will receive annually one black and white, 8 x 10 inch, photograph of children in the family not under contract, for a five year period, or for any period in excess of the period in which said photograph is received without any obligation to purchase additional photographs at an added cost.

15. Natural color photographs of persons who contract with National Talent Associates, Inc., are submitted annually, for a five year period, or for any period in excess of the period in

which said photographs are submitted to Monica Stuart or to the William Schuller Agency, Inc., for her or their consideration and review, without disclosing that, unless the person comes back for rephotographing annually for a five year period, such person's photographs will not be resubmitted to Monica Stuart or to the William Schuller Agency, Inc.

16. National Talent Associates, Inc., photographs other persons in a family in addition to the person whose name appears on its contract, solely for the purpose of submitting said photographs to Monica Stuart of the William Schuller Agency, Inc., for her evaluation of their potential for the commercial advertising, modeling, talent or entertainment industries.

17. The remuneration received by Monica Stuart of the William Schuller Agency, Inc., in connection with her consideration and review of photographs submitted to her by National Talent Associates, Inc., is derived solely from a percentage of the earnings of persons selected by her and placed under contract by the William Schuller Agency, Inc.

18. Persons placed under contract by National Talent Associates, Inc., can reasonably anticipate significant or substantial earnings from paid employment in the commercial advertising, talent, modeling or entertainment industries as models, actors, actresses, or entertainers.

19. Persons who contract with National Talent Associates, Inc., may reasonably anticipate earning sums of money sufficient to provide for a college education or for any other such formal education.

20. A person's chances for selection as a model, actor, actress or entertainer by the commercial advertising, modeling, talent or entertainment industries is, in any way, enhanced solely because he or she is Black, Oriental, has red hair, freckles or because of his or her size, age or any other specific racial or personal characteristics.

It is further ordered that respondents shall disclose clearly and conspicuously to each prospective purchaser of their services, prior to entering into any agreement for the furnishing of such services, the following information in a written document entitled "Important Information":

(1) The total number of persons signed to contracts and accepted by respondents during the five (5) calendar years immediately preceding the year in which the prospective purchaser is contacted; provided, however, such total number may also be broken down by individual calendar year so long as the

total number for the five (5) calendar years appears with such calendar year breakdown;

(2) The number and percentage of those persons in (1) above, who received payment for employment;

(3) The number of persons in (1) above who earned income and their cumulative gross earnings during the five (5) calendar years immediately preceding the year in which the purchaser is contacted, in each of the following categories: under \$500, \$500-\$5,000, \$5,000-\$10,000, and above \$10,000;

(4) Any financial agreement or affiliation between respondents and (a) any photographic studio to which they may refer purchasers of their services, and/or (b) any person, firm or agency to whom photographs, or any other information, concerning purchasers of their services may be sent by respondents;

(5) The source or sources from which the names, addresses, or any other information about prospective purchasers, or about any other members of their immediate family, was obtained by respondents;

and shall disclose in such "important information" document no other statistical data or information except (a) the name and addresses of National Talent Associates; (b) the following footnote relating to (1) and (2) above:

Of the children signed during the past five years, only a few have had the opportunity to complete the full term of their five-year agreement.

and (c) the following footnote relating to (3) above:

These figures do not include those children signed by NTA prior to (Year) who received earnings during the past five years.

It is further ordered that respondents shall provide to each purchaser of their services a retainable copy of the "Important Information" document, and secure from each such purchaser a signed and dated copy of such document containing an acknowledgement by the purchaser of having received such document, which shall also be signed by respondents' representative, and that respondents shall maintain each such signed and dated document for five years and, upon request, make them available to the Federal Trade Commission for inspection and copying.

It is further ordered that respondents shall not, in advertising or promotional material, or in any oral sales presentation, make any claim or other representation that contradicts any of the information required to be disclosed

in the "Important Information" document.

It is further ordered that respondents shall have up to sixty (60) days after the close of each calendar year to compile and update the "Important Information" document for the immediately preceding five-calendar-year period; provided, however, no "Important Information" document shall be given to any prospective purchaser after sixty (60) days from the beginning of each calendar year that does not disclose the information required to be disclosed by (1) through (5) above for the immediately preceding five-calendar-year period. In compiling the information required in (1) and (3) above, it shall not be a violation of this order if the figures in (1) vary by one-quarter (1/4) of one percent (1%) and the figures for (3) vary by one percent (1%), if such variances resulted from a good faith effort to accurately compile the required information.

It is further ordered that respondents shall maintain, and upon request, make available to the Federal Trade Commission records substantiating the statistical information contained in each "Important Information" document then in use.

It is further ordered that, if any representations are made by the respondents, their salesmen, representatives or agents, either expressly or implied, orally or in writing, pertaining to any standards, qualifications or characteristics which a person must meet or possess before respondents will agree to place such a person under contract, photograph them or otherwise assist or render services to said person, respondents shall maintain complete and detailed records as to such persons who have failed to meet or possess such standards, qualifications or characteristics, including their names, addresses, date of rejection, and the reason or reasons for their rejection by respondents. Such records shall be made available for examination and copying if necessary, by a duly authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

It is further ordered that the respondents named in Part I of this order shall submit to respondents Monica Stuart and the William Schuller Agency, Inc., for their inspection and evaluation, copies of all written promotional or sales materials, including but not limited to sales solicitation letters, contract forms, brochures, flyers, and sales presentation scripts. Said respondents will submit said materials to Monica Stuart and the William Schuller Agency, Inc., on a continuing

basis whenever there is a change, revision or modification of any of the materials.

It is further ordered that respondents shall cease and desist from:

a. Failing to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

**"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."**

b. Failing to furnish each buyer, at the time he signs the door-to-door sales contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in ten point bold face type the following information and statements in the same language, e.g., Spanish, as that used in the contract:

#### NOTICE OF CANCELLATION

(enter date of transaction)

You may cancel this transaction, without any penalty or obligation, within three business days from the above date.

If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice and any security interest arising out of the transaction will be cancelled.

If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale: Or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk.

If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller,

or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract. (Amended November 1, 1973).

To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram, to (Name of seller), at (address of seller's place of business) not later than midnight of (Date).

I hereby cancel this transaction.

(Date)

(Buyer's signature)

c. Failing, before furnishing copies of the "Notice of Cancellation" to the buyer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the buyer may give notice of cancellation.

d. Including in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the buyer is entitled under this Rule including specifically his right to cancel the sale in accordance with the provisions of this Rule.

e. Failing to inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel.

f. Misrepresenting in any manner the buyer's right to cancel.

g. Failing or refusing to honor any valid notice of cancellation by a buyer and within 10 business days after the receipt of such notice, to (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the seller; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

h. Negotiating, transferring, selling or assigning any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased.

i. Failing, within 10 business days of receipt of the buyer's notice of cancellation, to notify him whether the seller intends to repossess or to abandon any shipped or delivered goods.

Provided, however, that nothing contained in this order shall relieve respondents of any additional obligations respecting contracts required by federal law or the law of the state in which the contract is made. When such

obligations are inconsistent, respondents can apply to the Commission for relief from this provision with respect to contracts executed in the state in which such different obligations are required. The Commission, upon a showing of inconsistency, shall make such modifications as may be warranted in the premises.

## II

It is ordered that William Schuller Agency, Inc., a corporation, its successors and assigns, and Monica Stuart, individually and as an officer of said corporation, and respondents' officers, agents, representatives and employees directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale and distribution of products or services in connection with the placement and employment of persons as models, actors, actresses or entertainers in the commercial advertising, talent, modeling or entertainment industries, in or affecting commerce as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing to consumers, directly or indirectly, orally or in writing, that:

1. A person's chances for selection by Monica Stuart, the William Schuller Agency, Inc. or by any person or agency, will be aided, increased or enhanced by entering into a contract with National Talent Associates, Inc.

2. Access to Monica Stuart or to the William Schuller Agency, Inc. is available only to persons who contract with National Talent Associates, Inc.

3. Monica Stuart or the William Schuller Agency, Inc., review photographs of only those persons who have contracted with National Talent Associates, Inc.

4. National Talent Associates, Inc. photographs other persons in a family in addition to the person whose name appears on its contract, solely for the purpose of submitting said photographs to Monica Stuart of the William Schuller Agency, Inc. for her evaluation of their potential for the commercial advertising, modeling, talent or entertainment industries.

5. The remuneration received by Monica Stuart of the William Schuller Agency, Inc., in connection with her consideration and review of photographs submitted to her by National Talent Associates, Inc., is derived solely from a percentage of the earnings of persons selected by her and placed under contract by the William Schuller Agency, Inc.

6. Natural color photographs of persons who contract with National Talent Associates, Inc. are submitted annually, for a five year period, or for any period in excess of the period in which said photographs are submitted to Monica Stuart or to the William Schuller Agency, Inc. for her or their consideration and review without disclosing that, unless the person comes back for rephotographing annually for a five year period, such person's photographs will not be resubmitted to Monica Stuart or to the William Schuller Agency, Inc.

It is further ordered that respondents Monica Stuart and William Schuller Agency, Inc. shall maintain complete and detailed records as to the number of persons whose photographs were submitted to them by any of the respondents set forth under Part I of the order herein, and the number of such persons who have failed to meet or possess the standards, qualifications or characteristics which a person must meet or possess before respondents herein will agree to place such a person under contract, or otherwise assist or render services to said person, including their names, place of residence, and month and year of rejection. Such records shall be made available for examination and copying if necessary by an authorized representative of the Federal Trade Commission, upon reasonable notice, during normal business hours.

It is further ordered that respondents Monica Stuart and William Schuller Agency, Inc. shall inspect and evaluate the written promotional and sales material submitted to them by respondents named in Part I of this order. Within 30 days of their receipt of said materials, respondents Monica Stuart and William Schuller Agency, Inc. shall notify said other respondents, in writing as to any comments, complaints they might have, or any corrections they might require, concerning any representations relating to them contained in the materials submitted. Monica Stuart and William Schuller Agency, Inc. shall simultaneously submit to the New York Regional Office a copy of such notification to the respondents named in Part I of this Order.

It is further ordered that respondents Monica Stuart and William Schuller Agency, Inc. shall notify the Federal Trade Commission, in writing, of any consumer complaints received by them concerning any of the respondents named in Part I of this order. Such notification shall be made to the New York Regional Office within 30 days

after receipt of the consumer complaint. This provision shall apply only to those complaints about representations by or practices of the respondents named in Part I which relate to respondents Monica Stuart and William Schuller Agency, Inc.

### III

For the purposes of the following provisions of this order, unless otherwise specified, the term "respondents" shall include each of the respondents named heretofore in this order.

It is further ordered that respondents William Schuller Agency, Inc. and Monica Stuart shall forthwith deliver a copy of this order or a memorandum incorporating its provisions to all present and future employees engaged in the sale of said respondents' products or services and shall secure from each such person a signed statement acknowledging receipt of a copy of this order or the memorandum.

It is further ordered that corporate respondents National Talent Associates, Inc. and individual respondents Sanford Storm and Jerome P. Ashfield shall forthwith deliver a copy of this order or a memorandum incorporating its provisions to all present and future salesmen or other employees engaged in the sale of said respondents' products or services and shall secure from each such salesman or employee a signed statement acknowledging receipt of a copy of this order or the memorandum.

It is further ordered that respondent corporations shall forthwith distribute a copy of this order to each of their operating divisions.

It is further ordered that each individual respondent shall promptly notify the Commission of any discontinuance of his or her present business or employment and of his or her affiliation with any new business or employment. Such notice shall include such respondent's current business address and a statement as to the nature of the business or employment in which he or she is engaged as well as a description of his or her duties and responsibilities.

It is further ordered that corporate respondents notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other changes in the corporations which may affect compliance obligations arising out of this order.

It is further ordered that the respondents shall within sixty days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

By the Commission.

Issued: January 21, 1986.

**Benjamin I. Berman,**

*Acting Secretary.*

[FR Doc. 86-2817 Filed 2-7-86; 8:45 am]

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 45

[Docket No. RM 83-63-000; Order No. 446]

#### Electric Utilities; Automated Authorization for Holding Certain Positions That Require Commission Approval Under Section 305 (B) of the Federal Power Act

Issued: February 6, 1986

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is amending Part 45 of its regulations to authorize, generically, certain "interlocking positions" that require Commission approval under section 305(b) of the Federal Power Act (FPA). The Commission is providing this authorization to eliminate what it believes to be an unnecessary reporting burden on applicants and to reduce the time the Commission spends examining and processing certain applications to hold interlocking positions that are routinely approved.

**EFFECTIVE DATE:** This rule will be effective April 11, 1986.

**FOR FURTHER INFORMATION CONTACT:** Lori Tsang, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426 (202) 357-8463.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

### I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending Part 45 of its regulations to authorize certain "interlocking positions" that require Commission approval under section 305(b) of the Federal Power Act

(FPA).<sup>1</sup> The Commission provides this authorization to eliminate what it believes to be an unnecessary filing burden on certain categories of applicants and to reduce the time expended by applicants and the Commission in preparing and processing these types of applications to hold interlocking positions which have traditionally been approved routinely because they present no potential threat to public or private interests within the meaning of the FPA.

The Commission's experience in reviewing the applications it has processed in recent years shows that there are certain types of applications which are routinely approved because the interlocking positions involved present no foreseeable danger of the abuses that section 305(b) was intended to preclude.<sup>2</sup>

On May 17, 1985, the Commission issued a Notice of Proposed Rulemaking (NOPR) in Docket No. RM83-63-000<sup>3</sup> proposing to amend Part 45 of the regulations to provide an automatic authorization to hold several enumerated types of interlocking positions that require Commission approval under section 305(b). In initiating the rulemaking proceeding, the Commission, was responding, in part, to a petition for rulemaking submitted by eight registered electric utility holding companies.<sup>4</sup> The holding companies

<sup>1</sup> 16 U.S.C. 825(d) (1982). In the absence of prior Commission authorization, section 305(b) precludes an individual from serving concurrently as (1) an officer or director of more than one public utility, (2) an officer or director of a public utility and of any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility ("securities firm"), or (3) an officer or director of a public utility and of any company supplying electrical equipment to such public utility ("electrical equipment supplier"). For purposes of this discussion the term "interlocking positions" is used to refer to the concurrent positions identified in section 305(b).

<sup>2</sup> With respect to the kinds of interlocking positions at issue in this rulemaking, the Commission received, in fiscal years 1982, 1983, and 1984, 86 applications for authority to hold positions with public utilities that are under common ownership, 15 applications for authority to hold positions with a public utility and with a jointly-owned public utility that owned and operated a single generating facility, and 115 applications for authority to hold new or additional positions by applicants who already held Commission approval to hold interlocking positions with the same company. All of these applications were approved on a case-by-case basis. Each application, even when routine, is estimated to have required approximately 21 hours to prepare.

<sup>3</sup> 50 FR 21304 (1985)

<sup>4</sup> Petition for Rulemaking Submitted by Registered Holding Companies (filed April 20, 1983) (Docket No. RM83-63-000). The eight petitioners were Allegheny Power System, Inc., American Electric Power Company, Inc., Central and South West

requested that the Commission streamline its application procedure for authority to hold the following interlocking positions: (1) positions with public utilities that are owned by a single electric utility holding company registered with the Securities and Exchange Commission (SEC);<sup>5</sup> and (2) positions with a public utility that is owned by a registered holding company and a public utility that is a generating company owned by the holding company system, including those held in partnership with public utilities that are not affiliated with the system. The companies asserted that these types of interlocking positions do not adversely affect public or private interests and that the Commission's current application procedure is both burdensome and unnecessary.

## II. Background

### A. Requirements of Section 305(b)

When Congress investigated the utility industry in 1935, it found that public utilities<sup>6</sup> often had related interests because they belonged to various holding company systems, or because individuals served as officers or directors of more than one public utility or as officers or directors of a public utility and a firm that provided the public utility with goods and services. Congress expressed the belief that the existence of holding company systems and interlocking positions led to certain potential abuses in the industry, and sought to address such concerns through multifaceted legislation.<sup>7</sup> In 1940, this

Corporation, Eastern Utilities Associates, General Public Utilities Corporation, New England Electric System, Northeast Utilities, and The Southern Company.

<sup>5</sup> See Public Utility Holding Company Act of 1935, 15 U.S.C. 79 through 79z6 (1982).

<sup>6</sup> Under section 201(e) of the FPA, the term "public utility," with certain specific exceptions, means a person who owns or operates facilities subject to the jurisdiction of the Commission under Part II of the FPA (other than interconnection and wheeling facilities subject to Commission jurisdiction solely by reason of sections 210, 211, or 212).

<sup>7</sup> In attempting to resolve the perceived problems with holding companies, Congress identified what were believed to be the social and economic ills associated with these abuses, including the following: (1) Excessive charges to subsidiary public utility companies for goods and services resulting from the lack of arm's-length bargaining or the restraint of free and independent competition; (2) allocation of charges for goods and services among subsidiary companies in different States so as to frustrate State regulation; (3) control of subsidiary public utility companies through disproportionately small investment resulting in accounting practices, and rate, dividend, and other policies that complicated and obstructed State regulation; and (4) a general lack of economy of management and operation of the public utilities, a lack of efficiency and adequacy of services or a lack of effective public regulation, and a lack of economies in raising

Commission's predecessor, the Federal Power Commission (FPC), set forth what it regarded as the principal abuses that section 305(b) of the FPA was designed to prevent:

(1) Control over a large number of geographically widespread public utilities by a small group of individuals with perhaps a minimum of investment;

(2) The evasion, by means of common control, of competition resulting in higher costs and poorer services to consumers;

(3) The lack of arm's-length dealings between public utilities and organizations furnishing financial services or electrical equipment;

(4) The employment of dummy directors designated solely for the purpose of executing the orders of those in control and of nominal directors who give little time and attention to the affairs of the companies; and

(5) Violations of laws, ethics, and good business practices by those holding such interlocking positions, whereby such relationship is employed for their own benefit or profit or for the benefit or profit of any other person or persons, and to the detriment of the companies, their security holders, or the public interest.<sup>8</sup>

As a means of curbing such practices, Congress provided in section 305(b) that it is unlawful to hold "interlocking positions" unless the Commission, by order, authorizes the holding of the positions. Section 305(b) requires applicants, in the "form and manner prescribed by the Commission," to demonstrate that "neither public nor private interests will be adversely affected" by holding a particular interlock.

### B. Commission Implementation of Section 305(b)

The Commission has implemented section 305(b) of the FPA through Part 45 of its regulations. Part 45 requires each person desiring to hold interlocking positions to submit an application to the Commission for authority to hold the specified positions.<sup>9</sup> Upon review of each individual application, the Commission or its designee<sup>10</sup>

capital, Title I, Sec. 1, of the Public Utility Act of 1935 (49 Stat. 803, 15 U.S.C. 79a). Title I was the Public Utility Holding Company Act of 1935. Title II became Parts II and III of the Federal Power Act, which include section 305(b).

<sup>8</sup> John Edward Aldred, 2 FPC 246 (1940).

<sup>9</sup> Approximately 100 such applications are processed annually by the Commission.

<sup>10</sup> The Commission has delegated authority to act on uncontested applications to the Director of its Office of Electric Power Regulation. 18 CFR 375.308.

determines whether the holding of the positions for which the applicant has applied might "adversely affect public or private interests." Upon finding that it would not have such adverse effect, the application is granted.<sup>11</sup>

When an applicant who has received Commission approval to hold interlocking positions is elected or appointed to another position with one of the same companies, or is elected or appointed to new interlocking positions with additional companies, another application is required in order to hold these new positions.<sup>12</sup>

## III. Summary of Comments and Revisions to NOPR

### A. Introduction

In the NOPR issued on May 17, 1985, the Commission proposed to issue automatic authorization to hold the following interlocking positions:

(1) Positions as officer or director of more than one public utility when 100% of the voting stock of each utility is owned by the same holding company;

(2) Positions as officer or director of two public utilities where one of them is owned, wholly or in part, by the other and as its primary business generates electric power from one electric generating facility for sale to its owners; and

(3) Positions as officer or director of more than one public utility if the person is already authorized under Part 45 to hold different positions as officer or director with those utilities where the interlock involves affiliated public utilities.

The Commission received nine responses to this NOPR, seven from public utilities or public utility holding companies, one from Edison Electric Institute, and one from a lawyer.<sup>13</sup>

All of the commenters support the Commission's proposal, although six suggest certain amendments or clarifications of the proposed rule.

### B. Discussion

1. Authorization to hold positions as officer or director of more than one public utility when 100% of the

<sup>11</sup> In some cases, the Commission has granted conditional approval depending on the particular circumstances of the case. In any event, it also reserves authority to revisit the approval if the circumstances change.

<sup>12</sup> 18 CFR 45.4(a).

<sup>13</sup> The commenters are Iowa Power and Light Company (IPL); American Electric Power Company, Inc. (AEP); Northeast Utilities (NU); New England Electric System (NEES); Cincinnati Gas & Electric Company (CG&E); Edison Electric Institute (EEI); Atlantic City Electric Company (ACE); Wisconsin Electric Power Company (WEPCO); and Herbert B. Cohn.

outstanding voting stock of each pertinent public utility is owned by the same holding company.

a. *Rationale.* As part of its effort to address the perceived abuses caused by the practice of individuals holding interlocking positions and the existence of holding company systems, Congress enacted the Public Utility Holding Company Act of 1935 (the "Holding Company Act") to regulate holding companies and to simplify the complex network of public utilities belonging to holding company systems. Congress found, in 1935, that a small minority of shareholders were using complex networks of holding company systems to manipulate and control a large number of public utilities. This control by minority shareholders resulted in poor management (due to absentee officers and board directors), lack of competition, and violations of law, ethics, and good business practices.

Today, largely due to the SEC's operations under the Holding Company Act, a complex network of holding companies no longer exists. Holding companies now operate as single coordinated electric systems with simplified stock structures. The remaining nine registered electric utility holding companies now own, directly or indirectly, all or substantially all of the common or other voting stock of their systems' public utilities.<sup>14</sup> The abuses resulting from minority shareholder control no longer occur. Each holding company system is, for present purposes, a single company conducting its electric utility operations through more than one corporate identity.

Holding companies often appoint individuals to numerous similar positions with public utility subsidiaries in their respective systems. Under the Commission's current regulations, those individuals must submit separate applications for authority to hold each interlocking position.

For the following reasons the Commission believes that the current filing requirements are unnecessary and burdensome. First, because a holding company controls the voting stock of the public utilities within its system, it, in fact, controls all of its affiliated public utilities. It is not important whether the holding company controls its public utilities by assigning the same individuals to similar positions within each utility in its system, or by assigning different individuals to each public utility. In either case, the holding

company exercises effective control over the public utilities within its system. Second, because State and Federal agencies now closely regulate holding companies and their public utilities, the Commission believes that the holding of interlocking positions within a holding company system no longer leads to the kinds of difficulties that Congress feared might impede State regulation.<sup>15</sup> Third, the Commission acknowledges that allowing an individual to hold similar positions with several public utilities within a holding company system may enable the holding company to control and operate its system more efficiently and economically. Fourth, full public disclosure of these interlocking positions can be assured without case-specific approvals as a result of annual filing requirements under FPA section 305(c). Finally, a review of the applications processed over the years reveals that the abuses that section 305(b) was intended to preclude are never alleged to result from the holding of interlocking positions within holding company systems as they are now constituted.

b. *Comment Summary.* Five commenters raised concerns regarding holding companies which fail, technically, to meet the 100% ownership of "voting stock" requirement set forth in the NOPR.

NU explains that electric utilities generally have both common and preferred stock outstanding and, in a holding company system, only the common stock is owned by the holding company. While common stock normally carries the entitlement to vote for directors, preferred stock typically has some limited voting rights. NU further states that under the Holding Company Act, the requirement as to stock ownership of subsidiaries is that the parent own 100% of the common stock of the subsidiary, and preferred stock with limited voting rights is permitted to be issued publicly. Therefore, NU contends that the new rule should define "voting stock" to mean "capital stock of any class of a corporation, the holders of which are, ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or persons performing similar functions)."

Mr. Cohn states that among the registered holding company systems there are instances where preferred stock with voting power is outstanding and the holding company owns 100% of the common stock of a subsidiary, but something less than 100% of the

subsidiary's total voting stock. Therefore, Mr. Cohn suggests amending the proposed rule to require ownership of 100% of the subsidiary's common stock and at least 80% of its outstanding voting stock.

NEES explains that its wholesale generating utility, New England Power Company, has two classes of stock with general voting rights. In excess of 98% of the vote is in common stock, all of which is owned by NEES, while the remaining vote is in the 6% cumulative preferred stock. Therefore, NEES recommends that the Commission require ownership of 100% of the common stock of a subsidiary. Alternatively, NEES suggests that the level of voting stock ownership be set at such a percentage (i.e., 85%) as would clearly demonstrate operational control.

AEP states that three of the major public utility subsidiaries in the AEP system have outstanding preferred and preference stock that carry voting power, although 100% of their common stock is owned by AEP. AEP contends that it would be unnecessarily restrictive to exclude such public utility subsidiaries from coverage of the proposed rule. Accordingly, AEP suggests requiring ownership of 100% of the common stock of a subsidiary, and 80% of its voting stock.

CG&E states that it owns 99.9% of its subsidiary, Union Light, Heat and Power Company.<sup>16</sup> CG&E therefore suggests that proposed § 45.9(a)(1) be broadened to include "public utilities substantially or virtually wholly owned and controlled."

Mr. Cohn and AEP further suggest that the rule be amended to include indirect ownership through a subsidiary as well as direct ownership. AEP explains that, under the proposed amendment, interlocks involving one AEP system company, Kanawha Valley Power company (Kanawha) would not be covered, since Kanawha is a 100% owned public utility subsidiary of Appalachian Power Company, which in turn, is a direct public utility subsidiary of AEP.

c. *Comment Analysis.* Keeping in mind the concerns expressed by Congress in 1935, when it passed section 305(b) of the FPA, a holding company's actual control over its subsidiaries appears to be the appropriate focus of this Commission's scrutiny. Because the ability to elect directors is the primary

<sup>14</sup> Although there are numerous exempt electric utility holding company systems, these systems also appear to hold, directly or indirectly, controlling voting stock in their utility subsidiaries.

<sup>15</sup> See *supra*, note 7.

<sup>16</sup> *Moody's Public Utility Manual* (1985) indicates that, as of December 31, 1984, CG&E owns 99.9% of the "capital stock" of Union Light, Heat and Power Company. This suggests that Union Light, Heat and Power Company has only one class of stock.

means of exercising corporate control, a holding company's ownership of its subsidiaries' voting stock necessary to elect the board of directors should remain the test for purposes of the instant rule. Thus, the Commission has concluded that control of "voting stock" should, indeed, be defined in terms of the ability to elect directors.

The NOPR required 100% ownership of a subsidiary's "voting" stock. However, as the commenters pointed out, electric utilities often have two classes of stock outstanding—common and preferred—both of which have some "voting" rights. A holding company generally owns only the common stock. Therefore, a holding company would not own 100% of a subsidiary's "voting" stock, in the broadest sense of that term. Additionally, as evidenced by CG&E, there may be situations where a subsidiary has only one class of stock, less than 100% of which is owned by the parent company.

Consequently, in order to best implement the intent of the rule, the Commission will provide for automatic authorization of interlocking positions between more than one public utility if the same holding company owns, directly or indirectly,<sup>17</sup> that percentage of each utility's stock (of whatever class or classes) which is required by each utility's by-laws to elect directors.

2. Authorization to hold positions as officer or director of two public utilities where one of them is owned, wholly or in part, by the other and as its primary business generates electric power for sale to its owners from one electric generating facility.

a. *Rationale.* Several public utilities are jointly owned by a few corporate or governmental owners, such as other public utilities, holding companies, municipalities, or rural electric cooperatives. These public utilities were formed for the purpose of taking advantage of economies of scale and sharing the risks of financing, constructing, and operating facilities for the benefit of the utility's joint owners. These companies are usually owned by a small number of corporations and are managed by one of the owners under a management agreement.

The Commission has routinely approved applications for authority to hold interlocking positions with such a public utility and one of the utility's corporate owners because it is believed

that the holding of such interlocking positions creates no danger of fostering section 305(b) abuses. In essence, these jointly-owned companies are partnerships which have set out specific control arrangements in their initial agreements. None of the potential section 305(b) abuses appear to occur as a result of interlocking positions between the owner companies and the generating utilities.

b. *Comment Summary.* Mr. Cohn and AEP suggest amending the proposed rule to include jointly-owned companies that operate electric facilities as well as those that own them. AEP notes, as an example, that such an amendment would include interlocking positions involving Cardinal Operating Company which is jointly owned by Ohio Power Company and Buckeye Power, Inc. Mr. Cohn, AEP, and NU also suggest amending the proposed rule to include jointly-owned companies generating power from *more than one unit*. AEP states that such a modification would apply to the Ohio River Valley Electric Corporation (OVEC) and Indiana Kentucky Electric Corporation (IKEC) which own five and six generating units respectively.

NU and NEES recommend a further amendment to the proposed rule to include jointly-owned *transmission* as well as generating companies. These commenters refer, in particular, to jointly-owned transmission companies that are being organized to import power from Quebec to New England. Finally, NU suggests that the rule should automatically authorize interlocks with companies within the *same holding company system* as any of the joint owners, on the grounds that officers or directors of its system companies have "routinely" been authorized to hold interlocking positions of this kind.

c. *Comment Analysis—(i) Including companies within the same holding company system as any of the joint owners.* After due consideration, the Commission has decided not to expand the rule to include all companies that are within the same holding company system as any of the joint owners. The Commission perceives no problem if a person holds positions within *one* holding company system and one of the holding company subsidiaries is an owner or operator of a jointly-owned facility. However, if the rule were to grant the proposed expansion of authorization, the potential exists for automatic authorization of positions with utilities associated with two or more of the *non-affiliated* joint owners merely because the companies are associated with members of the joint

facility venture, *i.e.*, the possibility exists that a person would be authorized to hold positions with different holding companies. Such a situation would create potential conflict of interest problems for the holder of the interlock who would be performing duties for potentially competing utility systems. While such concerns might be alleviated on a case-by-case basis, insofar as some of those companies may be actual or potential competitors of one or more of the other owners, the Commission prefers to continue to review those applications individually.

(ii) *Including jointly-owned companies that either own or operate electric facilities.* The NOPR proposed to automatically authorize interlocking positions between "two public utilities, where one of them is owned, wholly or in part, by the other and as its primary business . . ." (emphasis added). The term "public utility," in turn, is defined in section 201(e) of the FPA as ". . . any person who owns or operates facilities subject to the jurisdiction of the Commission. . ." (emphasis added). Therefore, jointly-owned companies that operate facilities subject to the jurisdiction of the Commission are also covered by the rule. The final rule clarifies this point.

(iii) *Including jointly-owned (a) multiple-facility companies as well as single-facility companies and (b) transmission companies as well as generating companies.* Although the language in the NOPR focused on jointly-owned single-generating facility companies, the rationale for the NOPR applies generally to jointly-owned companies which are formed to take advantage of economies of scale and to share the risks of financing, constructing, and operating electric facilities, and are formed like partnerships with specific control arrangements in their initial management/operating agreements. As stated in the NOPR, interlocking positions within such companies are routinely approved.

The fact that transmission rather than generating facilities are involved, or that more than one facility is involved, does not detract from the salient considerations enumerated in the NOPR. Those considerations apply as well to jointly-owned companies owning or operating more than one facility and to jointly-owned companies owning or operating transmission facilities. In each case, the companies are formed to take advantage of the efficiencies and economies of scale and to share the risks discussed in the NOPR, and in each case management and operating

<sup>17</sup> This revision also implements the suggestion by AEP and Mr. Cohn to include within the scope of the rule indirect ownership through a holding company system affiliate. This change, too, is consistent with the intent of the NOPR since holding company control is equally complete, albeit indirect.

control are predetermined by agreement. Accordingly, the Commission is adopting these proposals to expand the scope of the proposed rule.

### 3. Changing Positions Within Affiliated Public Utilities.

Officers and directors already holding Commission-approved interlocking positions with two or more public utilities are frequently promoted, transferred, or otherwise assume new titles and responsibilities within these companies. Under section 45.4(a) of the Commission's current regulations, these individuals must file a complete interlocking position application under Part 45 for authority to hold each new position.

As discussed previously, the abuses that section 305(b) was intended to preclude do not appear to result from the holding of interlocking positions between affiliated public utilities controlled by a single parent holding company. Moreover, a change in the duties and responsibilities of an officer or director holding interlocking positions does not materially affect the possibility of fostering section 305(b) abuses within the context of an affiliated relationship between public utilities. No comments addressed this aspect of the NOPR. The Commission will therefore retain in the final rule the automatic authorization of such intracorporate changes in positions.

### 4. Other Issue.

WEPCO suggests amending the proposed rule to include interlocks between public utilities and banks, trust companies, banking associations, and firms that are authorized by law to underwrite or participate in the marketing of securities of a public utility, provided that such organizations have not and will not underwrite public utility securities. This proposal is well beyond the scope of the NOPR in this docket and the Commission declines to implement it in this final rule.

### C. Conclusion

The Commission herein provides for automatic authorization to hold the following interlocking positions:

(1) Position as officer or director of more than one public utility when the same holding company owns, directly or indirectly, that percentage of each utility's stock (of whatever class or classes) which is required by each utility's by-laws to elect directors;

(2) Positions as officer or director of two public utilities where one of them is owned, wholly or in part, by the other and as its primary business owns or operates transmission or generating facilities to provide transmission service

or electric power for sale to its owners; and

(3) Positions as officer or director of more than one public utility if the person is already authorized under Part 45 to hold different positions as officer or director of those utilities where the interlock involves affiliated public utilities.

Because these types of interlocking positions have no apparent potential to jeopardize public or private interests, the Commission is amending Part 45 of its regulations to provide a generic authorization (*i.e.*, by operation of the rule without prior review on a case-specific basis) to hold these interlocking positions.<sup>18</sup> This automatic authorization applies to anyone elected or appointed to these positions. To monitor all pre-authorized positions held subject to section 305(b) approval, the Commission will require that all persons holding interlocking positions pursuant to this automatic authorization file a short informational report within 30 days after they assume their interlocking positions. However, persons who are already assigned a current section 305(b) Commission identification number and file an annual FERC Form 561 information report will not be required to separately submit a report when they assume interlocking positions subject to this rule.<sup>19</sup> Information concerning any new interlocking position, assumed by an individual holding previously authorized interlocking positions, will be reported in that person's annual Form 561 report.

### IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act<sup>20</sup> requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. In the NOPR, the Commission found that the proposed rule would not impose any regulatory or administrative burdens on a significant number of small entities and that it would not require an expenditure of resources by such entities. No comments were received on this finding and the modifications adopted in the final rule do not materially affect the earlier conclusions.

<sup>18</sup> In the NOPR in this docket, the Commission expressed its view that the FPC had earlier adopted an unnecessarily narrow interpretation of the ability to address categories of interlocking positions generically in its Order No. 246, 27 FR 4912 (1962). The Commission has therefore overruled Order No. 246 in this regard.

<sup>19</sup> Under 18 CFR Part 46, a Form 561 is filed annually by persons holding Commission-approved interlocking positions.

<sup>20</sup> 5 U.S.C. 601-612 (1982).

Accordingly, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

### V. Paperwork Reduction Act Statement

The information collection provisions of this rule are being submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501-3520 (1982), and OMB's regulations, 5 CFR 1320 (1985). The information collection requirements are in fact being reduced by this rule. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention Lori Tsang, (202) 357-8463).

### VI. Effective date

This final rule is effective April 11, 1986.

### List of Subjects in 18 CFR Part 45

Electric utilities.

In consideration of the foregoing, the Commission grants the petition for rulemaking in this docket submitted by the holding companies and amends Part 45 of Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

By the Commission.

**Kenneth F. Plumb,**  
*Secretary.*

1. The authority citation for Part 45 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a-825r (1982); Department of Energy Organization Act, 42 U.S.C. 7701-7352 (1982); Exec. Order No. 12,009, 3 CFR Part 142 (1978).

2. Section 45.1 is revised to read as follows:

#### § 45.1 Applicability; who must file.

(a) This part applies to any person seeking to hold the following interlocking positions:

(1) Officer or director of more than one public utility;

(2) Officer or director of a public utility and of any bank, trust company, banking association, or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility; or

(3) Officer or director of a public utility and of any company supplying electrical equipment to a public utility.

(b) Any person seeking to hold any interlocking position described in § 45.2 of this Chapter must do the following:

(1) Apply for Commission authorization under § 45.8 of this Chapter; or

(2) If qualified, comply with the requirements for automatic authorization under § 45.9 of this Chapter.

3. The Table of Contents of Part 45 is amended by adding the following entry to read as follows:

**PART 45—APPLICATION FOR AUTHORITY TO HOLD INTERLOCKING POSITIONS**

Sec.

45.9 Automatic authorization of certain interlocking positions.

4. Part 45 is amended by adding a new § 45.9, to read as follows:

**§ 45.9 Automatic authorization of certain interlocking positions.**

(a) *Applicability.* Subject to paragraphs (b) and (c) of this section, the Commission authorizes any officer or director of a public utility to hold the following interlocking positions:

(1) Officer or director of one or more other public utilities if the same holding company owns, directly or indirectly, that percentage of each utility's stock (of whatever class or classes) which is required by each utility's by-laws to elect directors;

(2) Officer or director of two public utilities, if one utility is owned, wholly or in part, by the other and, as its primary business, owns or operates transmission or generating facilities to provide transmission service or electric power for sale to its owners; and

(3) Officer or director of more than one public utility, if such officer or director is already authorized under this part to hold different positions as officer or director of those utilities where the interlock involves affiliated public utilities.

(b) *Conditions of authorization.* Any person authorized to hold interlocking positions under this section must submit, not later than 30 days after assuming the duties of the position, an informational report in accordance with paragraph (c) of this section, unless that person is already authorized to hold interlocking positions of the type governed by this section.

(c) *Informational report.* An informational report required under paragraph (b) of this section must state:

(1) The full name and business address of the person required to submit this report;

(2) The names of all public utilities with which the person holds or will hold the positions of officer or director and a description of those positions;

(3) The names of any entity, other than those listed in paragraph (c)(2) of

this section, of which the person is an officer or director and a description of those positions; and

(4) An explanation of the corporate relationship between or among the public utilities listed in paragraph (c)(2) of this section which qualifies the person for automatic authorization under this section.

[FR Doc. 86-2856 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

**18 CFR Part 271**

[Docket No. RM79-76-246 (Oklahoma-7); Order No. 447]

**High Cost Gas Produced From Tight Formations; Final Rule**

Issued: February 7, 1986.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Final rule.

**SUMMARY:** Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission is authorized to designate natural gas as "high-cost natural gas" where it determines such gas is produced under conditions which present extraordinary risks or costs. The Commission is also authorized to prescribe an incentive maximum lawful price applicable to high-cost gas. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas qualifying for an incentive price (18 CFR 271.703 (1985)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. In this order, the Federal Energy Regulatory Commission adopts the recommendation of the Oklahoma Corporation Commission that the Upper Marchand Sand of the Hoxbar Group located in Comanche County, Oklahoma, in Section 11, Township 3 North, Range 9 West, be designated as a tight formation under § 271.703(d) of the Commission's regulations.

**EFFECTIVE DATE:** This rule is effective March 10, 1986.

**FOR FURTHER INFORMATION CONTACT:** Robert L. Winters, (202) 357-5578, or C.W. Gray, Jr., (202) 357-8731.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naevé.

Based on a recommendation made by the Oklahoma Corporation Commission (Oklahoma), the Commission amends its

regulations<sup>1</sup> to include the Upper Marchand Sand of the Hoxbar Group in Comanche County, Oklahoma, in Section 11, Township 3 North, Range 9 West, as a designated tight formation eligible for incentive pricing. The Director of the Office of Pipeline and Producer Regulation issued a notice proposing the amendment on October 18, 1985.<sup>2</sup>

Evidence submitted by Oklahoma supports the assertion that the Upper Marchand Sand of the Hoxbar Group, described above, meets the guidelines contained in § 271.703(c)(2). The Commission adopts this recommendation.

This amendment shall become effective March 10, 1986.

**List of Subjects in 18 CFR Part 271**

Natural gas, Incentive price, Tight formations.

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

By the Commission.  
Kenneth F. Plumb,  
Secretary.

**PART 271—[AMENDED]**

Part 271 is amended as follows:

1. The authority citation for Part 271 continues to read as follows:

**Authority:** Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(195) to read as follows:

**§ 271.703 Tight formations.**

\* \* \* \* \*

(d) *Designated tight formations.*

\* \* \* \* \*

(195) Upper Marchand Sand of the Hoxbar Group in Oklahoma. RM79-76-246 (Oklahoma-7).

(i) *Delineation of formation.* The Upper Marchand Sand of the Hoxbar Group is found in Section 11, Township 3 North, Range 9 West, in Comanche County, Oklahoma.

(ii) *Depth.* The depth to the top of the Upper Marchand Sand is 9,976 feet. The average net thickness of the recommended zone is 50 feet. The recommended zone consists of the upper

<sup>1</sup> 18 CFR 271.703(d) (1985).

<sup>2</sup> 50 FR 43407 (Oct. 25, 1985). Comments on the proposed rule were invited and none were received. No party requested a hearing and no hearing was held.

half of the Marchand Sand. The Marchand Sand is overlain by the Medrano Sandstone and underlain by the Culp-Melton Zone.

[FR Doc. 86-2854 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 165

[COTP Southeast Alaska REG 85-01]

#### Safety Zone; Ketchikan Harbor, Ketchikan, AK

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a Safety Zone in Ketchikan Harbor, Ketchikan, Alaska, from 1 May 1986 to 30 September 1986 and annually thereafter. The safety zone is the only suitable area for the maneuvering and anchoring of large passenger vessels in the Ketchikan area. When this area is used as an anchorage by private and other commercial vessels at the same time as a large cruise ship, the risk of collision between vessels is greatly increased due to the limited maneuverability of the larger vessels. The safety zone is needed to reduce this risk of collision and the inherent danger to life and property that this situation causes.

**EFFECTIVE DATE:** May 1, 1986, to September 30, 1986.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Scot W. Tiernan, (907) 586-7288.

**SUPPLEMENTARY INFORMATION:** On October 15, 1985 the Coast Guard published a notice of proposed rule making in the *Federal Register* for these regulations (50 FR 41705). Interested persons were requested to submit comments and two comments were received.

#### Drafting Information

The drafters of the notice are LT R.N. Janelle, project officer, Marine Safety Office, Juneau, Alaska, and LT Dave Shippert, project attorney, Coast Guard District Legal Office.

#### Discussion of Comments

Only two comments were received. The first comment addressed the fact that the positions of the navigation buoys which mark the corners of the Safety Zone were incorrectly published in the Notice of Proposed Rulemaking (NPRM). The latitude and longitude

position of each buoy as published in the NPRM was in degrees, minutes and seconds. The correct location should have the seconds listed as tenths of minutes. For example, latitude 55°-20'-3" N, in the Final Rule becomes 55°-20.3' N. However, since no other comments addressed this error, and the boundary buoys are long established navigation aids, this minor error did not seem to cause any confusion on the location of the Safety Zone. The second comment supported the need for the safety zone.

#### Economic Evaluation and Certification

This final rule is considered to be non-major under Executive Order 12291 and nonsignificant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this final rule has been found to be so minimal that further evaluation is necessary. The impact on smaller vessels in terms of cost and inconvenience is minimal because of the large number of anchorages suitable to that class of vessel outside of the proposed Safety Zone.

Since the impact of this final rule is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

#### Final Regulations

In consideration of the foregoing Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

#### PART 165—[AMENDED]

1. The authority citation of Part 165 continues to read as set forth below:

Authority: 33 U.S.C. 1225 and 1231, 50 U.S.C. 191, 49 CFR Part 146 and 33 CFR 1.05-1(a), 6.04-1 and 160.5.

2. Section 165.1705 is added to read as follows:

#### § 165.1705 Ketchikan Harbor, Ketchikan, Alaska—Safety Zone.

(a) That portion of Ketchikan Harbor, Ketchikan, Alaska enclosed by the following boundary lines is a Safety Zone: A line from Thomas Basin Entrance Light "2", latitude 55°-20'.3 N., longitude 131°-38'.5 W., to East Channel Lighted Buoy "4A", latitude 55°-20'.4 N., longitude 131°-38'.9 W., to Pennock Island Reef Lighted Buoy "PR", latitude 55°-20'.3 N., longitude 131°-40' W., to Wreck Lighted Buoy "WR6", latitude 55°-20'.7 N., longitude

131°-40'.3 W., then following a line bearing 064 degrees true to shore. This zone is effective 24 hours per day from 1 May through 30 September, annually. Annual notices of these regulations will be issued in Local Notices to Mariners.

#### (b) Special Regulations:

(1) All vessels may transit or navigate within the safety zone.

(2) No vessels, other than a large passenger vessel over 1600 gross tons (including ferries), may anchor within the Safety Zone without the express consent of the Captain of the Port, Southeast Alaska.

Dated: January 7, 1986

**D.M. Waldron,**

*Commander, U.S. Coast Guard Marine Safety Officer, Juneau, Alaska, Captain of the Port, Southeast, Alaska.*

[FR Doc. 86-2850 Filed 2-7-86; 8:45 am]

BILLING CODE 4910-14-M

#### 33 CFR Part 165

[COTP New London Regulation 86-05]

#### Safety Zone Regulations; Long Island Sound, Block Island Sound

**AGENCY:** Coast Guard, DOT.

**ACTION:** Emergency rule.

**SUMMARY:** The Coast Guard is establishing a safety zone around the vessel "Sea Level 7". The zone is needed to protect the vessel from a safety hazard associated with diving operations in which it is involved. Entry into this zone is prohibited unless authorized by the captain of the port.

**EFFECTIVE DATES:** This regulation becomes effective on 26 January 1986. It terminates on 31 January 1986 unless sooner terminated by the Captain of the Port.

**FOR FURTHER INFORMATION CONTACT:** ENS Jonathan Hammond, 203-442-4471.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after *Federal Register* publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent damage to the vessel involved.

#### Drafting Information

The drafters of this regulation are ENS Jonathan Hammond, project officer for the captain of the port, and Ms. M.A. Arisman, project attorney, Third Coast Guard District Legal Office.

**Discussion of Regulation**

The circumstances requiring this regulation resulted from the sinking of the barge E-24 and the subsequent attempts to survey its hull. A diving bell suspended from the "Sea Level 7" will take divers to the wreck to survey it. Maximum stability is needed on the surface so that the bell will not rock from heavy wakes of vessels passing close by.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Regulation****PART 165—[AMENDED]**

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225, and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T391 is added to read as follows:

**§ 165.T391 Safety Zone: Long Island Sound, Block Island Sound.**

(a) *Location.* The following area is a safety zone: A 1000 yd radius of the vessel "SEA LEVEL 7" anchored at position 41° 13.96' N. 072° 01.31' W. (approx. 1.5 miles SE. of Race Point, Fishers Island).

(b) *Effective date.* This regulation becomes effective on 26 January 1986. It terminates on 31 January 1986.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited by the captain of the port.

Dated: January 28, 1986.

J. Rutkovsky,

LCDR, USCG, Captain of the Port, New London, CT.

[FR Doc. 86-2852 Filed 2-7-86; 8:45 am]

BILLING CODE 4910-14-M

**33 CFR Part 165**

[COTP New London Regulation 86-01]

**Safety Zone Regulations; Long Island Sound, Block Island Sound**

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

**SUMMARY:** The Coast Guard is establishing a safety zone around the vessel "Tioga." The zone is needed to protect the vessel from a safety hazard associated with diving operations in which it is involved. Entry into this zone is prohibited unless authorized by the captain of the port.

**EFFECTIVE DATES:** This regulation becomes effective on 12 January 1986. It terminates on 13 January 1986 unless sooner terminated by the Captain of the Port.

**FOR FURTHER INFORMATION CONTACT:** ENS Jonathan Hammond, 203-442-4471.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after Federal Register publication. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent damage to the vessel involved.

**Drafting Information**

The drafters of this regulation are ENS Jonathan Hammond, project officer for the captain of the port, and Ms. M.A. Arisman, project attorney, Third Coast Guard District Legal Office.

**Discussion of Regulation**

The circumstances requiring this regulation resulted from the sinking of the barge E-24 and the subsequent attempts to survey its hull. Remote diving operations from the "Tioga" will take place intermittently as the currents allow. Maximum stability is needed on the surface so that the divers will not be subjected to excessive strain on the life lines from heavy wakes of vessels passing close by.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

**Regulation****PART 165—[AMENDED]**

In consideration of the foregoing, Subpart C of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T387 is added to read as follows:

**§ 165.T387 Safety Zone: Long Island Sound, Block Island Sound.**

(a) *Location.* The following area is a safety zone: A 500 yd radius of the vessel "Tioga" anchored at position 41° 13.96' N. 072° 01.31' W. (approx. 1.5 miles SE. of Race Point, Fishers Island).

(b) *Effective date.* This regulation becomes effective on 12 Jan. 1986. It terminates on 13 Jan. 1986.

(c) *Regulations.* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the captain of the port.

Dated: January 12, 1986.

J. Rutkovsky,

LCDR, USCG, Captain of the Port, New London, CT.

[FR Doc. 86-2853 Filed 2-7-86; 8:45 am]

BILLING CODE 4910-14-M

**DEPARTMENT OF DEFENSE****Corps of Engineers, Department of the Army****33 CFR Part 334****Danger Zone and Restricted Area Regulations; Naval Danger Zones and Restricted Areas, Vicinity of Norfolk and Virginia Beach, VA, and Gulf of Mexico, South of Panama City, FL**

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

**SUMMARY:** The Navy has requested that several regulations which establish danger zones and a restricted area in the Norfolk-Virginia Beach, Virginia area be amended as follows: (1) Change the title of § 334.360 to remove an obsolete command title, (2) Amend § 334.300 by enlarging the restricted area boundaries to incorporate government owned lands; and (3) Remove the prohibited area located in the Gulf of Mexico, South of Panama City, Florida promulgated in § 334.690. These amendments are necessary to meet changing conditions at those areas.

**EFFECTIVE DATE:** February 10, 1986.

**ADDRESS:** HQDA, DAEN-CWO-N, Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ralph Eppard or Mr. Sam Collinson, (202) 272-0199.

**SUPPLEMENTARY INFORMATION:** The Commander, U.S. Naval Base, Norfolk, Va., has found that the restricted area established in 33 CFR 334.300 does not

encompass the entire pier area at the Naval Station, Norfolk, and has requested an expansion of the restricted area. The Commander has also requested the title of 33 CFR 334.360 be changed from "Chesapeake Bay off Fort Monroe, Va.; restricted area, U.S. Naval Base and Naval Ordnance Laboratory" to "Chesapeake Bay off Fort Monroe, Va.; restricted area, U.S. Naval Base and Naval Surface Weapon Center."

The Commanding Officer, Fleet Combat Training Center, Atlantic, has requested the regulations which establish danger zones in 33 CFR 334.380 and 334.390 be amended to allow for nighttime use of the ranges.

On September 16, 1985, the Corps of Engineers published this proposal in the Notice of Proposed Rulemaking section of the *Federal Register* with the comment period expiring on October 16, 1985. One comment was received from the Commander, Fifth Coast Guard District which objected to the proposed amendments to 334.380 and 334.390. We received no objections to amending 334.300 and 334.360 and accordingly those regulations are amended as proposed. Any proposed amendments to 334.380 and 334.390 are being held in abeyance due to the objection. In addition, we have recently received a request from the Commanding Officer, Southern Division, Naval Facilities Engineering Command that the prohibited area in 334.690 be deleted. The prohibited area located in the Gulf of Mexico, South of Panama City, Florida is no longer needed because underwater testing platforms at that location have been demolished. The structures remain on the bottom but are converted to artificial fishing reefs. Section 334.690 is deleted as requested.

**Note 1.**—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 these regulations would not have a significant economic impact on a substantial number of entities and thus do not require preparation of regulatory flexibility analysis.

**Note 2.**—Section 334.690 is deleted without being published as a proposed rule as it is unnecessary and impracticable. The deletion will serve to remove a restriction on a navigable water and return it to public use.

**Note 3.**—We have determined that it is in the public interest to make these rules effective upon publication in the *Federal Register*. It is essential for the protection of Government property to correct the restricted area boundaries in 33 CFR 334.300 without delay. The amendments to 33 CFR 334.360 and 334.690 are not significant and nothing would be achieved by delaying the effective dates.

#### List of Subjects in 33 CFR Part 334

Navigation, Transportation, Waterways.

Accordingly, 33 CFR Part 334 is amended by amending §§ 334.300, 334.360 and 334.690 as follows:

#### PART 334—DANGER ZONES AND RESTRICTED AREA REGULATIONS

1. The authority for Part 334 continues to read as follows:

Authority: (40 Stat. 266; 33 U.S.C. 1) and (40 Stat. 892; 33 U.S.C. 3).

2. Section 334.300 is amended by revising paragraph (a) the areas, and paragraph (b)(2) as follows:

#### § 334.300 Hampton Roads and Willoughby Bay, off Norfolk Naval Base; naval restricted area.

(a) *The area.* Beginning at a point on shore at the Destroyer Submarine Piers at latitude 36°56'00", longitude 76°19'30"; thence westerly to latitude 36°55'59", longitude 76°20'08.5"; thence northerly along the eastern limit of Norfolk Harbor Channel to latitude 36°57'52", longitude 76°20'00"; thence easterly to latitude 36°57'52", longitude 76°19'35"; thence to latitude 36°57'47.7", longitude 76°18'57"; thence southeasterly to latitude 36°57'26", longitude 76°18'42"; thence easterly to latitude 36°57'26.2", longitude 76°17'55.2"; thence southerly to latitude 36°57'05", longitude 76°17'52"; thence southeasterly to latitude 36°56'56.2", longitude 76°17'27"; thence northeasterly to latitude 36°57'10", longitude 76°16'29"; and thence to the shoreline at latitude 36°57'18.8", longitude 76°16'22" at the Naval Air Station.

(b) The regulations. \* \* \*

(2) This section shall be enforced by the Commander, Naval Base, Norfolk, Virginia, and such agencies as he/she may designate.

3. Section 334.360 is amended by the revising the title only, as follows:

#### § 334.360 Chesapeake Bay off Fort Monroe, VA; restricted area, U.S. Naval Base and Naval Surface Weapon Center.

#### § 334.690 [Removed]

4. Remove § 334.690.

Dated: February 4, 1986.

John O. Roach,  
Army Liaison Officer with the Federal Register.

[FR Doc. 86-2848 Filed 2-7-86; 8:45 am]

BILLING CODE 3710-08-M

#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 52

[A-4-FRL-2967-6]

#### Approval and Promulgation of Implementation Plans; Alabama; Visibility Protection Plan

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

**SUMMARY:** In this action EPA is approving revisions to the Alabama State Implementation Plan (SIP) which were submitted to EPA on November 20, 1985. Alabama has revised its SIP to include a visibility monitoring plan and visibility new source review regulations. These visibility provisions meet the requirements of 40 CFR 51.305 and 51.307 and were submitted to EPA in order to satisfy the first part of the Settlement Agreement with the Environmental Defense Fund, et al., described at 40 FR 20647 on May 16, 1984. The principal effect of the new visibility protection regulations will be to require the State to consider visibility impacts when reviewing permit applications for new major sources, and major modifications, which could affect visibility in Federal Class I areas.

**DATES:** This action will be effective April 11, 1986, unless notice is received within 30 days that adverse or critical comments will be submitted. Such notice may be submitted to Janet Hayward at the EPA Regional Office address listed below:

**ADDRESSES:** Copies of the documents relevant to this action are available for public inspection at the following locations:

Environmental Protection Agency,  
Region IV, Air Programs Branch, 345  
Courtland Street, NE., Atlanta,  
Georgia 30365  
Air Division, Alabama Department of  
Environmental Management, 1751  
Federal Drive, Montgomery, AL 36109  
The Office of the Federal Register, 1100  
L Street, NW., Room 8401,  
Washington, DC  
Public Information Reference Unit,  
Environmental Protection Agency, 401  
M Street, SW., Washington, DC 20460

**FOR FURTHER INFORMATION CONTACT:**  
Janet Hayward of the EPA Region IV,  
Air Programs Branch, at the above  
address and telephone (404) 881-3286 or  
FTS 257-3286.

**SUPPLEMENTARY INFORMATION:** As a result of the Environmental Defense Fund (EDF) Agreement, the State of

Alabama was required to develop visibility new source review and visibility monitoring provisions to meet the requirements of 40 CFR 51.305 and 51.307. On November 20, 1985, Alabama submitted Part 1 visibility provisions to EPA for approval. This submittal satisfies the visibility requirements of 40 CFR 51.305 and 51.307.

Alabama's "Visibility SIP" is comprised of several parts. First, it contains a narrative discussion of visibility in general and of the State's visibility protection program. Second, it describes Alabama's visibility monitoring strategy. And third, it contains revisions to the State's new source review (in nonattainment areas) and Prevention of Significant Deterioration (PSD) regulations.

### 1. Narrative SIP

The new narrative section states that Alabama's visibility goal is to "prevent any future impairment of visibility in Federal Class I areas which results from man-made air pollution." This is consistent with EPA's national goal of preventing any future and remedying any existing visibility impairment in mandatory Class I areas. Alabama has one mandatory Class I area, which is the Sipsey Wilderness Area. It is located in the Bankhead National Forest in the northwest portion of the State. Through an inventory of the existing sources near Sipsey, the State has determined that there is presently no visibility impairment in the Class I area which can be attributed to a particular facility.

### 2. Monitoring Plan

Alabama will use airport visibility data to represent background visibility conditions in the Sipsey Wilderness. The National Weather Service (NWS) collects visual range data at the Huntsville-Madison County Airport on a daily basis. This information is reported to the State every month. The airport is located 48 miles to the east northeast of the Sipsey Wilderness, in flat to gently rolling terrain. Thus, the airport visibility data should be representative of conditions in the Class I area. The Alabama Air Division plans to use this background visibility data in reviewing permit applications and in evaluating visibility trends. Alabama's monitoring plan is consistent with the national visibility goal and meets EPA's criteria for approval.

### 3. New Source Review

Alabama has revised its new source review (in nonattainment areas) and PSD regulations to include the visibility notification and review procedures required by EPA. In doing this, they

assure the involvement of the Federal Land Manager (FLM) in reviewing new source permits which could impact visibility in Class I areas. The FLM will be sent a copy of all information relevant to the permit application, and will be given an opportunity to show that the source could adversely impact visibility in the Class I area. If the State disagrees with this determination, it must explain its nonconcurrence and make that explanation available to the public. These regulations also allow the State to require monitoring of visibility in the Class I area near the proposed new facility or modification. These revisions meet the requirements set forth in 40 CFR 51.307 for visibility new source review, and include the necessary visibility definitions contained in 40 CFR 51.301.

Further details pertaining to these regulation changes are contained in the technical support document, which is available for public inspection at EPA's Regional Office in Atlanta, Georgia.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of this **Federal Register** unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective April 11, 1986.

*Final Action:* After reviewing Alabama's visibility-related SIP revisions, EPA has found them to meet the requirements contained in 40 CFR 51.305 and 51.307. EPA is therefore approving Alabama's Visibility SIP, visibility monitoring strategy, and new source review regulation revisions, as submitted on November 20, 1985.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 1986. This action may

not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Intergovernmental relations.

*Note.*—Incorporation by reference of the State Implementation Plan for the State of Alabama was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: February 4, 1986.

Lee M. Thomas,  
Administrator.

### PART 52—[AMENDED]

Part 52 of Chapter I, Title 40—40 CFR Part 52 is amended as follows:

#### Subpart B—Alabama

1. The authority citation for Part 52 continues to read as follows:

*Authority:* 42 U.S.C. 7401-7642.

2. Section 52.50 is amended by adding paragraph (c)(40) as follows:

#### § 52.50 Identification of Plan.

\* \* \* \* \*

(c) \* \* \*

(40) Visibility new source review regulations as visibility monitoring strategy were submitted to EPA on November 20, 1985.

(i) Incorporated by reference.

(A) Letter of November 20, 1985, from the Alabama Department of Environmental Management, and the following regulation Changes to Paragraphs 16.3.2 and 16.4 to Address Visibility Requirements adopted by the Alabama Environmental Management Commission on November 13, 1985:

16.3.2(b)—(Permits to Construct in or Near Nonattainment Areas—Definitions)

16.3.2(f)—(Permits to construct in or Near Nonattainment Areas—visibility protection provisions)

16.4.2—(Permits to Construct in Clean Air Areas—Definitions)

16.4.12—(Visibility Monitoring)

16.4.15—(Sources Impacting Federal Class I Areas—Additional Requirements)

(ii) Additional material.

(A) Narrative Visibility SIP which includes the State's visibility monitoring strategy.

[FR Doc. 86-2833 Filed 2-7-86; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 52

[A-c-FRL-2967-3]

**Approval and Promulgation of Implementation Plans; Arkansas; Visibility Protection****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** This notice approves the new source review (NSR) and monitoring plan for visibility in a revision to the Arkansas State Implementation Plan (SIP). This action is a result of a proposed rulemaking on October 23, 1984 (49 FR 42670), in which EPA proposed to disapprove SIPs of states which failed to comply with the provisions of 40 CFR 51.305 (visibility monitoring) and 51.307 (visibility NSR).

The Governor of Arkansas submitted a SIP Revision for Visibility Protection and the Visibility Regulation on July 23, 1985. Review of the plan and regulations indicated that Arkansas has met the criteria of 40 CFR 51.305 and 51.307.

**EFFECTIVE DATE:** This action will be effective on April 11, 1986, unless notice is received within 30 days that someone wishes to submit adverse or critical comments.

**ADDRESSES:** Written comments on this action should be addressed to John Hepola of the EPA Region 6 Air Programs Branch, SIP/NSR Section (address below). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AN), 1201 Elm Street, Dallas, Texas 75270;

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460;

The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, D.C.

Arkansas Department of Pollution Control and Ecology, Division of Air Pollution Control, 8001 National Drive, Little Rock, Arkansas 72209.

**FOR FURTHER INFORMATION CONTACT:** John Crocker, Air Programs Branch, EPA Region 6, 1201 Elm Street, Dallas, Texas 75270, telephone (214) 767-9850 or (FTS) 729-9850. Reference Docket File Number AR-85-1.

**SUPPLEMENTARY INFORMATION:****Background**

Section 169A of the Clean Air Act, 42 U.S.C. 7491, requires visibility protection for mandatory Class I Federal areas where EPA has determined that visibility is an important value. ("Mandatory Class I Federal areas" are certain national parks, wilderness areas, and international parks, as described in section 162(a) of the Act, 42 U.S.C. 7472(a), 40 CFR 81.400-937.) Section 169A specifically requires EPA to promulgate regulations requiring certain states to amend their State Implementation Plans (SIPs) to provide for visibility protection.

On December 2, 1980, EPA promulgated the required visibility regulations in 45 FR 80084, codified at 40 CFR 51.300 *et seq.* It required the states to submit their revised SIPs to satisfy those provisions by September 2, 1981. (See 45 FR 80091, codified in 40 CFR 51.302(a)(1).) That rulemaking resulted in numerous parties seeking judicial review of the visibility regulations. In March 1981, the Court stayed the litigation pending EPA action on related administrative petitions for reconsideration of the visibility regulations filed with the Agency.

In December 1982, the Environmental Defense Fund (EDF) filed suit in the U.S. District Court for the Northern District of California alleging that EPA failed to perform a nondiscretionary duty under section 110 of the Act to promulgate visibility SIPs. A negotiated settlement agreement between EPA and EDF required EPA to promulgate visibility SIPs on a specific schedule. It required EPA to propose to incorporate federal regulations in states where SIPs are deficient with respect to the 1980 visibility new source review and monitoring regulations, 40 CFR 51.307 and 51.305, respectively. However, the settlement allows a state an opportunity to avoid federal promulgation if it submits a SIP by May 6, 1985. Arkansas is one of the states listed in 49 FR 42670 as having an inadequate New Source Review (NSR) and monitoring plan for visibility protection.

On July 23, 1985, the Governor of Arkansas submitted a SIP Revision for Visibility Protection and the Visibility Regulations for monitoring and new source review. EPA has reviewed the State's submittal and developed an evaluation report.<sup>1</sup> This evaluation

<sup>1</sup> Evaluation Report for the Arkansas Visibility Protection Plan, October 1985.

report is available for inspection by interested parties during normal business hours at the EPA Region 6 office and the other addresses listed above.

Arkansas has two mandatory Class I areas: Upper Buffalo Wilderness Area in Newton County and Caney Creek Wilderness Area in Polk County. No other Class I areas currently exist in the State. The SIP commits the State to visibility protection consistent with the Clean Air Act to be afforded within the wilderness area boundaries. The SIP is to be reviewed annually and revised as necessary.

**Visibility Monitoring Strategy**

40 CFR 51.305 requires all states with visibility protection areas to have a monitoring strategy for evaluating visibility in any mandatory Federal Class I area by visual observation or other appropriate monitoring techniques. The purposes of this requirement are to generate data for evaluating visibility impairment trends, determine potential impacts of new sources, assess the effectiveness of the visibility protection program, and identify major contributing sources. These purposes can be adequately addressed by determining the background visibility protection areas and documenting the extent of any visibility impairment that can be attributed by a source or small group of sources.

Visibility impairment is the human perception of the effects of natural or man-made conditions which reduce visual range or contrast, or coloration change. Thus, a visibility monitoring program should identify these effects as well as differentiate man-made effects from natural conditions. The program could generate various types of data such as reports from human observers, photographs, and/or automated instruments. The minimum data collection technique that 40 CFR 51.305 requires is visual observation. However, other more objective techniques are available. (See "Interim Guidance for Visibility Monitoring", Office of Air Quality Planning and Standards, November 1980 (EPA 450/2-80-082).

The monitoring section of the Arkansas Visibility Protection Plan consist of two components:

- (1) Monitoring by the Federal Land Manager (FLM), and
- (2) Monitoring by sources proposing to locate or modify in an area where emissions may impact Class I areas.

"Monitoring by the FLM" is the assessment of visibility background and trends by obtaining existing data

available from the FLM. The State will use the only monitoring site currently operating in Arkansas. The State shall use visibility monitoring data collected by the National Park Service (NPS) at its site in the Buffalo National River area at Buffalo Point in Marion County (on the lower Buffalo River) for background data and trend analysis for the Upper Buffalo Wilderness Area, and for background data for the Caney Creek Wilderness Area. The monitoring site is located approximately 32 miles (52 km) from the Upper Buffalo Wilderness Area, and approximately 144 miles (230 km) from the Caney Creek Wilderness Area. Equipment at the site at this time consists of an automatic camera and a fine particulate monitor, which have been operated for the past two years.

The National Park Service has stated in a letter dated March 25, 1985, that it intends to continue operating this monitoring site, subject to the continuing availability of budget funds. The Park Service has agreed that, in the event circumstances force it to discontinue operation of the site, it will give the State at least ninety (90) days notice and the opportunity for the State to take over the operation of the site.

Monitoring by sources proposing to locate or modify in the locale where emissions may impact Class I areas will provide data for the assessment of impact upon background conditions and for trend analyses for that Class I area.

The Arkansas monitoring section of the Visibility SIP consists of a statement of goals, a discussion of monitoring methods, and a provision for future plan revisions. These provisions meet EPA criteria and EPA is approving this phase of the plan.

#### New Source Review

40 CFR 51.307 requires states to review new major stationary sources and major modifications prior to construction to assess potential impacts on visibility in any visibility protection area, regardless of the air quality status of the area in which the source is located. That is, sources locating in attainment areas and nonattainment areas must undergo visibility new source review (See 40 CFR 51.307 (a) and (b)(2), respectively). These requirements ensure that (1) the visibility impact review is conducted in a timely and consistent manner, (2) the reviewing authority considers any timely FLM analysis demonstrating that a proposed source would have an adverse impact on visibility, and (3) public availability of the permitting authority's conclusion.

Visibility NSR is addressed in two parts: one addresses major stationary

sources subject to the Prevention of Significant Deterioration (PSD) regulations (40 CFR 52.21) which apply to attainment areas, and the second addresses major sources in nonattainment areas.

For all major PSD stationary sources:

(1) The State must notify the FLM in writing not more than 30 days after receiving a permit application or advance notification of application from a proposed source that may impact a visibility protection area.

(2) This notification must take place at least 60 days prior to the public hearing on the application and must contain any analysis of the potential impact of the proposed source on visibility.

(3) The State must consider any analysis concerning visibility impairment performed by the FLM and received not more than 30 days after the notification.

(4) If the State does not concur with the FLM's analysis that adverse visibility impairment will result from the proposed source, the State must provide in its notice of public hearing on the application an explanation of its decision or give notice as to where the explanation can be obtained.

(5) The State must have the ability to require a permit applicant to monitor visibility in or around the visibility protection areas.

For major sources in nonattainment areas:

(1) A major source or modification that may impact a visibility protection area must provide a visibility impact analysis.

(2) The State must ensure that the source's emissions are consistent with the national visibility goal. The State may consider the cost of compliance, the time for compliance, the energy and non-air quality environmental impacts of compliance, and the useful life of the source.

(3) The State must follow the same procedures outlined in the PSD items 1-5 above in conducting nonattainment area visibility reviews.

Items 1 through 5 for major PSD stationary sources and items 1 through 3 for major sources in nonattainment areas are the procedural steps in visibility review as defined in 40 CFR 52.27(d) and 52.28(c) and (d), respectively. (40 CFR 52.27 and 52.28 were proposed in 49 FR 42670 and finalized in 50 FR 28544.)

The Arkansas visibility SIP has incorporated into the NSR section its existing permit requirements for any source locating in an attainment area. Arkansas has no nonattainment areas and was therefore exempted from the nonattainment program requirements of

40 CFR 51.307(b)(2) by EPA (50 FR 28549). Since all areas in the State of Arkansas are classified attainment with respect to the National Ambient Air Quality Standards for all pollutants, their new source review regulations apply only to attainment areas and specify the standard requirements for any permit application and permit approval.

The approach taken by Arkansas to adopting new source review regulations was to amend the Prevention of Significant Deterioration (PSD) Supplement to the Arkansas SIP which was adopted by the Arkansas Commission and the Governor on April 10, 1981, and approved by EPA January 14, 1982. In amending these regulations, the Arkansas Department of Pollution Control and Ecology (Department) adopted by reference the definitions in 40 CFR 51.301 [Protection of Visibility SIP requirements]; and adopted by reference the revisions to the Federal PSD regulations pertaining to sources locating near Class I areas which were proposed in the October 23, 1984, Federal Register. As proposed, revised 40 CFR 52.21(o)(3) contains authority to require new sources to monitor visibility; and 40 CFR 52.21 (p)(1) and (p)(3) contain revised requirements for Federal Land Manager notification and visibility analysis. Corrections to the language used in adoption by reference have also been incorporated.

The SIP commits to the notification time frame requirements to the FLM. It commits to provide an explanation of its decision should it disagree with the FLM's assessment of a proposed source's impact on visibility and to give notice as to where that explanation can be obtained.

The SIP commits to the notification time frame requirements to the FLM. It commits to provide an explanation of its decision should it disagree with the FLM's assessment of a proposed source's impact on visibility and to give notice as to where that explanation can be obtained.

#### FLM Coordination

Under section 165(d) of the Clean Air Act, the FLM is given an affirmative responsibility to protect air quality related values, including visibility, in lands within a Class I area. The visibility regulations allow the FLM the opportunity to identify visibility impairment and to identify elements for inclusion in monitoring strategies. The FLM must maintain these areas consistent with congressional land use goals.

The State of Arkansas has accorded the FLM opportunities to participate and comment on its visibility SIP and regulations. Comments by the FLM were considered and incorporated where applicable. The State has committed in the SIP to consult continually with the FLM on the review and implementation of the visibility program. Further, the

State recognizes the expertise of the FLM (i.e., the NPS) in monitoring and new source applicability analyses for visibility and has agreed to notify the FLM of any advance notification or early consultation with a major new or modifying source prior to the submission of the permit application.

#### Final Action

By this notice, EPA is approving the Arkansas visibility plan and regulation as meeting the requirements of 40 CFR 51.305 and 51.307 and the criteria discussed in 49 FR 42670. (One should reference the October 23, 1984, 49 FR 42670, for additional information). The SIP commits to a 3 year review and making any changes deemed necessary. The SIP, therefore, has established the commitment to review the visibility requirements listed in 40 CFR Part 51 Subpart P—Protection of Visibility. The SIP is still deficient for all the other requirements of Subpart P (except 51.305 and 51.307) which should be addressed within the proper time frame after EPA promulgation or rulemaking.

EPA has reviewed these revisions to the Arkansas SIP and is approving them as submitted. This action is taken without prior proposal because the changes are non-controversial and EPA anticipates no adverse comments on them. The public should be advised that this action will be effective 60 days from the date of this **Federal Register** notice. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published before the effective date. The subsequent notice will withdraw the final action and will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 1986. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

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

#### List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide,

Hydrocarbons, Incorporation by reference.

**Note.**—Incorporation by reference of the State Implementation Plan for the State of Arkansas was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 4, 1986.

Lee M. Thomas,  
Administrator.

#### PART 52—[AMENDED]

Part 52 of Chapter I, Title 40.  
40 CFR Part 52 is amended as follows:

#### Subpart E—Arkansas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.170 is amended by adding paragraph (c)(22) as follows:

#### § 52.170 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(22) On July 12, 1985, the Governor submitted a revision entitled, "Protection of Visibility in Mandatory Class I Federal Areas, May 6, 1985." This submittal included new source review regulations and visibility monitoring strategy as adopted by the Arkansas Commission on Pollution Control and Ecology on May 24, 1985.

(i) Incorporation by reference.

(A) New source review regulations include amendments to rules and regulations of the Arkansas Department of Pollution Control and Ecology entitled, "Prevention of Significant Deterioration Supplement to the Arkansas Plan of Implementation for Air Pollution Control," Sections 1 through 6, adopted on May 24, 1985.

(B) Arkansas Department of Pollution Control and Ecology Minute Order No. 85-12, adopted May 24, 1985.

(ii) Additional Material.

(A) Narrative submittal, including introduction, and visibility monitoring strategy.

[FR Doc. 86-2831 Filed 2-7-86; 8:45 am]

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#### 40 CFR Part 52

[A-5-FRL-2954-6]

#### Approval and Promulgation of Implementation Plans; Indiana

**AGENCY:** Environmental Protection Agency (USEPA).

**ACTION:** Final rulemaking.

**SUMMARY:** Today's rulemaking pertains to rules developed by Indiana to satisfy the Clean Air Act's Reasonably

Available Control Technology (RACT) requirements for stationary sources of Volatile Organic Compounds (VOC), which are addressed in the USEPA's Group I and Group II Control Technique Guidelines (CTGs). On October 27, 1982 (47 FR 47552), and January 18, 1983 (48 FR 2124), USEPA approved Indiana's VOC RACT I and II regulations, respectively on the condition that Indiana correct eight specified deficiencies. Indiana submitted revisions to its VOC regulations, including responses to six of the eight deficiencies, and extended the applicability of these regulations to St. Joseph and Elkhart Counties. In the March 28, 1985, **Federal Register** (50 FR 12338), USEPA proposed to approve Indiana's revisions which responded to the six conditions on its VOC RACT I and II regulations and the St. Joseph and Elkhart Counties VOC RACT regulations. During the 60-day public comment period, USEPA received no comments.

USEPA has determined that these revisions satisfy the six deficiencies. It is today approving these revisions, removing the six conditions which the revisions satisfy, and conditionally approving the regulations at they apply to St. Joseph and Elkhart Counties. Because this satisfies the only outstanding element of the St. Joseph and Elkhart ozone plan, USEPA's conditional approval of the RACT rules lifts the section 110(a)(2)(I) growth restrictions in St. Joseph and Elkhart Counties.

USEPA will rulemake on the remaining two conditions in future **Federal Register** notices.

**DATE:** This final rulemaking becomes effective on February 10, 1986.

**ADDRESSES:** Copies of these revisions to the Indiana SIP are available for inspection at: The Office of the Federal Register, 1100 L Street, NW., Room 8401, Washington, DC 20408.

Copies of the SIP revisions, the proposed rulemaking, and other materials relating to this rulemaking are available for inspection at the following addresses: (It is recommended that you telephone Uylaine E. McMahan, at (312) 353-0396, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604;

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460; Indiana Air Pollution Control Division, Indiana State Board of Health, 1330

West Michigan Street, Indianapolis, Indiana 46206.

**FOR FURTHER INFORMATION CONTACT:** Uylaine E. McMahan (312) 353-0396.

**SUPPLEMENTARY INFORMATION:** Under section 107 of the Clean Air Act, USEPA has designated certain areas in Indiana as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978).

Part D of the Act requires the State to revise its SIP to meet specific requirements for areas designated as nonattainment. These SIP revisions must demonstrate attainment of the ozone NAAQS as expeditiously as practicable, but not later than December 31, 1982 (in certain cases by December 31, 1987). The requirements for an approvable SIP are described in a General Preamble for Part D rulemaking published on April 4, 1979 (44 FR 20372) and at 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

An adequate SIP for ozone is one which includes sufficient control of VOC emissions for stationary and mobile sources to provide for attainment of the ozone standard. For stationary sources, the plan must include, at a minimum, legally enforceable requirements reflecting the application of RACT for those sources for which USEPA has published a CTG. In general, where the State regulations are not supported by the information in the CTGs, the State must provide a demonstration that its regulations represent RACT or amend the regulations to be consistent with the information in the CTGs.

In response to the requirements of Part D of the Act, the State of Indiana revised its SIP to require control of VOC emissions from stationary industrial sources addressed in USEPA's Groups I and II CTGs. On February 11, 1980, the State submitted to USEPA a revision to the ozone portion of its SIP for the Group I sources of VOC emissions. USEPA took final action to conditionally approve the Group I sources' regulation on October 27, 1982 (47 FR 47552),<sup>1</sup> based on commitment from the State to correct deficiencies in the regulation. In this same rulemaking, USEPA took no action on the "bubble" provision in this regulation.

On November 25, 1980, the State submitted to USEPA as a revision to its ozone SIP, amendments to its VOC regulation, now codified as 325 IAC

Article 8<sup>2</sup>, which controlled VOC emissions from the Group II sources. USEPA took final action to conditionally approve this revision on January 18, 1983 (48 FR 2124), based on a commitment from the State to correct deficiencies in the regulation.

In response to these conditional approvals, on November 7, 1984, Indiana promulgated revised VOC regulations 325 IAC 8-1.1, 8-2, 8-3, 8-4, and 8-5. The State submitted these revisions to USEPA on July 3, 1984, and January 30, 1985, to satisfy certain conditions of USEPA's approval. In addition, the applicability of the regulations was extended to cover St. Joseph and Elkhart Counties.

#### Part I

In the March 28, 1985, Federal Register (50 FR 12338), USEPA proposed to approve Indiana's revised VOC RACT I and II regulations and the St. Joseph and Elkhart Counties RACT regulations. During the 60-day public comment period, USEPA received no comments.

#### Part II

##### Analysis of Revisions

A listing of each conditional approval item will be followed by a discussion of the State's corrected action and USEPA's final action.

1. *Conditional Approval Item—40 CFR 52.777(c)(1)(i).* For regulation 325 IAC 8-4, section 6, (Stage I Gasoline Dispensing Facilities) the State committed itself to conduct a study to demonstrate that even with the exemption from control of sources smaller than 20,000 gallons per month throughout, the source category as a whole still meets RACT emission reduction requirements. If the emissions resulting from the State's exemption were shown not to be essentially equivalent to those resulting from the CTG's RACT requirements, then the State agreed to submit to USEPA a rule which requires control of emissions from storage tanks at gasoline dispensing facilities with either 10,000 gallons per month or more throughput or 2,000 gallons or greater capacity.

<sup>2</sup> On October 6, 1980, the State resubmitted 1980 APC 15, recodified as 325 IAC Article 8. USEPA approved the State's recodification, but not the underlying regulations, on July 16, 1982 (47 FR 30972). On January 18, 1983, when USEPA codified its conditional approval of the RACT II regulations, it additionally revised the codification of the conditions of its October 27, 1982, approval of the RACT I regulation, 1980 APC 15, to reflect Indiana's recodification of that regulation to 325 IAC Article 8.

#### Analysis

Neither a study nor an amended regulation has been submitted to satisfy this conditional approval item. However, Indiana has informed USEPA it is modifying the existing minimum throughput to reflect the references in the CTGs. This conditional approval item remains outstanding, and USEPA will propose rulemaking on this issue at a later date.

2. *Conditional Approval Item—40 CFR 52.777(c)(1)(ii).* For regulation 325 IAC 8-2-2(b), 7(b), and 8(b), Surface Coating Operations, the State committed itself (1) to replace the transfer efficiency equations in this regulation with a statement addressing transfer efficiency improvement on a case by case basis and (2) to submit the new rules to USEPA as a SIP revision.

#### Analysis

The transfer efficiency equations discussed above have been deleted. This constitutes an acceptable resolution of this conditional approval item. For an Indiana source to obtain credit for use of improved transfer efficiency equipment, a site-specific SIP revision must be obtained.

3. *Conditional Approval Item—40 CFR 52.777(c)(1)(iii).* For regulation 325 IAC 8-2, section 6, Fabric and Vinyl Coating, the State committed itself to revise the rule to meet the requirements of RACT and to submit the new rule to USEPA as a SIP revision.

#### Analysis

Indiana repealed its fabric and vinyl coating rules, 325 IAC 8-2-6. Therefore, this conditional approval item was not satisfied with the July 3, 1984, submittal. However, Indiana submitted a new fabric and vinyl coating rule as part of a September 7, 1984, submittal which primarily dealt with RACT regulations for St. Joseph and Elkhart Counties. For USEPA's final action on the new fabric and vinyl coating condition, see

#### Part III.

4. *Conditional Approval Item—40 CFR 52.777(c)(1)(iv).* For regulation 325 IAC 8-1.1, section 4, Test Methods and Procedures, the State committed itself to require USEPA-approved test methods and procedures and to submit the new rule to USEPA as a SIP revision.

#### Analysis

Indiana has added a new subsection (e) to 325 IAC 8-1.1-4, Test Methods and Procedures. This new subsection is as follows:

(e) The VOC emissions and control efficiency for bulk gasoline terminals

<sup>1</sup> For more detail on conditional approvals, see 44 FR 38583 (July 2, 1979) and 44 FR 38583 (November 23, 1979).

may be determined by using reference test procedures specified in EPA guideline document EPA-450/2-77-026.

This new subsection states the testing requirement in terms of optional "may" language, rather than mandatory "shall" language. USEPA is approving the revision with the understanding that if Indiana allows use of a non-USEPA test method in the future, its use must be submitted to USEPA as a SIP revision. Other than that, the new subsection satisfies the above condition. It should be noted that this condition only refers to bulk gasoline terminals (as per the March 15, 1982, RACT I notice of Proposed Rulemaking). The test procedures in EPA-450/2-77-026 are appropriate for this source category, and USEPA is approving it.

5. *Conditional Approval Item—40 CFR 52.777(c)(1)(v)*. For regulation 325 IAC 8-5, section 6, Perchloroethylene Dry Cleaning, the State committed itself to study whether the State's exemption of sources using less than 1,500 gallons per year still allows the State to meet the RACT requirements for this source category. If the emission reductions resulting from the State's exemption were shown not to be essentially equivalent to those resulting from RACT requirements, then the State committed itself to submit to USEPA a rule which requires control of emissions from dry cleaning sources using less than 1,500 gallons of perchloroethylene per year.

#### Analysis

Instead of fulfilling its specified commitment, Indiana included perchloroethylene in its list of exempt (non-photochemically reactive) compounds. In addition, the State repealed 325 IAC 8-5-6, its perchloroethylene dry cleaning regulation. Even so, these actions may ultimately be approvable because, on October 24, 1983, (48 FR 49097), USEPA proposed to add perchloroethylene to the list of organic compounds which are negligibly photochemically reactive and, thus, may be exempted from regulation in State ozone SIPs. This conditional approval item, therefore, may no longer be relevant.

USEPA may reconsider its exemption of perchloroethylene, if it determines that this compound is carcinogenic. Final federal rulemaking on these issues should occur in the near future. USEPA, will at that time, either require Indiana to readopt perchloroethylene regulations or will remove the outstanding condition from the SIP.

6. *Conditional Approval Item—40 CFR 52.777(c)(1)(vi)*. For regulation 325 IAC 8-1.1, section 4, Test Methods and Procedures, the State committed (1) to

add USEPA-approved test methods and procedures for determining VOC emissions from external floating roof tanks, synthesized pharmaceutical manufacturing, pneumatic rubber tire manufacturing, and graphic arts systems, and (2) to submit the new rule to USEPA as a SIP revision.

#### Analysis

Indiana has adopted USEPA-approved test procedures for synthesized pharmaceutical manufacturing, pneumatic rubber tire manufacturing, graphic arts and external floating roof tanks. These procedures are referenced in new subsections (f) and (g) of 325 IAC 8-1.1-4. Once again these new subsections state the testing requirements in terms of "may" as opposed to mandatory "shall" language. USEPA is approving the revision with the express understanding that if Indiana allows the use of a non-USEPA test method in the future, its use must be submitted to USEPA as a SIP revision.

7. *Conditional Approval Item—40 CFR 52.777(c)(1)(vii)*. For regulation 325 IAC 8-4, section 3, Petroleum (liquid storage), the State committed itself to revise the rule to meet the requirements of RACT on petroleum storage tanks for primary and secondary seals, to add recordkeeping and reporting requirements, and to submit the new rule to USEPA as a SIP revision.

#### Analysis

Section 3(c) pertains to petroleum liquid storage in external floating roof tanks. Indiana revised section 3(c)(2)(B)(iii), which concerns primary and secondary seal gaps, such that it now meets the requirements of RACT. USEPA is approving these changes.

Recordkeeping and reporting requirements have been added in section 3(d) which meet USEPA requirements.

8. *Conditional Approval Item—40 CFR 52.777(c)(1)(viii)*. For regulation 325 IAC 8-5, section 5, Graphic Arts, the State committed itself (1) to revise the rule to require capture system efficiencies of 75 percent for packaging rotogravure processes and 70 percent for flexographic printing processes and (2) to submit the new rule to USEPA as a SIP revision.

#### Analysis

Indiana has revised this rule consistent with the requirements specified in the conditional approval item. Therefore, this condition has been satisfied. USEPA is approving it.

9. *Miscellaneous Rule Change*. One rule revision was noted in addition to those changes described above. A

revision was made to 325 IAC 8-2-3(a)(4), the portion of the can coating regulations dealing with end sealing compound operations. An interim limitation was changed from 4.2 pounds per gallon to 5.5 pounds per gallon of VOC, excluding water. This minor change is approvable. The final limitation of 3.7 pounds per gallon, which is effective after December 31, 1985, has not been changed.

#### Part III

St. Joseph and Elkhart Counties are nonattainment areas for ozone. Existing sources in these counties were not initially included in Indiana's VOC RACT I and RACT II regulations.

On September 7, 1984, and January 30, 1985, Indiana submitted revisions to 325 IAC Article 8 which amended various sections of 325 IAC 8-1.1, 8-2, 8-3, 8-4, and 8-5 to make them applicable to existing sources located in Elkhart and St. Joseph Counties. Essentially in parallel, the Indiana Air Pollution Control Board (Board) also adopted and submitted on September 12, 1984, VOC RACT I and II regulations developed by St. Joseph County for existing sources in that county only. These RACT VOC regulations are essentially identical to Indiana's September 7, 1984, version of 325 IAC Article 8, and state that they "do not apply to any facility subject to regulations under 325 IAC Article 8 by the Board". Because all RACT I and RACT II Source categories (except dry cleaning)<sup>3</sup> are covered by Indiana's RACT regulation, and supersede St. Joseph regulations, USEPA is not discussing these St. Joseph County regulations nor is it rulemaking on them.

The significant amendments to 325 IAC Article 8 in Indiana's September 7, 1984, submittal are as follows:

1. 325 IAC 8-1.1-3 (Compliance Schedules) was amended to impose the following compliance schedule on the RACT I and RACT II sources in St. Joseph County and Elkhart County.
  - (1) Plans and specifications for meeting the requirements of 325 IAC Article 8 must be submitted to the Board by June 30, 1985.
  - (2) Contracts for emission control systems or process modification must be awarded or purchase orders must be issued by August 31, 1985.
  - (3) On-site construction or installations must be initiated by October 31, 1985.

<sup>3</sup> If USEPA's Final Rulemaking on the reactivity of perchloroethylene is consistent with the Notice of Proposed Rulemaking, then no dry cleaning regulations would be required.

(4) On-site construction or installations must be completed by September 30, 1986.

(5) Final compliance must be demonstrated by December 31, 1986.

#### USEPA Position

These regulations were adopted by the Board in September 1984, and were State promulgated on November 7, 1985. Therefore, the subject sources would have about 2 years to comply with these RACT regulations. This is generally consistent with the amount of time sources have been given to comply with VOC RACT I and RACT II regulations. Therefore, USEPA finds this schedule is as expeditious as is now practicable, and USEPA is approving it.

2. 325 IAC 8-1.1-5 (Petition for Alternative Controls) was amended such that an owner or operator of a source constructed before January 1, 1980, in Elkhart and St. Joseph Counties may submit to the Board a petition for alternative RACT controls by October 1, 1985. Additionally, an owner or operator of any source which is constructed after January 1, 1980, located in any county may at any time submit to the Board a petition for alternative controls. The petition for alternative controls must meet certain specified criteria.

#### USEPA Position

Indiana requires a detailed analysis before it approves an alternative control plan. USEPA has previously approved this mechanism for other counties in Indiana. Additionally, the regulation states that alternative control plans shall be submitted to the USEPA as a revision to the State Implementation Plan. USEPA will act upon these revisions accordingly. The emission limitations contained in 325 IAC Article 8 will remain in effect for such a source seeking an alternative plan until such time as USEPA approves it as the alternative control plan. USEPA is approving this portion of the regulation.

3. 325 IAC 8-1.1-6 (Regarding Requirements for New Sources) was amended such that new facilities (as of January 1, 1980), which have potential emissions of 22.7 megagrams (25 tons) or more per year, located anywhere in the State, which are not otherwise regulated by other provisions of this Article, shall reduce their VOC emissions using Best Available Control Technology (BACT).

#### USEPA Position

The requirement for BACT is more appropriate for new sources than the State's previous requirement for control to at least an 85 percent reduction in emissions. BACT is an appropriate standard for new sources in attainment

areas and unclassifiable areas as well as for new sources in nonattainment areas which are not otherwise subject to Indiana's Lowest Achievable Emission Rate (LEAR) requirement in the State's new source review rules. USEPA is approving this provision.

4. 325 IAC 8-2 (Fabric and Vinyl Coating) was amended by adding a new section, 325 IAC 8-2-12, which specifically covers fabric and vinyl coating sources. This section allows compliance by use of low solvent coatings (2.9 pounds per gallon (lbs/gal) for fabric coating and 4.8 lbs/gal for vinyl coating) or by use of add-on controls. If an add-on control device is used, the following requirements must be satisfied: Overall control efficiency of 67.5 percent, capture efficiency of 75 percent, and control efficiency of 90 percent.

#### USEPA Position

Indiana has documented that 4.8 lbs VOC/gal is RACT for the only vinyl coating source in Indiana (Uniroyal in St. Joseph County). Indiana has also demonstrated that 75 percent capture efficiency represents RACT for Uniroyal. Therefore, the 4.8 lbs VOC/gal limitation and a 75 percent capture efficiency is being approved as RACT for the entire State. The technical bases for these RACT determinations are contained in USEPA's November 20, 1984, technical support document.

#### Conclusion

In the notices of final rulemaking, published on October 27, 1982, and January 18, 1983, USEPA conditionally approved 325 IAC Article 8. Although Indiana's amended VOC RACT I and II rules were submitted one year later than the State's earlier commitment date of July 1983, they do satisfy six of USEPA's conditions. Additionally, Indiana has made its VOC RACT regulations applicable in St. Joseph and Elkhart Counties. USEPA has determined that these amended regulations can be approved, and is doing so. Although these amendments are approvable, the following two RACT deficiencies remain:

1. Indiana's *Stage I Gasoline Dispensing Regulations* are subject to an outstanding conditional approval item which must be resolved.
2. Requirements on perchloroethylene have been removed. This must be resolved in the context of USEPA's national rulemakings on the reactivity and carcinogenicity of perchloroethylene.

USEPA will propose action on these two conditions in future *Federal Register* notices.

USEPA approved the St. Joseph and Elkhart Counties plan except for the VOC RACT regulations on February 11, 1982. (47 FR 6274). The section 110(a)(2)(I) growth restrictions have remained in effect in St. Joseph and Elkhart Counties because these Counties did not have VOC RACT regulations. Today's conditional approval of the VOC RACT regulation satisfies the one outstanding element of the St. Joseph and Elkhart Counties ozone plan. Therefore, today's action lifts the section 110(a)(2)(I) growth restrictions for St. Joseph and Elkhart Counties.

Finally, in today's notice USEPA is taking the opportunity to correct typographical errors in Paragraph (c) and subparagraph (c)(1) that were published in the October 27, 1982 *Federal Register* notice (47 FR 47553).

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intragovernmental Incorporation by reference, relations, Ozone.

**Note.**—Incorporation by reference of the State Implementation Plan for the State of Indiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: January 9, 1986.

Lee Thomas,  
Administrator.

#### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

##### Subpart P—Indiana

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, is amended as follows:

1. The authority citation for Part 52 continues to read as follows:  
Authority: 42 U.S.C. 7401-7642.
2. Section 52.770 is amended by adding new paragraph (c)(55) as follows:

##### § 52.770 Identification of Plan.

(c) \* \* \*

(55) On January 30, 1985, Indiana submitted revised VOC regulations 325 IAC 8-1.1, 8-2, 8-3, 8-4 and 8-5 to satisfy certain conditions of USEPA's approval. Those regulations amended

those approved at (c)(33) and (c)(34). In addition, the applicability of the regulations was extended to cover St. Joseph and Elkhart Counties. USEPA is taking no action on changes to 325 IAC 8-1.1-2(f), Methods of Compliance, and the repeal of 325 IAC 8-5-6, Perchloroethylene Dry Cleaning, because these exempt the compound perchloroethylene from control without the State justifying that such exemption is consistent with the Part D reasonably available control technology (RACT) requirements.

**Note.**—If Indiana allows use of a non-USEPA test method in the future, its use must be submitted to USEPA as a SIP revision.

(i) Incorporation by reference. (A) Indiana's Volatile Organic Compounds (VOC) RACT I and II regulations, Title 325 Air Pollution Control Board:

(1) 325 IAC 8-1.1, Establishes Volatile Organic Compound Emission Limitations. State promulgated on June 21, 1984, and amended November 7, 1984.

**Note.**—325 IAC 8-1.1-4 Test methods and procedures. If Indiana allows use of a non-USEPA test method in the future, its use must be submitted to USEPA as a SIP revision.

(2) 325 IAC 8-2 Surface Coating Emission Limitations. State promulgated on June 21, 1984, and amended November 7, 1984.

(3) 325 IAC 8-3 Solvent Metal Cleaning Operating Requirements. State promulgated on October 15, 1984, and amended November 7, 1984.

(4) 325 IAC 8-4 Petroleum Sources. State promulgated on June 21, 1984, and amended November 7, 1984.

(5) 325 IAC 8-5 Miscellaneous Operations. State promulgated on June 21, 1984, and amended November 7, 1984.

3. Section 52.773 is amended by adding St. Joseph and Elkhart Counties to the areas approved in paragraph (f). Paragraph (f) is revised to read as follows:

#### § 52.773 Approval status.

(f) The Administrator finds ozone strategies for Clark, Elkhart, Floyd, Lake, Marion, Porter, and St. Joseph Counties satisfy all requirements of Part D, Title I of the Clean Air Act that are required to be submitted by January 1, 1981, except as noted below.

4. Section 52.777 is amended by correcting typographical errors in Paragraph (c) and paragraph (c)(1) and adding St. Joseph and Elkhart Counties

to the list of conditionally approved Counties in paragraph (c). The introductory text of paragraphs (c) and (c)(1) are revised to read as follows:

#### § 52.777 Control Strategy: Photochemical Oxidants (Hydrocarbons).

(c) Part D—Conditional approval—The Indiana plan for Clark, Floyd, Elkhart, Lake, Marion, Porter, and St. Joseph Counties is approved provided the following conditions are satisfied:

(1) The plan for stationary source volatile organic compound control must contain the following:

5. Section 52.777 is amended by revoking the reserving paragraphs (c)(1) (ii), (iii), (iv), (vi), (vii), and (viii).

[FR Doc. 86-2681 Filed 2-7-86; 8:45 am]

BILLING CODE 6560-50-M

#### 40 CFR Part 52

[A-7-FRL-2967-5; MO 1809]

#### Approval and Promulgation of Missouri State Implementation Plan (SIP) for Visibility New Source Review and Monitoring

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rulemaking.

**SUMMARY:** EPA is today approving the visibility new source review and visibility monitoring portions of the Missouri SIP. This action was proposed for public comment in the **Federal Register** on November 26, 1985. No comments were received on the proposal.

**EFFECTIVE DATE:** March 12, 1986.

**ADDRESSES:** Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Environmental Protection Agency,  
Region VII, Air Branch, 726 Minnesota  
Avenue, Kansas City, Kansas 66101  
Library, Office of the Federal Register,  
1100 L Street NW., Room 8401,  
Washington, DC

Missouri Department of Natural  
Resources, Air Pollution Control  
Program, 1101 Rear Southwest  
Boulevard, Jefferson City, Missouri  
65101

Public Information, Reference Unit, EPA,  
401 U Street, SW., Washington, DC

**FOR FURTHER INFORMATION CONTACT:**  
Dwayne E. Durst at the EPA Region VII  
address listed above or (913) 236-2893,  
FTS 757-2893.

**SUPPLEMENTARY INFORMATION:** On May 3, 1985, the State of Missouri submitted

a revision to its SIP containing provisions for visibility new source review and visibility monitoring. EPA reviewed the submittal and proposed to approve those portions of Missouri's visibility SIP in the **Federal Register** on November 26, 1985 (50 FR 48612). All other background information relating to the actions being taken may be found in that notice. No comments were received during the comment period on the November 26, 1985, Notice of Proposed Rulemaking.

The proposed rulemaking indicated that details of the visibility monitoring plan were being developed for Class I areas in Missouri.

These details are to be contained in a monitoring plan to be submitted as an appendix to Missouri's Visibility SIP. As presently drafted, these details are contained in agreements between the Federal Land Managers for each Class I area in the State and the Director of the Missouri Department of Natural Resources. When finalized, a copy of the monitoring plans will be available at the Missouri Department of Natural Resources, Air Pollution Control Program, 1101 Rear Southwest Boulevard, Jefferson City, Missouri 65101, and at the Environmental Protection Agency, Region VII, Air Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

#### Action

Based on the foregoing, EPA hereby approves Missouri's SIP as meeting the requirements of 40 CFR 51.305 and 40 CFR 51.307. This action becomes effective March 12, 1986.

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 1986. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by references, Intergovernmental relations, Particulate matter.

Incorporation by reference of the State Implementation Plan for the State of Missouri was approved by the Director of the Federal Register on July 1, 1982.

Dated: February 4, 1986.

Lee M. Thomas,  
Administrator.

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

### Subpart AA—Missouri

Title 40 of the Code of Federal Regulations, Chapter I, Part 52 is amended as follows:

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1320 is amended by adding paragraph (c)(56) as follows:

#### § 52.1320 Identification of plan.

(c) The plan revisions listed below were submitted on the dates specified.

(56) The Missouri Department of Natural Resources submitted the Protection of Visibility Plan, 1985, on May 3, 1985.

(i) Incorporation by reference.

(A) Amendments to Missouri Rule 10 CSR 10-6.020, Definitions, and Rule 10 CSR 10-6.060, Permits Required. These Amendments were adopted by the Missouri Air Conservation Commission and became effective on May 11, 1985.

(ii) Additional material.

(A) Narrative description of visibility new source review program for Class I areas in Missouri.

(B) Visibility monitoring plan for Class I areas in Missouri.

[FR Doc. 86-2832 Filed 2-7-86; 8:45 am]

BILLING CODE 6560-50-M

### 40 CFR Part 81

[A-9-FRL-2967-7]

#### Designation of Areas for Air Quality Planning Purposes; Redesignation To Attainment of San Manuel, Arizona for Total Suspended Particulates (TSP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** The State of Arizona has requested a redesignation to attainment of the San Manuel portion of Pinal County, Arizona for total suspended particulates on October 1, 1984. EPA has evaluated the dispersion modeling using site-specific meteorological data and has determined that no violations could have occurred in the area. EPA approves

the redesignation since it is consistent with EPA policy and Section 107 of the Clean Air Act. The intended effect is to update the attainment status for TSP.

**DATES:** This action will be effective on April 11, 1986 unless notice is received within 30 days that someone wishes to submit adverse or critical comments. Such notice may be submitted to James C. Breitlow at the EPA Regional Office, address listed below.

**ADDRESSES:** Copies of EPA's technical support document for this action and the dispersion modeling analysis submitted to EPA by Arizona are available for public inspection during normal business hours at the EPA Region 9 office in San Francisco.

**FOR FURTHER INFORMATION CONTACT:** James C. Breitlow, Chief, State Implementation Plan Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7641, FTS: 454-7641.

#### SUPPLEMENTARY INFORMATION:

#### Background

On March 3, 1978 [43 FR 8967] EPA promulgated attainment status designations for Arizona under section 107 of the Clean Air Act and designated all of Pinal County as nonattainment for both the primary and secondary TSP National Ambient Air Quality Standards (NAAQS).

On April 10, 1979 [44 FR 21261], EPA redesignated San Manuel, Pinal County to unclassified because screening model results indicated minimal violations of the secondary 24-hour standard as a result of background and stack emissions from the major stationary source in San Manuel.

The State submitted a redesignation to attainment of San Manuel for total suspended particulates on October 1, 1984. This unclassified area was bounded by:

Township 10 south, Range 16 east and Township 10 south, Range 17 east, of the San Bernardino Base Line and Meridian.

Section 123 of the Clean Air Act does not allow credit for improved air quality resulting from intermittent or supplementary control systems (SCS) which take advantage of meteorological variations in order to avoid NAAQS violations. Also, the area to be redesignated to attainment cannot have had a measured or modeled violation for the most recent two years for which data are available.

#### EPA Evaluation

EPA has evaluated the State of Arizona's request that the San Manuel portion of Pinal County be redesignated to attainment from unclassified for TSP and has determined that it should be approved. EPA is basing its decision mainly on the recent results of a sophisticated dispersion model (Complex I). This model was run using EPA approved site-specific meteorological data, and assumed that intermittent controls (SCS) were not used. The modeling is consistent with EPA modeling guidelines and the July 8, 1985 revised stack height regulations. It indicated no violations of the TSP NAAQS. EPA modeled the major source at full production with installed controls. The emissions out of the stacks, grandfathered under the stack height regulations, cause no ambient air violations. EPA is basing the redesignation on both the eight years of violation free ambient data and the modeling results.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective 60 days from the date of this *Federal Register* unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new action by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective April 11, 1986.

#### Final Action

EPA approves the redesignation since it is consistent with EPA policy and section 107 of the Clean Air Act.

#### Regulatory Process

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

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 11, 1986. This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that this redesignation will not have a

significant economic impact on a substantial number of small entities.

**List of Subjects in 40 CFR Part 81**

Air pollution control, National parks, Wilderness areas.

Date: February 4, 1985.

Lee M. Thomas,  
Administrator.

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

**§ 81.303 Arizona.**

**PART 81—[AMENDED]**

**Subpart C—Section 107 Attainment Status Designations**

1. The authority citation for Part 81 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. In § 81.303 the attainment status designation table for TSP is amended by revising the entry for San Manuel to read as follows:

ARIZONA—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
San Manuel:				
T10S, R16E				X
T10S, R17E				X

[FR Doc. 86-2834 Filed 2-7-86; 8:45 am]  
BILLING CODE 6560-50-M

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Ch. I**

[CC Docket No. 81-893; FCC 86-17]

**Common Carrier Services; Procedures for Implementing the Detariffing of Customer Premises**

**AGENCY:** Federal Communications Commission.

**ACTION:** Seventh report and order.

**SUMMARY:** The Federal Communications Commission in this Order provides a structure for the deregulation of: (1) Federally tariffed, embedded customer premises equipment (CPE) owned by independent telephone companies (ITCs or Independents); and (2) federally or state tariffed, embedded CPE used by the Federal government for national security and emergency preparedness (NSEP) purposes. The Order also preempts state separate subsidiary requirements as applied to ITC provision, maintenance, or restoration of NSEP CPE. In addition, this Order establishes procedures for the deregulation of any remaining new or embedded CPE that is still subject to tariff and that has not been, or is being, addressed in other notices or orders. Specifically, this Order establishes procedures for: (1) Deregulating federally tariffed, embedded mobile CPE; and (2) deregulating any new or embedded CPE used in conjunction with

maritime common carrier services licensed under Part 81 of our Rules. This Order detariffs the aforementioned CPE in a manner that is consistent with the principles and goals we have established in the *Second Computer Inquiry*. Finally, the Order defers to the states the decision of whether to deregulate ITC-owned CPE used to provide "911" services. This action is taken in an effort by the Commission to continue to detariff embedded CPE.

**EFFECTIVE DATE:** February 10, 1986.

**ADDRESS:** Federal Communications Commission, 1919 M St., NW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Larry Povich or Rose Crellin, Common Carrier Bureau, (202) 632-9342.

**Seventh Report and Order**

In the matter of Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Service (Second Computer Inquiry) CC Docket No. 81-893.

Adopted: January 9, 1986.

Released: January 21, 1986.

By the Commission.

**I. Introduction**

1. This Order provides a structure for the deregulation of: (1) Federally tariffed, embedded customer premises equipment (CPE)<sup>1</sup> owned by

<sup>1</sup> In the *Second Computer Inquiry* proceeding, we defined "CPE" to include all equipment provided by common carriers in the fifty states, the District of Columbia, Puerto Rico, and the Virgin Islands and located on customer premises, except over-voltage protection equipment, inside wiring, coin-operated or pay telephones, and multiplexing equipment to deliver multiple channels to the customer.

Independent telephone companies (ITCs or Independents);<sup>2</sup> and (2) federally or state tariffed, embedded CPE used by the Federal government for national security and emergency preparedness (NSEP) purposes.<sup>3</sup> The Order also preempts state separate subsidiary requirements as applied to ITC provision, maintenance, or restoration of NSEP CPE. In addition, this Order establishes procedures for the deregulation of any remaining new or embedded CPE that is still subject to tariff and that has not been, or is not being, addressed in other notices or orders.<sup>4</sup> Specifically, this Order establishes procedures for: (1) Deregulating federally tariffed, embedded mobile CPE;<sup>5</sup> and (2) deregulating any new or embedded CPE used in conjunction with maritime common carrier services licensed under Part 81 of our Rules. This Order detariffs the aforementioned CPE in a manner that is consistent with the principles and goals we have established in the *Second*

Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Memorandum Opinion and Order on Further Reconsideration, 88 FCC 2d 512, para. 1 no. 1 (1981) (hereinafter *Further Reconsideration Order*). We also defined "embedded" CPE as "that equipment or inventory, which is tariffed or otherwise subject to the jurisdictional separations process as of the bifurcation date [January 1, 1983]," and "new" CPE as "[a]ny other CPE which is acquired by a carrier or manufactured by an affiliated entity after [the bifurcation date]." *Id.* at para. 45. Mobile CPE was defined in Procedures for Implementing the Detariffing of Customer Premises Equipment (Second Computer Inquiry), Second Report and Order, 98 FCC 2d 814, para. 1 n. 1 (1984) (hereinafter *Second Order*). (This equipment had been excluded from the original *Second Computer Inquiry* deregulatory decisions on CPE). Furthermore, there may still be some equipment subject to tariff that does not fall within either the *Second Computer Inquiry* or the *Second Order* definitions of CPE, but should be considered "customer premises equipment" and should be detariffed. *See, e.g., infra* note 77.

<sup>2</sup> For purposes of this proceeding, Cincinnati Bell Telephone Company (CBT) and Southern New England Telephone Company (SNET) are included among the ITCs.

<sup>3</sup> Section 1 of the Communications Act of 1934, as amended, 47 U.S.C. 151 (1982), provides that two of the goals the FCC should pursue in exercising its regulatory mandate over interstate and foreign communications are to assist in the national defense and to promote the safety of life and property. *See* Exec. Order No. 12,472, 49 FR 13471 (1984) and 47 CFR § 201.0-215.2 (1984).

<sup>4</sup> One category of embedded CPE that has not yet been deregulated, but is being addressed in another Commission proceeding is the embedded CPE owned by the Bell Operating Companies (BOCs) that was not transferred to AT&T at divestiture. *See* Further Notice of Proposed Rulemaking, FCC 85-565, released October 21, 1985. (hereinafter *Fourth Further Notice*).

<sup>5</sup> Although in the *Second Order* we detariffed federally tariffed, embedded mobile CPE owned by ITCs, we did not specify the detariffing mechanisms or valuation methodology to be used.

*Computer Inquiry*.<sup>6</sup> Finally, the Order defers to the states the decision of whether to deregulate ITC-owned CPE used to provide "911" services.

## II. General Background

2. In the *Second Computer Inquiry*, we concluded that "CPE is a severable commodity from the provision of transmission services and that regulation of CPE under Title II [of the Communication Act of 1934] is not required and is no longer warranted."<sup>7</sup> We concluded in subsequent proceedings in the *Second Computer Inquiry* that "continued provision of CPE by common carrier under regulation impedes the evolution of a truly competitive CPE market."<sup>8</sup> We also decided, however, that the public interest would be best served by providing separate schedules for the deregulation of new and embedded CPE.<sup>9</sup> New CPE was detariffed on January 1, 1983, while the detariffing of embedded CPE began after the completion of a separate "implementation proceeding," which addressed "issues of capital recovery and asset valuation, alternative mechanisms by which transition to an unregulated CPE environment may be achieved, and the appropriate time period for removal of embedded CPE investment from separations and a carrier's rate base."<sup>10</sup> We indicated that special treatment of embedded CPE was necessary in order to avoid the significant dislocations that could result from immediate detariffing.<sup>11</sup>

3. Several Commission orders in this docket have implemented the *Second Computer Inquiry* decisions requiring detariffing of embedded CPE.<sup>12</sup> In the

*First Order*, we required AT&T to transfer its embedded CPE to an unregulated subsidiary, AT&T-IS, effective January 1, 1984.<sup>13</sup> The CPE was valued at net book for purposes of this transfer. We also required that AT&T-IS provide a sale option to its embedded CPE customers. National sales prices were set for single-line equipment for a two-year price predictability period. For multiline equipment, the sales prices were not to exceed net book value plus transaction costs in the aggregate. We also established limits on increases in lease prices for the two-year period ending December 31, 1985.<sup>14</sup>

4. In the *Third Order*, we established a framework for states to follow in deregulating ITC-owned, embedded CPE tariffed at the state level. Subject to a minimum set of federal requirements, states were given the flexibility to develop an approach to detariffing that best meets the needs of customers and ITCs in their jurisdictions. We did not

(hereinafter *First Order*), modified on reconsideration, 50 FR 9016 (1985) (hereinafter *First Order Reconsideration*). On June 29, 1984, we released the *Second Order*, supra note 1, which detariffed embedded CPE used in mobile telephone service. A Second Further Notice of Proposed Rulemaking, released on June 20, 1984, 98 FCC 2d 361 (1984) (hereinafter *Second Further Notice*), sought comment on a framework to allow federal agencies to obtain NSEP equipment from AT&T and its subsidiaries and the Bell Operating Companies, and the Sixth Report and Order in this docket, 50 FR 1525 (1985) (hereinafter *Sixth Order*), established such a framework. The Third Report and Order, released on October 26, 1984, 99 FCC 2d 354 (1984) (hereinafter *Third Order*), aff'd on reconsideration, FCC 85-118 (released March 27, 1985), provides a framework for states to deregulate embedded CPE owned by the ITCs and tariffed at the state level. The Fourth Report and Order in this docket, 49 FR 47265 (1984), released November 4, 1984, detariffed CPE provided by Western Union and the international record carriers. The Fifth Report and Order, released November 20, 1984, 49 FR 46378 (1984) (hereinafter *Fifth Order*), reconsideration pending, addressed accounting matters involved in detariffing CPE. The Third Further Notice of Proposed Rulemaking, released on July 12, 1985, 50 FR 29440 (1985) (hereinafter *Third Further Notice*), requested comments on a structure for detariffing embedded, NSEP CPE owned by ITCs, tariffed at the state or federal level, as well as all other CPE not previously addressed in a Commission Order or Notice.

<sup>13</sup> The principal rules regarding the treatment of any gains or losses in connection with the removal of utility assets from regulated service are set out in *Democratic Cent. Comm. v. Washington Metro. Area Transit Comm'n*, 485 F.2d 786 (D.C. Cir. 1973), cert. denied sub nom. *D.C. Transit Sup. v. Democratic Cent. Comm.*, 415 U.S. 935 (1974) (hereinafter, together with companion cases, referred to as *Democratic Central Committee*). For a listing of companion cases, see *First Order* at para. 56 n. 48.

<sup>14</sup> In the *First Order*, we decided to detariff embedded CPE owned by AT&T quickly because of the then-imminent Bell System divestiture, but determined that, since divestiture did not apply to ITCs, we could decide on the detariffing of ITC-owned CPE in a future rulemaking. *First Order* at para. 56 n. 48.

set a valuation standard for the transfer price, but rather allowed the states to determine the valuation mechanism.<sup>15</sup> States were required to certify to the Commission by September 1, 1985, that they had developed plans to deregulate embedded CPE by December 31, 1987, in a manner consistent with the *Third Order*.

5. While we have deregulated, or have established a framework for deregulation of, a substantial amount of embedded CPE, there are still certain categories of embedded CPE yet to be detariffed. In the *Second Further Notice*, we sought comment on the deregulation of federally tariffed ITC-owned CPE. In the *Third Further Notice*, we sought comment on our proposals to deregulate embedded CPE for which we have not received substantial comment in prior proceedings, including ITC-owned, NSEP CPE tariffed at the state or federal level. We also proposed to establish detariffing mechanisms for mobile CPE tariffed at the federal level. In order to complete the deregulation of all CPE in an orderly and timely fashion, we also sought comments on the detariffing of any remaining CPE, new or embedded, for which we had not previously requested comments. Parties were requested to provide information on the type of any such CPE, the entity responsible for the CPE, and a preferred valuation technique and deregulation date.

## III. Federally Tariffed, Embedded CPE Owned by Independents

### A. Background

6. In the *Second Further Notice*, we sought comments on detariffing federally tariffed, embedded CPE. We proposed removing the embedded CPE from regulated service at adjusted net book value on a "flash-cut" basis as of January 1, 1985.<sup>16</sup> Customers would be given the opportunity to purchase their existing in-place equipment "at any time during a two-year period following detariffing at sale prices which, in the aggregate, do not exceed the adjusted net book value of the equipment plus

<sup>15</sup> States are subject to compliance with the principles of *Democratic Central Committee*, i.e., "the right to capital gains on utility assets is tied to the risk of capital losses" and "he who bears the financial burden of particular utility activity should also reap the benefit resulting therefrom." *Democratic Central Committee*, 485 F.2d at 806. Therefore, gains or losses on transfer or sale of assets must go to the group entity—investors or ratepayers—that bore the risk of loss of capital value over the regulated life of the assets. For further discussion of this case, see *Third Order* at para. 39 n. 28.

<sup>16</sup> *Second Further Notice* at paras. 22-23.

<sup>6</sup> Amendment of § 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), 77 FCC 2d 384 (hereinafter *Final Decision*), modified on reconsideration, 84 FCC 2d 50 (1980) (hereinafter *Reconsideration Order*), modified on further reconsideration, 88 FCC 2d 512 (1981) (hereinafter *Further Reconsideration Order*), aff'd sub nom. *Computer & Communications Industry Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983), aff'd on second further reconsideration, FCC 84-190 (released May 4, 1984) (hereinafter *Second Further Reconsideration Order*).

<sup>7</sup> *Final Decision* at para. 9.

<sup>8</sup> *Reconsideration Order* at para. 46. (citing *Final Decision* at paras. 144-59).

<sup>9</sup> *Reconsideration Order* at para. 49.

<sup>10</sup> *Id.* at para. 55 (footnote omitted).

<sup>11</sup> *Id.* at para. 48.

<sup>12</sup> This docket was initiated through the release of a Notice of Inquiry on April 13, 1982. Procedures for Implementing the Detariffing of Customer Premises Equipment (Second Computer Inquiry), Notice of Inquiry, 89 FCC 2d 694 (1982) (hereinafter *Notice of Inquiry*). On June 21, 1983, we released a Notice of Proposed Rulemaking, 94 FCC 2d 76 (1983) (hereinafter *Notice*). The Report and Order detariffing AT&T's embedded CPE was released on December 15, 1983, 95 FCC 2d 1276 (1983)

reasonable transaction costs."<sup>17</sup> We also proposed that the lease rates charged by the ITCs would be subject to established ceilings under a price predictability program based upon the requirements established in the *First Order* for AT&T-IS. Existing contracts applicable to this detariffed equipment would remain in effect and would be enforceable by the ITC and the customer involved. ITCs would be required to follow accounting and tax requirements specified in other Commission orders deregulating CPE.

7. Our goal in formulating the proposal in the *Second Further Notice* was to detariff federally tariffed, embedded equipment as expeditiously as possible, while "protecting the interests of ratepayers, in-place customers, and investors."<sup>18</sup> The comments and reply comments<sup>19</sup> received in response to the *Second Further Notice* represent the full range of interests on the issues under consideration.

#### B. Discussion

8. Initially, we note that our preliminary understanding that federally tariffed, embedded CPE comprises only a small portion of the total amount of embedded equipment owned by Independents has been confirmed by the record compiled in response to the *Second Further Notice*.<sup>20</sup> The procedures proposed by the various parties for detariffing that equipment,

however, run the gamut from applying to ITCs all the requirements adopted in the *First Order* for AT&T,<sup>21</sup> to allowing ITCs to use "voluntary" standards in price predictability and lease or sale offers.<sup>22</sup> Most ITCs argue that they do not require the same control in the detariffing process that we found appropriate for AT&T. They assert that ITCs do not enjoy comparable market power in the replacement, lease, or maintenance of CPE and that much of the CPE provided under federal tariff consists of private line equipment used by sophisticated and knowledgeable business customers. This embedded CPE, it is argued, is subject to a high rate of technological and economic obsolescence.<sup>23</sup> Since they are operating in a highly competitive environment, the ITCs argue, they will have a financial incentive to lease equipment at rates no higher than those currently prevailing in the marketplace thereby maintaining the equipment in service. If an ITC attempts to charge rates that are higher than a customer's market value expectations, the equipment will be returned, and the resulting financial loss will be borne by the ITCs.<sup>24</sup>

9. We are convinced by the comments received that some flexibility is appropriate in the detariffing process as it applies to ITC-owned, federally tariffed, embedded CPE. We reach this conclusion having reviewed state detariffing plans for ITC-owned, embedded CPE tariffed at the state level filed in response to the requirements of the *Third Order*.<sup>25</sup> Cincinnati Bell argues that federally tariffed CPE should be deregulated on the same date and in the same manner as CPE deregulated under the provisions of the *Third Order*.<sup>26</sup> We conclude, that ITCs should be given some opportunity to deregulate federally tariffed CPE at the same time as state-tariffed CPE<sup>27</sup> and under somewhat similar conditions. Thus, we

will provide some flexibility as to the detariffing date and valuation mechanisms.

10. In order to provide flexibility, while ensuring that this federally tariffed equipment is detariffed promptly and in a manner consistent with federal policies, we establish the following requirements:

(1) *Detariffing Period and Valuation Standard.* ITCs may deregulate federally tariffed, embedded CPE any time between March 1, 1986 and December 31, 1987.<sup>28</sup> For the purpose of transferring the CPE from regulated accounts the equipment should be valued at net book value.<sup>29</sup>

(2) *Price Predictability Program.* The Price Predictability program established herein provides for both a sales and lease program to be in effect for two years after the date of deregulation. This price predictability program is modeled after the program established for AT&T in the *First Order*.<sup>30</sup>

(a) *Sales Program.* A sales program<sup>31</sup> must be established under which customers will be able to purchase their CPE at any time during a two year price predictability program after deregulation, at sales prices that, in the aggregate, do not exceed the net book value of the equipment plus reasonable transaction costs. Customers must be notified that a sales program is in effect and those requesting a price quote for in-place CPE must receive a quote not more than 30 days after the request. CPE

<sup>17</sup> *Second Further Notice* at para. 23. See also *id.* at para. 23 n. 24 regarding adjustments to net book value.

<sup>18</sup> *Second Further Notice* at para. 24.

<sup>19</sup> Parties filing comments included: Federal Executive Agencies; Ameritech Operating Companies; International Communications Association (ICA); Mountain States Telephone Company; Northwestern Bell Telephone Company and Pacific Northwest Bell Telephone Company; American Satellite Company; Bell Telephone Company of Pennsylvania; Chesapeake and Potomac Telephone Company; The Diamond State Telephone Company; Nevada Bell Telephone Company; New England Telephone and Telegraph Company; New Jersey Bell Telephone Company; New York Telephone Company; Pacific Bell Telephone Company; Southwestern Bell Telephone Company; Teltec Saving Communications Company; and CTE Corp. Five parties filed reply comments: Federal Executive Agencies; United Telephone System, Inc. (UTS); AT&T; Central Telephone Company (Centel); Rolm Corporation.

<sup>20</sup> See, e.g., Centel Comments at 3. Centel states that its net investment of \$1,705,180 for private line interstate terminal equipment represents 2.5 percent of its total net investment in CPE. See also CTE Comments at 18; UTS Comments at 2.

<sup>21</sup> See ICA Comments at 4.

<sup>22</sup> See GTE Comments at 14.

<sup>23</sup> See Centel Comments at 3.

<sup>24</sup> See *Democratic Central Committee*, 485 F. 2d at 806.

<sup>25</sup> States were required to file plans for deregulating ITC-owned, state-tariffed, embedded CPE by September 1, 1985. The deregulation dates proposed by states have varied from January 1, 1986, to December 31, 1987. Waiver requests for detariffing past December 31, 1987, have also been received. States have proposed using net book value, market value, capital budgeting, and appraisals to set CPE valuation.

<sup>26</sup> Cincinnati Bell Comments at 3.

<sup>27</sup> The flexibility in detariffing date does not extend past December 31, 1987.

<sup>28</sup> This Order does not change the filing requirements of § 43.43 of the Commission's Rules, 47 CFR § 43.43 (1984). Any telephone company requiring changes in depreciation rates that are subject to approval by the Commission must follow the usual procedures in seeking such approval.

<sup>29</sup> Net book value is defined as the original cost of an asset less the related depreciation reserve. *First Order* at para. 45 n.40. For AT&T, we found that "using net book value as a proxy for economic value" has the advantage of extreme simplicity, and it may be the most prudent. See *First Order* at paras. 72-74, 78-79. Adjustments to net book value would be made in accordance with the principles and rules adopted with respect to AT&T embedded CPE in the *First Order*. We permitted the net book value of the embedded assets to be reduced upon transfer out of regulation by the amount of deferred tax reserves and unamortized investment tax credits associated with those assets as a means of effecting the transfer of these tax accounts from the regulated books. Since we are requiring ITCs also to transfer those tax accounts with the embedded CPE, a similar adjustment in net book value will be permitted.

<sup>30</sup> *First Order*, at paras. 57-112 and 15 n. 21.

<sup>31</sup> In the *First Order*, we indicated that the sale and transfer options formed the backbone of the detariffing plan developed for AT&T. *First Order* at para. 35.

purchased during this period must receive a 90 day warranty.<sup>32</sup>

(b) *Lease Program.* During the price predictability period the lease rates charged by the ITCs are subject to increase no greater than the increase in the Consumer Price Index for that period.<sup>33</sup> Increases may be made in eight month intervals occurring at the 8th and 16th months of the transition period. Option to purchase contracts and lease contracts will continue in effect and be enforceable by the ITC and the customer involved.

(3) *Accounting Requirements.* (A) The deferred tax reserves and unamortized tax credits associated with all embedded CPE must be transferred with the CPE to unregulated accounts upon deregulation.

(B) CPE must be transferred to unregulated accounts or a separate subsidiary at net book value on the date of deregulation.

(C) Supporting assets must be transferred to unregulated accounts at net book value. Land and buildings must be transferred to unregulated accounts at market or appraised value.

(D) ITCs must maintain separate books for unregulated activities as required in the *Fifth Order*, unless the equipment will be transferred to a separate subsidiary. Joint or common costs must be fully distributed between the regulated and unregulated activities of the ITC.

(E) For sales under regulation, ITCs must use existing salvage accounting procedures that were applied to AT&T in the *First Order*.

11. ITCs will be required to balance the interests of ratepayers, in-place customers, and investors, while proceeding to detariff this equipment in a manner consistent with the *Second Computer Inquiry* and *Democratic Central Committee*.<sup>34</sup> Although this Order does not require the filing of a plan for deregulation of federally tariffed CPE by ITCs, the Commission may, at its discretion, require the submittal of a detailed plan, a report, or an accounting audit to ensure that the detariffing of federally tariffed, ITC-owned CPE takes place in a manner consistent with the *Second Computer Inquiry*.

#### IV. Embedded NSEP Equipment Owned by Independents

##### A. Background

12. The removal from regulation of embedded NSEP CPE owned by ITCs

was not specifically addressed in the *Notice*. The *Third Order*, which permitted states to deregulate embedded CPE owned by ITCs that is tariffed at the state level, specifically excluded NSEP equipment<sup>35</sup> in order to ensure that there would be a consistent deregulatory process, for all NSEP CPE owned by ITCs, whether tariffed at the state or federal level.

13. In the *Second Further Notice*, we suggested several options under which specified federal agencies would be able to obtain CPE to provide NSEP functions.<sup>36</sup> The parties chose to comment largely on AT&T's role in the provision of NSEP equipment. Accordingly, the *Sixth Order* established a framework, involving a permanent waiver of the *Second Computer Inquiry* separate subsidiary requirements,<sup>37</sup> under which AT&T Communications (AT&T-COM) and the BOCs could continue to act as a single point of contact for federal agencies, to facilitate the provision, operation, and maintenance of 21 NSEP systems.<sup>38</sup>

14. The *Sixth Order* provided for the deregulation of embedded NSEP CPE owned by AT&T in a manner similar to that required by the *First Order* for AT&T's other embedded CPE. For both single-line and multiline CPE, the *Sixth Order* required that the equipment be transferred out of regulation at net book value with a sales plan and two-year price predictability period. AT&T-owned NSEP was detariffed effective January 1, 1984. The *Sixth Order* did not address the provision of NSEP equipment by ITCs; we stipulated however, that ITCs could continue to act as a single point of contact for NSEP communications needs and that a specific waiver would not be necessary since ITCs, unlike AT&T-

COM and the BOCs, were not subject to the Commission's separate subsidiary requirements.<sup>39</sup>

##### B. Discussion

15. Our goal in this proceeding is the deregulation of ITC-owned NSEP CPE in a manner that protects the national security and the interests of ratepayers, in-place customers, and investors.<sup>40</sup> Although we were convinced that the deregulatory policies of the *Second Computer Inquiry* could proceed without adversely affecting national security and emergency preparedness, in the *Third Further Notice* we provided interested parties with an opportunity to provide more detailed comments on the detariffing of ITC-owned NSEP CPE before we would proceed to establish rules for deregulation.

16. In the *Third Further Notice*, we sought comment on: (1) The definition of NSEP CPE for detariffing purposes; (2) the detariffing processes for state tariffed NSEP CPE; (3) the detariffing process for federally tariffed NSEP CPE; and (4) the need to preempt state separate subsidiary requirements that may interfere with the effective provision, restoration, or maintenance of CPE for NSEP purposes. Below, we address the first three of these issues together and then the fourth issue separately.

##### 1. NSEP CPE Detariffing

17. GTE and Cincinnati Bell argue that the definition of NSEP CPE presented in the *Third Further Notice*,<sup>41</sup> was "overbroad and subject to a variety of interpretations,"<sup>42</sup> and that "NSEP CPE is not currently separately identified . . ." <sup>43</sup> Cincinnati Bell indicates further that, it would be operationally difficult to keep these expenses separated from other expenses on an on-going basis because the deregulated NSEP equipment would be physically similar to other deregulated equipment.<sup>44</sup> In reply comments, FEA agrees with the concerns expressed by GTE and Cincinnati Bell regarding the identification of NSEP CPE. "The FEA are not sure that we are capable of compiling a complete and accurate list of all circuits in which ITC-owned NSEP CPE may be involved".<sup>45</sup> Further, FEA

<sup>32</sup> *Third Order* at para. 27.

<sup>33</sup> *Second Further Notice* at paras. 9-11.

<sup>34</sup> In the *Second Computer Inquiry*, we permitted AT&T to engage in the provision of CPE and enhanced services only through a separate subsidiary. See *Final Decision* at para. 208. We have recently released an Order relieving AT&T from structural separation requirements for the provision of CPE. See *Furnishing of Customer Premises Equipment and Enhanced Services by American Telephone and Telegraph Company*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 50 FR 9060 (1985). We have also recently initiated a proceeding to examine whether to remove the structural separation requirements for the enhanced service offerings of AT&T and the BOCs. Amendment of § 64.702 of the Commission's Rules and Regulations, CC Docket No. 85-229, FCC 85-397, released August 16, 1985.

<sup>35</sup> The permanent waiver permits AT&T-COM and the regulated BOC entities to maintain end-to-end responsibility for NSEP communications in cases of presidentially declared and certain other emergencies and on a continuous basis for 21 designated NSEP systems. See *Sixth Order* at para. 26, n. 72. See also *First Order* at para. 171 n. 146; *Sixth Order* at App. A.

<sup>39</sup> *Sixth Order* at para. 1 n.4.

<sup>40</sup> *Third Further Notice* at para. 8.

<sup>41</sup> *Id.* at para. 12.

<sup>42</sup> GTE Comments at 5-9.

<sup>43</sup> Cincinnati Bell Comments at 2. See also GTE Reply Comments at 3 n. 3.

<sup>44</sup> Cincinnati Bell Comments at 2.

<sup>45</sup> See FEA Reply Comments at 3.

<sup>32</sup> See *First Order* at para. 81.

<sup>33</sup> *Id.* at paras. 79-80.

<sup>34</sup> See *supra* para. 3 note 11 and para. 4 note 13.

states that it did not contemplate having "ITC NSEP CPE treated differently for detariffing purposes than ITC non-NSEP CPE."<sup>46</sup>

18. The comments uniformly indicate that no special treatment is required in detariffing ITC-owned, embedded NSEP CPE tariffed at the state or federal level.<sup>47</sup> We conclude that ITC-owned embedded NSEP CPE should be treated in the same manner as other ITC-owned embedded CPE. Accordingly, federally tariffed, embedded NSEP CPE will be detariffed according to the provisions established in this Order for other federally tariffed CPE and state tariffed, embedded NSEP CPE will be detariffed according to state plans filed in response to the *Third Order*.<sup>48</sup> Consequently, it is unnecessary for us to define NSEP as it relates to the detariffing process, as we proposed in the *Third Further Notice*, since NSEP CPE<sup>49</sup> will be detariffed in the same manner as other embedded CPE.

## 2. State Separate Subsidiary Requirements

19. In the *Second Computer Inquiry*, we required that AT&T provide embedded and new CPE through a separate subsidiary in order to eliminate the risk of cross-subsidization or other anticompetitive conduct.<sup>50</sup> While we chose not to place these requirements on ITCs,<sup>51</sup> we did not preclude states from

<sup>46</sup> *Id.* at 3. Although FEA initially supported federal deregulation of state tariffed NSEP CPE, in its Reply Comments it takes the position that NSEP CPE should be detariffed in the same manner as other state-tariffed CPE.

<sup>47</sup> Moreover, as argued by GTE, the broad nature of the definition of NSEP presented in the *Third Further Notice* and supported and broadened by FEA in its comments would make it very difficult to detariff this CPE separately from other CPE. GTE Comments at 4 and FEA Comments at 4-5.

<sup>48</sup> The *Third Order* provides that NSEP CPE owned by ITCs in a state in which a state plan has not been filed with the Commission or has been denied because it is not consistent with the requirements of the *Third Order* will be deregulated according to the AT&T Detariffing plan specified in the *First Order*.

<sup>49</sup> In the *Third Further Notice* we proposed a waiver to extend the detariffing periods for ITCs with a substantial amount of embedded NSEP CPE. No comment was received regarding this waiver proposal and thus we have decided not to admit the waiver.

<sup>50</sup> See *Third Further Notice* at para. 7 n. 19.

<sup>51</sup> In the *Reconsideration Order*, we decided that, for a number of reasons, separate subsidiary requirements would not be necessary for ITCs. First, we found that opportunities for ITCs to cross-subsidize were less than those of AT&T. Second, we concluded that the costs of separation would be greater for ITCs and might foreclose their entry into the enhanced service or CPE markets. See *Reconsideration Order* at para. 70.

requiring that an ITC establish a separate subsidiary for the provision of CPE.<sup>52</sup> If a state has imposed such a requirement on an ITC, however, problems similar to those addressed in the *Sixth Order*, regarding AT&T's ability to provide end-to-end service for NSEP requirements, may exist for the ITC.

20. In the *Third Further Notice*, we proposed to preempt state separate subsidiary requirements that do not allow ITCs to provide embedded, new, or replacement NSEP CPE as part of an end-to-end service. We were concerned that such requirements could impede the effective provision of CPE for national security and emergency purposes, including those situations under which priority restoration and similar requirements would necessitate participation by ITCs in ensuring the telecommunications requirements for NSEP. As was the case with AT&T in the *Sixth Order*, we were concerned that these state separate subsidiary requirements would preclude ITCs from offering a single point of contact for services and CPE needed for NSEP purposes.<sup>53</sup>

21. In the *Third Further Notice*, the Commission proposed a definition of NSEP for purposes of preempting state separate subsidiary requirements<sup>54</sup> that included CPE used in connection with: (1) NCS<sup>55</sup>/Federal Communications Commission approved restoration priority 1-4<sup>56</sup> services that are under

<sup>52</sup> In the *Second Computer Inquiry*, we held that "if a state regulatory authority, focusing on the local activities of a carrier not subject to structural separations under our rules, perceived that the carrier's unregulated activities could lead to cross-subsidies or other anticompetitive conduct detrimental to basic service ratepayers, the state could apply structural separation conditions on that carrier." *Second Further Reconsideration Order* at para. 2.

<sup>53</sup> See *Bureau Waiver Order* at para. 12 n.16, regarding the DOD's comments on the need for a single point of contact for emergency communications needs.

<sup>54</sup> See *Third Further Notice* at para. 12.

<sup>55</sup> The NCS includes the telecommunications assets of, and representatives from, "those Federal departments, agencies or entities, designated by the President, which lease or own telecommunications facilities or services of significance to national security or emergency preparedness, and to the extent permitted by law, other Executive entities, which bear policy, regulatory or enforcement responsibilities or importance to national security or emergency preparedness telecommunications capabilities." Exec. Order No. 12,472, 49 FR 13471 (1984).

<sup>56</sup> See 47 CFR Part 64, App. A, pp. 693-97. The Communications Act grants this Commission authority over the assignment of priorities for restoration of common carrier provided service, until such time as the applicable Commission rules are superseded by the President's emergency power. *Id.* at 693. A restoration priority system is "intended to restore only the most essential private line communications circuits in order to increase their

contract to specified federal agencies;<sup>57</sup> (2) any service or circuit required in support of certain emergency situations,<sup>58</sup> and (3) any military exercise or special purpose services or circuits.<sup>59</sup>

22. The parties commenting on our proposal assert that ITCs have the same need to provide "end-to-end" service to the government that led the Commissions to waive the structural separation requirements for AT&T and the BOCs in their provision of NSEP CPE.<sup>60</sup> FEA and GTE both argue that, therefore, the Commission should adopt its proposal and preempt state limitations.<sup>61</sup> In its comments, FEA also indicates that the NSEP CPE definition that included military exercises was too limited and should be expanded to all exercises held by the special agencies. They also indicate that the special purpose services should include "foreign affairs" NSEP services, as well as presidential and foreign intelligence NSEP services. We concur that these services should be included in order to make the definition consistent with the NSEP Manual.<sup>62</sup>

reliability during emergencies." *Id.* All communications common carriers are directed by Appendix A of Part 64 of this Commission's Rules to honor and apply the restoration priority system.

<sup>57</sup> The federal agencies involved are the Department of Defense (DOD), the Department of Energy, the Department of the Interior, the Department of Transportation (including the Federal Aviation Administration and the Coast Guard), the General Services Administration, the Central Intelligence Agency, the Federal Emergency Management Agency, the National Aeronautics and Space Administration, the United States Information Agency, and the Nuclear Regulatory Commission. These agencies are hereinafter referred to as the "specified federal agencies."

<sup>58</sup> These emergency situations include a presidentially declared disaster or emergency as defined in the Disaster Relief Act (42 U.S.C. 5122) or other emergency as defined in DCA Circular 310-130-1, Chapter II, para. 2 (Feb. 1982). For the relevant text of the DCA Circular, see AT&T Petition for Waiver of § 64.702 of the Commission's Rules and Regulations with Respect to the Department of Defense and Specified Government Agencies, Memorandum Opinion and Order, 93 FCC 2d 632, para. 7 n. 6 (1983) (hereinafter *CPE Waiver Order*).

<sup>59</sup> Special purpose services/circuits include services/circuits used to support the President, Vice President, or activities conducted pursuant to the Foreign Intelligence Surveillance Act, 50 U.S.C. 1801-11.

<sup>60</sup> GTE Reply Comments at 5 and FEA Comments at 6. See also Joint Supplemental Comments of FEA, GTE, Continental Telecom Inc., Centel Corporation, and the United States Telephone Assoc. (hereinafter Joint Supplemental Comments) at 2.

<sup>61</sup> GTE Reply Comments at 2; FEA Comments at 6.

<sup>62</sup> FEA Comments at 4-5.

23. In recognition of the "end-to-end" needs of an operational national security network,<sup>63</sup> this Commission herein preempts state-imposed separate subsidiary requirements, to the extent they apply to the provision, maintenance, or restoration of NSEP CPE by ITCs.<sup>64</sup> Specifically, in those states in which ITCs are required to provide CPE through a separate subsidiary, we preempt any state-imposed limitations that would prohibit ITCs from engaging on an unseparated basis in the provision, maintenance, and restoration of CPE<sup>65</sup> in national security and emergency situations, including those under which priority restoration and similar requirements would necessitate participation by ITCs in ensuring the telecommunications requirements of NSEP.<sup>66</sup> Under this preemption the regulated ITC would be permitted to be responsible for the acquisition of limited amounts of new CPE to replace embedded CPE in NSEP systems and for the reasonable augmentation of these systems. ITCs will also be permitted to be responsible for the acquisition of unlimited amounts of CPE during NSEP emergencies. New CPE that is not needed to augment or replace embedded CPE for NSEP systems, or to respond to a request during an NSEP emergency, will not be covered by this preemption.

24. Until deregulation, commenters argue, the provision, maintenance, and restoration of NSEP CPE may require coordination between the regulated and unregulated sides of ITCs. The costs of regulated service should continue to be reflected in tariff rates, and the

allocated costs associated with providing and servicing NSEP CPE should not be borne by the ordinary ratepayer, but rather should be treated as a reimbursed cost to ITCs by government users. The decision to preempt the state-imposed separate subsidiary requirements extends only to the provision, maintenance, or restoration of NSEP CPE.<sup>67</sup> The specified federal agencies must reimburse the ITCs under tariff, for costs associated with providing regulated "end-to-end" maintenance and repair for NSEP CPE in emergency situations. These expenses should not find their way into the rate base on which general ratepayer's rates are based for these tariffed services. New CPE provided for NSEP purposes must be titled in the separate subsidiary or the government agency. The decision to request the unseparated provision, restoration, or maintenance of NSEP CPE will be left to the FEA in consultation with the ITCs. The decisions made by the ITCs in conjunction with the FEA will continue to be subject to regulatory oversight and review by this Commission.

25. If requested by a state, within 120 days of this Order or 30 days after the establishment of a separate subsidiary by an ITC, whichever is later, the ITC in conjunction with FEA must file a report with the state that specifies the NSEP CPE that will be provided and serviced by the ITC on an ongoing basis under the provisions of the preemption provided for herein. The state may require that the report be updated as often as quarterly by the ITC. In addition, if requested by a state, the ITC in conjunction with FEA must report quarterly on any emergency situations that required the provision, restoration, or maintenance of new or embedded CPE under the provisions of the preemption provided for herein, which was not previously identified to the state as a NSEP requirement. The report may include information on the new or embedded CPE provided and the regulated resources diverted to provide emergency repair and maintenance necessary to support NSEP CPE.

#### V. Other CPE

26. In order to ensure that when we terminate this proceeding all new or embedded CPE is detariffed, we sought comment in the *Third Further Notice* on

<sup>67</sup> We have attempted to limit our preemption in this area in a manner that allows ITCs to provide NSEP CPE to the specified federal agencies in an effective fashion, while not broadening the preemption to a point that it interferes with the objectives of state separate subsidiary requirements.

the deregulation of any remaining CPE we have not addressed in this or any other previous notice or order.<sup>68</sup> Specifically, we sought comment regarding: (1) 911 emergency CPE; (2) federally tariffed, embedded mobile CPE and (3) CPE used with maritime mobile services licensed under part 81 of the Commission's Rules.

#### 1. 911 Emergency CPE

27. We proposed in the *Third Further Notice* to permit the states to decide whether or not to detariff 911 emergency CPE<sup>69</sup> owned by ITCs and tariffed at the state level. We based this tentative conclusion on the extraordinary requirements for service continuity, reliability, and maintenance associated with 911 emergency calls. The Common Carrier Bureau has previously concluded that the provision of 911 emergency service directly promotes the statutory objective embedded in Section 1 of the Communications Act, 47 U.S.C. 151, of "promoting safety of life and property through the use of wire and radio communications."<sup>70</sup>

28. GTE supports our proposal to allow states to determine whether or not to detariff 911 CPE.<sup>71</sup> Cincinnati Bell argues that this CPE should be detariffed according to the same provisions as other state tariffed CPE.<sup>72</sup> However, because of the importance of this CPE in local government provision of emergency services, we conclude that it is in the public interest to allow states to determine whether the circumstances within their jurisdiction justify special treatment of 911 CPE. Thus, we conclude, consistent with our prior actions on this issue, that states may decide whether to detariff 911 CPE, and if they do decide to do so, how to accomplish the detariffing.

<sup>68</sup> See *supra* para. 1 n. 4.

<sup>69</sup> By "911 emergency CPE" we mean that CPE located at 911 attendants' positions, including associated switches and processing database equipment used to implement centralized 911 dispatch services. We, of course, do not include in this definition conventional telephones that might be used to place a 911 call.

<sup>70</sup> Letter from the Chief, Common Carrier Bureau, to Alfred A. Green, AT&T (Dec. 30, 1982). See also generally, Southwestern Bell Telephone Company, File No. ENF 84-44, Mimeo No. 1709 (released January 8, 1985).

<sup>71</sup> GTE's telephone operating companies have recently sought a waiver of Computer II Rules for 911 service. See GTE Service Corporation letter dated May 21, 1985 from Daniel L. Bort, Request for Waiver of the Computer II Rules for E911 and CPE, ENF. 84-44.

<sup>72</sup> See comments Cincinnati Bell at 3.

<sup>63</sup> FEA argues in its comments: "Many NSEP telecommunications services involve the ITCs. Failure to preempt state separate subsidiary requirements which prohibit ITCs from providing embedded, new, or replacement NSEP CPE as part of an end-to-end service, would preclude the FEA from continuing to receive existing end-to-end NSEP telecommunications services from the affected ITCs, and would hamper their ability to respond to future NSEP telecommunications service requirements. . . . [A]bsent preemption, the federal government will be able to obtain NSEP CPE from AT&T and the BOCs, but not the ITCs. There is no justification for such disparate treatment of ITCs."

See FEA Comments at 6. See also Joint Supplementary Comments at p. 3.

<sup>64</sup> This preemption includes support services required to provide, maintain, and restore NSEP CPE. For example, support services may include: billing, installation and repair, legal and accounting support, and point-of-contact services. See Letter to the Commission from Daniel L. Bort, Attorney, GTE, dated November 14, 1985.

<sup>65</sup> NSEP CPE would not be tariffed and would not be added to the regulatory revenue requirements. Expenses incurred by ITCs in connection with making such arrangements would be recorded as below-the-line expenses.

<sup>66</sup> Only CPE associated with NSEP situations, as described *supra* paras. 21 and 22, would be covered by the proposed preemption.

## 2. Mobile CPE

29. In the *Second Order* in this proceeding, we detariffed all embedded CPE used in mobile telephone services that was provided by AT&T, ITCs, and radio common carriers (RCCs).<sup>73</sup> AT&T's embedded mobile CPE was deregulated according to the procedures of the *First Order*. With respect to state tariffed, embedded mobile CPE, we decided to extend to the state commissions the flexibility to establish valuation standards and detariffing mechanisms, such as sales plans, to be applied at the time these assets owned by the ITCs and RCCs were removed from regulated service. While we directed that detariffing or federally tariffed, embedded mobile CPE occur in the *Second Order*, we did not specify the detariffing mechanisms or valuation methodology to be used. It is our understanding that this represents a small amount of CPE.

30. As proposed in the *Third Further Notice*, we require that ITCs and RCCs detariffing federally tariffed, embedded mobile CPE must: (1) Use net book value as the valuation standard for transfer of the equipment to nonregulated books; (2) provide that customers have an opportunity to purchase the in-place equipment at any time during a two-year price predictability period following detariffing, at sales prices that in the aggregate do not exceed the net book value of the equipment plus transaction costs; (3) limit increases in month-to-month lease rates during the price predictability period to increases in the Consumer Price Index (CPI), with adjustments permitted in eight month intervals at the 8th and 16th months of the price predictability period; (4) honor existing fixed-term leases according to their terms<sup>74</sup> (such leases would be

enforceable by both the ITC and customer involved); and (5) follow accounting and tax requirements as specified herein for federally tariffed CPE.<sup>75</sup>

### 3. CPE used in Maritime Common Carrier Services Licensed under Part 81 of the Commission Rules

31. In the *Third Further Notice*, we sought comment on the deregulation of CPE used in maritime common carrier services licensed under Part 81 of our Rules. We received no comments on this issue. Neither new or embedded CPE used in this service has been previously deregulated by any prior Commission orders.<sup>76</sup> Thus, we are herein deregulating new and embedded CPE, effective March 1, 1986. Any embedded CPE used in such maritime service must be detariffed under the provisions established for federally tariffed mobile CPE.<sup>77</sup>

### 4. Any other CPE

32. In this Order we establish the procedures for detariffing any CPE not previously discussed in this Order, or any prior Commission notices or Orders. Respondents to the *Third Further Notice* did not identify any such new or embedded CPE. Any such embedded CPE identified subsequently must be deregulated according to the provisions established herein for federally tariffed, embedded, mobile CPE, effective March 1, 1986.<sup>78</sup>

## VI. Regulatory Flexibility Certification

33. This Order establishes rules and policies for the detariffing of embedded CPE owned by ITCs that is either tariffed at the federal level or used by the federal government for NSEP functions, whether tariffed at the federal or state level. This Order establishes a workable and durable framework for the provision of NSEP CPE in a manner that accommodates national defense and emergency preparedness goals as well

as the policies of the *Second Computer Inquiry*. This Order also establishes a framework for the deregulation of any remaining new or embedded CPE that is still being offered subject to tariffs. The authority for this rulemaking is contained in sections 4(i), 4(j), 201-205, 213, 218, 220, 403. We state our legal authority for taking action in this proceeding, and note that the policy objectives of the Regulatory Flexibility Act are also encompassed in Sections 2(b) and 203(a) of the Communications Act of 1934, the provisions of which are intended to relieve many small telephone companies from various reporting requirements established in the Communications Act.

34. We conclude that small business entities, as defined for purposes of the Regulatory Flexibility Act, 5 U.S.C. 602-12, would be favorably affected by this rulemaking.

35. We hereby certify pursuant to 5 U.S.C. 605(b) that the Regulatory Flexibility Act is not applicable to ITCs because they are monopolies in their own service areas. The Act incorporates the definition of a "small business" in Section 3 of the Small Business Act as the definition of a "small entity." The latter definition excludes any business that is dominant in its field of operation. ITCs, even small ones, enjoy a dominant monopoly position in their local service area. This is the case regarding the ITCs because each of them is the dominant provider of telephone service within its service area. Moreover, the actions we are taking in this proceeding that allow for more flexibility in deregulating federally tariffed CPE are designed such that the interests of small telephone companies are protected. We note that, even though the Regulatory Flexibility Act does not apply to ITCs, our requirements regarding the detariffing of CPE established in this proceeding comply with the spirit of that statute proceeding they will have the effect of reducing administrative burdens faced by small ITCs.

36. We conclude that our requirements will have a favorable impact on small RCCs directly affected by our actions. It is our view that any small business under the terms of the Regulatory Flexibility Act will be favorably affected because the removal of tariff regulation will allow them to meet the needs of their customers, to take advantage of technological developments affecting CPE, and to control and direct the operation and expansion of their CPE businesses in a more efficient manner. Moreover, as we noted in the *First Order*, the Regulatory Flexibility Act was designed for the protection of small

<sup>73</sup> A Notice of Proposed Rulemaking in CC Docket No. 83-372 addressed the deregulation of mobile CPE used in conventional common carrier mobile radio services. Deregulation of Mobile Customer Premises Equipment. Notice of Proposed Rulemaking, 48 FR 20952 (1983) (hereinafter *Mobile Notice*). In the Order adopted pursuant to the *Mobile Order*, this Commission, consistent with the procedures established in the *Second Computer Inquiry*, deregulated and detariffed mobile telephone equipment on a bifurcated basis. Deregulation of Mobile Customer Premises Equipment, Report and Order 48 FR 54619 (1983) (hereinafter *Mobile Order*), modified on reconsideration, 49 FR 882 (1983). In a Further Notice of proposed Rulemaking in this docket, 48 FR 54668 (1983), we proposed procedures for deregulating embedded mobile CPE, and the *Second Order* was adopted pursuant to that notice.

<sup>74</sup> See Memorandum Opinion and Order in CC Docket No. 81-893, FCC 85-220 (released May 15, 1985).

<sup>75</sup> See *supra* para. 10, Accounting Requirements.

<sup>76</sup> In a recent letter to the Common Carrier Bureau, Waterway Communications Systems, Inc. requested that the Commission deregulate new CPE to be utilized in maritime common carrier services licensed under Part 81 of the Commission's Rules, 47 CFR 81.913-15. Letter from Martin W. Bercovici to Chief, Common Carrier Bureau (March 1, 1985). In comments filed in response to the *Mobile Notice*, Waterway had argued that the proceeding in CC Docket No. 83-372 should include customer equipment used in conjunction with services licensed under Part 81 but we rejected this position, noting that the *Mobile Notice* was "finely focused upon the sole issue of deregulating mobile telephone CPE [used in all services licensed under Part 22 of the Commission's Rules] and did not include deregulation of any other type of CPE." *Mobile Order* at para. 11.

<sup>77</sup> See *supra* para. 30.

<sup>78</sup> See *supra* para. 30.

businesses that are directly subject to administrative rules rather than businesses indirectly affected by the results that any rules will produce.

#### VII. Ordering Clauses

37. Accordingly, it is ordered that, pursuant to sections 4(i), 4(j), 201-205, 213, 218, 220, and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201-205, 213, 218, 220 and 403, the policies, rules, and requirements set forth in this Order are adopted.

38. It is further ordered, that the petition to accept late filed comments filed by the Ameritech Operating Companies is granted and the comments are accepted as requested.

39. It is further ordered, that the petition of waiver to accept late filed comments filed by the Federal Executive Agencies is granted and the Joint Supplementary Comments are accepted, as requested.

40. It is further ordered, that the Secretary of the Commission shall cause a copy of this Report and Order to be provided to each state regulatory commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-2269 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 83-603; RM-4424]

#### FM Broadcast Station in Quartzsite, AZ

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action taken herein allots FM Channel 232A to Quartzsite, Arizona, as that community's first FM channel, in response to a petition for reconsideration filed by Buck Burdette.

**EFFECTIVE DATE:** March 13, 1986.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

#### SUPPLEMENTARY INFORMATION:

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

**Authority:** Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other

statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

#### Memorandum Opinion and Order (Proceeding Terminated)

In the Matter of Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Quartzsite, Arizona); MM Docket No. 83-603; RM-4424.

Adopted: January 24, 1986.

Released: February 4, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for reconsideration,<sup>1</sup> filed by Buck Burdette ("petitioner"), of the Commission's *Report and Order*, adopted May 15, 1984, denying his request to allot FM Channel 228A to Quartzsite, Arizona, as that community's first FM channel.<sup>2</sup> The denial was premised on petitioner's failure to provide the requisite expression of continuing interest in the proposal.

2. The Commission issued the *Notice of Proposed Rule Making*, 48 FR 29917, published June 29, 1983, seeking comments on the proposal to allot FM Channel 228A to Quartzsite. However, the petitioner neglected to file comments reconfirming his interest, as required by Commission policy, and absent any other expressions of interest, the proposal was dismissed. Burdette now provides the requisite intention to apply for authority to construct and operate a station in Quartzsite.

3. Accordingly, we believe that public interest considerations merit a reversal of our earlier dismissal. The channel would have been allotted to Quartzsite previously, had it not been for the absence of an expression of interest. (See, e.g., *St. Johnsbury, Vermont*, 47 FR 2867, published January 20, 1982.)

4. A staff engineering study reveals that Channel 232A can be allotted to Quartzsite consistent with the minimum distance separation requirements of § 73.207(b) of the Commission's Rules.

5. Since Quartzsite is located within 320 kilometers (199 miles) of the common U.S.-Mexico border, the Commission obtained the concurrence

<sup>1</sup> Public Notice of the petition was given August 13, 1984, Report No. 1474.

<sup>2</sup> Although petitioner requested the allotment of Channel 228A, that channel would limit the 16 kilometer buffer zone of Station KJOK (FM) (Channel 226), Yuma, Arizona. While we have not required such protection for petitions filed prior to March 1, 1984 (see *Memorandum Opinion and Order*, 94 F.C.C. 2d 152 (1983), *recon.* 97 F.C.C. 2d 279 (1984)), the Commission has attempted to accommodate such affected stations operating with less than 300 meters by substituting channels, where possible, to avoid overly restricting a station's ability to improve its facilities by the March 1, 1987 deadline. Accordingly, Channel 232A has been substituted for consideration herein.

of the Mexican government in the proposed allotment.

6. In view of the above considerations, it is ordered, That the petition for reconsideration filed by Buck Burdette is granted.

7. It is further ordered, pursuant to the authority contained in sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, That effective March 13, 1986, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, IS AMENDED to include the community listed below, as follows:

City	Channel No.
Quartzsite, Arizona.	232A

8. The filing window for applications on Channel 232A will open on March 14, 1986, and close on April 14, 1986.

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

10. For further information contact: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 86-2800 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 85-210; RM-4969]

#### FM Broadcast Station in Corning, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Action taken herein allocates Channel 254A to Corning, New York as the community's second local FM service, at the request of WCBA Radio, Inc.

**EFFECTIVE DATE:** March 13, 1986.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

#### SUPPLEMENTARY INFORMATION:

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

**Authority:** Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154,

303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

**Report and Order (Proceeding Terminated)**

In the Matter of Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Corning, New York); MM Docket No. 85-210; RM-4969.

Adopted: January 24, 1986.  
Released: February 4, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 50 FR 29448, published July 19, 1985, proposing the allocation of Channel 254A to Corning, New York, as that community's second local FM facility, at the request of WCBA, Inc. ("petitioner"). Petitioner filed comments reiterating its intention to apply for the frequency, if allocated.

2. Channel 254A can be allocated to Corning in compliance with the Commission's minimum distance separation and other technical requirements. The Canadian Government has concurred in the allocation of Channel 254A to Corning since the community is located within 320 kilometers (200 miles) of the U.S.-Canada border.

3. We believe the public interest would be served by allocating the channel, as proposed, as it could provide Corning with its second local FM service. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective March 13, 1986, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Corning, New York.....	254A, 291

4. The window for filing applications on this channel will open on March 14, 1986, and close April 14, 1986.

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

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

Federal Communications Commission.  
**Charles Schott,**  
*Chief, Policy and Rules Division, Mass Media Bureau.*  
[FR Doc. 86-2801 Filed 2-7-86; 8:45 am]  
BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 85-247; RM-4757; FCC 86-59]

**FM Broadcast Station in Crookston and Valentine, NE**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action dismisses a petition for rule making to substitute Class C FM Channel 262 for Channel 228A at Columbus, Nebraska due to the lack of continuing interest by the petitioner. This action also states Commission policy in situations where multiple channel substitutions in either the Television or FM Table of Allotments are necessary.

**EFFECTIVE DATE:** March 13, 1986.  
**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 47 CFR Part 73**

Radio and television broadcasting.  
The authority citation for Part 73 continues to read:

**Authority:** Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended, 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

**Report and Order (Proceeding Terminated)**

In the matter of amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations. (Columbus, Central City, Crookston, Kearney, Lexington, McCook and Valentine, Nebraska; and Hill City, Kansas); MM Docket No. 85-247, RM-4757.

Adopted: January 27, 1986.  
Released: February 4, 1986.

By the Commission.

1. The Commission has before it the *Notice of Proposed Rule Making and Orders to Show Cause*, 50 FR 34516, published August 26, 1985, in response to a petition filed by City and Farm Broadcasting, Inc., licensee of Station KTTT-FM, Columbus, Nebraska, proposing the substitution of Class C FM

Channel 262 in lieu of its present Channel 228A allotment and modification of its license to specify operation on the Class C channel. The proposal also requires channel substitutions for five existing stations and one vacant channel in other communities. Oppositions were filed by Nebraska Rural Radio Association, licensee of Station KRVN-FM, Lexington, Nebraska; Osage Radio, Inc., licensee of FM Station KZEN, Central City, Nebraska; and the Rosebud Educational Society, Inc., licensee of Station KINI(FM), Crookston, Nebraska. Semeco Broadcasting Corporation, licensee of Stations KRNY-FM, Kearney and KICX-FM, McCook, Nebraska filed comments and reply comments.

2. The *Notice of Proposed Rule Making* indicated that the petitioner, City and Farm Broadcasting, asserted that the proposed Class C facility in Columbus would provide service to additional areas which are presently underserved. In addition, City and Farm Broadcasting contended that upgrading to a full Class C channel would promote competition with the other existing Class C FM station in Columbus and eliminate the intermixture of a Class A and a Class C channel in the same community.

3. On July 10, 1985, the Commission granted an application to assign the license of Station KTTT-FM from City and Farm Broadcasting to Columbus Broadcasting Systems, Inc. (File No. BALH-850529FA). According to Commission policy, a showing of continuing interest is required before a channel will be allotted to a community. See *Williams, Arizona*, 47 FR 20827, published May 14, 1982. Neither City and Farm Broadcasting nor Columbus Broadcasting Systems, Inc. has filed comments in response to the *Notice* or indicated its willingness to pursue this matter. Accordingly, this petition for rule making will be dismissed.

4. Notwithstanding that the present petition for rule making is being dismissed, we are taking this opportunity to state our concerns with respect to proposals involving multiple FM or television channel substitutions. The present proceeding would have required five affected stations to agree on appropriate amounts of reimbursement for the channel changes.<sup>1</sup> This process can be time

<sup>1</sup> See *Circleville, Ohio*, 8 F.C.C. 2d 159 (1967), in which the Commission set the appropriate types of reimbursable expenses.

consuming for the parties and, in some instances, has lasted for years. *Muncie, Indiana*, 38 R.R. 2d 1327 (1976), *Ogallala, Nebraska*, 49 R.R. 2d 1675 (1981). Failure to reach a satisfactory agreement can delay or even preclude implementation of the proposed channel substitutions in these situations. There can also be a significant amount of confusion to the public from stations changing frequencies. Even though stations do attempt to inform the public of their change in frequency, these efforts are not often immediately successful and can result in disruptions to listening and viewing habits and losses of audience. In order to minimize interruptions in service, these channel substitutions would have to be accomplished on the same date.<sup>2</sup> Further, changing a station's frequency is a significant action which can cause substantial disruptions to a station's business. Modifications to equipment and promotional literature pertaining to the operating frequency are of major concern to most licensees despite the fact that the reasonable costs of the changes will be paid for by the benefitting party, i.e., the ultimate licensee of the new station. In summary, we do not believe it is in the public interest to have the service of several stations disrupted in order to accommodate one station expanding its service area.

5. For these reasons, we are advising potential petitioners for rule making that absent special factors involving significant public interest benefits, or an assurance of agreement among affected stations to the proposal in advance of filing the petition, the staff has been instructed not to entertain proposals for changes in the FM Table of Allotments which involve more than two other substitutions of channels occupied by existing FM or TV stations. Based upon our experience, proposals involving either one or two other channel substitutions have normally been successfully implemented. On the other hand, proposals involving more than two channel changes are frequently not pursued or implemented. This represents a waste of Commission resources as well as those of parties participating in the proceeding. Multiple channel substitutions are disruptive to licensees, Commission processes, and the viewing and listening public. While we do not

<sup>2</sup> This would necessitate the delivery or modification of equipment on that date as well as the availability of technical personnel at each station throughout Nebraska. Often, it is necessary for a station to hire an outside tower crew to either replace or rebuild an antenna. To successfully implement this proposal, it is readily apparent that serious coordination difficulties would have to be overcome.

intend to list what public interest benefits would be significant and overriding, we would, in the processing of petitions for rule making, look for such showings as service to unserved areas or resolution of major technical problems. We would also advise petitioners seeking changes in the Table of Allotments which also involve channel substitutions affecting existing licensees to address, in its petition for rule making, solutions to the problems discussed in the proceeding paragraph.

6. Finally, all of the parties who filed comments in this proceeding expressed concern over the ability of the licensee of Station KTTT-FM to reimburse five stations for the costs of changing channels. We believe that their concerns are understandable and warrant comment on our part. In most cases, the petitioner and the affected station can usually arrive at the appropriate reimbursement amount and the channel changes and reimbursement are promptly effectuated. However, it is not always the petitioner which ultimately becomes the party responsible for reimbursement. It is the ultimate permittee. Thus we do not require the petitioner to demonstrate its financial ability to reimburse other stations in the context of the rule making proceeding. On the other hand, affected stations cannot be expected to incur significant expenses without the assurance of prompt reimbursement. For this reason, it is quite conceivable that we would require a licensee to demonstrate its financial ability to affected stations. Having the necessary funds available and placed in escrow would be a reasonable request by an affected station.

7. As proposed in paragraph 5 of the *Notice*, we are using this *Report and Order* to change the Table of Allotments to reflect the actual usage of Channel 241 by Station KINI(FM) at Crookston, Nebraska, instead of Valentine, Nebraska as now listed in the Table.

8. Accordingly, it is further ordered, That effective March 13, 1986, the FM Table of Allotments, § 73.202(b) of the Commission's Rules, is amended, with respect to the communities listed below, as follows:

City	Channel No.
Crookston, NE	241
Valentine, NE	

9. It is further ordered, That the aforementioned petition for rule making filed by City and Farm Broadcasting, Inc. proposing the substitution of Class C FM Channel 262 for Channel 228A at

Columbus, Nebraska and modification of its license to specify operation on the Class C FM channel is dismissed.

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

William J. Tricarico,  
Secretary.

[FR Doc. 86-2795 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1175

[Ex Parte No. 397]

### Rail Carriers; Exemption of Railroads From Securities Regulation Under 49 U.S.C. 11301

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules.

**SUMMARY:** Subsequent to notice (50 FR 13841, April 8, 1985) and comment, the Commission is exempting the following from regulation under 49 U.S.C. 11301: (1) All securities issued and obligations assumed by Class II and III railroads; (2) all securities issued or obligations assumed by a party acquiring a rail line in a proceeding under 49 U.S.C. 10905; and (3) issuance of equipment trust certificates by any rail carrier, regardless of size. For these types of transactions, no filing with the Commission is needed.

The Commission also exempts issuances by Class I railroads and their holding companies, subject to a notice requirement. A Class I railroad may file a notice for each security issuance, or one annual notice with updates as needed, for all securities proposed to be issued during the upcoming two years. If the annual notice procedure is used, the exemption will expire for all securities not issued within two years of the filing. Either a Class I carrier's individual or annual notice, or update, may be protested within 15 days after it is filed.

Additionally, the Commission is removing the regulations governing rail securities and requiring competitive bidding for these securities (49 CFR Part 1175). In place of those regulations, Part 1175 is being revised. The new rules are set forth in the appendix. The forms OP-F-200, 210, 220, 230, and 240 are being eliminated.

These exemptions are due to a decreasing need for Commission oversight of railroad securities as a result of changed circumstances and recent Congressional action.

This exemption does not apply to securities that are directly related to applications filed under 49 U.S.C. 10901 and 11344.

**DATE:** The rules are effective on March 12, 1986.

**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.

This action will not significantly affect either the quality of the human environment or energy conservation. This rule will not have a significant economic impact on a substantial number of small entities.

#### List of Subjects in 49 CFR Part 1175

Administrative Practice and Procedures, Railroads, Securities.

Decided: December 27, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley and Strenio.

James H. Bayne,  
Secretary.

#### Appendix

Title 49, Subtitle B, Chapter X, Part 1175 of the Code of Federal Regulations is revised to read as follows:

#### PART 1175—EXEMPT ISSUANCE OF SECURITIES AND ASSUMPTION OF OBLIGATIONS

1175.1 Scope of exemption.

1175.2 Procedures and relevant dates.

**Authority:** 49 U.S.C. 10321, 10505, 11301; 5 U.S.C. 553.

##### § 1175.1 Scope of exemption.

(a) Subject to the exception in paragraph (b) of this section, the issuance of securities and/or the assumption of liabilities are exempt from the requirements of 49 U.S.C. 11301 when issued or assumed by: (1) Class II and III rail carriers; (2) a party acquiring a rail line in a proceeding under 49 U.S.C. 10905; and (3) any rail carrier, regardless of size, issuing equipment trust certificates. For these types of transactions, no filing with the Commission is needed. The issuance of securities and/or the assumption of liabilities by Class I railroads and their holding companies are also exempt from the requirements of 49 U.S.C. 11301,

subject to the requirements of § 1175.2 and further subject to the exception in paragraph (b) of this section.

(b) The exemption in paragraph (a) of this section does not apply to those securities that are directly related to applications filed under 49 U.S.C. 10901 and 11344. However, since the information is readily available in the primary application filed under 49 U.S.C. 10901 and 11344 in those proceedings, there is no need to file that information separately in an application under 49 U.S.C. 11301.

(c) This exemption does not affect the competitive bidding requirements of Section 10 of the Clayton Act (15 U.S.C. 20), as implemented in part by 49 CFR 1010.

##### § 1175.2 Procedures and relevant dates.

(a) To qualify for this exemption, Class I railroads and their holding companies, when issuing rail-related securities, must file a verified notice of exemption and serve it in accordance with 49 U.S.C. 11301(d)(2). A Class I railroad or its holding company may file a notice for each security issuance, or an annual notice, with updates as needed, for all securities proposed to be issued during the upcoming two years. If the annual notice procedure is used, the exemption will expire for all securities not issued within two years of filing. The notice must identify the carrier or holding company, describe the security and the purpose of the issuance or assumption, and certify that it has been served on the chief executive of the States in which the carrier operates.

(b)(1) If no opposition is filed with the Commission and served on the carrier within 15 days of the filing of either the individual or annual notice, or any update, the transaction is exempt without further action by the Commission.

(2) If protests are received, the Commission will issue a decision on whether the proposal will be investigated within 30 days of the filing of the notice, and the procedure to be followed. A decision not to investigate will allow the transaction to go forward under the exemption in § 1175.1

[FR Doc. 86-2826 Filed 2-7-86; 8:45 am]

BILLING CODE 7035-01-M

#### 49 CFR Part 1180

[Ex Parte No. 282 (Sub-No. 3)]

#### Railroad Consolidation Procedures

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Final rules.

**SUMMARY:** For the information of persons using railroad class exemptions, the Commission is making a technical amendment to § 1180.4. A cross reference is being added to other class exemptions which may be relevant. Notice and comments are not required because this change only provides information about agency practice, 5 U.S.C. 553(b).

**DATE:** Effective on February 10, 1986.

**FOR FURTHER INFORMATION CONTACT:** Louis E. Gitomer (202) 275-7245.

**SUPPLEMENTARY INFORMATION:** This action will not affect either the quality of the human environment or energy conservation, and will not affect small entities.

#### List of Subjects in 49 CFR Part 1180

Administrative practice and procedures, Railroads.

Decided: December 27, 1985.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Taylor, Sterrett, Andre, Lamboley and Strenio.

James H. Bayne,  
Secretary.

#### Appendix

Part 1180 of Title 49 of the Code of Federal Regulations is amended as follows:

#### PART 1180—[AMENDED]

1. The authority citation for Part 1180 is revised to read as follows:

**Authority:** 49 U.S.C. 10321, 11341, 11345, and 11346; 5 U.S.C. 553 and 559; 45 U.S.C. 904 and 915, unless otherwise noted;

2. Section 1180.4 is amended by adding a new paragraph (g)(1)(iii) to read as follows:

##### § 1180.4 Procedures.

\* \* \* \* \*

(g) \* \* \*

(1) \* \* \*

(iii) Other exemptions that may be relevant to a proposal under this provision are 49 CFR Part 1150, Subpart D for transactions under 49 U.S.C. 10901, and 49 CFR Part 1175, for securities.

\* \* \* \* \*

[FR Doc. 86-2821 Filed 2-7-86; 8:45 am]

BILLING CODE 7035-01-M

# Proposed Rules

Federal Register

Vol. 51, No. 27

Monday, February 10, 1986

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 85-NM-143-AD]

#### Airworthiness Directives; SAAB-Fairchild Corp. Model SF-340A Series Airplanes

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

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes to adopt an airworthiness directive (AD) that would require modification to the engine cable controls on certain SAAB-Fairchild Model SF-340A airplanes. This action is prompted by reports of an incorrect fitting of O-ring seals. This situation, if not corrected, could lead to freezing of the engine cable(s).

**DATE:** Comments must be received on or before April 4, 1986.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-143-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB-Fairchild, Product Support, S-58188, Linköping, Sweden. This information may also 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. Harold N. Wantiez, Standardization Branch, ANM-113; telephone (206) 431-2977. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway

South, C-68966, Seattle, Washington 98168.

#### SUPPLEMENTARY INFORMATION: Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communication should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

#### Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-143-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

#### Discussion

The Swedish Board of Civil Aviation (BCA) has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition that may exist on certain Model SF-340A airplanes. Water may accumulate in the engine control cables at the wing/fuselage interface. The entrapped moisture may then freeze and prevent the proper operation of this system. To prevent this from occurring, the BCA has issued AD 009, dated August 15, 1985, which mandates modifications in accordance with SAAB-Fairchild Service Bulletin SF 340-76-007, Revision 3, dated August 14, 1985.

This airplane model is manufactured in Sweden and type certificated in the

United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification in accordance with the previously mentioned service bulletin.

It is estimated that 10 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 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 to U.S. operators is estimated to be \$4,000.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures [44 FR 11034; February 26, 1979]; and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated will not have a significant economic impact on a substantial number of small entities because of the minimal costs of compliance per airplane (\$400). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

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

Aviation safety, Aircraft.

#### The Proposal Amendment

#### PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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. 96-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive to § 39.13:

**SAAB-Fairchild:** Applies to Model SF-340A airplanes listed in SAAB-Fairchild Service Bulletin SF 340-76-007, Revision 3, dated August 14, 1985, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished. To prevent engine control cable freezing, accomplish the following:

A. Modify the engine control cable system in accordance with SAAB-Fairchild Service Bulletin SF 340-76-007, Revision 3, dated August 14, 1985.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

C. 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 proposed directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to SAAB Fairchild, Product Support, S-58188, Linköping, Sweden. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on February 3, 1986.

Wayne J. Barlow,

Acting Director Northwest Mountain Region.

[FR Doc. 86-2774 Filed 2-7-86; 8:45 am]

BILLING CODE 4910-13-M

## 14 CFR Part 71

[Airspace Docket No. 85-AAL-2]

### Proposed Establishment of Quinhagak, AK, Transition Area-AK

#### Correction

In FR Doc. 86-2179 beginning on page 3987 in the issue of Friday, January 31, 1986, make the following corrections:

On page 3988, first column, in § 71.181 in the description heading, "AR" should read "AK". In the sixth line of the description, "Quinhagak" should read "Quinhagak". In the seventh line, "long, 161°53'6" W." should read "long, 161°53'16" W." At the end of the document, the signature should read "Daniel J. Peterson".

BILLING CODE 1505-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### 18 CFR Part 271

[Docket Nos. RM79-76-091 (Texas-10 Addition), RM79-76-094 (Texas-19), RM79-76-161 (Texas-7 Addition III), RM79-76-172 (Texas-21 Addition Nacogdoches County), and RM79-76-173 (Texas-34)]

### Natural Gas Policy Act; High-Cost Gas Produced From Tight Formations; Order Dismissing Tight Formation Recommendations and Terminating Dockets

Issued: February 7, 1986.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Order Dismissing Tight Formation Recommendations and Terminating Dockets.

**SUMMARY:** Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here, the Federal Energy Regulatory Commission dismisses recommendations of the Texas Railroad Commission that the Edwards Limestone Formation, underlying Fayette County (Texas-10 Addition); Lower Wilcox Formation, underlying Dewitt County (Texas-7 Addition III); Georgetown Formation, underlying Brazos, Washington, and Burleson Counties (Texas-19); James Limestone Formation, underlying Nacogdoches County (Texas-21 Addition); Pettit Lime Formation, underlying Leon, Houston, and Cherokee Counties (Texas-34) be designated as tight formations under § 271.703(d).

**DATE:** This order is effective March 10, 1986.

#### FOR FURTHER INFORMATION CONTACT:

James Whitfield, Jr. (202) 357-8179

or

Walter W. Lawson, (202) 357-8737

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

#### Background

During the period December 1981 through December 1982, the Commission received recommendations filed by the

Texas Railroad Commission (Texas) pursuant to § 271.703 of the Commission's regulations, requesting that the formations specified in the above captioned proceedings be designated as tight formations.<sup>1</sup> These recommendations were published in separate notices of proposed rulemakings issued by the Director of the Commission's Office of Pipeline and Producer Regulation.<sup>2</sup> No comments were received in response to the notices.

#### Discussion

In order to meet the tight formation guidelines set forth in § 271.703(c)(2)(i) the regulations, it is necessary that the estimated average *in situ* gas permeability throughout the pay section not exceed 0.1 millidarcy, that the stabilized production rate against atmospheric pressure not exceed a specified level, and that no well drilled into the recommended tight formation be capable of producing, without stimulation, more than five barrels of crude oil per day.

Under the tight formation program, as detailed in Order No. 99,<sup>3</sup> tight formation recommendations submitted to the Commission by the various jurisdictional agencies are approved under the Commission's rulemaking authority. The Commission is not limited by the evidence in the record presented to it by the jurisdictional agency and the various commenters, and accordingly is free to request or develop additional evidence which it deems necessary in ruling on tight formation recommendations.

By letter, dated December 2, 1983, the Commission staff advised Texas of various deficiencies in, among others, the five referenced tight formation recommendations and on December 13, 1983, staff met with Texas to discuss the

<sup>1</sup> Texas submitted tight formation recommendations (1) for the Edward Limestone Formation, located in Fayette County Texas (Texas-10 Addition) on December 1, 1981; (2) for the Lower Wilcox Formation, located in Dewitt County, Texas (Texas-7 Addition III) on November 22, 1982; (3) for the Georgetown Formation, located in Brazos, Washington, and Burleson Counties, Texas (Texas-19) on December 28, 1981; (4) for the James Limestone Formation, located in Nacogdoches and Shelby Counties, Texas (Texas-21 Addition) on December 27, 1982; and (5) for the Pettit Lime Formation, located in Leon, Houston, and Cherokee Counties, Texas on December 27, 1982.

<sup>2</sup> Notices of the recommendations were issued (1) on January 20, 1982 (47 FR 2884) with respect to the Edwards Limestone Formation; (2) on February 17, 1983 (48 FR 6994) with respect to the Lower Wilcox Formation; (3) on February 12, 1982 (47 FR 6437) with respect to the Georgetown Formation; (4) on March 4, 1983 (48 FR 9293) with respect to the James Limestone Formation; and (5) on March 4, 1983 (48 FR 9297) with respect to the Pettit Formation.

<sup>3</sup> Docket No. RM79-76, issued August 22, 1980, FERC Statutes and Regulations ¶ 30.183.

deficiencies.<sup>4</sup> The deficiencies<sup>5</sup> for the referenced recommendations are as follows:

(1) *Texas-10 Addition*. The arithmetic average permeability is 0.178 millidarcy which exceeds the 0.1 millidarcy guideline set forth in § 271.703(c).

(2) *Texas-7 Addition III*. The pre-stimulation flow rate exceeded the guideline rate set forth in § 271.703(c).

(3) *Texas-19*. Both the pre-stimulation flow rate and the permeability exceeded the guidelines set forth in § 271.703(c).

(4) *Texas-21 Addition*. Information supporting this recommendation was inadequate.<sup>6</sup>

(5) *Texas-34*. Supporting data for the 90 percent reduction of post-stimulation permeability values and the 95 percent reduction in post-stimulation production values to convert the values to pre-stimulated conditions was requested but not received.

By letter dated November 16, 1984, the staff advised Texas that nearly a year had elapsed since the December 13, 1983, meeting concerning problems with the subject recommendations and that no further information which would bring the recommendations into compliance with the applicable regulations had been received. The staff advised Texas that if information needed to process the recommendations were not forthcoming the recommendations would be referred to the Commission for appropriate disposition. As a result of this letter, the problems associated with some of the tight formation recommendations which were the subject of the December 13, 1983, meeting were resolved. No progress was made regarding the five recommendations which are the subject of this order.

On September 23, 1985, staff received a letter dated September 19, 1985, from Texas stating that on August 28, 1985, it had sent letters to four applicants requesting the submission of data which would bring their applications for tight formation designation into compliance with § 271.703(c)(2)(i) of the Commission's regulations. The letters of August 28, 1985, notified the applicants

that if the requested data were not received by September 13, 1985, their applications would be considered dismissed as of that date. In its September 19, 1985 letter to the Commission, Texas stated that none of the applicants had responded to its requests for additional information and that accordingly it considered the applications for tight formation designations dismissed as of September 13, 1985, but would reopen the cases at any time at the request of the applicants involved. The remaining application for tight formation designation, Texas-10 Addition, was not listed in the August 28, 1985 letter, but Texas confirmed by telephone and by letter dated November 4, 1985, that it had dismissed this application as of September 10, 1985.

#### Conclusion

The subject recommendations have been pending before the Commission for several years. The subject formations do not qualify for designation as tight formations under the Commission's applicable regulations and information needed to enable the formations to qualify has not been submitted. Under these circumstances, the Commission concludes that the subject recommendations must be dismissed. This action is without prejudice to resubmittal of the recommendations if and at such time as additional information required by the Commission's regulations becomes available.

#### The Commission orders:

(A) The subject recommendations for designations of tight formations are dismissed.

(B) Docket Nos. RM79-76-091, RM79-76-094, RM79-76-161, RM79-76-172, and RM79-76-173 are hereby terminated.

By the Commission,

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2855 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 101

[Docket Nos. 77P-0428 and 77P-0358]

### Food Ingredient Labeling; Exemptions

#### Correction

The correction to FR Doc. 86-927 appearing on page 3466 in the Rules and Regulations section of the issue of

Tuesday, January 28, 1986, should have appeared in the Proposed Rules section.

BILLING CODE 1505-01-M

## 21 CFR Part 700

[Docket No. 85N-0536]

### Cosmetics; Proposed Ban on the Use of Methylene Chloride as an Ingredient of Aerosol Cosmetic Products

#### Correction

In FR Doc. 85-29851 beginning on page 51551 in the issue of Wednesday, December 18, 1985, make the following corrections:

1. On page 51554, third column, third complete paragraph, eighth line, insert the word "was" before "negative".

2. On page 51555, second column, second paragraph, twelfth line, "1X<sup>-8</sup>" should read "1X10<sup>-8</sup>". In the thirteenth line, "4X<sup>-9</sup>" should read "4X10<sup>-9</sup>".

3. On page 51557, second column, sixth complete paragraph, fifth line, insert the word "from" between "result" and "the". In the twelfth line, insert "in tumor" between "increase" and "incidence".

4. On page 51558, first column, ninth line, "\$ 173.25" should read "\$ 173.255". In the same column, second complete paragraph, second line from the bottom, "being" should read "begin". In the second column, in the heading, "VII" should read "VIII".

BILLING CODE 1505-01-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 100

[CGD11 86-01]

### Special Local Regulations; Southern California Annual Marine Events

January 27, 1986.

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** This proposed rule will establish special local regulations during all the annual marine events in Southern California. Through this action the Coast Guard intends to ensure the safety of spectators and participants on navigable waters during each event. Also, this rule will consolidate all previously published permanent rulemakings concerning Southern California marine events into one section.

<sup>4</sup> The December 13, 1983 meeting concerned eleven recommendations for tight formation designations which staff determined were at variance with the tight formation guidelines specified in § 271.703(c)(2)(i) of the Commission's regulations.

<sup>5</sup> Detailed explanations of these deficiencies were sent to Texas by letter, dated December 2, 1983. Texas sent each applicant a copy of the applicable deficiency explanation.

<sup>6</sup> On March 27, 1984, the Commission designated the Shelby County portion of the recommendation as a tight formation. Consequently dismissal is limited to that portion of the formation in Nacogdoches County.

**DATE:** Comments must be received on or before March 27, 1986.

**ADDRESSES:** Comments should be mailed to Commander (bb), Eleventh Coast Guard District, 400 Oceangate Boulevard, Long Beach, CA 90822-5399. The comments will be available for inspection and copying at the Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, California. Normal Office hours are between 8:00 AM and 3:30 PM, Monday through Friday, except holidays. Comments may also be hand-delivered.

**FOR FURTHER INFORMATION CONTACT:** LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office, Union Bank Bldg., Suite 901, 400 Oceangate Boulevard, Long Beach, California 90822-5399, Tel: (213) 590-2331.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their name and address, identify this notice (CGD11 86-01) and the specific section of the proposal to which their comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

The regulations may change in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

#### Drafting Information

The drafters of this regulation are LTJG Jorge Arroyo, Eleventh Coast Guard District Boating Affairs Office and LCDR Arthur E. Brooks, Project Attorney, Eleventh Coast Guard District Legal Office.

#### Discussion of Proposed Regulations

Each year various Yacht Clubs, Harbor Departments and Chambers of Commerce sponsor various marine events in Southern California waters. These events vary from slow moving festive Christmas boat parades through high speed hydroplane races to long distance offshore sailboat races involving up to 600 participants. Because of the annual nature of these events, the Coast Guard has decided to promulgate a permanent amendment to Part 100 of

Title 33, Code of Federal Regulations to facilitate in the planning and organization of these events in the future. Each year the Coast Guard will provide the public full and adequate notice by publication in the Eleventh Coast Guard District Local Notice to Mariners. Certain events due to their nature present a hazard to navigation while others do not. However, given the number of participants and/or the uncertainty of spectators at any event it is sometime necessary to control vessel traffic to avoid any potential mishap. Therefore, regulated areas will be established, and vessels desiring to transit these areas may do so only with clearance from an official patrolling vessel.

#### Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979), the economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary, since the regulated areas will be in effect for a short period of time.

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

#### List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

#### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

##### Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; 49 CFR 1.46(b) and 33 CFR 100.35.

2. Part 100 is amended by adding a § 100.1101 to read as follows:

##### § 100.1101 Southern California Annual Marine Events.

(a) Regulated areas will be established for the event listed in Table 1. Further information on exact dates, times, details concerning number and type of participants and an exact geographical description of the areas are published by the Eleventh Coast District in the Local Notice to Mariners at least 20 days prior to each event. To be

placed on the mailing list contact: Commander (oan), Eleventh Coast Guard District, 400 Oceangate Blvd., Long Beach, CA 90822-5399.

(b) *Special Local Regulations:* All persons and/or vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol each event.

(1) No spectators shall anchor, block, loiter in, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given, failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. He may terminate the event at any time it is deemed necessary for the protection of life and property. He may be reached on VHF Channel 16 (156.8 MHz) when required, by the call sign "PATCOM".

#### TABLE 1

##### Del Rey to Puerto Vallarta Race

Sponsor: Del Rey Yacht Club.  
Date: February.

Location: Santa Monica Bay, that portion bounded by the following coordinates: Lat 33 degrees 56' 23" N, Long 118 degrees 28' 20" W, Lat 33 degrees 56' 23" N, Long 118 degrees 28' 55" W, Lat 33 degrees 56' 55" N, Long 118 degrees 28' 55" W, Lat 33 degrees 56' 55" N, Long 118 degrees 28' 20" W. For the start of the race only.

##### San Diego Crew Classic

Sponsor: San Diego Crew Classic.  
Date: April.

Location: Mission Bay, that portion bounded by Enchanted Cove, Fiesta Island, Pacific Passage and DeAnza Point.

##### Newport to Ensenada Race

Sponsor: Newport Ocean Sailing Association.  
Date: Late April.

Location: That portion of the Pacific Ocean off Newport, bounded by the following coordinates: Lat 33 degrees 35.3' N, Long 117 degrees 53.3' W; Lat 33 degrees 34.9' N, Long 117 degrees 53.3' W; Lat 33 degrees 34.9' N, Long 117 degrees

54.5'; Lat 33 degrees 35.3' N, Long 117 degrees 54.5' W. For the start of the race only.

#### California Cup

Sponsor: California Yacht Club.

Date: Late May (4 day event).

Location: Santa Bay, that portion bounded by the following coordinates: Lat 34 degrees 01.4' N, Long 118 degrees 31.8' W; Lat 33 degrees 59.7' N, Long 118 degrees 37.9' W; Lat 33 degrees 59.2' N, Long 118 degrees 37.7' W; Lat 33 degrees 59.5' N, Long 118 degrees 33.4' W; Lat 33 degrees 57.0' N, Long 118 degrees 30.9' W; Lat 33 degrees 57.2' N, Long 118 degrees 30.1' W.

#### Coronado 4th of July Demonstration, Fireworks and Rehearsals

Sponsor: Citizens Committee

Coronado 4th of July.

Date: 4 July (& 3 days of rehearsals prior to).

Location: Glorietta Bay, Coronado, the following portions: (1) Demonstration Area—from the tip of the marina, Lat 32 degrees 40' 43.5" N, Long 117 degrees 10' 10.5" W; northeast to Lat 32 degrees 40' 48.5" N, Long 117 degrees 10' 10.5" W; east along the shoreline to Lat 32 degrees 40' 43.5" N, Long 117 degrees 10' 00" W; east to Lat 32 degrees 40' 46" N, Long 117 degrees 09' 58" W; south to Lat 32 degrees 40' 41" N, Long 117 degrees 09' 56.5" W; east to Lat 32 40' 41" N, Long 117 degrees 09' 49" W; northeast to Lat 32 degrees 40' 54" N, Long 117 degrees 09' 30" W (Navy Restricted Area); thence southwest along shoreline to the initial point. (2) Fireworks Display Area—from Lat 32 degrees 40' 41" N, Long 117 degrees 09' 56.5" W; south to Lat 32 40' 33" N, Long 117 degrees 09' 56.5" W; northeast to Lat 32 degrees 40' 41" N, Long 117 degrees 09' 49" W; thence west to the initial point.

#### Los Angeles to Honolulu Yacht Race (Transpac)

Sponsor: Transpacific Yacht Club.

Date: 4 July (biennially).

Location: San Pedro Channel, that portion between Point Fermin and Portugese Bend bounded between the following coordinates: Lat 33 degrees, 42.6' N; Long 118 degrees, 19.5' W; Lat 33 degrees, 41.7' N; Long 118 degrees, 19.5' W; Lat 33 degrees, 41.7' N; Long 118 degrees, 21.2' W; Lat 33 degrees, 43.3' N; Long 118 degrees, 21.2' W.

#### Miller High Life Thunderboat Regatta

Sponsor: Thunderboats Unlimited of San Diego.

Date: Late September (4 day event).

Location: Fiesta Bay, Mission Bay, that portion bounded by the following coordinates: starting at Lat 32 degrees 47' 32" N, Long 117 degrees, 13' 00" W,

thence due west to Long 117 degrees, 13.25' W, thence along the eastern shoreline of Crown Point to the Vacation Isle Bridge, thence south along the bridge to Vacation Isle, thence along the eastern shoreline of Vacation Isle to Lat 32 degrees 46' 18" N, Long 117 degrees, 14' 01" W, thence southeasterly to Lat 32 degrees 46' 14" N, Long 117 degrees, 13' 43" W, thence along the western shoreline of Fiesta Island to Lat 32 degrees 47' 20" N, Long 117 degrees, 13' 00" W, thence due north to the starting point.

#### Head of Harbor Regatta

Sponsor: University of Southern California, Department of Intercollegiate Athletics.

Date: November.

Location: Los Angeles Harbor, that portion between Berth 191 and the Ford/Heim Bridges.

#### Symphony of Lights Boat Parade

Sponsor: Huntington Harbor Philharmonic Society.

Date: Early weekend in December.

Location: Entire Huntington Harbor Area.

#### Long Beach Festival of 1000 Lights

Sponsor: Shoreline Village Administration.

Date: Early December.

Location: Long Beach Harbor, that portion bounded by Shoreline Downtown Marina, the Queens Way Bridge and the Queen Mary.

#### Marina Del Rey Christmas Boat Parade

Sponsor: Pioneer Skippers Boat Owners Association.

Date: Early December.

Location: Marina del Rey Harbor, Main and entrance channels.

#### Los Angeles Christmas Afloat Parade

Sponsor: Los Angeles Harbor Department.

Date: Early December.

Location: Los Angeles Harbor, that portion between the Vincent Thomas Bridge and Reservation Point.

#### Newport Harbor Christmas Boat Parade of Lights

Sponsor: Newport Harbor Area Chamber of Commerce.

Date: Week prior to Christmas (7 day event).

Location: Entire Newport Harbor Area.

#### Mission Bay Parade of Lights

Sponsor: Mission Bay Yacht Club.

Date: Late December.

Location: Mission Bay, the Main Entrance Channel, Sail Bay and Fiesta Bay.

#### San Diego Christmas Boat Parade of Lights

Sponsor: Greater Shelter Island Association.

Date: Late December.

Location: San Diego Harbor, the northern portion of the main channel from Seaport Village to the Shelter Island Yacht Basin.

Dated: January 1, 1986.

A. Bruce Beran,

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

[FR Doc. 86-2089 Filed 2-7-86; 8:45 am]

BILLING CODE 4910-14-M

#### 33 CFR Part 117

[CGD13 86-02]

#### Drawbridge Operation Regulations; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

**SUMMARY:** The Coast Guard is considering a change to the regulations for operation of the City of Seattle's drawbridges across the Lake Washington Ship Canal. The change would permit the bridges to remain in the closed position, after receiving an opening request, for periods of up to ten minutes, if needed to pass accumulated vehicular traffic. Bridges to which this change would apply are the: Ballard (15th Avenue) Bridge, Fremont Avenue Bridge, University Bridge, and Montlake Bridge. This proposal is being made to relieve vehicular traffic congestion and should still provide for the reasonable needs of navigation.

**DATE:** Comments must be received on or before March 27, 1986.

**ADDRESS:** Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3564. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

**FOR FURTHER INFORMATION CONTACT:** John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, (Telephone: (206) 442-5864).

**SUPPLEMENTARY INFORMATION:**

Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridges, and give reasons for concurrence with or any recommended change in the proposal.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments.

**Drafting Information**

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Commander Judith M. Hammond, project attorney.

**Discussion of the Proposed Regulations**

Bridges across the Lake Washington Ship Canal are among the most frequently opened of any in the United States. Repeated opening of these drawbridges results in significant local traffic congestion. We believe that limiting the number of bridge openings will improve traffic conditions and still provide for the reasonable needs of navigation.

Temporary regulations similar to those contained in this proposal were published in the *Federal Register* on December 3, 1985 (50 FR 49550) and in a Thirteenth District Public Notice on December 10, 1985. The temporary regulations were in effect from November 20, 1985, to January 18, 1986. Two comments were received in response to the notices. One commentator, representing a company engaged in commercial towing on the waterway, supported the change as it applied to pleasure craft, but felt that commercial vessels should be exempted. The other commentator, representing an organization of commercial towing companies, felt that the evaluation period was too short and was not at a time of normal activity for member companies. The position stated by the representative was that the bridges should open on signal when requested by vessels engaged in towing operations. These concerns have been considered in the proposed regulation change.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Proposed Regulations**

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.1051 is amended by revising paragraph (d) to read as follows:

**§ 117.1051 Lake Washington Ship Canal.**

(d) The draws of the Ballard (15th Avenue) Bridge, mile 1.1, Fremont Avenue Bridge, mile 2.6, University Bridge, mile 4.3, and Montlake Bridge, mile 5.2, shall open on signal, except that:

(1) The draws need not be opened for a period of up to 10 minutes after receiving an opening request, if needed to pass accumulated vehicular traffic. However, the draws shall open without delay, when requested by vessels engaged in towing operations.

(2) The draws need not open from 7 a.m. to 9 a.m. and 4 p.m. to 6 p.m. Monday through Friday, except Federal holidays for vessels of less than 1,000 tons, unless the vessel has in tow a vessel of over 1,000 tons, except under emergency conditions when the Seattle City Engineer is notified.

(3) Between the hours of 11 p.m. and 7 a.m. the draws shall open if at least one hour notice is given by telephone, radiotelephone, or otherwise to the drawtender at the Fremont Avenue Bridge.

Dated: January 30, 1986.

H.W. Parker,

Rear Admiral, U.S. Coast Guard, Commander,  
13th Coast Guard District.

[FR Doc. 86-2851 Filed 2-7-86; 8:45 am]

BILLING CODE 4910-14-M

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 52**

[A-9-FRL-2967-2]

**Federal Assistance Limitations; State of Arizona**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of intent.

**SUMMARY:** This notice announces EPA's intent to monitor during 1986 the extent to which the state of Arizona attempts to bring the Maricopa County (Phoenix) and Tucson areas into attainment of the national ambient air quality standard (NAAQS) for carbon monoxide (CO).

This notice also announces EPA's intent to initiate rulemaking action under section 176(a) of the Clean Air Act ("the Act") by the end of 1986, in coordination with the Department of Transportation, if by then EPA concludes preliminarily that Arizona is not making reasonable efforts to meet the requirements of Part D of the Act as they apply to CO nonattainment in either or both of those areas.

**FOR FURTHER INFORMATION CONTACT:**

Wallace D. Woo, Chief, State Liaison Section, Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, California 94105, Telephone: (415) 974-7634, (FTS) 454-7634.

**SUPPLEMENTARY INFORMATION:** The Clear Air Act Amendments of 1977 required states to revise their state implementation plans (SIPs) to meet the requirements of the new Part D of the Act, Sections 171-179, in all areas designated as not attaining the NAAQS. Section 176(a), which Congress added as part of the amendments, authorizes the Administrator of EPA and the Secretary of Transportation to impose certain funding cutoffs, including a cutoff of highway grants under Title 23 of the United States Code (with certain exceptions), in any area in which (1) a NAAQS has not been attained, (2) transportation control measures are necessary for the attainment of that standard, and (3) the state has not submitted or made reasonable efforts toward submitting a SIP meeting the requirements of section 172 of the Act.

In 1978, EPA designated certain areas in and around Tucson and Phoenix as nonattainment for the NAAQS for CO. Following a series of SIP submittals and rulemakings, EPA published in separate *Federal Register* notices proposals (1) to find that the areas' CO SIPs do not meet the requirement in section 172 to demonstrate timely attainment of the CO NAAQS and (2) to impose in those areas the construction moratorium required by section 110(a)(2)(I) of the Act. 51 FR 3343 (January 27, 1986); 51 FR 3346 (January 27, 1986).

To ensure that Part D's requirements are met expeditiously, EPA will monitor the actions of the relevant state and local agencies and the legislature in Arizona during 1986 and decide by the end of the year whether the state is making the reasonable efforts described in section 176(a). EPA intends that, if the Agency decides preliminarily that the state is not making such efforts, it will initiate a rulemaking, in accordance with the procedures outlined at 45 FR 24892 (April 10, 1980) and, in

coordination with the Department of Transportation, to impose the funding cutoffs described in section 176(a).

EPA will consider all relevant factors in determining whether the state has made such reasonable efforts, including and giving significant weight to each of the following factors:

(a) The extent to which the relevant agencies have timely performed or are timely performing necessary modeling studies to address CO pollution in the two areas;

(b) Whether EPA has received a plan document from the state indicating the commitment of the relevant state and local agencies to implement (or evidence of actual implementation of) all additional CO emission reduction measures necessary to attain and maintain the national ambient air quality standard for CO as expeditiously as practicable;

(c) The extent to which the relevant state and local agencies have committed to implement the transportation control measures (TCMs) that EPA's contractor has identified as technologically applicable to the area;<sup>1</sup>

(d) Whether the relevant state and local agencies have adequately explained any decision not to commit to implement any TCMs that EPA's contractor has identified as technologically applicable to the relevant area;

(e) The extent to which the state has implemented, or committed to implement, whatever further lowering of the Arizona inspection and maintenance (I/M) testing cutpoints EPA has identified in guidance to the state as technologically feasible;

(f) Whether the state has adequately explained any failure to commit to implement, or to implement, a lowering of the I/M testing cutpoints that EPA has identified in guidance to the state as technologically feasible;

(g) Whether the state has committed to implement whatever measures to strengthen the Arizona I/M program EPA may identify in the next several months as presumptively reasonable for application in urban areas across the country, as well as any measures that the Arizona Department of Health Services may identify as reasonably available and as providing a reasonable potential for air quality improvement.

<sup>1</sup> The relevant state and local agencies remain primarily responsible for addressing TCMs. Put differently, EPA intends the contractor's work as a supplement to the work on TCMs that those agencies should already have commenced before receipt of the contractor's report.

#### List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Intergovernmental relations.

Authority: 42 U.S.C. 7401-7642.]

Dated: February 3, 1986.

Charles L. Elkins,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 86-2830 Filed 2-7-86; 8:45 am]

BILLING CODE 6560-50-M

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 73

[MM Docket No. 86-35; RM-5134]

#### FM Broadcast Station in Trinity, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

**SUMMARY:** Action taken herein proposes the allotment of Channel 223A to Trinity, Alabama, as that community's first local broadcast service, in response to a petition filed by Dorsey Eugene Newman.

**DATES:** Comments must be filed on or before March 27, 1986, reply comments on or before April 11, 1986.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

#### SUPPLEMENTARY INFORMATION:

##### List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Parts 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081; 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

#### Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), table of Allotments FM Broadcast Stations, (Trinity, Alabama); MM Docket No. 86-35, RM-5134.

Adopted: January 24, 1986.

Released: February 4, 1986.

By the Chief, Policy and Rules Divisions.

1. Before the Commission for consideration is a petition for rule making filed by Dorsey Eugene Newman

("petitioner")<sup>1</sup> seeking the allotment of FM Channel 223A to Trinity, Alabama, as that community's first local broadcast service. Petitioner indicates that he will apply for the channel, if allotted.

2. Channel 223A can be allotted to Trinity, Alabama in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. Since the proposed allotment could provide a first local broadcast service to Trinity, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, to include that community as follows:

City	Channel No.	
	Present	Proposed
Trinity, Alabama		223A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirement are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 27, 1986, and reply comments on or before April 11, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioner, or their counsel or consultant, as follows: Dorsey Eugene Newman, 113 No. Sparkman Street, Hartselle AL 35640.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings.

<sup>1</sup> Petitioner is the licensee of day-time-only AM Station WHRT, Hartselle, AL.

such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes and *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

### Appendix

1. Pursuant to authority found in section 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comment even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later

than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filing made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2799 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

[MM Docket No. 86-32; RM-5006; RM-5040; RM-5041; RM-5217]

### FM Broadcast Station in Greenwood, Seneca and Aiken, SC, and Biltmore Forest, NC

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** Action taken herein optionally proposes the allocation of: (1) Channel 243A to Biltmore Forest, North Carolina, as that community's first local FM service, at the request of Diana Cecil Pickering; (2) Channel 2433A to Seneca, South Carolina, as the community's second local FM service, at the request of LHR Partners; (3) Channel 243C2 in

lieu of Channel 244A at Greenwood, South Carolina, and modification of the license of Station WSCZ(FM) to specify operation on the higher powered frequency, at the request of Eaton Broadcasting Corporation; or (4) Channel 242C2 in lieu of Channel 240A at Aiken, South Carolina, and modification of the license of Station WJFX-FM to specify operation on the higher powered frequency, at the request of Amici Broadcasting Corporation.

**DATES:** Comments must be filed on or before March 27, 1986, and reply comments on or before April 11, 1986.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

### SUPPLEMENTARY INFORMATION:

#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

#### Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Greenwood, Seneca and Aiken, South Carolina, and Biltmore Forest, North Carolina; MM Docket No. 86-32, RM-5006, RM-5040, RM-5041, and RM-5217.

Adopted: January 23, 1986.

Released: February 3, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it four mutually exclusive petitions for rule making. Eaton Broadcasting Corporation ("Eaton"), licensee of FM Station WSZC, Greenwood, South Carolina, requests the substitution of for Channel 244A, and the modification of its license to specify operation on the higher powered frequency (RM-5006). LHR Partners ("LHR") seeks the allocation of Channel 243A to Seneca, South Carolina, as the community's second local FM service (RM-5040). Diana Cecil Pickering ("Pickering") requests the allocation of Channel 243A to Biltmore Forest, North Carolina, as its first local FM allocation (RM-5041). Amici Broadcasting Corporation ("Amici"), proposed assignee of Station WJFX-FM, Aiken, South Carolina, requests the substitution of Channel 242C2 for Channel 240A at

Aiken and the modification of its license to specify the higher powered channel (RM-5217).<sup>1</sup>

2. Greenwood, South Carolina (Population 21,613),<sup>2</sup> seat of Greenwood County (population 57,847), is located approximately 60 miles west of Columbia, South Carolina. The community currently receives local service from FM Station WSCZ, licensed to Eaton, as well as one full-time and two daytime-only AM stations. Seneca, South Carolina (population 7,436), in Oconee County (population 48,611), is located approximately 7 miles west of Clemson, South Carolina. Seneca receives local service from co-owned Stations WNSW(AM) and WBFM(FM). Biltmore Forest, North Carolina (population 1,499), in Buncombe County (population 160,934), is located approximately 5 miles southeast of Asheville, North Carolina. It presently has no local service. Aiken, South Carolina (population 14,978), seat of Aiken County (population 105,625), is located approximately 50 miles southwest of Columbia, South Carolina. It currently receives local service from two daytime-only AM stations and two FM stations.

3. Co-channel Class A stations must be separated by 105 kilometers (65 miles). However, Seneca and Biltmore Forest are only 100 kilometers apart. Co-channel Class A and Class C2 stations must be separated by 163 kilometers, but Greenwood is only 91 kilometers from Seneca, South Carolina, and 154 kilometers from Biltmore Forest, North Carolina. First adjacent Class C2 channels require a 130 kilometer separation but Aiken and Greenwood are only 64 kilometers apart. In an effort to resolve these conflicts, the staff has performed an engineering study but was unable to find an alternate channel for any of the communications involved nor was it able to find site restrictions to permit the allotment of Channel 243A to both Seneca and Biltmore Forest. Thus, these proposals must be comparatively considered.

4. Since we are unaware of any other Class A or C2 channel for the proposed communities, we shall provide each proponent with an opportunity to further demonstrate, in comments to this proceeding, why its community should receive the allocation. In this regard, the

parties should be guided by the allocation principles set forth in *Revision of FM Assignment Policies and Procedures*, 90 F.C.C. 2d 88 (1982). We shall also propose to modify the licenses of Stations WSCZ-FM at Greenwood and WJFX-FM at Aiken to specify operation on their requested channels. Pursuant to the Commission's Rules, modification of these licenses may not be implemented if other parties express interest in the proposed allotments unless an additional equivalent channel is available at their respective communities. See *Modification of FM and TV Station Licenses*, 98 F.C.C. 2d 916 (1984).<sup>3</sup>

5. We shall propose to allocate Channel 243A to either Seneca or Biltmore Forest as well as Channel 242C2 to Aiken or Channel 243C2 to Greenwood. Channel 243A can be allocated to Seneca in compliance with the Commission's minimum distance separation requirements if the transmitter site is restricted to an area at least 2.3 kilometers (1.4 miles) north to avoid a short-spacing to Station KFOX, Channel 246, Gainesville, Georgia. Channel 243A can be allocated to Biltmore Forest if the transmitter site is restricted to an area at least 1.9 kilometers (1.2 miles) southwest to avoid a short-spacing to Station WXBQ-FM, Channel 245, at Bristol, Tennessee-Virginia. This allocation is also contingent upon grant of the application filed by Station WXIK, Channel 241 at Shelby, North Carolina, to move its transmitter site (BPH-840904AD). Channel 243C2 can be allocated to Greenwood and utilized at Station WSCZ's existing transmitter site. Channel 242C2 can be allocated to Aiken if the transmitter is restricted to an area at least 19 kilometers (11.8 miles) northwest to avoid a short-spacing to Station WJCL, Channel 243 at Savannah, Georgia. This allocation is also contingent upon grant of the application of Station WXIK at Shelby, North Carolina.

6. In view of the foregoing, the Commission considers it appropriate to solicit comments on the alternative amendments to the FM Table of Allotments, § 73.202(b) of the Rules, as follows:

<sup>3</sup> See also *Notice of Proposed Rule Making*, MM Docket 85-313, 50 FR 45439, published October 31, 1985. In this proceeding, the Commission has under consideration a proposal to modify licenses to adjacent channels in situations such as Aiken and Greenwood without the need to provide an additional equivalent channel.

City	Channel No	
	Present	Proposed
OPTION I		
Greenwood, South Carolina	244A	243C2
OPTION II		
Seneca, South Carolina	251	243A and 251
Aiken, South Carolina	240A and 257A	242C2 and 258C2 <sup>1</sup>
OPTION III		
Biltmore Forest, North Carolina		243A
Aiken, South Carolina	240A and 257A	242C2 and 258C2 <sup>1</sup>

<sup>1</sup> The Commission has proposed to substitute Channel 258C2 for Channel 257A at the request of Aiken Radio. See *Notice of Proposed Rule Making*, 50 FR 34874, published August 28, 1985.

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before March 27, 1986, and reply comments on or before April 11, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows:

John E. Fiorini III, Esq., Pepper & Corazzini, 1776 K Street, NW., Suite 200, Washington, DC 20006 (Counsel to Eaton Broadcasting Corp., Greenwood, SC)

Martin I. Levy, Esq., Cohn and Marks, 1333 New Hampshire Avenue, N.W., Suite 600, Washington, D.C. 20036 (Counsel to Diana Cecil Pickering—Biltmore Forest, N.C.)

Nancy Wolf, Esq., Dow, Lohnes & Albertson, 1255 23rd Street, NW., Washington, DC 20037 (Counsel to LHR Partners, Seneca, South Carolina)

David Tillotson, Esq., Mania K. Baghdadi, Esq., Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, N.W., Washington, D.C. 20036 (Counsel to Amici Broadcasting Corporation—Aiken, South Carolina)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the*

<sup>1</sup> Amici filed its proposal in connection with the *Notice of Proposed Rule Making* looking toward the substitution of Channel 258C2 for Channel 257A at Aiken. Docket 85-254, 50 FR 34874, published August 28, 1985. However, because of the conflict with the Greenwood proposal, we have included it for consideration here.

<sup>2</sup> All population figures are taken from the 1980 U.S. Census.

*Commission's Rules*, 46 FR. 11549, published February 9, 1981.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

#### Appendix

1. Pursuant to authority found in sections 4(j), 5(d)(1), 303 (g) and (r); and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that

parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to his proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2794 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 86-31; RM-5173]

#### FM Broadcast Station in Lahoma, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

**SUMMARY:** Action taken herein proposes the allocation of Channel 239A to Lahoma, Oklahoma, as the community's first local service, at the request of Donna Clark.

**DATES:** Comments must be filed on or before March 27, 1986, and reply comments on or before April 11, 1986.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

#### SUPPLEMENTARY INFORMATION:

##### List of Subjects in 47 CFR Part 73

Radio broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

#### Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations, (Lahoma, Oklahoma); MM Docket No. 86-31 and RM-5173.

Adopted: January 24, 1986.

Released: February 3, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it the petition for rule making filed by Donna Clark ("petitioner") requesting the allocation of Channel 289A to Lahoma, Oklahoma, as the community's first local service.<sup>1</sup> Channel 239A can be allocated in compliance with the Commission's minimum distance separation requirements with a site restriction of 8.5 kilometers (5.3 miles) southwest to avoid a short-spacing to the construction permit of Station KWEN, Channel 238 at Tulsa, Oklahoma. No site restriction is needed if KWEN's application (BMPH-850917IG) specifying full Class C facilities is granted. Petitioner states that she will apply for the channel, if allocated.

2. Petitioner states that Lahoma, in Garfield County, is a growing community with over 1,000 population. However, Lahoma is not listed in the 1980 U.S. Census, Section 307(b) of the

<sup>1</sup> Petitioner requested the allocation of Channel 289A at Lahoma. We have substituted Channel 239A for consideration here in order to avoid a conflict with the request of Women, Handicapped Americans and Minorities for Better Broadcasting to substitute Channel 289C1 for Channel 232A at Alva, Oklahoma, and the modification of its construction permit to specify operation on the higher powered channel.

Communications Act of 1934, as amended, mandates that allocations be made to "communities" which are defined as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to satisfy its status. However, absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic or cultural indicia to qualify it as a "community" for allocation purposes. See *e.g.*, *Ansley, Alabama*, 46 FR 58588, published December 3, 1981; *Cascade Village, Colorado*, 48 FR 19917, published May 3, 1983; *Red Rock, Georgia*, 48 FR 36170, published August 9, 1983, and cases cited therein. Therefore, petitioner should submit additional information to demonstrate whether it has any business, social organizations, or governmental units that identify themselves with Lahoma.

3. We believe the public interest would be served by seeking comments on the proposed allocation of a first FM channel to Lahoma. Accordingly, we propose to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	
	Present	Proposed
Lahoma, Oklahoma.....		239A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

*Note.*—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 27, 1986, and reply comments on or before April 11, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Donna Clark, 2109 W. Pine Street, Enid, Oklahoma 73701 (Petitioner).

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend*

§§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

#### Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if

advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations; interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2793 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 85-390]

#### TV Broadcast Station in Ventura, CA

AGENCY: Federal Communications Commission.

**ACTION:** Order.

**SUMMARY:** This action extends the time for filing comments to the *Notice of Proposed Rule Making* which proposed the assignment of UHF Channel 25 or UHF Channel 51 as a substitute for UHF Channel 16, at Ventura, California, for a 7-day period, in response to a request filed by California Broadcasting Corporation.

**DATES:** Comments must be filed on or before January 31, 1986, and reply comments must be filed on or before February 17, 1986.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Arthur D. Scrutchins, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:****List of Subjects in 47 CFR Part 73**

Television broadcasting.

The authority citation for Part 73 continues to read:

**Authority:** Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or supply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

In the Matter of amendment of § 73.6.6(b), Table of Assignments, TV Broadcast Stations, (Ventura, California); MM Docket No. 85-390.

**Order Extending Time for Filing Comments and Reply Comments**

Adopted: January 28, 1986.

Released: January 30, 1986.

By the Chief, Mass Media Bureau.

1. The Commission has before it the *Notice of Proposed Rule Making*, 50 FR 52806, published December 26, 1985, proposing the substitution of UHF Channel 25 or UHF Channel 51 for UHF Channel 16 at Ventura, California. Channel 16 was reallocated to the Land Mobile Service for public safety use in the Los Angeles, California area. The *Notice* requested that the two pending applicants for Channel 16 at Ventura state their interest in Channel 25 or 51, or along with other interested parties, provide us with any alternative channel proposals for Ventura.

2. In order to facilitate the submission of any such alternative proposals for Ventura, the Commission placed in the docket a copy of its "channel studies" for each UHF channel using the coordinates for the site specified by the applicants for Ventura. (See, *Public Notice*, Mimeo No. 2089, January 21, 1986).

3. On January 22, 1986, California Broadcasting Corporation (CBC), one of the two applicants for Channel 16 at Ventura, filed a motion for extension of time, seeking an additional 7 days to review the channel studies and file its comments. Comments were previously due January 24, 1986. CBC noted that although § 1.46(b) of the Commission's Rules requires that extension requests be filed seven days in advance of the filing deadline, it was impossible for CFC to comply since the Public Notice covering the channel studies was announced less than seven days before the January 24 deadline. CBC also notes that the other Ventura applicant, Channel Islands Television Corporation ("CIT") has consented to the requested extension. Finally, CBC requests that all other parties filing comments in this proceeding be required to serve copies of the pleadings on itself and CIT.

4. From the information provided, we believe an extension of time is warranted. The Commission requested that the applicants or other interested parties consider alternative channel proposals. In order to provide sufficient time for these parties to review the channel studies, we believe that it would be in the public interest to extend the comment period as requested. Accordingly, the comment period will be extended to January 31, 1986. As for CBC's request that we require all parties filing comments to serve comments on CBC and CIT, we think the request is reasonable and order service at paragraph 6, *infra*.

5. Accordingly, it is ordered, That the time for filing comments in MM Docket 85-390 is extended to and including January 31, 1986. Furthermore, reply comments will be due February 17, 1986.

6. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204 and 0.283 of the Commission's Rules.

7. It is further ordered, That all comments in this proceeding shall be served on the parties as listed below:

1. California Broadcasting Corporation, c/o Gardner F. Gillespie III, Esq., Hogan and Hartson, 815 Connecticut Avenue, NW., Suite 700, Washington, DC 20006
2. Channel Islands Television Corporation, c/o Robert B. Jacobi, Esq., Cohn and Marks, 1133 New Hampshire Avenue, NW., Suite 600, Washington, DC 20036

Federal Communications Commission.

James C. McKinney,

Chief, Mass Media Bureau.

[FR Doc. 86-2790 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

**47 CFR Part 73**

[MM Docket No. 86-29; RM-4941]

**FM Broadcast Station in Greenup, KY**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** Action taken herein proposes the substitution of Class B1 FM Channel 289 for Channel 288A at Greenup, Kentucky and modification of the Class A license for Station WLGC(FM), in response to a petition filed by Greenup County Broadcasting, Inc. The proposed allotment could provide Greenup with its first wide coverate Class B1 FM station.

**DATES:** Comments must be filed on or before March 27, 1986, and reply comments on or before April 11, 1986.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

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

**SUPPLEMENTARY INFORMATION:****List of Subjects in 47 CFR Part 73**

Radio, Radio broadcasting.

The authority citation for Part 73 continues to read:

**Authority:** Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

**Notice of Proposed Rule Making**

In the matter of amendment of § 73.202(b) Table of Allotments, FM Broadcast Stations (Greenup, Kentucky), MM Docket No. 86-29, RM 4941.

Adopted: January 21, 1986.

Released: February 3, 1986.

By the Chief, Policy and Rules Division.

1. Before the Commission for consideration is a petition for rule making filed by Greenup County Broadcasting, Inc. ("petitioner"), licensee of Station WLGC(FM), Channel 288A, Greenup, Kentucky, requesting the substitution of FM Channel 289B1 for Channel 288A and modification of its license to specify operation on the Class B1 channel.

2. We believe the proposal warrants consideration in view of the expressed desire for a wider coverage area FM station to serve the public interest. A staff engineering study reveals that the proposed allotment of FM Channel 289B1 can be made at the present site on Station WLGC in compliance with the minimum distance separation requirements.

3. In accordance with our established policy, we shall propose to modify the license of Station WLGC(FM) to specify operation on FM Channel 289B1. However, under current policy should another party indicate an interest in the Class B1 allotment the modification may not be implemented, unless an additional equivalent channel is allotted. See *Modification of FM and TV Station Licenses*, 98 F.C.C. 2d 916 (1984).<sup>1</sup>

#### PART 73—[AMENDED]

4. Accordingly, in order to provide Greenup, Kentucky with its first wide coverage area FM station, the Commission proposes to amend the FM Table of Allotments, § 73.202(b) of the Rules, with regard to the community listed below, as follows:

City	Channel No.	
	Present	Proposed
Greenup Kentucky.....	288A	289B1

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before March 27, 1986, and reply comments on or before April 11, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: John H. Midlen, Jr., Chartered, 1050 Wisconsin Avenue, NW., Washington, DC 20007 (Counsel to petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to

<sup>1</sup> Interested parties should consider the pending *Notice of Proposed Rule Making* (MM Docket No. 85-313), 50 FR 45439, published October 31, 1985, which would permit FM stations to upgrade on adjacent channels without demonstrating the availability of an additional equivalent class of channel.

amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

For further information concerning this proceeding, contact D. David Weston, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

#### Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in the initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceedings, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments: Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2792 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

[MM Docket No. 86-36; RM-5081]

## TV Broadcast Station in McCook, NE

AGENCY: Federal Communications Commission.

ACTION: Proposal rule.

**SUMMARY:** Action taken herein proposes the assignment of VHF TV Channel 12 to McCook, Nebraska, at the request of Jerrell E. Kautz, and the modification of its construction permit for UHF TV Channel 16 to specify operation on the VHF channel. The channel assignment could provide McCook with its second VHF television service.

**DATES:** Comments must be filed on or before March 27, 1986 and reply comments on or before April 11, 1986.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

## SUPPLEMENTARY INFORMATION:

## List of subjects in 47 CFR Part 73

Television broadcasting.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

## Proposed Rule Making

In the Matter of Amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations (McCook, Nebraska); MM Docket No. 86-36; RM-5081.

Adopted: January 24, 1986.

Released: February 4, 1986.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the petition for rule making submitted by Jerrell E. Kautz ("petitioner") requesting the assignment of VHF Channel 12 to McCook, Nebraska. Petitioner also requests that its construction permit (BPCT-840312KE) for UHF TV Channel 16 at McCook be modified to specify operation on Channel 12.

2. McCook (population 8,404)<sup>1</sup>, seat of Red Willow County (population 12,615),

is located in southwestern Nebraska, approximately 250 miles southwest of Omaha, Nebraska. McCook currently has assigned to it Channel 8, Station KSNK, licensed to Kansas State Network, and Channel 16, for which petitioner has a construction permit.

3. Channel 12 can be assigned to McCook in compliance with the Commission's minimum distance separation requirements if the transmitter site is restricted to an area at least 21.5 miles east to avoid short-spacing to Station KRNE-TV, Channel 12, Merriman, Nebraska, and to unoccupied and unapplied for Channel 12 at Lamar, Colorado. We also seek comments on an alternative site restriction of 10.4 miles south for proposed Channel 12 at McCook and the imposition of a 15.4 mile southwest site restriction on existing Channel 12 at Lamar, Colorado. In view of the above, we shall propose to assign Channel 12 to McCook, Nebraska, and modify petitioner's construction permit to specify the new channel. However, pursuant to § 1.420(g) of the Commission's Rules, the modification of petitioner's construction permit cannot be implemented if other parties express an interest in the proposed assignment unless an additional equivalent channel is available for use at McCook. See *Modification of FM and TV Station Licenses*, 98 F.C.C. 2d 916 (1984).

4. Accordingly, we propose to amend the Television Table of Assignments, § 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

City	Channel No.	Proposed
	Present	
McCook, NE.....	8-, 16+	8-, 12+, and 16+

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. Note: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before March 27, 1986, and reply comments on or before April 11, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Jerrell E. Kautz, Rt. 1, Box 24A, Utica, Nebraska 68456, (Petitioner).

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

## Appendix

1. Pursuant to authority found in sections 4(i), 5(c)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its

<sup>1</sup> All population figures are taken from the 1980 U.S. Census.

present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedure.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference

Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2798 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 86-28; RM-5109]

#### FDM Broadcast Station in Frayser, TN

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** Action taken herein, at the request of Earl Daly, proposes the allotment of Channel 225A to Frayser, Tennessee, as that community's first FM service.

**DATES:** Comments must be filed on or before March 27, 1986, and reply comments on or before April 11, 1986.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

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

#### SUPPLEMENTARY INFORMATION:

##### List of Subjects in 47 CFR Part 73

Radio Broadcasting.

The authority citation for Part 73 continues to read:

**Authority:** Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303, Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

#### Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Frayser, Tennessee); MM Docket No. 86-28; RM-5109.

Adopted: January 21, 1986.

Released: February 3, 1986.

By the Chief, Policy and Rules Division:

1. The Commission has before it for consideration a petition for rule making filed by Earl Daly ("petitioner"), requesting the allotment of FM Channel 225A to Frayser, Tennessee, as that community's first FM service. Petitioner has stated his intention to apply for the channel, if allotted.

2. A staff engineering study reveals that Channel 225A can be allotted to Frayser in compliance with the Commission's minimum distance separation requirements, with a site restriction. The site restriction of 12.1 kilometers (7.5 miles) east of the community is necessary to avoid short spacing to a construction permit for

Station KZLE(FM), Channel 226, Batesville, Arkansas. However, a site 12.1 km removed from the center of the city may prove difficult to provide a city-grade (70 dBu) signal to the principal community. The petitioner or other interested parties, therefore, should provide information that a site is available that will meet the minimum spacing requirements and provide a city-grade signal to the community.

3. In view of the fact that Frayser, Tennessee, could receive its first local FM service, the Commission finds it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules, as follows:

City	Channel No.	
	Present	Proposed
Frayser, TN		225A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before March 27, 1986, and reply comments on or before April 11, 1986, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Keith E. Lamonica, P.O. Box 510261, Salt Lake City, Utah 84151, (Consultant to petitioner.)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a

message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceedings.

Federal Communications Commission

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

### Appendix

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposal allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in the *Notice*, they will be considered as comments in the proceeding, and Public Notice of this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in

connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, DC.

[FR Doc. 86-2791 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Parts 1004 and 1057

[Ex Parte No. MC-73 (Sub-1)]

### Interchange Policies at International Boundary Lines

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Withdrawal of proposed rules; discontinuance of proceeding.

**SUMMARY:** By notice of proposed rulemaking published at 46 FR 32460 (1981), the Commission proposed to reexamine the extent to which it regulates movements by foreign motor carriers transporting transborder traffic between points on the United States' international boundary lines and points

within the United States for the sole purpose of interchanging that traffic with U.S. carriers. In view of the lack of public support for any change in existing practice, and subsequent legislation affecting transborder traffic we conclude that the proceeding should be discontinued and the proposed rules withdrawn.

#### FOR FURTHER INFORMATION CONTACT:

Andrew L. Lyon, (202) 275-7805

or

Howell I. Sporn, (202) 275-7691

**SUPPLEMENTARY INFORMATION:** We instituted this rulemaking proceeding to reexamine the present policy of requiring Canadian and Mexican motor carriers to obtain operating authority from the Commission to conduct limited operations within the United States for the sole purpose of interchanging transborder traffic with United States carriers. Because the exchange of goods and equipment cannot be accomplished precisely on the boundary line, entry by foreign carriers into the United States is necessary. These movements require operating authority from the Commission. However, it was suggested that these movements are too insignificant to require this type of regulation and that the activity should continue without unnecessary regulatory burdens on the Commission and foreign carriers.

The rulemaking proposed to address these problems by making two changes in existing practice. The first change would have been made by amending the interchange regulations to allow operations within the United States by a foreign carrier to be conducted under the authority of the licensed interlining U.S. carrier, with the interchange of equipment being considered to occur on the border itself, although the necessary formalities could occur at any point within 5 miles of a boundary line. The second change, intended to address those situations in which the cargo is physically transferred to another carrier, is moving on a through bill of lading, and is being picked up from or delivered to a U.S. carrier, would have been made by disclaiming jurisdiction over all transportation by a foreign carrier within 5 miles of the boundary lines.

The comments do not provide support for either proposal. The proposed disclaimer of jurisdiction drew the strongest objections, with many parties arguing effectively that the burden on the Commission to ensure that unregulated operations remained confined to the 5 mile zone would be greater than that imposed by continuing

to process applications for authority to conduct these movements. However, more importantly, neither proposal was viewed as contributing significantly to the smooth flow of commerce across international boundary lines. The parties generally agreed that the present system functions as smoothly as possible, and that the most significant delays are not caused by matters within this Commission's jurisdiction. Those few parties that expressed support for either or both proposals did so in the most general of terms and have not provided any basis upon which we could reasonably justify adoption of either the proposed rules or any modified version of those rules.

In addition, legislation affecting motor carriers passed subsequent to the Motor Carrier Act of 1980 further addressed the issue of trans-border traffic. The proposed rules could interfere with both the Bus Regulatory Reform Act of 1982 and the Motor Carrier Safety Act of 1984, which provide for greater control over motor traffic from foreign countries moving across United States borders.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources, nor will it have a significant effect on a substantial number of small entities.

*It is ordered:*

This proceeding is discontinued.

This action is taken under the authority of 49 U.S.C. 10101, 10321, 10762, 10922, and 11101, and 5 U.S.C. 553.

Decided: February 3, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

**James H. Bayne,**

*Secretary.*

[FR Doc. 86-2822 Filed 2-7-86; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 14

#### Humane and Healthful Transport of Wild Animals and Birds to the United States

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule, extension of time.

**SUMMARY:** The Service extends the period for submission of comments from the public on the proposal (see 50 FR 49709 et seq. December 4, 1985) to promulgate regulatory requirements under the Lacey Act Amendments of 1981 for the humane and healthful transport of wild animals and birds to the United States.

**DATE:** The Service will consider information and comments received by March 5, 1986, in considering the making of a final rule.

**ADDRESS:** Please send correspondence concerning this notice to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, 1000 N. Glebe Road, Room 611, Arlington, Virginia 22201. Materials received will be available for public inspection from 7:45 am to 4:15 pm, Monday through Friday, at the Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 620, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard K. Robinson, Acting Chief, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, 1000 N. Glebe Road, Room 621, Arlington, Virginia 22201, telephone (703) 235-1937.

**SUPPLEMENTARY INFORMATION:** On

December 4, 1985, the Service published in the *Federal Register* (50 FR 49709 et seq.) proposed rules under the Lacey Act Amendments of 1981 (Pub. L. 87-79, 95 Stat 1073) that would amend 50 CFR Part 14 by adding a new Subpart J thereto. These rules if finalized would establish regulatory requirements for the humane and healthful transport of wild animals and birds to the United States.

Today, much of the transport of live wildlife involves airline carriers. The rules would create legal obligations on such carriers and others to provide for the humane and healthful transport of live wild animals and birds.

The International Air Transport Association and the Air Transport Association by letters dated December 10 and December 11, 1985, respectively, have requested that the Service extend the closing date of the comment period on these proposed rules, February 3, 1986, by at least 45 days in light of the various religious holidays which occur at this time of the year and the need to disseminate the proposed rules to air carriers and interested parties throughout the world.

The Service recognizes the validity of these requests, but also recognizes the need for expeditious action on the proposed rules. Therefore, the Service hereby extends the closing date of the comment period by 30 days to March 5, 1986.

Dated: January 31, 1986.

**P. Daniel Smith,**

*Deputy Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 86-2894 Filed 2-7-86; 8:45 am]

BILLING CODE 4310-55-M

# Notices

Federal Register

Vol. 51, No. 27

Monday, February 10, 1986

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.

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

### Committee on Adjudication; Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Adjudication of the Administrative Conference of the United States, to be held at 10:00 a.m., Wednesday, February 26, 1986, at 2120 L Street NW., FTC Hearing Room #1 (Lower Level), Washington, DC. The committee will meet to consider reports and recommendations from Professor George Johnson of George Mason University School of Law on the OSHA-OSHR enforcement model and Professor Richard Pierce of the University of Pittsburgh School of Law in the use of the Federal Rules of Evidence in Federal agency adjudications. For further information, call Richard K. Berg, 202-254-7065.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman of the Administrative Conference at least one day in advance. The committee chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the committee before, during or after the meeting. Minutes of the meeting will be available on request.

Dated: February 6, 1986.

**Richard K. Berg,**

*General Counsel.*

[FR Doc. 86-2816 Filed 2-7-86; 8:45 am]

BILLING CODE 6110-01-M

## DEPARTMENT OF AGRICULTURE

### Rural Electrification Administration

#### Environmental Statement; Fall River Rural Electric Cooperative, Inc.

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Notice of finding of no significant impact.

**SUMMARY:** Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality regulations (40 CFR Part 1500), and REA Environmental Policies and Procedures, 7 CFR Part 1794, has adopted and supplemented an Environmental Assessment (EA) prepared by the Federal Energy Regulatory Commission (FERC) on July 9, 1985, and made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Fall River Rural Electric Cooperative, Inc. (Fall River), of Ashton, Idaho.

The proposed project consists of altering the existing facilities at Fall River's Felt Hydro Project in Teton County, Idaho, by: (1) Refurbishing two existing generating units in the old powerhouse and installing two new units in a new powerhouse which would be located 518 m (1700 feet) downstream from the existing plant and it would increase the project's capacity from 6 MW to 7.5 MW, (2) rerouting the existing power line by constructing 1006 m (3300 feet) of 24.9 kV underground distribution line and 428 m (1400 feet) of aerial line, (3) rerouting the access road, and (4) constructing an additional 198 m (650 feet) penstock. The existing facilities consist of a dam, a reservoir, three intakes, three tunnels, three penstocks, two powerhouses containing an installed capacity of 1870 kW, and miscellaneous appurtenant facilities. No major alterations to the penstock intakes, dam, or reservoir are proposed.

**FOR FURTHER INFORMATION CONTACT:** REA's FONSI, the FERC EA, REA's Supplement to the FERC EA, and Fall River's Borrower's Environmental Report (BER), may be reviewed at or obtained from the office of the Director, Western Area-Electric, REA, Room

0207-S, 14th Street and Independence Avenue, SW., Washington, DC 20250, telephone number: (202) 382-8848, or the office of Fall River Rural Electric Cooperative, Inc. (Mr. Calvin Wickman, Manager), P.O. Box AE, Ashton, Idaho 83420, telephone number: (208) 652-7431, during regular business hours.

**SUPPLEMENTARY INFORMATION:** REA reviewed the BER submitted by Fall River and the FERC EA and determined that they represent an accurate assessment of the environmental impact of the proposed project. The BER and FERC EA adequately consider potential impacts of the proposed project to resources including threatened or endangered species, important farmland, prime forest land, prime rangeland, cultural resources, wild rivers, scenic or recreational rivers, floodplains, and wetlands. Possible REA actions could include: (1) Accommodating REA's first lien position related to existing facilities, easements, licenses, and water rights for the Felt Hydro Project lenders, and (2) Approving the "Lease Agreement on the new Felt Hydro Project" that would be executed by Bonneville Pacific Corporation and Fall River.

Based upon the FERC EA, the BER and other support documents, REA prepared a Supplement to the FERC EA, which represents REA's independent evaluation of the environmental effects of the proposed project. REA has independently evaluated the impact of the proposed project and determined the proposed project would not affect threatened or endangered species, important farmland, prime forest land, prime rangeland, cultural resources, wild rivers, scenic or recreational rivers, floodplains and wetlands.

FERC examined alternatives which included no action; upgrading the existing facility to its realistic maximum output by refurbishing two existing generating units in the old powerhouse and installing two new units in a new powerhouse which would be located 518 m (1700 feet) downstream from the existing plant; replacing the existing plant with a new, larger plant at the same location; and replacing the existing plant with a new plant at a new location. FERC has approved upgrading the existing plant to its maximum output as the preferred alternative. After

reviewing these alternatives, REA concurred with the FERC determination that the proposed project of upgrading the existing facility by refurbishing two existing generating units in the old powerhouse and installing two new units in a new powerhouse is an acceptable alternative and it meets Fall River's needs with a minimum of environmental impact.

In accordance with its regulations, FERC published notices in the *Federal Register* and requested comments on the application submitted by Fall River. The notices published by FERC meet the REA notice requirements contained in 7 CFR 1794.62. Pursuant to REA's Environmental Policies and Procedures, 7 CFR Part 1794, Fall River advertised the availability of its BER in the local newspapers. No comments were received.

Based upon the FERC EA, the BER and other support documents, REA prepared a Supplement to the FERC EA and issued a FONSI concerning the proposed construction. REA independently evaluated the proposed project and concluded that approval of the proposed project would not constitute a major Federal action significantly affecting the quality of the human environment.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: February 4, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86-2828 Filed 2-7-86; 8:45 am]

BILLING CODE 3410-15-M

#### Environmental Statements; United Power Association

**AGENCY:** Rural Electrification Administration, USDA.

**ACTION:** Notice of finding of no significant impact.

**SUMMARY:** Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the provisions of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact with respect to the expansion of the ash

disposal area at United Power Association's (UPA) Stanton Generating Station in Mercer County, North Dakota.

#### FOR FURTHER INFORMATION CONTACT:

REA's Finding of No Significant Impact and Environmental Assessment and UPA's Borrower's Environmental Report (BER) may be reviewed at and copies obtained from the Office of the Director, North Central Area—Electric, REA Room 0230, South Agriculture Building, Washington, DC 20250, telephone (202) 382-1400, or the offices of United Power Association, Highway 10, Elk River, Minnesota 55330-0800, telephone (612) 441-3121, during normal business hours.

#### SUPPLEMENTARY INFORMATION:

REA reviewed the Borrower's Environmental Report (BER) submitted by UPA and determined that it represents an accurate assessment of the environmental impacts of the proposed 41 hectare (102 acre) ash disposal area expansion. REA prepared its Environmental Assessment based on the BER and other pertinent information. REA independently concluded that the proposed financing assistance would not result in a major Federal action significantly affecting the quality of the human environment. The BER and Environmental Assessment adequately consider the potential impacts of the proposed project on prime farmlands, wetlands, floodplains, cultural resources, Federally listed threatened or endangered species or those proposed for listing or their critical habitat, wild and scenic rivers, air quality, water quality, and aesthetics.

Various alternatives to the proposed project were considered, including no action, alternative locations, and alternative methods of disposal. REA determined that the proposed project is an acceptable alternative that meets UPA's needs with a minimum of adverse environmental impact.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850—Rural Electrification Loans and Loan Guarantees. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Dated: February 4, 1986.

Jack Van Mark,

Acting Administrator.

[FR Doc. 86-2829 Filed 2-7-86; 8:45 am]

BILLING CODE 3410-15-M

#### CIVIL RIGHTS COMMISSION

##### California Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 7:00 p.m. and adjourn at 9:00 p.m. on February 28, 1986 and convene at 9:00 a.m. and adjourn at 1:00 p.m. on March 1, 1986, at the U.S. Commission on Civil Rights, 3660 Wilshire Boulevard, Room 810, Los Angeles, California. The purpose of the meeting is to discuss proposed project concepts on housing and affirmative action and to consider other SAC activities for the remainder of the fiscal year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxwell Greenberg or Philip Montez, Director of the Western Regional Office at (213) 688-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 4, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-2819 Filed 2-7-86; 8:45 am]

BILLING CODE 6335-01-M

##### Kansas Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 4:00 p.m. and adjourn at 6:30 p.m. on March 10, 1986 and convene at 9:30 a.m. and adjourn at 12:00 noon on March 11, 1986, at the Garden City Hilton Inn, 1911 East Kansas, Central Ballroom, Garden City, Kansas. The purpose of the meeting is to discuss the status of civil rights in Finney County and continue program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Burdett Loomis or Melvin Jenkins, Director of the

Central States Regional Office at (816)374-5253, (TDD 816/374-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five(5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, February 4, 1986.

Bert Silver,

Assistant Staff Director for Regional Programs.

[FR Doc. 86-2818 Filed 2-7-86; 8:45 am]

BILLING CODE 6335-01-M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-351-601]

#### Certain Finished Carbon Steel Butt-Weld Pipe Fittings From Brazil; Initiation of Antidumping Duty Investigation

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether certain finished carbon steel butt-weld pipe fittings from Brazil are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before February 27, 1986, and we will make ours on or before June 23, 1986.

**EFFECTIVE DATE:** February 10, 1986.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. O'Mara or Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 377-3798 or 377-1769.

**SUPPLEMENTARY INFORMATION:**

#### The Petition

On January 13, 1986, we received a petition in proper form filed by the U.S. Butt-Weld Pipe Fittings Committee. In

compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of the subject merchandise from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

#### Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain finished carbon steel butt-weld pipe fittings from Brazil and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain finished carbon steel butt-weld pipe fittings are being, or are likely to be, sold in the United States at less than fair value.

#### Scope of Investigation

The products covered by this investigation are finished, beveled, carbon steel butt-weld pipe fittings, other than couplings, under 14 inches in inside diameter, as currently provided for in item 610.88 of the *Tariff Schedules of the United States, Annotated*, (TSUS).

#### United States Price and Foreign Market Value

Petitioner was unable to obtain price information from price quotes or sales offers. Consequently, petitioner based United States price on the customs value for butt-weld pipe fittings under 14 inches in diameter imported from Brazil during the period January through October 1985. Petitioner made no adjustments for foreign inland freight.

Petitioner was unable to obtain home market or third country price data. Consequently, petitioner calculated a constructed foreign market value. As petitioner was unable to obtain Brazilian cost data for the appropriate sizes of seamless pipe, petitioner averaged the unit values for Brazilian seamless pipe inputs to obtain average unit prices for the average imported Brazilian seamless pipe. Production factors were averaged as well and were based on three high-volume, common finished fittings representative of the

market. Two average constructed foreign market values were calculated due to the uncertainty of the applicable tariff category.

Petitioner used U.S. production and packing costs for the three representative products.

Adjustments were made for known differences in corresponding Brazilian costs, as well as the statutory minimums for general expenses and profits.

Based on the comparison of United States price and the constructed foreign market value, petitioner alleges average dumping margins ranging from 53.4 to 58.1 percent.

#### Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

#### Preliminary Determination by ITC

The ITC will determine by February 27, 1986, whether there is a reasonable indication that imports of certain finished carbon steel butt-weld pipe fittings are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: February 3, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-2813 Filed 2-7-86; 8:45 am]

BILLING CODE 3910-DS-M

[A-583-601]

#### Certain Finished Carbon Steel Butt-Weld Pipe Fittings From Taiwan; Initiation of Antidumping Duty Investigation

**AGENCY:** International Trade Administration, Import Administration.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether

certain finished carbon steel butt-weld pipe fittings from Taiwan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before March 3, 1986 and we will make ours on or before June 25, 1986.

**EFFECTIVE DATE:** February 10, 1986.

**FOR FURTHER INFORMATION CONTACT:**

Patrick J. O'Mara or Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-3798 or 377-4769.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On January 13, 1986, the U.S. Butt-Weld Pipe Fittings Committee filed a petition in compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36). The petition, however, was not properly filed until January 16, 1986, since until that date, the petition did not comply with § 207.10(b) of the Rules of the International Trade Commission, 19 CFR 207.10(b). The petition alleged that imports of the subject merchandise from Taiwan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

**Initiation of Investigation**

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain finished carbon steel butt-weld pipe fittings from Taiwan and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain finished carbon steel butt-weld pipe fittings from Taiwan are being, or are likely to be, sold in the United States at less than fair value.

**Scope of Investigation**

The products covered by this investigation are finished, beveled, carbon steel butt-weld pipe fittings, other than couplings, under 14 inches in inside diameter, as currently provided for in item 810.88 of the *Tariff Schedules of the United States, Annotated*, (TSUS).

**United States Price and Foreign Market Value**

Petitioner based United States price on a price list, C.I.F. duty paid, from a Taiwanese manufacturer. Petitioner assumed that these prices did not include the applicable customs duty on butt-weld pipe fitting from Taiwan. Petitioner estimated Taiwanese ocean freight and insurance based on an ITC study.

Petitioner was unable to obtain home market or third country data. Consequently, petitioner calculated a constructed foreign market value. Petitioner constructed a value for each of four representative fittings. The cost of materials and fabrication were calculated based on a U.S. producer's cost of production factors with some adjustments to reflect Taiwanese prices for those factors. Such factors included the cost of seamless steel pipe, electricity, direct labor, supervisory labor, fringe benefits, depreciation, storage, losses, repairs and supplies. Petitioner added the statutory minimums of ten percent of the costs for general expenses and eight percent of the costs and general expenses for profit. Packing costs were added and were based on the actual expenses incurred by a U.S. producer. Based on the comparison of United States price and foreign market value, petitioner alleges average dumping margins ranging from 94.5 to 134.5 percent.

**Notification of ITC**

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

**Preliminary Determination by ITC**

The ITC will determine by March 3, 1986, whether there is a reasonable indication that imports of certain finished carbon steel butt-weld pipe fittings from

Taiwan are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

Dated: February 3, 1986.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration,*

[FR Doc. 86-2814 Filed 2-7-86; 8:45 am]

**BILLING CODE 3510-DS-M**

[A-588-601]

**Finished Carbon Steel Butt-Weld Pipe Fittings From Japan; Initiation of Antidumping Duty Investigation**

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** On the basis of a petition filed in proper form with the United States Department of Commerce, we are initiating an antidumping duty investigation to determine whether finished carbon steel butt-weld pipe fittings from Japan are being, or are likely to be, sold in the United States at less than fair value. We are notifying the United States International Trade Commission (ITC) of this action so that it may determine whether imports of this product are causing material injury, or threaten material injury, to a United States industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before March 3, 1986, and we will make ours on or before June 5, 1986.

**EFFECTIVE DATE:** February 10, 1986.

**FOR FURTHER INFORMATION CONTACT:**

Patrick J. O'Mara or Mary Clapp, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-3798 or 377-1769.

**SUPPLEMENTARY INFORMATION:**

**The Petition**

On January 13, 1986, the U.S. Butt-Weld Pipe Fittings Committee filed a petition in compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36). The petition, however, was not properly filed until January 16, 1986, because until that date, the petition did not comply with § 207.10(b) of the Rules of the U.S. International Trade Commission, 19 CFR 207.10(b). The petition alleged that imports of the subject merchandise from

Japan are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are causing material injury, or threaten material injury, to a United States industry.

#### Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation and further, whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on certain finished carbon steel butt-weld pipe fittings from Japan and have found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether certain finished carbon steel butt-weld pipe fittings from Japan are being, or are likely to be, sold in the United States at less than fair value.

#### Scope of Investigation

The products covered by this investigation are finished, beveled, carbon steel butt-weld pipe fittings, other than couplings, under 14 inches in inside diameter, as currently provided for in item 610.88 of the *Tariff Schedules of the United States, Annotated*, (TSUS).

#### United States Price and Foreign Market Value

Petitioners based United States price on price quotes stated to be discounts offered off domestic list prices in the United States. Petitioner then made deductions from the net price for U.S. inland freight, broker fees, customs duties, ocean freight and insurance. Petitioners based foreign market value on home market price lists for all three known Japanese manufacturers. Based on the comparison of United States price and foreign market value, petitioner alleges average dumping margins ranging from 18.2 to 165.3 percent.

#### Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files provided it confirms that it will not disclose such information either publicly or under an

administrative protective order without the consent of the Deputy Assistant Secretary for Import Administration.

#### Preliminary Determination by ITC

The ITC will determine by March 3, 1986, whether there is a reasonable indication that imports of certain finished carbon steel butt-weld pipe fittings from Japan are causing material injury, or threaten material injury, to a United States industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory procedures.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

February 3, 1986.

[FR Doc. 86-2815 Filed 2-7-86; 8:45 am]

BILLING CODE 3510-DS-M

#### Telecommunications Equipment Technical Advisory Committee; Partially Closed Meeting

A meeting of the Telecommunications Equipment Technical Advisory Committee will be held March 4, 1986, 9:30 a.m., Herbert C. Hoover Building, Room 6029, 14th Street and Constitution Avenue NW., Washington, DC.

The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to telecommunications and related equipment or technology.

#### Agenda

1. Presentation of papers or comments by the public.
2. Election of Chairman.
3. Discussion of the new PRC regulations.

#### Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In

The Sunshine Act, Pub. L. 94-409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereon is available for public inspection and copying in the Central reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377-4217. For further information or copies of the minutes, contact Liga Hagenah, (202) 377-4959.

Dated: February 4, 1986.

**Margaret A. Cornejo,**

*Acting Director, Technical Support Staff, Office of Technology and Policy Analysis.*

[FR Doc. 86-2812 Filed 2-7-86; 8:45 am]

BILLING CODE 3510-DS-M

#### National Oceanic and Atmospheric Administration

#### National Marine Fisheries Service; Receipt of Application for a General Permit

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within waters under the jurisdiction of the United States as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the regulations thereunder.

Applicant: Sportfishing Association of California, Long Beach, California has applied for a Category 6: "Commercial Passenger Fishing Vessel Operation" general permit to take California sea lions by specified means that do not result in injury or mortality.

The applicant has requested authority to use the following methods for harassment: Cracker shells, seal bombs and acoustic harassment devices.

Cracker shells are a flash explosive device launched from either a 12-gauge shotgun or a flare pistol. The devices would be launched near sea lions interacting with a CPFV. When fired, the shells explode either on or very near the surface. Interference effects from refraction severely attenuate the low frequency energy produced; shells exploding in-air were not detected by underwater hydrophones during testing. Most of the energy from shells exploding underwater falls between 200 Hz and 10kHz with a sound exposure level of

about 125dB. Thus it is highly unlikely that injury would occur with proper use.

Injury to a sea lion could result from direct in-air contact by a cracker shell. However, this event is not expected as operators are directed to fire the shells near, but not directly at, sea lions. Operators and crew will be instructed in the correct use of these devices to ensure both sea lion and passenger safety.

Sea bombs are a flash explosive, like the cracker shell, that are packed so that they sink below the surface before detonating. They usually explode at a depth of two to three meters. Most of the sound produced by seal bombs fall below 1-2kHz with a sound exposure level of 153.3dB at about 116 meters. Researchers state that a seal bomb would have to explode closer than 100 meters to cause auditory discomfort (and thus be effective). The sound levels at distances closer than 100 meters were roughly estimated to be about 168dB at 25 meters and 178dB at five meters. Although it is reported that these sound intensities may approach the predicted levels where some physical discomfort and auditory damage could occur, these effects are unlikely based on behavioral observations made by California Department of Fish and Game and National Marine Fisheries Service (NMFS). In field tests with seal bombs, California sea lions were observed to remain in or return to an area where seal bombs were being tested.

The acoustic harassment device (AHD) produces a sound electronically and projects it through an underwater transducer. The sounds produced are approximately 12kHz or 17kHz (depending on the device used) tones projected in regularly or randomly spaced pulses. These frequencies lie within or near the most sensitive hearing regions of California sea lions. In these frequency ranges, the hearing sensitivity of California sea lions is about 80dB. Within one meter of the source, actual sound levels were estimated at 175-185dB in shallow water. The expected threshold of pain is predicted to lie about 100-120dB above the hearing threshold (based on human audiology). Therefore, the AHD is effective because the sound level produced approaches sound levels that may be painful to sea lions. Researchers measured sound levels produced by the AHDs and concluded that although sounds produced were loud enough to be painful in the vicinity of the transducer, the sound probably would not result in damage to the sea lions auditory system. In the unlikely event that these devices did cause some minor

acoustic damage, this effect is expected to be temporary and would not result in serious injury or death.

The authorization to use all of these devices is requested so that CPFV operators will have an array of techniques available which may be used in a variety of fishing areas. In addition, by being able to vary the technique used, CPFV operators may be able to avoid habituating sea lions to an individual deterring stimulus.

Because these techniques are non-lethal and non-injurious to the animals and will serve to reduce the frequency of sea lion-sportfishermen interactions, the NMFS believed these techniques to be consistent with the intent and purposes of the Marine Mammal Protection Act and implementing regulations.

This application is available for review in the following offices:

Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, DC.

Office of the Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island California.

Interested parties may submit written comments on this application within thirty days (30) days of the date of this notice to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, DC 20235.

Dated: January 29, 1986.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 86-2810 Filed 2-7-86; 8:45 am]

BILLING CODE 3510-22-M

### **Western Pacific Fishery Management Council; Public Meeting**

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Crustaceans Plan Development Team (PDT) will convene a public meeting, February 12, 1986, at 12:30 p.m. at the Council's Headquarters, 1164 Bishop Street, Room 1405, Honolulu, HI. The PDT will review the validity of logbook data regarding reproductive conditions of spiny lobsters; the need for management measures for slipper lobsters; the economic condition of the fishery for lobsters in the Northwestern Hawaiian Islands, and possible revision of permit applications and data submission forms presently in use. For further information contact Kitty Simonds, Executive Director, Western Pacific Fishery

Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368 or FTS: (808) 546-8923.

Dated: February 5, 1986.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 86-2811 Filed 2-7-86; 8:45 am]

BILLING CODE 3510-22-M

## **DEPARTMENT OF DEFENSE**

### **Office of the Secretary**

#### **Department of Defense Wage Committee; Closed Meetings**

Pursuant to the provisions of section 10 of Pub. L. 92-463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, March 4, 1986; Tuesday, March 11, 1986; Tuesday, March 18, 1986; and Tuesday, March 25, 1986; at 10:00 a.m. in Room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Pub. L. 92-392.

At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92-463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy & Requirements) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments

with a guarantee that the data will be held in confidence (5 U.S.C. 552b.(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D264, The Pentagon, Washington, DC 20301.

Dated: February 5, 1986.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-2893 Filed 2-7-86; 8:45 am]

BILLING CODE 3810-01-M

## Department of the Army

### Military Traffic Management Command, Military Personal Property Claims Symposium, Open Meeting

Announcement is made of meeting of the Military Personal Property Claims Symposium. This meeting will be held on 27 February 1986 at the Headquarters, Military Traffic Management Command, 5611 Columbia Pike, Falls Church, Virginia, and will convene at 0930 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation (DoD 4500.34-R), and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Movement and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT-PPM, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 18 February 1986.

Dated: January 30, 1986.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 86-2847 Filed 2-7-86; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF ENERGY

### National Petroleum Council, U.S. Refinery Capability Task Group; Date Change for Meeting

The date of the February 6, 1986, eleventh meeting of the U.S. Refinery

Capability Task Group has been changed. The meeting will now be held on Thursday, February 13, 1986, starting at 8:30 a.m., in the Matagora Room of the Houston Airport Marriott Hotel, 18700 Kennedy Boulevard, Houston, Texas. Notice of this meeting first appeared in 51 FR 3644, Wednesday, January 29, 1986 (FR DOC 86-1938).

Issued at Washington, DC, February 5, 1986.

Donald L. Bauer,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 86-2895 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

## Economic Regulatory Administration

[Docket No. ERA-C&E-86-05; OFP Case No. 52164-6095-21, 22, 23-22]

### Powerplant and Industrial Fuel Use; Exemption From Prohibition; Oklahoma Gas & Electric Co.

**AGENCY:** Economic Regulatory Administration, DOE.

**ACTION:** Order granting Oklahoma Gas & Electric Company, exemption from the prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

**SUMMARY:** On October 15, 1985, Oklahoma Gas and Electric Company, (OG&E), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for an order permanently exempting a new proposed powerplant at its existing Sooner generating station (Sooner), operated by OG&E from the provisions of the Powerplant and Industrial Fuel Use Act of 1978 (FUA or the Act) (42 U.S.C. 8301 *et seq.*) which (1) prohibit the use of petroleum and natural gas as a primary energy source in new electric powerplants and (2) prohibit the construction of a new powerplant without the capability to use an alternate fuel as a primary energy source. The final rule containing the criteria and procedures for petitioning for exemptions from the prohibitions of FUA was published in the **Federal Register** at 46 FR 59872 (December 7, 1981).

OG&E requested a permanent peakload exemption under 10 CFR §503.41 for three simple-cycle combustion turbine generators with a maximum total capacity of 176.8 MW. Using a site elevation of 1,000 feet and assuming a 88°F inlet temperature, the total peakload fuel consumed by the four units using natural gas is estimated to be 1,935.6 million Btu per hour, and on No. 2 distillate oil 1,917.3 million Btu per

hour. The proposed units are to be installed at the OF&E's Sooner facility, a site of approximately 10,400 acres. It is located on the east side of U.S. Highway 177 and Oklahoma State Highway 15, adjacent to the Arkansas River in north central Oklahoma. The units will be able to burn either natural gas or petroleum as a primary energy source.

Pursuant to section 212(g) of the Act and 10 CFR 503.41, ERA hereby issues this order granting to OG&E Sooner a permanent peakload powerplant exemption from the prohibitions of FUA for the proposed combustion turbine generators at the aforementioned installation.

The basis for ERA's order is provided in the **SUPPLEMENTARY INFORMATION** section below.

**DATES:** In accordance with section 702(a) of FUA, this order and its provisions shall take effect on April 11, 1986.

### FOR FURTHER INFORMATION CONTACT:

John Boyd, Coal and Electricity Division,

Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue SW., Room GA-045, Washington, DC 20585 Telephone (202) 252-4523

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, 1000 Independence Avenue SW., Room GA-113, Washington, DC 20585, Telephone (202) 252-6947.

The public file containing a copy of this order and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue SW., Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

**SUPPLEMENTARY INFORMATION:** FUA prohibits the use of natural gas or petroleum in certain new powerplants unless an exemption for such use has been granted by ERA. OG&E has filed a petition for a permanent peakload powerplant exemption to use petroleum or natural gas as a primary energy source in its proposed Sooner facility's simple-cycle combustion turbine installation.

In accordance with the procedural requirements of FUA and 10 CFR 501.3(d), ERA published its Notice of Acceptance of Petition for Exemption and Availability of Certification relating to this petition in the **Federal Register** on November 25, 1985 (50 FR 48464), commencing a 45-day public comment period pursuant to section 701(c) of FUA. As required by section 701(f) of

the Act, ERA provided a copy of OG&E petition to the Environmental Protection Agency for its comments. During that period, interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed January 9, 1986. No comments were received and no hearing was requested.

OG&E certified in its Petition for Exemption that the proposed unit will be operated solely as a peakload powerplant. To be included within the basic definition of "peakload powerplant" as established by section 103(a) of FUA, an electric-generating unit must be "a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1500 hours."

OG&E has further certified that it will, prior to operating the units under the exemption, secure all applicable environmental permits and approvals pursuant thereto.

As ERA has determined that no alternate fuels are presently available for use in the proposed unit, ERA has waived the requirement of 10 CFR 503.41(a)(2)(ii) for submission of a certification by the Administrator of the Environmental Protection Agency or the director of the appropriate state air pollution control agency that the use by the powerplant of any available alternate fuels as a primary energy source will cause or contribute to a concentration in an air quality control region or any area within the region, of a pollutant for which any national air quality standard is, or would be, exceeded.

#### Decision and Order

Accordingly, based upon the entire record of this proceeding, ERA has determined that OG&E has satisfied all of the eligibility requirements for the requested exemption as set forth in 10 CFR 503.41, and pursuant to section 212(g) of FUA, ERA hereby grants OG&E a permanent exemption for a peakload powerplant to be installed at its facility in north central Oklahoma, permitting the use of natural gas or petroleum as a primary energy source in the units.

Pursuant to section 702(c) of the Act and 10 CFR 501.69 any person aggrieved by this order may petition for judicial review at any time before the 60th day following the publication of this order in the Federal Register.

Issued in Washington, DC, on January 31, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-2896 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

#### Federal Energy Regulatory Commission

[Docket Nos. ER86-264-000 et al.]

#### Electric Rate and Corporate Regulation Filings; Arkansas Power and Light Co. et al.

Take notice that the following filings have been made with the Commission:

##### 1. Arkansas Power and Light Company

[Docket No. ER86-264-000]

February 4, 1986.

Take notice that Arkansas Power & Light Company (AP&L) filed on January 28, 1986, a proposed Peaking Power Agreement which is a supplement to the Power Coordination, Interchange and Transmission Agreement between City of Thayer, Missouri and Arkansas Power & Light Company dated June 23, 1983. The agreement provides for the sale to the City of 1 MW of Peaking capacity and 240 MWH of peaking Energy per month during the months of May through September.

The proposed Peaking Power Agreement will effect a savings of approximately \$56,000 per year for the City of Thayer based on the actual billings for the twelve month period ended September 30, 1985.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

##### 2. Arkansas Power & Light Company

[Docket No. ER86-265-000]

February 4, 1986.

Take notice that Arkansas Power & Light Company (AP&L) filed on January 28, 1986, a proposed Peaking Power Agreement which is a supplement to the Power Coordination, Interchange and Transmission Agreement between City of Campbell, Missouri and Arkansas Power & Light Company dated June 23, 1983. The agreement provides for the sale to the City of 1 MW of Peaking capacity and 240 MWH of Peaking Energy per month during the months of May through September.

The proposed Peaking Power Agreement will effect a savings of approximately \$59,000 per year for the City of Campbell based on the actual billings for the twelve month period ended September 30, 1985.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

##### 3. Consumers Power Company

[Docket No. ER86-270-000]

February 4, 1986.

Take notice that Consumers Power Company ("Consumers") on January 30, 1986 tendered for filing Amendment No. 1 to Back-Up Requirements Agreement Between Consumers Power Company and Northern Michigan Electric Cooperative, Inc. and Wolverine Electric Cooperative, Inc. This is Consumers' Rate Schedule FERC No. 48. Consumers also tendered for filing at the same time Amendment No. 1 to Back-Up Requirements Agreement Between Consumers Power Company and the Michigan Public Power Agency. This is Consumers' Rate Schedule FERC No. 47.

Each of the amendments reduces its respective annual charge for back-up requirements service and the amount of power to be compensated for by the annual charge. Each amendment limits the provision of such back-up power compensated for by the annual charge to cases of total outage of Campbell Unit No. 3. Each amendment changes the unit for measuring back-up power provided from megawatt days to megawatt hours. Finally, each amendment changes the circumstances under which alternative arrangements can be made for back-up power in case of partial outage or derate of Campbell Unit No. 3.

Consumers states that copies of the filing were served on Wolverine Power Supply Cooperative, Inc., Michigan Public Power Agency and the Michigan Public Service Commission.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

##### 4. Iowa Public Service Company

[Docket No. ES86-27-000]

February 3, 1986.

Take notice that on January 23, 1986, Iowa Public Service Company filed an application pursuant to section 204 of the Federal Power Act, seeking authority to issue up to \$90 million of short-term unsecured promissory notes to commercial banks and its parent or affiliated companies and commercial paper dealers. All proposed notes are to be issued on or before March 31, 1987, and will bear final maturity dates not later than March 31, 1988.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this notice.

### 5. New York State Electric & Gas Corporation

[Docket No. ER86-262-000]

February 4, 1986.

Take notice that on January 27, 1985, New York State Electric & Gas Corporation ("NYSEG") tendered for filing as an initial rate schedule a contract dated September 18, 1985 between NYSEG and the County of Orange, a municipal corporation of the State of New York, ("Orange County"). The contract provides for Orange County to pay a charge to NYSEG for the use of its facilities to deliver hydroelectric power and energy sold by Orange County to its residential customers, equal to the charges that would have been billed to such customers under NYSEG's appropriate residential electric rate schedule on file with the New York State Public Service Commission less NYSEG's fuel and purchased power costs reflected in such rate schedule.

NYSEG states that copies of this filing have been served by mail upon Orange County, the New York State Public Service Commission, and the Power Authority of the State of New York, from whom Orange County is purchasing the hydroelectric power and energy to be sold by Orange County to its customers.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

### 6. Niagara Mohawk Power Corporation

[Docket No. ER86-268-000]

February 4, 1986.

Take notice that Niagara Mohawk Power Corporation (Niagara), on January 30, 1986 tendered for filing as a rate schedule, an agreement between Niagara and Central Hudson Gas and Electric Corporation (Central Hudson) dated May 15, 1985.

Niagara presently has on file an agreement with Central Hudson dated February 14, 1975. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. No. 88. This new agreement is being transmitted as a supplement to the existing agreement.

This supplement revises the transmission rate for transmitting FitzPatrick power and energy from the Power Authority of the State of New York to Central Hudson as provided for in the terms of the original agreement. Niagara requests the Commission to allow said agreement to become effective as of September 1, 1985.

Copies of the filing were served upon the following:

Central Hudson Gas and Electric Corporation, 284 South Avenue, Poughkeepsie, NY 12602;

Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, NY 12223.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

### 7. Niagara Mohawk Power Corporation

[Docket No. ER86-269-000]

February 4, 1985.

Take notice that Niagara Mohawk Power Corporation (Niagara), on January 30, 1986 tendered for filing as a rate schedule, an agreement between Niagara and Central Hudson Gas and Electric Corporation (Central Hudson) dated May 15, 1985.

Niagara presently has on file an agreement with Central Hudson dated November 1, 1983. This agreement is designated as Niagara Mohawk Power Corporation Rate Schedule F.E.R.C. No. 128. This new agreement is being transmitted as a supplement to the existing agreement.

This supplement revises the rate for providing transmission service for Central Hudson for the delivery of pumping and generating energy in connection with pumped storage power service provided in Central Hudson by the Power Authority of the State of New York (PASNY) from PASNY's Blenheim-Gilboa Pumped Storage Project. Niagara requests an effective date of July 1, 1985.

Copies of the filing were served upon the following:

Central Hudson Gas and Electric Corporation, 284 South Avenue, Poughkeepsie, NY 12602;

Public Service Commission, State of New York, Three Rockefeller State Plaza, Albany, NY 12233.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

### 8. Southern California Edison Company

[Docket No. ER86-271-000]

February 4, 1986.

Take notice that Southern California Edison Company, on January 30, 1986, tendered for filing proposed changes in its FERC Electric Service Tariff, Time-of-Use Resale Service, Schedule R-3.2. The proposed changes would increase revenues from jurisdictional sales and service by \$4,920,000 based on the 12-month period ending December 31, 1986. This increase is the result of a settlement which Edison has reached with all of its resale customers. This increase in resale revenues is subject to various adjustments under terms of the settlement.

The reasons for the proposed change are to include in rates increased costs associated with new generating units being placed in service, costs of termination of several fuel purchase contracts, increased operation and maintenance expenses, and increased demand costs of purchased power.

Copies of the filing were served upon the public utility's jurisdictional customers, the California Public Utilities Commission, and the Arizona Corporation Commission.

Comment date: February 18, 1986, in accordance with Standard Paragraph E at the end of this notice.

### 9. PacifiCorp doing business as Pacific Power & Light Company

[Docket No. ES86-26-000]

February 3, 1986

Take notice that on January 22, 1986, PacifiCorp dba Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing it to (1) issue, on or before March 3, 1989, its unsecured short-term promissory notes to and borrow from U.S. or foreign commercial banks (or their affiliates) under the following facilities:

(a) Not more than \$300,000,000 in aggregate principal amount outstanding at any one time under a Revolving Credit Agreement (Agreement);

(b) Not more than \$25,000,000 in aggregate principal amount outstanding at any one time under renewable lines of credit (Lines);

(c) Not more than \$325,000,000 in aggregate principal amount outstanding at any one time under other borrowing arrangements (Other Arrangements); and to (2) issue and sell its commercial paper (Paper) in the U.S. or overseas from time to time, in aggregate principal amounts outstanding not to exceed \$325,000,000 at any one time; provided that the aggregate principal amounts outstanding under the Agreement, Lines, Other Arrangements, and Paper shall not exceed \$325,000,000 at any one time.

Comment date: February 21, 1986, in accordance with Standard Paragraph E at the end of this document.

### 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.

Kenneth F. Plumb,

Secretary

[FR Doc. 86-2867 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM85-1-000 (Parts A-C) et al]

**Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Mesa Pipeline Co. et al.; Order Granting Rehearing for the Purpose of Further Consideration**

Before Commissioners: A. G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C. M. Naeve.

In the matter of Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Mesa Pipeline Co.), (Panhandle Producers and Royalty Owners Association), (Atlanta Gas Light Co.), (Natural Gas Pipeline Co.), (ANR Pipeline Co., et al.), (Southern Natural Gas Co.), (Interstate Natural Gas Association), (Texas Eastern Transmission Corporation); Docket Nos. RM85-1-000 (Parts A-C), RM85-1-144, RM85-1-145, RM85-1-147, RM85-1-148, RM85-1-149, RM85-1-150, RM85-1-151, RM85-1-152.

Issued: February 4, 1986.

On December 12, 1985, the Federal Energy Regulatory Commission issued Order No. 436-A, granting in part and denying in part applications for rehearing, denying petitions for stays, and granting clarification of Order No. 436.

The Commission received eight applications for rehearing of Order No. 436-A. In order to provide sufficient time to consider the issues raised in these pleadings, the Commission grants rehearing of its final rule for the limited purpose of further consideration. This action does not constitute a grant or denial of any request on its merits, either in whole or in part, nor does it stay the effect of the rule. As provided in § 385.713 of the Commission's Rules of Practice and Procedure (18 CFR 325.713), no answers to the requests for rehearing will be considered by the Commission.

Kenneth F. Plumb,

Secretary

[FR Doc. 86-2880 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Part A-D)]

**Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Air Products and Chemicals, Inc.); Order Denying Request for Clarification**

(Issued: February 4, 1986.

Before Commissioners A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On December 27, 1985, Air Products and Chemicals, Inc., filed a petition for expedited treatment of a request for clarification or, in the alternative, rehearing of the transitional provisions of § 284.223 (g)(1) of the regulations adopted in Order No. 436.<sup>1</sup> Air Products' original request was filed on November 8, 1985, and was addressed by the Commission in Order No. 436-A.<sup>2</sup> Notwithstanding, in its petition for expedited treatment of its earlier request, Air Products has requested that the Commission further clarify issues involving receipt and delivery points.

Specifically, Air Products requests clarification that "a pre-existing contract provision under a grandfathered Order No. 319 arrangement that expressly permits the addition of mutually agreeable sources and delivery points is one of the 'terms and conditions' of the transportation authorization that continues for the remainder of the agreement's term."

On November 1, 1984, Air Products entered into a transportation agreement with United, under Order No. 319, whereby United agreed to transport gas on behalf of Air Products for use as process gas or feedstock in Air Products' industrial facility near Floridatown, Florida. The agreement is to terminate on October 1, 1989, and provides for transportation of up to 35,000 Mcf per day. The gas is predominately spot gas, unsupported by long-term reserves, and, therefore, subject to rapid depletion. In recognition that Air Products regularly requires the attachment of additional wells to maintain its supply, the list in the transportation contract of Air Products' sources and delivery points into United's system specifically includes "any other mutually agreeable source through an existing delivery point and any new delivery point as the parties may agree in writing." Air Products states that prior to October 9, 1985, new delivery points were added on five occasions and new wells through existing delivery points were added on twenty-three occasions. Air Products thus argues that the flexible delivery

point authority was an "operative term and condition" prior to October 9, 1985.

In its petition, Air Products recognizes that the Commission has previously clarified that contracts cannot be amended to include additional delivery points and still qualify for transitional treatment. Air Products argues that its request should be distinguished from previous requests denied by the Commission in that its contract specifically provided for such additions over the term of the agreement.

We disagree. The Commission previously clarified that contracts could not be amended after October 9, 1985 to add new receipt or delivery points without invoking the non-discriminatory access provisions of Order No. 436.<sup>3</sup> We find that the contract clause which permitted the addition of any other mutually agreeable (but unspecified) delivery points as the parties may agree to in writing merely committed the parties to amend their written agreement at a later date. Such an amendment now, however, would constitute a new agreement that would not qualify for transitional treatment. Any change to the terms and conditions of the originally certificated transaction made after October 9, 1985 would require an application for a new blanket certificate under § 284.221 of Subpart G. Accordingly, Air Products' request for clarification is denied.

By the Commission,

Kenneth F. Plumb,

Secretary

[FR Doc. 86-2864 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RM85-1-000 (Parts A-C)]

**Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Columbia Gas Transmission Corp.); Order Denying Request for Clarification or Modification**

Issued: February 4, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On January 3, 1986, Columbia Gas Transmission Corporation (Columbia) filed a request for a clarification or

<sup>1</sup> Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Hadson Gas Systems, Inc.), 33 FERC ¶ 61,142 (1985); Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Panhandle Eastern Pipeline Company), 33 FERC ¶ 61,139 (1985); Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Consolidated Fuel Supply, Inc.), 33 FERC ¶ 61,151 (1985); Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (J. R. Simplot Company), 33 FERC 61,379 (1985).

<sup>2</sup> 33 FERC ¶ 61,097, 50 FR 42408 (October 18, 1985).

<sup>3</sup> 50 FR 52217 (December 23, 1985).

modification of Order No. 436-A<sup>1</sup> to the effect that pipelines can provide self-implementing transportation services for their pipeline customers as well as local distribution company customers prior to February 15, 1986, without subjecting themselves to the contract demand reduction/conversion condition of § 284.10 of the Regulations.

Columbia states that a number of its direct and indirect interstate pipeline suppliers have been continuing self-implementing transportation arrangements for their local distribution company customers on a non-discriminatory basis until February 15, 1986. However, such interstate pipelines have not offered similar self-implementing transportation arrangements to pipeline customers, such as Columbia, because they are uncertain whether the continuation or commencement of new transportation services for pipeline customers would subject the transporting pipelines to the reduction/conversion options.

Although not specifically identified in Columbia's request, we assume that the self-implementing transportation by Columbia's pipeline suppliers for local distribution company customers is being performed pursuant to section 311 of the Natural Gas Policy Act. Section 284.10(a) of the Regulations was modified in Order No. 436-A to permit new transportation arrangements under Section 311 to be commenced or continued through February 15, 1986, without triggering the contract demand reduction/conversion conditions. The transporting pipeline is required in such instances to provide non-discriminatory access to its system.<sup>2</sup>

Regulations covering the transportation of gas by an interstate pipeline on behalf of another interstate pipeline were issued in Order No. 60, which promulgated § 284.221 of our former rules. Such transportation is now covered by § 284.222. Section 284.105 of the new rules provides for the continuation of Order No. 60 transactions that were authorized and commenced on or before October 9, 1985, on the same basis as similar transactions commenced under Section 311. However, § 284.222 of the new rules provides that for an interstate pipeline to commence new transactions of the kind previously authorized by Order No. 60, the pipeline must first apply for and receive a blanket certificate under new § 284.221. Accordingly, unless Columbia's pipeline suppliers have satisfied the requirements of that

section, they may not offer new transportation to Columbia.

The authorization in our Regulations which permits the continuation or commencement of new self-implementing transportation arrangements to local distribution company customers is consistent with the provisions of section 311(a)(1) of the Natural Gas Policy Act, which applies only to transportation by interstate pipelines on behalf of intrastate pipelines and local distribution companies. That section does not authorize the Commission to approve similar transportation on behalf of another interstate pipeline. The request for modification of Order No. 436-A, therefore, is denied.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-2866 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RM85-1-139 and RM85-1-142]

**Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (El Paso Natural Gas Company, Pacific Gas and Electric Company, and Valley Gas Company); Order Denying Rehearing**

Issued: February 4, 1986.

Before Commissioners: A. G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

The Panhandle Producers and Royalty Owners Association (PPROA) has requested rehearing of these clarification orders we issued in this proceeding concerning El Paso Natural Gas Company (*El Paso*),<sup>1</sup> Pacific Gas and Electric Company (*PG&E*),<sup>2</sup> and Valley Gas Company (*Valley*).<sup>3</sup> As discussed below, we will deny PPROA's request.

The three orders concern transitional treatment of transportation authorized by section 311 of the Natural Gas Policy Act of 1978 (NGPA) pursuant to the regulations we recently issued in Order No. 436.<sup>4</sup> Section 284.105 of the regulations provides that NGPA section 311 transportation service authorized and commenced on or before October 9, 1985, may be continued, with several exceptions, under the terms and

conditions that applied prior to November 1, 1985, until the earlier of October 9, 1987, or the end of the expiration of the term of the contract. In the *El Paso*, *PG&E*, and *Valley* orders, we clarified that:

1. The transition period rule is applicable to transportation arrangements which commenced prior to October 9, 1985, pursuant to a previously-executed written agreement;
2. The rule is not applicable to service which commenced after October 9, 1985, pursuant to a verbal agreement; and
3. The rule is applicable to service which commenced prior to October 9, 1985, pursuant to a verbal agreement, so long as applicable reporting requirements were satisfied.

PPROA is concerned that the orders permit transportation arrangements under section 311 to qualify for transition treatment under § 284.105 of our regulations on the basis of oral agreements between the parties. It contends that this permits pipelines to discriminate in favor of their marketing affiliates. While not explicitly stated, PPROA apparently believes that pipelines will enter into NGPA section 311 transportation arrangements with their affiliates after October 9, 1985, and then claim that the transactions qualify for transition treatment under § 284.105 of the regulations on the basis of oral agreements between the parties.

We are not persuaded that reliance on oral agreements as a basis for compliance with § 284.105 of the regulations will permit pipelines to discriminate in favor of their affiliates. To be eligible for transition treatment, the transportation must have commenced on or before October 9, 1985. Transportation which commences after that date must be conducted on a non-discriminatory basis under §§ 284.8 and 284.9 of the Order No. 436 regulations. Pursuant to §§ 284.4 and 284.106 of our Regulations, as in effect prior to November 1, 1985, pipelines were required to file an initial report of the transportation within 48 hours and full report within 30 days after commencing transportation. So, we can monitor the transactions to ensure that they did not commence after October 9.

PPROA also contends that certain interstate pipelines have been filing late 48-hour and 30-day reports alleging the commencement of transportation prior to October 9. It requests that we rule that transactions which have not been thoroughly documented by timely-filed 48-hour and 30-day reports are not eligible for transition treatment. We do not believe that such a ruling is warranted on the record before us.

<sup>1</sup> Order Denying Petition for Declaratory Order and Denying, in Part, and Granting, in Part, Motion for Clarification, Docket No. RM85-1-000 (October 30, 1985).

<sup>2</sup> Order Granting Motion for Clarification, Docket No. RM85-1-000 (October 31, 1985).

<sup>3</sup> Order Granting Request for Clarification, Docket No. RM85-1-000 (November 27, 1985).

<sup>4</sup> Order No. 436, 50 FR 42408 (October 18, 1985).

<sup>1</sup> 50 FR 52217 (December 23, 1985).

<sup>2</sup> Order No. 436-A, mimeo, pp. 276-77.

PPROA has not alleged any specific instances of such action by any pipeline. We will consider any complaint which PPROA or any other person may file alleging specific instances of non-compliance with the transition provisions or the reporting requirements and take appropriate action.

Accordingly, PPROA's requests for rehearing are denied.

By the Commission.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-2865 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8268-001 et al.]

### **Surrender of Preliminary Permits; Dillon Lake Hydro Associates et al.**

January 31, 1986.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

#### **1. Dillion Lake Hydro Associates**

[Project No. 8268-001]

Take notice that the Dillon Lake Hydro Associates, Permittee for the Dillon Lake Project No. 8268, located on the Licking River in Muskingum County, Ohio has requested that its preliminary permit be terminated. The preliminary permit was issued on November 16, 1984, and would have expired on April 30, 1986. The Permittee states that analysis of the Dillon Lake Project did not indicate feasibility for development.

The Permittee filed the request on January 14, 1986.

#### **2. Wills Creek Hydro Associates**

[Project No. 8269-001]

Take notice that the Wills Creek Hydro Associates, Permittee for the Wills Creek Lake Project No. 8269, located on the Wills Creek in Coshonton and Muskingum Counties, Ohio has requested that its preliminary permit be terminated. The preliminary permit was issued on December 18, 1984, and would have expired on May 31, 1986. The Permittee states that analysis of the Wills Creek Lake Project did not indicate feasibility for development.

The Permittee filed the request on January 14, 1986.

#### **Standard Paragraphs**

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which

case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-2869 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF86-494-000 et al.]

### **Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc.; Resource Enterprises, 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.

January 31, 1986.

Take notice that the following filings have been made with the Commission.

#### **1. Resource Enterprises Inc.**

[Docket No. QF86-494-000]

On January 15, 1986, Resources Enterprises, Inc. (Applicant), of 8 Richland Lane T-1, Camp Hill, Pennsylvania 17011 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located at the Emerald Mine near Waynesburg, Pennsylvania. The facility will burn waste in the form of methane gas produced as a by-product of abandoned coal mining area to generate 1,500 kW of electric power.

#### **2. Oceanside Refrigeration, Inc. (ICE HAUS V)**

[Docket No. QF86-389-000]

On January 16, 1986, J.R. Bishop, President, Oceanside Refrigeration, Inc. (Applicant), of 4500 Campus Drive, Newport Beach, California 92660 submitted for filing an application for certification of a facility known as ICE HAUS V as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed topping-cycle ICE HAUS V cogeneration facility is located at Industry Street and Hoover Street, Oceanside, California. The facility will consist of a combustion turbine-generator, a two pressure level heat recovery steam generator (HRSG) and an extraction steam turbine-generator.

The extracted steam together with low pressure steam from the HRSG will be supplied to the absorption refrigeration equipment to provide refrigeration at the host ice making facility. The net electric power production of the facility will be 40,627 kW. The primary energy source will be natural gas. The facility is scheduled to start commercial operation in Winter of 1987.

#### **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.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-2868 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-22-000, 001]

### **Consolidated Gas Transmission Corp; Proposed Changes in FERC Gas Tariff**

February 5, 1986.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on January 30, 1986, filed a revised tariff sheet pursuant to sections 12 (PGA Clause), 12A (Incremental Pricing Surcharges), and 13 (Research, Development and Demonstration Cost Adjustment) of the General Terms and Conditions of its tariff. The revisions, shown on Eighth Revised Sheet No. 31 to Original Volume No. 1 of Consolidated's tariff, provide for Consolidated's semiannual PGA to be effective March 1, 1986.

Consolidated has included in its filing:

(a) Rate decreases from pipeline suppliers in the amount of \$58.1 million;

(b) Rate changes from producer suppliers in the amount of \$28.6 million;

(c) A surcharge of 21.75 cents per dekatherm to recoup amounts accumulated in Account 191, Unrecovered Purchased Gas Costs;

(d) A refund credit of 13.43 cents per dekatherm to flow through supplier refunds.

Copies of the filing were served upon Consolidated's jurisdictional customers as well as interested state commissions.

Concurrently with these PGA changes, Consolidated also includes a separately stated rate surcharge to recover its funding of take-or-pay payments made by Tennessee Gas Pipeline Company under the procedures approved in the Commission's order issued on April 16, 1985, in *Columbia Gas Transmission Corporation v. Tennessee Gas Pipeline Company, et al.*, in Docket Nos. RP83-8, et al. The take-or-pay surcharge is 0.31¢ per dekatherm.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice of Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before February 12, 1986. 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. 86-2870 Filed 2-7-86; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP86-42-000]

#### El Paso Natural Gas Co.; Tariff Filing

February 3, 1986.

Take notice that on January 29, 1986, El Paso Natural Gas Company (El Paso) tendered for filing the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1:

First Revised Sheet No. 101  
First Revised Sheet No. 250  
First Revised Sheet No. 251  
Second Revised Sheet No. 252  
First Revised Sheet No. 254

According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until January 30, 1986.

El Paso states, the above designated tariff sheets, when accepted by the Commission and permitted to become effective will revise El Paso's Rate

Schedule INC-1 (Incentive Sales Rate).<sup>1</sup> Such revised Rate Schedule INC-1 will allow El Paso from time to time, and at its sole discretion, to elect to offer natural gas for sale at a price discounted from the otherwise applicable rate, but not less than the variable cost component of the rate, for all or a portion of the quantities sold under its sales rate schedules. The revisions to El Paso's Rate Schedule INC-1 track the revisions to Transwestern Pipeline Company's ("Transwestern") incentive sale Rate Schedule ISR filed as a part of Transwestern's Stipulation and Agreement on January 17, 1986 at Docket No. RP85-175-000. El Paso requests February 1, 1986 as the effective date of the tariff sheets, the same effective date as Transwestern requested for its revised Rate Schedule ISR.

Additionally, El Paso states that Transwestern has provided in Article VII, MINIMUM BILL, of its Stipulation and Agreement a "period of minimum bill waiver" commencing February 1, 1986, and ending on the date Transwestern reinstates or revises its minimum bill as permitted, in certain circumstances, by Article VII and Article VIII of the Stipulation and Agreement. El Paso states that upon Commission approval of its revised Rate Schedule INC-1, it will also waive the Fixed Cost Reimbursement Charge which might otherwise be due under section 3.1(c) of Rate Schedule G for the same period during which the waiver of Transwestern's minimum bill is in effect, subject to the provisions of section 6.2 through 6.4 of El Paso's Settlement at Docket No. RP85-58-000 governing the possible reinstatement of such charge.

El Paso states that the copies of the filing have been served upon all of its interstate pipeline system customers and all interested state regulatory 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 § 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before February 10, 1986. 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

<sup>1</sup> Rate Schedule INC-1 was a part of El Paso's Stipulation and Agreement in Settlement of Rate Proceedings at Docket No. RP85-58-000, which was approved by the Commission in its letter order dated August 14, 1985.

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. 86-2857 Filed 2-7-86; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. RP86-45-000]

#### El Paso Natural Gas Co., Tariff Filing

February 5, 1986.

Take notice that on January 31, 1986, El Paso Natural Gas Company ("El Paso") filed pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the National Gas Act, the revised and original tariff sheets to its FERC Gas Tariff identified on the attached Appendix.

El Paso states that on January 17, 1986 it commenced open-access transportation pursuant to the self-implementing provisions of Section 311 of the Natural Gas Policy Act of 1978 ("NGPA") and in accordance with the Commission's Order Nos. 436 and 436-A issued at Docket No. RM85-1. Consistent with the requirements of Order Nos. 436 and 436-A, the tendered tariff sheets serve to establish as part of El Paso's FERC Gas Tariff, the rates, rate schedules, and operating terms and conditions applicable to such transportation service rendered by El Paso under Subpart B of Part 284 of the Commission's Regulations, as well as service to be rendered upon receipt of blanket certificate authorization pursuant to Order Nos. 436 and 436-A which El Paso states it will promptly file for upon Commission approval of the tendered tariff sheets.

El Paso requests waiver of all Commission rules and regulations as may be necessary to permit the tendered tariff sheets to become effective March 1, 1986, and states that copies of the filing have been served upon all of its sales and transportation customers and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC., 20426, in accordance with §§ 385.214 and 385.211 of this Chapter. All such motions or protests should be filed on or before February 12, 1986. 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.

[Docket No. TA86-3-34-000, 001]

**Florida Gas Transmission Co.;  
Proposed Changes in FERC Gas Tariff**

February 5, 1986.

Take notice that on January 30, 1986, Florida Gas Transmission Company (FGT), tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective February 1, 1986.

First Revised Volume No. 1

6th Revised Sheet No. 8

Original Volume No. 2

29th Revised Sheet No. 128

The proposed change reflects a decrease of 2.109¢/therm in FGT's Rate Schedule G and I and .96¢/Mcf in Rate Schedule T-3. In order to implement FGT's out-of-cycle PGA decrease, FGT has requested such Commission waivers as may be necessary to approve its filing effective February 1, 1986.

Copies of this filing were served on FGT's jurisdictional 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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 12, 1986. 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. 86-2872 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-180-000]

**Holden Energy Corp.; Application for  
Abandonment of Service**

February 3, 1986.

Take notice that the Applicant listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein.

The circumstances presented in the application appear to meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order No. 436 and 436-A, issued October 9, and December 12, 1985, in Docket No. RM85-1-000, all as more fully described in the application which is on file with the Commission and open to public inspection.

And person desiring to be heard or to make any protests with reference to said application should on or before 15 days after the date of publication of this notice in the **Federal Register**, 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 in the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI86-180-000, B, Jan. 24, 1986.....	Holden Energy Corporation, 5956 Sherry Lane, Suite 1110, Dallas, Texas 75225.	Tennessee Gas Pipeline, a Division of Tenneco, Inc., Lopena Field, Zapata County, Texas.	(*).....	

\* Pursuant to the expedited procedures set forth in § 2.77 of the Commission's rules, Applicant requests abandonment authorization for its sale to Tennessee of all gas from wells which will qualify for deregulation under section 601(a)(1)(B) of the NGPA upon conclusion of the well category determination process. Applicant indicates that it currently has 8 wells for which it has filed for NGPA section 103 determinations and 3 wells which have received NGPA section 102(c) or 103 determinations. Applicant states that it is not seeking abandonment of gas sold from wells subject to NGPA sections 104, 106 or 108. Applicant indicates that production from the subject wells has been shut-in by Tennessee since October 1, 1985, and that Applicant is not being paid for gas not taken.

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. 86-2858 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01

[Docket No. TA86-3-46-000, 001]

**Kentucky West Virginia Gas Co.;  
Proposed Change in Rates**

February 5, 1986.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on January 30, 1986, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Seventeenth Revised Sheet No. 27A to its FERC Gas Tariff, First Revised Volume No. 1, to become effective February 1, 1986.

The proposed tariff sheet amends the PGA filing made by Kentucky West herein on October 31, 1985, so as to reflect a reduction in current purchased gas costs due to Kentucky West's exercise of market-out provisions in its various gas purchase contracts with independence producers and purchases of natural gas from affiliated companies, effective February 1, 1986.

The current purchase gas adjustment is a reduction of 22.30¢ per dekatherm (dth). This reduction results in a total net jurisdictional sales rate of 271.41¢ per dth, to become effective February 1, 1986. This net jurisdictional sales rate is a decrease of 22.30¢ per dth below the

net jurisdictional sales rate in Kentucky West's October 31, 1985 filing herein.

Apart from reflecting the decrease in purchase gas costs resulting from Kentucky West's exercise of market-out provisions effective February 1, 1986, no other amendment is proposed by Kentucky West to its PGA filing herein of October 31, 1985. Kentucky West requires waiver of the Commission's Regulations and the 30 day notice requirement to the extent necessary to permit its amended PGA adjustment to become effective February 1, 1986.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested state

commissions and upon each party to these proceedings.

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 § 385.211 and 385.214 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 February 12, 1986. 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. 86-2873 Filed 2-7-86; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. TA86-1-60-000, 001]

#### Locust Ridge Gas Co.; Proposed Changes in FERC Gas Tariff

February 5, 1986.

Take notice that on January 3, 1986, Locust Ridge Gas Company (Locust Ridge) tendered for filing as a part of its FERC Gas Tariff, Original Volume No. 1 and Original Volume No. 3, the following tariff sheets to be effective March 1, 1986:

Original Volume No. 1—Thirteenth Revised Sheet No. 1A  
Original Volume No. 3—Twentieth Revised Sheet No. 1A

Locust Ridge states that the purpose of this filing is to submit, for Commission approval, a revision in Locust Ridge's rate for gas resold reflecting proposed changes in the Purchased Gas Component of such rate. The filing projects an increase of \$0.0105 per MMBtu in the company's resale rate to its jurisdiction customers under the above tariffs for the period beginning March 1, 1986 and ending August 31, 1986.

Locust Ridge requests waiver of the Commission's regulations to the extent, if any, required to place the proposed tariff sheets into effect March 1, 1986. A copy of this filing has been mailed to Locust Ridge's jurisdictional customers affected by such filing.

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 §§ 385.211 and 385.214 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 February 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make any 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. 86-2874 Filed 2-7-86; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. CS86-22-000 et al.]

#### Long Brothers Oil Co. et al.; Applications for "Small Producer" Certificates<sup>1</sup>

February 3, 1986.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of

<sup>1</sup> This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS86-22-000	1-21-86	Long Brothers Oil Co., P.O. Box L, Norphlet, Arkansas 71759.
CS86-26-000	1-6-86	Book Cliffs Oil & Gas Corp., 77 No. Oak Knoll Ave., #103, Pasadena, California 91101.
CS86-27-000	1-10-86	Mary Leonard Trust, Acct. Nos.'s 1979-03, 1979-04, 1979-05, and 1979-06, P.O. Box 2605, Fort Worth, Texas 76113.
CS86-28-000	1-13-86	Marquee Corporation, P.O. Box 2743, Corpus Christi, Texas 78403.
CS86-30-000	1-24-86	Minatome Corporation, One Allen Center, Suite 400, Houston, Texas 77002.
CS86-31-000	1-27-86	USENCO, 400 ClayDesta Towers East, Midland, Texas 79705.
CS86-32-000	1-27-86	Medallion Petroleum, Inc., Suite 200, 320 S. Boston Ave., Tulsa, Oklahoma 74103.

[FR Doc. 86-2859 Filed 2-7-86; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. TA86-3-25-000, 001]

#### Mississippi River Transmission Corp.; Rate Change Filing

February 5, 1986.

Take notice that on January 30, 1986 Mississippi River Transmission Corporation ("Mississippi") tendered for filing Fourteenth Revised Sheet No. 4 and Fifth Revised Sheet No. 4A to its FERC Gas Tariff, Second Revised Volume No. 1. An effective date of March 1, 1986 is proposed.

Fourteenth Revised Sheet No. 4 is being submitted pursuant to Mississippi's gas tariff to track pipeline and producer rate changes and to

the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before February 19, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

**Kenneth F. Plumb,**  
Secretary.

recover gas costs which have accumulated in Mississippi's Unrecovered Purchased Gas Cost Account. Mississippi states that the filing reflects an increase under Rate Schedule CD-1 of \$1.019 per Mcf in Demand Charge D-1, an increase of \$0.346 per Mcf in the D-2 Demand Charge and a commodity rate decrease of \$1.708 per Mcf. The single part rate under Rate Schedule SCS-1 reflects a purchased gas cost decrease of \$0.0376 per Mcf. The overall cost impact of such rate changes when applied to annual jurisdictional billing determinants is an \$8.6 million reduction.

Mississippi states that Fourth Revised Sheet No. 4A indicates zero incremental pricing surcharges.

Mississippi also submitted for filing as part of its tariff Third Revised Sheet No.

52 to be effective July 1, 1985. The purpose of this revised sheet is to modify Paragraph 17.44 of Mississippi's PGA tariff provisions to provide that the commodity cost of purchased gas recorded in Account 191 shall be adjusted to include the effect of exchange gas transactions recorded in Account 806.

Mississippi states that copies of its filing have been served on all jurisdictional 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, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before February 12, 1986. 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. 86-2875 Filed 2-7 86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-202-000]

**Montaup Electric Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Denying Motions for Summary Disposition, and Establishing Hearing procedures**

Issued: February 3, 1986.

Before Commissioners: A.G. Sousa, Acting Chairman; Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

On December 5, 1985, Montaup Electric Company (Montaup) tendered for filing a proposed two-phase increase in its rates for firm power service to two affiliated<sup>1</sup> and three unaffiliated wholesale customers.<sup>2</sup> The proposed Phase One rates would increase revenues by approximately \$24.7 million (11.0%) for the test year ending April 30, 1987. The proposed Phase Two rates would result in an additional increase of approximately \$2.7 million, representing a total increase of \$27.4 million (12.2%) for the same period. In addition,

Montaup, Eastern Edison, and Blackstone have filed revisions to facilities rental agreements under which Eastern Edison and Blackstone provide facilities to Montaup, and Montaup provides facilities to Eastern Edison. The revisions decrease the return on common equity components used in formula rates under the rental agreements. Montaup requests that the Phase One rates be made effective as of February 4, 1986, and suspended until the Millstone Generating Unit No. 3 (Millstone 3) enters commercial service.<sup>3</sup> Montaup requests an effective date of February 5, 1986, with suspension until the day after Millstone 3 enters commercial service, for the Phase Two rates. In the event that the Phase One and Phase Two rates are suspended for the same period, Montaup requests that the Phase One rates be deemed withdrawn.

Notice of Montaup's filing was published in the *Federal Register*,<sup>4</sup> with comments due on or before December 23, 1985.

On December 23, 1985, the Pascoag Fire District, the Town of Middleborough, Massachusetts, and Newport Electric Company (Unaffiliated Customers) filed a motion to intervene. The Unaffiliated Customers do not object to Montaup's request that the effectiveness of the rates be tied to the operation of Millstone 3, but request that the Commission's suspension order prohibit the collection of Millstone No. 3 related costs until the unit is "in fact," in commercial operation. The Unaffiliated Customers request that Montaup's filing be set for hearing, citing various cost of service issues.<sup>5</sup> The Unaffiliated Customers also object to the existing ratchet provisions in Montaup's tariff as discriminatory. Since that issue is being heard in Docket No. ER81-749-000, the Unaffiliated Customers request that any revision of the rate design ordered in that pending rate case be made applicable to the rates proposed here.

Timely motions to intervene were also filed by the Attorney General of Rhode Island, on behalf of herself and the Rhode Island Division of Public Carriers, and by the Attorney General of the Commonwealth of Massachusetts. The Rhode Island Attorney General raises various cost-of-service issues. In addition, the Rhode Island and

Massachusetts Attorneys General request summary disposition as to the inclusion of non-pollution control CWIP in rate base, citing the decision in *Mid-Texas Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985) (*Mid-Tex*). Finally, they request that this case not be set for hearing on an expedited basis.

On January 6, 1986, Montaup filed an answer to the motions to intervene. While not opposing the interventions, the company does oppose the requests for summary disposition. With respect to the remaining assertions raised by the intervenors, Montaup contends that they are questions best resolved at hearing.

**Discussion**

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the timely, unopposed motions to intervene serve to make the Unaffiliated Customers, and the Rhode Island and Massachusetts Attorneys General parties to this proceeding.

The Commission intends, in the near future, to take some responsive action to address the major outstanding issues regarding the inclusion of CWIP, other than that related to fuel conversion or pollution control facilities, in rate base in light of the D.C. Circuit's recent decision in *Mid-Tex, supra*. Pending such action, we believe that it would be premature to grant the motions in this docket for summary disposition on the CWIP issue. We note, in any case, that the utility's request to defer collection of the proposed rates until about May 1, 1986, largely obviates any urgency in addressing the intervenors' concerns. We shall therefore deny the requests for summary disposition at this time.

Our review of the company's filing and the pleadings indicates that Montaup's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we shall accept Montaup's rates for filing and suspend them in part as ordered below.

We observe initially that Montaup has filed revisions in the return on common equity component of the formula rates reflected in Montaup's, Eastern Edison's, and Blackstone's facilities rental agreements. Because these revisions result in rate decreases, they will not be made subject to suspension and a refund obligation. However, these rates, though decreases, reflect the same rate of return as that reflected in Montaup's other rates and challenged by the intervenors. We shall therefore order an

<sup>3</sup> Montaup estimates that Millstone 3 will enter commercial service on or about May 1, 1986.

<sup>4</sup> 50 FR 51744 (1985).

<sup>5</sup> The issues raised include: (1) Millstone 3 decommissioning costs; (2) depreciation expense; (3) forecasted investment in Millstone 3; (4) rate of return on common equity; (5) regulatory expenses; (6) demand projections and forecasts of unit sales; and (7) income taxes.

<sup>1</sup> Eastern Edison Company (Eastern Edison) and Blackstone Valley Electric Company (Blackstone).

<sup>2</sup> See Attachment for affected customers and rate schedule designations.

investigation of these rates, with any modification to be prospective only.

In *West Texas Utilities Company*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a nominal suspension. Here, our examination suggests that the Phase One rates may not yield substantially excessive revenues. In ordinary circumstances, we would therefore suspend these rates for one day. However, because Montaup has requested that the Phase One rates be suspended until Millstone 3 enters commercial service,<sup>6</sup> we shall suspend those rates until that time, subject to refund. With respect to the Phase Two rates, our preliminary examination indicates that they may produce substantially excessive revenues. Accordingly, we shall suspend the Phase Two rates to become effective on the later of July 5, 1986, or one day after the unit enters commercial service, subject to refund.

Two of the issues raised by the intervenors in their pleadings have been or are currently being litigated in other Montaup rate filings. Specifically, the company's proposed amortization of Seabrook 2 costs is at issue in Docket No. ER85-106-000, and a ratchet provision applicable to the Unaffiliated Customers has been raised in Docket No. ER81-749-000. Because no change in circumstances has been alleged, those issues shall be controlled by our ultimate decision in the earlier dockets.

Finally, with respect to the request that we not make this proceeding subject to expedited procedures, we shall leave that question to be determined by the Chief Administrative Law Judge.

#### The Commission Orders

(A) The motions for summary disposition by the Rhode Island and the Massachusetts Attorneys General are hereby denied.

<sup>6</sup> As noted, the intervenors raise concerns regarding the "in-service" date of Millstone 3, suggesting that the unit may be brought on line to meet NEPOOL status and may then suffer a prolonged outage. Montaup has projected that Millstone No. 3 will come on line at the beginning of Period II. Based on our preliminary review, this date appears reasonable. To the extent that Millstone 3 goes on a prolonged outage after its initial in-service run, thereby bringing into question the propriety of continued rate base treatment, the customers are free to pursue this issue at hearing.

(B) Montaup's submittal is hereby accepted for filing. The Phase One rates are hereby suspended until the date on which Millstone 3 enters commercial service, subject to refund. The Phase Two rates are suspended to become effective on July 5, 1986, or one day after the unit enters commercial service, whichever is later, subject to refund. The proposed revisions to the facilities rental agreements shall become effective on February 4, 1986, without suspension, but subject to prospective modification following a hearing.

(C) Within ten (10) days of the date on which Millstone 3 enters commercial service, Montaup shall so advise the Commission and the affected wholesale customers.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning

the justness and reasonableness of Montaup's rates.

(E) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(F) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service to top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(G) Subdocket No. 000 of Docket No. ER86-202 is hereby terminated. The evidentiary hearing established herein is assigned Docket No. ER86-202-001.

(H) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission,  
**Kenneth F. Plumb,**  
Secretary.

#### MONTAUP ELECTRIC COMPANY, DOCKET NO. ER86-202-000

[Rate schedule designations]

Designation	Description/other party
(1) Eighteenth Revised Sheet No. 4 under FPC Electric Tariff, Original Volume No. 1 (Supersedes Seventeenth Revised Sheet No. 4).	Phase I Rates.
(2) Seventeenth Revised Sheet No. 6 under FPC Electric Tariff, Original Volume No. 1 (Supersedes Sixteenth Revised Sheet No. 6).	Fuel Clause.
(3) Supplement No. 18 to Rate Schedule FERC No. 64 (Supersedes Supplement No. 17).	Revised Exhibit A—Rates for Contract Demand Service Pascoag Fire District.
(4) Supplement No. 10 to Rate Schedule FERC No. 75 (Supersedes Supplement No. 9).	Revised Exhibit A—Rates for Contract Demand Service Town of Middleborough.
(5) Supplement No. 7 to Rate Schedule FERC No. 76 (Supersedes Supplement No. 6).	Revised Exhibit A—Rates for Contract Demand Service Newport Electric Corporation.
(6) Nineteenth Revised Sheet No. 4 under FPC Electric Tariff, Original Volume No. 1 (Supersedes Eighteenth Revised Sheet No. 4).	Phase II Rates.
(7) Eighteenth Revised Sheet No. 6 under FPC Electric Tariff, Original Volume No. 1 (Supersedes Seventeenth Revised Sheet No. 6).	Fuel Clause.
(8) Supplement No. 19 to Rate Schedule FERC No. 64 (Supersedes Supplement No. 18).	Revised Exhibit A—Rates for Contract Demand Service Pascoag Fire District.
(9) Supplement No. 11 to Rate Schedule FERC No. 75 (Supersedes Supplement No. 10).	Revised Exhibit A—Rates for Contract Demand Service Town of Middleborough.
(10) Supplement No. 8 to Rate Schedule FERC No. 76 (Supersedes Supplement No. 7).	Revised Exhibit A—Rates for Contract Demand Service/Newport Electric Corporation.
(11) Supplement No. 8 to Rate Schedule FERC No. 58 (Supersedes Supplement No. 7).	Revised Cost of Capital/Fall River Electric Light Company.
EASTERN EDISON COMPANY	
(12) Supplement No. 14 to Rate Schedule FERC No. 5 (Supersedes Supplement No. 13).	Revised Cost of Capital/Montaup Electric Company
BLACKSTONE VALLEY ELECTRIC COMPANY	
(13) Supplement No. 14 to Rate Schedule FPC No. 21 (Supersedes Supplement No. 13).	Revised Cost of Capital/Montaup Electric Company.

[FR Doc. 86-2860 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-26-003]

**Natural Gas Pipeline Company of America; Change in Rates**

February 5, 1986.

Take notice that on January 29, 1986, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets to be effective January 1, 1986.

Second Substitute Revised Sheet No. 5  
Second Substitute Twenty-seventh Revised Sheet No. 5A

Natural states that the purpose of the revised tariff sheets is to amend Natural's out-of-cycle PGA filing of December 31, 1985, as amended on January 17, 1986 (Natural's filing). The instant amendment is intended to reflect the rate impact of Great Lakes Gas Transmission Company's revised tariff sheets filed in Docket No. TA86-3-51-000 on January 21, 1986, to be effective December 19, 1985.

A copy of the filing is being mailed to Natural's jurisdictional customers and to interested state regulatory agencies.

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 § 385.214 and 385.211. All such motions or protests must be filed on or before February 12, 1986. 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. 86-2876 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER86-238-000]

**New England Power Service Co.; Filing**

February 5, 1986.

Take notice that on January 29, 1986, New England Power Company (NEP) tendered for filing revised rate schedules incorporating the Commission's acceptance of the proposed treatment of Brayton Point Unit 3 replacement power fuel adjustment clause. The filing is made in accordance with the Commission's order

of November 27, 1985 in Docket Number EL86-4-000.

NEP also enclosed in this filing, revisions to the previously filed W-7 rate schedule, accepted for filing by the Commission on September 30, 1985 in Docket Number ER85-647-000. The revisions reflect the interim adjustment clause amendment granted in Docket Number EL86-4-000. These rate schedules should supercede those filed in Docket Number ER85-647-000 to become effective subject to refund, in March 1, 1986.

Any person desiring to be heard or to protest the application 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 214 and 211 of the Commission's rules of practice and procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before February 12, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-2877 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-2-28-000, 001]

**Panhandle Eastern Pipe Line Co.; Change in Tariff**

February 3, 1986.

Take notice that on January 29, 1986 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Fifty-Fifth Revised Sheet No. 3-A.  
Thirty-Second Revised Sheet No. 3-B.  
Fourteenth Revised Sheet No. 3-C.1.  
Fourteenth Revised Sheet No. 3-C.2.  
Fourteenth Revised Sheet No. 3-C.3.

The proposed effective date of these revised sheets is March 1, 1986.

Panhandle states that these revised tariff sheets reflect an increase in the commodity rate of 18.99¢ per Dt. This increase includes: (1) A (10.99¢) Per Dt. decrease in the projected purchased gas cost component; (2) a 5.64¢ per Dt. increase in the surcharge to recover the current deferred account balance at November 30, 1985 and related carrying charges; and (3) a 24.34¢ per Dt. increase

in the surcharge for the current period amortization of the deferred account balance at May 31, 1983, pursuant to Commission authorization previously granted in Docket No. TA83-2-28-000.

Panhandle further states that the revised tariff sheets filed herewith reflect the following changes to Panhandle's D<sub>1</sub> and D<sub>2</sub> demand rates:

(1) A decrease of (\$.03) for D<sub>1</sub> and (0.07¢) for D<sub>2</sub>, pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and

(2) A decrease of (\$.05) for D<sub>1</sub> and (0.20¢) for D<sub>2</sub>, to reflect a decrease in the Section 18.4 pipeline supplier demand costs.

Panhandle has included in this filing projected gas purchase volumes from its suppliers for the six-month period commencing March 1, 1986, as detailed in section 18.2, Schedule A. All projected gas costs for purchases from producer-suppliers reflected in this PGA filing have been calculated utilizing the procedures consistent with the requirements in the Commission's PGA Regulations.

Panhandle has also included in this filing the final portion of the three-year amortization of the deferred account balance at May 31, 1983 as approved in Docket No. TA83-2-28-000. Consistent with the Commission's Order dated August 31, 1983, Opinion No. 223 dated June 1, 1984, and Order on Rehearing dated July 25, 1984, no carrying charges on the amortized deferred account have been included herein. This filing is being made without prejudice to Panhandle's claims as stated in its request for court review.

As authorized by the Commission's Order dated November 27, 1985 in Docket No. TA85-3-28-003 Panhandle has: (1) Excluded estimated gas costs for the last month (November 1985) of the applicable deferral period herein; and (2) reflected the computation of its carrying charges based on the gross amount of supplier refunds and transportation revenues credited to Account No. 191 without reduction for the interperiod tax effect.

Panhandle is also submitting herewith for filing six (6) copies of the following revised sheet to its FERC Gas Tariff, Original Volume No. 1:

Fourth Revised Sheet No. 43-2.1

The proposed effective date of this revised sheet is December 1, 1985.

The purpose of this revision to Paragraph 18.33 of Panhandle's PGA tariff is to implement the adjustment to the computation of the unit cost of gas, with respect to out-of-balance

concurrent exchange transactions, as presented to the Commission Staff at a public conference held at the Commission on August 29, 1985 and discussed by the Commission at its December 4, 1985 meeting. It is noted that the Commission has agreed to the treatment proposed by the pipelines, as reflected in recent Commission orders. Carrying charges will be calculated without the effects of assigning gas costs to any out-of-balance concurrent exchange transactions. Panhandle is proposing to implement this "adjusted methodology" prospectively beginning December 1, 1985. Accordingly, a December 1, 1985 effective date is proposed for Fourth Revised Sheet No. 43-2.1.

In addition, Panhandle has included in the instant PGA filing a one-time adjustment to Account No. 191 to bring it into appropriate balance to reflect the out-of-balance exchange transactions, as of November 30, 1985. Workpapers supporting this one-time adjustment are submitted herewith. Panhandle will include in subsequent PGA filings, data on the volumes and costs of the monthly exchange transactions, as well as data supporting the computation of the affected carrying charges.

Panhandle respectfully requests waiver of Section 154.22 of the Commission's Regulations together with any other such waivers as may be necessary, for the acceptance of Fourth Revised Sheet No. 43-2.1 submitted herewith to become effective December 1, 1985.

Additionally, the revised tariff sheets filed herewith reflect Projected Incremental Pricing Surcharges in accordance with section 21 of the General Terms and Conditions of Panhandle's tariff.

In accordance with section 18 of the General Terms and Conditions of its tariff, Panhandle has estimated sales volumes for the six-month period, March 1, 1986 through August 31, 1986. A tabulation of these estimated sales volumes for the six-month period beginning March 1, 1986 is submitted herewith in section 18.2.

On May 30, 1985 the Commission issued Order No. 423 in Docket No. RM83-53-000 which requires interstate pipelines to include with their future PGA filings a report which shows producer-supplier refunds recovered through billing adjustments. Accordingly, such schedules are being submitted in section 18.2 herewith.

Panhandle's Schedule A included herein reflects costs under the

Commission's Order No. 94-A for gas to be acquired by Panhandle during the six-month period commencing March 1, 1986. Production-related cost data required by § 271.1104(f) of the Commission's Regulations, including the relevant contractual provisions expressly authorizing section 110 production-related charges, has previously been filed for all producer-suppliers.

Pursuant to the Commission's order of November 27, 1985 in Docket No. TA85-3-28-003, Panhandle is submitting additional data, under separate cover, pertaining to the "at risk" condition in its March 1, 1985 PGA. The additional data submitted pertains to contract information concerning Panhandle's actual gas costs, and its Account No. 191 balances, during the six-month period March 1 through August 31, 1985. This supplemental information shows that Panhandle's Account No. 191 balance at the end of this six-month period was a negative \$4.5 million, which means that Panhandle during this "at risk" period did not incur any undercollections, and in fact experienced a slight overcollection. Therefore Panhandle has satisfied the "at risk" condition contained in the March 1, 1985 PGA, and is filing in that proceeding the data described above which demonstrates that, and is requesting the removal of the "at risk" condition in that proceeding. Notwithstanding final Commission action in the Docket Nos. TA85-1-28-000, 001 and Docket No. TA85-3-28-003 proceedings Panhandle is in the instant filing flowing back to its customers this \$4.5 million negative balance in the deferred account, without prejudice to its rights in the Docket Nos. TA85-1-28-000, 001 and Docket No. TA85-3-28-003 proceedings.

To the extent required, if any, Panhandle requests that the Commission grant such waivers as may be necessary for the acceptance of the tariff sheets submitted herewith to become effective December 1, 1985, or March 1, 1986, as previously stated.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

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 February 10, 1986. 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. 86-2861 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-4953-001 et al.]

**Sun Exploration & Production Co. et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates<sup>1</sup>**

February 3, 1986.

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 sell natural gas in interstate commerce or 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.

Any person desiring to be heard or to make any protest with reference to said applications should on or before February 19, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests 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. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

**Kenneth F. Plumb,**  
Secretary.

<sup>1</sup> This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and Location	Price per Mcf	Pressure base
G-4953-001, D Jan. 27, 1986	Sun Exploration & Production Co., P.O. Box 2880, Dallas, TX 75221-2880.	United Gas Pipe Line Co., Red Fish Bay Field, Nueces County, TX.	(1)	
G-12211-002, D, Jan. 27, 1986	do	United Gas Pipe Line Co., Ridge Area, Lafayette & Vermilion Parishes, LA.	(2)	
G-12548-001, D, Jan. 24, 1986	do	Northern Natural Gas Co., West Perryton Field, Ochiltree County, TX.	(2)	
C161-524-002, D, Jan. 23, 1986	Shell Western E&P Inc., P.O. Box 4684, Houston, TX 77210.	ANR Pipeline Co., Cedardale Field, Major and Woodward Counties, OK.	(2)	
C173-334-000, C, Jan. 24, 1986	The Superior Oil Company, Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	ANR Pipeline Co., Eugene Island Block 306, Offshore LA.	(4)	
C173-476-000, C, Jan. 24, 1986	do	do	(5)	
C174-610-000, C, Jan. 24, 1986	Mobile Oil Exploration & Producing Southeast Inc., Nine Greenway Plaza, Suite 2700, Houston, TX 77046.	do	(5)	
C175-245-002, D, Jan. 27, 1986	Sun Exploration & Production Co.	Arkansas Louisiana Gas Co., Star-Lacey Field, Kingfisher County, OK.	(7)	
C175-324-001, D, Jan. 22, 1986	do	Arkansas Louisiana Gas Co., Wilburton Field, Latimer County, OK.	(8)	
C180-133-001, C, Jan. 24, 1986	Mobile Oil Exploration & Producing Southeast Inc.	ANR Pipeline Co., Eugene Island Block 306, Offshore LA.	(8)	
C186-171-000, A, Jan. 21, 1986	ARCO Oil and Gas Company, Division of Atlantic Richfield Co., P.O. Box 2819, Dallas, TX 75221.	Transco Gas Supply Co., Eugene Island Area Block 361, Offshore LA.	(10)	
C186-174-000, B, Jan. 21, 1986	Joseph P. Mueller	United Gas Pipe Line Co., Ramirena Field, Live Oak County, TX.	(11)	
C186-176-000, B, Jan. 24, 1986	Petroleum Resources, Inc., 420 Boulevard of the Allies, Pittsburgh, PA 15219.	Equitable Gas Co., Courthouse Field, Lewis County, WV.	(12)	
C186-177-000, B, Jan. 24, 1986	do	do	(12)	
C186-178-000, B, Jan. 24, 1986	Petroleum Resources, Inc., 420 Boulevard of the Allies Pittsburgh, PA 15219.	Equitable Gas Co., Courthouse Field, Lewis County, WV.	(12)	
C186-179-000, B, Jan. 24, 1986	do	do	(12)	
C186-183-000, F, Jan. 23, 1986	Cities Service Oil & Gas Corp. (Partial Succ. in Interest to Sun Exploration & Production Co.) P. O. Box 300, Tulsa, OK 74102.	ANR Pipeline Co., Laverne Field, Harper County, OK.	(12)	

<sup>1</sup> Sale of State Tract 397 Wells No. 4 and No. 6 to Woolridge & Associates.

<sup>2</sup> Expiration of leases.

<sup>3</sup> All properties in the Cedardale Field were assigned to Plains Resources, Inc., effective 12-1-85.

<sup>4</sup> Superior proposes to reinstate its Gas Rate Schedule No. 161 and establish an NGPA 109 rate effective 10-24-80, the date of first delivery from the additional reserves not covered by the original certificate.

<sup>5</sup> Superior proposes to reinstate its Gas Rate Schedule No. 252 and establish an NGPA 109 rate effective 10-24-80, the date of first delivery from the additional reserves not covered by the original certificate.

<sup>6</sup> MOEPSI proposes to reinstate its Gas Rate Schedule No. 122 and establish an NGPA 109 rate effective 10-24-80, the date of first delivery from the additional reserves not covered by the original certificate.

<sup>7</sup> Sale of Sun's interest in properties to Jack P. Speed.

<sup>8</sup> Assignment and Bill of Sale of properties to Samson Resources Company.

<sup>9</sup> MOEPSI proposes to reinstate its Gas Rate Schedule No. 107 and establish an NGPA 109 rate effective 10-24-80, the date of first delivery from the additional reserves not covered by the original certificate.

<sup>10</sup> Applicant is filing under Gas Purchase Contract dated 11-25-85.

<sup>11</sup> Abandonment from the contract of all depths in the dedicated acreage below the subsurface depth of 6000' is being sought in order to close an agreement with CONOCO to drill a deep well (below 12,000') on said acreage dedicated under the United contract or on acreage pooled therewith. It would not be economical to produce said deep gas well if gas from same were to be sold at a rate of 60.0¢/MCF. CONOCO will close said agreement with Mueller if, and only if, Mueller obtains an abandonment of deep rights.

<sup>12</sup> Equitable Gas Company has agreed to release the gas. Applicant proposes to sell instead to Hope Gas, Inc.

<sup>13</sup> Partial Assignment and Bill of Sale executed 10-17-85, effective 6-1-85, whereby Sun Exploration and Production Company assigned to Cities Service Oil and Gas Corporation additional interest in the Zoldoske "E" Unit in Harper County, Oklahoma.

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. 86-2862 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-17-001]

### Texas Eastern Transmission Corp; Proposed Changes in FERC Gas Tariff

February 3, 1986.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 24, 1986 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 the following tariff sheets:

*To Be Effective January 1, 1986*

Substitute Revised Seventy-sixth Revised Sheet No. 14 (4 pages)

*To Be Effective February 1, 1986*

Substitute Seventy-seventh Revised Sheet No. 14 (4 pages)

These tariff sheets are being filed pursuant to section 4.F of Texas Eastern's Rate Schedule SS-II and section 4.E of Texas Eastern's Rate

Schedule ISS-III which provide for an automatic rate adjustment to flow through any changes in Consolidated Natural Gas Transmission Corporation's (Consolidated) GSS rates which underlie Texas Eastern's Rate Schedules SS-II and ISS-III.

Consolidated filed on July 1, 1985 to increase its Rate Schedule GSS rates as a part of their general rate increase filing in Docket No. RP85-169-000. The proposed rate increase was suspended until January 1, 1986 by the Commission in its order issued July 31, 1985. In this connection, Texas Eastern subsequently filed a revised tariff sheet on November 27, 1985 to be effective January 1, 1986 that reflected in its Rate Schedules SS-II and ISS-III the impact of the GSS rates in Consolidated's filing of July 1, 1985. Pursuant to a letter order dated December 17, 1985, the Commission accepted Texas Eastern's tariff sheet effective January 1, 1986 subject to downward revisions to track any such revision in Consolidated's GSS rates. Further, Texas Eastern filed on

December 31, 1985 its semi-annual PGA filing to be effective February 1, 1986 which also reflected in its Rate Schedules SS-II and ISS-III the impact of the GSS rates in Consolidated's original filing of July 1, 1985.

On December 31, 1985, Consolidated filed its motion to make rates effective January 1, 1986 in compliance with the Commission's suspension order issued July 31, 1985 in Docket No. RP85-169-000. Consolidated's motion filing contained a revised space charge of 3.47¢ per dekatherm under Rate Schedule GSS as compared to 3.49¢ in its original filing.

The above substitute tariff sheets are being filed solely to reflect the revised GSS rates contained in Consolidated's motion filing of December 31, 1985. The proposed effective dates are as set forth above.

Copies of the filings were served on Texas Eastern's jurisdictional 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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before February 10, 1986. 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. 86-2863 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-1-42-003]

### Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

February 5, 1986.

Take notice that Transwestern Pipeline Company (Transwestern) on January 30, 1986 tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

9th Revised Sheet No. 74

4th Revised Sheet No. 75

Original Sheet No. 75A

The above tariff sheets are being issued pursuant to Ordering Paragraph (B) of the Commission's order issued September 30, 1985 in Docket No. TA86-1-42, and are in compliance with the methodology to treat concurrent exchange imbalances adopted by the Commission on December 4, 1985. Transwestern states that the revisions contained in the above tariff sheets, in addition to a proposed "one time adjustment" to its Account 191 as of July 1, 1985 to reflect the effect of any out-of-balance exchanges which existed as of July 1, 1985, are filed as in compliance with Ordering Paragraph (B) of the Commission's September 30, 1985 order, and Transwestern requests that a Commission order accepting the instant filing also constitute an order on rehearing of Transwestern's October 30, 1985 application for rehearing in Docket No. TA86-1-42.

The proposed effective date of the above tariff sheets is March 1, 1986.

Copies of the filing were served on Transwestern's jurisdictional 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, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure. All such motions or protests should be filed on or before February 12, 1986. 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. 86-2878 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-44-000]

### Valero Interstate Transmission Co.; Proposed Rate Changes

February 5, 1986.

Take notice that on January 30, 1986, Valero Interstate Transmission Company ("Vitco") tendered for filing a notice of change in rates for the sale of gas under Vitco's FERC Gas Rate Schedule Nos., S-1, S-2 and S-3, to Natural Gas Pipeline Company of America ("Natural"), Transcontinental Gas Pipe Line Company ("Transco") and El Paso Natural Gas Company ("El Paso") respectively; and for the transportation of gas under FERC Gas Rate Schedule T-1, now revised as Rate Schedule ITS-1.

Vitco states that the proposed change represents a unit decrease in rate on a 100% load factor level. Vitco has unbundled its transmission and gathering services, and has separately stated its rate of firm transportation service in a new Rate Schedule FTS-1. Vitco's proposed rates for interruptible service are one part rates with a maximum and minimum rate stated. Reservation fees are imposed for firm service, and a minimum rate is stated. Vitco is proposing to convert its rates from an Mcf basis to an MMBtu basis, and is proposing to revert from a unit of production method of depreciation to a straight line rate.

Vitco states that its changes are necessary to satisfy the requirements of the FERC's Order No. 436 and the provisions of § 157.103 and 284.7 of the FERC's regulations. Vitco notes that simultaneously with its rate filing it is filing an application for a blanket certificate of public convenience and necessity pursuant to § 284.221 of the FERC's regulations.

Vitco is also proposing a rate schedule, Rate Schedule E, for emergency gas sales service pursuant to Subpart C, Part 157, of the FERC's regulations.

The proposed effective date is February 1, 1986. Vitco states that copies of the filing have been served on its jurisdictional customers.

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 § 211 and 214 of the Commission's rules of practice and procedure (18 CFR 211 and 214). All such motions or protests should be filed on or before February 12, 1986. 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. 86-2879 Filed 2-7-86; 8:45 am]

BILLING CODE 6717-01-M

### Office of Hearings and Appeals

#### Cases Filed; Week of January 3 Through January 10, 1986

During the week of January 3 through January 10, 1986, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 28, 1986.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

## LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Jan. 3 through Jan. 10, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 30, 1985	UCO Oil Co., Whittier, CA	RR176-1	Request for modification/rescission. If granted: The November 25, 1985 Decision and Order (Case No. RF176-7), issued to UCO Oil Company in response to the firm's application for refund in the Inland, USA refund proceeding, would be modified.
Jan. 7, 1986	Philadelphia Electric Co., et al., Philadelphia, PA	KRR-0004	Request for modification/rescission. If granted: The November 27, 1985 Decision and Order issued to the Philadelphia Electric Company, et al (Case No. KRZ-0009) regarding a request to participate in the enforcement proceeding involving Texaco, Inc. (Case No. DRO-0199) would be rescinded.
Jan. 8, 1986	F.H. Moorhouse, Inc., Albion, IN	KEE-0015	Exception to the reporting requirements. If granted: F.H. Moorhouse, Inc. would no longer be required to file Form EIA-782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report".
Jan. 10, 1986	Natural Resources Defense Council, Washington, DC	KFA-0010	Appeal of an information request denial. If granted: The December 11, 1985 Freedom of Information Request Denial issued by the Office of International Security Affairs would be rescinded and the Natural Resources Defense Council would receive access to the classified addendum to the September 18, 1985 statement of Roger F. Batzel.

## REFUND APPLICATION RECEIVED

[Week of Jan. 3 to Jan. 10, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
8/16/85	Lowe/Stan's Hardware	RF206-5.
1/6/86	City Service/Howard "Slim" Hogleman	RF219-4.
1/6/86	Zia/Standard Welding Works, Inc.	RF216-4.
1/6/86	Mobil/Charles Lindner	RF225-1.
1/6/86	Quaker State/Frost Distributing Co., Inc.	RF213-14.
1/6/86	General Equities/Mike's Getty	RF224-1.
1/7/86	Mobil/Frank A. Trapani Service	RF225-2.
1/9/86	Gulf/Donald R. Ermel	RF40-3090
1/9/86	Quaker State Refund Applications.	RF213-15 thru RF213-44.
1/10/86	Amoco/Milwaukee County Transit System	RF21-12401.
1/10/86	Eastern/Frank M. Speaks, Jr.	RF215-6.

## Cases Filed; Week of January 10 Through January 17, 1986

During the Week of January 10 through January 17, 1986, the applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be the aggrieved by the DOE action sought in these cases may file written comments on the application within ten

days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585

Dated: January 31, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-2836 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

## LIST OF CASES RECEIVED BY THE OFFICE OF HEARING AND APPEALS

[Week of Jan. 10 through Jan. 17, 1986]

Date	Name and location of applicant	Case No.	Type of submission
Jan. 13, 1986	Eastern Petroleum Corp., Enfield, NC	KEE-0016	Exception to the reporting requirements. If granted: Eastern Petroleum Corporation would not be required to file Form EIA-782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report".
Jan. 14, 1986	Beard Oil & Supply, Inc., Mt. Pleasant, MI	KEE-0017	Exception to the reporting requirements. If granted: Beard Oil & Supply & Inc. would not be required to file Form EIA-782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report".
Jan. 14, 1986	MGPC, Inc., Los Angeles, CA	KRZ-0016	Interlocutory. If granted: The revised Proposed Remedial Order issued to MGPC, Inc. by the Economic Regulatory Administration on May 4, 1984, would be dismissed.
Jan. 14, 1986	Mountain Oil, Inc., Walla Walla, WA	KEE-0018	Exception to the reporting requirements. If granted: Mountain Oil, Inc. would not be required to file Form EIA-782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report".
Jan. 15, 1986	Consolidated Materials, New Orleans, LA	KRX-0008	Supplemental order. If granted: A new date and provisions would be established for an evidentiary hearing in the Consolidated Materials, Inc. Proposed Remedial Order proceeding (Case No. HRO-0107).

## REFUND APPLICATIONS RECEIVED

[Week of Jan. 10 to Jan. 17, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
1/13/86	Aminoil/Evelyn M. Carson	RF139-143.
1/13/86	Eastern/Bausum & Duckett Electronic Company, Inc.	RF215-7.
1/13/86	Zia/Walton Construction Co., Inc.	RF216-5.
1/13/86	Leese/Wynn J. Kraus	RF211-8.

## REFUND APPLICATIONS RECEIVED—Continued

[Week of Jan. 10 to Jan. 17, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
1/13/86	Conoco/Kelley Williamson Company	RF220-2.
1/13/86	Conoco/Kendall Petroleum	RF220-3.
1/14/86	Midway/Charles Sonnevile	RF207-3.
1/14/86	Mobil/William J. Grady	RF225-4.
1/14/86	Pasco/Whiting Bros	RF222-2.

## REFUND APPLICATIONS RECEIVED—Continued

[Week of Jan. 10 to Jan. 17, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
1/14/86	Amoco/Sauvage Gas Company	RF21-12402.
1/15/86	Mobil/Thomas A. Brown	RF225-5.
1/14/86	Union Texas/Winn Dixie Stores, Inc.	RF140-35.
1/16/86	Indian/Skowhegan Robo Wash	RF226-1.
1/16/86	Mobil/Beltline Mobil Service	RF225-6.

## REFUND APPLICATIONS RECEIVED—Continued

[Week of Jan. 10 to Jan. 17, 1986]

Date received	Name of refund proceeding/ name of refund applicant	Case No.
1/16/86	National Helium, Amoco, Charter/Louisiana.	RQ3-262. RQ21-263. RQ23-264. RF213-45.
1/15/86	Quaker State/Southwest Central Rural Electric Cooperative Corp.	
1/16/86	Mobil/Troiano Fuel Oil Company.	RF225-7.
1/16/86	Mobil/Stieves Service Station, Inc.	RF225-8.
1/16/86	Conoco/Northville Industries Corp.	RF220-4.
1/17/86	Aminol/Xeron, Inc.	RF139-144.

[FR Doc. 86-2837 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

**Implementation of Special Refund Procedures****AGENCY:** Office of Hearings and Appeals, Energy.**ACTION:** Notice of implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of \$83,646 (plus accrued interest) obtained as a result of a Consent Order which the DOE entered into with Hicks Oil and Hicks Gas Company, Inc. of Roberts, Illinois (Case No. HEF-0091). The fund will be available to certain customers who purchased propane from Hicks' wholly owned subsidiary, Rocket Supply Company, during the consent order period.

**DATE AND ADDRESS:** Applications for refund of a portion of the consent order fund must be filed no later than 90 days after publication of this Decision and Order in the *Federal Register* and should be addressed to the Hicks Consent Order Refund Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All applications should conspicuously display a reference to Case No. HEF-0091.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-2860.

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Hicks Oil and Hicks Gas Company of Roberts, Illinois. The Consent Order

settled possible pricing violations with respect to sales of propane by Hicks' wholly owned subsidiary, Rocket Supply Company, during the November 1, 1973 through December 31, 1975 consent order period.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order funds was issued on August 13, 1985. 50 FR 33829 (August 21, 1985).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the *Federal Register*.

Applications will be accepted from customers who purchased propane from Rocket Supply Company during the relevant consent order period. The specified information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: January 31, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

**Decision and Order of the Department of Energy***Special Refund Procedures*

January 31, 1986.

Name of Firm: Hicks Oil and Hicks Gas Company, Inc.

Date of Filing: October 13, 1983

Case Number: HEF-0091

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and Hicks Oil and Hicks Gas Company, Inc. (Hicks) of Roberts, Illinois.

**I. Background**

Hicks is a "reseller-retailer" of propane as this term was defined in 10

CFR 212.31 and was therefore subject to the DOE Mandatory Petroleum Price Regulations. An ERA audit of Rocket Supply Company (Rocket), a wholly owned subsidiary of Hicks, was conducted for the period November 1, 1973 through December 31, 1975 (the audit period). Subsequently, the ERA issued a Notice of Probable Violation (NOPV) to Hicks on February 8, 1980. In the NOPV, the ERA alleged that, during the audit period, Rocket overcharged its wholesale customers by \$369,029.40 in sales of propane. On October 16, 1981 Hicks entered into a Consent Order with the DOE in order to settle all disputes and claims between Hicks and the DOE regarding Rocket's compliance with the DOE price regulations in sales of propane during the audit period (hereinafter known as the consent order period). In the Consent Order, Hicks agreed to remit \$69,028.58 to the DOE for deposit in an interest bearing escrow account.<sup>1</sup> The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. Additionally, the Consent Order states that Hicks does not admit it committed any such violations.

On August 13, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order fund. 50 FR 33829 (August 21, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or adjudicated violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they are eligible to receive a refund from the monies remitted by Hicks. We noted that the ERA audit file identifies 20 wholesale customers who purchased propane from Rocket and specifies the amounts these customers were allegedly overcharged.<sup>2</sup> We specifically proposed

<sup>1</sup> Hicks remitted a total of \$83,646.27 to the DOE. This amount includes interest on Hicks' installment payments of the consent order amount to the DOE.

<sup>2</sup> Although the Hicks Consent Order does not mention Rocket by name, it expressly states that it is intended to settle the DOE's claims against Hicks with respect to the "specified transactions" which allegedly resulted in the overcharges. Consent Order ¶¶ 4 and 5. On the basis of the language in the Consent Order and the allegations set forth in the NOPV, we have determined that the Consent Order is limited to settling the claims and disputes regarding Rocket's alleged overcharges to wholesale customers. Accordingly, this refund proceeding establishes procedures for the disbursement of funds to Rocket's wholesale customers only.

to refund proportionate shares of the consent order fund to these customers.

A copy of the PD&O was published in the *Federal Register* on August 21, 1985, and comments were solicited regarding the proposed refund procedures. In addition, a copy of the PD&O was sent to those customers whose names and addresses were listed in the ERA audit file. Comments supporting OHA's efforts to make direct restitution to parties who have been affected by alleged violations of the petroleum price regulations were filed by the National Council of Farmer Cooperatives. We also received comments filed on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. These comments argue that state governments are the appropriate recipients of second stage refunds. However, the purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the present refund proceeding. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the funds. Therefore, it would be premature for us to address the issues raised by the States' comments concerning the disposition of any residual funds until after all meritorious first stage claims have been paid.<sup>3</sup>

## II. Jurisdiction and Authority

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The DOE policy is to use the Subpart V process in order to distribute such funds. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements see *Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). As we stated in the PD&O, we have reviewed the record in the present case and have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Hicks consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over this fund.

<sup>3</sup> It is not clear, however, that any of these States have a direct interest in this proceeding because none of the propane sales took place in these States.

## III. Refund Procedures

Since we have not received any adverse comments regarding our proposed refund procedures, we have determined that those procedures should be adopted.

The distribution of refunds will take place in two stages. In the first stage refund monies will be refunded to those wholesale customers who purchased propane from Rocket during the consent order period and who demonstrate that they were injured by Rocket's alleged overcharges. Such purchasers must file claims and document their purchases in order to be eligible for a portion of the consent order fund.

After meritorious claims are paid in the first stage, a second stage may become necessary to distribute any remaining funds. See generally *Office of Special Counsel*, 10 DOE ¶85,048 (1982). However, we will not discuss second-stage refund procedures in this Decision and Order.

### A. Refund Claimants

During the first stage of the refund process, the Hicks consent order fund will be distributed to claimants who satisfactorily demonstrate that they were injured by Rocket's alleged regulatory violations.<sup>4</sup> As we indicated earlier, the ERA audit file identifies 20 wholesale customers who were allegedly overcharged by Rocket in sales of propane. These Rocket customers fall into one of two categories: Reseller i.e., retailer or wholesaler, or end-user. See Appendix to this Decision. The audit file also indicates the amount which each customer was allegedly overcharged. In our view, these identified customers are most likely the parties who were adversely affected, at least initially, by any overcharges by Rocket.<sup>5</sup>

### B. Showing of Injury

In order to qualify for a refund, resellers of Rocket propane must show that during the consent order period they would have maintained their prices for the product at the same level had the alleged overcharges not occurred. Accordingly, a reseller of Rocket propane should show that during the

<sup>4</sup> In past Decisions, this Office has made a finding that affiliates of a consent order firm, even though they may have made "purchases" from the firm during the consent order period, are not eligible for refunds because the refund would effectively inure to the consent order firm. See, e.g., *Aztex Energy Co.*, 12 DOE ¶85,116 at 88,359 n.2 (1984). We will adopt that finding in this Decision as well.

<sup>5</sup> Rocket's sales to another firm, Bumps LP Gas (Bumps), are documented in the ERA audit file. However, according to these records, Bumps was not overcharged. Bumps is therefore not eligible for a refund in this proceeding.

consent order period, market conditions would not permit it to increase its prices to pass through the additional costs associated with the alleged overcharges. *Office of Enforcement*, 10 DOE ¶85,056 (1983); *Office of Enforcement*, 10 DOE ¶85,029 (1982). In addition, a reseller must show that it had a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. As we noted in the PD&O, however, the maintenance of a bank will not automatically establish injury. See *Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶85,014 (1982).

In the PD&O, we also proposed to adopt presumptions which have been used in many prior refund cases. The presumptions proposed in the PD&O, and being adopted here, will permit claimants to participate in the refund process without incurring disproportionate expenses, and will enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available. See 10 CFR 205.282(e).

### 1. Applicants Claiming a Refund of \$5,000 or Less

As stated in the PD&O, we recognize that making a detailed showing of injury may be too complicated and burdensome for resellers who purchased relatively small amounts of propane from the consent order firm. For example, such firms may have limited accounting and data-retrieval capabilities and may therefore be unable to produce the records necessary to prove that they did not pass on the alleged overcharges to their own customers. We also are concerned that the cost to the applicant and to the government of compiling and analyzing information sufficient to make a detailed showing of injury not exceed the amount of the refund to be gained. In the past we have adopted a small claims presumption to assure that the costs of filing and processing refund applications do not exceed the benefits. See, e.g., *Aztex Energy Co.*, 12 DOE ¶85,116 (1984); *Marion Corp.*, 12 DOE ¶85,014 (1984) (*Marion*). We will adopt such a presumption in this case. Therefore, any reseller applicant claiming a refund of \$5,000 or less need not make a detailed showing of injury in order to be eligible to receive a refund.<sup>6</sup>

<sup>6</sup> In the present case, only five of the 20 Rocket customers listed in the Appendix are eligible to apply for refunds over \$5,000. If any of these five claimants chooses to apply for a refund based on the threshold level, it will not be required to make a showing of injury beyond volumes purchased.

## 2. Spot Purchasers

Resellers that made spot purchases from Rocket will be ineligible to receive a refund, even a refund below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. As we have previously noted, a spot purchaser would not have made spot market purchases of a firm's product at increased prices unless it was able to pass through to its customers the full amount of the firm's selling price. See *Vickers*, 8 DOE at 85,396-97. In order to overcome the rebuttable presumption that it was not injured, a spot purchaser must show that it absorbed the alleged overcharges and should submit additional evidence to establish that it would be inappropriate to presume that it had discretion as to where and when to make the purchase(s) upon which the refund claim is based.

## 3. End-Users

In the PD&O, we made a finding that end-users and ultimate consumers whose businesses are unrelated to the petroleum industry were injured by the alleged overcharges settled in the Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the time covered by the Consent Order, and thus were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final price of non-petroleum goods and services would be beyond the scope of a special refund proceeding. See *Office of Enforcement*, 10 DOE ¶85,072 (1983); see also *Texas Oil & Gas Corp.*, 12 DOE ¶85,069 (1984), and cases cited therein. We have received no comments objecting to this finding. We will therefore adopt our proposal that end-users of Rocket propane need only document their purchase volumes from the firm to make a showing that they were injured by the alleged overcharges.<sup>7</sup>

## C. Calculation of Refund Amounts

We must further determine the proper method for dividing the consent order fund among successful applicants. In the

<sup>7</sup> In its comments, the National Council of Farmer Cooperatives requested that the OHA continue its practice of considering agricultural cooperatives to be end-users for purposes of the showing of injury required of refund claimants. We intend to do so in this proceeding with respect to those volumes of propane that cooperatives sold to their members. See, e.g., *Apco Oil Corp.*, 12 DOE ¶85,149 at 88,459 (1985). Sales by cooperatives to non-members, however, will be treated the same as sales by any other resellers.

PD&O, we proposed that the maximum refund for the customers listed in the Appendix be based on the amount they were allegedly overcharged, as indicated in the ERA audit file. Although we recognize that the ERA audit file and NOPV do not provide conclusive evidence as to the identity of all injured parties or the amount of money they should receive in a Subpart V proceeding, we believe it is appropriate to use this information in the present case.

Specifically, we note that the ERA audit was very narrow in scope, that an NOPV had been issued, that the Consent Order was limited to "specified transactions" which occurred during the same time period as the audit, and that Rocket had a relatively small number of customers. Because of these factors, the information contained in the ERA audit file and NOPV can be used for guidance in fashioning a refund plan which is likely to correspond closely to the injuries experienced. See, e.g., *Marion*. To calculate the maximum refund amount for each identified customer listed in the Appendix, we will therefore multiply the alleged overcharge amounts for each firm by a pro rata factor, determined by dividing the applicable consent order amount (\$83,646.27) by the total alleged overcharges in sales to wholesale customers (\$369,029.40). This yields a pro rata factor of 0.22666. The potential refund, rounded to the nearest dollar, for each customer listed in the ERA audit file is set forth in the Appendix to this Decision. The interest which has accrued on the money in the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

## IV. Application for Refund Procedures

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Hicks consent order fund. Accordingly, we shall now accept applications for refund from eligible customers who purchased propane from Rocket during the consent order period. There is no official application form. Applications for Refund should be written or typed on business letterhead or personal stationery. The following information should be included in all Applications for Refund:

1. The name of the consent order firm, Hicks Oil and Hicks Gas Company, Inc., the case number HEF-0091, and the applicant's name should be prominently displayed on the first page.
2. The name, position title, and telephone number of a person who may

be contacted by us for additional information concerning the Application.

3. The manner in which the applicant used the Rocket propane i.e., whether it was a reseller or end-user.

4. The volume of Rocket propane that the applicant purchased in each month of the period of time for which it is claiming it was injured by the alleged overcharges. Alternatively, an applicant may submit a signed statement certifying that it was a purchaser of Rocket propane during the consent order period and explaining why it cannot provide the requested documentation.

5. If the applicant is a reseller who wishes to claim a refund in excess of \$5,000, it should also:

(a) State whether it maintained banks of unrecouped product cost increases and furnish the OHA with quarterly bank calculations, and

(b) submit evidence to establish that it did not pass through the alleged injury to its customers. For example, a firm may compare the prices it paid for Rocket propane with the prices paid for that product by its competitors to show that price increases to recover alleged overcharges were infeasible.

6. A statement of whether the applicant was in any way affiliated with Hicks. If so, the applicant should state the nature of the affiliation.

7. A statement of whether there has been any change in ownership of the entity that purchased propane from Hicks since the end of the consent order period. If so, the name and address of the current (or former) owner should be provided.

8. A statement of whether the applicant is or has been involved as a party in any DOE or private section 210 enforcement actions. If these actions have been terminated, the applicant should furnish a copy of any final order issued in the matter. If the action is ongoing, the applicant should describe the action and its current status. The applicant is under a continuing obligation to keep the OHA informed of any change in status during the pendency of its Application for refund. See 10 CFR 205.9(d).

9. The following signed statement: I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief.

All Applications for Refund must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register**. A copy of each Application will be available for Public inspection in the Public Reference Room of the Office of Hearings and Appeals, Forrestal Building, Room 1E-234, 1000

Independence Avenue, SW., Washington, D.C. Any applicant that believes that its Application contains confidential information must so indicate on the first page of its Application and submit two additional copies of its Application from which the material alleged to be confidential has been deleted, together with a statement specifying why the information is alleged to be privileged or confidential.

All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

#### It is Therefore Ordered That

(1) Applications for Refund from the funds remitted to the Department of Energy by Hicks Oil and Hicks Gas Company, Inc. pursuant to the Consent Order executed on October 16, 1981 may now be filed.

(2) All Applications must be filed no later than 90 days after publication of this Decision and Order in the Federal Register.

Dated: January 31, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

#### APPENDIX

Customer	Potential refund
Allerton Supply Co.	\$8,384
Bloomfield LP Gas	51
Boente Bros. Propane	20,051
Bryant & Son LP Gas Co.	1,971
Cender Gas Co.	20,309
Flessner & Duitsman	405
Hicks Grain Terminal <sup>1</sup>	336
Hi Lo Gas Co. <sup>1</sup>	2,769
Hook Bros. LP Gas Co.	36
Lake Fork Grain Co.	53
Mt. Pulaski Products	359
Mainline Petroleum	589
Patterson Bros. Propane	16,667
C.T. Rees & Son	557
Scranton Industries	226
Southern States Co-op.	1,849
W. E. Stoll Coal & Gas Co.	8,685
Tate's Blue Flame Gas	27
Wescoe School <sup>1</sup>	18
Zinata Farms	322
Total	83,644

<sup>1</sup> We sent copies of the PD&O to the firms marked with an asterisk, but they were returned to this office because of incorrect addresses. These firms may still apply for refunds and may contact this Office for a copy of our determination. We plan to enlist the plan help of the consent order firm in locating these potential claimants.

[FR Doc. 86-2842 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

#### Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of Implementation of Special Refund Procedures.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy

solicits comments concerning the appropriate procedures to be followed in refunding a \$37,000 consent order fund to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Gibbs Industries, Inc. of Revere, Massachusetts (Case No. HEF-0079).

**DATE AND ADDRESS:** Comments must be filed within 30 days of publication of this notice in the Federal Register and should be addressed to Gibbs Industries, Inc. Consent Order Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case No. HEF-0079.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set forth below. The Proposed Decision relates to a Consent Order entered into by Gibbs Industries, Inc. of Revere, Massachusetts and the DOE which settled possible regulatory violations regarding the firm's allocation of motor gasoline during the consent order period, May 1979 through June 1979.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute the escrow account funded by Gibbs pursuant to the Consent Order. The DOE has tentatively established procedures under which certain purchasers of Gibbs motor gasoline during the consent order period may file claims for refunds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals located in Room

1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: January 29, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

#### Proposed Decision and Order of the Department of Energy

##### Implementation of Special Refund Procedures

January 29, 1986.

Name of Firm: Gibbs Industries, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0079.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. See 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, the ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with Gibbs Industries, Inc. (Gibbs) of Revere, Massachusetts.

#### I. Background

Gibbs is engaged in the reselling and retailing of petroleum products and was therefore subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, and 212. An ERA audit of Gibbs revealed possible violations of the regulations governing the allocation of petroleum products, 10 CFR Part 211, Subparts A and F. The ERA specifically alleged that during the months of May and June 1979, Gibbs failed to supply certain of its customers with their adjusted base period allocation of motor gasoline.

In order to settle all claims and disputes between Gibbs and the DOE regarding the firm's allocation of motor gasoline during May and June 1979 (hereinafter referred to as the consent order period), Gibbs and the DOE entered into a Consent Order on January 7, 1981. The Consent Order refers to the ERA's allegations of allocation infractions, but notes that there was no finding that violations actually occurred. Additionally, the Consent Order states that Gibbs does not admit that it violated the regulations. Under the terms of the Consent Order, Gibbs remitted \$37,000 to the DOE for deposit in an interest-bearing escrow account for ultimate distribution by the DOE.

## II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines that may be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,538 (1982) (*Tenneco*), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). After reviewing the record in the present proceeding, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Gibbs consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

## III. Proposed Refund Procedures

Our experience with Subpart V cases leads us to believe that the distribution of refunds in this proceeding should take place in two stages. In the first stage, we will accept claims from identifiable purchasers of motor gasoline who may have been injured by Gibbs' allocation practices during the consent order period. The ERA audit file contains the names of Gibbs' base period customers who received less than their adjusted base period customers who received less than their adjusted base period allocation of motor gasoline for May and/or June 1979. These are the parties most likely adversely affected, at least initially, by Gibbs' alleged allocation infractions. We propose to adopt the following standards and presumptions to assess the claims of these customers.<sup>1</sup>

First, we will generally assume that the customers listed in the ERA audit file were injured by Gibbs' alleged allocation violations. This assumption is based on a number of factors. The first factor is the period of time covered in the Gibbs audit: May and June 1979. This was a period of severe supply shortages in the petroleum industry, and firms generally were able to sell all the motor gasoline they were able to obtain. Cf. *Colony West Gulf*, No. DEE-4579 (June 22, 1979) (Proposed Decision), *Finalized sub nom. AIA Exxon*, No. DEE-2426 (August 20, 1979), and *C&C Garage & Towing*, No. DEE-3362 (June 20, 1979) (Proposed Decision), *finalized* at 5 DOE ¶ 81,249 (1980) (when shortages exist, any firm that obtains additional

quantities of product could sell it). Furthermore, we note that the Gibbs Consent Order is focused on specific alleged allocation violations based upon a detailed audit. The ERA audit file identifies 147 customers of Gibbs who were affected by the firm's alleged allocation violations and indicates the difference between each customer's adjusted base period allocation of motor gasoline and the amount which it actually purchased from Gibbs. See the Appendix to this Proposed Decision.<sup>2</sup>

Therefore, we propose to adopt the presumption that each customer listed in the ERA audit file was injured with respect to any gallons of motor gasoline to which it was entitled, but did not receive from Gibbs.<sup>3</sup>

Second, we propose to use a volumetric method to divide the consent order fund among applicants who demonstrate that they are eligible to receive refunds. Under this methodology, we will presume that all customers experienced that same loss per gallon as a result of not receiving the correct adjusted base period allocation of motor gasoline from Gibbs during the consent order period. The assumption that the injury in this case was the same for each gallon lost is reasonable since the customers were in the same marketing area and is not inconsistent with the information contained in the audit file. As we have stated in prior cases, allocating refunds on a volumetric basis is efficient, treats all firms similarly and avoids detailed examination of the impact on each firm of the alleged violation. See *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,199 (1982).

Utilizing the volumetric refund presumption will also further our goal of granting restitution to as many claimants as possible by simplifying the process through which refund applications are prepared and analyzed. In this case, the volumetric refund amount is calculated by dividing the consent order settlement amount (\$37,000) by the total volume of misallocated motor gasoline (383,670

gallons), yielding a per gallon volumetric refund amount, exclusive of interest, of \$0.096437. An eligible claimant will receive a refund determined by multiplying the volumetric refund amount by the number of gallons to which it was entitled, but did not receive from Gibbs during the consent order period (excluding any gallons obtained from alternative sources).<sup>4</sup> In addition, successful applicants will receive a pro rata share of the interest which has accrued since the deposit of the funds into the escrow account.

All refund applicants will be required to indicate, for each month of the consent order period, their base period allocation of motor gasoline and the number of gallons actually purchased from Gibbs, and the base period allocation and gallons purchased from other suppliers. If a claimant lacks this data, but is listed in the attached Appendix, it may certify that, during May and June 1979, (i) it had a supplier-purchaser relationship with Gibbs pursuant to 10 CFR Part 211, and (ii) it did not receive motor gasoline from another supplier.

As in previous cases, only claims for at least \$15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than \$15 outweighs the benefits of restitution in those situations. See, e.g., *Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). See also 10 CFR 205.286(b). The same principle applies here.

Refund applications in the Gibbs proceeding should not be filed until after issuance of a final Decision and Order. Detailed procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received as a result of the Consent Order involved in this proceeding, we intend to publicize the distribution process to solicit comments on the proposed refund procedures and to provide an opportunity for any affected party to file a claim.

In the unlikely event that the total amount of valid claims exceeds the funds available in the escrow account,

<sup>2</sup> *Contra Tenneco Oil Co./Research Fuels, Inc.*, 10 DOE ¶ 85,012 (1982) (RFI) (Applicants seeking refunds from a "global" consent order fund required to show injury).

<sup>3</sup> This presumption will not apply to firms which were able to obtain sufficient quantities of motor gasoline elsewhere. The acquisition of product from other sources would have mitigated the injury which such customers experienced as a result of Gibbs' alleged failure to supply them with their full allocation. However, a claimant which purchased product from alternative sources will still be eligible for a refund, if, for example, it shows that it paid a significantly higher price for the product and was not able to pass the higher price through to its customers.

<sup>4</sup> Some customers may claim that they suffered an injury greater than that which has been approximated by the volumetric refund amount. In order to be eligible for a refund at a level in excess of the volumetric refund amount, these firms must make the showings required of allocation claimants in other Subpart V proceedings. See, e.g., *RFI; cf. Standard Oil Co. (Indiana)/Army & Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984) (refund above volumetric level approved for price violation claim). Specifically, they must document the net profits lost as a result of not receiving their adjusted base period allocation of motor gasoline during the consent order period.

<sup>1</sup> Presumptions in refund cases are specifically authorized by § 205.282(e) of the DOE procedural regulations in order that refund applications may be considered in an efficient and equitable manner.

all refunds will be reduced proportionately. If, on the other hand, money remains after all meritorious claims have been satisfied, residual funds could be distributed in a number of ways in a subsequent second-stage proceeding. However, we will not be in a position to decide what should be done with any remaining funds until the initial stage of this refund proceeding has been completed.

It is therefore ordered that the refund amount remitted to the Department of Energy by Gibbs Industries, Inc. pursuant to the Consent Order executed on January 7, 1981, will be distributed in accordance with the foregoing Decision.

### Appendix

#### I. GIBB'S WHOLESALE ACCOUNTS

Name of customer	Gallons not received	
	May 1979	June 1979
<b>A. Address Known</b>		
Arsenault, Harold	7,705	
Clean Machine	282	
Coviello & Son <sup>1</sup>	149	
Deering Lumber		156
Eddy, James	20	
Hallman Chevrolet	270	
Pleasant Park Yacht Club <sup>1</sup>		98
Richardson, Harold	1,684	
<b>B. Address Unknown</b>		
Acomi Corp	6,865	
Aranosian Oil Co	1,912	
Avellino, Silvio	11,100	
B&D Enterprises	276	
Ballard Oil	2,001	
Barnes, William	2,531	
C&C Elliot	951	
CDC, Inc	1,564	
Carl Oil Co	2,362	
Center Market, Inc	1,262	
Chapman Oil Co	157	
Charles Auto Body and Tire <sup>1</sup>	20	
Charles C. Towne & Sons	270	81
Charles Deemers, Inc	249	
Chelmsford Fuel Trans	1,449	
City of Saco, Maine	1,047	51
Colonial Express	232	
Conway, Clinton	5,552	
Cray Oil	5,031	
Daigle, Claude <sup>1</sup>	108	
Davis, Frank Jr <sup>1</sup>	28	
Dennis K. Burke, Inc	5,806	
Derring, Albert <sup>1</sup>	43	
Dinola Fuels, Inc	711	
Disilva Truck Service	80	
Duquette, D	2,333	
Dutton Tire & Auto Dist	622	1,670
Duval, Robert L	1,212	12,635
Dystart Service	2,178	4,672
Ecology Oil Corp	4,837	
Edgemont Garage & Oil	2,919	
Freed Oil Co	269	
Gasland (Good Hope)	18,129	
Geo. E. Warran Co	2,992	
Goldman Paper	68	
Gorham Town Garage	252	
Green Brothers Oil & Co., Inc	126	
Hall, Hoyt T	7,490	
Harbor Supply	166	
Hill Oil Co	5,227	19,228
Hoolie Richard E	1,865	
JBB, Inc	9,639	
Kartland, Inc	23	
L.J. Bouchard & Son	2,113	
Lovetere, Angelo	376	
Lucas, James	1,202	

#### I. GIBB'S WHOLESALE ACCOUNTS—Continued

Name of customer	Gallons not received	
	May 1979	June 1979
Maier, Paul	5,583	
Maine Coal Sales	630	
Maiden Taxi	750	
McCollister	438	
Miliard, Fred <sup>1</sup>	52	
Montgomery, A	988	
Moore, Tom	617	
Mosher Farm <sup>1</sup>	27	
Mullerkey, Paul	1,715	
Muncies Superior Petroleum	564	
Pages Service, Inc	4,478	3,120
Paul Martin, Inc	205	289
Piglet Market	1,312	
Prentiss, Arthur Jr. <sup>1</sup>	30	
Pressman, Melvin	212	
R.L. Greenlaw & Sons, Inc	630	79
Red's, Inc	6,006	
Remi Fortin Construction	730	
Rent A Took, Inc	273	
Richdale Dairies	3,206	
Riverside Anchorage <sup>1</sup>	90	
Rohner Service, Inc	1,257	
Romanchuk, Al	2,725	
Rossi, Steve	1,431	
Rousseau, G A	3,612	
Roy's Garage	685	
Saco Brick <sup>1</sup>	84	
Schlager, Joseph	1,777	
Spang, Phil <sup>1</sup>	96	
Stevens, Walter <sup>1</sup>	44	
Stop-N-Go <sup>1</sup>	150	
Sweetster's Home <sup>1</sup>	106	
Teixeira, E	2,771	
Terry Oil & Heating	275	
Thibeault Oil	540	440
United Tire	1,501	
Wakefield Moving & Storage	472	
Wayfra Realty	11,688	
Welch, Frank	1,123	
Woonsocket Consumer Coal	527	

<sup>1</sup> Using the volumetric method of calculating refunds, these firms do not qualify for the \$15 minimum required to file a refund application.

#### II. GIBB'S DEALER ACCOUNTS

Name of customer	Gallons not received	
	May 1979	June 1979
<b>A. Address Known</b>		
Beers, Richard R		7,408
Berube, Jos	6,587	11,558
Bourassa, William	4,744	233
Clean Machine		953
Cole's Garage, Inc	552	
Daniels, Warren C		4,228
Martines, Joseph	200	3,957
<b>B. Address Unknown</b>		
A&G Auto		856
Arthur Wolfe Tire Co	1,698	
Arundel Tulsa	469	
Bartlett, Clarence	7,829	
Bates, Clifford		578
Bill & Andy's	3,734	5,561
Bob Brest Buick		329
Brighton Auto Service	174	1,834
Bruhms, Arthur	610	508
Buster's Service	1,260	
Cormier, Ronald	1,304	1,505
D. Duquette		5,288
Donovan, Thomas		366
Duff's Littleton		6,205
Ferris, Thomas	66	
Forbes, George	4,132	1,983
Foster, Charlie	7,936	
Granite State Gas Station		241
Greenier, Andrew		8,999
Hodge, William		2,498
Jiffy Mart		171
L.J. Bouchard & Son		177
Lampron, Hubert	3,016	

#### II. GIBB'S DEALER ACCOUNTS—Continued

Name of customer	Gallons not received	
	May 1979	June 1979
Latorella & Frongell		1,361
Lemieux, Hercules	215	
Levysohn, J.V. Permis		2,049
Maier, Paul		105
Morel, Edmund		779
Mullerkey, P		934
Nierberle, Ernest	1,547	
North Reading BP		6,403
Oliver, G		3,552
Pressman, Melvin		130
Ray, Leonard		4,060
Reggie's BP		594
Rohner Service		1,295
Rossi, Steve		1,302
Samson, Lionel	1,777	145
Schlager, Joseph		1,323
Sebago, Portland		2,967
Steelstone Industries, Inc	266	
Sullaway, Sam		8,969
Venut, Robert	421	
Welch, Frank		4,777
York Oldsmobile <sup>1</sup>		130
Zannini, David	2,159	5,470

<sup>1</sup> Using the volumetric method of calculating refunds, these firms do not qualify for the \$15 minimum required to file a refund application.

[FR Doc. 86-2843 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

### Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals Energy.

**ACTION:** Notice of implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of \$75,102.50 obtained as a result of a consent order which the DOE entered into with Power Pak Company, Inc., a wholesale purchaser reseller of petroleum products located in Houston, Texas. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

**DATE AND ADDRESS:** Applications for refund of a portion of the Power Pak consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the Federal Register. All applications should refer to Case Number HEF-0155 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Walter J. Marullo, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252-6602.

**SUPPLEMENTARY INFORMATION:** In accordance with §205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The decision relates to a consent order entered into by the DOE and Power Pak Company, Inc., which settled all claims and disputes between Power Pak and the DOE regarding the manner in which the firm applied the federal allocation regulations with respect to its sales of motor gasoline during the period August 1, 1979, through December 31, 1979 (consent order period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Power Pak consent order funds was issued on November 13, 1985. 50 FR 47819 (November 20, 1985).

The Decision sets forth procedures and standards that the DOE has formulated to distribute the contents of an escrow account funded by Power Pak pursuant to the consent order. The DOE has decided to accept Applications for Refunds from firms and individuals that were unable to purchase their adjusted base period allocations of motor gasoline from Power Pak during the consent order period. In order to apply for a refund, a claimant should submit enough information to demonstrate that its claim is well-founded, including the best available evidence of injury which was sustained as a result of an alleged allocation violation. In assessing the extent of any such injury, the DOE will consider a number of equitable factors such as, for example, whether the alleged violation had a significant deleterious impact on the claimant or caused any loss of profits, and whether the applicant had the ability to protect itself by obtaining a replacement supply of the allocated product or by taking other appropriate action.

As the accompanying Decision and Order indicates, Applications for Refunds may now be filed by customers that were unable to purchase their adjusted base period allocations of motor gasoline from Power Pak during the consent order period. Applications will be accepted provided they are received no later than 90 days after publication of this Decision and Order in the *Federal Register*. The specific information required in an Application for Refund is set forth in the Decision and Order.

Dated: February 3, 1986.  
**George B. Breznay,**  
*Director, Office of Hearings and Appeals.*

### Decision and Order of the Department of Energy

#### *Implementation of Special Refund Procedures*

Name of Petitioner: Power Pak Co., Inc.

Date of Filing: October 13, 1983.  
 Case Number: NEF-0155.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. See 10 CFR Part 205, Subpart V. In accordance with the provisions of Subpart V, on October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a consent order entered into with Power Pak Co., Inc. (Power Pak). This Decision and Order specifies the procedures which the OHA has formulated to distribute the funds received pursuant to that consent order.

#### I. Background

Power Pak is a "wholesale purchaser reseller" of refined petroleum products as that term was defined in 10 CFR 211.51 and is located in Houston, Texas. A DOE audit of Power Pak's records revealed possible violations of the Mandatory Petroleum Allocation Regulations, 10 CFR Part 211, Subparts A and F. The DOE alleged that between August 1, 1979, and December 31, 1979 (consent order period), Power Pak failed to supply certain of its base period customers with their adjusted base period allocations of motor gasoline.

In order to settle all claims and disputes between Power Pak and the DOE regarding the firm's motor gasoline operations during the period covered by the audit, Power Pak and the DOE entered into a consent order on September 1, 1981. The consent order refers to ERA's allegations of allocation infractions, but notes that there was no finding that violations occurred. In addition, the consent order states that Power Pak does not admit that it violated the regulations.

Under the terms of the consent order, Power Pak was required, in a series of installments, to deposit \$66,201, plus interest, into an interest-bearing escrow account for ultimate distribution by the

DOE. Power Pak make its final payment on August 19, 1983.<sup>1</sup>

#### II. Jurisdiction and Authority To Fashion Refund Procedures

The general guidelines which the OHA may use to formulate and implement a plan to distribute funds received as the result of a consent order are set forth in 10 CFR Part 205, Subpart V. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds obtained as part of settlement agreements, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

On November 13, 1985, the OHA issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of refunds to parties that can make a reasonable showing of injury as a result of Power Pak's alleged allocation violations in its sales of motor gasoline during the consent order period. 50 FR 47819 (November 20, 1985). The PD&O stated that the basic purpose of a special refund proceeding is to make restitution for injuries that were experienced as a result of actual or alleged violations of the DOE regulations.

In order to give notice to all potentially affected parties, a copy of the Proposed Decision was published in the *Federal Register* and comments regarding the proposed refund procedures were solicited. In addition, copies of the PD&O were mailed to potential claimants identified in the audit file whose addresses were available. Copies were also sent to various service station dealers' associations. None of Power Pak's customers submitted comments on the proposed procedures. Comments were submitted collectively on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. All of these comments concern the distribution of any funds remaining after all refunds have been made to injured parties. However, the purpose of this Decision is to establish procedures for filing and processing claims in the first stage of the Power Pak refund proceeding. Any procedures pertaining to the disposition of any monies remaining after this first stage will necessarily depend on the size of the fund. See *Office Enforcement*, 9

<sup>1</sup> Power Pak paid \$75,102.50 including installment interest into the escrow account. This amount represents the principal which will form the basis for refund calculations. The total value of the Power Pak account stood at \$102,938.48 as of December 31, 1985.

DOE ¶ 82,508 (1981). Therefore, it would be premature for us to address the issues raised by the states at this time. Since no comments were received concerning the first-stage procedures, they will be adopted as proposed.

### III. Refund Procedures

In the first stage of the Power Pak refund proceeding, we will distribute the funds currently in escrow to claimants who demonstrate that they were injured by Power Pak's alleged allocation violations.<sup>2</sup> In order to consider refund applications in the most efficient and equitable way possible in view of the limited resources available, we will adopt a presumption regarding injury.

We will presume that if, during the course of the entire consent order period, a claimant received aggregate volumes of motor gasoline at least equal to its adjusted base period allocation for that period, it was not injured by Power Pak's alleged failure to supply correct volumes during certain months. We believe that this presumption is justified in order to limit eligibility for refunds to only those firms that were most adversely affected by Power Pak's alleged allocation violations. *Aztex Energy Company*, 12 DOE ¶ 85,116 at 88,356 (1984). However, this presumption is rebuttable. For example, we will consider granting a refund to a claimant which shows that the injuries sustained during the months when Power Pak allegedly failed to supply it with its monthly allocations of motor gasoline significantly outweighed any benefits which accrued to the claimant as a result of its receiving more than its monthly allocations during the other months of the consent order period.

Each applicant should submit enough information to demonstrate that its claim is well-founded, including the best available evidence of injury which was sustained as a result of an alleged allocation violation. In assessing the extent of any such injury, we will consider a number of equitable factors such as, for example, whether the alleged violation had a significant deleterious impact on the claimant or caused any loss of profits, *see Aztex*

*Energy Company*, 12 DOE at 88,356 (1984), and whether the applicant had the ability to protect itself by obtaining a replacement supply of the allocated product or by taking other appropriate action. *Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,207 (1982); *Office of Special Counsel*, 9 DOE ¶ 82,545 at 85,246 (1982). Additionally, we will consider the cost and general adequacy of any such replacement supply.

The OHA is also interested in knowing if a claimant took some contemporaneous action to mitigate its injury, since any firm affected by an allocation violation would probably have known of this situation immediately, as contrasted with a firm being overcharged. We might expect that a firm which was denied a portion or all of its gasoline allocation would immediately seek redress by: (1) Filing a complaint with or otherwise notifying the appropriate agency officials, *see* 10 CFR 205.201(a)(d), or (2) filing a private lawsuit under section 210 of the Economic Stabilization Act, or (3) taking some other mitigating action such as filing an exception request, a state set-aside application pursuant to 10 CFR 211.17, or otherwise obtaining substitute supplies. This information along with a consideration of the other equitable factors discussed above will allow the OHA to determine the appropriate refund for a particular claimant.

As in previous cases, only claims for at least \$15 will be processed. This minimum has been adopted in prior refund cases because the cost of processing claims for refunds of less than \$15 outweighs the benefits of restitution in those situations. *See e.g., Uban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b). The same principle applies here.

If valid claims exceed the funds available in the escrow account, all refunds will be reduced proportionately. Actual refunds will be determined after analyzing all appropriate claims.

### IV. Applications for Refund

We have determined that by using the procedures described above, we can distribute the Power Pak consent order funds as equitably and efficiently as possible. Accordingly, we will now accept Applications for Refunds from individuals and firms that were unable to purchase their adjusted base period allocations of motor gasoline from Power Pak between August 1, 1979, and December 31, 1979.

There is no specific application form which must be used. In order to apply for a refund, each claimant must submit the following information:

(1) A description of any actions taken prior to the September 1, 1981 consent order date by which it attempted to mitigate the injury resulting from Power Pak's alleged allocation violations;

(2) Its adjusted base period allocation of motor gasoline from each of its suppliers for each month of the consent order period;

(3) Its actual purchases of motor gasoline from each supplier during each month of the consent order period;

(4) A description of its efforts to locate alternative supplies of motor gasoline; and

(5) A computation of lost net profits sustained as a result of Power Pak's alleged allocation violations.

A claimant must also state:

(6) Whether it has previously received a refund, from any source, with respect to the alleged allocation violations underlying these proceedings;

(7) Whether there has been a change in ownership of the firm since the audit period. If there has been a change in ownership, the applicant must provide the names and addresses of the other owners, and should state the reasons why the refund should be paid to the applicant rather than to the other owners or provide a signed statement from the other owners indicating that they do not claim a refund;

(8) Whether it is or has been involved as a party in DOE enforcement or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must keep OHA informed of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d); and

(9) The name and telephone number of a person who may be contacted by this Office for additional information.

Finally, each application must include the following statement: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. 1001.

All applications must be filed in duplicate and must be received within 90 days from the date of publication of this Decision and Order in the **Federal Register**. A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any applicant which believes that its application contains confidential information must indicate this and submit two additional copies of its application from which the

<sup>2</sup> Many potential claimants, *i.e.*, firms identified in the ERA audit as having purchased less than their adjusted base period allocations of motor gasoline from Power Pak during at least one of the months of the consent order period, are listed in Appendices 1 and 2. Appendix 1 lists potential applicants for which we have complete addresses. In addition to publishing this Decision and Order in the **Federal Register**, we will contact these customers directly. Since we have no addresses for the potential claimants listed in Appendix 2, we will accept information regarding the present locations of these purchasers for a period of 90 days following publication of this Decision and Order.

information has been deleted. All applications should refer to Case No. HEF-0155 and should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

**It Is Therefore Ordered That:**

(1) Applications for Refunds from the funds remitted to Department of Energy by Power Pak Co., Inc. pursuant to the Consent Order executed on September 1, 1981, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Dated: February 3, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

**Appendix 1—Potential Claimants**

Bear Creek Tire & Auto, 5608 Highway 6 North, Houston, TX 77084  
 Condo Oil & Gas Co., 3419 Mercer, Houston, TX 77027  
 Clarke Bottling Co., 1 Clarke Drive, Conroe, TX 77301  
 Community Grocery, 1485 West, New Caney, TX 77357  
 Corner Food Store #6, 5103 F M 1960 Rd. E, Houston, TX 77073  
 Four M. Market, 3001 F M 1266, League City, TX 77573  
 Growing Concern, 6021 Winsome, Houston, TX 77057  
 Gullo-Haas Toyota, 8335 North Freeway, Houston, TX 77068  
 H&M Food Mart, 3599 Spring Stuebner Rd., Spring, TX 77379  
 Handy Man, Inc., 6215 Frazier, S., Conroe, TX 77301  
 Leland Lincoln Mercury, 9645 North Freeway, Houston, TX 77037  
 Oil Chemical, 505 Hadley, Houston, TX 77002  
 Reneau Roofing, 1014 Gatecrest Drive, Houston, TX 77032  
 Tomball Conoco, 1335 W. Main, Tomball, TX 77350  
 Wanda Petroleum, P.O. Box 45896, Houston, TX 77045  
 Webb's Grocery & Feed, 33042 F M 2978, Magnolia, TX 77355  
 World Trade, P.O. Box 60398, Houston, TX 77060

**Appendix 2—Potential Claimants, No Address Available**

Alright Parking  
 Bargain Barn  
 Bellville  
 Big Fulton  
 Big Tin Barn  
 Budget  
 Charles Way  
 Corner Food Store #1  
 Corner Food Store #2  
 Corner Food Store #3

Corner Food Store #4  
 Corner Food Store #5  
 Crosley #1  
 Crosley #2  
 De Montrond Buick  
 Elfex Research and Exploration  
 Express Stop #2  
 Fowler's  
 Friendswood  
 Frizzell Pontiac  
 Fulton Car Wash  
 Galveston #2  
 Harvey's  
 Herman Miller  
 Home Telephone  
 Huntsville Freeway  
 I-10 (#202)  
 J.H.J. Venture  
 Lake Conroe Forest  
 Luke Johnson Ford  
 MPG Oil  
 Margin Drive-In  
 Martinez Conoco  
 Martin's  
 Max Mahaffrey  
 McCarty's  
 National Precast  
 Park Place  
 Plains Machinery  
 Porter Fina  
 Post Oak  
 Roadrunner C/W  
 S & M Food  
 Sam Montgomery  
 Scarborough's  
 Sunny's #1  
 Sunny's #25  
 Tanner's  
 W. Columbia  
 Western C/W  
 Willis  
 3-75

[FR Doc. 86-2897 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

**Issuance of Decisions and Orders; Week of December 9 Through December 13, 1985**

During the week of December 9 through December 13, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeal**

Peat, Marwick, Mitchell & Co., 12/11/85, KFA-0004

Peat, Marwick, Mitchell & Co. filed an Appeal from search fees assessed by the Western Area Power Administration pursuant to a Request for Information which the firm had submitted under the Freedom of Information Act (FOIA). In considering the

Appeal, the DOE found that the firm's FOIA request contained an unconditional promise to pay all search fees assessed by the DOE and, since the authorizing official had not exceeded the scope of the search as authorized by the firm, the assessed fees were reasonable. Accordingly, the Appeal was denied.

**Remedial Orders**

Fields Energy Resources, Inc., V.W. Fields, II, 12/12/85, HRO-0284

Fields Energy Resources, Inc. and V.W. Fields, II, its president, failed to object to a Proposed Remedial Order which the Economic Regulatory Administration issued to them jointly on February 18, 1985. All findings of fact and conclusions of law contained in the PRO were therefore deemed admitted.

The DOE found that ERA had established prima facie violations of the "layering" (10 CFR 212.186) and "PAM" (10 CFR 212.182 and 212.183) regulations, in the amounts of \$561,669.80 and \$45,697.15, respectively. DOE further found that V.W. Fields was jointly and severally liable for the total \$607,366.95 violation. The PRO was modified to require restitutionary proceedings pursuant to 10 CFR Part 205, Subpart V.

Isthmus Trading Corporation, Richard Gonzales, 12/11/85, HRO-0252

Isthmus Trading Corporation and Richard Gonzales, its president, jointly objected to a Proposed Remedial Order which the Economic Regulatory Administration issued to them on September 14, 1984. In the PRO, ERA found that, during the period April through December 1980, Respondents sold crude oil at excessive prices under the layering rule, 10 CFR 212.186 and received \$3,574,849.48 in overcharges. In considering the Respondents' objections, the DOE found that the services Respondents claimed to have performed did not constitute traditional and historical reseller services within the meaning of the regulation. The DOE further found that Richard Gonzales, the corporation's president and primary shareholder, was jointly and severally liable with ITC because he (i) participated in the transactions and (ii) benefited through bonuses and commissions resulting from the transactions. The DOE therefore concluded that the Proposed Remedial Order should be issued as a final order.

Oil-Tex Petroleum, Inc., David E. Myres, 12/10/85, HRO-0161

Oil-Tex Petroleum, Inc. and David E. Myres (Respondents) objected to a Proposed Remedial Order which the Economic Regulatory Administration issued to them. After considering the objections, the DOE found that Respondents had violated DOE regulations concerning layering, certification and permissible average mark up in crude oil sales. The DOE stated that recurring sales to a refiner of crude oil which was subsequently refined by that refiner would involve a traditional, historical service, if the crude oil was not otherwise generally available to the refiner. Such sales would therefore not violate the layering regulation. The DOE further decided that since Myres was

personally involved in and derived personal benefit from the illegal transactions, he should be held personally liable for the resulting overcharges. Accordingly, Respondents were directed to remit \$1,947,101.03 in overcharges, plus interest, to the DOE.

#### Request for Exception

*Union Carbide Caribe, Inc., Phillips Petroleum Company and Phillips Puerto Rico Core, Inc., Commonwealth Oil Refining, Inc., 12/18/85, HEE-0022; HEE-0024; HEE-0025; HEG-0015; HEA-0002; HEA-0003; HEA-0004*

Union Carbide Caribe, Inc., Phillips Petroleum Company and Phillips Puerto Rico Core, Inc., and Commonwealth Oil Refining, Inc. (the Applicants) each filed an Application for Exception from a March 11, 1982 decision of the Economic Regulatory Administration. The ERA had ordered each Applicant to repay excessive entitlement relief that it had received under the Naphtha Entitlements Program, 10 CFR 211.67(d)(5). In the Proposed Decision and Order, the DOE considered the requests for exception relief and concluded that the implementation of the ERA order would further reduce the already insufficient benefits received by the Applicants under the Naphtha Entitlements Program. No Applicant objected to this conclusion in the Proposed Decision and Order. Accordingly, the requested exception relief from the March 11, 1982 ERA order was granted. Commonwealth Oil Refining, Inc. filed a Statement of Objections to the Proposed Decision and Order in which it argued that although the Proposed Decision and Order properly granted the requested relief, it did not address the firm's additional request for prospective and retroactive exception relief from ERA's use of a single crude runs credit as a cap on the firm's entitlements benefits rather than a modified crude runs credit. In considering Commonwealth Oil's Statement of Objections, the DOE concluded that the firm's request for prospective exception relief was moot because of a decision by ERA in January 1981 to eliminate any cap on naphtha entitlements benefits. The DOE also concluded that the firm's request for retroactive exception relief should be denied because the firm could not show that in the absence of the requested relief, it would suffer irreparable injury. Accordingly, Commonwealth Oil's additional request for prospective and retroactive relief was denied.

*Tommy Oil Company, 12/13/85, HRD-0120; HRH-0120; KRZ-0011*

Tommy Oil Company filed a Motion to Dismiss and Motions for Discovery and Evidentiary Hearing in connection with its Statement of Objections to a Proposed Remedial Order that the Economic Regulatory Administration issued to the firm on October 29, 1982. In considering the Motion to Dismiss, the DOE determined that the PRO established a prima facie case of a regulatory violation and, accordingly, denied the motion. In considering the firm's Motion for Discovery, the DOE determined that contemporaneous construction discovery was unwarranted because the firm failed to

establish that the regulations at issue were ambiguous or inconsistently applied or interpreted by the DOE. The DOE also found that audit-related discovery was unnecessary since the audit methodology employed in this proceeding had been fully explained by the ERA in the PRO and had been elaborated upon in other submissions. Accordingly, the Motion for Discovery was denied. Finally, in considering the Motion for Evidentiary Hearing, the DOE determined that an evidentiary hearing should not be convened because the firm failed to present any disputed material issues of fact. Accordingly, that motion was also denied.

*Eason Oil Company, 12/10/85, KEX-0004*

The Economic Regulatory Administration requested a review of the propriety of exception relief that was granted to Eason Oil Company. See *International Telephone & Telegraph Co.*, No. DXE-0921 (April 20, 1978) (unpublished decision). In considering the ERA's request, the DOE found that very serious questions existed regarding the level of general and administrative expenses reported during Eason's acquisition by the International Telephone and Telegraph Company. Accordingly, the DOE found that good cause existed for reopening the prior exception proceeding. In order to evaluate the propriety of the exception relief, the DOE required Eason to submit a breakdown of the expenses it included in its "General and Administrative Expenses" for several fiscal quarters. Furthermore, the DOE required Eason to submit an explanation for any changes of more than five percent from the level in those prior quarters.

#### Implementation of Special Refund Procedures

*Conlo Service, Inc., 12/13/85, HEF-0053*

The DOE issued a Decision and Order which establishes procedures for the distribution of funds totalling \$5,615.95 obtained as a result of a Consent Order entered into between the DOE and Conlo Service, Inc. of East Farmingdale, New York. The Decision sets forth refund application procedures for customers who purchased motor gasoline from Conlo during the period covered by the Consent Order, April 1, 1979 through September 30, 1979. The Decision outlines specific information to be included in refund applications and discusses certain presumptions and findings which the DOE will utilize in analyzing the applications.

*Conoco Inc., 12/12/85, HEF-0010; HEF-0484*

The DOE issued a Decision and Order which establishes procedures to be used for distributing \$14 million received from Conoco pursuant to a 1982 consent order. The consent order settled all disputes regarding Conoco's compliance with the DOE petroleum price and allocation regulations. The funds, plus accrued interest, will be available to customers who were injured as a result of their purchases of covered petroleum products from Conoco during the consent order period, January 1, 1973 through January 27, 1981. The Decision outlines specific information to be included in refund applications and discusses certain presumptions and findings which the DOE will utilize in analyzing the applications.

*OKC Corporation, 12/13/85, KQF-0011*

The DOE issued a Decision and Order which establishes criteria for the second stage disbursement of \$1,981,111 in consent order funds provided by OKC Corporation. The DOE determined that the adverse effects of OKC's pricing practices during the consent order period were regional in nature, and generally confined to ten states in which OKC conducted the bulk of its business operations. The DOE therefore divided the funds remaining in the refined products pool of the OKC escrow account among the ten states in shares which reflect the volume of price-controlled OKC products consumed in each State during the consent order period. The DOE also provided that the funds would be disbursed upon the approval OHA of restitutionary plans submitted by the states.

#### Refund Applications

*Crystal Petroleum/Tesoro Petroleum Distributing Company, 12/12/85, RF190-1*

The DOE issued a Decision and Order concerning an Application for Refund filed by Tesoro Petroleum Distributing Company (Pedco), a reseller of No. 2 diesel fuel purchased from Crystal Petroleum. Pedco provided purchase volume figures for the consent order period and requested a refund below the \$5,000 threshold level. In accordance with the procedures established in the Crystal Special Refund Proceeding, the DOE determined that Pedco should receive a refund based on the volumes of No. 2 diesel fuel it purchased from Crystal during the consent order period. The total refund amount approved in this Decision is \$2,057 (\$1,353 principal plus \$704 interest).

*F.O. Fletcher, Inc./Blue & White Transport, Inc., 12/13/85, RF172-16*

The DOE issued a Decision and Order concerning an Application for Refund filed by Blue & White Transport, Inc. (BWT), a reseller of motor gasoline and diesel fuel purchased from F.O. Fletcher, Inc. BWT requested a refund of \$11,915, a prorated portion of the alleged overcharges to the firm, but was unable to make a sufficient showing of injury at that level. In accordance with the procedures established in the Fletcher Special Refund Proceeding, the DOE determined that BWT should receive a refund equal to the \$5,000 threshold amount. The total refund amount granted in this Decision is \$9,394 (\$5,000 principal plus \$4,394 interest).

*Gulf Oil Corporation/Hicks Plaza, Inc., 12/10/85, RF40-449*

The DOE issued a Decision and Order concerning an Application for Refund filed by Hicks Plaza, Inc., a direct purchaser of Gulf Oil Corporation petroleum products. Hicks applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. To support its refund claim, Hicks presented material indicating that it banked approximately \$300,000 in increased product costs during the period October 1974 through February 1975, and that those product costs were not subsequently recouped. The DOE concluded that Hicks

would not have been required to reduce selling prices to its customers by the amount of the claimed refund, and that the firm therefore is eligible for a refund based on its purchases from Gulf during the period October 1974 through January 1976 (the end of the consent order period). The DOE granted Hicks a total refund of \$27,013 (\$23,208 principal plus \$3,805 interest).

*Gulf Oil Corporation/Spartan V&H Oil Company, 12/12/85, RF40-3081*

The DOE issued a Decision and Order concerning a November 12, 1985 Decision and Order, *Gulf Oil Corp./Gordon C. Varn, Inc.*, 13 DOE ¶ 85,264 (1985). The DOE determined that the November 12 Decision had granted Spartan V&H Oil Company an excessive refund. Accordingly, the DOE required Bassman, Mitchell and Alfano, representing Spartan, to remit to the DOE \$508 for deposit into the Gulf escrow fund account.

*Joc Oil, Inc./Tenneco Oil Company and Joc Oil, Inc./Amerada Hess Corporation, 12/09/85, RF109-1; RF109-3*

The DOE issued a Decision and Order concerning Applications for Refund filed by Tenneco Oil Company and Amerada Hess Corporation, each seeking a portion of funds remitted by Joc Oil, Inc. pursuant to a consent order that Joc Oil entered into with the DOE. The DOE found that the refund applications filed by Tenneco and Amerada Hess were based upon their spot purchases which did not reflect a supplier/purchaser relationship with Joc Oil. The DOE stated that the firms' discretionary decision to make the spot purchases was very likely to have served their profit goals. Since there was no evidence that Tenneco and Amerada Hess were injured from their spot purchases from Joc Oil, the DOE denies their refund requests.

*Little America Refining Company, Inc. Lockhart, 12/13/85, RF112-3*

The DOE issued a Decision and Order concerning an Applications for Refund filed by Lockhart, seeking a portion of funds remitted by Little America Refining Company, Inc. (Larco), pursuant to a consent order that Larco entered into with the DOE. Lockhart claimed that it purchased 102,051 gallons of motor gasoline from Larco during the consent order period. Based on the per gallon refund money available, Lockhart would be eligible for a refund of \$36.55 plus accrued interest. Since Lockhart's claim did not exceed the threshold level of \$5,000, the DOE applied the presumption of injury method, and approved Lockhart's refund request without requiring a proof of injury.

*Palo Pinto Oil & Gas/Mississippi, 12/13/85, RQ5-257*

The DOE issued a Supplemental Order rescinding an earlier Supplemental Order. The earlier Supplemental Order authorized the disbursement of an additional second stage refund of \$5,678 from the Palo Pinto Oil & Gas escrow account to the State of Mississippi. See *Palo Pinto Oil & Gas/Mississippi*, 13 DOE ¶ 85,313 (1985).

*Tenneco Oil Company/Major Oil Company of Georgia, 12/13/85, RR7-8; RR7-9*

Major Oil Company of Georgia filed two Motions for Reconsideration in connection

with its Application for Refund for a portion of the Tenneco consent order funds. At the time of its original application in 1982, the firm had failed to provide cost bank information and was therefore limited to the 600,000-gallon annual threshold. Major filed two Motions for Modification in March 1985, which were denied by the DOE. In considering the firm's subsequent Motions for Reconsideration, the DOE found that because of the administrative ease in reevaluating Major's data and the relatively small size of the claim, the DOE should reconsider Major's application.

Major submitted reconstructed cost bank figures sufficient to support its motor gasoline refund claim. In addition, it provided information from *Platt's* as evidence of competitive disadvantage. For regular and premium grades of gasoline, Major was granted a refund for gallons purchased in months when its purchase price was higher than *Platt's* average market price for the region. For unleaded gasoline, Major was granted a refund for the post-July 1975 period for gallons purchased in months when its purchase price was higher than EIA price data for those months and a refund for earlier months based on data extrapolated therefrom.

Major had previously received a Tenneco refund of \$1,358 based on 3,970,954 gallons. The DOE therefore subtracted this amount from Major's total refund and granted the firm an additional refund of \$2,101 (\$1,333 principal plus \$768 interest) based on additional purchases of 3,897,925 gallons.

*Texas Oil and Gas Corporation/Gulf States Oil & Refining Company, 12/10/85, FR42-11*

Gulf States Oil & Refining Company (Gulf States) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Texas Oil and Gas Corporation (TOGCO). The DOE found that Gulf States paid above-market average prices for propane in all of the months in which purchases were made during the TOGCO consent order period. Using a three-step methodology, the DOE calculated a range of Gulf States' competitive disadvantage. A refund of \$83,159.24 was found to equitably compensate Gulf States for any harm experienced as a result of TOGCO's alleged overcharges. In addition, the firm received accrued interest of \$39,634.35 for a total refund of \$122,793.59.

**Dismissals**

The following submissions were dismissed:

*Name and Case No.*

Defense Fuel Supply Center—RF192-5  
Fields Energy Resources, Inc./V. W. Fields II—KRW-0001  
Hill Petroleum Company—RF42-2

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except

federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*  
February 3, 1986.

[FR Doc. 86-2898 Filed 2-7-86; 8:45 am]  
BILLING CODE 6450-01-M

**Issuance of Decisions and Orders;  
Week of January 13 Through January  
17, 1986**

During the week of January 13 through January 17, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Appeals**

*Crown Central Petroleum Corporation, 1/17/86, HEA-0008*

Crown Central Petroleum Corporation (Crown) filed an Appeal challenging ERA's authority to issue ERA Order No. 85-1, entitled "Decision and Order Concerning The March 20, 1981 Refiling By The Crown Central Petroleum Corporation." In its Order, ERA determined that Crown's March 20, 1981 refiling of certain of its refiner's monthly cost allocation reports was without force and effect, in its entirety, for any use in connection with the Mandatory Petroleum Price and Allocation Regulations. After considering Crown's claims, OHA concluded that ERA has independent jurisdiction to issue Order No. 85-1 and that the principal conclusions contained in ERA's Order are consistent with previous OHA decisions. Accordingly, OHA denied Crown's Appeal.

*W.F. Lawless, 1/14/86, KFA-0005*

W.F. Lawless filed an Appeal from a partial denial by the Assistant Manager for Administration of the Richland Operations Office of the Department of Energy (DOE) of a Request for Information which the Appellant had submitted under the Freedom of Information Act (FOIA). In his original request, the Appellant asked for all documents regarding high level waste tanks that could not meet certain requirements. The initial determination stated that no such requirements existed and, consequently, there could be no responsive documents. In considering the Appeal, the DOE concluded that an adequate search had been performed and that no such requirements existed. Accordingly, the DOE affirmed the initial determination and denied the Appeal.

*Dr. Ping-Wha Lin, 1/16/86, KFA-0003*

Dr. Ping-Wha Lin filed an appeal from a partial denial by the DOE's Pittsburgh Energy Technology Center of a Request for Information which he had submitted under

the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the proposal scorings, written proposal evaluations, proposal evaluation summaries, proposal rankings, proposal score averages and proposal recommendations made by an evaluation committee which were forwarded to a source selection official who made a final decision were exempt from mandatory disclosure by the "deliberative process" privilege incorporated into Exemption 5 of the FOIA. In addition, the DOE found home addresses of DOE employees to be exempt from mandatory disclosure because of the privacy considerations embodied in Exemption 6. However, the DOE found that factual materials in proposal evaluations such as document titles, headings, evaluation weights and criteria, dates, and proposal numbers initially withheld under Exemption 5 should be released to the public. The DOE also found that, absent special considerations not present in this case, DOE employee names are not shielded from mandatory disclosure by Exemption 5. Accordingly, the Appeal was granted in part.

#### Motions for Discovery

*Cities Service Oil and Gas Corporation, 1/13/86, HRD-0265; HRH-0285*

Cities Service Oil & Gas Corporation filed a Motion for Discovery and Evidentiary Hearing in connection with a Proposed Remedial Order issued to the firm by the ERA on March 5, 1985. In the PRO, the ERA alleged that during the audit period, Cities, through the use of reciprocal crude oil trades, violated the provisions of the Mandatory Petroleum Price Regulations in the aggregate amount of \$264 million.

In its Motion for Discovery, Cities propounded a set of interrogatories and requests for documents that the firm alleged related to the issues in dispute in the March 5 PRO. In denying Cities' request for discovery, the DOE found that the material requested by the firm would not advance the resolution of the issues in dispute in the proceeding. In addition, the DOE found that after the initiation of the proceeding, Cities had received from the ERA a substantial amount of the material that it had requested. Accordingly the DOE found that discovery was not necessary for the resolution of the issues in dispute in this case.

In connection with Cities' Motion for Evidentiary Hearing, the DOE determined that an evidentiary hearing should be convened in this case. The March 5 PRO found that the substantial discount that Cities received in exchanging price-controlled crude oil for uncontrolled crude oil constituted extra consideration for the sale of the firm's price-controlled crude oil. The DOE found that the reason why the substantial discount was offered to Cities for the uncontrolled crude oil that it purchased in the reciprocal crude oil agreements was the central issue that must be resolved in this proceeding. The DOE therefore determined that Cities should be permitted to demonstrate what its traders knew regarding the reasons why the substantial discount was offered to the firm.

The DOE also found that an evidentiary hearing should be convened on another aspect of this case. In its pleadings, Cities

stated that it could demonstrate that it passed along to consumers a substantial portion of the excessive regulatory benefits that it received. In exercising its discretion to grant Cities' request, the DOE determined that convening an evidentiary hearing would be appropriate due to the complexity of this issue. Accordingly, the firm's motion for an evidentiary hearing was granted.

*Doram Energy Inc. and Damson Oil Corporation, 1/16/86, HRD-0145; HRH-0145*

Doram Energy Inc. (Doram) and Damson Oil Corporation (Damson) filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with a Proposed Remedial Order (PRO) issued to the firms on March 9, 1983. In the PRO, the ERA alleges that Doram and Damson violated the "anti-layering" provisions of 10 CFR Part 212, Subpart L. In the Motion for Discovery, Doram and Damson sought information regarding: (1) The audit of the firm, (2) the administrative record for various rulemakings applicable to crude oil resellers, and (3) the DOE's contemporaneous construction of portions of the crude oil reseller regulations. Doram and Damson's Motion for Evidentiary hearing requested that OHA convene a hearing for the purpose of receiving oral testimony regarding the services that the firms provided in connection with the sales of crude oil that are the subject of the PRO.

In the Decision and Order, the DOE determined that the requested discovery would not elicit evidence that was material and relevant to the issues involved in the PRO, and that neither firm demonstrated that there were issues of fact in this proceeding that would benefit from an evidentiary hearing. Accordingly, both motions were denied. The DOE allowed the firms, however, to submit additional evidence regarding whether the services they provided in connection with the resale of crude oil were traditional and historical reseller services.

*Lantern Petroleum Corporation, 1/14/86, HRD-0265; HRH-0265*

Lantern Petroleum corporation filed Motions for Discovery and Evidentiary Hearing in connection with its Statement of Objections to a Proposed Remedial order. The DOE found that these Motions, relating to the DOE's crude oil resellers regulations, were identical to those denied in *MAPCO International, Inc.*, 13 DOE ¶ 84,003 (1985). Since there were no differences in the circumstances of these cases which would make the reasoning of the MAPCO Decision inapplicable to the present proceeding, the Motions were denied for the reasons set forth in the MAPCO Decision.

#### Implementation of Special Refund Procedures

*Pride Refining, Inc., 1/13/86, HEF-0218*

The DOE issued a decision and Order implementing procedures to distribute \$600,000 remitted by Pride Refining, Inc. (Pride) pursuant to a consent order entered into with the DOE in settlement of the DOE's allegations that Pride had violated the Mandatory Petroleum Price and Allocation Regulations during the consent order period January 1, 1973 through January 27, 1981. The Decision provided that refunds would be

distributed to purchasers of refined petroleum products from Pride during the consent order period who can demonstrate that they were injured by Pride's alleged regulatory violations. The Decision sets forth specific information to be included in refund applications.

*Richardson Ayres Jobber, Inc., 1/13/86, HEF-0166*

The DOE issued a decision and Order implementing a plan for the distribution of \$115,695.89 received pursuant to a consent order entered into by Richardson Ayres Jobber, Inc. (Ayres) and the DOE on September 29, 1981. The DOE determined that the Ayres settlement fund should be distributed to customers that purchased Ayres motor gasoline and No. 2 diesel fuel during the period November 1, 1973 through April 30, 1974. The specific information to be included in refund applications is set forth in the Decision.

#### Refund Applications

*Foster Oil Company/Yezbick Corporation, Inc., 1/16/86, RF146-2*

The DOE issued a Decision and Order concerning an Application for Refund filed by Yezbick Corporation, a reseller of motor gasoline purchased from Foster Oil Company. In accordance with the procedures set forth in the Foster Special Refund Proceeding, the DOE determined that Yezbick should receive a refund of \$5,000, the maximum small claims refund. The total refund granted in this Decision is \$8,017, representing \$5,000 in principal and \$3,017 in interest.

*Franks Petroleum, Inc./, Tesoro Petroleum Corporation, Inc., 1/13/86, RF156-1*

Tesoro Petroleum Corporation filed an Application for Refund in the Franks Petroleum, Inc. refund proceeding. Tesoro stated that it purchased 16,262,995 gallons of covered products during the Franks consent order period, and would be eligible for a refund of \$34,438. Tesoro elected to limit its claim, however, to the threshold small claims refund amount of \$5,000. The firm was therefore granted a refund of \$5,000 plus \$2,050.84 in accrued interest.

*Gulf Oil Corporation/Armour Oil Company, Inc., 1/13/86, RF40-3016*

Armour Oil Company sought a portion of the Gulf Oil Corporation consent order fund based upon settlement of a private claim by Armour arising out of alleged cost violations by Gulf during the consent order period. The refund procedures allow for consideration of applications of this type, provided the amount of the settlement is approved by the Office of Special Counsel. After verifying that the Application meets the criteria established in the refund procedures, the DOE concluded that Armour should receive a refund based on the amount of its settlement with Gulf. Accordingly, the Application for Refund was granted.

*Gulf Oil Corporation/Clark's Service Station, 1/16/86, RF40-756*

The DOE Issued a Decision and Order concerning an Application for refund filed by a retailer of motor gasoline, Carmel G. Clark, owner of Clark's Service Station, in

connection with the Gulf Oil Corporation refund proceeding. In considering the application, the DOE found that Clark failed to demonstrate that he would not have been required to reduce selling prices to his customers by the amount of refund he was claiming. Since that showing is a prerequisite for resellers and retailers applying for refunds from the Gulf escrow account, the DOE denied Clark's refund claim.

*Gulf Oil Corporation/Schrof Oil company, et al.*, 1/13/86, RF40-88, et al.

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation deposit escrow fund to 14 purchasers of Gulf refined petroleum products. All of the refund applicants are resellers or retailers who demonstrated that they would not have been required to reduce selling prices to their customers by the amount of refund they received. The refunds to these firms total \$81,563, representing \$69,587 in principal and \$11,976 in interest.

*Gulf Oil Corporation/Stephen H. Sack, et al.*, 1/16/86, RF40-811, et al.

The DOE issued a Decision and Order concerning 14 Applications for Refund filed by retailers and resellers of Gulf covered refined petroleum products and natural gas liquid products. All of the claimants applied for refunds based on the volumetric presumption outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). Certain of the refunds were adjusted as a result of a finding that those applicants had negative banks of unrecouped increased product costs for portions of the consent order period. The total amount of refunds granted in this Decision is \$614,621.

*Husky Oil Company/Direct Sales Tire Company, et al.*, 1/17/86, RF161-55, et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund filed by Direct Sales Tire Company, et al. Each of the applicants had purchased refined petroleum products from Husky Oil Company, and each sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Husky. Although the applicants were eligible to apply for refunds greater than \$5,000, they elected to limit their claims to \$5,000 and apply for a refund under the small claims procedures outlined in *Office of Special Counsel*, 9 DOE ¶ 81,538 (1982). After examining the evidence and supporting information submitted by the firms, the DOE concluded that each of the 13 firms should receive a refund, based on its volumetric per gallon refund amount, as described in the Appendix to the Decision. The total amount of refunds granted in this Decision is \$84,216.

*Little America Refining company/Davidson Oil & Supply, et al.*, 1/16/86, RF112-53, et al.

The DOE issued a Decision and Order granting refunds from the Little America Refining Company (Larco) deposit escrow account to 29 purchasers of Larco covered products. All of the applicants submitted claims for less than the \$5,000 threshold small claims refund amount. The refunds in this Decision total \$62,155, representing \$42,194 in principal and \$19,961 in interest.

*Little America Refining Company/ Intermountain Farmers Association, Consolidated Freightways, 1/13/86, RF112-52, RF112-159*

The DOE issued a Decision and Order granting refunds from the Little America Refining Company (Larco) deposit escrow account to two purchasers of Larco covered products, Consolidated Freightways and the International Farmers Association. The DOE determined that both of the applicants were eligible for consideration under the ultimate consumer presumption of injury, and therefore did not require either to submit a detailed showing of injury. Accordingly, the DOE granted refunds totalling \$2,950, representing \$2,003 in principal and \$947 in interest.

*Little America Refining Company/K.Q. Oil, Inc. and B & B Oil Company, 1/14/86, RF112-185; RF112-186*

The DOE issued a supplemental Decision and Order granting additional refunds from the Little America Refining Company deposit escrow account to two purchasers of covered products who had revised their original claims to a higher, documented total. The additional refunds to these firms total \$1,097, representing \$745 in principal and \$352 in interest.

*National Helium Corporation/Washington, RQ3-234; Perry Gas Processors, Inc./ Washington, RQ183-235; Coline Gasoline Corporation/Washington, 1/13/86, RQ2-236*

The State of Washington filed a proposed second-stage refund plan with the Office of Hearings and Appeals (OHA) pursuant to Decisions and Orders establishing procedures for the disbursement of funds obtained under Consent Orders with National Helium Corporation, Perry Gas Processors, Inc., and Coline Gasoline Corporation. Washington proposed to use the refunds to fund traffic light synchronization in major Washington cities, blower door testing and oil furnace retrofits for low-income residents, park and ride lots and an alternative fuels project for vehicle fleets. The OHA approved the alternative fuels project for private fleets only and fully approved all other plans. The OHA concluded that Washington's proposed restitutionary plan would benefit consumers of motor gasoline who were injured by the alleged overcharges. Accordingly, a refund of \$770,834 was approved.

*Plateau, Inc./Jim Dible Oil Company and Clark's Service Station, 1/13/86, RF204-4; RF204-5*

The DOE issued a Decision and Order granting refunds from the Plateau, Inc. deposit escrow account to two purchasers of Plateau covered products. Both claims were under the small claims threshold. The refunds granted in this proceeding total \$11,235, representing \$7,424 in principal and \$3,811 in interest.

*Seminole Refining, Inc./Jasper Laundry and Dry Cleaners, 1/16/86, RF111-10*

Jasper Laundry and Dry Cleaners (Jasper) filed an Application for Refund in which it sought a portion of the fund obtained by the

DOE through a consent order entered into with Seminole Refining, Inc. (Seminole). The applicant claimed a refund on the basis of its purchase of 129,492 gallons of No. 4 fuel oil from Seminole during the consent order period. The DOE determined that Jasper was an end-user of the No. 4 fuel oil purchased from Seminole and was therefore entitled to a refund. The DOE therefore granted Jasper a refund in the amount of \$1,359.42, representing \$810.62 in principal and \$548.80 in accrued interest.

*Witco Chemical Corporation/Consolidated Oil Company, 1/16/86, RF115-3*

Consolidated Oil Company (Consolidated) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Witco Chemical Corporation (Witco). The firm claimed a refund on the basis of its purchase of 336,520 gallons of lubricating oils from Witco during the consent order period; however, we considered only those volumes (280,276 gallons) purchased through August 31, 1976, since the prices of lubricating oils were exempt from price controls, effective September 1, 1976. The DOE determined that Consolidated's claim was below the presumption of injury threshold level of \$5,000. The DOE therefore granted Consolidated a refund of \$1,139.02, representing \$719.75 in principal and \$419.27 in accrued interest.

#### Dismissals

The following submissions were dismissed:

#### Company Name and Case No.

Elkton Gulf—RF40-1586  
Green's Crichton Gulf—RF40-1411  
Hazlet Plaza Gulf—RF40-1412  
Jim's Cedar City Gulf—RF40-1429  
Keeble's Service Center—RF40-1484  
Lea Exploration, Inc.—KRO-0160  
Muyl Wayne Bright—RF40-1088  
Richard C. Krausmann—RF40-464  
Seven Harbors Auto—RF40-1496  
State of Nevada—RF40-1687

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,  
Director, Office of Hearings and Appeals.  
February 3, 1986.

[FR Doc. 86-2899 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

### Issuance of Decisions and Orders; Week of January 20 Through January 24, 1986

During the week of January 20 through January 24, 1986, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

#### Supplemental Order

*Consolidated Materials, Inc., Economic Regulatory Administration, 1/24/86 KRX-0008; KRZ-0017*

On December 13, 1985, the Economic Regulatory Administration filed a memorandum setting forth its factual and legal arguments in connection with the enforcement proceeding involving Consolidated Materials, Inc. ERA also filed a Motion to Strike a response submitted by Consolidated. On December 19, 1986, Consolidated filed its memorandum accompanied by a memorandum regarding discovery and an additional witness nomination. All of the above-referenced submissions and requests pertain to the evidentiary hearing to be convened in connection with the Consolidated enforcement proceeding. In considering the requests described above, OHA determined that the additional witness list submitted by Consolidated be approved, that the Motion to Strike be denied, and that Consolidated's discovery requests be denied.

#### Implementation of Special Refund Procedures

*Brownlie, Wallace, Armstrong, & Bander, HER-0564; Cordele Operating Company, HEF-0565; H.H. Gungoll & Associates, 1/21/86, HEF-0572*

The Department of Energy issued a final Decision and Order setting forth procedures to be used in a Special Refund Proceeding involving \$1,912,000 received by the DOE in connection with a Remedial Order issued to H.H. Gungoll & Associates on April 5, 1984, and with consent orders entered into between the DOE and Brownlie, Wallace, Armstrong & Bander and Cordele Operating Company. Each of the firms was a producer of crude oil during the period in which the DOE Entitlements Program operated. The refund money will be distributed in accordance with Departmental policies.

*Crystal Oil Company, 1/21/86, HEF-0204*

The DOE issued a Decision and Order implementing procedures to distribute \$1,041,462.73 remitted by Crystal Oil Company (Crystal) under the terms of a 1981 consent order settling the DOE's allegations that Crystal had violated the Mandatory Petroleum Price Regulations during the period August 19, 1973 through December 31, 1975 (the consent order period). The Decision provided that refunds would be granted to purchasers of refined petroleum products from Crystal during the consent order period who can demonstrate that they were injured by Crystal's alleged overcharges. Specific

information to be included in refund applications is set forth in the Decision.

*Earth Resources Company, 1/23/86, HEF-0205*

The DOE issued a Decision and Order setting forth procedures to be used for distributing \$10,938,130.18 plus accrued interest received from Earth Resources Company (ERC) pursuant to a 1981 consent order. The consent order settled all disputes regarding ERC's compliance with the DOE petroleum price and allocation regulations during the period August 9, 1973 through January 28, 1981. The funds will be available to customers who were injured as a result of their purchases of covered petroleum products from ERC during the consent order period. The Decision outlines specific information to be included in refund applications and discusses certain presumptions and findings which the DOE will utilize in analyzing the applications.

*Juniper Petroleum Corporation, 1/21/86, HEF-0579*

The Department of Energy issued a final Decision and Order setting forth procedures to be used in a Special Refund Proceeding involving \$568,000 received by the DOE in connection with a lawsuit Juniper Petroleum Corporation filed challenging the DOE regulations governing the sale of crude oil produced from "stripper well properties." The refund money will be distributed in accordance with Departmental policies.

#### Refund Applications

*Gulf Oil Corporation/Bryan's Gulf Service Station et al., 1/21/86, RF40-02217 et al.*

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation deposit escrow fund to 20 purchasers of Gulf refined petroleum products. The refunds of these firms totaled \$23,473, representing \$20,026 in principal and \$3,447 in interest. All the refund applicants are retailers who demonstrated that they would not have been required to reduce their selling prices to their customers by the amount of the refund they received.

*Gulf Oil Corporation/C.F. Canter Oil Company, Inc., 1/22/86, RF40-1017*

C.F. Canter Oil Company, a consignee of Gulf motor gasolines filed an Application for Refund seeking a portion of the consent order fund made available by the Gulf Oil Corporation. Canter, who is located in Tennessee, demonstrated that the state's overall gasoline consumption during the consent order period increased 13.45 percent, while its own total sales volume of gasoline during that period declined .6 percent. The DOE therefore determined that Canter was injured by Gulf's allegedly uncompetitive prices. Canter's refund was calculated by multiplying the 11,948,450 gallons of motor gasoline Gulf consigned to Canter during the consent order period, Canter's 14.05 percent loss of potential sales, and the Gulf volumetric refund amount of \$.00122. Accordingly, the firm received a total refund of \$2,384, including \$2,048 in principal and \$336 in interest.

*Gulf Oil Corporation/Donald R. Ermel, 1/22/86, RF40-03090*

Subsequent to the issuance of *Gulf Oil Corporation/Sun City Gulf*, 13 DOE ¶ 85,332 (1985), the DOE discovered that one of the claimants, Donald R. Ermel, had understated his Gulf motor gasoline purchase volume figures, according to records provided by Gulf. The DOE therefore issued a Supplemental Order to Donald R. Ermel granting him an additional refund of \$172.

*Gulf Oil Corp./Florida Aviation Fueling Company, Inc. et al., 1/21/86, RF40-333 et al.*

The DOE issued a Decision and Order concerning 30 Applications for Refund filed by end-users of petroleum products purchased from the Gulf Oil Corporation. In its Decision, the DOE granted the 30 applications under the standards and methods specified in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The refunds granted in this proceeding total \$229,350, representing \$195,673 in principal and \$33,677 in interest.

*Gulf Oil Corp./Hamilton Taxi & Baggage Company et al., 1/21/86, RF40-27 et al.*

The DOE issued a Decision and Order concerning 36 Applications for Refund filed by end-users of petroleum products purchased from the Gulf Oil Corporation. In its Decision, the DOE granted the 36 applications under the standards and methods specified in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). The refunds granted in this proceeding total \$71,506, representing \$61,001 in principal and \$10,505 in interest.

*Houston Natural Gas Corporation/Tenneco Oil Company, 1/24/86, RF53-4*

The DOE issued a Decision and Order granting an Application for Refund filed by Tenneco Oil Company from the Houston Natural Gas Corporation consent order fund. The refund approved in this Decision is \$5,310 (\$3,594 in principal and \$1,716 in interest.)

*MAPCO, Inc./Shell Oil Company, 1/24/86, RF108-2*

Shell Oil Company (Shell) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with MAPCO, Inc. (MAPCO). The firm claimed a refund on the basis of its purchase of 1,703,772 gallons of natural gasoline from MAPCO during the consent order period. The DOE determined that Shell's claim was below the presumption of injury threshold level of \$5,000. The DOE therefore granted Shell a refund of \$3,066.79 plus accrued interest of \$2,254.2 for a total refund of \$5,321.01.

*National Helium Corporation/Nevada et al., 1/23/86, RQ3-195 et al.*

The DOE issued a Decision and Order approving in part the second-stage refund plans of Nevada, Maryland, and New Jersey for use of funds from the National Helium Corporation, Coline Gasoline Corporation, and Perry Gas Processors, Inc. escrow accounts. Nevada plans to use \$714 from Coline to supplement its Park and Ride program. Maryland will use \$124,623 from National Helium, Coline, and Perry Gas to implement a vehicle fleet management

program. New Jersey will use \$90,588 from National Helium and Coline to retrofit New Jersey Transit buses with aluminum wheels. The OHS found these programs to be restitutionary to injured motor gasoline consumers.

*National Helium Corp./Washington, 1/23/86, RQ3-265*

The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) issued a Supplemental Order to the State of Washington. In the Order, the OHA corrected an inadvertent error in the amount of the refund to be disbursed to Washington pursuant to the second-stage National Helium special refund proceedings. Washington's refund was misstated as \$760,834 when it should have been \$770,834.

*U.S. Compressed Gas Co./FMC Corporation, 1/24/86, RF54-1*

FMC Corporation filed an Application for Refund in the U.S. Compressed Gas Co. (USC) refund proceeding. FMC stated that it purchased 1,966,197 gallons of covered products during the USC consent order period, and requested a refund of \$2,351.32. FMC stated that it used the products purchased from USC in its food and pharmaceutical operations. Since FMC was an end-user of the covered products, the DOE approved the firm's refund request without requiring additional proof of injury.

*Webco Southern Oil, Inc./Airport Fina, 1/23/86, RF202-1*

The DOE issued a Decision and Order concerning the Application for Refund from the Webco Southern Oil, Inc. escrow account filed by Airport Fina. Airport Fina applied for a volumetric refund based on the presumption of injury for small claims. *Webco Southern Oil, Inc.* 12 DOE ¶ 85,209 (1985). After examining the evidence and supporting information submitted by the applicant, the DOE concluded that Airport Fina should receive a refund of \$1,250.

**Dismissals**

The following submissions were dismissed:

*Name and Case No.*

Champlin Pet. Company—RF13-16  
Cities Service Company—RF13-25  
Commonwealth Oil Ref. Co.—RF13-2  
Stand. Oil Co. (Ind.)—RF13-28

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*  
January 31, 1986.

[FR Doc. 86-2900 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

**Issuance of Proposed Decision and Order; Period of December 23, 1985 Through January 10, 1986**

During the period of December 23, 1985 through January 10, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within the ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service or the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: January 28, 1986.

**George B. Breznay,**

*Director Office of Hearings and Appeals.*

*Ed Flood Oil Co., Inc., Amarillo, Texas; KEE-0006*

Ed Flood Oil Co., Inc. filed an Application for Exception from the requirement that it file Form EIA-782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report." On January 9, 1986, the Department of Energy issued a Proposed Decision and Order which tentatively determined that the exception request should be denied.

[FR Doc. 86-2841 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

**Issuance of Decisions and Orders; Week of December 30, 1985 Through January 3, 1986**

During the week of December 30, 1985 through January 3, 1986, the decisions and orders summarized below were issued with respect to applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

**Requests for Exception**

*The Anschutz Corporation, 12/31/85; KEE-0004*

The Anschutz Corporation filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-758(A) with the DOE Energy Information Administration regarding one of the firm's natural gas wells. In considering the request, the DOE determined that since the well chosen by the EIA for its survey was the subject of litigation, the potential cost and damage facing Anschutz if adverse litigants obtained the information on Form EIA-758(A) constituted a gross inequity. Accordingly, the exception request was granted.

*City Ice and Fuel Company, 12/31/85; KEE-0003*

City Ice and Fuel Company filed an Application for Exception in which the firm sought to be relieved of the requirement to file Form EIA-782B with the DOE Energy Information Administration. In considering the request, the DOE found that City Ice was not unduly burdened by the reporting obligation. Accordingly, the exception request was denied.

*Fred K. Kleinbach Sons, Inc., 1/3/86; HEE-0154*

Fred K. Kleinbach Sons, Inc. (Kleinbach) filed an Application for Exception from the requirement to file Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the request, the DOE found that Kleinbach's reporting burden was not significantly different from that of other firms participating in the EIA-782B survey. Accordingly, exception relief was denied.

**Motion for Discovery**

*Thomas P. Reidy, Inc., 1/3/86; HRD-0277; HRH-0277*

Thomas P. Reidy, Inc. filed Motions for Discovery and Evidentiary Hearing concerning a Proposed Remedial Order issued to the firm on November 3, 1984. In the PRO, the ERA found that during the audit period, Reidy charged prices for regular motor gasoline that were in excess of the Maximum Lawful Selling Prices for that refined petroleum product. In its Motion for Discovery, Reidy requested discovery concerning almost every aspect of the November 3 PRO. In denying the motion, the DOE noted that Reidy's arguments were previously considered and rejected in two Decisions issued to the firm, *Thomas P.*

*Reidy, Inc.*, 12 DOE ¶ 84,020 (1984), and *Thomas P. Reidy, Inc.*, 11 DOE ¶ 84,046 (1984), and that the firm had not provided any additional arguments to support its discovery request. With respect to Reidy's request for an evidentiary hearing, the DOE exercised its discretion to convene a hearing. In view of the complexity of Reidy's accounting practices and the prominence of accounting issues in its pleadings, an evidentiary hearing was granted to provide the firm with an opportunity to furnish testimony regarding its accounting practices. Accordingly, the firm's Motion for Discovery was denied and the Motion for Evidentiary Hearing was granted.

#### Interlocutory Order

Kenneth Walker, 12/30/85; HRZ-0263, HRD-0268, IRIH-0268

Kenneth Walker filed a Motion for Discovery, a Supplemental Motion for Discovery and a Motion for Evidentiary Hearing in connection with the Proposed Remedial Order (PRO) issued jointly to Mr. Walker and Southwestern States Marketing Corporation (Southwestern). The Economic Regulatory Administration (ERA) filed a request to amend the PRO in connection with the same proceeding. In considering these submissions, the Office of Hearings and Appeals (OHA) first determined that the PRO, together with ERA's other submissions in this proceeding, fail to adequately describe the activities that allegedly constitute "illegal practices" during the period prior to the effective date of 10 CFR 212.186. Accordingly, OHA granted Interrogatories No. 19 & 20 only insofar as they request ERA to identify the illegal practices with which Mr. Walker is charged under 10 CFR 205.202 and 210.62(c) during the period October through December 1977. Next, OHA partially granted Mr. Walker's request for audit discovery. OHA determined that unusual circumstances in the present case require departure from the Office's general unwillingness to grant discovery of materials generated from a firm's own records. Since ERA had voluntarily provided audit related documents and microfilm to the co-respondent in this proceeding, Southwestern, OHA determined that ERA should make available to Mr. Walker all documents that the agency has heretofore provided to Southwestern. OHA also partially granted Mr. Walker's Motion for Evidentiary Hearing. OHA determined that an evidentiary hearing concerning the extent of Mr. Walker's involvement in the crude oil transactions that are the subject of this proceeding will be of substantial assistance in resolving the issue of Mr. Walker's personal liability for the regulatory violations alleged in the POR. Accordingly, Mr. Walker was directed to file with OHA a list of witnesses whom he proposes to call at the evidentiary hearing as well as the scope of anticipated questioning of those witnesses and the relevance of the questioning to the issues set forth for consideration at the hearing. With regard to ERA's request to amend the PRO, OHA determined that granting ERA's request would not prejudice Mr. Walker in any way, since the effect of the proposed amendment is to reduce Mr. Walker's potential liability. Therefore, OHA granted ERA permission to amend the PRO to

effectuate the following three substantive changes: (1) withdraw all allegations relating to the purported violations of 10 CFR 212.10 and 212.183 by Southwestern and Mr. Walker; (2) withdraw the theory of piercing the corporate veil as one of the bases for holding Mr. Walker personally liable for the applicable DOE regulations; (3) withdraw the allegations lodged against Mr. Walker regarding his violations of the applicable DOE regulations based on a tortious conduct theory for the period June 1980 through December 1980 only. OHA decided to deny Mr. Walker's Supplemental Motion for discovery because the motion failed to meet the requisite standards of 10 CFR 205.198.

As a final matter, OHA determined that Mr. Walker should be afforded the opportunity to submit any information that he deems necessary to prove (i) that he did not reap any financial or other benefit from the activities that ERA claims constitute regulatory violations, and (ii) that the services southwestern provided during the period covered by the PRO were traditional and historical reseller services as described in the Decision and Order.

#### Refund Applications

*Gulf Oil Corporation/Cunningham Butane Gas Company, Inc.*, 12/31/85; RF40-3082

The DOE issued a Decision and Order granting an Application for Refund filed by Cunningham Butane Gas Company, Inc., a retailer of Gulf products. The claimant applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). After examining the evidence and supporting documentation, the DOE concluded that the applicant should receive a refund of the full volumetric amount. The refund granted in this Decision totals \$7,137, representing \$6,132 in principal and \$1,005 in interest.

*Gulf Oil Corporation/Melrose Distributors, Inc. et al.*, 12/31/85; RF40-1960 et al.

The DOE issued a Decision and Order concerning 17 Applications for Refund filed by retailers and resellers of Gulf products. All of the claimants applied for refunds based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). After examining the evidence and supporting documentation, the DOE concluded that the applicants should receive refunds of the full volumetric amount. The refunds granted in this Decision total \$89,693, representing \$77,061 in principal and \$12,632 in interest.

*Mesa Petroleum Co./Mobil Oil Corporation*, 1/2/86; RF120-2

Mobil Oil Corporation filed an Application for Refund in the Mesa Petroleum Company refund proceeding. Mobil stated that it purchased 42,014 gallons of covered products during the Mesa consent order period, and would be eligible for a refund of \$438.25 under the volumetric allocation methodology. Since Mobil's claim did not exceed the threshold level, the DOE approved the firm's refund request of \$438.25 plus accrued interest of \$333.03 without requiring detailed proof of injury.

*Point Landing, Inc./Canal Barge Company et al.*, 1/3/86; RF122-1 et al.

The DOE issued a Decision and Order granting refunds to eight firms which had been identified by the Economic Regulatory Administration as having sustained overcharges alleged in the ERA's audit of Point Landing's sales of motor gasoline. Each claimant filed an Application for Refund in which it adequately demonstrated that it was injured by the alleged overcharges. The total amount of refunds approved in the Decision is \$26,176, representing \$14,628 in principal and \$11,548 in interest.

#### Dismissals

The following submissions were dismissed:

#### Name and Case No.

ERA—KRR—0003

Dr. Milton Hoenig—HFA—0261

Navajo Refining, Inc.—BER—0166, BEG—0062.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: January 28, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-2838 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

#### Issuance of Decisions and Orders; Week of January 6 Through January 10, 1986

During the week of January 6 through January 10, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

#### Appeals

*Arent, Fox, Kintner, Plotkin & Kahn*, 1/8/86; KFA-0006

Arent, Fox, Kintner, Plotkin & Kahn (Arent) filed an Appeal from a partial denial by the Authorizing Official at the Office of Procurement Operations at the Department of Energy (DOE) of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). Arent sought information which was deleted from a copy of a government contract previously released to the firm. Specifically, Arent sought the due dates of audits of DOE field operations and the amounts of payment due at each step of the audit process. In considering the Appeal, the DOE found that the Authorizing Official improperly withheld

the contested material pursuant to Exemption 4 of the FOIA. In so holding, the DOE found that a portion of the information was outside the scope of Exemption 4. Further, the DOE found that the remainder of the requested information was already in the public domain or easily calculable from available information. Accordingly, DOE ordered the release of the contested information.

*Pacific Lighting Energy Systems, 1/9/86; KFA-0007*

Pacific Lighting Energy Systems filed an Appeal from a denial by the Director of the Office of Policy, Planning and Analysis (Authorizing Official) of a Request for Information which the firm submitted under the Freedom of Information Act. In considering the Appeal, the DOE found that the Authorizing Official had properly withheld pursuant to Exemption 5 a "Statement of Work" that contained the opinions and recommendations of DOE personnel concerning a draft report prepared by an outside consultant. The DOE also found, however, that responsive materials exist that were not identified or released to the firm by the Authorizing Official. Accordingly, the Decision and Order directed the Authorizing Official to conduct a further search for documents responsive to the firm's request.

*Rek-Chem Manufacturing Corporation, 1/7/86; KFA-0008*

Rek-Chem Manufacturing Corporation filed an Appeal from a denial by the Department of Energy Albuquerque Operations Office of a Request for Information which Rek-Chem had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that inadequate justification was given for the Operations Office's determination. The DOE therefore remanded the matter to the Director of that Office with instructions to either release the unit price information requested by Rek-Chem or issue a new determination that adequately justifies withholding the information in light of the applicable regulations.

#### Request for exception

*P J W Corporation Pacific Northern Oil Carlson Company, 1/8/86; HEE-0165, HEE-0166, HEE-0167*

P J W Corporation, Pacific Northern Oil, and Carlson Oil Company filed Applications for Exception in which each of the three firms sought relief from the obligation to submit Form EIA-782B, entitled "Reseller/Retailers' Monthly Petroleum Product Sales Report." In considering the applicants' requests, the DOE found that none of the firms was particularly adversely affected by the requirement that it file Form EIA-782B, accordingly, exception relief was denied to the three applicants.

#### Motions for Discovery

*Elk Trading Energy, Inc. Neal Davis, 1/8/85; HRD-0281, HRH-0281*

Elk Trading Energy, Inc. and Neal Davis (collectively "Elk") filed a Motion for Discovery and a Motion for Evidentiary Hearing in connection with a Statement of Objections to a Proposed Remedial Order (PRO) that was issued to Elk by the Economic

Regulatory Administration (ERA) on March 11, 1985. In the PRO, the ERA alleges that during the period May 1978 through December 1980, Elk charged prices in resales of crude oil in excess of those permitted under DOE regulations. In considering Elk's discovery motion, the DOE determined that (i) Elk's request for contemporaneous construction discovery of the pertinent crude oil reseller regulations should be denied since Elk had failed to show any ambiguity or inconsistency in those regulations, and (ii) Elk's request for administrative record discovery of the crude oil reseller regulations should be denied since Elk had failed to show any omission or defect in the publicly available record. In addition, the DOE determined that Elk's Motion for Evidentiary Hearing should be denied since Elk had failed to specify any genuine factual issue in dispute. Accordingly, Elk's Motion for Discovery and Motion for Evidentiary Hearing were denied.

*T&M Petroleum Corporation and Ted R. Adkins, 1/8/86; HRD-0115, HRH-0115, HRZ-0259, HRZ-0260*

T&M Petroleum Corporation and Ted R. Adkins (T&M) filed a Motion for Discovery and Motion for an Evidentiary hearing in connection with a Proposed Remedial Order (PRO) issued to the firm by the Economic Regulatory Administration (ERA) of the Department of Energy. Subsequently, both parties filed separate motions to dismiss portions of the PRO. In its Motion for Discovery, T&M requests administrative record and contemporaneous construction discovery of both the layering regulation and the term "nearest comparable reseller" contained in the reseller pricing rule. In its Motion for an Evidentiary Hearing, T&M seeks the opportunity to present evidence concerning the services and functions it performed in its resales of crude oil.

In considering T&M's Motion, the OHA found that discovery concerning the layering rule and term "nearest comparable reseller" was both unnecessary and inappropriate since much of the information sought concerned legal opinions, and the OHA had denied identical requests in recent layering cases. Furthermore, the OHA found that the PRO set forth a prima facie case of regulatory and individual liability and, accordingly, denied both Motions to Dismiss. Finally, the OHA denied T&M's Evidentiary Hearing Motion in the form submitted. T&M was allowed, however, to renew its Motion concerning whether the services and functions performed by the firm in its crude oil resales constitute traditional and historical reseller services and functions under the layering rule.

#### Implementation of Special Refund Procedures

*Eastern of New Jersey, Inc., 1/10/86; HEF-0065*

The DOE issued a Decision and Order which establishes procedures for the distribution of funds totalling \$459,929.76 obtained as a result of a consent order entered into between the DOE and Eastern of New Jersey, Inc. The Decision sets forth refund application procedures for customers who purchased No. 4 residual fuel oil from

Eastern during the consent order period November 1, 1973 through March 31, 1974. The specific information to be included in refund applications is set forth in the Decision.

*James Petroleum Corporation, 1/10/86; HEF-0099*

The DOE issued a Decision and Order implementing a plan for the distribution of \$60,434 received as a result of a consent order entered into by the DOE and James Petroleum Corporation (James) on November 10, 1981. The DOE determined that the James settlement fund should be distributed to customers who purchased motor gasoline fuel from James during the period January 1, 1980 through April 30, 1980. The specific information to be included in refund applications is set forth in the Decision.

*Leonard E. Belcher, Inc., 1/7/86; HEF-0586*

The DOE issued a final Decision and Order setting forth procedures to be used in filing applications for refund from \$700,000 in settlement funds obtained under an Agreed Final Judgment terminating litigation with Leonard E. Belcher, Inc., a fuel oil reseller located in Springfield, Massachusetts. The Funds will be available to customers who purchased No. 2 fuel oil from Belcher during the period August 1973 to June 1976. The specific information to be included in refund applications is set forth in the Decision.

*Malco Industries, Inc., 1/10/86; HEF-0121*

The DOE issued a Decision and Order implementing a plan for the distribution of \$61,889.83 received as a result of a consent order entered into by Malco Industries, Inc. and the DOE on November 10, 1981. The DOE determined that the Malco settlement fund should be distributed to customers that purchased Malco motor gasoline during the period April 1, 1979 through January 31, 1980. The specific information to be included in applications for refund is set forth in the Decision.

*Oceana Terminal Corporation, et al., 1/10/86; HEF-0142*

The DOE issued a Decision and Order implementing a plan for the distribution of \$258,367, plus accrued interest, received as the result of a consent order entered into by the DOE and Oceana Terminal Corporation, its parents, subsidiaries and affiliates (Cibro). The DOE determined that the Cibro settlement fund should be distributed to customers that were injured as a result of purchases of No. 6 fuel oil from Cibro during the period November 1, 1973 through April 30, 1974. The DOE also decided that a separate, detailed showing of injury would not be required of claimants for refunds of \$5,000 or less. The Decision discusses specific information to be included in refund applications.

*Post Petroleum Company, 1/9/86; HEF-0154*

The DOE issued a Decision and Order implementing a plan for the distribution of \$12,486.57 received as a result of a consent order entered into by Post Petroleum Company and the DOE on September 29, 1981. The DOE determined that the Post settlement fund should be distributed to

customers that purchased Post motor gasoline during the period April 1, 1979 through September 30, 1979. The specific information to be included in applications for refund is set forth in the Decision.

#### Refund Applications

##### *Armour Oil Company/Golden Gate Petroleum Company, 1/8/85; RF167-6*

The DOE issued by Decision and Order concerning an Application for Refund filed by Golden Gate Petroleum Company, as reseller of refined products purchased from Armour Oil Company. In accordance with the procedures set forth in the Armour Special Refund Proceeding, the DOE determined that Golden Gate should receive a refund of \$5,000, the maximum small claims refund. The total refund granted in this Decision is \$6,557, representing \$5,000 in principal and \$1,557 in interest.

##### *Belridge Oil Company/North Carolina Standard Oil Company (Indiana)/North Carolina, 1/9/86; RM8-9, RM21-10*

The DOE issued a Decision and Order concerning the Motions for Modification filed by the State of North Carolina in the Belridge and Amoco second-stage refund proceedings. North Carolina sought permission to modify an earlier second-stage decisions approving seven restitutionary programs submitted by the state to benefit the state's injured consumers of motor gasoline and middle distillates. See *Standard Oil Co. (Indiana)/North Carolina*, 12 DOE ¶ 85,180 (1985). The proposed plan would appropriate \$50,000 from previously approved programs and use this money for Amtrak operations between Raleigh and Charlotte, the most populous part of the state. Because the Amtrak project would reduce fuel consumption and improve the quality of transportation services in North Carolina, the state was granted permission to use the \$50,000 which it had already received from the Belridge and Amoco escrow accounts to fund train service between Raleigh and Charlotte.

##### *Gulf Oil Corporation/Defense Logistics Agency, 1/9/85; RF40-3084*

The Department of Energy issued a Decision and Order concerning the resubmission of a claim by the Defense Logistics Agency (DLA) on behalf of the United States Government. The DLA, an end-user of Gulf petroleum products, applied for an additional refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In submitting its renewed application, DLA asked that the DOE approve a refund for certain portions of the consent order period based on estimates of the government's purchases of products from Gulf. After examining the estimation method and the information in the record, the DOE determined that DLA had submitted reasonable estimates which closely approximated the applicant's actual purchases. Accordingly, the DOE concluded that DLA should receive an additional refund of \$214,323.

##### *Gulf Oil Corporation/Harold Jones, et al., 1/9/86; RF40-00248, et al.*

The DOE issued a Decision and Order concerning 28 Applications for Refund filed

by resellers and retailers of Gulf refined products, in accordance with the refund procedures established in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). In considering the Applications, the DOE found that all of the applicants had demonstrated that they would not have been required to pass through to their customers a cost reduction equal to the refund claiming. Accordingly, the firms were granted refunds totalling \$32,447, representing \$27,876 in principal and \$4,571 in interest.

##### *Gulf Oil Corporation/Hilltop Auto Laundry, et al., 1/8/86; RF40-00033, et al.*

The DOE issued a Decision and Order concerning 19 Applications for Refund filed by retailers and resellers that were direct purchasers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to customers a cost reduction equal to the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total refund of \$35,177, consisting of \$30,223 in principal and \$4,954 in interest, based on a total purchase volume of 24,772,510 gallons of Gulf petroleum products.

##### *Gulf Oil Corporation/Matawan Gulf Service, et al., 1/9/86; RF40-02217, et al.*

The DOE issued a Decision and Order granting refunds from the Gulf Oil Corporation deposit escrow fund to 44 purchasers of Gulf refined petroleum products. All refund applicants demonstrated that they would not have been required to reduce their selling prices to their customers by the amount of the refund they received. Accordingly, the firms were granted refunds totalling \$56,740, representing \$48,748 in principal and \$7,991 in interest.

##### *Seminole Refining, Inc./Columbia Paving, Inc., 1/7/86; RF111-12*

Columbia Paving, Inc. (Columbia) filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with Seminole Refining, Inc. (Seminole). The applicant claimed a refund on the basis of its purchases of 3,414,322 gallons of No. 2 and No. 5 fuel-oils from Seminole during the consent order period. The DOE determined that Columbia was an end-user of the No. 2 and 5 fuel oils purchased from Seminole and was therefore entitled to a refund. Accordingly, the DOE granted Columbia a refund of \$33,636.54, representing \$21,373.66 in principal and \$14,262.88 in accrued interest.

##### *Seminole Refining, Inc./National Linen Service, 1/8/86; RF111-8*

National Linen Service (NLS) filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with Seminole Refining, Inc. (Seminole). The applicant claimed a refund on the basis of its purchases of 117,990 gallons of No. 5 fuel oil

from Seminole during the consent order period. The DOE determined that NLS was an end-user of the No. 5 oils purchased from Seminole and was therefore entitled to a refund. Accordingly, the DOE granted NLS a refund of \$1,231.57, representing \$738.62 in principal and \$492.95 in accrued interest.

##### *Standard Oil Company (Indiana)/Bennett Corners Amoco, 1/9/86; RF21-12395*

The DOE issued a Decision and Order concerning an incorrect refund received by a retailer of Amoco motor gasoline in the Standard Oil Company (Indiana) proceeding. The DOE determined that David S. Merva had applied for a refund on behalf of Bennett Corners Amoco for a period prior to his purchase of the station, and directed that Merva return the refund and accrued interest for that period. Merva was required to also submit evidence documenting his claim that owned the station after his alleged purchase. The DOE further provided that failure to file this additional information within 30 days would result in rescission of the entire refund amount.

##### *Thompson Oil Company Defense Logistics Agency, et al., 1/9/86; RF185-2, et al.*

Defense Logistics Agency (DLA) filed Applications for Refund in three refund proceedings involving Thompson Oil Company, Navajo Refining Company, and United Oil Company. DLA stated that it purchased certain volumes of covered products from those firms during their consent order periods. Since DLA was an end-user of the products it purchased, the DOE approved DLA's refund requests without requiring proof of injury. The refund amounts granted DLA were: \$70.25 plus \$36.09 in accrued interest from the Thompson Oil Company consent order fund; \$90,929.25 plus \$43,371.43 in accrued interest from the Navajo consent order fund; and \$361.44 plus \$206.09 in accrued interest from the United Oil consent order fund.

##### *Warrior Asphalt Company of Alabama/Chevron U.S.A. Inc., 1/6/86; RF160-1*

Chevron U.S.A. Inc. filed an Application for Refund in the Warrior Asphalt Company of Alabama refund proceeding. Chevron stated that it purchased 332,304 gallons of covered products during the Warrior consent order period, and would be eligible for a refund of \$2,351.32. Since Chevron's application did not exceed the small claims threshold amount of \$5,000, the DOE approved the firm's refund request of \$2,351.32 in principal plus accrued interest of \$2,081.36 without requiring proof of injury.

#### Dismissals

The following submissions were dismissed:

##### *Company Name and Case No.*

Bock Water Heaters, Inc.—HEE-0126  
Cord Products Corporation—HEE-0158/HEL-0158  
Double U Oil Company—BRO-1535  
Jack E. Guenther—BRO-1533  
Kerr-McGee Corporation—RF177-4  
Knight Enterprises, Inc.—RF40-2987  
Philadelphia Electric Company/National Freight, Inc./RJC Cab Inc. & Geraldine H. Sweeney—KRR-0004

Rubins Hotel—RF169-4.

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: January 31, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 86-2839 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

### Issuance of Proposed Decision and Order; Period of January 13 Through January 24, 1986

During the period of January 13 through January 24, 1986, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the

hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

Dated: January 31, 1986.

George B. Breznay,

Director, Office of Hearings and Appeals.

Knox Nelson Oil Company, Pine Bluff, Arkansas; KEE-0002

Knox Nelson Oil Company filed an Application for Exception from the reporting requirements of Form EIA-782B. The exception request, if granted, would permit Knox Nelson to file reports using estimated data. On January 22, 1986, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be grant in part.

[FR Doc. 86-2840 Filed 2-7-86; 8:45 am]

BILLING CODE 6450-01-M

### FEDERAL COMMUNICATIONS COMMISSION

#### Federal Advisory Committee for the 1987 ITU World Administrative Radio Conference for the Mobile Services; Meeting

February 4, 1986.

The Fifth meeting of the Federal Advisory Committee for the 1987 Mobile World Administrative Radio Conference will be held on Monday, March 10, 1986, at 9:30 A.M. in the Commission Meeting Room 856, 1919 M Street, NW., Washington, DC

The meeting agenda is:

1. Approval of meeting agenda.
2. Approval of the summary record of the January 7, 1986, meeting.
3. Report on administrative matters from designated Federal employee.
4. Progress reports and consideration of draft proposals from Ad Hoc Group Chairmen: (a) Aeronautical, (b) Land Mobile, (c) Maritime, (d) Satellite, and (e) Steering.
5. Report on technical matters under consideration in the U.S. CCIR organization relevant to the Mobile WARC.
6. Reports on international meetings bearing on the Mobile WARC.
7. Other business.
8. Selection of next meeting date.

Anyone desiring further information should contact Gordon Hempton, FCC/PRB at (202) 632-7175. These meetings are open to the public.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-2797 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

#### Sixth Meeting of the Land Mobile Radio/UHF Television Technical Advisory Committee

The sixth meeting of the Land Mobile Radio/UHF Television Technical Advisory Committee will be held on February 27, 1986, in Room 856 (the Commission Meeting Room), 1919 M Street, NW., Washington, DC. The meeting will start at 11:30 A.M.

All interested parties are invited to attend this meeting. Since this is to be a technical advisory committee, attendees should be prepared for technical discussions.

The agenda for this meeting will consist of:

1. Approval of minutes of last meeting;
2. Status report from working group co-convenors;
3. Discussion of new business for the Committee;
4. Discussion of appropriate date and tentative agenda for next meeting.

Any questions regarding these meetings should be directed to Mr. Kenneth Nichols at (301) 725-1585.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-2789 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

#### Applications for Consolidated Hearing; Hispanic Broadcasting et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Rocky Alford and Martha Vasquez d/b/a Hispanic Broadcasting	Victoria, Texas	BPH-840710/A	86-7
B. Robert Rivera, Jr.	.....do.....	BPH-840913/A	
C. Sand Dollar Communications, Inc.	.....do.....	BPH-841016/B	
D. Victoria Radio Broadcasting Limited Partnership.	.....do.....	BPH-841018/C	
E. Yolanda G. Dorset	.....do.....	BPH-841018/F	

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, 1963. 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	Applicant(s)
1. (See Appendix) .....	B.
2. Air Hazard .....	C, D, and E.
3. Comparative .....	All applicants.
4. Ultimate .....	All applicants.

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.

#### Appendix

##### Issue

1. If a final environmental impact statement is issued with respect to B (Rivera) which concludes that the proposed facilities are likely to have an adverse impact on the quality of the environment, to determine:

(a) Whether the proposal is consistent with the National Environmental Policy Act, as implemented by § 1.1301-1319 of the Commission's rules;

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

[FR Doc. 86-2796 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

#### Community Christian Television; Hearing Designation Order

In re applications of MM Docket No. 86-39:  
File No.

Rosemary Wuenschel and BPCT-850924KJ  
Kristen A. Kincaid d/b/  
a Community Christian  
Television.

Montana Western Corpo- BPCT-851107KF  
ration.

For Construction Permit, Butte, Montana.

Adopted: January 28, 1986.

Released: February 4, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 18, Butte, Montana.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 64 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. Each of the applicants proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposals pose no interference threat to United States television stations; however they contravene an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes, T.I.A.S. 2594 (1952)*. Accordingly, in the event of a grant of either application, the construction permit shall be appropriately conditioned.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, It Is Ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications Are Designated For Hearing In A Consolidated Proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

6. It Is Further Ordered, That, in the event of a grant of either application, the construction permit shall be conditioned as follows: Subject to the condition that operation with visual effective radiated power in excess of 1000 kW is subject to the consent of Canada.

7. It Is Further Ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

8. It Is Further Ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 86-2804 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

#### L. Lynn Henley et al.; Hearing Designation Order

In re applications of MM Docket No. 86-41:  
File No.

L. Lynn Henley ..... BPCT-850822KE  
Virginia L. Fruits and BPCT-  
Frederic O. Fruits. 851018KO

For Construction Permit, Opelika,  
Alabama.

Adopted: January 28, 1986.

Released: February 4, 1986.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 50, Opelika, Alabama.

2. On June 26, 1985, the Commission issued a Public Notice (Mimeo No. 5421) requiring all applicants for new broadcast stations to certify that they have obtained reasonable assurance that their specified transmitter sites will be available to them. The Fruits application does include a certification

of site availability. However, the certification is qualified and the applicant indicates that additional agreements or understanding must be obtained before the applicant can give reasonable assurance comporting with the requirements of the Commission. Accordingly, the applicant will be given 20 days after the release of this Order to submit a clarifying amendment to the presiding Administrative Law Judge.

3. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, It Is Ordered, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications Are Designated For Hearing In a Consolidated Proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would on a comparative basis, better serve the public interest

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, which of the applications should be granted.

5. It Is Further Ordered, That Virginia L. Fruits and Frederic O. Fruits shall submit a clarifying amendment regarding the availability of its transmitter site, to the presiding Administrative Law Judge, within 20 days after this Order is released.

6. It Is Further Ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

7. It Is Further Ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing within the time and in the manner prescribed in such rule, and shall advise the Commission of the

publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

**Roy J. Stewart,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 86-2803 Filed 2-7-86; 8:45 am]

BILLING CODE 6712-01-M

[PRB-2]

**Request by Lee Shoblom, London Bridge Broadcasting, Inc., Lake Havasu City, Arizona for Waiver of Certain Amateur Rules**

**AGENCY:** Federal Communications Commission.

**ACTION:** Wavier Denied.

**SUMMARY:** The Chief, Private Radio Bureau, FCC, by letter denied the request wavier of §§ 97.110 and 97.113(b) of the Commission's Rules in order to permit use of petitioner's amateur station to gather news for broadcast over petitioner's low power television station. The wavier request was denied since its grant would set an undesirable precedent and because the proposed use of amateur frequencies as an adjunct to a television station operation did not comport with the character of the Amateur Radio Service.

**DATE:** January 31, 1986.

**FOR FURTHER INFORMATION CONTACT:** Maurice J. DePont, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

**SUPPLEMENTARY INFORMATION:**

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

[FR Doc. 85-2788 Filed 2-7-85; 8:45 am]

BILLING CODE 6712-01-M

**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**Agency Information Collection Submitted to the Office of Management and Budget for Clearance**

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

TYPE: Extension of 3067-0113.

TITLE: Declaration of Emergency of Major Disaster

**ABSTRACT:** Requests for a Presidential declaration of a major disaster or an emergency must be made by the Governor. The request must contain certain information to comply with statutory requirements. Affected public includes families, individuals, and public facilities of State and local governments.

Type of Respondents: Individuals or households; Non-Profit Institutions; State or local governments

Number of Respondents: 57

Burden Hours: 400

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Mike Weinstein, Desk Officer for FEMA, Office of Information and Regulatory Affairs, OMB, Rm. 3235, New Executive Office Building, Washington, DC 20503.

Dated: January 31, 1986.

**Walter A. Girstantas,**

*Director Administrative Support.*

[FR Doc. 86-2809 Filed 2-7-86; 8:45 am]

BILLING CODE 6718-01-M

**Delegation of Authority to the Department of Labor**

**AGENCY:** Federal Emergency Management Agency.

**ACTION:** Delegation of Authority to the Department of Labor.

Pursuant to the authority vested in me to exercise certain of the powers and authorities of the President with respect to Federal disaster assistance, I hereby delegate to the Secretary of Labor, subject to the general policy guidance and coordination of the Director of the Federal Emergency Management Agency:

1. The authority, functions and powers granted by section 407(a) of the Disaster Relief Act of 1974, 42 U.S.C. 5177(a), to provide assistance to individuals unemployed as a result of a major disaster;

2. The authority, functions and powers granted by section 407(b) of the Disaster Relief Act of 1974, 42 U.S.C. 5177(b), to provide re-employment assistance services under other laws administered by the Department of Labor to individuals who are unemployed as a result of a major disaster; and

3. With the concurrence of the Director of the Federal Emergency Management Agency, the authority to issue such rules and regulations as may

be necessary and appropriate to effectuate this delegation.

This delegation of authority supersedes the delegation of authority from James T. Lynn, Secretary of Housing and Urban Development to Peter J. Brennan, Secretary of Labor, appearing September 13, 1974, in 39 FR 33020.

**DATE:** The delegation of authority is effective on December 1, 1985.

**FOR FURTHER INFORMATION CONTACT:** Karen J. Keefer, Individual Assistance Division, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472; (202) 646-3658.

Dated: January 30, 1986.

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 86-2808 Filed 2-7-86; 8:45 am]

BILLING CODE 6718-01-M

## FEDERAL HOME LOAN BANK BOARD

### Great West Savings and Loan Association, Las Vegas, NV; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Great West Savings and Loan Association, Las Vegas, Nevada on January 31, 1986.

Dated: February 5, 1986.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 86-2849 Filed 2-7-86; 8:45 am]

BILLING CODE 6720-01-M

## FEDERAL MARITIME COMMISSION

### Application for Certificate [Casualty]; Epirotiki Lines et al.

Notice is hereby given that the following persons have applied to the Federal Maritime Commission for a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89-777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Cosmos Cruises Maritime Company S.A. (d/b/a Epirotiki Lines), c/o Epirotiki Lines, Inc., 551 Fifth Avenue, New York, NY 10176

Vacation Travel Concepts, Inc., 955 N.E. 125th St., No. Miami, FL 33161

Dated: February 5, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-2888 Filed 2-7-86; 8:45 am]

BILLING CODE 6730-01-M

### Application for Certificate [Performance]; Epirotiki Lines et al.

Notice is hereby given that the following persons have applied to the Federal Maritime Commission for a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Pub. L. 89-777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Cosmos Cruises Maritime Company S.A. (d/b/a Epirotiki Lines), c/o Epirotiki Lines, Inc., 551 Fifth Avenue, New York, NY 10176

Vacation Travel Concepts, Inc., 955 N.E. 125th St., No. Miami, FL 33161

Dated: February 5, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-2889 Filed 2-7-86; 8:45 am]

BILLING CODE 6730-01-M

### [Docket No. 86-5]

### Compagnie Generale Maritime and Intercontinental Transport (ICT), B.V. v. S.E.L. Maduro (Florida), Inc.; Filing of Complaint and Assignment

Notice is given that a complaint filed by Compagnie Generale Maritime; and Intercontinental Transport (ICT), B.V. was served February 4, 1986. Complainants allege that respondent, a marine terminal operator, has violated sections 10(ds) (1) and (2) and sections 10(b) (11) and (12) of the Shipping Act of 1984, and sections 15, 16 First, and 17 of the Shipping Act, 1916 through misapplication of terminal tariff rates and charges for freight handling at its terminal facilities in Miami and Port Everglades, Florida.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline. Hearing in this matter, if any is held shall commence within the time limitations prescribed in 46 CFR 501.61. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the

matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the presiding officer in this proceeding shall be denied issued by February 4, 1987, and the final decision of the Commission shall be issued by June 4, 1987.

John Robert Ewers,

Secretary.

[FR Doc. 86-2779 Filed 2-7-86; 8:45 am]

BILLING CODE 6730-01-M

### Ocean Freight Forwarder License Applicants; West Coast Air Freight, Inc.

Notice is hereby given that the following person has filed with the Federal Maritime Commission an application for license as an ocean freight forwarder pursuant to section 19 of the Shipping Act, 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why the following person should not receive a license are requested to communicate with the Director, Bureau of Tariffs, Federal Maritime Commission, Washington, DC 20573. West Coast Air Freight, Inc., 105-107 Eucalyptus Drive, El Segundo, CA 90245. Officers: Josef S. Goralik, President; Tomas S-E Edlund, Director.

Dated: February 5, 1986.

By the Federal Maritime Commission.

John Robert Ewers,

Secretary.

[FR Doc. 86-2844 Filed 2-7-86; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Mahaska Investment Co.; 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 February 28, 1986.

**A. Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mahaska Investment Company*, Oskaloosa, Iowa; to engage *de novo* directly in providing data processing services, pursuant to § 225.25(b)(7) of Regulation Y. These activities would be conducted in the State of Iowa.

**B. Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Plaza Commerce Bancorp*, San Jose, California; to engage *de novo* through its subsidiary, *Plaza Commerce Bancorp*, San Jose, California, in arranging and brokering residential, commercial, and construction loans and other extensions of credit, pursuant to § 225.25(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, February 4, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86-2776 Filed 2-7-86; 8:45 am]

BILLING CODE 6210-01-M

### **Unity Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval

under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than March 3, 1986.

**A. Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Unity Bancorp, Inc.*, New Waterford, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of *The New Waterford Bank*, New Waterford, Ohio.

**B. Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *CB & T Bancshares, Inc.*, Columbus, Georgia; to acquire 100 percent of the voting shares of *Bank of Coweta*, Newnan, Georgia.

2. *Wrightsville Bancshares, Inc.*, Wrightsville, Georgia; to become a bank holding company by acquiring 80 percent of the voting shares of *Bank of Wrightsville*, Wrightsville, Georgia.

**C. Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Dassel Investment Company*, Minneapolis, Minnesota; to acquire 42.88 percent of the voting shares of *Hutchinson Bancorp, Inc.*, Minneapolis, Minnesota, thereby indirectly acquiring *First National Bank*, Hutchinson, Minnesota. Comments on this application must be received not later than February 24, 1986.

2. *Hutchinson Bancorp, Inc.*, Minneapolis, Minnesota; to acquire 97.03 percent of the voting shares of *Dassel State Bank*, Dassel, Minnesota. Comments on this application must be

received not later than February 24, 1986.

**D. Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *MCorp*, Dallas, Texas and *MCorp Financial, Inc.*, Wilmington, Delaware; to acquire 100 percent of the voting shares of *MBank Arboretum*, Austin, Texas, a *de novo* bank.

2. *Texas Commerce Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of *Texas Commerce Bank*, Newark, Delaware, a *de novo* bank.

3. *Zapata Bancshares, Inc.*, Zapata, Texas; to acquire 51 percent of the voting shares of *Mercedes Bancorp, Inc.*, Mercedes, Texas, which has applied to become a bank holding company by acquiring *Mercedes National Bank*, Mercedes, Texas.

Board of Governors of the Federal Reserve System, February 4, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86-2777 Filed 2-7-86; 8:45 am]

BILLING CODE 6210-01-M

### **Washington Bancorporation 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 February 20, 1986.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Washington Bancorporation*, Washington, DC; *Colson, Inc.*, Wilmington, Delaware; and *Washington National Holdings, N.V.*, Curacao, Netherlands Antilles; to engage *de novo* through its subsidiary, Washington Mortgage Group, Inc., Washington, DC, in the appraisal of single family residences for first and second trust loan applications, for a fee; placing single family, multi-family and commercial loans with commercial banks, savings and loans, insurance companies other sources active in the secondary markets, for a fee; and negotiating sales and purchases of blocks of loans for a fee, pursuant to § 225.25(b) (1) and (13), respectively.

Board of Governors of the Federal Reserve System, February 4, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-2778 Filed 2-7-86; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control

#### Open Meetings; SNISA/NIOSH Collaborative Study of the Health Status of Industrial Sand Workers, et al.

The following meetings will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

*National Industrial Sand Association (NISA)/NIOSH Collaborative Study of the Health Status of Industrial Sand Workers*

Date: March 12, 1986

Time: 9:00 a.m. to 12 noon

Place: Room 203, Appalachian Laboratory for Occupational Safety and Health, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505

Purpose: To discuss the research protocol for a project to estimate the exposure-response association between silica and silicosis, and between silica, silicosis, and mortality in the industrial sand industry.

Additional information may be obtained from: Harlan Amandus, Ph.D., Division of Respiratory Disease Studies, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505. Telephones: FTS: 923-4476, Commercial: (304) 291-4476

#### *Development of Predictive Models for Determining Control Effectiveness*

Date: March 18, 1986

Time: 9:00 a.m. to 12 noon

Place: Conference Room B, National Institute for Occupational Safety and Health, 5555 Ridge Avenue, Cincinnati, Ohio 45213

Purpose: To review a project to develop predictive models for determining the effectiveness of engineering controls which control emissions from industrial processes. This review will be in conjunction with a project to develop air curtain technology for control of emissions from industrial processes.

Additional information may be obtained from: Mazen Y. Anastas, Ph.D., Division of Physical Sciences and Engineering, NIOSH, CDC 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephones: FTS: 684-4266, Commercial: (513) 841-4266

#### *Control of Particulate and Gaseous Agents by Air Curtain Technology*

Date: March 18, 1986

Time: 1:00 p.m. to 5:00 p.m.

Place: Conference Room B, National Institute for Occupational Safety and Health, 5555 Ridge Avenue, Cincinnati, Ohio 45213

Purpose: To review a project to develop air curtain technology for control of particulates and gaseous agents from industrial processes. This review will be in conjunction with a project to develop predictive models for control of harmful chemical agents from industrial processes.

Additional information may be obtained from: Vladimir Hampl, Ph.D., Division of Physical Sciences and Engineering, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephones: FTS: 684-4266, Commercial: (513) 841-4266

#### *Development of Monitoring Networks and Control Monitoring Techniques*

Date: March 19, 1986

Time: 9:00 a.m. to 12 noon

Place: Conference Room B, National Institute for Occupational Safety and Health, 5555 Ridge Avenue, Cincinnati, Ohio 45213

Purpose: To review a project to develop criteria for networking contaminant control monitors in the occupational work-place and to develop low cost control monitoring devices.

Additional information may be obtained from: Jerome P. Smith, Ph.D., Division of Physical Sciences and Engineering, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati Ohio 45226. Telephones: FTS: 684-4266, Commercial: (513) 841-4266

#### *Epidemiologic Study of Workers Exposed to Ethylene Oxide*

Date: March 26, 1986

Time: 9:30 a.m.-4:00 p.m.

Place: Conference Room C, National Institute for Occupational Safety and Health, 5555 Ridge Avenue, Cincinnati, Ohio 45213

Purpose: To discuss the progress of a cohort mortality study of workers exposed to ethylene oxide.

Additional information may be obtained from: Leslie Stayner, Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226. Telephones: FTS: 684-4481, Commercial: 513/841-4481

Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Robert L. Foster,

Acting Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 86-2807 Filed 2-7-86 8:45 am]

BILLING CODE 4160-19-M

### Food and Drug Administration

[Docket No. 85P-0570]

#### Petition Requesting Exclusivity for a Combination Product Containing Erythromycin and Benzoyl Peroxide

AGENCY: Food and Drug Administration.  
ACTION: Notice.

SUMMARY: In keeping with agency policy, the Food and Drug Administration (FDA) is announcing the filing of a petition requesting, among other things, a period of marketing exclusivity for a combination product containing the antibiotic erythromycin and benzoyl peroxide. The agency has taken the position that antibiotics are

not subject to the provisions of Title I of the Drug Price Competition and Patent Term Restoration Act of 1984. However, FDA is giving notice of the filing of this petition to all interested persons because, should FDA decide to grant the petition, this decision may affect the date when approval for marketing of generic versions of this combination product containing erythromycin and benzoyl peroxide may be made effective.

**DATE:** Comments by March 12, 1986.

**ADDRESS:** Requests for a copy of the petition and written comments regarding the petition to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Carol A. Kimbrough, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8046.

**SUPPLEMENTARY INFORMATION:** On September 24, 1984, the President signed into law the Drug Price Competition and Patent Term Restoration Act of 1984. This act amends the Federal Food, Drug, and Cosmetic Act (the act) authorizing among other things, the agency to accept abbreviated new drug applications (ANDA's) for most previously approved new drug products. This legislation also provides for extending the term of a patent which claims a product, use, or method of manufacture that was subject to a regulatory review period in accordance with the act. Further, this new legislation also provides for periods, of exclusive marketing of certain new drug products submitted in an application (or a supplement to an application) under section 505(b) of the act (21 U.S.C. 355(b)). An ANDA or paper new drug application (NDA) for such a drug may not be submitted (under some provisions) or made effective (under other provisions) until the period of "exclusive" marketing ends.

The new drug products that have been granted "exclusivity" under one of the several exclusivity provisions of this new legislation are set forth in the volume entitled "Approved Prescription Drug Products with Therapeutic Equivalence Evaluations" (the list) and its monthly supplements. In addition, the period of "exclusivity" is shown. Further, the list also shows those products that are covered by a patent and when the patent expires.

The agency believes that all patent and exclusivity information appearing in the list is correct, and expects that such information appearing in any future supplements to the list will also be

correct. However, interested persons may disagree with the agency's findings and believe that FDA has excluded patent or exclusivity information that should have been included, or included patent or exclusivity information that should have been excluded.

Accordingly, FDA has established a policy that, whenever an interested person submits a citizen petition requesting such inclusion or exclusion, the agency will publish a notice in the **Federal Register** of the availability of the petition. This publication is constructive notice to all interested persons that they may be affected by the petition and gives them an opportunity to submit their comments on the petition to the agency. Persons potentially affected include holders of approved ANDA's or approved paper NDA's the effective dates of which might be changed by a decision to grant the petition, persons who have pending ANDA's or paper NDA's or who contemplate submitting such applications that, when approved, would have effective dates that will be determined by the decision on the petition or, in some cases, persons whose right to submit such applications may be affected. Where a petition seeks a change in a decision to grant exclusivity, the applicant granted exclusivity has an obvious interest in the issue.

Although the agency has taken the position that antibiotics are not subject to the provisions of Title I of the Drug Price Competition and Patent Term Restoration Act of 1984, in accordance with the policy above, FDA is announcing the filing of a petition submitted on behalf of Dermik Laboratories, Inc. (Dermik), requesting exclusivity for a topical gel combination product containing erythromycin and benzoyl peroxide. Specifically, Dermik requests that the agency:

1. Refrain from approving and ANDA or Form 6 for a generic version of erythromycin-benzoyl peroxide topical gel until the expiration on June 7, 2000 of certain patents.
2. Recognize 3-year exclusivity under section 505(j)(4)(D)(iii) of the act as an additional bar to approval of generic versions of erythromycin-benzoyl peroxide topical gel for the period prior to October 26, 1987.

FDA is reviewing the merits of this petition and, by this notice, is giving anyone who may be affected by this petition an opportunity to submit comments within 30 days.

Interested persons may, on or before March 12, 1986, submit to the Dockets Management Branch (address above) written comments on the petition. These

comments will be considered in preparing an agency response to the petition. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The petition and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. Requests for a single copy of the petition should be sent to the Dockets Management Branch.

Dated: February 3, 1986.

**James C. Simmons,**  
*Acting Associate Commissioner for  
Regulatory Affairs.*

[FR Doc. 86-2786 Filed 2-7-86 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0030]

**Bausch & Lomb Optics Center;  
Premarket Approval of Bausch &  
Lomb® Silsoft® (Elastofilcon A)  
Contact Lens**

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Bausch & Lomb Optics Center, Rochester, NY, for premarket approval, under the Medical Device Amendments of 1976, of the Bausch & Lomb® Silsoft® (elastofilcon A) Contact Lens. The lens is to be manufactured under an agreement with Dow Corning Ophthalmics, Inc., Midland, MI, which has authorized Bausch & Lomb Optics Center to incorporate by reference information contained in its approved premarket approval application for the Silsoft® (elastofilcon A) Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** Petitions for administrative review by March 12, 1986.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757

Georgia Avenue., Silver Spring, MD 20910, 301-427-7940.

**SUPPLEMENTARY INFORMATION:** On September 13, 1985, Bausch & Lomb Optics Center, Rochester, NY 14692, submitted to CDRH an application for premarket approval of the Bausch & Lomb® Silsoft® (elastofilcon A) Contact Lens. The lens is indicated for daily wear and extended wear from 1 to 30 days between removals for cleaning and disinfection as recommended by the eye care practitioner. The lens is indicated for the correction of visual acuity in aphakic persons with nondiseased eyes. The lens may be worn by persons who exhibit refractive astigmatism of 1.50 diopters (D) or less and corneal astigmatism of 2.00 D or less that do not interfere with visual acuity. The lens ranges in powers from +7.00 D to +35.00 D and is to be disinfected by either a heat or chemical lens care system. The application included authorization from Dow Corning Ophthalmics, Inc., Midland, MI 48640, to incorporate by reference the information contained in its approved premarket approval application (PMA) and PMA supplement for the Silsoft® (elastofilcon A) Contact Lens for daily wear and aphakic extended wear (Docket No. 81M-0229).

On October 17, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 31, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file with the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the Bausch & Lomb® Silsoft® (elastofilcon A) Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made

of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the *Federal Register* of the approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

#### Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and of CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 12, 1986 file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360(h)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 4, 1986.

James S. Benson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 86-2783 Filed 2-7-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0029]

#### Mansfield Scientific, Inc.; Premarket Approval of the Mansfield Scientific Heart Trak™ Coronary Balloon Dilatation Catheter System

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the application by Mansfield Scientific, Inc., Mansfield, MA, for premarket approval, under the Medical Device Amendments of 1976, of the Mansfield Scientific Heart Trak™ Coronary Balloon Dilatation Catheter System. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

**DATE:** 1 Petitions for administrative review by March 12, 1986.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Shang W. Hwang, Center for Devices and Radiological Health (FHZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7559.

**SUPPLEMENTARY INFORMATION:** On February 14, 1985, Mansfield Scientific, Inc., Mansfield, MA 02048, submitted to CDRH an application for premarket approval of the Mansfield Scientific Heart Trak™ Coronary Balloon Dilatation Catheter System. The system is indicated for balloon dilatation of the atheromatous, stenotic portion of a coronary artery affected by atherosclerosis in patients who are suitable candidates for coronary artery bypass graft surgery, and who meet one of the following selection criteria.

1. The patient has single vessel atherosclerotic lesions which are concentric, discrete, subtotal, noncalcific, and accessible to dilatation with a catheter.

2. The patient with multiple vessel disease, under certain circumstances, is a suitable candidate for the procedure.

3. The patient has undergone previous aorto-coronary bypass surgery with recurrence of symptoms and progression of disease in the coronary artery, or stenosis and closure of the grafts.

On July 26, 1985, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On December 19, 1985, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from the office upon written request. Requests should be identified with the name of the device and docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Shang W. Hwang (HFZ-450), address above.

#### Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the Act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the *Federal Register*. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 12, 1986, file with the Dockets Management Branch (address above) two copies of each petition and

supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 4, 1986.

**James S. Benson,**  
*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 86-2781 Filed 2-7-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0028]

#### Syntex Ophthalmics, Inc.; Premarket Approval of Polycon® II (Silafocan A) Bifocal Contact Lens

**AGENCY:** Food and Drug Administration.  
**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing its approval of the supplemental application by Syntex Ophthalmics, Inc., Phoenix, AZ, for premarket approval, under the Medical Device Amendments of 1976, of the Polycon® II (silafocan A) Bifocal Contact Lens. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the supplemental application.

**DATE:** Petitions for administrative review by March 12, 1986.

**ADDRESS:** Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Richard E. Lippman, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

**SUPPLEMENTARY INFORMATION:** On November 13, 1984, Syntex Ophthalmics, Inc., Phoenix, AZ 85069-9600, submitted to CDRH a supplemental application for premarket approval of the Polycon® II (silafocan A) Bifocal Contact Lens. The lens is indicated for daily wear for the

correction of visual acuity in non-aphakic myopic and hyperopic presbyopic persons with nondiseased eyes. The lens may be worn by persons who may exhibit astigmatism of 4.00 diopters (D) or less that does not interfere with visual acuity. The lens ranges in power from -10.00 D to +10.00 D. The refractive add power of the lens ranges from 1.00 D to 3.00 D. The lens contains the color additive D&C Green No. 6 in accordance with the color additive listing provisions of 21 CFR 74.3206. It is to be disinfected using a chemical lens care system only.

On July 15, 1985, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the supplemental application.

On December 12, 1985, CDRH approved the supplemental application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact Richard E. Lippman (HFZ-460), address above.

The labeling of the Polycon® II (silafocan A) Bifocal Contact Lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 et seq.), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41-58), as amended. Accordingly, whenever CDRH publishes a notice in the *Federal Register* of approval of a new solution for use with an approved lens, the applicant shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

**Opportunity for Administrative Review**

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the Act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before March 12, 1986, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: February 4, 1986.

James S. Benson,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 86-2785 Filed 2-7-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85V-0338]

**Availability of Approved Variance for XIScan Model 1000 Fluoroscopic System**

AGENCY: Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for fluoroscopic equipment has been approved by FDA's Center for Devices and Radiological Health (CDRH) for the Model 1000 XIScan fluoroscopic system manufactured by XI Tech Inc. The product is a small-format, low-intensity fluoroscopic system for real-time x-ray imaging in miniature C-arm configuration.

**DATES:** The variance became effective October 21, 1985, and ends October 21, 1990.

**ADDRESS:** Except for information regarded as confidential under 42 U.S.C. 263i(e) or 21 CFR 1010.4(c)(4), the application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

**SUPPLEMENTARY INFORMATION:** Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted XI Tech Inc., 215 Route 10, Randolph, NJ 07869, a variance from § 1020.32(f) (21 CFR 1020.32(f)) of the performance standard for fluoroscopic equipment for the Model 1000 XIScan fluoroscopic system.

The specific requirement of the standard from which a variance has been granted pertains to the provision of § 1020.32(f) that requires that the product be provided with a means to limit the source-to-skin distance to not less than 30 centimeters for mobile fluoroscopes and to not less than 20 centimeters for image-intensified fluoroscopes intended for specific surgical applications. All other provisions of the performance standard remain applicable to the product.

CDRH has determined that (1) the requirement of § 1020.32(f) is not appropriate for the product, and (2) suitable means of radiation safety and protection will be provided by (a) constraints on the existing equipment design, (b) conditions imposed by the terms of the variance, and (c) supplemental information provided to users. Therefore, on October 21, 1985, CDRH approved the requested variance

by a letter to the manufacturer from the Deputy Director of CDRH.

So that the product may show evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the heading of this notice, and the effective date of the variance.

Except for information regarded as confidential under 42 U.S.C. 263i(e) or 21 CFR 1010.4(c)(4), the application and all correspondence on the application have been placed on public display under the docket number in the heading of this document in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (section 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: January 30, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-2787 Filed 2-7-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket Nos. 85E-0550 and 85E-0551]

**Determination of Regulatory Review Period for Purposes of Patent Extension; Novafil**

AGENCY: Food and Drug Administration.

ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for Novafil and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of two applications to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims the medical device Novafil.

**ADDRESS:** Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Michael W. Cogan, Office of Health Affairs (HFY-20), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) generally provides that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under the act, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 158(g)(3)(B).

The applicant filed two alternative applications for extension of a patent related to Novafil. The primary application, for U.S. Patent No. 4,224,946 (FDA Docket No. 85E-0550), requests extension of a patent currently under litigation. The applicant filed an alternative application, for U.S. Patent No. 4,246,904 (FDA Docket No. 85E-0551), for Patent Office consideration only in the event that applicant does not prevail in the litigation regarding U.S. Patent No. 4,224,946. Both patents claim a single product, Novafil. FDA's determination of the regulatory review period for Novafil applies to both applications.

FDA has determined that the applicable regulatory review period for Novafil is 1,251 days. Of this time, 872 days occurred during the testing phase of the regulatory review period, while 379 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date a clinical investigation involving this device began: April 30, 1982.

FDA has verified that clinical testing began on April 30, 1982, the date an investigational device exemption became effective for the product.

2. The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act: September 17, 1984.

The applicant claimed that the approval phase began on September 14, 1984. However, FDA did not receive the premarket approval application (No. P840041) until September 17, 1984.

3. The date the application was approved: September 30, 1985.

FDA has verified that premarket approval application No. P840041 was approved on September 30, 1985, as stated by the applicant.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 626 days of patent extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before April 11, 1986, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before August 11, 1986, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket numbers found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 3, 1986.

**Allen B. Duncan,**  
Deputy Associate Commissioner for Health Affairs.

[FR Doc. 86-2782 Filed 2-5-86; 11:05am]

BILLING CODE 4160-01-M

## Public Health Service

### National Institute of Environmental Health Sciences; Conference

A conference to discuss the toxicity of methyl isocyanate (MIC) will be held in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences (NIEHS), Research Triangle Park, North Carolina, on March 12 and 13, 1986. The conference is sponsored by the NIEHS.

The purpose of the conference is the presentation and discussion of the results of studies on various aspects of the toxicity of methyl isocyanate. Topics will include assessments of human health effects; experimental animal respiratory pathology and function; general, immune, and reproductive toxicology; effects on hemoglobin and serum enzymes; and *in vitro* and *in vivo* genetic toxicology. Invited speakers include representatives from academia, industry, and government agencies who have engaged in recent research with methyl isocyanate or related isocyanates. For questions on scientific content, contact Dr. John Bucher, (919) 541-4532; FTS 629-4532.

There will be no registration fee; however, registration is required as attendance will be limited by space available. A conference schedule and agenda will be mailed with confirmation of registration.

To register and receive information and assistance about the conference including housing, reservations, and agenda, please contact: Ms. June Wallace, Corporate Travel International, 404-266-2680 (Atlanta area only), 1-800-241-2324 (Outside Atlanta).

Dated: February 3, 1986.

**David P. Rall,**  
Director, National Institute of Environmental Health Sciences.

[FR Doc. 86-2780 Filed 2-7-86; 8:45 am]

BILLING CODE 4140-01-M

### National Toxicology Program; Availability of Technical Report on Carcinogenesis Studies of Chlorodibromomethane

The HHS' National Toxicology Program today announces the availability of the Technical Report describing toxicology and carcinogenesis studies of chlorodibromomethane

(dibromochloromethane), a trihalomethane formed when organic substances in water are chlorinated.

Toxicology and carcinogenesis studies of chlorodibromomethane (greater than 98% pure) were conducted by administering this chemical in corn oil by gavage five times per week for 104 weeks to groups of 50 male and 50 female F344/N rats at 0, 40, or 80 mg/kg per day and to groups of 50 male and 50 female B6C3F<sub>1</sub> mice for 105 weeks at doses of 0, 50, 100 mg/kg per day.

Under the conditions of these gavage studies, there was no evidence of carcinogenicity in male or female F344/N rats receiving chlorodibromomethane at doses of 40 or 80 mg/kg five times per week for 104 weeks. Fatty metamorphosis and ground-glass cytoplasmic changes of the liver in male and female F344/N rats were related to administration of chlorodibromomethane. There was equivocal evidence\* of carcinogenicity for male B6C3F<sub>1</sub> mice; chlorodibromomethane caused an increased incidence of hepatocellular carcinomas, whereas the combined incidence of hepatocellular adenomas or carcinomas was only marginally increased. Some evidence of carcinogenicity was observed for female B6C3F<sub>1</sub> mice, since chlorodibromomethane caused an increased incidence of hepatocellular adenomas and an increased combined incidence of hepatocellular adenomas or carcinomas.

Copies of *Toxicology and Carcinogenesis Studies of Chlorodibromomethane in F344/N Rats and B6C3F<sub>1</sub> Mice (Gavage Studies)* (TR 282) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709. Telephone (919) 541-3991, FTS: 629-3991.

Dated: February 4, 1986.

David P. Rall,  
Director.

[FR Doc. 86-2781 Filed 2-7-86 8:45 am]

BILLING CODE 4140-01-M

\* The NTP uses five categories of evidence of carcinogenicity to summarize the strength of the evidence observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. R-86-1272; FR-2179]

#### Statement of Interim Policy on Mandatory Meals Program

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

**ACTION:** Notice of agency policy.

**SUMMARY:** In approximately one year, HUD anticipates that it will publish a final rule, following notice and an opportunity for public comment on a proposed rule, that will govern the provision of mandatory meals in HUD-assisted housing for the elderly. The purpose of this Notice is to advise the public of the Department's policy that will apply to the mandatory meals program pending the formulation of regulations.

**EFFECTIVE DATE:** The policy described in this Notice is effective February 10, 1986.

**FOR FURTHER INFORMATION CONTACT:** James J. Tahash, Director, Program Planning Division, Office of Multifamily Housing, Room 6182, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 426-3970. (This is not a toll-free telephone number).

**SUPPLEMENTARY INFORMATION:** From 1959 to 1963 the Housing and Home Finance Agency (HHFA), HUD's predecessor agency, permitted owners of HHFA-assisted projects for the elderly with central dining facilities to require their tenants to purchase meals in their project's central dining facility. HHFA placed no limit on the number of meals per day that owners could require their tenants to purchase. Beginning in 1963, HHFA, and subsequently HUD, has permitted, with prior HUD approval, owners HUD-assisted projects for the elderly with central dining facilities to require their tenants to purchase only one meal per day in the dining facilities. This "mandatory meal policy" has appeared over the years in various HUD Circulars and Handbooks covering projects for the elderly assisted under section 202 of the Housing Act of 1959, 12 U.S.C. 1701q; sections 221(d)(3), (d)(4) and (d)(5), 231, and 236 of the National Housing Act, 12 U.S.C. 1715l(d)(3), (4) and (5), 1715w, and 1715z-1; and Section 8 of the United States Housing Act, 42 U.S.C. 1437(f).

Recently, mandatory meal plans have generated controversy, on both procedural and substantive grounds. Procedurally, critics have complained that HUD should have published its policy in the *Federal Register*, after notice and an opportunity for public comment. Substantively, critics claim that the plans infringe on tenants' freedom to prepare or purchase meals of their choice, that they are excessive financial drain on tenants' modest income, and that tenants who cannot eat the meals because they require special diets, or because of employment they are unavoidably absent during the time meals are served, are nonetheless being required to pay for the mandatory meals.

HUD has determined as a matter of policy to reevaluate its mandatory meal policy, and to publish the policy as a final rule in the *Federal Register*, after providing notice and an opportunity for public comment. This decision has been incorporated into a court order in a legal challenge to mandatory meal programs in *Birkland v. Rotary Plaza, Inc.*, No. C 84-2026 SW (N.D. Cal. Jan. 10, 1986) (order granting declaratory and injunctive relief). HUD will promulgate a final rule by February 1, 1987. HUD will not, however, require owners to terminate their mandatory meal programs while HUD is engaged in rule making. Both the U.S. Ninth Circuit Court of Appeals, in *Aujero v. CDA Todco, Inc.*, 756 F.2d 1374, 1377 (9th Cir. 1985) and the Tenth Circuit, in *Mayoral v. Jeffco American Baptist Residences*, 726 F.2d 1361, 1366 (10th Cir. 1984), *cert. denied*, 105 S.Ct. 255 (1984) have recognized that mandatory meal programs benefit elderly participants by ensuring adequate nutrition in a social environment, thereby avoiding malnutrition and social isolation. In March 1985 the General Accounting Office reported that it had surveyed participants in mandatory meal programs and that 75 percent of them said that their program improved their day-to-day lives. Also, available evidence indicates that owners of projects with mandatory meal programs would not continue their programs if they were required to make participation voluntary, because attendance might be too unpredictable to ensure a sufficiently steady stream of income. The District Court for the Northern District of California stated in its order granting injunctive and declaratory relief in *Birkland v. Rotary Plaza, Inc.* that it was "concerned that meal programs might collapse and some participants might be harmed if the mandatory meal policy were

immediately voided nationwide." Thus, a termination of mandatory meal programs while HUD develops a final rule would not serve the public interest.

Instead, pending the formulation of a final rule following the observance of public notice and opportunity to comment procedures, HUD is now publishing an interim mandatory meal policy. Except for two changes concerning exemptions, HUD's interim policy is a continuation of its existing policy: Upon prior written approval of HUD, owners of HUD-assisted elderly projects with central dining facilities may require their tenants to purchase no more than one meal per day at their facilities. On a few occasions since 1963, HUD has permitted owners to require tenants to purchase more than one meal per day, generally in instances where there projects have not contained individual kitchens in which tenants could prepare their own meals. HUD will continue to permit those projects to require purchase of more than one meal per day, but will not approve any requests by other owners to require more than one meal per day. Mandatory meal charges, and any subsequent increase in charges, must receive the prior written approval of HUD, must be modest, and in no case may such charges exceed the cost of purchasing, preparing and serving the meals. HUD's current policy leaves to the discretion of owners whether to grant tenants exemptions from participation in their programs. Under HUD's interim policy, owners are required to grant exemption under two circumstances: (1) For individuals who have a documented medical condition demanding special diets that a project cannot provide; and (2) for tenants who have a paying job which requires that they be absent during the time mandatory meals are served at the project. HUD has determined that there is no reasonable basis for permitting owners to require tenants to participate in a mandatory meal program in either of these two circumstances. Owners continue to have discretion, but are not required, to grant exemptions for other reasons, such as for financial or religious reasons. HUD encourages owners in managing their mandatory meal programs to be sensitive to tenants' religious dietary practices.

HUD's interim policy is effective immediately, and will remain in effect for all existing and future mandatory meal programs in projects for the elderly assisted under section 202, sections 221(d)(3), (4) or (5), 231 or 236, or section 8, until a final rule is published and effective.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(c) of the National Environment Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410.

**Authority:** Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: February 6, 1986.

**Janet Hale,**

*General Deputy Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 86-2956 Filed 2-7-86; 8:45 am]

**BILLING CODE 4210-27-M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

#### Realty Action Recreation and Public Purposes Classification

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Land classification for recreation and public purposes, Roseau and St. Louis Counties, ES-31812, ES-31813, ES-31831.

**SUMMARY:** The following described parcels have been classified as suitable for disposal to the State of Minnesota by conveyance pursuant to the provisions of the Recreation and Public Purposes Act of 1926 (44 Stat. 741), as amended (43 U.S.C. 869):

#### Fifth Principal Meridian, Minnesota

1. ES-31812, Roseau County: T.159N., R.42W., Sec. 23, SE ¼ NW ¼ total of 40 acres.

2. ES-31813, Roseau County: T.160N., R.44W., Sec. 30 Lot 2, total of 30.04 acres

#### Fourth Principal Meridian, Minnesota

3. ES-31831, St. Louis County: T.62N., R.14W., Tract 40, total of 5.2 acres, island in Eagles Nest lake No. 4.

The purpose of the conveyances in Roseau County (ES-31812 and ES-31813) is the preservation of Wildlife Management Areas.

The purpose of the conveyance in St. Louis County (ES-31831) is the preservation of a Scientific and Natural Area.

Any patent issued under this notice shall be subject to the provisions in 43 CFR 2741.8. In the event of noncompliance with the terms of the

patent, title to the land shall revert to the United States.

Classification of these lands will segregate them from all appropriation except as to applications under the mineral leasing laws and the Recreation and Public Purposes Act. This segregation will terminate upon issuance of a patent, or eighteen (18) months from the date of this Notice, or upon publication of a notice of termination.

**Comments:** For a period of 45 days from the date of first publication of this notice, interested parties may submit comments to: District Manager, Milwaukee District Office, Bureau of Land Management, P.O. Box 631, Milwaukee, Wisconsin 53201-0631. Any adverse comments will be evaluated by the District Manager who may vacate or modify this classification. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of Interior.

#### FOR FURTHER INFORMATION CONTACT:

Detailed information concerning these applications is available for review at the Milwaukee District Office, Suite 225, 310 W. Wisconsin Ave., Milwaukee, Wisconsin 53201, or by calling Larry Johnson at (414) 291-4413.

**Chuck Steele,**

*District Manager.*

[FR Doc. 86-2771 Filed 2-7-86; 8:45 am]

**BILLING CODE 4310-RN-M**

## Minerals Management Service

### Outer Continental Shelf, Development Operations Coordination Document; Forest Oil Corp.

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Forest Oil Corporation has submitted a DOCD describing the activities it proposes to conduct on Leases OCS-G 0996 an 1980. Blocks 307 and 308, respectively, Eugene Island 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 Intracoastal City, Louisiana.

**DATE:** The subject DOCD was deemed submitted on January 30, 1986.

**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 states, 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: January 31, 1986.

J. Rogers Percy,

*Acting Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 86-2682 Filed 2-7-86; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

### Addition of Lands at Redwood National Park; Correction

January 27, 1986.

**AGENCY:** National Park Service, Redwood National Park, California, Interior.

**ACTION:** Correction.

The last paragraph of the notice of Wednesday, November 20, 1985, (FR Doc. 85-27684; 50 FR 47850) is hereby corrected as follows:

Inquiries concerning the area within the Redwood National Park shall be directed to the Director, National Park Service, U.S. Department of the Interior, Washington, DC 20013-7127, or to the Regional Director, Western Regional Office, National Park Service, U.S. Department of the Interior, 450 Golden Gate Avenue, P.O. Box 36063, San Francisco, California 94102.

Denis P. Galvin,

*Acting Director.*

[FR Doc. 86-2885 Filed 2-7-86; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

### Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser, (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave. NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension  
Bureau/Office: Bureau of Accounts  
Title of Form: Records Retention Regulations

OMB Form No.: 3120-0121

Agency Form No.: None

Frequency: Recordkeeping

Respondents: Recordkeeping requirements of large carriers

No. of Respondents: 2,594

Total Burden Hrs.: 25,940

James H. Bayne,

*Secretary.*

[FR Doc. 86-2823 Filed 2-7-86; 8:45 am]

BILLING CODE 7035-01-M

### [Ex Parte No. 399]

### Rail Carriers; Cost Recovery Percentage

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Further Notice of Proposed Costing Standards and Decision.

**SUMMARY:** Although we have been able to calculate a preliminary 1985 Cost Recovery Percentage (CRP) using 1983 movement data and unit costs, other indicators tell us this should not have been possible. The addition of a 1983 cost of capital element, computed at the embedded debt level, to the total 1983 freight expenses of the railroad industry produces a total higher than the industry's total freight revenues. If costs exceed revenues, it should not be possible to calculate a CRP.

However, a CRP (182.5 percent) was calculated by applying actual 1983 Rail Form A unit costs to the movements from the 1983 I.C.C. Waybill Study. Individual railroad unit costs were used for movements over Class I Line-Haul

Railroads, where possible, and regional unit costs were used for other movements. Since the CRP of 182.5 percent is based on revenue obtained by extrapolation from the waybill study sample, it will reflect the weakness of that sample.

The CRP of 182.5 percent may not be valid under 49 U.S.C. 10709. Section 10709 defines the CRP as the revenue/variable cost limit which would, if it were applied, reduce railroad revenues to the level of variable costs plus fixed costs. Fixed costs must include a return on equity equal to the embedded cost of debt.

Clearly, a CRP cannot be produced which satisfies the statutory definition when costs exceed revenues. If a number derived from the Waybill Study sample is produced when costs exceed revenues, there is likely to be a limitation in the sample methodology and/or the data.

In this case, the CRP of 182.5 percent is suspect because total railroad revenues are less than costs as defined by section 10709(d)(1). In all likelihood, the discrepancy is due to the lack of revenue information on movements under contract. When revenues are less than costs, section 10709(d)(5)(B) deems the CRP to be the CRP "last determined by the Commission".

In view of the contradiction between our calculated CRP using revenue based on a sample and the fact that total freight revenues are less than costs, comments are requested on whether we should adopt our calculated CRP or fall back to the latest published CRP contained in our decision served January 25, 1985. Our final 1985 CRP will be determined in light of those comments.

We have developed a methodology for the calculation of the CRP which we believe satisfies the requirements of the Staggers Rail Act. After our review of comments relating to the methodology currently used, we intend to issue final procedures for the methodology used for the calculation of a CRP. Although we will continue to solicit comments on each year's CRP after final rules are issued, any suggestions for changes in our methodology after that time must be brought to our attention through either a petition for reconsideration or a rulemaking proceeding.

Comments are due 30 days after publication in the *Federal Register*. If the calculated CRP is adopted it will be used as the threshold for rate regulation of market dominant traffic because it falls within the range specified by the Staggers Rail Act of 1980.

**DATES:** Comments are due by March 12, 1986.

**FOR FURTHER INFORMATION CONTACT:** William T. Bono (202) 275-7354 or Robert C. Hasek (202) 275-0938 or 275-7354.

**SUPPLEMENTARY INFORMATION:**

Additional information is contained in the decision. To purchase a copy of the full decision, write T. S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone 289-4357 (Washington, DC Metropolitan Area) or toll free (800) 424-5043.

Section 202 of the Staggers Rail Act requires us to calculate an annual CRP for all railway traffic. The CRP is a revenue to variable cost percentage calculated using railway unit costs and a statistical sample of rail traffic. The Staggers Rail Act requires it to be set at such a level that, if all traffic moving at revenue to variable cost percentages above the CRP level were held at the CRP level, the railway industry would, in total, earn revenues sufficient to cover industry variable plus fixed costs. That Act currently sets a range of 170 percent to 180 percent in order for the CRP to be used as the jurisdictional threshold for rate regulation of market dominant traffic. If our calculated CRP falls below 170 percent the threshold will be set at 170 percent. If it falls above 180 percent the threshold will be set at 180 percent.

**Authority:** 49 U.S.C. 10321, 10709, 5 U.S.C. 553.

Dated: December 10, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Andre, Sterrett, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred with a separate expression.

James H. Bayne,

Secretary.

[FR Doc. 86-2824 Filed 2-7-86; 8:45 am]

**BILLING CODE 7035-01-M**

[Docket No. AB-33 (Sub-No. 26)]

**Union Pacific Railroad Co.;  
Abandonment in Douglas County, NE;  
Findings**

The Commission has found that, subject to certain conditions, the public convenience and necessity permit the Union Pacific Railroad Company to abandon its line of railroad extending from railroad miles post 482.62 to railroad mile post 488.19 and from railroad mile post 488.70 to railroad mile post 492.33, a total distance of approximately 9.20 miles in Douglas County, Nebraska.

A certificate will be issued authorizing his abandonment unless within 10 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 must 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. 86-2825 Filed 2-7-86; 8:45 am]

**BILLING CODE 7035-01-M**

**DEPARTMENT OF JUSTICE**

**Information Collection(s) Under OMB Review**

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. The list has all entries grouped into new forms, revisions, or extensions. Each entry contains the following information: the name and telephone number of the Agency Clearance Officer (from whom a copy of the form and supporting documents is available); the office of the agency issuing the form; the title of the form; the agency form number, if applicable; how often the form must be filled out; who will be required or asked to report; an estimate of the number of responses; an estimate of the total number of hours needed to fill out the form; an indication of whether Section 3504(h) of Pub. L. 96-511 applies; and, the name and telephone number of the person or office responsible for the OMB review. Copies of the proposed form(s) and the supporting documentation may be obtained from the Agency Clearance Officer whose name and telephone number appear under the agency name. Comments and questions regarding the item(s) contained in this list should be directed to the reviewer listed at the end of each entry and to the Agency

Clearance Officer. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer and the Agency Clearance Officer of your intent as early as possible.

**Department of Justice**

Agency Clearance Officer: Larry E. Miesse, 202/633-4312

*Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection*

- (1) Larry E. Miesse, 202/633-4312
- (2) Federal Bureau of Investigation, Department of Justice
- (3) Monthly return of arson offenses known to law enforcement
- (4) DO-73
- (5) Monthly
- (6) State and local governments. Used to collect the number of arsons and dollar loss throughout the United States. Data are published annually.
- (7) 1,716 respondents
- (8) 10,296 burden hours
- (9) Not applicable under 3504(h)
- (10) Robert Veeder, 395-4814
- (1) Larry E. Miesse, 202/633-4312
- (2) Federal Bureau of Investigation, Department of Justice
- (3) Number of full-time law enforcement employees as of October 31
- (4) DO-52, 52a, 52b
- (5) Annually
- (6) State and local governments. Needed to determine the number of civilian and sworn male/female law enforcement employees in the United States; data published annually.
- (7) 11,702 respondents
- (8) 2,340 burden hours
- (9) Not applicable under 3504(h)
- (10) Robert Veeder, 395-4814
- (1) Larry E. Miesse, 202/633-4312
- (2) Federal Bureau of Investigation, Department of Justice
- (3) Supplementary homicide report
- (4) DO-56
- (5) On occasion
- (6) State and local governments. Used to collect age, sex, race, ethnic origin and relationship of murder victims; weapons; and motives. Data published annually.
- (7) 929 respondents
- (8) 110 burden hours
- (9) Not applicable under 3504(h)
- (10) Robert Veeder, 395-4814
- (1) Larry E. Miesse, 202/633-4312
- (2) Immigration and Naturalization Service, Department of Justice
- (3) Alien Crewman's landing permit
- (4) I-95A
- (5) On occasion

(6) Individuals or households, Vessel and aircraft alien crewmen execute this form for permission to enter the United States under Sections 251 and 252 of the Immigration and Nationality Act.

(7) 300,000 respondents

(8) 24,900 burden hours

(9) Not applicable under 3504(h)

(10) Robert Veeder, 395-4814

(1) Larry E. Miesse, 202/633-4312

(2) Immigration and Naturalization Service, Department of Justice

(3) Report of status treaty trader or investor

(4) I-126

(5) Annually

(6) Individuals or households.

Information is used to determine whether an alien admitted to the United States as a treaty trader or investor (Section 101[a][15][e], I&N Act) is maintaining status.

(7) 35,000 respondents

(8) 17,500 burden hours

(9) Not applicable under 3504(h)

(10) Robert Veeder, 395-4814

Larry E. Miesse,

Agency Clearance Officer, Department of Justice.

[FR Doc. 86-2846 Filed 2-7-86; 8:45 am]

BILLING CODE 4410-10-M

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Agency Information Collection Activities Under OMB Review

**AGENCY:** National Endowment for the Humanities, NAAH.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Comments on this information collection must be submitted by March 12, 1986.

**ADDRESSES:** Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) or Ms. Judy McIntosh, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-6880).

**FOR FURTHER INFORMATION CONTACT:** Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room

202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0233) from whom copies of forms and supporting documents are available.

**SUPPLEMENTARY INFORMATION:** All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

**Category:** Extension of the Expiration Date of Currently Approved Form

**Title:** Sample Certification Letter

**Form Number:** 3136-0072

**Frequency of Collection:** Occasional

**Respondents:** NEH grantees who which to certify third party gifts

**Use:** To certify that gifts for federal matching funds, have been received by NEH grantees.

**Estimated Number of Respondents:** 500

**Estimated Hours for Respondents to Provide Information:** 1/2.

Susan Metts,

Acting Director of Administration.

[FR Doc. 86-2845 Filed 2-7-86; 8:45 am]

BILLING CODE 7536-01-M

## NATIONAL TRANSPORTATION SAFETY BOARD

### Availability of Safety Recommendations Issued

Recommendation No.	Issued to	Date	Subject
<b>AVIATION</b>			
A-85-127 and 128	Federal Aviation Administration	Nov. 14, 1985	Installation and maintenance of runway markers, landing aids, safety areas, surveillance, and length of runway at Dutch Harbor Airport, Unalaska, Alaska.
A-85-112 through -114	FAA	Nov. 15, 1985	Airport Radar Service Areas (ARSA) and Terminal Control Areas (TSA) at the New Orleans International Airport.
A-85-115	FAA	Nov. 27, 1985	Minimum runway lengths for transport category airplanes in general aviation; emergency brake systems or alternate emergency procedures for use in brake failures.
A-85-117	FAA	Nov. 19, 1985	Mandatory use of shoulder harnesses during takeoff and landing of U.S. registered civil aircraft.
A-85-116	County of Los Angeles Fire Department, Avalon Fire Department, and Santa Catalina Island Conservancy.	Nov. 27, 1985	Improvement of crash/fire/rescue capability at the Catalina Airport.
A-85-138 through -140	FAA	Dec. 13, 1985	Fail safe criteria for dome-shaped aft pressure bulkheads on transport category airplanes.
A-85-126	General Aviation Manufacturers Association.	Dec. 17, 1985	Evaluation of design of the seat/restraint systems in models of airplanes in wide use.
A-85-122 through -125	FAA	Dec. 17, 1985	Performance standards for seat/restraint systems in small airplanes.
A-85-93 through -104	FAA	Dec. 17, 1985	Airline passenger safety education.
<b>HIGHWAY</b>			
H-85-22	Governors of States and 4 U.S. Territories and the Mayor of the District of Columbia.	Nov. 12, 1985	Proper use of child seat restraints.
H-85-23 through -26	National Highway Traffic Safety Administration (NHTSA).	Nov. 12, 1985	Proper use of child seat restraints.
H-85-44 through -46	Riss International Corporation.	Nov. 15, 1985	Transportation of hazardous materials; 24-hour emergency telephone numbers, safe haven lists, route selection.
H-85-41 through -43	Colorado State Highway Commission.	Nov. 15, 1985	Inspection, effectiveness, and adequacy of existing hazard warning signs on interstate highway ramps; particularly ramp on Interstate 25 southbound to Interstate 70 eastbound.
H-85-36 through -40	Federal Highway Administration (FHA).	Nov. 15, 1985	Location of safe havens and routes designated for or restricted from the transportation of hazardous materials, placement of curve and turn warning signs; standards for retroreflective illumination for traffic control devices.
H-85-31 through -35	Bureau of Motor Carrier Safety, FHA	Nov. 15, 1985	Transportation of hazardous materials; 24-hour emergency number, driver qualifications, safe havens, routing requirements, safety ratings.
H-85-47 and -48	NHTSA	Dec. 6, 1985	Improved reporting of alcohol involvement in highway crashes.

Recommendation No.	Issued to	Date	Subject
INTERMODAL			
I-85-21 through -27	U.S. Department of Defense	Nov. 15, 1985	Safe transportation of high-hazard Department of Defense shipments.
MARINE			
M-85-108 through -110	U.S. Coast Guard	Dec. 5, 1985	Performance of safety equipment, adequacy of exposure suits when worn by physically smaller adults, and lights on life preservers.
M-85-107	Imperial Manufacturing Co.	Dec. 5, 1985	Separation of the inflator tube assembly for the auxiliary buoyancy ring on Imperial Manufacturing Co. exposure suits manufactured before clamps were required on inflator tubes.
M-85-116	Department of Labor Occupational Safety and Health Administration.	Dec. 17, 1985	Lifesaving and firefighting equipment requirements to protect industrial workers employed on uninspected self-elevating lift boats in State controlled waters.
M-85-111 through -115	U.S. Coast Guard	Dec. 17, 1985	Need for further regulation of self-elevating lift boats operating on the outer continental shelf.
M-85-117 through -119	Offshore Marine Service Association	Dec. 17, 1985	Regulation of self-elevating lift boats in the Gulf of Mexico and other offshore areas.
PIPELINE			
P-85-23 through -28	National Fuel Gas Company	Nov. 27, 1985	Emergency response procedures for gas leaks and preventive measures.
P-85-31	Research and Special Programs Administration.	Nov. 27, 1985	Design limitations on forces anticipated to act upon plastic pipe and couplings.
P-85-29	Dresser Industries, Inc.	Nov. 27, 1985	Customer notification of new or modified product limitations.
P-85-30	American Gas Association and American Public Gas Association	Nov. 27, 1985	Design limitations on forces anticipated to act upon plastic pipe and couplings.
P-85-32	American Society of Mechanical Engineers and the American Petroleum Institute.	Nov. 27, 1985	Local emergency response to pipeline emergencies; initial lifesaving measures; provision of training to local emergency response agencies.
P-85-33	International Association of Fire Chiefs, Inc., the International Association of Chiefs of Police, and the International Society of Fire Service Instructors.	Nov. 27, 1985	Local emergency response to pipeline emergencies; initial lifesaving measures; provision of training to local emergency response agencies.
RAILROAD			
R-85-53	All railroads operating railyards	June 6, 1985	Development and implementation of emergency planning and response procedures for handling releases of hazardous materials.
R-85-64	Federal railroad Administration (FRA)	June 24, 1985	Testing and evaluation of head shields to protect DOT specification aluminum tank car ends from puncture.
R-85-76 through -78	Seaboard System Railroad, Inc.	July 22, 1985	Prevention of return to service of unsafe equipment; dispatching procedures in manual block territories, and safe dispatching of trains.
R-85-79 and -80	Seaboard System Railroad, Inc.	July 22, 1985	Notification of local emergency response agencies immediately of a derailment of a train transporting hazardous materials and training of employees in rules applicable to hazardous materials emergencies.
R-85-84 and -85	Association of American Railroads (AAR)	Aug. 5, 1985	Modification of operating rules classes and administering tests for employees and allocation to AMTRAK of radio channel for its exclusive operational use in New York area.
R-85-81 through -83	National Railroad Passenger Corporation	Aug. 5, 1985	Coach seatback cushion safety; exclusive radio channel for the National Railroad Passenger Corporation's operational use in New York area, operating rules verification procedure.
R-85-86	AAR	Aug. 12, 1985	Inspection of cushion underframe units replaced by Joy Manufacturing Company.
R-85-87	American Short Line Railroad Association	Aug. 12, 1985	Inspection of cushion underframe units replaced by Joy Manufacturing Company.
R-85-99	FRA	Sept. 26, 1985	Compliance of tank cars used in hazardous materials service with DOT standards.
R-85-100 and -101	City of North Little Rock, Arkansas	Sept. 26, 1985	Emergency response plan for responding to releases of hazardous materials within railroad yards and training and equipment for emergency response personnel.
R-85-49 and -50	Missouri Pacific Railroad Company	Sept. 26, 1985	Master railroad yard emergency response guideline for use by railroad yard personnel and the communities, for responding to releases of hazardous materials within railroad yards; local emergency and response plans.
R-85-98	Arkansas Office of Emergency Service	Sept. 26, 1985	Emergency response guidelines for use by communities adjacent to railroad yards that handle hazardous materials.
R-85-88 through -97	Chicago Transit Authority	Oct. 16, 1985	Emergency evacuation of trains at locations away from station platforms; medical records on operating personnel; evaluation of drugs taken by operating personnel; effects of over-the-counter drugs; initial and recurrent training in routine and simulated emergency situations; knowledge and understanding of CTA rules; procedures and coordinated response to emergency situations; identification of risks in CTA transit system; assurance that 6000-series cars retained for service are sound before they are returned to revenue service; energy-absorbing passenger seat grab bars and vertical stanchions.
R-85-106 through -112	The Chicago, South Shore and South Bend Railroad.	Nov. 13, 1985	3-minute delay rule for single-track operation; issue of "call orders"; record of communications to and from dispatcher; power-monitoring system; stop-and-proceed signal aspect where no propulsion power is available, communications skills for employees.
R-85-105	Research and Special Programs Administration.	Nov. 13, 1985	Requirement that tank car shipments of hazardous materials with an isolation radius of one-half mile or more be transported in tank cars equipped with head shield or full tank head protection.
R-85-102 through -104	Seaboard System Railroad	Nov. 13, 1985	Equipment temporarily stored on main tracks, train radio communications capability; training of crewmembers regarding inspection practices for assembling trains at designated initial terminals.
R-85-113 through -116	New York State Public Transportation Safety Board	Nov. 15, 1985	Integrated reporting systems on track and structures fires and car equipment fires, reporting of such fires for data collection; installation of a hardware communication system throughout subway tunnels; prohibition of extended operation of subway trains with insufficiently powered motor control groups.

Single copies of these recommendation letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. Please

include addressee's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page (\$1 minimum charge).

Alice F. Caldwell,  
Alternate Federal Register Liaison Officer.  
January 30, 1986.  
[FR Doc. 86-2768 Filed 2-7-86; 8:45 am]  
BILLING CODE 7533-01-M

### Availability of Safety Recommendations Issued

Recommendation number	Respondent	Date	Subject
<b>RAILROAD</b>			
R-85-53	Burlington Northern Railroad	June 13, 1985	Hazardous emergency preparedness.
R-85-53	Chicago and Illinois Midland Railroad Co.	June 20, 1985	Do.
R-85-53	Missouri-Kansas-Texas Railroad Co.	.....do	Do.
R-85-53	Seaboard System Railroad Co.	June 21, 1985	Do.
R-83-7 and -9	Association of American Railroads	July 31, 1985	Internal rail flow inspections based on defect occurrence rates; provision by shippers of hazardous materials descriptions.
R-83-60 and 61	Houston Belt & Terminal Railway Co.	Aug. 2, 1985	Monitoring of switch engine crews; qualifications of crew members.
R-85-3	Burlington Northern Railroad	Aug. 6, 1985	Emergency preparedness plans.
Monitoring of switch engine crews; qualification of crewmembers.	Do.		
R-85-59 and -60	Federal Railroad Administration	.....do	Tank car inspections and evaluation of industry inspection programs.
R-78-35	.....do	Aug. 9, 1985	Expansion of communication channels between FRA and Assn. of American Railroads—Early Warning System.
R-76-54 and -55, R-78-35 and -44, R-84-31, R-79-85, R-84-10, R-83-102	.....do	Aug. 12, 1985	Motive power and equipment.
R-85-53	Chicago & Northwestern	June 21, 1985	Hazardous materials emergency preparedness.
R-85-22	Seaboard System Railroad	.....do	Periodic monitoring of each train crew member on every applicable operational test.
R-85-53	The Atchison, Topeka and Santa Fe Railroad Co.	June 25, 1985	Hazardous material emergency preparedness.
R-85-53	Cambria and Indiana Railroad Company	.....do	Do.
R-85-53	Boston and Maine Corp.; Delaware & Hudson Railroad Co.; Maine Central Railroad Co.	June 26, 1985	Do.
R-84-05	Burlington Northern Railroad	June 28, 1985	In-train forces; reduction of longitudinal forces that can occur when trains are stopped.
R-85-53	Detroit & Mackinac Railroad Co.	.....do	Hazardous material emergency preparedness.
R-85-48	Association of American Railroads	July 18, 1985	Training and testing procedures for individuals to be employed in safety critical positions.
R-85-53	Illinois Central Gulf	July 22, 1985	Hazardous materials emergency preparedness.
R-85-53	Richmond, Fredericksburg and Potomac Railroad Co.	.....do	Do.
R-85-10 and -11	Federal Railroad Administration (FRA)	Aug. 12, 1985	Automated track geometry cars.
R-84-20	American Railway Engineering Association	Aug. 15, 1985	Torch-cutting of rail ends.
R-85-79 and -80	Seaboard System Railroad	Aug. 19, 1985	Notification of local emergency response agencies immediately of a derailment of a train transporting hazardous materials.
R-85-53	The Denver & Rio Grande Western Railroad Co.	Aug. 20, 1985	Hazardous materials emergency preparedness.
R-85-53	Indiana Harbor Belt Railroad Co., Railroad Co.	Oct. 18, 1985	Do.
R-85-53	Chicago & Northwestern Transportation Company	Sept. 18, 1985	Do.
R-85-53	Missouri-Kansas-Texas Railroad Co.	Sept. 5, 1985	Do.
R-84-15	Federal Railroad Administration	Aug. 27, 1985	Looseening problem on excess flow valves on certain tank cars.
R-85-64	.....do	.....do	Puncture resistance testing of aluminum tank cars.
R-85-87	The American Short Line Railroad	Aug. 30, 1985	Joy Manufacturing Company cushion underframe units.
R-85-76 through -78	Seaboard System Railroad	Sept. 3, 1985	Maintenance, inspection, supervisory practices, for locomotive and car equipment to prevent return to service of unsafe equipment.
R-81-39 and -40	Federal Railroad Administration	Sept. 5, 1985	Radios, grade crossing and other aspects of signal systems.
R-83-61	Chicago & Illinois Midland Railway Co.	Sept. 10, 1985	Fitness of operating department employees when coming on duty at any hour.
R-85-57 and -58	New York City Transit Authority	Sept. 6, 1985	Procedures to ensure appropriate signs and signals are displayed to indicate speeds; reporting of discrepancies in truck conditions.
R-81-104, -105, -106-108, -109, -112, -113 and -115	.....do	Sept. 5, 1985	Subway car inspections; emergency training; passenger procedures, provision of fire extinguishers, emergency procedures.
R-85-21	Association of American Railroads	Sept. 16, 1985	Crewmember substance use.
R-83-60 and -61	Illinois Central Gulf	.....do	Fitness of operating department employees; employee responsibility to report rules violations.
R-83-62, -63, -64, -67, -68, -69, -72, -74, and -75	Amtrak	Sept. 23, 1985	Emergency equipment and procedures on revenue passenger cars.
R-76-56 and -57	Association of American Railroads	Sept. 26, 1985	Effect of exposure to critical temperatures on wheels.
R-85-86	.....do	.....do	Joy Manufacturing Company cushion underframe units.
R-85-23	.....do	.....do	Bottom discontinuities on existing stub-sill tank cars.
R-85-62 and -63	.....do	Sept. 19, 1985	Inspection of hidden car components, development of headshield to protect DOT specification aluminum tank car ends from puncture.
R-85-25 through -34	State of New York Public Transportation Safety Board	Oct. 1, 1985	Removal of subway tunnel debris, emergency procedures.
R-85-84 and -85	Association of American Railroads	Oct. 2, 1985	Employee comprehension of operating rules.
R-85-4 and -5	Federal Railroad Administration	Oct. 8, 1985	Torch-cutting of chrome-vanadium alloy rail.
R-80-31, R-83-76	.....do	June 1985	Railroad passenger car safety.
R-83-30	.....do	June 1985	Alcohol and drug use in railroad operations.
R-85-25 through -34	New York City Transit Authority	Oct. 16, 1985	Removal of subway tunnel debris, emergency procedures.
R-83-25 and R-85-13	Amtrak	Oct. 23, 1985	Emergency lighting in passenger equipment; system to inform crew of over-heating traction motor support bearings.
R-82-15, -18, -55, -57, -70, -72, and 74	Washington Metropolitan Area Transit Authority	Oct. 24, 1985	Training for operators and supervisors; program to educate passengers on emergency procedures; marked emergency escape windows, side center doors; instruction graphic; carbone monitors.
R-83-47, -50, and -51	Seaboard System Railroad	Oct. 25, 1985	Hazardous materials emergency response procedures.

Recommendation number	Respondent	Date	Subject
R-85-98	Arkansas Office of Emergency Preparedness	.....do	Transportation of hazardous materials; emergency drills and exercises.
R-85-81 through -83	Amtrak	Nov. 14, 1985	Reinforcing bar in the head-rest portion of the Amfleet seat back cushion; separate radio channel for the New York Sunnyside Yard operation; employee comprehension of rules.
R-85-71 and -72	U.S. Department of Labor	Aug. 21, 1985	Inspection of petrochemical plant loading facilities.
R-85-52	Association of American Railroads	Sept. 11, 1985	Requirement for at least two qualified crewmembers to be present on locomotives of through freight trains; one having total responsibility for the train and all employees, and the other to serve as an assistant.
I-85-2 through -4	Harris Corporation	June 20, 1985	Safe packaging of wastes.
I-85-13 and -14	Research and Special Programs Administration	Aug. 6, 1985	Evacuation distances for rail tank cars carrying hazardous materials.
I-85-16 through -18	Kentucky Department of Military Affairs	July 29, 1985	Emergency response plans & procedures.
I-85-5 and -6	Chemical Waste Management, Inc.	Sept. 23, 1985	Safety and training programs for waste transporters.
I-78-14 through -16	Association of American Railroads	Sept. 26, 1985	Safety procedures for identifying and assessing hazardous materials dangers; wreckage-clearing operations.
I-78-9	Research and Special Programs Administration	Sept. 27, 1985	Safety analysis application in hazardous materials regulatory and exemption programs.

Note.—The Safety Board has revised the format of these notices of availability to reduce significantly the cost of preparing and printing this information. Single copies of these response letters are available on written request to: Public Inquiries Section,

National Transportation Safety Board, Washington, DC 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page (\$1 minimum charge).

Alice F. Caldwell,  
Alternate Federal Register Liaison Officer  
January 30, 1986.  
[FR Doc. 86-2769 Filed 2-7-86; 8:45 am]  
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### Responses to Safety Recommendations

Recommendation No.	Respondent	Date	Subject
AVIATION			
A-82-32	Federal Aviation Administration	Nov. 1, 1985	Tension bolts on wings of specified model Beech Aircraft—removal, inspection.
A-85-53 through -56	do	Nov. 1, 1985	Rotating outer air seal grooves in 2nd stage low-pressure turbine disks in Pratt & Whitney JT8D15-17, and 17R series engines.
A-78-4	do	Nov. 1, 1985	Forward baggage door locks on Piper Cheyenne, Navajo, and Aztec airplanes.
A-83-64	do	Nov. 1, 1985	Roll pins used to secure fuel tank selector valve handles to fuel tank selector valve shafts on all Cessna model airplanes.
A-82-123 through -129	do	Oct. 29, 1985	Training guides for pilot transition into general aviation turbojet airplanes.
A-76-64	do	Oct. 29, 1985	Maximum number of birds in various categories required to be injected into turbine engines.
A-84-50	do	Oct. 29, 1985	Requirement for possession of valid medical certificates for airmen.
A-81-53	do	Oct. 29, 1985	Retrofitting of Beech Baron/Travel Air aircraft with aerodynamic air flow kits.
A-84-83 and -84	do	Oct. 26, 1985	Low altitude/conflict alert at ARTS III/III A facilities.
A-85-5 and -6	do	Aug. 23, 1985	Engine fire detection & extinguishing systems on Boeing 747 series airplanes equipped with Pratt & Whitney JT9D series engines.
A-84-36, -37 and -41	do	July 5, 1985	Safety of aircraft operations in the airport environment.
A-84-24 thru -26	do	July 1, 1985	Airport Certification Program—standards for fueling training.
A-81-70	do	July 5, 1985	Design of flanges and fasteners on forward and aft faces of the fan case of JT9D turbofan engines.
A-74-38 and -39	do	July 5, 1985	Specifications for standardizing powerplant control locations, visual/tactile appearance, mode of actuation, and fuel selector valve handles.
A-84-93 thru -95	do	July 5, 1985	Pilot use of licit and illicit drugs.
A-80-115 and -119	do	June 19, 1985	National Weather Service weather radar color remote displays.
A-84-45, -46, -48, and -50	do	June 3, 1985	Blood alcohol testing of airmen; requirement for airmen to possess valid medical certificates.
A-84-87, -88, -89 and -92	do	June 17, 1985	Mooney Model M-20 and M-20A airplanes; structural deterioration.
A-85-32 and -33	do	July 12, 1985	Coordination between ground and local air traffic controllers.
A-85-26 and -27	do	July 22, 1985	Wind shear training program and cockpit resource management training.
A-84-79 and -80	do	Aug. 1, 1985	Cessna Models 206, 207, and nonturbocharged Model 210—inspection of induction airbox assembly; installation of Cessna induction airbox assembly Part 1250705-8.
A-81-156 and A-83-36	do	Aug. 7, 1985	Evaluation of air traffic controllers.
A-85-31	do	July 25, 1985	Inspection on Model PA-601B, -601P and -602P Piper Aerostar airplanes to determine whether the intercostals of the wing extension assemblies are properly attached with rivets to the wing rib structure at wing station 195.
A-85-34	do	Aug. 29, 1985	General Electric CF6-50 and CF6-45 engines; left side cooling air tubes.
A-85-8 through -10	do	Aug. 29, 1985	Field modifications for Mooney Models M20B, M20C, M20, E, M20F, M20G, M20J, (201) and M20K (231), and elimination of possibility for water entrapment in outward bay area of fuel tanks on all Mooney aircraft.
A-83-33	do	Sept. 13, 1985	Inspection of connector sockets specified in Sunstrand Data Control Service Bulletin No. 23, dated Aug. 2, 1982, and replacement of incorrect connectors.
A-77-70, A-80-125, A-80-126, A-80-127, A-75-51, A-80-130, A-80-131, A-80-128	do	Sept. 12, 1985	Shoulder harnesses at occupant seats, crashworthiness testing for occupant protection.
A-85-20 and -21	do	Sept. 13, 1985	Detection and repair of wing structural damage and inflight airframe failure in Bellanca Model 8GCBC.
A-80-53	do	Sept. 12, 1985	Control and airspeed margins of Series 20 Learjet aircraft at both low- and high-speed extremes.
A-85-19	National Oceanic and Atmospheric Administration	Aug. 13, 1985	Inspection of Supplementary Aviation Weather Reporting Stations outside the Alaska Region.
A-82-32	Federal Aviation Administration	Aug. 12, 1985	Periodic inspection of specified Model Beech aircraft wing tension bolts.
A-76-34	do	Sept. 24, 1985	Airplane wind shear penetration capability.
A-78-23	do	Sept. 17, 1985	Expansion of research on "Cockpit Human Factors Program" to include problems peculiar to helicopter controls and displays.

Recommendation No.	Respondent	Date	Subject
A-79-42	do	Sept. 18, 1985	Runway incursion problem.
A-81-34	DOD Defense Mapping Agency	Sept. 20, 1985	NOS approach charts—missed approach symbology.
A-80-90, -91, -92, and -94	Federal Aviation Administration	Sept. 17, 1985	Crash resistant fuel systems.
A-84-67 and -68	do	Oct. 1, 1985	Loss of tail rotor effectiveness on Bell Model 206 helicopters.
A-85-50 through -52	do	Oct. 23, 1985	Labeling of ignition switch on Fairchild Swearingen Models SA-226 and SA-227.
A-83-35, -36, A-84-71 through -73	do	Oct. 23, 1985	Controller fatigue and stress, operational error, Miami ARTCC satellite channels.
A-84-60	do	Oct. 23, 1985	Engine compartment design of all certificated multiengine helicopters.
A-84-87 and -88	do	Oct. 23, 1985	Structural deterioration in Mooney Models M-20 and M-20A airplanes.
A-83-39	do	Oct. 7, 1985	Punitive nature of controller operational error/deviation investigations.
A-84-96	U.S. Department of Transportation	Oct. 3, 1985	Effect of licit and illicit drugs on human performance in all transportation
A-83-55	Federal Aviation Administration	Oct. 1, 1985	Inclusion of questions on visual scanning techniques for airborne targets in written examinations for pilot licenses.
H-85-12	Hawaii Department of Education	June 12, 1985	Schoolbus driver qualifications.
H-85-13	Florida Department of Education	June 13, 1985	Do.
H-84-15 through -18	State of Maryland	June 14, 1985	Sobriety checkpoints.
H-84-30	Mack Trucks, Inc.	June 18, 1985	Decarbonization control.
H-85-13	Oklahoma Department of Education	June 18, 1985	Schoolbus driver qualifications.
H-85-13	Tennessee Department of Education	June 19, 1985	Do.
H-85-12	Nebraska Department of Motor Vehicles	June 20, 1985	Do.
H-84-21	Missouri Division of Highway Safety	June 24, 1985	Data evaluation of DWI laws.
H-85-12	State of Hawaii	June 25, 1985	Schoolbus driver qualifications.
H-85-13	Arizona Department of Transportation	June 25, 1985	Do.
H-85-13	Kansas Department of Transportation	June 26, 1985	Do.
H-85-12	State of Nevada	June 28, 1985	Do.
H-85-12	California Highway Patrol	July 1, 1985	Do.
H-85-13	Wisconsin Department of Public Instruction	July 2, 1985	Do.
H-85-12	Maine Department of Educational and Cultural Services	July 2, 1985	Do.
H-85-12	State of Maryland	July 5, 1985	Schoolbus driver qualifications.
H-84-77 through -86	Commonwealth of Kentucky	July 8, 1985	Blood alcohol testing, alcohol-related traffic offenses, including juvenile offenders.
H-85-13	Ohio Department of Education	July 10, 1985	Schoolbus driver standards.
H-85-9 through -11	Florida Department of Highway Safety and Motor Vehicles	July 12, 1985	Schoolbus inspection (private and public buses).
H-84-66 through -68	Federal Highway Administration	July 15, 1985	Identification of motor carriers involved in interstate commerce through the automated Management Information System.
H-79-13	Recreational Vehicle Industry Assn	July 15, 1985	Safety of multipurpose vans.
H-85-13	Washington Superintendent of Public Instruction	July 15, 1985	Schoolbus operation—public and private.
H-85-13	Ohio Department of Highway Safety	July 17, 1985	Schoolbus operation—public and private.
H-85-12	North Carolina Department of Transportation	July 17, 1985	Schoolbus driver qualifications.
H-81-2, -4, -7	Federal Highway Administration	July 16, 1985	Motor carrier safety—hazardous materials enforcement.
H-85-12	State of Washington	July 23, 1985	Schoolbus driver qualifications.
H-85-12	State of Mississippi	July 25, 1985	Do.
H-84-76	Wayne Corporation	July 25, 1985	Attachment of seat cushions to seat frames.
H-85-12	State of Rhode Island and Providence Plantations	July 26, 1985	Schoolbus driver qualifications.
H-85-12	State of New York	July 26, 1985	Do.
H-83-53 through -59	National Highway Traffic Safety Administration	July 26, 1985	Testing of child safety seats.
H-85-13	Virginia Department of Education	July 26, 1985	Schoolbus driver qualifications.
H-79-31, H-84-72, H-85-12	Minnesota Department of Education	July 22, 1985	Do.
H-85-12	State of Hawaii	July 30, 1985	Do.
H-85-13	Alaska Department of Education	July 30, 1985	Do.
H-85-12, H-84-72	Ohio Department of Highway Safety	July 31, 1985	Do.
H-78-52	Federal Highway Administration	July 31, 1985	Energy attenuating devices capable of decelerating large runway vehicles on steep grades.
H-79-31, H-84-72, and H-85-12	Commonwealth of Massachusetts	July 31, 1985	Schoolbus driver qualifications.
H-85-4 through -6	Alaska Department of Education	July 31, 1985	Schoolbus driver compliance with railroad crossing stop requirements; schoolbus driver stress.
H-84-89	Veterans Administration	July 31, 1985	Availability of VA hospital alcohol dependency treatment programs to local traffic court rehabilitation programs for convicted veteran DWI defendants.
H-85-17	North Carolina Department of Transportation	Aug. 1, 1985	Schoolbus driver qualifications.
H-79-31, H-84-72, and H-85-12	State of Maryland	Aug. 2, 1985	Do.
H-79-31, H-84-72, and H-85-12	Wisconsin Department of Transportation	Aug. 3, 1985	Do.
H-84-77 through -86	State of New Jersey	Aug. 5, 1985	Blood alcohol testing; alcohol-related traffic offenses.
H-85-13	Pennsylvania Department of Transportation	Aug. 6, 1985	Schoolbus driver qualifications.
H-85-12	State of Nebraska	Aug. 8, 1985	Do.
H-85-12	State of Delaware	Aug. 7, 1985	Do.
H-79-31, H-84-72, and H-85-12	California Department of Highway Patrol	Aug. 7, 1985	Do.
H-85-12	State of Iowa	Aug. 8, 1985	Do.
H-85-12	State of Vermont	Aug. 9, 1985	Do.
H-79-31, H-84-72, and H-85-12	Oregon Department of Transportation	Aug. 9, 1985	Do.
H-85-12	State of Indiana	Aug. 13, 1985	Do.
H-84-19 through -21	State of Missouri	Aug. 26, 1985	Sobriety checkpoints.
H-84-55	American Association of State Highway and Transportation Officials	Sept. 11, 1985	Design of bridges.
H-84-61 and -62	Trailways	Sept. 13, 1985	Driver seatbelt compliance and speed compliance.
H-83-23 and -24	Federal Highway Administration	Aug. 14, 1985	Testing of New Jersey type barriers on curved roadway sections—including crash testing of heavier vehicles with higher centers of gravity.
H-79-31, H-84-72, and H-85-12	State of Connecticut	Aug. 14, 1985	Schoolbus driver qualifications.
H-84-91 and -92	International Association of Chiefs of Police, Inc.	Aug. 15, 1985	Use of emergency signaling devices by police in non-emergency situations.
H-83-39 through -41, and -46 through -48	State of Alaska	Aug. 15, 1985	Use of lap seat belts in schoolbuses.
H-79-31, H-84-72, and H-85-12	State of West Virginia	Aug. 19, 1985	Schoolbus driver qualifications.
H-84-77, -79, -82 and -85	Ohio Department of Highway Safety	Aug. 23, 1985	Preliminary breath tests, DWI holding and release policies, juvenile offenders.
H-85-12	New Jersey Department of Education	Aug. 26, 1985	Schoolbus driver qualifications.
H-83-51	Delaware Department of Public Safety	Aug. 29, 1985	Child safety seats.
H-85-17	Commonwealth of Virginia	Aug. 29, 1985	Supplemental locks on schoolbus emergency doors.
H-83-51	Commonwealth of Kentucky	Sept. 3, 1985	Child safety seats.
H-85-4 through -6	State of Missouri	Sept. 3, 1985	Schoolbus driver certifications.

Recommendation No.	Respondent	Date	Subject
H-79-31, H-84-72, and H-85-12	State of Iowa	Sept. 4, 1985	Do.
H-85-12	Florida Department of Highway Safety and Motor Vehicles	Sept. 6, 1985	Do.
H-84-77	State of Florida	Sept. 9, 1985	Preliminary breath test devices; three-part field sobriety test, including the horizontal gaze nystagmus test.
H-82-35	Minnesota Department of Public Safety	Sept. 11, 1985	Citizen drunk driving reporting program.
H-83-39, -40, -41, and -50, H-84-77 through -86	State of Texas	Sept. 12, 1985	Preliminary breath test devices, detention of DWI offenders, treatment of juvenile offenders, seat restraints for small schoolbus passengers, child passenger safety program.
H-80-16, -17, -18 and -20	Federal Highway Administration	Sept. 13, 1985	Seat restraints for bus passengers.
H-68-18, H-70-4, H-73-7, H-73-42	do	Sept. 13, 1985	Detection and control of unsafe interstate.
H-80-54 through -57	do	Sept. 13, 1985	State skid resistance programs.
H-84-77, -78, -73, -84, -86, and -79	State of Nevada	Sept. 19, 1985	Three-part field sobriety test, including the horizontal gaze nystagmus test, driver record system, pre-sentence investigation, juvenile offenders, detention of DWI offenders.
H-85-18	West Virginia Department of Education	Sept. 20, 1985	Schoolbus rear emergency door locks.
H-83-51	State of Connecticut	Sept. 23, 1985	Child safety seats.
H-85-18	Florida Department of Highway Safety and Motor Vehicles	Sept. 24, 1985	Schoolbus rear emergency door locks.
H-85-9, -12, -18, H-79-31, H-84-72	State of Georgia	Sept. 25, 1985	Schoolbus driver qualifications; rear emergency door locks.
H-79-31, H-84-72, and H-85-12	State of New York	Sept. 25, 1985	Schoolbus driver qualifications.
H-84-78, -79, -80, and -84	Alaska Department of Public Safety	Sept. 27, 1985	Blood alcohol testing, detention of DWI offenders, repeat offenders.
H-82-35	Alaska Department of Public Safety	Sept. 27, 1985	REDDI programs; citizen drunk driver reporting.
H-83-51	State of New York	Oct. 1, 1985	Child safety seats.
H-85-18	Arizona Department of Transportation	Oct. 3, 1985	Rear emergency door locks on school buses.
H-80-58	Federal Highway Administration	Oct. 4, 1985	Uniform traffic control devices—pavement marking policies.
H-85-4 through -6	State of West Virginia	Oct. 7, 1985	Schoolbus driver compliance with railroad crossing stop requirements; driver stress.
H-83-61	Ford Motor Company	Oct. 7, 1985	Lap belt locking clip on Ford child safety seats.
H-77-19	Department of California	Oct. 7, 1985	Heavy-duty commercial vehicle driver qualifications.
H-85-17	Washington Traffic Safety Commission	Oct. 8, 1985	Rear emergency door locks on schoolbuses.
H-82-35	Pennsylvania Department of Transportation	Oct. 11, 1985	Citizen drunk driver reporting programs (REDDI).
H-76-23	Federal Highway Administration	Oct. 11, 1985	Identification and surveillance of accident locations.
H-82-35	State of Nevada	Oct. 14, 1985	Citizen drunk driver reporting programs (REDDI).
H-83-18	American Trucking Associations, Inc.	Oct. 15, 1985	Safe truck transportation of hazardous materials.
H-76-12 and -14	Federal Highway Administration	Oct. 22, 1985	Bridge inspection reports; investigation of bridge collapses on public roadways and of accidents involving vehicles that have struck traffic barrier railing on bridges.
H-85-18	State of West Virginia	Oct. 23, 1985	Rear emergency door locks on schoolbuses.
PIPELINE			
P-85-7	Interstate Natural Gas Association of America	June 18, 1985	Records of corrosion test results, safe transportation of hydrocarbons.
P-85-7	American Petroleum Institute	June 20, 1985	Do.
P-74-47	National Fire Protection Association	June 20, 1985	Treatment of gas leaks.
P-85-6	Texas Eastern Gas Pipeline Company	June 28, 1985	Cathodic Protection—pipe corrosion.
P-76-13	Southern Building Code Congress International, Inc.	July 3, 1985	Standard Gas Code—protecting gas lines in buildings.
P-74-22	Missouri Public Service Company	July 8, 1985	System failure alarms.
P-76-83	Michigan Power Company	July 18, 1985	Determination of gas-in-air ratio at which gas odor is first detectable.
P-83-29	American Gas Association	July 23, 1985	Inspection of customer-owned piping.
P-78-23	American Society of Mechanical Engineers	Sept. 12, 1985	Location of isolation valves in gas distribution systems.
P-85-21	American Gas Association	Sept. 18, 1985	ABS pipe material failures.
P-84-48	Columbia Gas	Oct. 14, 1985	Procedures for defining & investigating pipeline failures.
P-85-7	Interstate Natural Gas Association of America	Oct. 22, 1985	Cathodic protection of pipelines.
P-85-7	American Gas Association	Oct. 25, 1985	Do.
MARINE			
M-83-76 and -77	State of Nevada	June 10, 1985	Alcohol abuse and boating safety.
M84-74 through -76	American Bureau of Shipping	July 8, 1985	Inspection of non-fuel oil tanks; stability criteria for Mobile Offshore Drilling Units.
M-81-21	Federal Highway Administration	July 16, 1985	Structural pier protection on bridges over navigable waterways.
M-85-48	National Association of State Boating Law Administrators	July 29, 1985	Guidelines for vessels not subject to Federal jurisdiction.
M-85-42 through -44	United States Coast Guard (USCG)	Aug. 9, 1985	Vessel bridge-to-bridge radiotelephone.
M-85-18 through -24	USCG	Aug. 9, 1985	Study to identify critical areas of Western Rivers; qualifications for towing vessel operators; alternative bridge main span light displays; shore lighting in St. Louis Harbor.
M-85-29 through -35	USCG	Aug. 21, 1985	Port contingency plan for Port Canaveral; firefighting in U.S. ports & waterways; fire standards of SOLAS 74; sprinkle systems in accommodation areas of passenger vessels, increased level of Captain of the Port representation in Port Canaveral, Florida.
M-84-17 through -19	USCG	Sept. 4, 1985	Training for commanding officers in use of tugs.
M-84-67 through -69	ARCO China, Inc.	Sept. 11, 1985	Organization charts and company lists.
M-80-23	USCG	Sept. 19, 1985	Carriage of emergency position indicating radio beacons (EPIRB) on documented U.S. fishing vessels.
M-85-25	National Oceanic and Atmospheric Administration (NOAA)	Sept. 24, 1985	Publication of a Western Rivers Navigation Guide.
M-83-12	USCG	Sept. 30, 1985	Manning requirements for certificated lifeboatmen on a MODU.
M-85-36 through -38	Canaveral Port Authority	Oct. 3, 1985	Port contingency plan; portable power supplies available at berths; passenger vessel submission of plans, diagrams, and procedures to Emergency Services coordinator for Port Authority.
M-85-45 and -46	USCG	Oct. 21, 1985	Reevaluation of basis for stability criteria; microbursts.
M-85-25	NOAA	Oct. 23, 1985	Advisory notes to navigation charts.
M-85-96	Lloyd's Register of Shipping	Oct. 24, 1985	Structural design of ships.
M-85-95	Liberty Fishing Corporation	Oct. 25, 1985	Stability of the fishing vessel <i>Liberty</i> .
M-85-91	U.S. Department of the Interior	Oct. 30, 1985	Safe use of natural gas on offshore drilling platforms.
M-85-14 through -17	USCG	Oct. 30, 1985	Reporting requirements for bridges over navigable waterways.

The Safety Board has revised the format of these notices of availability to reduce significantly the cost of preparing and printing this information. Single copies of these response letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, DC 20594. Please include respondent's name, date of letter, and recommendation number(s) in your request. The photocopies will be billed at a cost of 14 cents per page (\$1 minimum charge).

Catherine T. Kaputa,

*Federal Register Liaison Officer.*

January 30, 1986.

[FR Doc. 86-2770 Filed 2-7-86; 8:45 am]

BILLING CODE 7533-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 40-2061-SC; ASLBP No. 84-502-01 SC]

### Kerr-McGee Chemical Corp.; West Chicago Rare Earths Facility (Kress Creek Decontamination); Reconstruction of Board

Pursuant to the authority contained in 10 CFR 2.721 and 2.721(b), the Atomic Safety and Licensing Board for the *Kerr-McGee Chemical Corporation* (West Chicago Rare Earths Facility (Kress Creek Decontamination)), Docket No. 40-2061-SC, is hereby reconstituted by appointing Administrative Judge Jerry R. Kline in place of Administrative Judge Peter A. Morris, who because of schedule conflict is unable to serve.

As reconstituted, the Board is comprised of the following Administrative Judges:

John H. Frye, III, Chairman  
Dr. Jerry R. Kline  
Dr. James H. Carpenter

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The address of the new Board member is: Administrative Judge Jerry R. Kline, Atomic Safety and Licensing Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda Maryland, this 4th day of February, 1986.

B. Paul Cotter, Jr.,

*Chief Administrative Judge, Atomic Safety and Licensing Board Panel.*

[FR Doc. 86-2887 Filed 2-7-86; 8:45 am]

BILLING CODE 7590-01-M

### Advisory Committee on Reactor Safeguards, Subcommittee on Emergency Core Cooling Systems; Meeting

The ACRS Subcommittee on Emergency Core Cooling Systems will hold a meeting on February 26, 1986, Room 1046, 1717 H Street, NW, Washington, DC.

To the extent practical the meeting will be open to public attendance. However, portions of the meeting may be closed to discuss proprietary information related to Westinghouse ECCS codes.

The agenda for the subject meeting shall be as follows:

*Wednesday, February 26, 1986-8:30 A.M. Until the Conclusion of Business*

The Subcommittee will review Duke Power Company's request to delete use of the ECCs UHI system.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Paul Boehmert (telephone 202/634-3267) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any

changes in schedule, etc., which may have occurred.

Dated: February 5, 1986.

Morton W. Libarkin,

*Assistant Executive Director for Project Review.*

[FR Doc. 86-2886 Filed 2-7-86; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Information Collection for OMB Review

**AGENCY:** U.S. Office of Personnel Management (OPM).

**ACTION:** Notice of extended use of a revised form submitted to the Office of Management and Budget (OMB) for clearance.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980, this notice announces the extended use of a revised OPM Form 192 that collects information from the public. Under the provisions of the Administrative Procedure Act of 1946, now 5 U.S.C. 553-559, 1104, and 3105, OPM is required to examine qualifications of applicants who seek appointment to Administrative Law Judge (ALJ) positions.

Further, under 5 U.S.C. 1305, OPM is specifically authorized to collect such information and reports as needed to carry out its responsibility for examining applicants for ALJ positions. For copies of this proposal, call James M. Farron, Agency Clearance Officer, on (202) 632-7714.

**DATE:** Comments on this proposal should be received within 20 working days from date of this publication.

**ADDRESS:** Send or deliver comments to—

James M. Farron, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415, and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** James M. Farron, (202) 632-7714.

U.S. Office of Personnel Management.

Constance Horner,

*Director.*

[FR Doc. 86-2767 Filed 2-7-86; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF TRANSPORTATION

## Agreements Filed During Week Ending January 31, 1986

Answers may be filed within 21 days from the date of filing.

Date filed	Docket No.	Parties	Subject	Proposed effective date
Jan. 27, 1986	43749	Members of International Air Transport Association	Mid-Atlantic-Africa Fares	Apr. 1, 1986
Do	R-1—R-37 43750	do	Amend Netherlands-Morocco Creative Fares	Do
Do	R-1 & R-2 43751	do	Amends Japan-Australia Fares for New Service	Do
Do	43752	do	Inc. Peak GIT Fares ex-Japan to South West Pacific	Do
Do	43753	do	New GCRs between PyongYang and TC3	Feb. 10, 1986
Jan. 30, 1986	43763	do	Inc. Rates ex Egypt/Syria to Western Hemisphere	Dec. 21, 1986
Do	43764	do	Reduce Minimum Stays on Intra-So. American Excursion Fares	Feb. 15, 1986
Jan. 28, 1986	43754	NWA Inc., c/o Ronald D. Eastman, Cadwalader, Wickersham & Taft, 1333 New Hampshire Avenue NW., Suite 700, Washington, DC 20006. Republic Airlines, Inc., c/o Raymond J. Rasenberger, Zuckert, Scoutt, Rasenberger & Johnson, 888—17th Street NW., Washington, DC 20036. Joint Application of NWA Inc. and Republic Airlines, Inc. apply for an exemption to the extent necessary to allow NWA to acquire control of Republic. If DOT decides not to use its exemption authority, Joint Applicants ask the Department to approve the transaction under section 408 of the Act to proceed expeditiously under show cause procedures		

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-2883 Filed 2-7-86; 8:45 am]

BILLING CODE 4910-62-M

**Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed; Week Ended January 31, 1986**

## Subpart Q Applications

The due date for answers, conforming

application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may

consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Jan. 31, 1986	43766	Key Airlines, Inc., c/o John T. Stewart, Jr., Zuckert, Scoutt, Rasenberger & Johnson, 888 Seventeenth Street, NW., Suite 600, Washington, DC 20006. Application of Key Airlines, Inc. pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations seeks authority to engage in interstate and overseas scheduled air transportation of persons, property and mail. It intends to initiate service with one daily scheduled round-trip between Salt Lake City, Utah and Las Vegas, Nevada.
Jan. 31, 1986	43771	Conforming Applications, Motions to Modify Scope and Answers may be filed by February 27, 1986. All Nippon Airways Co., Ltd., c/o James L. Devall, Zuckert, Scoutt, Rasenberger & Johnson, 888 17th Street, NW., Washington, DC 20006. Application of All Nippon Airways Co., Ltd. pursuant to Section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to engage in scheduled foreign air transportation of persons, property, and mail on the following route: Between Tokyo, Japan and Guam. ANA also requests authority to engage in charter foreign air transportation of persons, property and mail. Answers may be filed by February 28, 1986.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 86-2884 Filed 2-7-86; 8:45 am]

BILLING CODE 4910-62-M

## Federal Railroad Administration

[RS&amp;I-Ap-No. 1018]

**Missouri, Kansas and Texas Railroad Co.; Petition of Exemption and Hearing**

The Missouri, Kansas and Texas Railroad Company has petitioned the Federal Railroad Administration (FRA) seeking an exemption from the requirements of the last sentence of § 236.204 of the Rules, Standards and Instructions which reads, "... In absolute permissive block signaling, when a train passes a head block signal

it shall cause the opposing head block signal to display an aspect with an indication not more favorable than 'Stop'." This proceeding is identified as FRA Rules, Standards and Instructions No. 1018.

After examining the carrier's proposal and the available facts, the FRA has determined that a public hearing is necessary before a final decision is made on the proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on April 2, 1986, in the City Council Chambers, Second Floor of the Fort Worth City Hall, 1000 Throckmorton Street, in Fort Worth, TX.

The hearing will be an informal one, and will be conducted in accordance with Rule 25 of the FRA rules of practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on February 3, 1986.

J. W. Walsh,

Associate Administrator for Safety.

[FR Doc. 86-2882 Filed 2-7-86; 8:45 am]

BILLING CODE 4910-06-M

# Sunshine Act Meetings

Federal Register

Vol. 51, No. 27

Monday, February 10, 1986

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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Consumer Product Safety Commission	1, 2
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Securities and Exchange Commission.	4

1

### CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 9:30 a.m., Wednesday, February 12, 1986.

**LOCATION:** Third Floor Hearing Room, 1111 - 18th Street, NW., Washington, DC.

**STATUS:** Open to the Public.

#### MATTERS TO BE CONSIDERED:

##### 1. Pressed Wood Project/Petition CP 82-6

The staff will brief the Commission on its analysis of the Consumer Federation of America (CFA)'s petition, as well as provide information on the risk of formaldehyde emitted by pressed wood products.

##### 2. Section 15 Guidelines

The staff will brief the Commission on its response to comments on the Statement of Enforcement Policy on Substantial Product Hazard Reports, published in the Federal Register on April 6, 1984.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207; 301-492-6800.

Sheldon D. Butts,  
*Deputy Secretary.*

February 6, 1986.

[FR Doc. 86-2936 Filed 2-6-86; 12:43 pm]

BILLING CODE 6355-01-M

2

### CONSUMER PRODUCT SAFETY COMMISSION

**TIME AND DATE:** 9:30 a.m., Thursday, February 13, 1986.

**LOCATION:** Third Floor Hearing Room, 1111-18th Street, NW., Washington, DC

**STATUS:** Open to the public.

#### MATTERS TO BE CONSIDERED:

##### 1. Upholstered Furniture Flammability Project

The Commission will consider staff recommendations for 1986 on activities on upholstered furniture flammability.

##### 2. Methylene Chloride

The Commission will consider various options available to them on methylene chloride in paint strippers and spray paints.

**FOR A RECORDED MESSAGE CONTAINING THE LATEST AGENDA INFORMATION, CALL:** 301-492-5709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207 301-492-6800.

Sheldon D. Butts,

*Deputy Secretary.*

February 6, 1986.

[FR Doc. 86-2937 Filed 2-6-86; 12:43 pm]

BILLING CODE 6355-01-M

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### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

February 5, 1986.

**TIME AND DATE:** 10:00 a.m., Wednesday, February 26, 1986.

**PLACE:** Room 600, 1730 K St., NW., Washington, DC.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Commission will hear oral argument on the following:

1. Robert Simpson v. Kenta Energy, Inc., & Roy Dan Jackson. Docket No. KENT 83-155-D. (Issues include whether the administrative law judge properly concluded that the miner was constructively discharged in violation of the Mine Act.)

Any person intending to attend this hearing who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

**TIME AND DATE:** Following oral argument.

**STATUS:** Closed (Pursuant to 5 U.S.C. 552b(c)(10)). A majority of Commissioners voted to close this portion of the meeting.

**MATTERS TO BE CONSIDERED:** The Commissioners will consider and act upon the above listed case, Docket No. KENT 83-155-D.

**CORRECTION TO PREVIOUSLY ANNOUNCED AGENDA:** The agenda meeting announced for February 12, 1986 listed an incorrect docket number. The case should read: U.S. Steel Mining Co., Inc., Docket No. PENN 84-49.

#### CONTACT PERSON FOR MORE

**INFORMATION:** Jean Ellen, 202-653-5632.

Jean H. Ellen,

*Agenda Clerk.*

[FR Doc. 86-2928 Filed 2-6-86; 11:46 am]

BILLING CODE 6735-01-M

4

### SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of February 10, 1986.

A closed meeting will be held on Tuesday, February 11, 1986, at 2:30 p.m. An open meeting will be held on Thursday, February 13, 1986, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, February 11, 1986, at 2:30 p.m., will be:

- Formal order of investigation.
- Institution of administrative proceedings of an enforcement nature.
- Institution of injunctive actions.
- Settlement of administrative proceeding of an enforcement nature.
- Chapter 11 proceeding.

The subject matter of the open meeting scheduled for Thursday, February 13, 1986, at 10:00 a.m. will be:

1. Consideration of whether to withdraw Temporary Exemptive Rule 206A-1(T) under

the Investment Advisers Act of 1940 for certain broker-dealers which, by its terms, expired. For further information, please contact Stephanie M. Monaco at (202) 272-2031.

2. Consideration of whether to propose for public comment Rule 202(a)(1)-1 under the Investment Advisers Act of 1940 which would deem a transaction not resulting in a change of actual control or management of an

investment adviser not to be an "assignment" requiring approval of the adviser's clients. For further information, please contact Stephanie M. Monaco at (202) 272-2031.

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: Kathryn Natale at (202) 272-3195.

**John Wheeler,**

*Secretary.*

February 3, 1986.

[FR Doc. 86-2967 Filed 2-6-86; 8:45 am]

BILLING CODE 8010-01-M

# **Federal Register**

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Monday  
February 10, 1986

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## **Part II**

### **Department of Transportation**

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**Maritime Administration**

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**46 CFR Parts 381 and 383  
Cargo Preference; U.S. Flag Vessels;  
Proposed Rulemaking**

**DEPARTMENT OF TRANSPORTATION****Maritime Administration****46 CFR Part 383**

[Docket No. R-104]

**Preference Cargoes; Proposed Rulemaking****AGENCY:** Maritime Administration, Transportation.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Maritime Administration (MARAD) proposes to establish new administrative procedures and methodology for determining fair and reasonable rates for the carriage of dry bulk preference cargoes in less than full shiploads on United States-flag commercial liner vessels. These proposed regulations would also require operators to submit data on the operating and capital costs of their vessels. On the basis of these data, MARAD would calculate fair and reasonable guideline rates according to the method explained in the Supplementary Information Section of these proposed regulations.

**DATE:** Comments must be received on or before April 11, 1986.

**ADDRESS:** Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. To expedite review of the comments, the Agency requests, but does not require, submission of an additional ten (10) copies of the comments. All comments will be made available for inspection during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Arthur B. Sforza, Director, Office of Ship Operating Costs, Maritime Administration, Washington, DC 20590, Tel. (202) 382-6036.

**SUPPLEMENTARY INFORMATION:** Section 901(b)(1) of the Merchant Marine Act of 1936, as amended (46 U.S.C. 1241(b)) (Act), requires that at least 50 percent of any equipment, materials or commodities generated by the United States or for the account of any foreign nation without provision for reimbursement, or acquired as the result of funds or credits from the United States, should be transported on privately owned United States-flag commercial vessels to the extent that such vessels are available at fair and reasonable rates. In 1985, section 901

was amended to limit the application of cargo preference to specific programs and to raise the U.S.-flag share for those programs to 75 percent, phased in over three years.

Section 901 requires that all affected shipper agencies comply with regulations issued by MARAD (by delegation from the Secretary of Transportation). While a substantial number of Federal agencies generate preference cargoes, the preponderance of shipping tonnage subject to cargo preference is generated by the Department of Defense, U.S. Department of Agriculture (USDA), Department of State's Agency for International Development (AID), Department of Energy's Strategic Petroleum Reserve (SPR), and Eximbank. The principal agencies generating parcel lots of dry bulk preference cargoes are USDA and AID.

In 1981, the U.S. District Court for the District of Columbia (District Court), in response to a claim that the Maritime Subsidy Board (MSB) has no rate setting authority, held that the MSB has broad authority under section 901 of the Act to establish the rate formula and to provide guidance to other departments and agencies. The case was appealed to the U.S. Court of Appeals for the District of Columbia Circuit (Court of Appeals). In November 1982, the Court of Appeals upheld the previous ruling that the MSB has authority to set rates but it instructed the District Court to remand that particular case to the MSB for further proceedings on the reasonableness of the rate involved.

For many years MARAD has determined fair and reasonable rates for the carriage of civilian preference cargoes on bulk vessels and provided guidance to the shipper agencies. However, no formal rate guidance has been provided for the carriage of preference cargoes on liner vessels except for full shiploads. Fair and reasonable rates for the carriage of full shiploads of preference cargoes on liner vessels have been determined in the same manner as bulk vessel rates. The rates charged by liner companies for less than full shiploads have been a function of vessel costs and market forces. Decisions as to the reasonableness of such liner rates have been a function of the individual U.S. government agency controlling the cargo. With regard to military cargoes, MARAD does not have the authority to determine whether or not rates for such cargoes are fair and reasonable. Pursuant to the Cargo Preference Act, 1904 (10 U.S.C. 2631), authority to determine excessive or unreasonable

rates for military cargoes is not vested in the Department of Transportation.

The lack of fair and reasonable rate standards for the carriage of non-competitive preference cargoes on liner vessels has recently been criticized. The President's Private Sector Survey on Coast Control (the Grace Commission) cited the need for regulatory standards to limit the cost of transporting preference cargoes on U.S.-flag liner vessels. Further, a General Accounting Office report entitled "Transportation of Public Law 480 Commodities—Efforts Needed to Eliminate Unnecessary Costs", included a recommendation to establish a system of fair and reasonable rates for the carriage of preference cargoes by liner vessels in less than full shiploads. MARAD concurs with these recommendations and proposes to implement a fair and reasonable rate system for liner vessels.

Civilian preference cargoes are primarily raw and processed, packaged and bulk agricultural commodities which are shipped to friendly nations under auspices of USDA in conjunction with Titles I, II, and III of the Agricultural Trade and Assistance Act of 1954 (Pub. L. 480), and under auspices of the State Department as AID cargoes. Packaged liner preference cargoes generally are transported at rates published as independent ocean carrier and conference freight tariffs filed with the Federal Maritime Commission, as required by law.

Tariffs on bulk parcel cargoes are not required by statute and are not filed. These parcels are predominantly dry bulk cargoes. The freight rates for liner parcels of dry bulk preference cargoes have been based on market conditions which have, at times, included a limited supply of vessels. The rates generally rise and fall according to the competitive demand. Rates have also fluctuated to some extent because of variances in shipping terms caused by local and seasonal factors at and beyond the ports of discharge. Thus, fluctuations, in the market place have been a more important factor than vessel costs in setting freight rates for liner parcels of dry bulk preference cargoes. Over the years these rates and the preference cargo laws have been criticized due to the large disparity with foreign rates. Accordingly, the methodology to establish fair and reasonable rates has been limited to dry bulk preference cargoes.

Three alternatives were considered in formulating this rulemaking. The first of these was to let the status quo prevail and continue with no formal fair and reasonable rate standards. However, as

noted previously, MARAD concurs with the Grace Commission and GAO recommendations that there is a need for regulatory standards to limit the cost of transporting dry bulk preference cargoes. Without such standards, there are no assurances that dry bulk preference cargo parcels are carried on liner vessels at fair and reasonable rates.

The second alternative would involve implementing a system of fair and reasonable rates that are fully cost compensatory based on each vessel's actual costs. Such a system would not encourage efficiency measures for the carriage of preference cargoes since full compensation would provide no incentive for the operator to lower its costs in order to make a profit. It would have the disadvantage of inefficient operators continuing to bid for cargoes at rates reflecting their high operating cost levels.

The third alternative considered would utilize average operating costs on a fleetwide basis, and would incorporate actual capital costs and a reasonable return for investment. Such a system would be advantageous since it would encourage efficiency measures. The separate treatment of operating cost data and capital cost data permits recognition of the varying degrees of control that an operator has over different categories of costs. The vessel operator can exercise some control over operating costs. In contrast, capital costs are dictated to a large extent by prevailing conditions in the financial markets and are by and large beyond an operator's control. The proposed methodology, as set forth below, would reflect these considerations.

#### **New MARAD System for Determination of Guideline Rates**

The proposed procedures would set the maximum level (the fair and reasonable rate) for the carriage of dry bulk preference cargoes in parcels on eligible liner vessels. Eligible vessels are those for which data has been submitted in accordance with this rule. The cost-based guideline rates established by MARAD would apply only to the waterborne portion of cargo transportation and would consist of three components: (1) Operating costs, including fuel; (2) capital costs; and (3) port and cargo handling costs. Port and cargo handling costs would be determined on the basis of full berth terms, and with regard to ports of destination, only to the extent of landing the cargo in such a port. Any charges incurred for additional handling and necessary inland transport are beyond

the jurisdiction of MARAD and will not be included in the guideline rate.

The operating cost component of the fair and reasonable rate for each participating liner vessel would be based on the aggregate average of all operating costs submitted by interested vessel operators for the calendar year immediately preceding the current year. The capital cost component would be calculated individually for each participating liner vessel type, and would consist of a reasonable return on investment, depreciation, and interest cost. To determine the operating and capital components as a cost per ton, the resulting daily cost elements would be multiplied by the average number of days per voyage, and divided by the average cargo carried per voyage, as derived from the operators' submissions. The operating and capital cost components would be added to the port and cargo handling charges based on the cargo tender terms for commodity, load and discharge ports, and lot size, expressed as a cost per ton.

The determination of fair and reasonable rates for the carriage of preference cargoes on voyages which are not totally dedicated to a preference trade presents a unique problem with respect to the allocation of vessel operating and capital costs. A liner operator would base its offered rate for moving the preference cargo on a variety of factors relating to its own operating schedule and the particular trade involved. The movement of the commercial cargo is generally the most important element of the voyage. Since fair and reasonable rates for preference cargoes must be determined prospectively, the amount of commercial cargo to be carried on the voyage would be unavailable at the time the fair and reasonable rate is determined. The mix of cargoes, also unknown, would make it difficult to accurately estimate the time necessary to conduct the voyage, and its associated costs. Consequently, the rate formula would not differentiate between commercial cargoes and preference cargoes in the computation of the operating and capital cost components since both cargoes are carried on the same voyage. For those components, it would utilize aggregate average data from the previous year, for all eligible liner vessels, with respect to voyage length and freight payable tonnage (the number of weight tons and measurement tons on which the freight charges have been based). The port and cargo handling component of the rate would be based on cargo tender terms.

In addition, terms to carry cargoes to many foreign ports, especially in third

world nations, may vary drastically from one time to another. Commercial rates quoted for such areas may include surcharges for such unforeseeable costs as port congestion, weather, additional handling and transshipment to inland points. Many times these additional charges occur on a seasonal basis, or because of local competitive or political factors. As a result it is not possible to create a guideline rate which would accurately reflect all of the possible conditions in every port of discharge. Accordingly, the proposed guideline rate determination would utilize only factors to some extent within the control of the operators, and would be applicable only to the sealift of the cargo involved. Charges for additional services such as bagging at discharge, rail or truck loading and inland transport should be reviewed and approved by the sponsoring Government shipper agency.

The consideration and use of average operating costs is intended to encourage efficiency measures since vessel operators can exercise some control over operating costs. The methodology provides some incentive for efficiency since it would not allow full reimbursement for the high costs of inefficient vessels.

#### **Proposed Data Submission Requirements**

The proposed new Part 383 would require all operators who wish to participate in the carriage of dry bulk preference cargo to submit specific data to MARAD regarding vessel operating and capital costs. The data would be used by MARAD to determine fair and reasonable rates for the carriage of parcel lots of dry bulk preference cargoes on United States-flag liner vessels. Data submissions would be required not later than April 30 of each year and would be updated at least once every 12 months. Required information would include operating expenses (e.g., crew employment costs), capital costs (e.g., interest cost on the vessel), and an annual recapitulation of voyage results (e.g., cargo revenue tons, voyage days).

MARAD recognizes that a portion of United States-flag liner operators already submit operating data to MARAD under the reporting requirements for other programs administered by the agency. This information is collected by vessel type. To avoid duplication of information reporting requirements, data already submitted by an operator in accordance with another MARAD program would suffice for the purposes of this proposed rule, provided the data required by this proposal are submitted by April 30 of

each year. Operators which do not already submit this information on a current basis would be required to submit the past year's experience, and update the information annually. MARAD needs these data in order to calculate fair and reasonable rates accurately. Pursuant to the Freedom of Information Act, data submissions would be considered confidential commercial or financial information not to be disclosed to the public (5 U.S.C. 552(b)(4)). A provision is included in the proposed regulation under which data would be held in confidence. Comments are particularly invited on § 383.2(c), which contains the provision relating to confidentiality.

#### E.O. 12291, Statutory and DOT Requirements

The Maritime Administrator has determined that this proposed regulation is not a major rule as defined in E.O. 12291, but is significant under DOT regulatory policies and procedures (49 FR 11034, February 26, 1979). This proposed regulation is considered to be significant because MARAD expects it to generate considerable interest among ship operators and because there are no information submission procedures presently in place for the purpose of determining fair and reasonable rates for liner parcels of dry bulk preference cargoes.

MARAD has not yet prepared a regulatory evaluation. However, it does expect, given the lack of formal procedures for establishing fair and reasonable rate levels, that the implementation of a new system would result in significant program savings for the carriage of dry bulk preference cargoes in parcels on liner vessels. It is difficult to accurately estimate the magnitude of program savings which would result from implementation of fair and reasonable rate procedures. MARAD does not at this time have accurate information to support projections on the economic impact of implementing fair and reasonable rates and specifically requests comments on the industry's views in that regard. Based on those comments and other information available to it, MARAD will prepare a regulatory evaluation at the final rulemaking stage.

Since this proposal would affect principally ship operators with substantial annual revenues, and Government agencies, MARAD certifies that this rule, as proposed, would not exert a significant economic impact on a substantial number of small entities under Pub. L. 96-354. This proposed rulemaking contains a proposed information collection requirement in

§ 383.2. Although MARAD estimates ten total respondents, seven of those are subsidized and already submit the data to MARAD on Form MA-172. Since this rule would not require duplication of information reporting, the number of new respondents for purposes of the Paperwork Reduction Act is three. The proposed information collection requirement is being submitted to OMB for review pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). We estimate that the total amount of time required to submit the proposed required data would be 48 hours (3 respondents x 16 hours to compile data per response). The total estimated cost of the proposed information collection would be only \$441.00 annually (43 hours for an accountant and 5 hours for a clerk x hourly rates of \$9.35 and \$7.87, respectively). Persons desiring to comment on these information collection requirements should submit their comments to:

Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, Attn: Desk Officer, Department of Transportation. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Department of Transportation, Maritime Administration as listed under "ADDRESSES."

#### List of Subjects in 46 CFR Part 383

Agricultural commodities, Cargo vessels, Government procurement, Grant programs—foreign relations, Loan programs—foreign relations, Water transportation, Freight and maritime carriers.

Accordingly it is proposed to amend 46 CFR Chapter II by adding a new Part 383, to read as follows:

#### PART 383—DETERMINATION OF FAIR AND REASONABLE RATES FOR THE CARRIAGE OF LINER PARCELS OF DRY BULK PREFERENCE CARGOES ON U.S.-FLAG LINER VESSELS

- Sec.  
383.1 Scope.  
383.2 Data submission.  
383.3 Determination of fair and reasonable rates.

Authority: Sec. 204(b), 901, Merchant Marine Act, 1936, as amended (46 U.S.C. 1241; Pub. L. 97-31. (August 6, 1981).

##### § 383.1 Scope.

Part 383 prescribes regulations applying to the waterborne transportation of dry bulk preference cargoes in less than full shiploads on United States-flag commercial liner vessels. These regulations contain the method that the Maritime

Administration (MARAD) shall use in calculating fair and reasonable rates and the type of information that must be submitted by liner operators interested in carrying such preference cargoes.

##### § 383.2 Data submission.

(a) *General.* Operators who wish to employ vessels in the carriage of liner parcels of dry bulk preference cargoes must submit information as provided in paragraph (b) of this section, as applicable, to the Director, Office of Ship Operating Costs, Maritime Administration, Washington, DC 20590. Such information shall be submitted not later than April 30 of each year and updated not less often than once every 12 months. All submissions are subject to verification by MARAD.

(b) *Required Information.* (1) For each vessel an operator wishes to be considered for the carriage of preference cargoes, operating cost information shall be submitted, by vessel type, in the format stipulated by 46 CFR 232.1, Form MA-172, including operating revenue and expenses (Schedule 301). Such information shall be applicable to the most recently completed calendar year.

(2) For each vessel, total costs capitalized for Federal Income Tax purposes (list and date capitalized improvements separately) and cost and interest rate on any debt applicable to each vessel.

(3) An operator which already submits the information in paragraphs (b)(1) and (b)(2) of this section to MARAD in conjunction with other MARAD programs need not submit a duplicate of the information.

(c) *Confidentiality.* Due to the proprietary and confidential nature of the commercial and financial information requested in subparagraph (b) above, MARAD has determined that disclosure of such data is not required under 5 U.S.C. 552(b)(4).

##### § 383.3 Determination of fair and reasonable rates.

(a) *Cost Components.* MARAD shall calculate a fair and reasonable rate for all liner vessels participating in this program. The fair and reasonable rate shall include an operating cost component, a capital cost component, and a component for port and cargo handling expense.

(b) *Operating cost component.* (1) *General.* MARAD shall calculate an average operating cost component applicable to the fair and reasonable rate for all participating liner vessels. It shall be based on operating cost data submissions for the calendar year immediately preceding the current year.

(2) *Items included.* The operating cost component shall include all costs relating to vessel operation and shall include expense categories as defined by 46 CFR Part 232.1, Form MA-172, Schedule 301, Operating Expenses.

(c) *Capital component.* (1) *General.* MARAD shall calculate the daily capital component of the fair and reasonable rate for each participating liner vessel type, consisting of return on working capital (one-half average voyage expense), return on equity, vessel depreciation, and interest cost.

(2) *Items included.* The capital component shall include:

(i) *Return on working capital.* The working capital shall be calculated for each participating liner vessel type, consisting of the dollar amount necessary to cover one-half the average operating costs (as calculated in paragraph (b)(1)) for the average voyage length of all participating liner vessels. For a rate of return, MARAD is considering the use of the most recent median annual rate of return on stockholder's equity for the top 500 corporations. For example, the median rate of return for calendar year 1984 was 13.6%. As an alternative, MARAD is also considering the use of the 12-month Treasury Bill rate as of January 1 of the year for which fair and reasonable rates are being calculated. MARAD specifically requests the industry's comments on the rates of return under consideration and will consider any alternatives proposed in the comments.

(ii) *Return on equity.* For the purpose of determining equity, the vessel's net book value shall be determined from the operator's amortization schedule, Form MA-172, Schedule 213.

The net book value shall equal the owner's capitalized cost minus accumulated straight line depreciation. The rate of return on equity shall be the same as that determined for working capital.

(iii) *Interest.* The cost of debt shall be determined by calculating the daily interest cost for each vessel type using the vessel owner's interest rate and remaining principal to be paid for each vessel.

(iv) *Depreciation.* Depreciation for each vessel shall be calculated by depreciating cost, reconstruction cost or purchase cost on a straight line basis over 25 years, unless the owner has purchased or reconstructed the vessel when its age was greater than 15 years old. When vessels more than 15 years old are purchased, a depreciation period of 10 years shall be used. When vessels more than 15 years old are reconstructed, MARAD shall determine

the depreciation period. The residual value of the vessel shall be based on the current scrap-value as determined by MARAD.

(d) *Port and cargo handling component.* (1) *General.* MARAD shall calculate an estimate of port and cargo handling costs consisting of a U.S. port and cargo handling element and a foreign element as applicable. Government shipper agencies have at times required steamship lines to perform services beyond their usual scope of operation on some shipments. Additional services such as bagging at discharge, rail or truck loading on carriage to some inland destinations, and other sundry expenses have been included in the ocean freight rate in the past. In order to provide a fair and reasonable rate guideline, charges beyond the seaport terminal at which a vessel discharges should be reviewed and approved by the sponsoring Government shipper agency.

(2) *Items included.* Port and cargo handling charges shall include the following, assuming full berth term quotations:

(i) *U.S. port and cargo handling charges.* In this category MARAD shall include domestic port and cargo handling charges for commodity, port of lading, and lot size based on the cargo tender, expressed as a cost per ton.

(ii) *Foreign port and cargo handling charges.* To the extent possible MARAD shall include in this category all known foreign port and cargo handling charges that would normally be included. These estimates shall be made for commodity, port of discharge, and lot size based on the cargo tender, expressed as a cost per ton.

(3) *Terms.* If the terms of the rate are other than full berth terms to the vessel owner, adjustment to the guideline rate shall be made on an *ad hoc* basis by request to MARAD. This provision shall be interpreted in accordance with Incoterms, as amended, published by the International Chamber of Commerce, Paris, France.

(e) *Determination of voyage days and cargo carried.* For purposes of determining the vessel operating and capital cost components of the fair and reasonable rate, the number of voyage days and total cargo carried shall be the aggregate average as determined by the section 232(D) data submitted by the operators. The resulting components, expressed as costs per ton, shall be added to the component for port and cargo handling charges to yield the guideline rate.

By order of the Maritime Administrator

Dated: February 3, 1986.

Georgia P. Stamas,

Secretary, Maritime Administration.

[FR Doc. 86-2654 Filed 2-7-86; 8:45 am]

BILLING CODE 4910-81-M

## 46 CFR Part 381

[Docket No. R-105]

### Cargo Preference—U.S. Flag Vessels

**AGENCY:** Maritime Administration, Transportation.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Maritime Administration (MARAD) proposes to amend procedures governing the evaluation by U.S. departments or agencies ("the agencies") of bids from subsidized U.S.-flag vessel operators for the carriage of dry bulk preference cargoes. The amendments would expand coverage of the procedures to subsidized liner vessel carriage of dry bulk preference cargoes in less than full shiploads, and would revise procedures regarding negotiations with bidders by shipper agencies. The procedures would require that operating differential subsidies (ODS) received by operators of all liner vessels carrying less than full shiploads of dry bulk preference cargoes be considered a cost to the government for the carriage of such cargoes and be considered in the calculation of fair and reasonable rates for such carriage. MARAD's intent in proposing this regulation is to ensure equitable competition between subsidized and unsubsidized operators carrying dry bulk preference cargoes and the carriage of these cargoes at the lowest direct cost to the government.

**DATE:** Comments must be received on or before April 11, 1986.

**ADDRESS:** Send original and two copies of comments to the Secretary, Maritime Administration, Room 7300, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. To expedite review of the comments, the Agency requests, but does not require, submission of an additional ten (10) copies of the comments. All comments will be made available for inspection during normal business hours at this address. Commenters wishing MARAD to acknowledge receipt should enclose a self-addressed and stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Arthur B. Sforza, Director, Office of Ship Operating Costs, Maritime Administration, Washington, DC 20590, Telephone: (202) 382-6036.

**SUPPLEMENTARY INFORMATION:****a. Background**

On October 11, 1984 (49 FR 39847) (46 CFR 381.8) MARAD issued a final rule setting forth procedures governing the evaluation by U.S. departments or agencies ("the agencies") of bids from subsidized U.S.-flag bulk vessel operators for the carriage of dry bulk preference cargoes. The procedures required that operating-differential subsidies (ODS) received by operators of vessels carrying dry bulk preference cargoes be considered a cost to the government for the carriage of such cargoes and be considered in the calculation of fair and reasonable rates for such carriage.

*Application of Rulemaking to Liner Operators*

Immediately preceding this document, MARAD is publishing a notice of proposed rulemaking (46 CFR Part 383) which would establish new administrative procedures and methodology for determining fair and reasonable rates for the carriage of dry bulk preference cargoes in less than full shiploads on U.S.-flag commercial liner vessels. The proposed rulemaking would require operators to submit data on the operating and capital costs of their vessels. Based on this data, MARAD would calculate fair and reasonable guideline rates.

At the time the final rule on dry bulk preference cargo was published as an interim final rule, two commenters suggested that MARAD expand the concept of the rule, i.e., the inclusion of ODS as a cost to the government, to subsidized liner vessels engaging in the carriage of preference cargoes. MARAD stated, in the preamble to the rule, that it was considering the possibility of issuing a separate rulemaking applicable to the carriage of preference cargo by subsidized liner vessels, with opportunity for public comment.

Since MARAD is issuing proposed fair and reasonable rate procedures applicable to liner vessels, it is appropriate to establish criteria for the evaluation of bids when subsidized liner vessels compete to carry dry bulk preference cargoes. MARAD proposes to require that ODS be considered a cost to the government during the evaluation of bids from subsidized liner operators for the carriage of dry bulk preference cargoes in less than full shiploads. The reasons for applying these procedures to full shiploads of preference cargoes carried on subsidized bulk vessels (49 FR 39847) are equally valid for liner vessel carriage in less than full shiploads (subsidized liner vessels do not receive ODS for the carriage of full

shiploads of preference cargoes). There is an inequity caused when an operator receiving ODS bids for cargo against an operator not receiving ODS. Unless the amount of ODS is taken into consideration by the agencies, subsidized vessels could have an unfair advantage. In addition to eliminating inequities, MARAD also wishes to assure that dry bulk preference cargoes are carried at the lowest cost to the government. Accordingly, MARAD is publishing this notice of proposed rulemaking which would revise 46 CFR 381.8 by applying a method similar to that used in evaluating dry bulk cargo preference bids for subsidized bulk vessels to all subsidized vessels.

This regulation does not supplant or prejudice further MARAD deliberations concerning the carriage of preference cargo by bulk operators pursuant to the decisions in *American Maritime Ass'n. v. United States*, No. 84-249 (D.D.C. August 20, 1984) and *American Maritime Ass'n. v. United States*, No. 84-5381 (D.C. Cir. July 2, 1985).

*Negotiations with Bidders*

The final rule for bulk vessels precluded the agencies from negotiating with anyone other than the low bidder. However, the Department of Agriculture, one of the shipper agencies covered by that rule, has stated that this provision has prevented it from negotiating lower rates for preference cargoes. MARAD agrees with the Department of Agriculture, and accordingly proposes to allow agencies to have more flexibility in negotiating with bidders to encourage lower rates. Forcing shipper agencies to accept the low initial bid prevents further negotiations which could result in even lower final offers.

This notice of proposed rulemaking would revise the final rule to allow the agencies to negotiate with all the bidders that have a reasonable chance of winning the bid. Such additional negotiations must, however, be equitable and non-discriminatory, may not permit carriers to learn the details of their competitors' bids, and the contract must be awarded to the bidder with the lowest responsive final offer.

**b. Procedures**

This proposed rule provides that when a subsidized vessel operator is the apparent low U.S.-flag responsive bidder for a dry bulk preference cargo, the responsible agency shall evaluate the subsidized operator's bid by: (1) Requesting from MARAD an amount for the ODS likely to be paid for the carriage of such cargo expressed as a cost per ton for performing the voyage

by the apparent low responsive subsidized bidder and any other responsive subsidized bidders; (2) deriving "augmented bids" for the subsidized operators by adding the ODS amount to each subsidized operator's by adding the ODS amount to each subsidized operator's bid; (3) comparing the augmented bids of the subsidized operators and the bids of unsubsidized operators to determine the apparent low responsive bidder; (4) requesting from MARAD a fair and reasonable guideline rate for the apparent low responsive bidder which shall be based on MARAD's calculation of the anticipated costs (less ODS in the case of a subsidized vessel) for the voyage plus a reasonable amount for profit for the voyage; and (5) determining whether the subsidized operator's unaugmented bid or the unsubsidized operator's bid, whoever was determined to be the lowest responsive bidder in Step (3), is at or below the guideline rate. When an open bid procedure is used, the contract shall be awarded to the low responsive bidder at a rate not exceeding the guideline rate. If the low responsive bidder will not carry the cargo at or below the guideline rate, the agency may disqualify the bidder. In that event, the agency must then fix the next lowest responsive bidder at a rate not exceeding the guideline rate. When a closed bid procedure is used, the agencies or any of their contractors may negotiate with all responsive bidders within a competitive range that have a reasonable chance of winning the bid. Such additional negotiations must be equitable and non-discriminatory, may not permit carriers to learn the details of their competitors' bids, and the contract must be awarded to the bidder with the lowest responsive final offer.

**c. E.O. 12291, Statutory, and DOT Requirements**

This proposed rulemaking is considered to be non-major under Executive Order 12291 and significant under DOT's regulatory policies and procedures (44 FR 11034; February 26, 1979). The rulemaking is significant because it is of substantial interest to certain governmental agencies and to the maritime industry since the shipment of preference cargoes represents a major source of business for that industry.

A regulatory evaluation for this proposed rule has not been prepared because MARAD does not have accurate information relating to essential variables needed to determine its economic impact. These variables would include the number of subsidized and unsubsidized vessels that would

compete, the particular preference trade involved, the number of voyages made, the efficiencies of the vessels and the amount of cargo. The information needed is not historical in nature, and MARAD cannot reasonably predict which operators and agencies would benefit since the impact of the rule is directly affected by competition for the specific cargoes through the bidding process. In view of the foregoing, MARAD specifically requests comments on the industry's views with respect to this proposal and will prepare a regulatory evaluation, if necessary. The major benefits of the rule would be the elimination of the competitive inequity in the bidding process between subsidized and unsubsidized operators and the assurance that dry preference cargoes are carried at the lowest cost to the government and the public.

MARAD sees no evidence that this rule would affect a substantial number of small entities pursuant to the Regulatory Flexibility Act of 1980 (Pub. L. 96-354), since the rule would affect only large ship operators which do not meet the criteria for small business in the Small Business Administration regulations (13 CFR Part 121). The Maritime Administration certifies that the rule would not have a significant economic impact on a substantial number of small entities. This rulemaking does not include any new or amended information collection requirement within the scope of the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

#### List of Subjects in 46 CFR Part 381

Freight, Maritime carriers, Reporting requirements.

Accordingly, 46 CFR Part 381 is proposed to be amended as follows:

#### PART 381—[AMENDED]

1. The authority citation for Part 381 continues to read:

**Authority:** Secs. 204(b), 212(d), and 901(b), Merchant Marine Act, 1936, as amended; 46 U.S.C. 1114(b), 1122(d), and 1241(b) unless otherwise noted.

2. Section 381.8 is revised to read as follows:

#### § 381.8 Subsidized vessel participation.

(a) For the purpose of approving subsidized U.S.-flag vessels competing for the carriage of dry bulk preference cargoes, each department or agency having responsibility under the Cargo Preference Act of 1954 (46 U.S.C. 1214(b)), shall evaluate bids received from the operators of such vessels in the manner described in this section.

(b) When a subsidized vessel operator is the apparent low U.S.-flag responsive bidder for a dry bulk preference cargo, the responsible department or agency shall evaluate the subsidized operators' bid by: (1) Requesting from MARAD an amount for the operating-differential subsidy (ODS) likely to be paid for the carriage of such cargo expressed as a cost per ton for performing the voyage by the apparent low responsive subsidized bidder and any other responsive subsidized bidders; (2) deriving "augmented bids" for the subsidized operators by adding the ODS amount to each subsidized operators' bid; (3) comparing the augmented bids of the subsidized operators and the bids of unsubsidized operators to determine the apparent low responsive bidder; (4) requesting from MARAD a fair and reasonable guideline rate for the apparent low responsive bidder which shall be based on MARAD's calculation of anticipated costs (less ODS in the case of a subsidized vessel) for the voyage plus a reasonable amount for profit for the voyage; and (5) determining whether the subsidized operator's unaugmented bid or the unsubsidized operator's bid, whichever was determined to be the lowest responsive bid in Step (3), is at or below the fair and reasonable guideline rate. When an open bid procedure is used, the contract shall be awarded to the low responsive bidder at a rate not exceeding the guideline rate. If the low responsive bidder will not carry the cargo at or below the guideline rate, the department or agency may disqualify that bidder and must fix the next lowest responsive bidder at a rate not

exceeding the guideline rate. When a closed bid procedure is used, the department or agency or any of its contractors may negotiate with all responsive bidders that have a reasonable chance of winning the bid. Such additional negotiations must be equitable and non-discriminatory, may not permit carriers to learn the details of their competitors' bids, and the contract must be awarded to the bidder with the lowest responsive final offer within the guideline rates.

(c) If the amount of cargo to be shipped is changed at any time prior to award, the department or agency shall request that MARAD provide new ODS amounts applicable to the carriage. The department or agency shall redetermine the augmented bids before determining the lowest responsive bid and requesting from MARAD a revised fair and reasonable guideline rate in accordance with the provisions of paragraph (b) above.

(d) Whenever a bid is submitted for a bulk cargo vessel for the transportation of dry bulk preference cargo, the responsible department or agency shall only approve bids that apply to an individual vessel, and may not accept combined bids submitted for more than one vessel.

(e) The requirements of this section shall apply only to those departments or agencies that directly pay or finance all or part of U.S.-flag ocean freight transportation costs for the carriage of dry bulk preference cargoes, in accordance with this part. The requirements of this section shall not apply to departments or agencies that provide foreign aid by direct cash transfer payments unless specific agreements between the departments or agencies and the recipient country concerning the expenditure of such funds for U.S.-flag vessels.

By order of the Maritime Administrator.

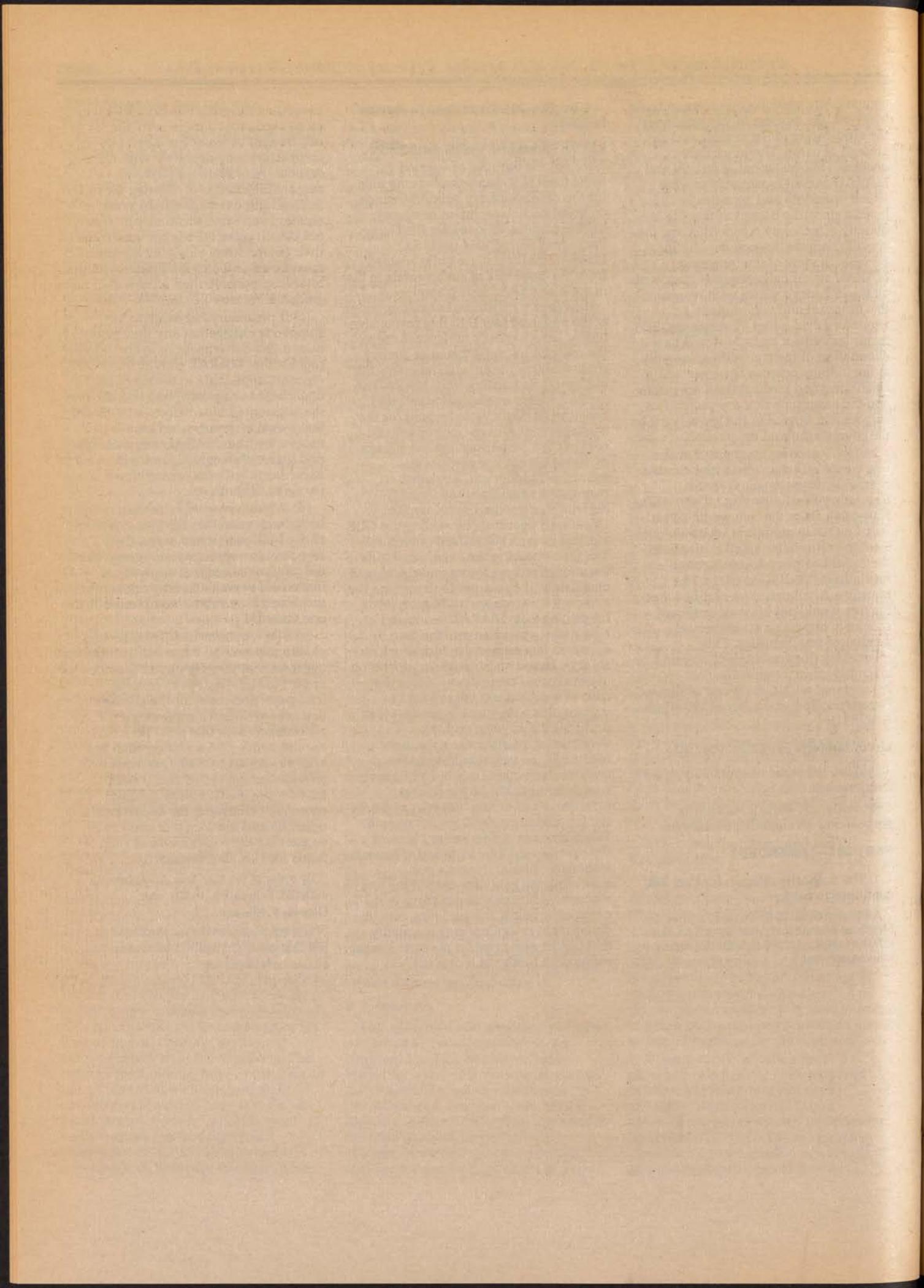
Dated: February 3, 1986.

**Georgia P. Stamas,**

*Secretary, Maritime Administration.*

[FR Doc. 86-2653 Filed 2-7-86; 8:45 am]

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**Register  
Federal Register**

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Monday  
February 10, 1986

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**Part III**

**Department of  
Health and Human  
Services**

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**Office of Community Services**

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**Availability of Funds and Requests for  
Applications**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Community Services

[Program Announcement No. OCS-86-1]

#### Availability of Funds and Requests for Applications Under the Office of Community Services Discretionary Authority

**AGENCY:** Office of Community Services, Department of Health and Human Services.

**ACTION:** Announcement of availability of funds and requests for applications under the Office of Community Services Discretionary Authority. The Administration budget request proposes rescission of the discretionary funds. However, should funds become available for this purpose, this contingency action will assure that grants can be awarded in a timely fashion consistent with the needs of the program. This notice regarding applications does not reflect any change in this policy.

**SUMMARY:** The Office of Community Services (OCS) announces that competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under Section 681 of the Community Services Block Grant Act of 1981, as amended. This program announcement consists of four parts. Part I covers general information, discusses the overall purposes of the OCS Discretionary Grants Program, lists the funding authority and briefly describes the Fiscal Year 1986 competitive review process. Part II describes the program priority areas in which grants will be awarded. Part III describes the application process, who is eligible to apply, what funds are expected to be available and the review and selection criteria. Part IV gives specific guidance on how to prepare and submit an application under each separate published program priority area. Applications must be limited to no more than 100 single-spaced typed pages. (Exceptions to this page limitation are noted within this announcement.)

**DATE:** The closing date for submission of applications is March 31, 1986. Applicants may meet this deadline either by delivering or mailing the application on or before March 31 in accordance with the detailed instructions in Part IV below. Late applications will be returned to the senders without consideration in the competition.

**FOR FURTHER INFORMATION CONTACT:** OCS/Office of State and Project Assistance/Division of Discretionary Grants, 200 Independence Avenue, SW., Room 433F.3, Washington, DC 20201, (202) 475-0394.

#### Part I—Overall Guidance

##### A. Scope of This Program Announcement

Section 681 of the Community Services Block Grant (CSBG) Act authorizes the Secretary of Health and Human Services to make funds available to support program activities of national or regional significance to alleviate the causes of poverty in distressed communities.

Applicants must fully demonstrate that they have successful prior experience in program implementation in one of the specific program activities defined below. Applicants must show that the proposed activity is clearly related to the purposes of the CSBG Act, i.e., to alleviate the causes of poverty in distressed communities.

For purposes of this announcement, the term "national or regional significance" means activities that directly address the causes of poverty in a way that can be replicated in another part of the region or country. Projects under this announcement must result in direct benefits targeted toward low-income people as defined in the most recent Annual Revision of Poverty Income Guidelines, published in the *Federal Register*, March 8, 1985, pp. 9517-9518. (A copy of these guidelines will be made available to any party that requests an application kit.) Annual revisions of these guidelines are normally published in February or early March of each year and are applicable to projects being implemented at the time of publication.

No other government agency or privately defined poverty guidelines are applicable for the determination of low-income eligibility for this OCS Discretionary Grants Program.

The OCS will grant funds for only one year. Accordingly, each applicant must clearly demonstrate its ability to carry out its work plan with the funds awarded and that its project will achieve measurable results within the one year of funding.

An applicant can be engaged in a qualified program activity without previously having been a recipient of funds from OCS. An organization funded by OCS in previous years may apply but an application from such an organization would constitute a request for new funding rather than an application for continued funding. This

is a particularly relevant reminder for successful applicants in previous fiscal years under the OCS Discretionary Grants Program. All acceptable applications will be considered in competition with other applications within the pertinent program priority area.

The FY 1986 program will be conducted under the same basic policies established for the previous years for the OCS Discretionary Grants Programs. A project must be targeted to address the needs of a specific segment of low-income people, i.e., urban poor, rural poor, migrants or seasonal farmworkers.

The OCS policy direction for discretionary grants is to promote:

1. Full-time permanent jobs for poverty level project area residents;
2. Income and/or ownership opportunities for low-income community members;
3. A better standard of living for rural low-income individuals in terms of housing or water and waste-water treatment; and
4. The implementation of projects, including projects proposing new and innovative strategies for addressing the special needs of migrants and seasonal farmworkers.

The OCS believes that these policy objectives can be best met at the local level through local organizations that can coordinate linkages with other private and public sector initiatives and enhance private sector involvement.

##### B. Application Prerequisites

All proposed projects must meet the basic criteria of: (a) Being projects that are designed and intended to provide benefits to a targeted low-income group of people, (b) including matching funds from other sources sufficient to meet the requirements of this grant announcement, and (c) being capable of completion within one year of the award of the grant.

The OCS will not consider applications that are geared towards the establishment of new, or investment in existing, revolving loan funds, Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

##### C. FY 1986 Application Process

All timely applications will be initially screened by OCS staff to determine whether they are complete and in conformance with the requirements of this announcement, using the screening factors listed below in Part III. Those applications which pass this screening will be given further consideration by referral to independent field readers for

scoring and analytical comment based on the criteria detailed in Part III of this announcement and the specific requirements contained under each published program priority area. Following the final review by the Director of OCS and staff, it is anticipated that awards under this announcement will be made in September, 1986.

#### D. General Grant Terms

1. Applicants are reminded that grantees are subject to the provisions of Office of Management and Budget Circular A-122 which prohibits the use of grant funds for: (a) Electioneering activities at the Federal, State or local level, and (b) attempts to influence Federal or State legislation through either grassroots lobbying or direct contacts with Federal or State legislators or their staffs.

2. Applicants are reminded that periodic progress and financial reports, as well as an audit, will be required for any project that receives OCS funds. Costs associated with the completion and submission of the required grant audit may be chargeable to the grant but are not considered as part of the up to 10% of the grant that is allowable for administrative costs.

#### Part II—Program Priority Areas

##### A. Priority Area 1.0: Urban and Rural Community Economic Development

The purpose of this priority area is to encourage the development of special programs by which the applicants planning to serve economically depressed urban and rural areas may, with appropriate Federal assistance, initiate projects intended to improve the quality of the economic and social environment of low-income residents of the areas they plan to serve. It is intended to provide resources to eligible applicants, but also has the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas. The emphases of projects must be on self-help and mobilization of the community at-large and on providing opportunities for employment and/or ownership within the targeted population. To this end, the program seeks: (a) To attract additional private capital into distressed communities, including enterprise zones; (b) to build and expand the ability of local institutions to better serve the economic needs of local residents; and (c) to provide new employment and ownership opportunities for low-income

people through business, physical or commercial development.

##### 1. Narrative Description

The Office of Community Services will provide funds to a limited number of non-profit corporations or public agencies for business and community development activities at the local level. Funding under this Program Priority Area will be provided for specific projects with up to 10% allowed for administrative purposes and will require the submission of business or community development proposals that meet the test of economic feasibility.

Projects must further Administration goals of public-private partnerships, and Federal initiatives such as urban and rural enterprise zones. OCS is particularly interested in receiving applications that stress public-private partnerships that are directed toward the development of economic self-sufficiency through a focus on economic expansion.

Applications must show significant ability to create new permanent private sector jobs and maintain existing jobs, all targeted towards the poverty level area residents who are either unemployed or underemployed. While projected employment in future years may be included in the application, it is essential that the focus of employment projections concentrate on those jobs saved or created during the one year period of the requested grant from OCS. The description of employment should include a discussion of the types of jobs, any upward mobility potential and the wage structure that will be created by the OCS support of the project.

Any funds that are proposed to be used for training purposes must be limited to providing specific job related training to poverty level individuals who have been selected for employment in the grant supported project or who have been selected for training or participation in a project where potential jobs have actually been identified.

Investments in projects which would result in the relocation of a venture from one geographic area to another are discouraged.

A distressed community is defined as a geographic urban neighborhood or rural community of high unemployment and pervasive poverty. Applicants located in a State or Federally designated enterprise zone, in which a legislative entity has enacted a program of tax and regulatory relief to encourage business development, are encouraged to submit applications. Such applications must be linked with and complement enterprise zone initiatives,

and may be for either a business venture or a demonstration of innovative ways of involving the poverty community in the implementation of the enterprise zone concept.

Because of the continuing exacerbation of poverty and unemployment along the U.S.-Mexican border resulting from the devaluation of the Mexican peso, OCS will give special emphasis to the issuance of up to \$3 million worth of grants to applicants proposing economic development projects in those counties of California, Arizona, New Mexico and Texas proximate to the border with Mexico.

##### 2. Submission Requirements

Each application submitted under this program priority area must include a valid and complete Business Plan as part of its project narrative that is in Part IV of the SF 424. The format for such plans will be available to applicants as part of the Application Kit (defined in Part III, E. below) (OMB Approval Number 0990-0147, expiration date 9-30-87).

Although applicants may submit more than one application for OCS funding, each application must be a request for grant support for only one project. Single applications requesting grant support for more than one project may be disqualified and returned.

The Business Plan is one of the major components in the required project narrative that will be evaluated by OCS in terms of feasibility and community benefits. Therefore, the Business Plan must be well prepared and address all the major elements of a Business Plan as detailed in this program announcement and in the guidelines included in the application kits. The use of these guidelines should produce a complete and professional business plan of not more than 30 single-spaced typed pages that makes an orderly presentation of the facts as required by this program announcement. It must include clearly defined quarterly goals and identify the types of jobs that will be created/saved, including a discussion of the skills requirements and projected wage structure that will be characteristic of the project.

The Business Plan is to be component part of the application proper, with the exception that financial projections may be provided as part of appendices and may be in addition to the application's 100 page limitation.

Project narratives should contain a full and accurate description of the proposed use of the requested financial assistance, whether it is for a business enterprise or a physical or commercial

development project. The project narrative must show how increased employment, income and/or ownership opportunities will be provided by the proposed project. The applicant must also clearly document an ability to strengthen links with and mobilize additional resources from other private and public sources. Evidence of a commitment on the part of the public or private sector to participate in the proposed project must be fully documented.

The Business Plan must demonstrate to OCS that there is reasonable assurance that the amount of OCS funds requested, together with other funds available, is adequate for the completion of the proposed project or achievement of the stated purposes for which the OCS grant funds are being requested within a twelve month period.

Because the Business Plan guidelines are written to cover a variety of possibilities, rigid adherence to them is neither possible nor necessarily desirable for all ventures. For example, a plan for a service business would not require a discussion of manufacturing or product design. Common sense should be used in applying the guidelines to develop a business plan for the venture.

The Business Plan guidelines include the following twelve sections: Summary Business Plan; The Venture and its Industry; Products and Services; Market Research and Evaluation; Marketing Plan; Design and Development Plans; Manufacturing and Operations Plan; Management Team; Overall Schedule and a Quarterly Work Plan; Critical Risks and Assumptions; Community Benefits (e.g., number of permanent jobs to be saved, number of new jobs to be created for poverty level residents, new ownership opportunities for community residents, specific new services or commercial or industrial infrastructure improvements that result from the project, etc.); and the Financial Plan.

Applicants which do not include a Business Plan as part of their application may be found non-responsive and their application may be disqualified and returned to them.

Any applicant applying under this priority area must document previous involvement in substantial economic development activities and a record of successful project implementation which justifies a high degree of confidence in the success of the proposed project.

Each applicant must document a firmly established and quantifiable performance record that shows the following capabilities:

- To plan and implement major activities such as (a) business

development, (b) commercial development, (c) physical development, or (d) financial services;

- To mobilize dollars from such sources as (a) the private sector (corporations, banks, etc.), (b) foundations, (c) the public sector, including State and local governments, or (d) individuals;
- To establish and maintain working relationships within the community including public officials, financial institutions, corporations, other community organizations and residents;

- To maintain a sound asset base and organizational structure in terms of (a) net worth, (b) management stability, and (c) organizational capability;

- To develop and maintain a stable program in terms of business, physical or community development activities that will provide needed permanent jobs, services and other benefits to community residents, and impact on community-wide economic problems and needs;

- To recruit and maintain both a qualified and demonstrably competent staff and a functioning board of directors that are capable of setting policy, making program decisions, and providing adequate programmatic oversight;

- To have in place sound administrative and fiscal systems and controls; and,

- To establish and maintain partnerships with the private sector in such forms as financial support, volunteerism, or executives on loan.

Each applicant must also provide a detailed description, as specified in the application screening requirements noted herein, of the amount, type and sources of funding, as well as other significant support the applicant has received within the past three years from any source. In general, types of assistance can be divided into cash, in-kind contributions, training and technical assistance, etc. Sources might be other Federal, State, local governmental, corporate or other private contributors/project participants.

#### *B. Priority Area 2.0: Assistance for Rural Housing and Community Facilities Development*

The purpose of this priority area is to target funds in a limited number of low-income rural communities to address two major needs Housing Repair and Rehabilitation and Water and Waste Water Treatment.

Under this OCS Discretionary Grants Program, the eligibility guidelines for participation are the Annual Revision of Poverty Income Guidelines published by Department of Health and Human Services with the most recent edition

being dated March 8, 1985. *No other low-income guidelines, such as those used by HUD or FmHA, may be used to determine participant eligibility.* All applications must state in detail what criteria were used by the applicant to determine participant eligibility.

For purposes of this section, *rural* is defined as any area that is not within the outer boundary of a metropolitan entity having a population of 25,000 or more and the contiguous communities with population density of 100 persons or more per square mile according to the latest decennial census. Such an entity may be located entirely within one State or made up of contiguous interstate communities.

#### **1. Priority Area 2.1: Rural Housing Repairs and Rehabilitation**

The primary purpose of this priority area is to assist low-income residents in rural communities by: (a) Rehabilitating or repairing existing substandard housing units; (b) converting non-residential buildings to residential use; and/or (c) developing innovative ways to meet housing needs. In addition, this program priority area has the purpose of assisting low-income community residents in acquiring and rehabilitating their own homes. OCS encourages applications that will assist low-income homeowners to improve their housing.

Applications calling for new construction or 'gut' rehabilitation will only be considered if the application clearly documents that there is insufficient existing housing stock that can be economically rehabilitated.

Funds will not be made available for the repair or rehabilitation of low-income rental housing unless the structure is either occupied by a low-income owner or the properties to be repaired are (a) Owned by a private non-profit organization and (b) covered by a written agreement which will ensure continued occupancy by low-income people, as defined by DHHS Poverty Income Guidelines noted above, for at least three years. Such applications must state the current rents for the units in question as well as what rents will be charged for the rehabilitated units.

Funds will not be made available under this program priority area for establishing or expanding a revolving loan fund.

We will consider applications from such entities as rural housing development corporations, cooperatives and other public and private organizations with proven accomplishments in the area of rural housing.

Proposals should fully describe how the proposed use of grant funds will result in tangible improvements and benefits for rural poor people in housing conditions such as the following:

- Interior or exterior structural repairs including weatherization and alternative energy systems;
- Job opportunities for local unskilled residents while assuring quality work;
- Technical assistance and professional services related to housing and community planning by community-based design and planning organizations. (Projects should be conducted with maximum use of voluntary services of professional and community personnel);
- Development of innovative housing strategies to help low-income rural residents acquire housing.

Each applicant must include in Part IV, Program Narrative of the SF 424, a full discussion of the project including the following sections:

- Basic Housing Data for Targeted Area.* Information on the status of housing in the targeted area, including but not limited to vacancy rates, housing deficiencies, characteristics of housing units to be repaired, new construction inventory, property values, rents and mortgage rates. (While specific census data may be included, this information must be project specific.)
- Analysis of Needs/Priorities.* The nature and extent of the problem(s) to be addressed by the project with adequate description and documentation identifying specific housing needs of the rural poor in the area targeted and a rationale for the strategies and priorities for which OCS support is requested.
- Participant Application Process.* A description of the participant application process including: (a) Verification of participant need and income eligibility, (b) proposed diagnostic repair forms and contract bid procedures (where applicable), and (c) completion verification and quality workmanship assurance procedures.
- Types of Work to be Performed.* Specific listing of the types of repairs or rehabilitation work to be performed under an OCS grant, noting which types of work will be done in order to bring properties up to minimum housing standards, inspection procedures and construction schedules.
- Job Creation.* Data regarding the number of new permanent direct jobs to be created, and the number of permanent jobs maintained by the

proposed project, including the number of residents of the project target area expected to be trained and placed.

## 2. Priority Area 2.2: Rural Community Facilities Development (Water and Waste Water Treatment Systems Development)

The purpose of this priority area is to help low-income rural communities develop the capability and expertise to establish and maintain affordable, adequate and safe water and waste water treatment facilities.

The OCS will consider applications from Regional Technical Resource Centers and public or private organizations with proven technical expertise and accomplishments in water and waste water treatment programs.

Non-profit organizations applying under this program area must include in their board membership or in an advisory body a significant representation of low-income community residents to ensure that project efforts are meeting the needs of low-income people in the area served and to meet the program objective of areas helping rural low-income communities to develop expertise in the overall management of water and waste water systems.

Each applicant must include in Part IV of the SF 424, a full discussion of how the proposed use of funds will result in tangible improvements and other benefits in the quality of water and waste water treatment systems for the rural poor such as:

- Improving the adequacy and dissemination of information on water and waste water programs serving rural communities;
- Increasing local expertise and capability in water and waste water development and engineering services;
- Assisting rural communities in developing the capability to operate and manage water and waste water facilities; and
- Coordinating Federal, State and local water and waste water program financing and development to assure improved service to rural communities.

While matching funds may be used for construction of water and waste water treatment systems or for operating subsidies for such systems and for individual home hook-ups (ECUs), OCS funds may not be used for these purposes. Applicants that define measurable benefits in terms of equivalent connection units (ECUs) should report the actual number of

connection units to be completed during the grant program year as well. Applicants should coordinate projects with the Farmers Home Administration (FmHA) and other Federal and State agencies to ensure that funds for hardware for local community projects are available.

## C. Priority Area 3.0: Assistance to Migrants and Seasonal Farmworkers

The purpose of this priority area is to fund a limited number of projects which focus exclusively on the problems and special needs of migrants and seasonal farmworkers in order to improve their quality of life and advance self-sufficiency.

The following are definitions of terms for purposes of this section:

*A migrant farmworker* means an individual who works in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence.

*A seasonal farmworker* means an individual who works in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence.

Special consideration will be given to projects that emphasize the involvement of the private sector in addressing the unique problems of migrants or seasonal farmworkers, with priority afforded to migrant farmworkers since local commuting farmworkers have greater access to other social services and poverty programs.

Applicants are particularly encouraged to address the need for longer term and permanent employment and for support in the areas of nutrition and housing. With respect to employment problems, OCS encourages the submission of proposals that aim to:

- (a) Assist low-income farmworkers directly in improving their job skills so as to qualify them for longer term and permanent full-time employment in agriculture, and/or
- (b) Assist low-income farmworkers who wish to leave agricultural employment and find jobs in other lines of work.

With respect to farmworkers' needs in the areas of nutrition and housing, OCS will entertain proposals that directly assist in such areas as crisis nutritional activities, the development of self-help systems of food production, and activities in the areas of home repair, rehabilitation, and ownership.

Under the Community Services Block Grant Act, States may use block grant funds to provide services and assistance

to migrant and seasonal farmworkers. Applications submitted under this discretionary grant priority area must not duplicate services or grants provided by the States through block grant funds in the specific State to be served by the applicant.

### Part III—Application Process

#### A. Eligible Applicants

Any public agency or private non-profit organization may apply under this announcement.

#### B. Available Funds

Subject to the availability of funds at the time grant awards are expected to be made, the Office of Community Services expects to award approximately \$24,000,000 in the fourth quarter of FY 1986 for new grants. The funding expected to be available for each program priority area is summarized below:

#### FUNDING SUMMARY

Program priority area	Anticipated fiscal year 1986 funds
1.0 Urban and Rural Community Economic Development	\$17,535,000
2.0 Rural Housing and Community Facilities Development	3,720,000
3.0 Assistance for Migrants and Seasonal Farmworkers	2,800,000

The OCS anticipates making approximately 80 new awards pursuant to this announcement. In Fiscal Year 1986, OCS strongly encourages applicants to refrain from requests that are for more than \$700,000. A typical award would be expected to be between \$300,000 and \$400,000 in economic development. In the area of housing repair and rehabilitation, community facilities development and assistance to migrants and seasonal farmworkers, we would anticipate that the average application request would be approximately \$200,000. Actual grants may vary widely and eligible applicants requesting smaller or larger awards will still receive consideration.

Projects will be funded under this authority for a period not to exceed twelve months and each project will have an expiration date. However, at the discretion of the Director, shorter or longer project periods may be established.

If a project is intended to continue beyond the OCS grant expiration date, the applicant must demonstrate that it will be able to continue project operations with other sources of funding.

#### C. Administrative Costs

The OCS will accept applications that include administrative costs. However, since grant funds are extremely limited, no awards for only administrative costs will be made and no more than 10% of the OCS discretionary funds awarded under a single grant may be used for administrative purposes. More favorable consideration may be given to applications where administrative costs are less than 10% of total project funds from all sources.

Administrative costs are defined as costs that are necessary to protect, monitor, properly account for and apply to the approved project, those Federal funds awarded. Costs associated with the internal operational management of the approved project are not considered to be administrative costs. Administrative costs must be identifiable within grantee records in order to allow auditors and OCS to verify that the grantee has not exceeded the 10% administrative cost limitation.

In all cases where an applicant has been awarded and claims a current indirect cost rate approved by the Department of Health and Human Services, the Defense Contracting Agency, or some other Federal agency, this rate should be documented in the application and will ordinarily be recognized by OCS and applied to any OCS grant award. However, it is understood that both administrative and indirect costs are part of and not in addition to the amount of funds awarded in the subject grant. (In most cases, the indirect cost rate approved will include not only administrative costs but also other allowable costs that were negotiated under the grantee's approved indirect cost rate. Therefore, applicants with an applicable indirect cost rate exceeding 10% may not propose any administrative funds in excess of that rate. Thus, the approved indirect cost rate may often exceed the normal 10% administrative cost restrictions which otherwise apply to OCS discretionary grants. In such cases, the entire approved indirect cost rate will be accepted.)

#### D. Matching Funds Requirement

The applicant is required to obtain commitment of minimum prescribed amounts of private or public funds as noted below to match each OCS dollar awarded. This match must be either one private sector dollar or two public sector dollars to each dollar of OCS discretionary funds awarded in Priority Areas 1.0, 2.1 and 2.2. For projects submitted under Program Priority Area 3.0, Assistance to Migrants and

Seasonal Farmworkers, a match of one private or public sector dollar to each dollar of OCS discretionary funds awarded is acceptable. The firm commitment of these required matching funds must be documented in the project application. Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/institution(s) from which the funds will be received.

Matching funds must be definite, or contingent only on receipt of the OCS grant. Speculative match, or match based on independent contingencies (such as receipt of another grant) will not be counted towards the matching requirement.

Funds expected to be raised as a result of the grant, whether from program income or otherwise, will not be counted toward the matching requirement, except that for existing businesses or projects, projected income based on the realistic extrapolation of past performance may be considered.

Matching funds may be in such forms as loans for construction financing, mortgages, grants from other Federal sources, or from States, counties, municipalities or private individuals or organizations or equity investments that are made to the project supported by the OCS grant. Matching funds might also be in the form of correlated training programs, related water or waste water installations, foundation support, private and charitable contributions and/or in-kind contributions.

In-kind matching contributions must show the bases for computation by indicating such data as: (a) The number and types of volunteers and rates at which their services are valued, (b) the value of donated space or equipment, noting rental value, use charges, square feet, etc., and/or (c) the fair market value of any property or equipment that is specifically part of the project.

Funds that are eligible to be counted as "matching" funds must be committed for specific project activities within the OCS approved project during the one year duration of the OCS grant. A grantee may not claim as matching funds, wages earned as a result of training or skill improvements that are expected to come from the OCS funded project.

Funds expended or obligated prior to the approved OCS starting date for a grant cannot be considered as matching funds, although currently owned assets may be applied against the matching requirement.

Applicants should describe clearly how they plan to use their own resources and the requested OCS funds

to generate additional private sources of funding or investment as well as funding from other government agencies.

While the above matching requirement must be met and documented for an application to be eligible for consideration, applicants generating support greater than that required, may be eligible for additional points to be awarded by the independent field readers as noted in Part III, F. 2. d., Criterion IV. below.

Documentation of any commitment of matching funds must be valid at least through September 1986.

#### E. Application Procedures

Organizations wishing to compete for an award under this announcement must submit an application by March 31, 1986. Any application not received, postmarked or identified by a commercial carrier processing date by the above closing date will be disqualified and returned to the applicant.

#### 1. Availability of Forms

Applications for awards under the OCS Discretionary Program must be submitted on Standard Form (SF) 424 provided for that purpose. Application kits containing copies of these forms as well as detailed technical instructions for preparing the application may only be obtained by writing to:

Division of Discretionary Programs,  
Office of Community Services/DHHS,  
Room 433F.3, 200 Independence Ave.,  
SW., Washington, DC 20201, Attn:  
OCS-86-1-DP

Your request for an application kit must include the following information formatted as below:

Name of Requesting Organization,  
Address (including Zip Code), Name  
of Contact Person at Organization,  
Phone Number

Telephone requests for application kits will not be honored.

#### 2. Application Submission

An original signed application and six copies must be submitted to:

Office of Grants Management, Office of  
Community Services/DHHS, Room  
457F, 200 Independence Ave., SW.,  
Washington, DC 20201, Attn: OCS-86-  
1-DP

The application cover must contain a Program Priority Area designation in the lower right hand corner. The following Program Priority Area designations must be used:

UR—for Urban and Rural Community  
Economic Development,  
RH—for Rural Housing Repairs and  
Rehabilitation,

RF—for Rural Community Facilities  
Development,

MS—for Migrants and Seasonal  
Farmworkers projects.

#### 3. Table of Contents

All applications must include, as the first item, a Table of Contents with page numbers noted for each major section and subsection of the proposal and each section of the appendices. Each page in the application, including those in all appendices, must be numbered consecutive. (This will facilitate review as well as future referencing once the application becomes part of the Agency's permanent files.)

The Table of Contents should list the following and the application should present material in the order herein noted:

a. Executive Summary (not to exceed 5 single-spaced typewritten pages).

b. Standard Form 424, Parts I through III, accompanied by:

(1). A Detailed Budget Breakdown for Part III, Section B,

(2). Documentation of Required Matching Funds, and

(3). Evidence of Applicant Support from other Government and/or private sources.

c. Narrative Description of project applicant and implementing organizations (if grant is to be implemented by an organization other than the entity which is making application to OCS), must include, at a minimum, the following:

(1). Organizational Experience in Program Area,

(2). Management History,

\* (3). Staffing (Organizational Chart, Job Descriptions, Resumes),

(4) Senior Staff Responsibilities (including definite statements of who will have the responsibilities of the chief executive officer and who will be responsible for grant coordination with OCS).

\* (5). Articles of Incorporation and By-laws,

\* (6). Governing Boards and Representational Structure.

d. Description of Impact Area  
(1). Standard Demographic Data,

(2). Participant/Beneficiary Characteristics,

(3). Analysis of Need.

e. Project Implementation  
(1). Project Objectives and Measurable Impact,

(2). Implementation Factors: Resource Coordination, Quarterly Work Plans with Specific Task Timelines, Financial/Business Plans (where applicable), Identification of Problems and Issues, etc.

f. Evaluation Component.

\*These items may be included as appendices to the project proposal.

Applications must be uniform in composition. They must be submitted on 8½ x 11 inch paper only. They must not include colored, oversized or folded materials. (Please do not include organizational brochures or other promotional materials in the proposal unless they have been copied to conform with the size requirements noted above.)

Please submit applications in binders that will allow for easy separation and reassembly. While applications must be comprehensive, we encourage conciseness and brevity in the presentation of materials and caution you to avoid unnecessary duplication of information.

Failure to comply with the above formatting requirements may result in disqualification and return of an application.

#### 4. Intergovernmental Review

The OCS Discretionary Grants Program is covered by Executive Order 12372 which provides for review of proposed Federal assistance by State and local governments.

Therefore, applicants for funds under this announcement are subject to the clearance procedures and requirements established by the State(s) in which their projects will be conducted. Consequently, applicants are reminded that clearance action through appropriate State clearinghouses must be initiated by them prior to submittal of applications to OCS. These initial actions must be reported on the SF 424, Page 1, which is submitted to OCS. Clearance action by States need not be completed before applications are submitted to OCS.

#### 5. Application Consideration

Complete applications that conform to the requirements of this Program Announcement will be reviewed competitively and evaluated by Federal officials and qualified independent field readers. Each complete application will be referred to qualified field readers for a numerical score and explanatory comments based solely on responsiveness to program priority area guidelines and review criteria published in this notice. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Evaluation scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the mean scores assigned by reviewers. However, highly

ranked applications are not guaranteed funding.

The Director may also consider other factors deemed relevant including, but not limited to comments of independent field readers and State and local officials; staff evaluation and input; geographical distribution of funding; the previous program performance of applicants especially those that have had previous HHS grants; audit reports and investigative reports; and applicants' progress in resolving any final audit disallowances on OCS or other Federal agency grants.

The OCS reserves the option of discussing applications with other Federal or non-Federal funding sources to determine the applicant's performance record.

The official award document is the Notice of Financial Assistance Awarded, which sets forth in writing to the recipient the amount of funds awarded, the purpose of the award, other terms and conditions of the award, the effective date of the award, the budget period for which support is given, the total project period for which support is contemplated and the total recipient participation required.

#### F. Criteria for OCS Screening and Review of All Applications

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this announcement. Only complete and conforming applications will then be reviewed and evaluated competitively.

1. *Screening Requirements:* In order for an application to be processed under this announcement, it must meet all of the following requirements:

a. It must not exceed 100 pages in total, including the Business Plan (not to exceed 30 pages) and the Executive Summary (not to exceed 5 pages), but appendices may be in addition to the 100 page limitation.

b. *Standard Form 424:* The application must include a SF 424, completed according to instructions. Item 23b of Part I of this form must be signed by an official of the applicant organization having authority to obligate the applicant legally.

c. *Number of copies:* A signed original application and six copies must be submitted.

d. *Executive Summary:* A narrative summary of the project, not to exceed five single spaced typed pages, must be included in each application, immediately following the table of contents. This summary must directly address the program specifics within this announcement and the evaluation

criteria contained below. (Applicants are cautioned that OCS will not accept a 5 page executive summary as the complete application or as a substitute for a properly detailed Part IV, Program Narrative of the SF 424.)

e. *OCS Priorities:* An application may contain only one project and this project must be identified as responding to one of the program priority areas stated in the announcement. An application which does not identify one program priority area or which shows multiple program priority areas, will be deemed non-conforming and may be disqualified and returned to the applicant.

f. *Multiple Submittals:* A project can only be proposed once under this announcement. Multiple submittals of the same—or essentially the same—project as an application under different priority areas will be deemed non-conforming and may be disqualified and returned to the applicant.

g. *OCS Target Populations:* The application must clearly target the specific outcomes and benefits of the project to low-income participants and beneficiaries eligible under the DHHS Annual Revision of Poverty Guidelines.

h. *Match Requirements:* A match of one contributed private sector or two public sector dollars to each OCS discretionary dollar sought must be documented for all program priority areas, except Migrants and Seasonal Farmworker Programs. The match requirement for Migrants and Seasonal Farmworkers is one private or public sector dollar to each OCS dollar.

i. *Support from other Government Agencies or Private Institutions:* Each applicant must provide a list of all financial assistance (loans, loan guarantees, grants, contracts, cooperative agreements or other investment assistance) received from any government agency (Federal, State or local), private institution or individual during the three-year period beginning January 1, 1983 and ending December 31, 1985. In cases of applicants which are units of government (e.g. a city or county) which receive extensive assistance from many sources, the funding history need be only for that office or agency which is actually conducting the activities for which the OCS grant is being requested. The list must include the title of the project for which assistance was received, the name and address of the governmental agency, private institution or individual which provided the assistance and the name and telephone number of the responsible official or program officer, within the grantor agency or institution, who administered the assistance. The list should be certified by the applicant

as accurate and complete. Where no assistance has been received during the three year period, the applicant must specifically so certify.

*Special Note:* Failure to include the above information by the deadline for submission of an application may disqualify the applicant from further consideration. In addition, should OCS discover that the applicant has omitted or distorted any information submitted as part of its application, it may be grounds for no further review of the application or for the recovery of any grant award already made.

Applications Must Meet All of the Above Requirements To Be Considered for Funding

#### 2. Criteria for Review and Evaluation of Applications:

Applications which are judged to be in complete compliance with the announcement will be reviewed on a competitive basis. The OCS will use qualified independent field readers, other than OCS employees to conduct a formal objective review of the applications.

Each reader will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this notice. An overall rating will include the reader's judgment of each application. The readers will be instructed to assign one of the following ratings to each application consistent with the points given under the evaluation criteria: a) Not recommended for funding; b) recommended for funding with conditions; or c) unconditionally recommended for funding.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements contained under each program priority area.

##### a. Criterion I: Organizational Capability and Capacity (Maximum: 20 points)

###### (1). Organizational Experience in Program Area (sub-rating: 5 points)

Each applicant must document competence in the specific program priority area under which an application is submitted. Where the applicant has a history of two or more years of prior achievement in that area, the documentation must address the relevance and effectiveness of projects undertaken, especially their cost effectiveness and the relevance and effectiveness of any services and the permanent benefits provided to the

targeted population. Applicants with a history of less than two years of prior achievement in the program area should so identify themselves. They must also indicate those activities that they have accomplished in the area in question and the reasons why they feel that they can successfully implement the project for which they are requesting funding. If applicable, documentation provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization. The commitment of these organizations to the applicant organization and the project and the relevant experiences and achievements of key personnel including board members, executive staff and project management staff must also be included.

(2). *Management History (sub-rating: 5 points)*

The applicant must fully document a history of sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also document that they have consistently complied with financial and program progress reporting and audit requirements. Applicants with less than 2 years of such corporate management history should so identify themselves. These applicants should submit any available documentation on their management practices and progress reporting procedures along with a certification by a Certified or Licensed Public Accountant to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

(3). *Staffing and Resources (sub-rating: 5 points)*

The application must fully describe the experience and skills, e.g. resumes of key staff showing that they are not only well qualified but that their professional capabilities are relevant to the successful implementation of the project. It must also show that the applicant has adequate facilities and physical resources to carry out successfully the work plan specified.

(4). *Staff Responsibilities (sub-rating: 5 points)*

The application must describe how the assigned responsibilities of the staff are appropriate to the tasks identified for the project. It must show clearly that sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project.

b. *Criterion II: Significant and Beneficial Impact (Maximum: 30 points)*

Projects funded under this announcement must produce permanent

and measurable results that will reduce the incidence of poverty in the areas targeted. Results should be quantifiable in terms of program area expectations, e.g., business or physical development accomplished, number of jobs saved/created, number of units of housing rehabilitated, etc. The OCS grant funds, in combination with private and other public resources, must be targeted into low-income communities with the goal of increasing the economic and social self-sufficiency of residents. Projects must be designed to achieve the specific program priority area objectives defined in this program announcement.

The following are examples of specific impact measures for the various program priority areas:

(1). *Area 1.0: Urban and Rural Community Economic Development:* The number of new permanent direct jobs to be created for low-income residents of the area that the project is intended to serve, the number of such jobs maintained; increase in taxes paid; new technical skills development and associated career opportunities for low-income community residents; development of the community's economic and physical assets; the amount of non-Discretionary Program dollars to be mobilized and the degree of involvement by private sector individuals, corporations, and foundations in the implementation of the project.

(2). *Area 2.1: Rural Housing Repair and Rehabilitation:* The number of sub-standard housing units to be repaired and/or rehabilitated, noting by number those which will be occupied by a low-income owner and/or those which will be rental units; the number of low-income residents who will be helped to purchase or acquire adequate housing; the number of low-income people to be employed in such projects; the number of units to be converted or newly constructed; total non-Discretionary Program dollars mobilized; and justifications for selecting target communities that are based on the housing needs of low-income local residents and which show the types and amounts of assistance that have been provided in the communities in previous years. (In cases where new construction is proposed, it will only be approved if the applicant clearly documents that there is insufficient existing housing stock that can be economically rehabilitated.)

(3). *Area 2.2: Rural Community Facilities:* The number of rural communities to be provided with technical and advisory services; the number of rural poor individuals who are expected to be directly served by

applicant supported improved water and waste water systems; the decrease in the number of inadequate water systems related to applicant activity; the number of newly-established and applicant supported treatment systems (all of the above may be expressed in terms of equivalent connections); the increase in local capacity in engineering and other areas of expertise; and the amount of non-Discretionary Program dollars expected to be mobilized.

(4). *Area 3.0: Assistance to Migrants and Seasonal Farmworkers:* The number of farmworkers who are expected to improve their agricultural skills and thus improve their agricultural employment situation; the number of farmworkers who are expected to gain longer term or permanent private sector employment in areas outside agriculture; the number of farmworkers who will receive help in the areas of nutrition and housing; the number of housing units to be repaired or rehabilitated; the degree and kind of such help; the amount of non-Discretionary Program dollars expected to be mobilized; and the degree of private sector involvement that will be utilized in developing and carrying out projects funded under this announcement.

c. *Criterion III: Project Implementation and Evaluation (Maximum: 30 points)*

(1). *Project Implementation Component (sub-rating: 25 points)*

The application must contain a detailed and specific work plan that is both sound and feasible. It must set forth realistic quarterly time targets by which the various work tasks will be completed. Because quarterly time schedules are used by OCS as a key instrument to monitor progress, failure to include these time targets may seriously reduce an applicant's point score in this criterion. It must define critical issues or potential problems that might impact negatively on the project and it must indicate how the project objectives will be attained notwithstanding any such potential problems.

(2). *Evaluation Component (sub-rating: 5 points)*

All proposals should include a self-evaluation component. The evaluation data collection and analysis procedures should be specifically oriented to assess the degree to which the stated goals and objectives are achieved. Qualitative and quantitative measures reflective of the scheduling and task delineation in (1) above should be used to the maximum extent possible. This component should indicate the ways in which the potential grantee would integrate qualitative and

quantitative measures of accomplishment and specific data into its program progress reports that are required by OCS from all grantees.

**d. Criterion IV: Public-Private Partnerships (Maximum: 5 points)**

All applications must document that the private and/or public matching funds requirement will be met as part of the grant. This commitment of non-Discretionary Grant funds is necessary for an application to be considered.

An application may be eligible for points under this criterion only if, in addition to the required matching funds, it documents that it will mobilize from public or private sources additional project support and assistance which will directly benefit the project and poverty level target area residents.

**e. Criterion V: Budget Appropriateness and Reasonableness (Maximum: 15 points)**

Each applicant should carefully review the requirements of the specific program priority area and the budget submitted must coincide with these requirements.

The proposed request for funds must be commensurate with the level of effort necessary to accomplish the goals and objectives of the project. It must include a detailed budget breakout for each of the budget categories in Part III, Section B of the SF 424. (Please identify any positions for which less than full-time funding is requested.) The estimated cost to the government of the project must also be reasonable in relation to the value of the anticipated results.

The contribution of any other private and/or public sector agencies or organizations must be assured in writing in the application when it is submitted.

**Part IV: Instructions for Completing Applications, Closing Date & Delivery of Applications**

**A. Submission Date**

The closing date for applications submitted under this program announcement is March 31, 1986. Applications may be mailed or hand delivered to: Office of Grants Management, Office of Community Services, Department of Health & Human Services, Room 457F, 200 Independence Ave., SW., Washington, DC 20201, Attn: OCS-86-1-DP

Hand delivered applications will be accepted during the normal working hours of 8:45 a.m. to 5:30 p.m., Monday through Friday (excluding Federal legal

holidays), up through the closing date of March 31, 1986. All other applications must be postmarked or dated by a commercial carrier not later than midnight, March 31, 1986.

An application will be considered to be received on time under either one of the following two circumstances:

1. The application was sent by registered or certified mail or by private commercial carrier no later than the closing date, as evidenced by a U.S. Postal Service date postmark or by commercial carrier dating, unless it arrives too late to be considered by the independent field readers.

Applicants are responsible for assuring that the U.S. Post Office or private commercial carrier dates the application package. Applicants should be aware that not all post offices or private commercial carriers provide a dated postmark unless specifically instructed to do so.

2. The application is hand delivered on or before the closing date to the Office of Community Services, Department of Health and Human Services in Washington, DC at the address indicated above. In establishing the date of receipt of hand delivered applications, reliance will be placed on documentary evidence of receipt maintained by OCS/DHHS.

Any application not meeting the above closing date for submission will be disqualified and returned to the applicant organization.

**B. Application Package:** Each application must include:

1. A signed original and six additional copies of the application. The original must bear original signatures of the certifying representative of the applicant organization. Do not include extraneous materials such as agency promotional brochures, slides, tapes, film clips, etc. It is not feasible to use such items in the review process, and they will be discarded if included.

2. A self-addressed, franked postcard (included in all OCS Application Kits) so that acknowledgment of receipt can be returned. (This requirement applies even if the application is accompanied by a "return receipt requested card".) All applications will be assigned an identification number which will be noted by OCS on the acknowledgment. This number and the program priority area must be referred to in all subsequent communication with OCS concerning the application. If you do not receive the acknowledgment within

three weeks after the deadline date, please notify OCS by telephone (202) 475-0376.

**Special Note.**—After an identification number is assigned and the applicant has been notified of the number, applications will be filed serially by the number to aid in quick retrieval. It is not possible for OCS staff to provide a timely response to inquiries about a specific application unless this number and the program priority area are given along with the applicant's name.

**C. Contents of Applications:** Each copy of the application must contain in the order listed, each of the following (more detailed instructions are noted in Part III.E.3, above, and in the OCS Application Kit instructions to applicants).

1. A Table of Contents as noted in Part III, above;

2. Executive Summary no more than the equivalent of 5 single spaced typed pages;

3. Standard Form 424, Part I, Federal Assistance—to be completed according to instructions contained on that form;

4. Standard Form 424, Part II, Project Approval Information items 1 through 10, with attachment;

5. Standard Form 424, Part III, Budget Information—Sections A through F with attachments; and

6. Standard Form 424, Part IV, Project Narrative, fully describing the project being proposed in response to this announcement. The narrative should be fully responsive to the specific requirements contained under each program priority area and address the review criteria.

Applications once submitted are considered final and no additions will be accepted by OCS.

Applicants are cautioned to carefully read the specific requirements contained under each program priority area and detailed in the application kit.

Again, applicants are reminded that failure to meet the specific programmatic format and the submission requirements stated herein may result in the disqualification and return of an application.

Dated: February 6, 1986.

**Jerrold B. Speers,**  
Acting Director, Office of Community Services.

[FR Doc. 86-2913 Filed 2-7-86; 8:45 am]

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<sup>1</sup> No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1985. The CFR volume issued as of Apr. 1, 1980, should be retained.

<sup>2</sup> No amendments to this volume were promulgated during the period Apr. 1, 1984 to March 31, 1985. The CFR volume issued as of Apr. 1, 1984, should be retained.

<sup>3</sup> No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1985. The CFR volume issued as of July 1, 1984, should be retained.

<sup>4</sup> The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

<sup>5</sup> The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.