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Briefings on How To Use the Federal Register—
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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

WASHINGTON, DC

WHEN: July 11; at 9 am.

WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street NW., Washington, DC.

RESERVATIONS: Abram Primus 202-523-3419
Ina Masters 202-523-3419

SEATTLE, WA

WHEN: July 22; at 1:30 pm.

WHERE: North Auditorium,
Fourth Floor, Federal Building,
915 2nd Avenue, Seattle, WA.

RESERVATIONS: Call the Portland Federal Information Center on the following local numbers:
Seattle 206-442-0570
Tacoma 206-383-5230
Portland 503-221-2222

SAN FRANCISCO, CA

WHEN: July 24; at 1:30 pm.

WHERE: Room 2007, Federal Building,
450 Golden Gate Avenue,
San Francisco, CA.

RESERVATIONS: Call the San Francisco Federal Information Center, 415-556-6600

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Reader Aids
Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 86-10 of June 3, 1986

Determination Under Subsection 402(d)(5) of the Trade Act of 1974—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93-618), January 3, 1975 (88 Stat. 1978) (hereinafter "the Act"), I determine, pursuant to subsection 402(d)(5) of the Act, that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of Section 402 of the Act. I further determine that the continuation of the waivers applicable to the Socialist Republic of Romania, the Hungarian People's Republic, and the People's Republic of China will substantially promote the objectives of Section 402 of the Act.

This determination shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
Washington, June 3, 1986.

[FR Doc. 86-13904
Filed 6-16-86; 4:56 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register
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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27, 28, and 61

Revision of User Fees for Cotton Classification, Testing, and Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the fee for cotton classification services to producers. Fees are also to be increased for certain other cotton classification and testing services and cottonseed grading services. Fees charged for the purchase of American Upland and American Pima cotton and linters grade and staple standards and for calibration cotton standards are revised. AMS is also offering two new cotton fiber and processing tests and a new set of micronaire reading only calibration cotton standards. The higher fees are necessary to recover, as nearly as practicable, the costs of providing such services including administrative and supervisory costs.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Jerome J. Boyd, Chief, Marketing Services Branch, Cotton Division, AMS, USDA, 4841 Summer Avenue, Memphis, TN 38122. (901) 521-2921.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be nonmajor since it does not meet the criteria for a major regulatory action as stated in the Order. The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact as defined by the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*) because: (1) The fee increases merely reflect a minimal increase in the cost-per-unit as is currently borne by those entities utilizing the services; (2) the cost increases will not affect normal completion in the marketplace; (3) the amounts of the increases in fees are too small to have a significant impact; (4) the use of the services is voluntary; (5) and, if there is any impact, the Secretary has been directed by statute to recover the costs of cotton classification, standards, and the testing services from users of such services and standards.

Since the harvesting of the 1986 cotton crop will begin in July, it is necessary to implement the revised fee for cotton classification services to producers less than 30 days after the publication date to insure that the cost of the program are covered by fees paid by all participating growers during the 1986 cotton season. All of the other fees in this document are for services directly related to the marketing and untilization of cotton. These fees will also become effective less than 30 days after the publication date because in addition to the reasons stated as to the impact of this action under the Regulatory Flexibility Act, current revenue does not cover the costs of providing these services and its is preferable to have all revisions to the cotton fees implemented on the same date. Accordingly, under the administrative provisions of 5 U.S.C. 553, good cause is found for making this action effective July 1, 1986.

Proposed rulemaking was published in the April 14, 1986, issue of the **Federal Register** at 51 FR 12624 and invited comments for 30 days ending May 14, 1986. Only two comments on the proposal were received. One comment was submitted by the Committee on Classing and User Fees appointed by the National Cotton Council of America to review AMS cotton user fees. The Committee did not oppose the proposed classing fee increases to producers although one committee member did express concern at the additional $.05 cent increase for High Volume Instrument Classification. The other comment was received from a gin organization expressing opposition to the fee increase to producers. No reasonable alternative suggestions were offered by either comment for financing the classing program. This final rule does not differ from the proposed rule and will become effective July 1, 1986.

Classification Fee For Producers

Section 3a of the Cotton Statistics and Estimates Act of 1927, as amended (7 U.S.C. 473a) requires that user fees shall be charged for the classification of producer cotton for fiscal years 1985, 1986, 1987 and 1988. This statute directs the Secretary, within certain limitations, to set the user fee at a level that when combined with the proceeds from the sale of samples submitted for classification would recover, as nearly as practicable, the cost of the service provided, including administrative and supervisory costs. The fee for manual classification of producers' cotton was set at $1.05 per sample during the 1984 and 1985 harvest seasons (7 CFR 28.909(b); 49 FR 26543-26547).

This rule increases the classification fee for manual classification services to producers in § 28.909 from $1.05 to $1.08 per sample. This cost increase is necessary due to the following conditions: (1) Anticipated volume of cotton to be classed from the 1986 crop is projected to be 10 to 15 percent below the volume of cotton classed from the 1985 crop. The unit cost of classing is affected by the volume of classings inasmuch as there are substantial fixed or overhead costs such as salaries and rent which will remain constant whether volume decreases or increases. Since the volume of cotton to be classed from the 1985 crop. The unit cost of clasing is affected by the volume of classings inasmuch as there are substantial fixed or overhead costs such as salaries and rent which will remain constant whether volume decreases or increases. Since the volume of cotton to be classed from the 1986 crop will be less than the previous year, the unit cost of classing needs to be increased to provide sufficient revenue to recover the costs of the service. (2) The volume of samples submitted for classification and to be baled and sold after classification to defray a portion of the classing costs will likewise be about 10 to 15 percent smaller. (3) Prices received for the baled samples are expected to be around 10 cents per pound less than in 1985. (4) Operating costs for providing classification services to producers have increased since the last fee increase in 1984 (49 FR 26546). There have been increases in expenditures for salaries, rent, utilities, communications, supplies and materials.

In addition to the manual classification service, USDA has made High Volume Instrument (HVI) classification service available to growers on an optional basis since 1982. The fee for this special classification service has remained constant at an additional 45 cents per sample over the charge for manual classification. Costs associated with equipment operation, modification and maintenance have increased during this period of time. Therefore, the fee in § 28.909 for HVI classification is increased by five cents to 50 cents per bale over the manual classification fee.

The special HVI fee provisions for classification of samples and review classification at the Lamesa, Texas facility are deleted. In 1980, a classing facility was established on a trial basis in Lamesa, Texas as the first USDA cotton classing facility equipped to instrument class all cotton received. HVI classing equipment for the facility was purchased through a cooperative funding agreement under the Federal-State Marketing Improvement Program in which a substantial amount of funds came from cotton growers served by the Lamesa facility.

Since first established, the fees for HVI classification for growers served by the Lamesa classing facility have been the same as the fee for manual classification and review classification to growers. In promulgating this provision in July, 1983 (48 FR 30937), it was noted that this fee structure would continue until such time as it was determined that the Lamesa cotton growers were appropriately recompensed for their investment in the automatic classing facility.

AMS has now determined that the Lamesa growers have recouped their investment through lower classing costs. As a result, the special HVI fee provisions for the Lamesa classing facility in § 28.909(c) and § 29.911 are removed.

The fee in paragraph (b) of § 28.910 for issuance of a new memorandum of classification at the request of the owner of the cotton for the business convenience of the owner without the reclassification of such cotton is increased from $2.50 to $3.00 per sheet due to the increased costs of providing this service, including clerical costs.

The fee for a manual review classification in § 28.911 is also increased from $1.10 to $1.15 per sample. The fee for HVI review classification is increased from $1.55 to $1.65 per sample. These higher fees reflect the increased costs of performing these services, including overhead and equipment costs.

Costs of Cotton Standards

Practical forms of the cotton standards are prepared and sold by the Cotton Division offices in Memphis, Tennessee, under the authority of the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*). The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) directs that the price for standards will cover, as nearly as practicable, the costs of providing the standards.

This rule increases the fees listed in §§ 28.123, 28.151 and 28.956 for practical forms of the cotton standards, including both grade and staple standards for American Upland cotton, American Pima cotton and for cotton linters, and for cotton calibration standards. The fees are adjusted due to increased costs for salaries, packaging, handling, delivery, and postage. Current and estimated demand for the standards is also factored into the fee revision since per unit costs are directly related to volume.

In addition, AMS is providing two methods of delivery for domestic orders and two methods of delivery for orders from foreign countries for grade, staple and calibration cotton standards. These methods have been determined to be the most reliable, cost-effective, and popular. They will permit AMS to avoid numerous problems which have been encountered when other methods of delivery were attempted in the past. These difficulties include the inability to get standards through foreign customs offices, late delivery of standards and problems with clearing letters of credit tendered as payment. The revised fee schedule gives customers a choice of delivery methods and fees for any of the grade, staple, and calibration cotton standards offered for sale.

Domestic Purchase

The fees for domestic delivery of American Upland cotton grade standards f.o.b. Memphis, Tennessee are increased from $90.00 to $94.00 and the surface delivered price will be $98.00. The fees for American Upland staple standards f.o.b. Memphis are increased from $12.00 to $13.00 and the surface delivered price will be $15.00. The fee for American Pima standards f.o.b. Memphis is increased to $120.00 from $115.00, with a surface delivery price of $124.00. The fees for staple length standards for American Pima cotton are increased to $14.00 from $13.00 f.o.b. Memphis, and the cost will be $16.00 surface delivered. The fees for cotton linters grade standards are reduced from $95.00 to $94.00 f.o.b. Memphis, Tennessee and a surface delivered price of $98.00 added. The fees for linters staple standards shall continue at the rate of $15.00 f.o.b. Memphis, Tennessee with a surface delivered price of $17.00 added.

The fees for USDA calibration cotton standards are increased from $22.00 to $24.00 surface delivered. The cost for these standards f.o.b. Memphis will be $22.00 and air delivery is eliminated. The fees for International calibration cotton standards are increased to $15.00 from $14.00 surface delivered. The cost for these standards f.o.b. Memphis will be $14.00 and air delivery is eliminated. The fees for High Volume Instrument (HVI) calibration cotton standards are increased from $80.00 to $84.00 surface delivered. Air delivery is eliminated and a fee of $80.00 f.o.b. Memphis is added. Fees for the new micronaire reading only calibration cotton standards are set at $22.00 f.o.b. Memphis, Tennessee and $24.00 surface delivered.

Foreign Purchase

The fee for all shipments of American Upland grade standards delivered outside the United States has been $125.00. This is changed to $94.00 air freight collect and $134.00 air parcel post delivered. Foreign shipments of American Upland staple standards had cost $16.00 delivered. The increased fees are $13.00 air freight collect and $27.00 air parcel post delivered. American Pima grade standards had cost $150.00 delivered. They will now be $120.00 air freight collect and $160.00 air parcel post delivered. The fees for staple length standards for American Pima cotton are set at $14.00 air freight collect and $28.00 air parcel post delivered. The cost had been $17.00 delivered. The fee for cotton linters grade standards is increased to $134.00 air parcel post delivered and a fee of $94.00 air freight collect is added. The fee for cotton linters staple standards is increased to $29.00 air parcel post delivered and a fee of $15.00 air freight collect added.

The fees for USDA calibration cotton standards are increased from $30.00 to $36.00 for air parcel post delivered. A fee of $22.00 for air freight collect is added and surface delivery is eliminated. The fees for International calibration cotton standards are increased from $20.00 to 24.00 air parcel post delivered. A fee of $14.00 for air freight collect is added and surface delivery is eliminated. The fees for HVI Calibration cotton standards are increased by changing from $80.00 surface delivered to $80.00 air freight collect. The fees for air parcel post delivered are increased from $110.00 to $120.00. The fees for the new micronaire only calibration cotton standards are set at $22.00 air freight collect and $36.00 air parcel post delivered.

Other Classification Services

Certain other cotton classification services are conducted under the United States Cotton Standards Act. Fees for these services were reviewed. In order to recover increased costs, including supervision and overhead, the fees for classification of cotton or samples in § 28.116 are increased by 5 cents: for grade, staple and micronaire readings from $1.10 per sample to $1.15; for grade and staple only from 95 cents per sample to $1.00; for grade only or staple only from 70 cents to 75 cents; and for micronaire reading only from 25 cents per sample to 30 cents.

The fee in § 28.117 for each new memorandum or certificate issued in substitution for a prior one is increased from $2.50 per sheet to $3.00. The additional hourly fee charged for Form C determinations in § 28.120 and § 28.149 is increased from $15.85 per hour or each portion thereof to $17.00 per hour, or each portion thereof, plus traveling expenses and subsistence or per diem. The fee in § 28.122 for a complete practical classing examination for cotton or cotton linters is increased from $110.00 to $120.00 and the fee for reexamination for a failed part, either grade or staple, is increased from $60.00 to $70.00. Fees for the classification, comparison, or review of linters in § 28.148 are increased from $1.00 to $1.05 per bale or sample involved. In § 28.184, the fee for classification or comparison of cotton linters and the issuance of a memorandum is increased from $1.00 to $1.05 per sample.

The United States Cotton Futures Act (7 U.S.C. 15b) authorizes the Secretary to make such regulations as are necessary to carry out the provisions of the Act. Pursuant to that authority, Part 27 of the regulations (7 CFR Part 27) provides for cotton classification under the Cotton Futures Act including fees to recover the costs of classification and micronaire. The fees charged for these services are increased to cover the costs of providing such services, including overhead costs.

The fees in § 27.80 for initial classification from $1.00 per bale to $1.05 per bale; for review classification are increased from $1.20 per bale to $1.25 per bale; for micronaire determinations from 25 cents per bale to 30 cents per bale; and for combination service from $2.20 per bale to $2.30 per bale. All supervision fees are increased by 10 cents per bale. Pursuant to § 27.85, fees for withdrawal of requests or applications for review, after such services have been started, are the same as the fees in § 27.80 for services completed, so such charges are appropriately increased. Fees for certificates which appear in § 27.81 are increased from 50 cents to 55 cents.

Cotton Grading Fees

Pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) the Secretary is authorized to assess and collect such fees as will be reasonable and nearly as may be practicable to cover the costs of services rendered under the Act. The regulations promulgated pursuant to the Act for the inspection, sampling, and certification of cottonseed sold or offered for sale for crushing purposes (7 CFR Part 61) includes such fees. Under this rule, the fees charged for cottonseed grading purposes are increased to cover the costs of providing these services, including increased overhead costs.

The fee in § 61.43 for a sampler's license is increased from $17.00 to $19.00 for the examination while the fee for renewal of such a license is increased from $15.00 to $17.00. In § 61.44, the fee for a chemist's license is increased from $325.00 to $350.00 for the examination while the fee for renewal of such a license is increased from $110.00 to $120.00. In § 61.45, those fees charged to each licensed cottonseed chemist to cover the cost of administering the regulations in Part 61 are increased from $1.25 per certificate issued by the chemist to $1.30. The fee in § 61.46 for the review of the grading of any lot of cottonseed is increased from $45.00 to $51.00 with the disbursement to each of the two licensed chemists who performed the reanalysis increasing from $15.00 to $17.00. All of these higher fees reflect increases in program costs including clerical and administrative costs and rent, utilities, and communications.

Testing Services

Cotton testing services are provided by a USDA Laboratory in Clemson, South Carolina under the authority of the Cotton Statistics and Estimates Act of 1927 (7 U.S.C. 471–478). The tests are available, upon request, to private sources on a fee basis. The Cotton Service Testing Amendment (7 U.S.C. 473d) specifies that the fees for the services be reasonable and, as nearly as may be, to cover the costs of rendering the services.

AMS is adding a fiber length and length distribution test to the list of fiber and processing test items listed in § 28.956. The fee is to be $20.00, $25.00, or $30.00, depending on the type of data reported. This test is added to § 28.956 as item 3.5. This new listing is desirable because there have been sufficient requests for such service.

Also added is a fiber length array test of cotton samples including purified or absorbent cotton. This is a test which was formerly available but was discontinued due to lack of demand. Over the last two years, the frequency of requests for the test has increased enough to justify offering it again. The fee is $110.00. This test is added to § 28.956 as item 3.2.

The entry for item 14.1 in § 28.956, describing the 50-gram miniature carded cotton spinning test, is revised to clarify the fact that HVI testing is also performed on the samples submitted for testing. The existing fee covers the cost of the HVI test and reporting of the data.

The fee for HVI measurement of cotton listed in § 28.956 as item 25.0 is increased to $1.60 per sample from the present fee of $1.50 per sample to reflect the increased costs, including overhead costs, of providing this service.

List of Subjects

7 CFR Part 27

Cotton, Classification, Samples, Micronaire, Spot markets.

7 CFR Part 28

Cotton, Samples, Standards, Cotton linters, Grades, Staples, Market news, Testing.

7 CFR Part 61

Cottonseeds, Chemists, Samplers, Grades.

Accordingly, 7 CFR Parts 27, 28, and 61 are amended as follows:

PART 27—[AMENDED]

1. The authority citation for Part 27 continues to read as follows:

Authority: 90 Stat. 1841–1846; 7 U.S.C. 15b.

2. Sections 27.80 and 27.81 are revised to read as follows:

§ 27.80 Fees; classification, micronaire, and supervision.

For services rendered by the Cotton Division pursuant to this subpart, whether the cotton involved is tenderable or not, person requesting the services shall pay fees as follows:

(a) Initial classification and certification—$1.05 per bale.

(b) Review classification and certification—$1.25 per bale.

(c) Micronaire determination and certification—30 cents per bale.

(d) Combination service—$2.30 per bale. (Initial classification, review classification, and Micronaire determination covered by the same request and only the review classification and Micronaire determination results certified on cotton class certificates.)

(e) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any two or more of these operations are performed together—$1.30 per bale.

(f) Supervision, by a supervisor of cotton inspection, of the inspection, weighing, or sampling of cotton when any one of these operations is performed individually—$1.30 per bale.

(g) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$2.40 per bale.

(h) Supervision, by a supervisor of cotton inspection, of transfers of cotton to a different warehouse at the same delivery point, including issuance of new cotton class certificates in substitution for prior certificates—$1.65 per bale.

§ 27.81 Fees; certificates.

For each new certificate issued in substitution for a prior certificate at the request of the holder thereof, for the purposes of business covenience, or when made necessary by the transfer of cotton under the supervision of any exchange inspection agency as provided in § 27.73, the person making the request shall pay a fee of 55 cents for each certificate issued.

PART 28—[AMENDED]

3. The authority citation for Subpart A of Part 28 continues to read as follows:

Authority: Sec. 5, 50 Stat. 62, as amended (7 U.S.C. 55); Sec. 10, 42 Stat. 1519 (7 U.S.C. 61).

4. Section 28.116 is amended by revising paragraph (a) to read as follows:

§ 28.116 Amounts of fees for classification; exemption.

(a) For the classification of any cotton or samples, the person requesting the services shall pay a fee, as follows, subject to the additional fee provided by paragraph (c) of this section.

(1) Grade, staple, and micronaire reading—$1.15 per sample.

(2) Grade, staple only—$1.00 per sample.

(3) Grade only or staple only—75 cents per sample.

(4) Micronaire reading only—30 cents per sample.

* * * * *

5. Sections 28.117, 28.120, and 28.122 are revised to read as follows:

§ 28.117 Fee for new memorandum or certificate.

For each new memorandum or certificate issued in substitution for a prior memorandum or certificate at the request of the holder, thereof, on account of the breaking or splitting of the lot of cotton covered thereby or otherwise for his business convenience, the person requesting such substitution shall pay a fee of $3.00 per sheet.

§ 28.120 Expenses to be borne by party requesting classification.

For any samples submitted for Form A or Form D determinations, the expenses of inspection and sampling, the preparation of the samples and delivery of such samples to the classification room or other place specifically designated for the purpose by the Director shall be borne by the party requesting the classification. For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $17.00 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of such request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

§ 28.122 Fee for practical classing examination.

The fee for the complete practical classing examination for cotton or cotton linters shall be $120.00. Any applicant who passes both parts of the examination may be issued a certificate indicating this accomplishment. Any person who passes one part of the examination, either grade or staple, and fails to pass the other part, may be reexamined for that part that was failed. The fee for this practical reexamination is $70.00.

6. Section 28.123 is revised to read as follows:

§ 28.123 Costs of practical forms of cotton standards.

The costs of practical forms of the cotton standards of the United States shall be as follows:

Effective Date: July 1, 1986	Dollars each box or roll			
	Domestic shipments		Shipments delivered outside the continental United States	
	F.o.b. Memphis, TN	Surface delivery	Air freight collect	Air parcel post delivered
Grade Standards:				
American Upland	$94.00	$98.00	$94.00	$134.00
American Pima	120.00	124.00	120.00	160.00
Standards for Length of Staple:				
American Upland (prepared in one pound rolls for each length)	13.00	15.00	13.00	27.00
American Pima (prepared in one pound rolls for each length)	14.00	16.00	14.00	28.00

7. Sections 28.148 and 28.149 are revised to read as follows:

§ 28.148 Fees and costs; classification; reviews; other.

The fee for the classification, comparison, or review of linters with respect to grade, staple, and character or any of these qualities shall be at the rate of $1.05 for each bale or sample involved. The provisions of §§ 28.115 through 28.126 relating to other fees and costs shall, so far as applicable apply to services performed with respect to linters.

§ 28.149 Fees and costs; Form C determination.

For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of $17.00 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of each request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

8. Section 28.151 is revised to read as follows:

§ 28.151 Cost of practical forms for linters, period effective.

Practicial forms of the offical cotton linters standards of the United States will be furnished to any person subject to the applicable terms and conditions specified in § 28.105; *Provided,* That no practical form of any of the official cotton linters standards of the United States for grade shall be considered as representing any such standards after the date of its cancellation in accordance with this subpart, or, in any event, after the expiration of 12 months following the date of its certification. The cost of the practical forms of cotton linters standards of the United States shall be as follows:

Effective Date: July 1, 1986	Dollars each box or roll			
	Domestic shipments		Shipments delivered outside the continental United States	
	F.o.b. Memphis, TN.	Surface delivery	Air freight collect	Air parcel post delivered
Linters grade standards:				
(6 sample box for each grade)	$94.00	$98.00	$94.00	$134.00
Linters staple standards:				
(prepared in one pound rolls for each length)	15.00	17.00	15.00	29.00

9. The authority citation for Subpart B of Part 28 continues to read as follows:

Authority: Sec. 205, 60 Stat. 1090, as amended; 7 U.S.C. 1624.

10. Section 28.184 is revised to read as follows:

§ 28.184 Cotton linters; general.

Requests for the classification or comparison of cotton linters pursuant to this subpart and the samples involved shall be submitted to the Cotton Division. All samples classed shall be on the basis of the official cotton linters standards of the United States. The fee for classification or comparison and the issuance of a memorandum showing the results of such classification or comparison shall be $1.05 per sample.

11. The authority citation for Subpart D of Part 28 is revised to read as follows and the authority citations following the sections in Subpart D are removed:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); sec. 3c, 50 Stat. 62 (7 U.S.C. 473c)

12. Paragraphs (b) and (c) of section 28.909 are revised to read as follows:

§ 28.909 Costs.

* * * * *

(b) The cost of manual cotton classification service to producers is $1.08 per sample.

(c) The cost of High Volume Instrument classification to producers is the cost for manual cotton classification service plus an additional 50 cents per sample.

* * * * *

13. Paragraph (b) of § 28.910 is revised to read as follows:

§ 28.910 Classification of samples and issuance of classification data.

* * * * *

(b) Upon request of an owner of cotton for which classification memoranda have been issued under this subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be $3.00 per sheet.

14. Section § 28.911 is revised to read as follows:

28.911 Review classification.

A producer may request one manual review classification for each bale of eligible cotton. The fee for manual review classification is $1.15 per sample. The fee for High Volume Instrument (HVI) review classification is $1.65 per sample. Samples for review classification must be drawn by gins or warehouses licensed pursuant to § 28.20–28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds from the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 25 cents per sample in addition to the fee established above in this section.

15. The authority citation for Subpart E of Part 28 continues to read as follows:

Authority: Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c); Sec. 3d, 55 Stat. 131 (7 U.S.C. 473d).

16. Section 28.956 is amended by revising the entries for the items numbered 1.0, 2.0, 14.1, 25.0, and 26.0 and by adding entries to be numbered 2.1, 3.2 and 3.5 to read as follows (The introductory text is republished):

§ 28.956 Prescribed Fees.

Fees for fiber and processing tests shall be assessed as listed below:

Item No. and kind of test	Fee per test
1.0 Furnishing USDA calibration cotton in the short, medium, long and extra long staple lengths including standard values for length by both array and Fibrograph methods, strength at ⅛-inch gage, and maturity and fineness by the Causticaire methods:	
a. f.o.b. Memphis, Tennessee, 1-lb sample	$22.00
b. surface delivery within continental United States, 1-lb sample	24.00
c. By air freight collect outside continental United States, 1-lb sample	22.00
d. By air parcel post delivery outside continental United States, 1-lb sample	36.00
2.0 Furnishing international calibration cotton standards with standard values for micronaire reading and fiber strength at zero and ⅛-inch gage and Fibrograph length:	
a. f.o.b. Memphis, Tennessee, ½-lb sample	14.00
b. By surface delivery within continental United States, ½-lb sample	15.00
c. By air freight collect outside continental United States, ½-lb sample	14.00
d. By air parcel post delivery outside continental United States, ½-lb sample	24.00
2.1 Furnishing international calibration cotton standards with standard values for micronaire reading only.	
a. f.o.b. Memphis, Tennessee, 1-lb sample	22.00
b. Surface delivery within continental United States, 1-lb sample	24.00
c. By air freight collect outside continental United States, 1-lb sample	22.00
d. By air parcel post delivery outside continental United States, ½-lb sample	36.00
* * * * *	
3.2 Fiber length array of cotton samples, including purified or absorbent cotton. Reporting the average percentage of fibers by weight in each ⅛-inch group, average length and average length variability as based on 3 specimens from a blended sample, per sample	110.00
3.5 Fiber Length and Length Distribution of cotton samples by the Almeter method. Reporting the upper 25 percent length, mean length, coefficient of variation, and short fiber percentages by weight, number or tuft in each ⅛-inch group, as based on 2 specimens from a blended sample.	
a. Report percentages of fiber by weight only	20.00
b. Report percentages of fiber by weight and number or tuft	25.00
c. Report percentages of fiber by weight, number and tuft	30.00
* * * * *	
14.1 Miniature carded cotton spinning test. Reporting data on tenacity (centinewtons per tex) of 22's yarn and HVI data (see item 25.0). Based on the processing of 50 grams of cotton in accordance with special procedures, per sample	25.00
* * * * *	
25.0 High Volume Instrument (HVI) measurement. Reporting micronaire, length, length uniformity, ⅛-inch gauge strength, color and trash content. Based on a 6 oz. (170 g) sample, per sample	1.60
26.0 Calibration cotton for use with High Volume Instruments, per 5 pound package:	
a. f.o.b. Memphis, Tennessee	80.00
b. By surface delivery within continental United States	84.00
c. By air freight collect outside continental United States	80.00
d. By air parcel post delivery outside continental United States	120.00
* * * * *	

PART 61—[AMENDED]

16. The authority citation for Subpart

A of Part 61 is revised to read as follows and the authority citations following the sections are removed:

Authority: Sec. 205, 60 Stat. 1090, as amended, (7 U.S.C. 1624)

17. Sections 61.43, 61.44, 61.45 and 61.46 are revised to read as follows:

§ 61.43 Fee for sampler's license.

In the examination of an applicant for a license to sample and certificate official samples of cottonseed the fee shall be $19.00, but no additional charges shall be made for the issuance of a license. For each renewal of a sampler's license, the fee shall be $17.00.

§ 61.44 Fee for chemist's license.

For the examination of an applicant for a license as a chemist to analyze and certificate the grade of cottonseed the fee shall be $350.00, but no additional charge shall be made for the issuance of a license. For each renewal of a chemist's license the fee shall be $120.00.

§ 61.45 Fee for certificate to be paid by licensee to Service.

To cover the cost of administering the regulations in this part each licensed cottonseed chemist shall pay to the Service $1.30 for each certificate of the grade of cottonseed issued by the licensee. Upon receipt of a statement from the Service each month showing the number of certificates issued by the licensee, such licensee will forward the appropriate remittance in the form of a check, draft, or money order payable to the "Agricultural Marketing Service, USDA."

§ 61.46 Fees for the review of grading of cottonseed.

For the review of the grading of any lot of cottonseed, the fee, shall be $51. Remittance to cover such fee, in the form of a check, draft, or money order payable to the "Agricultural Marketing Service, USDA" shall accompany each application for review. Of each such fee collected, $17.00 shall be disbursed to each of the two licensed chemists designated to make reanalysis of such seed.

Dated: June 10, 1986.

William T. Manley,

Deputy Administrator, Marketing Programs.

[Fr Doc. 86-13606 Filed 6-17-86; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 86-AGL-18]

Alteration of Various Control Zones and Transition Areas Within the Great Lakes Region

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this action is to alter the published descriptions for certain control zones and transition areas within the Great Lakes Region.

EFFECTIVE DATE: 0901 UTC, August 28, 1986.

FOR FURTHER INFORMATION CONTACT: Edward R. Heaps, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations modifies the published descriptions for Jackson, MI; Millersburg, OH and Zanesville, OH, by changing the acronym VOR to VOR/DME; and, for Aberdeen, SD by changing the acronym VORTAC to VOR/DME. The VORTAC conversion consists of removing the TACAN azimuth feature utilized by military aircraft. This change has been coordinated with and approved by the Department of Defense.

There will be no changes to any existing designated airspace area of designated altitudes for any of the associated control zones and/or transition areas.

I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because these actions are minor amendments in which the public would not be particularly interested. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6B dated January 2, 1986.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones, Transition areas.

Adoption of The Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

In all instances where the acronym VOR or VORTAC appears; remove and replace with VOR/DME for the control zones and transition areas listed below:

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Aberdeen, SD—[Amended]

Jackson, MI—[Amended]

Zanesville, OH—[Amended]

3. Section 71.181 is amended as follows:

§ 71.181 [Amended]

Aberdeen, SD—[Amended]

Jackson, MI—[Amended]

Millersburg, OH—[Amended]

Zanesville, OH—[Amended]

Issued in Des Plaines, Illinois, on June 6, 1986.

Teddy W. Burcham,

Manager, Air Traffic Division.

[FR Doc. 86-13685 Filed 6-17-86; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket Nos. RM86-6-001, RM86-6-002, and RM86-6-003]

Electric Utilities, Construction Work in Progress; Order Denying Requests for Rehearing

Issued June 12, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Interim rule; Order denying requests for rehearing.

SUMMARY: On February 27, 1986, the Federal Energy Regulatory Commission (Commission) issued a rule to specify interim procedures and filing requirements to be followed in cases where electric utilities request inclusion of construction work in progress in rate base, pending further Commission action on the remand by the United States Court of Appeals for the District of Columbia Circuit in *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (D.C Cir. 1985). Three requests for rehearing were filed. In this order, the Commission denies these requests for rehearing.

EFFECTIVE DATE: June 12, 1986.

FOR FURTHER INFORMATION CONTACT: Daniel L. Larcamp, Federal Energy Regulatory Commission, Room 8006-A, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 357-8520.

SUPPLEMENTARY INFORMATION:

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

I. Introduction

The Federal Energy Regulatory Commission (Commission) is denying the requests for rehearing filed in these dockets. After carefully reviewing the requests for rehearing of Order No. 448, "Interim Rule and Request for Comment," 51 FR 7774 (1986), the Commission remains convinced that Order No. 448 represents a necessary and proper response to the remand by the United States Court of Appeals for the District of Columbia Circuit in *Mid-Tex Electric Cooperative, Inc.* v. *FERC*, 773 F.2d 327 (1985) (*Mid-Tex*).

II. Background

A. Order No. 448

In Order No. 448, the Commission adopted interim procedures, pending final action to resolve the *Mid-Tex* court's specific concerns about the potential price squeeze and double whammy implications of the Commission's approach to construction work in progress (CWIP) in rate base. That court decision addressed an earlier CWIP rule promulgated in Order No. 298, under which public utilities were permitted to file and attempt to support rates that included certain costs associated with CWIP in rate base.[1] The interim procedures followed Order No. 298 insofar as public utilities are permitted to seek to include in rate base, in addition to pollution control and fuel conversion CWIP, up to 50% of all remaining CWIP. However, the interim procedures, in contrast to the Order No. 298 rule, incorporate a new section[2] that sets forth interim procedures to guard against potential harm from CWIP-related price squeeze and/or double whammy during the pendency of the Commission's full review of the concerns expressed by the *Mid-Tex* court.

In Order No. 448, the Commission also sought comments, not only with respect to the interim procedures established in Order No. 448, but also with respect to specific questions arising directly or indirectly from the *Mid-Tex* remand. These questions represent the Commission's attempt to focus directly on the anticompetitive price squeeze and double whammy implications which the court found that the Commission had not adequately considered in its earlier rulemaking.[3]

B. Requests for Rehearing

On March 28, 1986, Public Systems filed, on behalf of itself and several other publicly-owned electric systems, a request for rehearing of Order No. 448.[4] On March 31, 1986, additional requests for rehearing of Order No. 448 were filed by (1) North Carolina Electric Membership Corporation, Northeast Texas Electric Cooperative, Inc., and Sam Rayburn G&T, Inc. (Cooperative Customers), and (2) the National Rural Electric Cooperative Association, *et al.* (*Mid-Tex* Petitioners).[5] The Commission previously granted rehearing for the limited purpose of further consideration.[6]

The objections raised in the rehearings can be grouped into three general categories. First, the rehearings assert that Order No. 448 represents a violation of the *Mid-Tex* court's mandate.[7] Second, the rehearings assert that the Order No. 448 interim procedures are inadequate or should be modified in some respect. Finally, the rehearings assert that the Commission violated the prior notice and comment requirements of the Administrative Procedure Act (APA).

1. Asserted Violations of the Mid-Tex Mandate

Public Systems assert that the interim rule fails to respond to their concerns which allegedly led to the *Mid-Tex* remand. They also assert that Order No. 448 makes no change to the Commission's price squeeze procedures, and that the order does not resolve any of the underlying questions raised by the court in *Mid-Tex*.[8] The Cooperative Customers also object to the Commission's failure to resolve certain questions raised in *Mid-Tex*, and to certain tentative conclusions which the Commission announced in Order No. 448.[9] *Mid-Tex* Petitioners also assert

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[1] Order No. 298, 48 FR 24323, FERC Statutes and Regulations (Regulations Preambles 1982-1985) ¶30,455 (1983), and Order No. 298-A, 48 FR 46012, FERC Statutes and Regulations (Regulations Preambles 1982-1985) ¶30,500 (1983).

[2] 51 FR 7783, I FERC Statutes and Regulations ¶13,976 at 11,349-50 (to be codified at 18 CFR 35.26(g)).

[3] On May 12, 1986, the District of Columbia Circuit Court of Appeals denied a motion by certain parties to enforce the *Mid-Tex* mandate.

[4] Public Systems also included the docket designation RM81-38 in their request for rehearing. In order to avoid unnecessary administrative confusion, the Commission will respond in Docket No. RM86-6 to all issues raised. Parties should, henceforth, raise issues relating to construction work in progress either in individual rate proceedings, or in Docket No. RM86-6, as appropriate.

[5] *Mid-Tex* Petitioners include the National Rural Electric Cooperative Association, American Public Power Association, Golden Spread Electric Cooperative, Inc., Kimwood Electric Cooperative, Inc., The Full Requirements Cooperative Customers of Southwestern Public Service Company, Mid-Tex Electric Cooperative, Inc., and Magic Valley Electric Cooperative, Inc.

[6] *See* "Order Granting Rehearing for Purpose of Further Consideration," 51 FR 16012 (April 30, 1986).

[7] This category of objections includes challenges that the Commission, in Order No. 448, failed to address the salient questions raised by the *Mid-Tex* court. For example, Public Systems object that the Commission failed to deal with the "obligation to serve" issue. *See* Public Systems' rehearing at 11. As discussed in footnote 9, *infra*, the Commission has solicited comment on all of these questions, including the "obligation to serve" issue.

[8] Public Systems' rehearing at 1-4, 11. Public Systems also seek to draw certain inferences from factual information the Commission recited concerning the number of CWIP cases filed and/or settled. *Id.* at 4, 5. The bare facts recited do not by themselves lead necessarily to any particular conclusion regarding the relationship between CWIP and price squeeze situations. Indeed, the relationships that may underlie these facts is a principal focus of the Commission's evaluation in Docket No. RM86-6.

[9] *See* Cooperative Customers' rehearing at 2-3. In Order No. 448, the Commission did not seek to respond definitively to the specific questions raised by the *Mid-Tex* court. Rather, the Commission sought comments from interested parties prior to responding to the difficult questions raised. With

Continued

that Order No. 448 violates the court's mandate, and that the interim procedures fail to address the problem of "regulatory" price squeeze.[10]

All of the rehearings object that the Commission did not revert to its pre-existing (Order No. 555) CWIP policy during the Commission's further consideration of the *Mid-Tex* remand.[11] Public Systems and the *Mid-Tex* Petitioners also urge the Commission to order refunds of all CWIP-related revenues in pending cases.[12]

2. Asserted Inadequacies in the Interim Procedures

Public Systems assert that the interim procedures are inadequate. They suggest, for example, that any utility seeking to collect CWIP should, by affidavit of its chief executive officer, represent that a prohibited price squeeze will not result from its CWIP request; they also assert that the utility should be required to state the terms under which it has offered its wholesale customers a right to participate in joint ownership of the facility for which CWIP has been requested.[13] The Cooperative Customers assert that it is unreasonable to allow CWIP-based rates without regard to the financial health of the particular utility.[14] *Mid-Tex* Petitioners suggest that the interim procedures be modified to require any utility seeking CWIP to submit data demonstrating whether a price squeeze exists for its customers.[15]

3. Asserted Violations of the APA

All of the rehearings assert that the Commission violated section 4 of the APA, 5 U.S.C. § 553 (1982), in failing to provide prior notice and comment before promulgating the interim procedures.[16] The parties object to the Commission's stated rationale for deferring the public comment process.

III. Discussion

A. Asserted Violations of the Mid-Tex Mandate

Notwithstanding the contentions that Order No. 448 violated the *Mid-Tex* mandate, the Commission continues to believe that Order No. 448 represents a fair, pragmatic, and responsible procedure providing for reasonable implementation of the *Mid-Tex* court's mandate. Since these objections were anticipated and addressed in Order No. 448, the Commission is denying rehearing on this issue for the reasons set forth in Order No. 448.

B. Asserted Inadequacies in the Interim Procedures

As noted above, the rehearings assert that the Commission's interim procedures are inadequate and could be improved with certain modifications. The Commission is not persuaded that any specific change in the interim procedures is warranted at this time. In Order No. 448, the Commission noted that price squeeze had not been alleged in approximately one-third of the cases where non-pollution control/fuel conversion CWIP had been sought under the Order No. 298 rule.[17] Since the experience under Order No. 298 indicates that price squeeze is not alleged in many cases where CWIP is sought,[18] the Commission rejects as excessive the suggestions that the interim procedures should be modified to required all utilities which seek to include CWIP in rate base to file additional data demonstrating whether a CWIP-related price squeeze would result from the request. Such a requirement could impose a significant, additional burden on some utilities for no legitimate purpose.

A recent filing confirms the Commission's belief that the somewhat narrower interim procedures established by Order No. 448 provide an adequate vehicle to guard against "potential short-term harm to consumers while the Commission further considers the complex issues raised on remand."[19] On March 27, 1986, the Virginia Electric and Power Company (VEPCO) submitted for filing a proposed two-step rate increase for wholesale service to ten municipal customers, eight cooperative customers, and the Old Dominion Electric Cooperative.[20] By letter dated April 21, 1986, the Director of the Commission's Division of Electric Power Application Review, Office of Electric Power Regulation, notified VEPCO that its submittal was deficient under the interim procedures established by Order No. 448, and directed VEPCO to provide additional data relating to price squeeze and double whammy.[21]

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respect to the preliminary conclusions expressed by the Commission in Order No. 448, the Commission indicated that these conclusions were tentative and would be evaluated in light of comments received. *See* 51 FR 7775, 7777, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,689 at 30,140, 30,142–43.

[10] *But see* 51 FR 7778, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,689 at 30,143, where the Commission stated that on an *interim basis* it would attempt to identify "regulatory" price squeezes in individual cases, and to provide effective relief where shown to be warranted.

[11] Order No. 555, 41 FR 51392, 56 FPC 2939 (1976), promulgated a former Commission CWIP policy, which was subsequently superseded by Order No. 298. Under Order No. 555, utilities were permitted to seek rates which included pollution control and fuel conversion CWIP. Other CWIP was permitted only where the utility requesting CWIP first could make an affirmative showing that CWIP-relief would be necessary to alleviate a situation of severe financial distress. *See* Order No. 448, 51 FR 7775–76, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,689 at 30,140–41, for a discussion of the Order No. 555 CWIP policy.

[12] The Commission does not interpret *Mid-Tex* as requiring refunds of all CWIP-related revenues collected pursuant to the Commission's Order No. 298 rule. That rule was not stayed pending judicial review, and was reasonably relied upon by utilities which sought CWIP based on the rule. Furthermore, the Commission does not believe that refunds would necessarily be appropriate in all instances, in any event. As noted in Order No. 448, the price squeeze or double whammy issues are not even present in some of the cases involving CWIP filings. Indeed, some of the utilities that the Commission regulates are subject only to its jurisdiction. In addition, there may well be mitigating or offsetting factors that would weigh against refunds either generically or in individual cases. The Commission will not issue any across-the-board refund directive without a thorough evaluation of the various consequences. In Order No. 448, the Commission noted that motions seeking refunds of CWIP-related revenues had been filed in certain pending cases. The Commission is persuaded that the opportunity of a customer to so advocate refunds in an individual proceeding provides ample protection, while affording the utility an opportunity to respond and the Commission an opportunity to evaluate all the pertinent circumstances.

[13] Public Systems' rehearing at 7–9.

[14] Cooperative Customers' rehearing at 15–16.

[15] *Mid-Tex* Petitioners' rehearing at 21.

[16] *See* Public Systems' rehearing at 12–14; Cooperative Customers' rehearing at 3; and *Mid-Tex* Petitioners' rehearing at 16–19.

[17] 51 FR 7780, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,689 at 30,152, n. 35.

[18] The experience with respect to the frequency of CWIP-related double whammy claims is even more persuasive. *See* 51 FR 7778, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,689 at 30,151, n. 25.

[19] 51 FR 7,775, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,698 at 30,140. In Order No. 448, the Commission noted that it *may* consider preliminary relief at the suspension stage of a case where a proper showing has been made that the CWIP rules would otherwise cause immediate, irreparable harm. *See* 51 FR 7783, I FERC Statutes and Regulations ¶ 13,976 at 11,349 [§§ 35.26(g)(2), (3), and (5)]. To the extent that there may be an ambiguity with respect to the Commission's intention to consider remedying CWIP-related price squeeze or double whammy situations (*see Mid-Tex* Petitioners' rehearing at 9), the Commission clarifies that it *will* consider whether preliminary relief is necessary, if an appropriate showing is made in an individual case. The Commission's choice of a permissive verb was only intended to indicate that any remedy that might be considered would, of necessity, depend on the factual circumstances present.

[20] Docket No. ER86–372–000.

[21] *See* "Letter dated April 21, 1986, from Jerry R. Milbourn, Director, Division of Electric Power Application Review, to C.M. Jarvis, Vice President, Virginia Electric and Power Company," (deficiency letter). With respect to price squeeze, for example, the deficiency letter noted that the Virginia Municipal Electric Association No. 1 (VMEA) had alleged price squeeze in VEPCO's last rate case (Docket No. ER85–400–000), and that VEPCO's motion to defer procedural dates in that case specifically linked the CWIP and price squeeze

Continued

The Commission stresses that no determination has yet been made with respect to the merits of VEPCO's rate filing, the potential treatment of its requested increase (including that portion related to CWIP), or the resolution of any matters raised by the interventors.[22] Further, the Commission will not speculate here on whether the additional information which VEPCO has supplied with respect to the price squeeze and double whammy issues are sufficient under the interim procedures. However, it is clear that, in this instance, the interim procedures are thus far working as expected and that broader alternative procedures suggested in the rehearings have not been shown to be necessary. Therefore, the requests to modify the interim rule are denied.

C. Asserted Violations of the APA

In Order No. 448, the Commission found, and incorporated the finding and a brief statement of reasons thereof, that notice and comment thereon were impracticable and contrary to the public interest.[23] In light of the assertions in the rehearings that the Commission has violated sections 4 (b) and (c) of the APA, the Commission believes that it is appropriate to briefly reiterate the special reasons why it invoked exceptions to the normal notice and public comment requirements of APA.

First, the Commission noted that the procedures adopted by Order No. 448 were not intended to be permanent. Rather, the procedures were intended to be in effect for a relatively short interim period, while the Commission expeditiously studies the issues related to the court's remand.[24] The Commission will continue to press forward to resolve the court's concerns and establish a final rule as soon as possible.

Second, the Commission noted that the fundamental approach to including CWIP had been investigated by the Commission in an extensive prior public proceeding,[25] and that the *Mid-Tex* court affirmed the legitimacy of the Commission's objectives in Order No. 298,[26] and also the support it had for its methods of accomplishing those objectives.[27] Therefore, the Commission determined that the interim rule, to a considerable degree, was already supported by a broad and substantial record.[28]

Third, the Commission stated that § 35.26(g) of the regulations should protect consumers by minimizing or eliminating the possibility of price squeeze or double whammy while the interim procedures are in effect and while the Commission completes its review.

The Commission recognized the existence of other available options that it could have initiated as a means of temporarily implementing *Mid-Tex*. Several factors militated against those options. As previously noted, the court affirmed the Commission's determination that inclusion of CWIP in rates was a reasonable way to accomplish legitimate objectives. Moreover, there had been considerable reliance on the rule for approximately three years.[29] Finally, there existed the substantial potential for irremedial financial consequences and regulatory confusion.

The Commission therefore chose not simply to deny all utilities the ability to file for any CWIP during the pendency of its reexamination of anticompetitive issues. Rather, the Commission chose to allow utilities to attempt to make a case for CWIP in rates, while supplying customers with rate protection in the form of: (1) a limit on the amount of CWIP eligible for inclusion in rate base; (2) detailed filing requirements; and (3) interim procedures which require, in part, an initial showing by any filing utility how any reasonably anticipated CWIP-related anticompetitive effects could be mitigated.

Finally, the Commission noted that a binding rule was necessary to ensure the rational administration of CWIP applications in electric rate cases while it addressed itself to the *Mid-Tex* court's concerns.[30] Utilities, their customers, and the Commission's staff are thus aware of the procedures under which CWIP applications will be reviewed and processed in an orderly fashion by the Commission.

In summary, the Commission has carefully reviewed the rehearing claims that the Commission's action in promulgating its interim CWIP procedures without prior notice and public comment violated the requirements of the APA. The Commission is still convinced that "good cause" exists under the circumstances of this proceeding to dispense with prior notice and public comment since such action would be impracticable or contrary to the public interest. 5 U.S.C. 553(b)(B) (1982). The exception to notice and comment procedures before implementing an interim rule is further justified in this proceeding because no utility will automatically be permitted to include CWIP in its rates without a case-specific review by the Commission under its expressed interim policies and procedures.

In consideration of the foregoing, the Commission denies all the requests for rehearing.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-13763 Filed 6-17-86; 8:45 am]

BILLING CODE 6717-01-M

issues for common resolution after the Commission responded to the *Med-Tex* remand. Pleadings submitted in Docket No. ER86-372-000 also suggest that before that filing was made, but after the issuance of Order No. 448, VMEA advised VEPCO of its concern that inclusion of CWIP in rate base in the instant filing might result in a price squeeze to VMEA's members. *See* Docket No. ER86-372-000, VMEA's "Protest and Motion to Intervene," at Attachment 1(a). On May 6, 1986, VEPCO filed additional materials in respone to the deficiency letter.

[22] On May 13, 1986, VEPCO appealed staff's deficiency letter, and asserted that its original filing fully complied with the requirements of Order No. 448 and the Commission's regulations. The Commission intends the present discussion to be factual and does not intend to prejudge any question in this order.

[23] *See* Order No. 448, "Section V., Administrative Findings and Effective Date," 51 FR 7781, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,689 at 30, 148-49.

[24] *Id.*

[25] The record in Docket No. RM81-38 has been incorporated into the record in Docket No. RM86-6. 51 FR 7782, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,689 at 30,149.

[26] *See* 48 FR 24,326, FERC Statutes and Regulations (Regulations Preambles 1982-1985) ¶ 30,455 at 30,493.

[27] *See Mid-Tex*, 773 F.2d at 344-45.

[28] 51 FR 7781, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,689 at 30,148.

[29] As noted above, the Order No. 298 rule was not stayed pending review by the *Mid-Tex* court.

[30] 51 FR 7781, III FERC Statutes and Regulations (Regulations Preambles) ¶ 30,689 at 30,148.

18 CFR Part 271

[Docket No. RM79-76-247; Order No. 452 (Texas—16 Addition)]

High-Cost Gas Produced From Tight Formations, Texas

Issued June 12, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that

the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1985)). This rule established procedures for jurisdictional agencies to submit recommendations of areas for designation as tight formations. This order adopts the recommendations of the Railroad Commission of the State of Texas that an additional area of the Olmos Formation located in McMullen County, Texas, be designated as a tight formation under § 271.703(d) of the Commission's Regulations.

EFFECTIVE DATE: This rule is effective July 14, 1986.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, (202) 357-9114 or Walter W. Lawson, (202) 357-8731.

SUPPLEMENTARY INFORMATION:

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

Based on a recommendation made by the Railroad Commission of the State of Texas (Texas), the Commission amends § 271.703(d) of its regulations [1] to include an additional area of the Olmos Formation located in McMullen County, Texas, as a designated tight formation eligible for incentive pricing under section 271.703. The Director of the Office of Pipeline and Producer Regulation issued a notice proposing the amendment on January 7, 1986.[2]

Evidence submitted by Texas supports the assertion that the additional area of the Olmos Formation meets the guidelines contained in § 271.703(c)(2). The Commission therefore adopts Texas' recommendation.

The amendment shall become effective July 14, 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, Title 18, Code of Federal Regulations, is amended as set forth below.

[1] 18 CFR 271.703(d) (1985).

[2] 51 FR 1387 (January 13, 1986). Comments on the proposed rule were invited and only one was received. Mobil Producing Texas and New Mexico, Inc. filed comments in support of the recommendation. No party requested a public hearing and no hearing was held.

By the Commission.

Lois D. Cashell,

Acting 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. 7171 *et seq.;* Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by revising paragraph (d)(111) to read as follows. The italicized heading of paragraph (d) is republished.

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(111) *The Olmos Formation in Texas.* Rm79-76 (Texas—16)—(i) *Dimmit and Webb Counties*—(A) *Delineation of formation.* The Olmos Formation is located in the northwest portion of Webb County and the southern portion of Dimmit County in Texas. The Formation includes all of that portion of Dimmit County extending approximately 14 miles north of the boundary of Webb County, and all of that portion of northwest Webb County west of a north-south line extending south from a point approximately 1.5 miles east of the southwest corner of La Salle County, and north of an eastwest line located approximately 22 miles south of the southwest corner of La Salle County.

(B) *Depth.* The top and base of the Olmos Formation are found at approximate depths of 4,146 feet and 5,237 feet respectively, on the log of the Trans Delta Corporation Petty Well No. 6-7. This well is located in Section 7, Block 8, of the I&G.N.R.R. Co. Survey in the S.W. Catarina Field, Webb County, Texas.

(ii) *A.W.P. (Olmos) Field, McMullen County*—(A) *Delineation of formation.* The Olmos Formation designated area underlies portions of the A.W.P. Olmos Field and consists of 4,853 contiguous acres located 3½ to 5 miles southeast of Tilden, Texas. Specifically, the area is all of Sections 24, 25, 27, 37, 38, 39, the west ½ Section 23, the southwest ¼ of Section 28, the north ½ of Section 41, and the north ½ of Section 42, out of the Two Rivers Ranch Subdivision as shown by plat recorded in Volume O, page 460 (Bracken Lease) and page 464 (McClaugherty Lease) of the Deed Records, McMullen County, Texas.

(B) *Depth.* The top of the Olmos Formation occurs at depths of from 9,100 feet to 9,600 feet below mean sea level.

* * * * *

[FR Doc. 86-13764 Filed 6-17-86; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Part 282

[Docket No. RM 80-62-001; Order No. 104-A]

Section 206(d) Exemption for Mechanical Cogeneration Facilities From the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978; Order Denying Petition for Reconsideration of Effective Date of Final Rule

Issued June 12, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule—Order denying petition for reconsideration or revision of effective date.

SUMMARY: The Federal Energy Regulatory Commission is denying reconsideration of the effective date of the exemption for mechanical cogeneration facilities from incremental pricing under the Natural Gas Policy Act of 1978.

DATES: The effective date of the final rule remains March 1, 1981. This order was issued on June 12, 1986.

FOR FURTHER INFORMATION CONTACT: Peter J. Roidakis, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8224.

SUPPLEMENTARY INFORMATION:

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

The Federal Energy Regulatory Commission (Commission) is denying a petition to revise the effective date of the final rule in this docket (Order No. 104),[1] to establish October 23, 1980 (the date of issuance of the rule), as the effective date of the exemption for mechanical cogeneration facilities from incremental pricing under the Natural Gas Policy Act of 1978 (NGPA).[2]

Background

Under section 206(d)(2) of the NGPA,[3] such exemptions were subject to a one-

[1] Order No. 104, Final Rule issued Oct. 23, 1980. 45 FR 71,787 (Oct. 30, 1980).

[2] 15 U.S.C. 3301-3432 (1982).

[3] 15 U.S.C. 3346(d)(2) (1982).

House legislative veto, and such exemptive rules could not take effect until the expiration of thirty calendar days of continuous session of Congress, so as to afford either House an opportunity to exercise its veto. The existing effective date of the mechanical cogeneration exemption, March 1, 1981, was the date chosen by the Commission after neither House took steps to disapprove the rule.[4]

In *Consumer Energy Council of America v. FERC*, 673 F.2d 425 (D.C. Cir. 1982), *aff'd sub nom. Process Gas Consumers Group v. Consumer Energy Council of America*, 463 U.S. 1216 *reh'g denied*, 463 U.S. 1250 (1983) (*CECA*), the Court found unconstitutional an essentially identical congressional review provision of the NGPA.[5] On December 30, 1982, American Cyanamid Company (Cyanamid) petitioned the Commission, in light of the *CECA* decision holding section 202(c)(1) unconstitutional, to reconsider its prior decisions in this proceeding (*see* n.1, 4, 6) to the extent that they set March 1, 1981, rather than October 23, 1980, as the effective date of the exemption.[6]

The mechanical cogeneration [7] usage at Cyanamid's acrylic fiber plant in Milton, Santa Rosa County, Florida, would qualify for the exemption from incremental pricing under Order No. 104. On August 3, 1983, Cyanamid filed a renewed petition for reconsideration.

[4] *See* "Notice of Effective Date and Availability of Exemption Affidavits," issued Mar. 2, 1981, in Docket No. RM80-62, which established a Mar. 1, 1981 effective date for the exemptive rule. 46 FR 16,256 (Mar. 12, 1981).

[5] *See* 15 U.S.C. 3342(c) (1982).

[6] On August 25, 1982, Cyanamid, joined by the Commission, moved to dismiss Cyanamid's petition for review of the effective date of the final rule then pending before the United States Court of Appeals for the District of Columbia Circuit, No. 81-1864, in order that the Commission should have an opportunity to reconsider the effective date. The Court granted the joint motion on September 7, 1982. Cyanamid had filed its petition for review with the United States Court of Appeals on June 19, 1981, shortly after the Commission, on April 23, 1981, denied its request for rehearing, reconsideration, and request for adjustment to make the mechanical cogeneration exemption effective on October 23, 1980. *See* "Order Denying Rehearing, Reconsideration and Request for Adjustment," issued April 23, 1981, in Docket No. RM80-62. 15 FERC ¶ 61,067 (1981). In discussing the possibility that "the legislative veto provision of section 206(d) may be held unconstitutional[.]" the Commission found "no reason to prejudge the pending judicial resolution of that matter" by ignoring the provision. 15 FERC ¶ 61,067 at 61,144.

[7] Gas-fired boilers produce steam that is used to drive turbines and produce mechanical energy for various plant uses; the exhaust steam is then also used for heating purposes. This mechanical cogeneration is more efficient than producing mechanical or heating energy alone.

Discussion

Cyanamid argues that the Commission is required by *CECA* to make Order No. 104 effective on October 23, 1980; or alternatively, that the Commission should exercise its discretion [8] to make this rule effective on that date. For the reasons discussed below, the effective date of Order No. 104 remains March 1, 1981.

The statutory provision at issue here, section 206(d)(2), provides:

> Congressional Review.—Any rule which provides for any exemption under this subsection may take effect after the expiration of the first 30 calendar days of continuous session of Congress (determined in accordance with section 507(b)) after a copy of such rule has been submitted to each House of Congress, unless, during such 30 day period of continuous session of Congress, either House of Congress adopts a resolution of disapproval described in section 507(c)(3), with respect to such rule.[9]

As Cyanamid points out, following submission of the mechanical cogeneration exemption rule (Order No. 104) to Congress, the consideration period was interrupted by "the 1980 national elections, Thanksgiving, Christmas, New Year's Day, Inauguration Day, and Washington's Birthday; as a result, the '30-day' suspension period did not expire until Febrary 28, 1981, more than four months after the rule's promulgation. During that time, neither House took steps to disapprove the rule." [10]

The Commission notes a distinction here with the *CECA* case, however. In *CECA*, the veto provision was exercised; in Cyanamid's case, neither House took steps to disapprove the rule, and the rule became effective, albeit at a later date than Cyanamid would have liked. The court in *CECA* confirms that no constitutional infirmity attends Congress's decision *not to veto*.[11]

[8] *See* 5 U.S.C. 553(d) (1982). This provision of the Administrative Procedure Act provides that rules may be made effective immediately upon a finding of good cause.

[9] 15 U.S.C. 3346(d)(2) (1982). The veto provision of section 206(d)(2) quoted above (the clause beginning with the word "unless . . .") is identical to the same veto provision in section 202(c)(1) held unconstitutional in the *CECA* decision.

[10] Cyanamid "Petition for Reconsideration," filed Dec. 30, 1982, at 5-6.

[11] "[Congress's] failure to disapprove an agency rule does not constitute formal and official action invoking Article I, Section 7. Congress (or one house) 'acts' for purposes of this provision when it affirmatively passes some bill, order, vote, or resolution that alters the substantive law; it does *not* act when such proposals are not adopted and the substantive law—i.e., the promulgated regulations—remain unchanged." *CECA*, 673 F.2d 425, 467 n.170 (D.C. Cir. 1982) (emphasis in original).

Cyanamid argues that the review provision is not severable from the veto clause because the two elements "are of a piece," and cannot be severed. The Commission disagrees. Since the veto in *CECA* had actually been exercised, the court never faced the question of whether the review requirement was severable from the veto provision where no veto was ever exercised. However, the court, in *dicta*, rejects the argument that the Congressional review process, even when it does not culminate in a veto, is tainted by the unconstitutionality of the one-House veto provision. [12] Cyanamid's only remaining argument to support its position is that if only the one-House veto is constitutionally invalid, but not the consideration process, then Congress could adjourn *sine die* as necessary to disrupt the continuity of the 30-day continuous session review period and thereby effect a *de facto* veto. This argument appears to be extraodinarily hypothetical. No such Congressional action occurred here to disrupt the running of the 30-day review period. Rather, the disruptions were due to a number of intervening holidays, whose fortuitous occurrence in sequence resulted in a somewhat longer period of review under the 30-day continuous session requirement.

Moreover, even if, for argument's sake, the review clause is considered "of a piece" with the veto clause, the effective date of the Commission's exemptive rules still remains a matter fully within the discretion of the Commission.[13] The Commission is here exercising that discretion to adhere to the effective date originally established. The Commission's discretion to establish the effective date of its own rules is not impaired by the unconstitutionality of the veto provision, or even the consideration process, if such process were also held unconstitutional and inseverable from the veto provision.

There is no reason in law or policy to make the rule and exemption effective at a different date from that already established. Order No. 104 was issued to discourage mechanical cogenerators from investing in unnecessary electrical cogeneration equipment in order to gain an exemption from incremental

[12] The court explicity rejected the view that the President is entitled to presentation of *both* a decision to veto, *and* a decision not to veto. Such a holding, said the court, "would empower the President to veto both regulations and disapproval of regulations, an unwarranted and illogical extension of his power under Article I, Section 7." *CECA*, 673 F.2d 425, 467 n.170 (D.C. Cir. 1982).

[13] 5 U.S.C. 553(d) (1982).

pricing.[14] Cyanamid did *not* invest in such needless electrical cogeneration equipment. The argument that its foregoing of such wasteful expenditures justifies granting its petition is without merit. Such expenditures were in fact not made. Therefore, a retroactive change in the effective date of the mechanical cogeneration exemption cannot possibly affect any decisions made in 1980–81 on whether to install electrical cogeneration equipment to obtain the exemption. Accordingly, the policy considerations that led us to issue Order No. 104 and provide a prospective exemption do not justify retroactively changing the effective date of that rule.

The original misgivings articulated in the Commission's April 23, 1981 order in this proceeding, which were the basis for stating it was "unlikely that the Commission would exercise its discretion to make the exemption available on a retroactive basis[,]"[15] rested only in part on a belief that the adjustment of the incremental pricing "surcharge" accounts that would be required would be extremely burdensome.[16] There were other relevant considerations as well which on balance impel the Commission to maintain the effective date of the exemption as originally promulgated. For example, although further analysis of the administrative feasibility of an adjustment of the effective date indicates that such an adjustment, at least insofar as Cyanamid is concerned, may not create a significant administrative burden because Cyanamid purchases its gas from United Gas Pipe Line Company, an interstate pipeline. But, administrative infeasibility still remains for mechanical cogenerators that purchase gas from local distribution companies.[17] Moreover, the mere administrative feasibility of granting Cyanamid's request, as it applies to its particular plant, is in no way a substantive justification for doing so. The fact that Cyanamid's circumstances (where no veto was exercised) are distinguishable from the *CECA* case, the fact that Cyanamid has not met the NGPA criteria [18] for such an adjustment, and the fact that other persons will suffer an unfair redistribution of burdens if Cyanamid's request were granted, all militate against granting the adjustment requested.

A significant consideration is that the approximately $700,000 in surcharges refunded to Cyanamid would have to be made up by increasing rates to high-priority users of natural gas, thereby creating a potential hardship for those users. Since there are approximately 70 other mechanical cogenerators, other high priority gas users' rates would have to be increased to recover refunds caused by a change in the effective date of the rule. The courts have recognized that such considerations alone provide a sufficient reason for denying retroactive effect to such incremental pricing exemptions.[19]

Because of these concerns the Commission has consistently denied requests to make exemptive rules effective retroactively.[20]

In conclusion, the Commission reiterates the reasons stated in its April 23, 1981, order [21] herein for denying Cyanamid's petition: (1) Although the legislative veto provisions of section 206(d) may have been found unconstitutional, the effective date for adoption of the rule and the exemption is still discretionary with the Commission, and for reasons of law and equity discussed above the Commission declines to exercise that discretion to make the exemption retroactively effective as requested. (2) If the Commission were now to apply the mechanical cogeneration rule effective October 23, 1980 [the date of issuance of the mechanical cogeneration exemption], it would seem inequitable not to make the new small boiler [exemption] rule retroactive to July 29, 1980 [the date of issuance of the new small boiler exemption], and to similarly adjust the agricultural chemical, fertilizer, and animal feed and food incremental pricing exemptions.[22] This

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[14] NGPA section 206(c)(3) provided an exemption for electrical cogeneration but not mechanical cogeneration. 15 U.S.C. 3346(c) (1982).

[15] "Order Denying Rehearing, Reconsideration and Request for Adjustment," issued April 23, 1981, in Docket No. RM80–62, 15 FERC ¶ 61,067 at 61,145.

[16] *Id.* at 61,144.

[17] Most local distribution companies are under state incremental pricing plans. These state plans provide that as end-user who is exempt under the federal plan is also exempt under the state plan. Under a state plan any money collected through incremental pricing is retained within the state rather than being passed on to the interstate pipeline supplier. (See Order No. 103, 45 FR 71781 (Oct. 30, 1980)). If the Commission changed the effective date of Order No. 104 as requested, local distribution companies would be required to refund money to mechanical cogenerators, but may have no way under existing state plans of recovering from other customers the monies paid to the cogenerators.

[18] Section 502(c) of the NGPA provides "for the making of such adjustments, consistent with the other purposes of this Act, as may be necessary to prevent special hardship, inequity, or an unfair distribution of burdens." 15 U.S.C. § 3412 (1982). Commission case law that has developed under this provision would require that Cyanamid show an out-of-pocket loss during the period for which the adjustment of the exemption is sought. This, for whatever reason, Cyanamid has not attempted to show. *See, e.g., Peter Cooper Corporations*, 15 FERC ¶ 61,027 at 61,045 (1981). (The Commission directed that the following standard apply to the determination of special financial hardship under NGPA section 502(c): where a "facility's monthly out-of-pocket costs, including incremental pricing surcharges, exceed that facility's total sales revenues for the same period, then it may qualify for adjustment relief.")

[19] *See, e.g.*, Petrolite Corp. v. FERC, 667 F.2d 667, 669 (8th Cir. 1981). ("It may be that the Commission could have ordered a retroactive exemption, but, at any rate, this would have been a discretionary matter. *See* Transwestern Pipeline Co. v. Federal Energy Regulatory Comm'n, 626 F.2d 1266, 1271 (5th Cir. 1980), *cert. denied*, 101 S. Ct. 2017, *rehearing denied*, 101 S. Ct. 3128 (1981). The Commission has point out the potential hardship to other users of natural gas and the administrative burden in allowing the retroactive exemption that petitioners seek. Most significantly, the surcharges refunded to manufacturers of hardboard would have to be made up by other users of natural gas. Such considerations provide a sufficient reason for denying retroactive effect to the exemption. As the United States Court of Appeals for the Fifth Circuit noted in a somewhat different context:

We believe that the Commission acted within its discretion in making the effect of Order 566 prospective. *See generally Securities and Exchange Commission v. Chenery Corp.*, 332 U.S. 194, 201–204, 67 S. Ct. 1575, 1579–1581, 91 L. Ed. 1995 (1947); *Retail, Wholesale and Department Store Union v. National Labor Relations Board*, 466 F.2d 380, 389–90 (D.C. Cir. 1972); *Pacific Molasses Company v. Federal Trade Commission*, 356 F.2d 386, 390 (5th Cir. 1966). The Commission could properly determine that an adverse affect [sic] on other parties could result from a retroactive application of the new definition. *Coe v. Secretary of Health, Education and Welfare*, 502 F.2d 1337, 1340 (4th Cir. 1974). Thus, as the Commission stated, Transwestern's claims must stand or fall under the rules as they stood prior to the amendment; it has no vested right to retroactivity.

[20] The Commission has never made incremental pricing exemptive rules effective retroactively. These rules, by their very nature, affect many different end users and suppliers. The Commission did make one rule effective retroactively (Interim Rule in Docket No. RM81–1, 45 Fed. Reg. 68,389 (Oct. 15, 1980)). However, this was done because of the unique circumstances involved. The rule corrected an error in the calculation of the prices that applied to end users in the state of Rhode Island. Prior to the issuance of the rule the Commission was able to determine that the rule would only affect one distribution company and that the retroactive change in prices would not cause an administrative burden for this supplier.

[21] 15 FERC ¶ 61,067 at 61,144–45.

[22] Cyanamid argues that the mechanical cogeneration rule can be distinguished from these other rules because of the potential for wasteful economic expenditures involved, and the somewhat longer Congressional review period that resulted. *See* Cyanamid August 3, 1983 Petition. The Commission disagrees with this analysis and has already pointed out that no change in the effective date is needed to prevent wasteful capital expenditures that were never actually incurred by Cyanamid. *See* discussion *supra* at 6–7. Further, while the mechanical cogeneration exemption had a longer Congressional review period than other exemptions, this does not work any unfairness on Cyanamid, but arises from the Congressional review process itself, which can be expected to result in varying periods of review.

would wreak havoc in the incremental pricing program, which has now become stabilized, by inserting new price uncertainties through the program. (3) Furthermore, retroactive relief would create a substantial administrative burden on many of the gas suppliers of those facilities granted exemptions. (*See* n.17 *supra.*)

The Commission Orders

Consistent with the foregoing discussion, and upon reconsideration, the effective date of Order No. 104 shall remain March 1, 1981.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-13762 Filed 6-17-86; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 436 and 455

[Docket No. 86N-0197]

Antibiotic Drugs; Vancomycin Hydrochloride Capsules

AGENCY: Food and Drug Administration

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new dosage form of vancomycin hydrochloride, vancomycin hydrochloride capsules. The manufacturer has supplied sufficient data and information to establish its safety and efficacy.

DATES: Effective June 18, 1986; comments, notice of participation, and request for hearing by July 18, 1986; data, information, and analyses to justify a hearing by August 18, 1986.

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

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

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new dosage form of vancomycin hydrochloride, vancomycin hydrochloride capsules. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in 21 CFR Parts 436 and 455 to provide for the inclusion of accepted standards for the product.

Environmental Impact.

The agency has determined under 21 CFR 25.24(c)(6) (April 26, 1985; 50 FR 16636) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Submitting Comments and Filing Objections

This regulation announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this regulation is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. The regulation, therefore, is effective June 18, 1986. However, interested persons may on or before July 18, 1986, submit written comments to the Dockets Management Branch (address above). 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. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before July 18, 1986, a written notice of participation and request for hearing, and (2) on or before August 18, 1986, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order, and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Parts 436 and 455

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 436 and 455 are amended as follows:

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

1. The authority citation for 21 CFR Part 436 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. Part 436 is amended in § 436.201 by adding new paragraph (b)(3)(iii); by redesignating paragraph (c)(3) (iii) as (iv) and revising it, and by adding new paragraph (c)(3)(iii) to read as follows:

§ 436.201 Moisture determination.

* * * * *

(b) * * *

(3) * * *

(iii) *Solvent C.* Anhydrous methanol.

(c) * * *

(3) * * *

(iii) *Solvent C.* Used 20 milliliters of solvent C as the sample. Start the stirrer and titrate to the endpoint by adding measured quantities of Karl Fischer reagent.

(iv) Calculate the Karl Fischer reagent equivalence of the solvents as follows:

$V_A = V_C = V_T,$

$V_B = (V_T - V_m) \times f$

where:

$V_A, V_B,$ and V_C = Milliliters of Karl

Fischer reagent equivalent to the aliquots used of solvents A, B, and C, respectively;

V_T=Milliliters of Karl Fischer reagent used;

V_m=Milliliters of methanol solution used;

f=Milliliters of Karl Fischer reagent equivalent to each milliliter of methanol solution determined as directed in paragraph (c)(2) of this section.

* * * * *

3. In § 436.215 by revising paragraphs (a), (b), and (d), and adding a new paragraph (c)(7) to read as follows:

§ 436.215 Dissolution test.

(a) *Equipment.* Use either Apparatus 1 or 2 as described in the United States Pharmacopeia XXI dissolution test.

(b) *Procedure.* For each dosage form listed in the table in this paragraph select the appropriate dissolution medium, rotation rate, sampling time, and apparatus, and proceed as set forth in either Apparatus 1 or 2 methodology of the United States Pharmacopeia XXI dissolution test. Determine the amount of drug substance dissolved by performing the assay described in paragraph (c) of this section. The amount of dissolution medium removed for sampling purposes may be disregarded if the amount removed is not more than 15 milliliters. If more than 15 milliliters is removed, then correct for the volume removed.

Dosage form	Dissolution medium	Rotation rate [1]	Sampling time(s)	Apparatus
Amoxicillin trihydrate and clavulanate potassium chewable tablets.	900 mL distilled water	75	30 min	2
Amoxicillin trihydrate and clavulanate potassium tablets.	do	75	do	2
Bacampicillin hydrochloride tablets	do	75	do	2
Cephradine dihydrate capsules	900 mL 0.12*N* hydrochloric acid	75	60 min	2
Doxycycline hyclate tablets	900 mL distilled water	75	60 min and 90 min	2
Oxytetracycline hydrochloride capsules.	do	75	30 min and 60 min	2
Tetracycline hydrochloride capsules (except 500-mg).	do	75	do	2
Tetracycline hydrochloride capsules (500-mg).	do	75	30 min, 60 min, and 90 min	2
Tetracycline hydrochloride tablets.	do	75	30 min and 60 min	2
Vancomycin hydrochloride capsules.	900 mL distilled water	100	45 min	1

[1] Rotation rate of basket of paddle stirring element (revolutions per minute).

(c) * * *

(7) *Vancomycin hydrochloride.* Assay for the vancomycin content as described in § 436.105 of this chapter, except use the sample as it is removed from the dissolution test.

(d) *Evaluation.* Use the dissolution acceptance table and interpretation in the United States Pharmacopeia XXI.

PART 455—CERTAIN OTHER ANTIBIOTIC DRUGS

4. The authority citation for 21 CFR Part 455 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

5. Part 455 is amended by redesignating § 455.185 as § 455.185a and by adding new §§ 455.185 and 455.185b to read as follows:

§ 455.185 Vancomycin hydrochloide oral dosage forms.

§ 455.185a Vancomycin hydrochloride for oral solution.

* * * * *

§ 455.185b Vancomycin hydrochloride capsules.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Vancomycin hydrochloride capsules contain vancomycin hydrochloride dispersed in polyethylene glycol. Each capsule contains either 125 milligrams or 250 milligrams of vancomycin. Its potency is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of vancomycin that it is represented to contain. Its moisture is not more than 8 percent. It passes the dissolution test. The vancomycin hydrochloride used conforms to the standards prescribed by § 455.85(a)(1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The vancomycin hydrochloride used in making the batch for potency, moisture, pH, factor A content, and identity.

(*b*) The batch for potency, moisture, and dissolution.

(ii) Samples, if required by the Director, Center for Drugs and Biologics:

(*a*) The vancomycin hydrochloride used in making the batch: 12 packages, each containing approximately 500 milligrams.

(*b*) The batch: A minimum of 100 capsules.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a high-speed glass blender jar with sufficient distilled water to obtain a stock solution of convenient concentration. Blend for 3 to 5 minutes. Further dilute an aliquot of the stock solution with 0.1*M* potassium phosphate buffer, pH 4.5 (solution 4) to the reference concentration of 10 micrograms of vancomycin per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter, using the titration procedure described in paragraph (e)(1) of that section, except:

(i) Remove gelatin coating before grinding the capsules; and

(ii) Use solvent C in lieu of solvent A.

(3) *Dissolution.* Proceed as directed in § 436.215 of this chapter. The quantity Q (the amount of vancomycin dissolved) is 85 percent within 45 minutes.

Dated: June 6, 1986.

Daniel L. Michels,

Director, Office of Compliance Center for Drugs and Biologics.

[FR Doc. 86-13689 Filed 6-17-86; 8:45 am]

BILLING CODE 4160-01-M

LIBRARY OF CONGRESS

36 CFR Parts 701 and 703

Organization, Policies and Procedures

AGENCY: Library of Congress.

ACTION: Final rule.

SUMMARY: In the interest of providing members of the public and other interested parties with information reflecting current organization, policies, and procedures, the Library is revising the text of its regulations as published in Chapter VII, Title 36 of the Code of Federal Regulations.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Howard Blancheri, Executive Officer, Management Services (287-5560).

SUPPLEMENTARY INFORMATION:

List of Subjects

40 CFR Part 701

Libraries.

40 CFR Part 703

Archives and records.

For reasons set out in the preamble, Chapter VII, Title 36 of the Code of Federal Regulations is amended as shown:

PART 701—[AMENDED]

1. The authority citation for Part 701 continues to read as follows:

Authority: Sec. 1, 29 Stat. 544, 546 (2 U.S.C. 136)

2. Sections 701.21 and 701.27, as listed in the table of contents are revised to read as follows:

701.21 Service of maps and cartographic materials.

701.27 Service of scientific and technical materials.

3. Section 701.3 is revised to read as follows:

§ 701.3 Removal of materials from the Library buildings.

No material may be removed from the Library buildings without the proper stamp, pass, or other authorization as prescribed by regulations established by The Librarian of Congress. All property including, but not limited to, suitcases, briefcases, handbags, large envelopes, packages, and office equipment may be inspected upon leaving Library buildings in order to prevent the improper removal of property belonging to the U.S. Government.

4. Section 701.4 is amended by revising the third sentence to read as follows:

§ 701.4 Information about the Library.

* * * For convenience of the public, the office administers information counters in the James Madison and Thomas Jefferson Buildings; its staff answers visitors' inquiries about the Library but does not provide reference service for readers wishing to use the Library's collections. * * *

5. Section 701.5 is revised to read as follows:

§ 701.5 The Library's reading rooms and public use thereof.

Materials in the general classified collections of the Library are serviced in the Main and Local History and Genealogy reading rooms (Thomas Jefferson Building), and the Science and Social Science reading rooms (John Adams Building). Special collections, as explained further in subsequent sections, are serviced in the following reading rooms: Archive of Folk Culture, European, Microform, and Rare Book and Special Collections (Thomas Jefferson Building), African and Middle East and Asian (Adams Building), and Geography and Map, Law Library, Manuscript, Motion Picture and Television, Newspaper and Current Periodical, Performing Arts, Prints and Photographs, and Recorded Sound Reference Center (James Madison Memorial Building). Reference and bibliographic assistance is provided by the staff on duty in the reading rooms, to the extent necessary to supplement the reader's prior use of library resources elsewhere and/or to facilitate use of the Library's collections.

§ 701.6 [Amended]

6. Section 701.6 is amended by removing the words "Collection Management" and inserting, in their place, the words "General Reading Rooms".

7. Section 701.9 is amended by revising the third sentence to read as follows:

§ 701.9 Loans of library materials.

* * * Subject to regulations and conditions established by The Librarian of Congress, special permission to withdraw materials may be given to congressional staff. * * *

8. Section 701.13 is revised to read as follows:

§ 701.13 Service of African and Middle Eastern materials.

(a) Services to readers in the African and Middle Eastern Division are provided in accordance with prescribed conditions of use of materials in the custody of the division: materials written or printed in Arabic, Hebrew, Persian, Turkish, Yiddish, etc.

(b) Readers requiring reference and bibliographic assistance in the general areas of African and Middle Eastern studies are assisted in the African and Middle Eastern Division's three component sections: African, Hebraic, and Near East, each of which maintains a reference collection and pertinent bibliographic tools. Reference service on special materials of interest to African and Middle Eastern studies (except law) is provided by the divisions holding such materials, as identified in § 701.5. In the fields of science and technology, reference and bibliographic services are provided by the Science and Technology Division.

9. Section 701.14 is revised to read as follows:

§ 701.14 Service of Asian materials.

(a) Services to readers in the Asian Division are provided in accordance with prescribed conditions of use of materials in the custody of the division: materials written or printed in Bengali, Burmese, Chinese, Hindi, Indonesian, Japanese, Korean, Thai, Urdu, Vietnamese, etc.

(b) Readers requiring reference and bibliographic assistance in the general areas of Asian studies are assisted in the Asian Division's three component sections. Reference service on special materials of interest to Asian studies (except law) is provided by the divisions holding such materials, as identified in § 701.5. In the fields of science and technology, reference and bibliographic services are provided by the Science and Technology Division.

10. Section 701.15 is revised to read as follows:

§ 701.15 Service of European materials.

(a) Services to readers in the European Division are provided in accordance with prescribed conditions of use of the materials in the custody of the European Division: Unbound serials and newspapers, (with the exception of those assigned to the Law Library), written or printed in any of the Slavic languages and in Estonian, Latvian, and Lithuanian. Readers requesting reference and bibliographic assistance on European materials classified in the general collections are assisted by staff on duty in the general reading rooms, or in the European Reading Room, which maintains a reference collection and pertinent informational files.

(b) The professional staff of the European Division renders reference and bibliographic services pertaining to the cultural, political, social, and economic life of Albania, Austria, Belgium, Bulgaria, Cyprus, Czechosloviakia, Denmark, Estonia, Finland, France, the German Democratic Republic, the Federal Republic of Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Monaco, The Netherlands, Norway, Poland, Romania, San Marino, the Soviet Union, Sweden, Switzerland, the Vatican City, and Yugoslavia. Reference service on special materials of interest to European studies (except law) is provided by the divisions holding such materials, as identified in § 701.5. In the fields of science and technology, reference and bibliographic services are provided by the Science and Technology Division.

§ 701.16 [Amended]

11. Section 701.16, paragraph (b) is amended by removing the words "Folk Song" and inserting, in their place, the words "Fork Culture".

12. Section 701.17 is revised to read as follows:

§ 701.17 Service of Hispanic materials.

(a) Readers requesting reference and bibliographic assistance on hispanic materials classified in the general collections may consult staff on duty in the general reading rooms, or in the Hispanic Reading Room, which maintains a reference collection and pertinent informational files.

(b) The professional staff of the Hispanic Division renders reference and bibliographic services pertaining to the cultural, political, social and economic life of Spain, Portugal, and the countries of Latin America and the Caribbean, as well as for materials pertaining to the social and cultural life of Hispanics in the United States. Reference service on special materials of interest to Hispanic studies (except law) is provided by the divisions holding such materials, as identified in § 701.5. In the fields of science and technology, reference and bibliographic services are provided by the Science and Technology Division.

13. Section 701.20 is revised to read as follows:

§ 701.20 Service of manuscript materials.

(a) Services to readers in the Manuscript Reading Room are provided in accordance with prescribed conditions of reader registration and use of the materials in the custody of the Manuscript Division. The use of such materials is restricted to the Manuscript Reading Room.

(b) The professional staff of the Manuscript Division renders reference and bibliographic services pertaining to its collections by telephone, through correspondence, and directly to adult readers in the Manuscript Reading Room.

14. Section 701.21 is revised to read as follows:

§ 701.21 Service of maps and cartographic materials.

(a) Services to readers in the Geography and Map Reading Room are provided in accordance with prescribed conditions of reader registration and use of the maps, atlases and globes in the custody of the Geography and Map Division. The use of such materials is restricted to the Geography and Map Reading Room.

(b) The professional staff of the Geography and Map Division renders reference and bibliographic services pertaining to its collections by telephone, through correspondence, and directly to adult readers in the Geography and Map Reading Room.

15. Section 701.23 is revised to read as follows:

§ 701.23 Service of motion picture and television materials.

(a) Services to readers in the Motion Picture and Television Reading Room are provided in accordance with prescribed conditions of reader registration and use of the motion picture film, and videotape materials in the custody of the Motion Picture, Broadcasting and Recorded Sound Division. The use of such materials is restricted to the Motion Picture and Television Reading Room.

(b) The professional staff of the Motion Picture, Broadcasting and Recorded Sound Division renders reference and filmographic services pertaining to its collections by telephone, through correspondence and directly to adult readers in the Motion Picture and Television Reading Room.

16. Section 701.24 is revised to read as follows:

§ 701.24 Service of music materials.

(a) Services to readers in the Performing Arts Reading Room are provided in accordance with prescribed conditions of reader registration and use of the music materials in the custody of the Music Division. The use of such materials is restricted to the Performing Arts Reading Room.

(b) The professional staff of the Music Division renders reference and bibliographic services pertaining to its collections, by telephone, through correspondence and directly to adult readers in Performing Arts Reading Room (see also Section 701.29).

17. Section 701.25 is revised to read as follows:

§ 701.25 Service of prints and photographs.

(a) Services to readers in the Prints and Photographs Reading Room are provided in accordance with prescribed conditions of reader registration and use of the collections of fine and historical prints, drawings, photographs, posters, and architectural drawings and photographs, in the custody of the Prints and Photographs Division. The use of such materials is restricted to the Prints and Photographs Reading Room.

(b) The professional staff of the Prints and Photographs Division renders reference and bibliographic services pertaining to its collections, by telephone, through correspondence and directly to adult readers in the Prints and Photographs Reading Room.

18. Section 701.26 is revised to read as follows:

§ 701.26 Service of rare books and special collections.

(a) Services to readers in the Rare Book and Special Collections Reading Room are provided in accordance with prescribed conditions of reader registration and use of the materials in the custody of the Rare Book and Special Collections Division. The use of such materials is restricted to the Rare Book and Special Collections Reading Room.

(b) The professional staff of the Rare Book and Special Collections Division renders reference and bibliographic services pertaining to its collections by telephone, through correspondence, and directly to adult readers in the Rare Book and Special Collections Reading Room.

(c) Service to readers of the rare books in the custody of the Law Library and the Music Division are subject to similar regulations.

19. Section 701.27 is revised to read as follows:

§ 701.27 Service of scientific and technical materials.

(a) Readers requesting reference and bibliographic assistance in science and technology may consult the staff on duty in the Science Reading Room. Inquiries are referred when necessary to subject specialists in the Science and Technology Division. A special collection of technical reports is available in the Science Reading Room. Materials on science in the Library's subject-classified collections are also served in the Library's other general reading rooms.

(b) In answering requests for referral service, the Resources Analysis Section of the General Reading Rooms Division compiles names, addresses, telephone numbers, and brief descriptions of appropriate information resources, which may include professional societies, university research bureaus and institutes, Federal and State agencies, industrial laboratories, museums, testing stations, and individual experts as well as more traditional sources of information, such as technical libraries, information and document centers, and abstracting and indexing services.

20. Section 701.28 is revised to read as follows:

§ 701.28 Service of serial materials.

(a) Services to readers in the Newspaper and Current Periodical Reading Room are provided in accordance with prescribed conditions of use of the collections of current and unbound periodicals, bound, unbound and microfilmed newspapers, Government documents, ephemera, etc. not assigned to other divisions, in the custody of the Serial and Government Publications Division. The use of such materials is restricted to the Newspaper and Current Periodical Reading Room.

(b) The professional staff of the Serial and Government Publications Division renders reference and bibliographic services pertaining to its collections as well as to the government publications in the general classified collections, by telephone, through correspondence and directly to adult readers in the Newspaper and Current Periodical Reading Room.

21. Section 701.29 is revised to read as follows:

§ 701.29 Service of sound recordings.

(a) Services to readers in the Recorded Sound Reference Center in the Performing Arts Reading Room are provided in accordance with prescribed conditions of reader registration and use of the sound recordings of all kinds (except recordings for the blind) in the custody of the Motion Picture, Broadcasting and Recorded Sound Division. The use of such materials, for serious research only, is restricted to the Performing Arts Reading Room and appointments to use them must be sought in advance by application to the Motion Picture, Broadcasting and Recorded Sound Division.

(b) The professional staff of the Recorded Sound Reference Center renders reference and discographic services pertaining to the collections, by telephone, through correspondence, and directly to adult readers in the Performing Arts Reading Room.

(c) Reference and information pertaining to folk music and ethnomusicology are available from the Archive of Folk Culture, American Folklife Center.

(d) A list of recordings of poetry and folk music issued by the Library of Congress and available for a sale may be obtained from the Public Services Coordinator, Motion Picture, Broadcasting and Recorded Sound Division, Library of Congress, Washington, DC 20540.

22. Section 701.30 is revised to read as follows:

§ 701.30 Cataloging distribution.

Bibliographic products and services are produced and supplied to the Library of Congress and other libraries by the Cataloging Distribution Service. The Service sells bibliographic data in the form of printed cards, machine-readable tapes (MARC), book catalogs, microfiche catalogs and technical publications to libraries, learned societies, professional institutions, government agencies, private institutions, and cooperative and commercial processing centers. Information may be obtained from the Cataloging Distribution Service, Library of Congress.

§ 701.31 [Amended]

23. Section 701.31 is amended by removing the words "a quarterly journal,".

24. Section 701.23 is revised as follows:

§ 701.23 Offers of materials for purchase.

The Library solicits offers of library materials (including books, periodicals, pamphlets, manuscripts, maps, views, music, recordings, motion pictures, photographs, posters, prints, etc.). Lists or catalogs offering materials should specify author, title, place of publication, date of publication, whether or not copyrighted, edition note, series note, and number of pages or volumes. Each item must be priced. All offers of materials and all other correspondence concerning the acquisition by purchase of materials for the Library's collections (including invoices, statements, and questions concerning payment for material purchased by the Library) should be addressed to the Library of Congress, Order Division, Washington, DC 20504. Materials should be sent "on approval" unless specifically requested by the Order Division.

25. Section 701.33(b) is revised to read as follows:

§ 701.33 Acquisition of library materials by non-purchase means and disposition of surplus library materials.

* * * * *

(b) *Disposition of surplus books.* The Exchange and Gift Division has available at all times surplus books not needed by the Library for its own uses. These materials are made available for selection on exchange by eligible institutions, organizations, book dealers, and collections, and by donation to educational institutions (tax-supported or non-profit schools, school systems, colleges, universities, museums, and public libraries), non-profit tax-exempt organizations (Section 501 of IRS Code) and public bodies (agencies of local, state, or national governments) in the United States. A public library is defined as "a library that serves free all residents of a community, district, state, or region, and receives its financial support in whole or in part from public funds."

* * * * *

26. *Section 701.34* is revised to read as follows:

§ 701.34 Contracting officers.

The following officers are authorized to procure materials and services on behalf of the Library of Congress and to execute contracts in the particular areas specified:

Officers	Areas of contracting authority
The Librarian of Congress.	All areas.
The Deputy Librarian of Congress.	All areas.
The Associate Librarian of Congress.	All areas.
Associate Librarian for Management.	All areas except materials for the Library's collections.
Director, Congressional Research Service.	Agreements to procure experts or consultants (including stenographic reporters), pursuant to 2 U.S.C. 166(h)(2).
Assistant Librarian for Research Services.	Performance fees for readings, lectures, dramatic fees and Council of Scholars.
Director, Library Environment Resources Office.	Rental/Space Agreements with Government Agencies.
Director, Acquisitions and Overseas Operations.	Agreements for bibliographic services.
Director, National Library Service for the Blind and Physically Handicapped.	Collection materials for the Library's Blind and Physically Handicapped Program.
Director of Publishing	Agreements with outside authors and agreements related to the Library's printing needs (non-appropriated funds).
Chief, Procurement and Supply Division.	All areas except materials for the Library's collections.
Chief and Assistant Chief, Order Division.	Materials for the Library's collections.
Chief and Assistant Chief, Exchange and Gift Division.	Agreements involving all non-purchase materials for the Library's collections (exchanges, gifts, deposits, etc.).
Chief, Financial Management and Budget Officer.	Interagency agreements, entertainment, performance of services by the Library and interdepartmental charges.
Chief, Manuscript Division.	Agreements involving the Library's literature programs (non-appropriated funds).
Chief, Music Division	Agreements involving the Library's music programs (non-appropriated funds).
Exhibits Officer	Agreements involving loans of exhibits.
Staff Training and Development Officer.	Training agreements with educational institutions.
Other officers who are delegated specific procurement powers by The Librarian of Congress in specific situtations.	As specifically delegated.

§ 701.35 [Amended]

27. Section 701.35(b) is amended by removing the words "Associate Librarian for National Programs" and inserting, in their place, the words "Assistant Librarian for National Programs" in both places they appear.

PART 703—AVAILABILITY OF LIBRARY OF CONGRESS RECORDS

1. The authority citation for Part 703 continues to read as follows:

Authority.—2 U.S.C. 136.

§ 703.6 [Amended]

21. Section 703.6(a)(2) is amended by removing the words "Information Systems Office" and inserting, in their place, the words "Automated Systems Office".

Effective date—The amendments set forth above are effective July 1, 1986.

Issued in Washington, DC, June 10, 1986.

Glen A. Zimmerman,

Associate Librarian for Management, Library of Congress.

[FR Doc. 86-13620 Filed 6-17-86; 8:45 am]

BILLING CODE 1410-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1254 and 1260

Records Declassification

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule reorganizes NARA regulations concerning the declassification of classified records for which NARA has declassification authority. The rule removes material which is duplicative and extends the time NARA has to forward to the responsible agency requests for declassification of classified information less than 30 years old.

EFFECTIVE DATE: June 18, 1986.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas or Nancy Allard at 202-523-3214 (FTS 523-3214).

SUPPLEMENTARY INFORMATION: On April 17, 1986, NARA published a notice of proposed rulemaking (51 FR 13026) to consolidate its regulations relating to declassification of classified records for which NARA has declassification authority. No comments were received.

This rule removes from Part 1254 procedures for mandatory review of classified information which are already contained in Part 1260, and removes from Part 1260 procedures for public requests for mandatory review which are also found in § 1254.46. A reference to the procedures in § 1254.46 is added to § 1260.1. In addition, Subparts A and B of Part 1260 are combined because the procedures outlined in these subparts are the same for both classified U.S. originated information and foreign government information provided to the United States in confidence.

Section 1260.10(a) is further modified by changing the time limit from 20 days to 30 days for NARA to forward to the responsible agency mandatory review requests involving information less than 30 years old. The Information Security Oversight Office (ISOO) implementing directive allows an agency 30 days to respond to a mandatory review request. Because of an increase in demand, the volume of records involved in May requests, and the decrease in personnel resources for this activity, NARA has difficulty in meeting the shorter deadline.

This rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 36 CFR Parts 1254 and 1260

Archives and records, Classified information.

For the reasons set forth in the preamble, Title 36 of the Code of Federal Regulations is amended as follows:

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

1. The authority citation for Part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101-2118.

§§ 1254.42 and 1254.44 [Redesignated]

2. Section 1254.42 is redesignated as § 1254.44, § 1254.44 is redesignated as § 1254.42, and the internal reference in paragraph (c) of the redesignated § 1254.44 is changed to read "§ 1254.42."

§§ 1254.48 through 1254.54 [Removed]

3. Sections 1254.48, 1254.50, 1254.52, and 1254.54 are removed.

§ 1254.56 [Redesignated]

4. Section 1254.56 is redesignated as § 1254.48.

§ 1254.58 [Redesignated]

5. Section 1254.58 is redesignated as § 1254.50.

PART 1260—DECLASSIFICATION OF AND PUBLIC ACCESS TO NATIONAL SECURITY INFORMATION

6. The authority citation for Part 1260 continues to read as follows:

Authority: 44 U.S.C. 2104(a); Executive Order 12356 of April 2, 1982 (3 CFR 1982 Comp., p. 166).

7. Section 1260.1 is revised to read as follows:

§ 1260.1 Scope of part.

Declassification of and public access to national security information and material (hereafter referred to as "classified information" or collectively termed "information") is governed by Executive Order 12356 of April 2, 1982 (47 FR 14874, April 6, 1982) and by the Information Security Oversight Office Directive Number 1 of June 22, 1982 (47 FR 27836, June 25, 1982). Documents declassified in accordance with this regulation may be withheld from release under the provisions of 5 U.S.C. 552(b) for accessioned agency records or § 1254.36 for donated historical materials. Procedures for public requests for mandatory review of classified information under Executive Order 12356 are found in § 1254.46 of this chapter.

§ 1260.2 [Removed]

8. Section 1260.2 is removed.

Subpart A—Mandatory Review of Classified U.S. Government Originated Information and Foreign Government Information Provided to the United States in Confidence

9. Section 1260.10 is revised to read as follows:

§ 1260.10 NARA action.

(a) *Information less than 30 years old.* NARA shall promptly acknowledge receipt of a request for mandatory review of classified U.S. Government originated information, and within 30 calendar days of receipt of the request, shall forward the request, with copies of the documents containing the requested information, to the agency that originated the information or to the agency that the Archivist determines has primary subject matter interest. With respect to foreign government information, the request and copies of the documents shall be forwarded to the agency which initially received or classified the information. If unable to identify that agency, NARA shall forward the request to the agency which has primary subject matter interest. NARA shall inform the requester that referrals have been made to the appropriate Government agency.

(b) *Information more than 30 years old.* NARA shall acknowledge receipt of a request for mandatory review of classified U.S. Government originated information or foreign government information which NARA may review for declassification using systematic review guidelines, and within 60 days of receipt of the request shall act upon it and notify the requester of the action taken. If additional time is necessary to make a declassification determination, NARA shall notify the requester of the time needed to process the request. Except in unusual circumstances, NARA will make a final determination within 1 year of the receipt of the request. Information which NARA may not declassify using the systematic review guidelines will be promptly forwarded, with copies of the documents containing the requested information, to the responsible agency. NARA shall inform the requester that referrals have been made to the appropriate Government agency.

10. Section 1260.12 is amended by revising the introductory paragraph to read as follows:

§ 1260.12 **Agency action.**

Upon receipt of a request for mandatory review of classified U.S. Government originated information or foreign government information forwarded by NARA, the originating or responsible agency shall:

* * * * *

Subpart B—[Removed and Reserved]

11. Subpart B, consisting of §§ 1260.20 and 1260.22, is removed and reserved.

Dated: May 28, 1986.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 86-13732 Filed 6-17-86; 8:45 am]

BILLING CODE 7515-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6F3402/R843; FRL-3032-2]

Pesticide Tolerances for 3,5-Dimethyl-4-(Methylthio)Phenyl Methylcarbamate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends 40 CFR 180.320 by reducing and establishing maximum, interim permissible level of residues for the insecticide/bird repellent 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate in or on blueberries and cherries from 25 to 5 parts per million (ppm). The interim tolerances, requested by the Mobay Chemical Corp., expire March 31, 1989.

EFFECTIVE DATE: Effective on June 18, 1986.

ADDRESS: Written objections, identified by the document control number [PP 6F3402/R843], may be submitted to the Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By Mail: William H. Miller, Product Manager (PM) 16, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 211, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-2600).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of May 15, 1986 (51 FR 17828), which announced that the Mobay Chemical Corp., P.O. Box 4913, Kansas City, MO 64120, had submitted pesticide petition 6F3402 to EPA proposing that 40 CFR 180.320 be amended by reducing the established tolerances in or on blueberries and cherries from 25.0 ppm to 5.0 ppm.

There were no comments received in response to the notice of filing.

The data submitted in the petition and other relevant material have been evaluated. The data considered in support of the regulation include:

1. A 2-year dog feeding study with a no-observed-effect level (NOEL) of 5.0 ppm (0.125 mg/kg/day) based on cholinesterase inhibition.
2. A 2-year rat feeding/oncogenic study with a NOEL of 100.0 ppm based on cholinesterase inhibition (no oncogenic effects observed at dosage levels up to and including 600.0 ppm which was the highest level tested).
3. A rabbit teratology study with a NOEL of 10.0 mg/kg (no teratogenic effects were observed at dosage levels up to and including 10.0 mg/kg which was the highest level tested).
4. A rat teratology study with a NOEL of 10.0 mg/kg (no teratogenic effects were observed at dosage levels up to and including 10.0 mg/kg which was the highest level tested).
5. A 3-generation rat reproduction study with a NOEL of 300.0 ppm (no reproductive effects were observed at dosage levels up to and including 300.0 ppm which was the highest level tested).
6. An acute delayed neurotoxicity study in hens which was negative for neurotoxic effects under conditions of the study (highest dose tested was 380 mg/kg).

Based on the 2-year dog feeding study with a NOEL of 5.0 ppm (0.125 mg/kg/day) and using a safely factor of 10, the acceptable daily intake (ADI) for humans is 0.0125 mg/kg of body weight per day and the maximum permissible intake (MPI) is 0.7500 mg/day for a 60-kg human.

The current established tolerances for residue of 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate comprise a theoretical maximum residue contribution (TMRC) of 0.2542 mg/day (1.5 kg) and utilizes 33.89 percent of the ADI. As a result of this regulation, the TMRC will be reduced to 0.2145 mg/day (1.5 kg) and 28.61 percent of the ADI will be utilized.

No feed items are involved; therefore, it is expected that no secondary residues in meat, milk, poultry and eggs will result from the use of the pesticide on blueberries and cherries.

The metabolism of the insecticide is adequately understood, and an analytical method, gas liquid chromatography with a flame photometric detector, is available for enforcement purposes. New methodology is forthcoming. If method trials are successful, the new methodology will replace the current methodology in PAM. Because the Agency presently has concerns over this new methology, the Agency is limiting the period of time that the reduced tolerance is to be in effect. When the Agency receives the additional data needed to verify the analytical method, which is due December 31, 1987, it will reassess the tolerance for blueberries and cherries and, if appropriate, will establish a permanent tolerance for these commodities. There are no regulatory actions pending against continued registration of the insecticide/bird repellent, and no other considerations are involved in estabishing the tolerance.

The pesticide is considered useful for the purpose for which the tolerances are sought. Based on the above information and data, the Agency concludes that the establishment of the tolerances will protect the public health and are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this notice in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

As required by Executive Order 12291, the EPA has determined that this rule is not a "Major" rule and therefore does not require a Regulatory Impact analysis.

The Office of Management and Budget has reviewed this action and determined that the requirements of Section 3 of Executive Order 12291 have been satisfied.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 6, 1986.

Steve Schatzow,

Director, Office of Pesticide Programs.

PART 180—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.320 is revised as follows:

§ 180.320 3,5-Dimethyl-4-(methylthio)phenyl methylcarbamate; tolerances for residues.

(a) Tolerances are established for residues of the pesticide 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate and its cholinesterase-inhibiting metabolites in or the raw agricultural commodities as follows:

Commodities	Parts per million
Citrus fruits	0.02
Corn, fodder	0.03
Corn, forage	0.03
Corn, fresh (inc sweet K + CWHR)	0.03
Corn, grain, field	0.03
Corn, grain, pop	0.03
Peaches	15

(b) Interim tolerances, to expire March 31, 1989, are established for residues of the pesticide 3,5-dimethyl-4-(methylthio)phenyl methylcarbamate and its cholinesterase-inhibiting metabolites in or the raw agricultural commodities as follows:

Commodities	Parts per million
Blueberries	5.0
Cherries	5.0

[FR Doc. 86-13462 Filed 6-18-86; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 5E3199/R836; FRL-3030-6]

Pesticide Tolerance for 3,5-Dichloro-N-(1,1-Dimethyl-2-Propynyl)Benzamide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for the combined residues of the herbicide 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide (referred to in the preamble of this document as "pronamide") and its metabolites, in or on the raw agricultural commodity rhubarb. This regulation, to establish a maximum permissible level for residues of pronamide in or on rhubarb, was requested in a petition by the Inter-regional Research Project No. 4 (IR-4).

EFFECTIVE DATE: Effective on June 18, 1986.

ADDRESS: Written objections, identified by the document control number [PP 5E3199/R836], may be submitted to the: Hearing Clerk (A-110), Environmental Protection Agency, Room 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT:

By mail: Jack Housenger, Emergency Response and Minor Use Section (TS-767C), Registration Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of April 16, 1986 (51 FR 12886), which announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231 Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 5E3199 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of Oregon proposing the establishment of a tolerance for the combined residues of the herbicide pronamide and its metabolites (calculated as 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide) in or on the raw agricultural commodity rhubarb at 0.1 part per million (ppm). The petitioner further proposed that: (1) The use of pronamide on rhubarb be limited to Oregon and Washington based on the geographical representation of the residue data submitted, (2) additional residue data will be required to expand the area of usage, and (3) persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted and other relevant information have been evaluated and discussed in the proposed rulemaking Based on the data and information considered, the Agency concludes that the tolerance would protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

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 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: June 3, 1986.

Steven Schatzow,

Director, Office of Pesticide Programs.

PART 40—[AMENDED]

Therefore, 40 CFR Part 180 is amended as follows:

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.317 is amended by designating the existing paragraph as paragraph (a) and adding paragraph (b) to read as follows:

§ 180.317 3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide; tolerances for residues.

(a) * * *

(b) Tolerance with regional registration are established for the combined residues of the herbicide 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide and its metabolites (calculated as 3,5-dichloro-*N*-(1,1-dimethyl-2-propynyl)benzamide) in or on the following raw agricultural commodities:

Commodities	Parts per million
Rhubarb	0.1

[FR Doc. 86-13261 Filed 6-17-86; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3610

[Circular No. 2583]

Sales; Emergency Final Rulemaking Establishing Procedures for Noncompetitive Sales in Excess of 100,000 Cubic Yards of Mineral Materials

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency final rulemaking.

SUMMARY: The existing mineral materials sales regulations authorize the noncompetitive sale of mineral materials not in excess of 100,000 cubic yards in any individual sale or 200,000 cubic yards in any one State for the benefit of any entity in any period of twelve consecutive calendar months. This emergency final rulemaking would authorize the noncompetitive sale of unlimited amounts of mineral materials where the Director, Bureau of Land Management, determines that competition is not possible under the circumstances or there exists an emergency situation that threatens public property, health or safety.

EFFECTIVE DATE: June 18, 1986.

ADDRESS: Comments, questions or inquiries should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Bldg., 1800 C Street, NW., Washington, DC 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Brenda Aird, (202) 343-8537.

SUPPLEMENTARY INFORMATION: The existing regulations covering sales of mineral materials limit the noncompetitive sale of mineral materials to 100,000 cubic yards or weight equivalent in any individual sale and 200,000 cubic yards or weight equivalent to any entity per year per State. The existing regulations require that the United States receive the appraised fair market value for any mineral materials sold noncompetitively. These limitations on the amount of mineral materials that can be sold noncompetitively do not apply to sales for the Trans-Alaska Pipeline System or the Alaska Natural Gas Transportation System. The Material Sales Act (30 U.S.C. 601 et seq.), allows the Secretary of the Interior to sell mineral materials noncompetitively where their competitive sale would be impractical. The existing regulations do not make any provision for situations where competition is not possible or where emergencies exist that threaten public property, health or safety.

The rising level of the Great Salt Lake, Utah, has created a situation that is threatening a major transportation corridor, thereby endangering both public and private property, as well as the public health and safety. Representatives of a transcontinental railroad threatened by the rising level of the Great Salt Lake have requested that the Department of the Interior provide the immediate sale of large quantities of mineral materials for the purpose of protecting the endangered transportation corridor. The existing regulations limit the Department's authority to sell unlimited amounts of mineral materials noncompetitively. Further, the emergency need for this mineral material does not permit the time-consuming process of making the mineral materials available through the competitive process required by § 3610.3 of the existing regulations. Therefore, the Department has determined that it cannot meet the request for unlimited amounts of minerals materials to meet this or any other emergency without amending the existing regulations in 43 CFR Part 3610. Further, this emergency situation has convinced the Department that it needs the flexibility to meet such emergency situations in the future, wherever they may arise. This final rulemaking will amend Part 3610 to provide the Department, acting through the Bureau of Land Management, the authority needed to meet all such emergencies.

Because time is of the essence in meeting the current emergency at the Great Salt Lake, this change is being issued as a final rulemaking and is being issued under the exceptions in the Administrative Procedure Act (5 U.S.C. 553) because notice and public involvement are impracticable and not in the public interest. It also has been determined that it is in the public interest to provide immediate relief through the authorization to sell noncompetitively mineral materials to meet the pending emergency. This determination requires that the final rulemaking be made effective upon publication.

The public is requested to give comments on the issue of providing the Department of the Interior with the flexibility to meet such emergencies. These comments will be reviewed and if any changes are deemed necessary, the regulations will be further amended to reflect the changes.

The principal author of this final rulemaking is Brenda Aird, Division of Mining Law and Salable Minerals, Bureau of Land Management, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

This final rulemaking will give the Department of the Interior the flexibility to meet a request for the noncompetitive sale of large amounts of mineral materials to meet situations where public property, health and safety are threatened or where competition is not possible under the circumstances. This authority will be equally applicable to all entities, whether large or small.

The final rulemaking contains no information collection requirements requiring the approval of the Office of Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 43 CFR Part 3610

Government contracts, Public lands—mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Under the authority of the Materials Act of July 31, 1947, as amended (30 U.S.C. 601, 602), Part 3610, Group 3600, Subchapter B, Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below.

J. Steven Griles,

Assistant Secretary of the Interior.

June 13, 1986.

PART 3610—[AMENDED]

1. The authority citation for Part 3610 is revised to read:

Authority: The Materials Act of July 31, 1947, as amended (30 U.S.C. 601, 602).

2. Section 3610.2-1 is amended by adding a new paragraph (d) to read:

§3610.2-1 Limitations in volumes

* * * * *

(d) The volume limitations contained in paragraphs (a) and (b) of this section shall not apply where the Director determines that circumstances make it impossible to obtain competition or where, because of an emergency situation affecting public property, health and safety, there is insufficient time to invite competitive bids.

[FR Doc. 86-13741 Filed 6-17-86; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 387

[BMCS Docket No. MC-121; Amdt. No. 83-18]

Minimum Levels of Financial Responsibility for Motor Carriers; May Petition

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FHWA is adopting an interim rule to permit motor carriers of property to satisfy its financial responsibility requirements by self-insuring if they have received approval from the Interstate Commerce Commission (ICC) to self-insure and have maintained a "satisfactory" safety rating assigned by the FHWA. The motor carrier industry is currently facing an "insurance crisis" in which many motor carriers with safe operating records, good accident experience, and strong financial position are experiencing great difficulties in obtaining federally mandated insurance. Motor carriers are being charged dramatically higher premiums, or in some cases being denied coverage and being forced into State assigned-risk plans. In response to this emergency situation, the FHWA is amending its regulations to provide an option for certain motor carriers to fulfill their obligation to protect the public. Elsewhere in this issue of the **Federal Register**, the FHWA is initiating a rulemaking action to consider the issue of self-insurance further, to ascertain whether any additional conditions should be established for qualification as a self-insurer, and to determine what qualifications, conditions, reporting requirements, and other procedures should be established to extend the self-insurance alternative to other motor carriers.

EFFECTIVE DATE: June 18, 1986.

ADDRESS: All written comments should refer to the docket number that appears at the top of this document and should be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590. The comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday, except for legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety (202) 755-1011; or Mr. Thomas P. Holian, Office of the Chief Counsel (202) 426-0346, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The FHWA has received a petition from May Trucking Company (May), a motor common carrier of property required to maintain a minimal level of financial responsibility of $1 million to cover bodily injury, property damage, and environmental restoration claims arising from its commercial motor vehicle operation. In its petition, May requested that it be granted a waiver from the requirements of the FHWA's regulations or, in the alternative, that FHWA institute a rulemaking proceeding to amend its financial responsibility rules and immediately adopt interim rules that would permit a motor carrier to comply with the minimum financial responsibility requirements established by the FHWA under section 30 of the Motor Carrier Act of 1980, 49 U.S.C. 10927 note (1982 & Supp. II 1984), by qualification as a self-insurer.

When the FHWA adopted final rules implementing section 30, it specifically declined to permit a motor carrier to comply with the minimum financial responsibility requirements by qualifying as a self-insurer. (46 FR 30974, June 11, 1981, now codified at 49 CFR 387.1-387.17.) The FHWA recognized at that time that self-insurance could be a viable alternative means of assuring that a motor carrier maintained a level of financial responsibility that was adequate to protect the public, but that self-insuance would not necessarily afford precisely the same level of protection as traditional insurance coverage. Moreover, there appeared to be little support for self-insurance as an alternative means for complying with the financial responsibility requirements. It appeared that other alternatives adequately protected the public while providing motor carriers with considerable flexibility. Because the FHWA was also concerned that implementation of a self-insurance program would require a substantial commitment of agency resources, and that this commitment was not then justified, the FHWA did not adopt a self-insurance alternative.

Since 1981 there has been a significant deterioration in the affordability and availability of insurance for motor carriers. This situation has recently taken on the characteristics of a crisis facing the motor carrier industry both because of its severity and the breadth of its impact. Information that FHWA has received leads it to believe that many insurers are refusing to renew policies of insurance, or are dramatically increasing premiums for such coverages, without regard to the past claims experience of individual motor carriers. Accordingly, the FHWA believes that during this crisis the currently permitted means for complying with the FHWA's financial responsibility requirements do not provide significant alternatives and have curtailed the motor carriers' flexibility to operate.

The question which remains is whether such a limitation on motor carrier flexibility is necessary to protect the public. Information currently available to the FHWA suggests that it is not. The FHWA does not believe that the current high insurance premiums are necessary to induce motor carriers to operate more safely.

In its petition, May requested a waiver that would permit it to comply with the financial responsibility requirements by self-insuring. The FHWA does not believe that the insurance problems described by May in its petition are unique to May. Thus, the FHWA believes that a waiver for May alone would be inappropriate.

May holds a certificate of public convenience and necessity issued by the ICC, and is subject to regulation by the Commission. May petitioned the ICC for authority to qualify as a self-insurer on September 30, 1985. The ICC denied May's request on December 9, 1985, and May filed a Petition to Reopen that decision on December 30, 1985. The Commission has recently adopted interim rules applicable to requests for authority to self-insure. These interim rules provide:

Section 1043.5 Qualifications as a self-insurer and other securities or agreements.

(a) *As a self-insurer.* The Commission will give consideration to and will approve the application of a motor carrier to qualify as a self-insurer if such carrier furnishes a true and accurate statement of its financial condition and other evidence which will establish to the satisfaction of the Commission the ability of such motor carrier to satisfy its obligation for bodily injury liability, property damage liability, or cargo liability. Application Guidelines: In addition to filing Form B.M.C. 40, applicants for authority to self-insure against bodily injury and property damage claims should submit evidence that will allow the Commission to determine:

(1) The adequacy of the net worth of the motor carrier in relationship to the size of operations and the extent of its request for self-insurance authority. Applicant should demonstrate that it will maintain a net worth that will ensure that it will be able to meet its statutory obligations to the public to indemnify all claimants in the event of loss.

(2) The existence of a sound self-insurance program. Applicant should demonstrate that it has established, and will maintain, an insurance program that will protect the public against all claims to the same extent as the minimum security limits applicable to applicant under § 1043.2 of this part. Such a program may include, but not be limited to, one or more of the following: reserves; sinking funds; third party financial guarantees, parent company or affiliate sureties; excess insurance coverage; or other similar arrangements.

(3) The existence of an adequate safety program. Applicant must submit evidence of a "satisfactory" safety rating by the Bureau of Motor Carrier Safety continuously for the three years immediately prior to the date of its application or the date on which its initial safety rating was assigned, whichever time period is shorter.

51 FR 15008 (1986) (ICC interim rule and request for comments, *Ex Parte No. MC–178, Investigation Into Motor Carrier Insurance Rates*) (to be codified at 49 CFR 1043.5).

The ICC has also recently allowed May to qualify as a self-insurer for its bodily injury and property damage liability subject to certain conditions. Interstate Commerce Commission Decision No. MC–128527, *May Trucking Company—Application To Be A Self-Insurer* (unpublished decision) (April 16, 1986). The conditions established by the Commission in its May decision require May to do the following:

1. Submit carrier quarterly and annual financial statements to the Commission. The statements must include a certification by an appropriate May official verifying the accuracy of the information provided. Disclosure is also required of affiliated companies which provide support services for the operations of May Trucking Company;

2. File quarterly claim reports detailing the number, dollar amount, and nature of its claims experience, and quarterly reports detailing pending court cases relating to or arising from claims experience;

3. Immediately notify the ICC of any pending or contingent liability claim(s) which individually exceed $50,000 or collectively exceed $250,000;

4. Maintain an irrevocable $1 million line of credit, notify the ICC immediately upon any drawdown of the credit line, have unrestricted access to the entire credit line, and drawdown from the credit line only to satisfy bodily injury and property damage claims;

5. In the event of a drawdown, provide the ICC with a plan detailing May's proposed response to future liability claims;

6. Notify the ICC prior to the effective date of any change or cancellation of the credit line, or of renewal of the credit line;

7. Maintain a net worth of at least $2 million, and notify the ICC at any time that its net worth falls below that figure, at which time May will have 30 days to correct the situation or face termination of the authority to self-insure;

8. Acknowledge that the Commission retains the authority to terminate May's self-insurance authorization at any time if it appears to the ICC that May's financial arrangements fail to provide satisfactory protection for the public.

The Commission made clear that its grant of authority does not release May from its obligation to meet the financial responsibility requirements of the DOT. The ICC has indicated that it will require May to have and maintain a "satisfactory" safety rating as determined by the FHWA's Bureau of Motor Carrier Safety. This rating is assigned by the FHWA. The FHWA agrees that only motor carriers with such safety ratings should be permitted to self-insure.

Motor carriers with less than a "satisfactory" safety rating, regardless of accident record, claims experience, or financial strength, will not be permitted to be self-insured under the interim rule the FHWA is adopting today. Motor carriers with a "satisfactory" safety rating have been evaluated by the FHWA, and their rating reflects a determination that, among other things, such carriers pose less risk to the public than those with less than the current "satisfactory" rating. The FHWA believes that its responsiblity to protect the public dictates the adoption of such a requirement. The FHWA believes that this requirement may induce some carriers to improve their safety standards, thus fulfilling one of the primary underlying purposes of section 30.

The Commission further made amply clear in its May decision that the grant of authority to self-insure is conditioned on close monitoring of the carrier's operation by the Commission. The FHWA notes that motor carriers subject to regulation by the ICC are accustomed to reporting requirements imposed by that agency. The FHWA believes that adequate reporting to the Commission, and close monitoring by the Commission, will adequately serve to protect the public. The FHWA does not believe that additional burdens need to be placed on such a carrier at this time to ensure public protection.

Under this interim rule, certain motor carriers will be permitted to comply with the financial responsibility requirements of the FHWA by qualification as self-insurers. The FHWA is extending this alternative to motor carriers subject to regulation by the ICC, which have applied for and been granted authority by the Commission to self-insure, and which have agreed to the conditions set by the Commission, including periodic reporting to and close monitoring by the Commission. Additionally, motor carriers will be required to maintain a "satisfactory" safety rating as determined by the FHWA.

The FHWA believes that, for purposes of determining whether a motor carrier is financially and otherwise qualified to be self-insured, there is substantial equivalence between the ICC required financial responsibility requirements and those of the FHWA. Thus, under this interim final rule, the FHWA's acceptance of the ICC's grant of self-insurance authority to a motor carrier, subject to conditions established by the ICC and the requirement that the motor carrier maintain a "satisfactory" safety rating as determined by the FHWA, means that the motor carrier will be considered by the FHWA to be self-insured for the required amount to cover claims for public liability, property damage, and environmental restoration. Other types of liability, e.g., cargo liability, are not covered by these requirements.

As the ICC recognized in its decision in the May application, self-insurance will not necessarily afford the precise level of protection that customary insurance plans provide. *May Trucking Company*, decision at page 9. The FHWA, prior to the adoption of this interim rule, required motor carriers to secure insurance policies or surety bonds which provide coverage in the required amount for each accident or incident during the term of the coverage. The FHWA does not now have adequate information upon which to assess the reduction in protection, if any, that may be associated with self-insurance.

In adopting this interim rule, the FHWA is relying heavily upon the monitoring function of the ICC. However, before extending the alternative of self-insurance to motor carriers not subject to scrutiny by the Commission, the FHWA believes that it must satisfy itself as to what conditions should be imposed on such carriers, how applications should be reviewed and approved, and what procedures should be established for monitoring by the FHWA. Accordingly, elsewhere in this issue of the **Federal Register** the FHWA is publishing an advance notice of proposed rulemaking (ANPRM) to adequately consider these issues. All interested parties are asked to carefully review and comment on that ANPRM. Motor carriers subject to regulation by the ICC are also invited to review and comment on the FHWA's ANPRM inasmuch as information obtained from that proceeding may indicate to the FHWA a need for additional conditions to be imposed on motor carriers regulated by the Interstate Commerce Commission and subject to this interim rule. Further, the FHWA is mindful of the Administration's proposals for tort reform and for sunsetting the ICC's responsibilities for regulation of the trucking industry. These matters will be considered as appropriate in the rulemaking proceeding initiated by the ANPRM.

Regulatory Impact

The FHWA has determined that this action does not constitute a major rule under Executive Order 12291. However, because of the public interest in the issue that is addressed in this action, this interim final rule is considered significant under the regulatory policies and procedures of the Department of Transportation.

The FHWA believes that the seriousness and extent of the current insurance cost and availability problems facing motor carriers of property is good cause to take immediate action. The difficulties engendered by the current crisis are affecting all motor carriers and require immediate action if the agency is going to provide some measure of relief. In adopting its interim rule in Ex Parte MC-178, the ICC found good cause for waiving prior notice and comment. The Commission found that, "The interim rules represent a timely response to cost and availability problems in the motor carrier insurance area that have reached crisis proportions and require rapid action by this Commission. Responsive action would be delayed to the detriment of many parties if we were to undertake a notice and comment proceeding prior to taking any action." *Ex Parte MC-178*, decision at page 4.

For the foregoing reasons, the FHWA finds good cause to make this regulation effective without prior notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act, 5 U.S.C. 553(b). The FHWA believes that making the alternative of self-insurance available to qualified motor carriers will relieve those motor carriers of a burden. *See* 5 U.S.C. 553(d) (1). Accordingly, the regulation is effective upon publication.

Public Participation

The FHWA gives notice that comments on this rulemaking action will be accepted. As has been stated, a concurrent rulemaking is being initiated and published in today's **Federal Register** which requests additional public comment on the issue of self-insurance. In this rulemaking action, issues which will be addressed include: the need to establish additional conditions for qualification as a self-insurer; and the determination of what qualifications, conditions, reporting requirements, and other procedures should be established to extend this alternative of self-insurance to other motor carriers. Therefore, any comments that are submitted specifically to this docket will be fully considered in determining the need for future revisions to the self-insurance procedures which are the subject of the concurrent rulemaking cited above. For this reason, publication of this final rule without an opportunity for prior comment, but with a request for comments for future revisions to procedures, is consistent with the Department of Transportation's regulatory policies.

In addition to the May petition discussed herein, the FHWA has received two other petitions requesting similar relief. These petitions were filed by the American Trucking Associations, Inc., on behalf of itself and the American Movers Conference, Film, Air & Package Carriers Conference, Interstate Carriers Conference, Munitions Carriers Conference, National Automobile Transportation Association, National Tank Truck Carriers, Regional & Distribution Carriers Conference, and Specialized Carriers and Rigging Associations; and by the Regular Common Carrier Conference. Both of these petitioners have requested that the FHWA adopt interim rules and institute a rulemaking proceeding to permit self-insurance by motor carriers of property. Inasmuch as these petitions seek substantially the same relief as that sought by May, they will be disposed of by the FHWA's adoption of this interim rule and its publication of an ANPRM elsewhere in this issue of the **Federal Register**. Copies of these two petitions have placed in the public docket opened today and referred to at the top of this document.

Economic Evaluation

The FHWA assumes that any motor carrier which can obtain a policy of insurance or a surety bond, with high self-retention or otherwise, at a cost which is less than the cost associated with compliance with the reporting and other requirements imposed by the ICC and incorporated herein, will not avail itself of the option the FHWA is now making available.

The FHWA further believes that other motor carriers which do not seek or do not qualify for self-insurance, including those for whom this option is not immediately available and many small motor carriers, may benefit if resort to this option acts to make insurance more available to those remaining in the pool for insurance.

Because the classes of motor carrier operations subject to the FHWA's financial responsibility requirements under section 30 of the Motor Carrier Act of 1980 are somewhat different than the classes regulated for safety under the agency's other statutory authorities, and because the FHWA has not imposed a reporting requirement on motor carriers subject to its jurisdiction, the FHWA is uncertain of the number of motor carriers subject to the regulations and upon which this interim rule will have an impact. Preliminary estimates by the FHWA indicate that approximately 1 million commercial motor vehicles (trucks only) are subject to the requirements of the regulations adopted under section 30. It is further estimated that motor carriers currently pay approximately $7.1 billion in annual insurance premiums for personal injury, property damage, and environmental restoration for these vehicles. The FHWA intends to fully evaluate the economic impact of self-insurance procedures on the motor carrier industry in the concurrent rulemaking action appearing in today's **Federal Register**. The FHWA requests information from knowledgeable persons which will enable the FHWA to better calculate the economic effects of self-insurance on the regulated industry and on small entities.

List of Subjects in 49 CFR Part 387

Highways and roads, Insurance, Motor carriers, Surety bonds.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety.)

Issued on June 13, 1986.

R.P. Landis,

Associate Administrator for Motor Carriers, Federal Highway Administration.

In consideration of the foregoing, the Federal Highway Administration hereby amends Title 49, Code of Federal Regulations, Subtitle B, Chapter III, by amending Subpart A of Part 387 as set forth below.

Part 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

Subpart A—Motor Carriers of Property—[Amended]

1. The authority citation for Part 387 is revised to read as follows:

Authority: 49 U.S.C. 10927 note; 49 CFR 1.48 and 301.60.

2. In § 387.7, paragraph (d) is amended by striking the work "or" at the end of paragraph (d)(1); substituting a semicolon for the period and adding the word "or" at the end of paragraph (d)(2); and by adding a new paragraph (d)(3) to read as follows:

§ 387.7 Financial responsibility required.

* * * * *

(d) * * *

(3) A written decision, order, or authorization of the Interstate Commerce Commission authorizing the motor carrier to self-insure under § 1043.5 of this title, provided the motor carrier maintains a satisfactory safety rating as determined by the Bureau of Motor Carrier Safety under Part 385 of this title.

* * * * *

[FR Doc. 86-13718 Filed 6-13-86; 12:20 pm

BILLING CODE 4910-22-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1220

[No. 38849 (Sub-No.1)]

Elimination of Preservation of Records Rules

AGENCY: Interstate Commerce Commission.

ACTION: Final rules and notice of effective date.

SUMMARY: The Commission instituted a notice of proposed rulemaking (NPRM) and request for comments, 49 FR 3493 (January 27, 1984), which proposed to rescind the record retention rules of 49 CFR Part 1220 entirely. In its decision, decided February 28, 1985 and served March 18, 1985, (50 FR 10774, March 18, 1985.), the Commission decided that total elimination of the record retention rules would be inappropriate. Instead, it decided to revise 49 CFR Part 1220 to require a minimum level of recordkeeping which significantly reduces the required number of records and their retention periods.

The Office of Management and Budget (OMB) has approved the revised rules of 49 CFR Part 1220 as consistent with the Paperwork Reduction Act of 1980, subject to correcting a minor omission. The revised rules did not become effective until final approval by OMB. Pursuant to this notice, the rules are effective October 18, 1985.

Additionally, §1220.6 section E., item 1, which is set forth in the attached appendix to the decision served March 18, 1985, should be corrected by adding the omitted notation "(Note A)" after "1 year." This notation refers users to the provision which states that other regulatory agencies may require a longer retention period than required by the Commission.

EFFECTIVE DATE: October 18, 1985.

FOR FURTHER INFORMATION CONTACT: Andrew J. Lee (202) 275-7510.

Regulatory Flexibility Act

This rule will have a significant economic impact upon a substantial number of entities. The economic impact is beneficial because the effect of these revisions will be a lessening of the expense and burden of recordkeeping. Additional information is contained in the Commission's decision.

This action will not significantly affect either the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1220

Preservation of records, Express companies, Freight forwarders, Motor carriers and brokers, Railroads, Ratemaking organization subject to Commission oversight, Water carriers.

Noreta R. McGee,

Acting Secretary.

PART 1220—[AMENDED]

Part 1220 of Title 49 is amended as follows:

1. The authority citation for Part 1220 continues to read as follow:

Authority: 49 U.S.C. 10321 and 11145, and 5 U.S.C. 553.

§ 1220.6 [Amended]

2. Section 1220.6 is amended by adding the notation "(Note A)" to follow the words "1 year" in the "Schedule of Records and Periods of Retention, in Section E," Personnel and Payroll" item 1.

[FR Doc. 86-13723 Filed 6-17-86; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
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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. 86-NM-126-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) which would require inspection for fracture of the H-11 bolts that supports the nacelle strut attach fittings on Boeing Model 747 series airplanes, replacement of all bolts found fractured, and replacement of the bolts in the outboard fittings within 24 months and in the inboard fittings within 36 months. This action is prompted by a recent report of fracture of both bolts on one fitting. This action is necessary since fracture of both bolts on one fitting, if not corrected, could result in separation of the engine from the airplane and cracking of the lower wing skin.

DATE: Comments must be received on or before August 11, 1986.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 86-NM-126-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested person are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket 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 (Attn: ANM-103), Attention: Airworthiness Rules Docket No. 85-NM-126-AD, 17900 Pacific Highway, South, C68966, Seattle, Washington 98168.

Discussion

There has been a recent report of failure of both H-11 forward attach bolts on the number 4 engine strut outboard support fitting. The fitting dropped down and caused a 9-inch crack in the wing skin in the fuel tank area. The fitting was inspected for joint integrity only three months previously in accordance with the one-time inspection requirements of AD 86-05-11. The failure of the H-11 bolts as found to have been the result of stress corrosion. Should both bolts on any of the engine strut attach fittings fail, it would result in separation of an engine and cracking of the lower wing skin.

The Boeing Commercial Airplane Company has issued Service Letter Number 747-SL-57-47, dated April 24, 1986, which describes the specific procedures to be used to inspect for failed bolts on the inboard and outboard engine strut attach fittings.

Since this condition is likely to exist or develop on other airplanes of this same type design, an airworthiness directive is being proposed which would require inspection of the H-11 bolts that support the nacelle strut attach fittings for failure, and replacement, if necessary, in accordance with Boeing Service Letter Number 747-SL-57-47. Because of the unpredictability of the failure of these H-11 bolts, the FAA considers it necessary to require their replacement with Inconel bolts within 24 months on the outboard fittings and 36 months on the inboard fittings.

It is estimated that 152 airplanes would be affected by this Ad, that it would take approximately 128 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 $778,240 for the initial inspection cycle.

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 few, if any, Boeing Model 747 airplances are operated by small entities. A copy of draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 38—[AMENDED]

The Proposed Amendment

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

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

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

2. By adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes, certificated in any category, line number 1 through line number 644.

To prevent separation of an engine due to failed H–11 bolts, accomplish the following, unless already accomplished:

A. Prior to accumulation of 10,000 flight hours, or within 10 landings after the effective date of this AD, whichever occurs later, perform a visual inspection of the outboard attach fitting H–11 bolts of all nacelle struts for structural integrity to determine if any H–11 bolts have failed, in accorance with Boeing Service Letter Number 747–SL–57–47, dated April 24, 1986. Repeat the inspections thereafter at intervals not to exceed 6 months.

B. Prior to accumulation of 10,000 flight hours, or within 600 landings after the effective date of this AD, whichever occurs later, perform a visual inspection of the inboard attach fitting joints of all nacelle struts for structural integrity to determine if any H–11 bolts have failed, in accordance with Boeing Service Letter Number 747–SL–57–47, dated April 24, 1986. Repeat the inspections thereafter at intervals not to exceed 12 months.

C. Failed botls must be replaced prior to further flight.

D. Installation of the Inconel replacement bolts in accordance with Boeing Service Letter 747–SL–57–47, dated April 24, 1986, terminates the repetitive inspections required by paragraphs A. and B., above.

E. Within 24 months after the effective date of this AD, replace all remaining H–11 bolts on the outboard attach fitting of all nacelle struts with Inconel bolts in accordance with Boeing Service Letter 747–SL–57–47, dated April 24, 1986.

F. Within 36 months after the effective date of this AD, replace all remaining H–11 bolts on the inboard attach fitting of all nacelle struts with Inconel bolts in accordance with Boeing Service Letter 747–SL–57–47, dated April 24, 1986.

G. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

H. 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.

I. For the H–11 bolts that utilized the BACN 10HR 162 nuts, the accomplishment of the inspection requirements of AD 86–05–11 (Amendment 39–5255) is considered an acceptable alternate means of compliance for the initial inspection requirements of paragraph A. and B. of this AD.

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

Issued in Seattle, Washington, on June 11, 1986.

David E. Jones,

Acting Director, Northwest Mountain Region.

[FR Doc. 86–13687 Filed 6–17–86; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Proposed Placement of Nabilone Into Schedule II

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice is a proposed rule to place the drug, nabilone, into Schedule II of the Controlled Substances Act (21 U.S.C. 801 et seq.). The Administrator of the Drug Enforcement Administration has received a recommendation from the Department of Health and Human Services that nabilone be controlled in Schedule II.

DATE: Comments must be submitted on or before July 18, 1986.

ADDRESS: Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative.

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

SUPPLEMENTARY INFORMATION:

List of Subjects in 21 CFR Part 1308

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

The Administrator of the Drug Enforcement Administration received a letter dated April 25, 1986 from the Acting Assistant Secretary for Health, on behalf of the Secretary of the Department of Health and Human Services, recommending that nabilone be placed into Schedule II of the Controlled Substances Act (Title II of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 801–966)). Enclosed with the letter from the Acting Assistant Secretary was a scientific and medical evaluation which listed the factors which the Act requires the Secretary to consider, and summarized the matters considered by the Acting Assistant Secretary in recommending the control of nabilone under the Controlled Substances Act.

The factors considered by the Secretary for nabilone were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effect, if known;

(3) The state of current scientific knowledge regarding the drug;

(4) Its history and current pattern of abuse;

(5) The scope, duration and significance of abuse;

(6) What, if any, risk to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this title.

Relying on the scientific and medical evaluations and the recommendations of the Acting Assistant Secretary for Health, received in accordance with section 201(f) of the Act (21 U.S.C. 811(f)), the Administrator of the Drug Enforcement Administration, pursuant to sections 201(a) and 201(b) of the Act, (21 U.S.C. 811(a) and 811(b)), finds that:

(1) Based on available information, nabilone has a high potential for abuse.

(2) Nabilone, with final approval of a new drug application by the Food and Drug Administration, has a currently accepted medical use in treatment in the United States, or a currently accepted medical use with severe restrictions.

(3) Abuse of nabilone may lead to severe psychological or physical dependence.

Interested persons are invited to submit their comments or objections in writing regarding this proposal. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief. In the event comments, objections or requests for a hearing received in response to this proposal raise one or more issues which the Administrator finds warrant a hearing, the Administrator shall order a public hearing by notice in the **Federal Register** summarizing the issues to be heard and setting the time for the hearing (which will not be less than 30 days after the date of the order). If no objections presenting grounds for a hearing on this proposal are received within the time limitation or if interested parties waive or are deemed to have waived their opportunity for a hearing or to participate in a hearing, the Administrator, after giving consideration to written comments and objections, will issue a final order pursuant to 21 CFR 1308.48 without a hearing.

Pursuant to 5 U.S.C. 605(b), the Administrator certifies that the control of nabilone, as proposed herein, will have no significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96-354). These scheduling actions relate to the proposed initial control of a drug not previously approved for marketing in the United States. Substances in Schedule II may be used in medical treatment in the United States.

In accordance with the provisions of section 201(a) of the Controlled Substances Act (21 U.S.C. 811(a), this proposal to place nabilone into Schedule II is a formal rulemaking "on the record after opportunity for a hearing." Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and as such have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

Therefore, under the authority vested in the Attorney General by section 201(a) of the Act (21 U.S.C. 811(a)) and delegated to the Administrator of the Drug Enforcment Administration by regulations of the Department of Justice (28 CFR Part 0.100), the Administrator hereby proposes to amend 21 CFR Part 1308 as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. Paragraph (f) of § 1308.12 is amended by adding a new item (2) to read as follows:

§ 1308.12 Schedule II.

* * * * *

(f) * * *

(2) Nabilone 7379

[Another name for nabilone: (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one].

* * * * *

Dated: June 12, 1986.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 86-13653 Filed 6-17-86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 209, 335, 336, 337, and 338

Proposed Amendment to Corps of Engineers Operations and Maintenance Regulations for Activities Involving the Discharge of Dredged or Fill Material in Waters of the United States and Ocean Waters

Correction

In FR Doc. 86-12084 beginning on page 19694 in the issue of Friday, May 30, 1986, make the following correction:

On page 19694, in the first column, in the **FOR FURTHER INFORMATION CONTACT** caption, the telephone number should read "355-2235".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 387

[BMCS Docket No. MC-122; Notice No. 86-05]

Minimum Levels of Finanical Responsibility for Motor Carriers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: A petition, seeking authority for motor carriers of property to self-insure, has been received by the FHWA. The petition highlights the "insurance crisis" currently affecting the motor carrier industry. Elsewhere in today's Federal Register the FHWA has adopted an interim rule to permit motor carriers of property to satisfy the financial responsibility requirements of the DOT (FHWA) by self-insuring if they have received approval from the Interstate Commerce Commission (ICC) to self-insure and have maintained an FHWA "satisfactory" safety rating. The FHWA has determined that the issues associated with its authority to permit motor carriers to self-insure need to be examined in light of current circumstances. This Notice seeks comment from interested parties concerning self-insurance as a viable and effective mechanism for demonstrating financial responsibility as required by the Motor Carrier Act of 1980.

DATE: Comments must be received on or before July 18, 1986.

ADDRESS: All comments should refer to the docket number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety (202) 755-1011; or Thomas P. Holian, Officer of the Chief Counsel (202) 426-0346, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 to 4:15 p.m., ET, Monay through Friday.

SUPPLEMENTARY INFORMATION: The FHWA has determined that this action does not constitute a major rule under Executive Order 12291. However, because of the public interest in the issue that is addressed in this action, this interim final rule is considered significant under the regulatory policies and procedures of the Department of Transportation. A draft regulatory evaluation will be prepared based upon the data received in response to this notice.

Based on the information available to the FHWA at this time, the action taken in this rulemaking will not have a signifiant economic impact on a substantial number of small entities. However, the FHWA seeks additional information on this subject in the questions contained in this advance notice.

Background

History

On July 1, 1980 the President signed the Motor Carrier Act of 1980, 49 U.S.C. 10927 note (1982 and Supp. II 1984). Section 30 of that Act prescribes that minimum levels of financial responsibility be set for for-hire motor carriers of property involved in interstate or foreign commerce and for motor carriers transporting hazardous materials in instraste, interstate or foreign commerce. The Act specified the levels of financial responsibility to be adopted after a "phase in" period. The Act allowed the Secretary of Transportation to accept evidence of insurance, guarantees, surety bonds and self insurance to meet the requirements of the Act.

The advance notice of proposed rulemaking (ANPRM) published on August 28, 1980, (45 FR 57676) and the notice of proposed rulemaking (NPRM) published on January 26, 1981, (46 FR 8186) requested information on self-insurance. The NPRM would have allowed a motor carrier to be self-insurer.

The final rule established minimum levels of financial responsibility for motor carriers of property (46 FR 30974, June 11, 1981) which became effective on July 1, 1981, and were increased to the mandated levels on January 1, 1985.

When the FHWA adopted final rules implementing section 30, it specifically declined to permit a motor carrier to comply with the minimum financial responsibility requirements by qualifying as a self-insurer. (46 FR 30974, June 11, 1981, now codified at 49 CFR 387.1–387.17.) The FHWA recognized at that time that self-insurance could be a viable alternative means of assuring that a motor carrier maintained a level of financial responsibility that was adequate to protect the public, but that self-insurance would not necessarily afford precisely the same level of protection as traditional insurance coverage. Moreover, there appeared to be little support for self-insurance as an alternative means for complying with the financial responsibility requirements. It appeared that other alternatives adequately protected the public while providing motor carriers with considerable flexibility. Because the FHWA was also concerned that implementation of a self-insurance program would require substantial commitment of agency resources, and that this commitment was not then justified, the FHWA did not adopt a self-insurance alternative.

The rulemaking further noted that a self-insurer would, in effect, have to operate much like an insurance company. This would mean that the self-insured motor carrier would be required to set aside substantial claims reserves and establish a claims handling mechanism within the company. Applying to a self-insurer the extensive controls that now regulate insurance companies could require a significant commitment of resources by the Federal government.

Although the final rule did not allow self-insurance, further information was solicited in the form of questions.

No one responded to those questions between the time the final rule was published and the time that May Trucking submitted the petition that prompted this rulemaking. During that time, however, conditions in the trucking industry changed significantly. In 1985, rates began rising for all forms of insurance. For the motor carrier industry, the rise was especially sharp. The May Trucking petition comes at a time when motor carriers find their premiums increasing and their coverages shrinking rapidly. Reports of insurance premiums doubling or tripling over the previous year are not unusual.

May Trucking Company Petition

May Trucking Company (May) has petitioned the FHWA to grant it a waiver from the Department of Transportation's current regulations to permit May to comply with the financial responsibility requirements by qualifying as a self-insurer. In the alternative, May has requested that the FHWA initiate rulemaking to amend its rules on financial responsibility and immediately adopt interim rules that would permit consideration of self-insurance proposals.

In its petition, May has requested a waiver of the requirements of the FHWA's regulations that motor carriers comply with the financial responsibility requirements by obtaining insurance policies or surety bonds. The FHWA does not believe that the circumstances facing May which led it to petition the agency for relief are unique to May. Thus, the FHWA concludes that a waiver for May alone would be inappropriate. However, as discussed above, the FHWA is convinced that an insurance crisis currently confronts the motor carrier industry.

The FHWA has provided a means of immediate relief to May through adoption of an interim rule published elsewhere in today's **Federal Register**. This will provide relief only for motor carriers which have received approval from the ICC to self-insure, and which maintain "satisfactory" safety ratings with FHWA. There are carriers which are not eligible for ICC approval to self-insure but which are subject to the FHWA's financial responsibility requirements. There are also other entities which may be affected by self-insurance.

Therefore, the FHWA is also initiating a proceeding to gather information and analyze the issue associated with a possible amendment to the financial responsibility regulations which would permit motor carriers to self-insure. The FHWA intends to move quickly with this initial phase of the proceeding, and to proceed without undue delay to a determination concerning proposed rules in this area.

Elsewhere in today's **Federal Register** the FHWA has adopted an interim rule to permit motor carriers of property to satisfy the financial responsibility requirements of the DOT (FHWA) by receiving approval from the Interstate Commerce Commission (ICC) to self-insure and maintaining a "satisfactory" safety rating assigned by the FHWA. In this regard, the FHWA has taken careful note of recent actions taken by the Interstate Commerce Commission (ICC) on a companion petition for authority to self-insure filed there by May. May holds a certificate of public convenience and necessity issued by the ICC, and is subject to regulation by the Commission. The ICC initially denied May's request and May subsequently filed a petition for reconsideration of that decision. Still later, May filed its separate petition with the FHWA. The ICC has now granted May's application to self-insure its bodily injury and property damage liability subject to certain conditions. These conditions require May to do the following:

1. Submit carrier quarterly and annual financial statements to the Commission. The statements must include a certification by an appropriate May official verifying the accuracy of the information provided. Disclosure is also required of affiliated companies which provide support services for the operations of May Trucking Company;

2. File quarterly claim reports detailing the number, dollar amount, and nature of its claims experience, and quarterly reports detailing pending court cases relating to or arising from claims experience;

3. Immediately notify the ICC of any pending or contingent liability claim(s) which individually exceed $50,000 or collectively exceed $250,000.

4. Maintain an irrevocable $1 million line of credit, notify the ICC immediately upon any drawdown of the credit line, have unrestricted access to the entire credit line, and drawdown from the credit line only to satisfy bodily injury and property damage claims;

5. In the event of a drawdown, provide the ICC with a plan detailing May's proposed response to future liability claims;

6. Notify the ICC prior to the effective date of any change or cancellation of the credit line, or of renewal of the credit line;

7. Maintain a net worth of a least $2 million, and notify the ICC at any time that its net worth falls below that figure, at which time May will have 30 days to correct the situation or face termination of the authority to self-insure;

8. Acknowledge that the Commission retains the authority to terminate May's self-insurance authorization at any time if it appears to the ICC that May's financial arrangements fail to provide satisfactory protection for the public.

The Commission has made clear that its grant of authority does not release May from its obligation to meet the financial responsibility requirements of the DOT. The interim rule adopted by the FHWA elsewhere in today's Federal Register will enable May to meet the DOT's financial responsibility requirements through self-insurance while this rulemaking proceeds.

In its petition filed with the FHWA, May included proposed rules. The FHWA requests comments addressing the desirability of adopting these rules, in whole or in part. Specifically, May suggests that 49 CFR 387.7(d) be amended to add a new paragraph (3) as follows:

(3) A written approval, issued by the BMCS pursuant to § 387.19 of this subpart, authorizing the motor carrier to be a self-insurer."

In addition, May suggests that a new § 387.19 be added, to read as follows:

Section 387.19 Temporary rules for qualification as a self-insurer.

(a) *Background; findings.* The BMCS has undertaken a rulemaking proceeding . . . pursuant to § 389.11 of this chapter. Effective with the publication of these rules in the Federal Register, applications for approval as a self-insurer will be accepted and decided under these rules, pending completion of the permanent rulemaking proceeding docketed as . . .

(b) *Eligibility.* An application for approval as a self-insurer may be submitted to the BMCS by a for-hire motor carrier which meets the following criteria for eligibility:

(1) The applicant shall have maintained a "satisfactory" safety rating pursuant to Part 385 of this subchapter, either continuously for the three years immediately prior to the date of its application or continuously since the date on which its initial safety rating was assigned, whichever time period is shorter.

(2) The applicant, if subject to regulation by the Interstate Commerce Commission (ICC), shall have submitted to the ICC, not later than the date of its self-insurance application under this section, a corresponding request for approval as a self-insurer under § 1043.5 of this title.

(3) The applicant shall present written evidence, in the form prescribed by paragraph (c)(11) of this section, of a third party financial guarantee in the amount of the minimum level of financial responsibility the applicant is required to maintain under § 387.9 of this subpart. Such guarantee shall consist of a letter establishing a line of credit ("letter of credit") from a bank or other financial institution for the required amount, dedicated to the payment of public liability claims aganist the applicant for at least two years the date of the self-insurance application under this section. More than one letter of credit may be utilized if the letters collectively guarantee the required amount and otherwise meet the requirements of this paragraph.

(4) Such letter of credit shall include an undertaking by the issuing bank or financial institution to notify the BMCS in writing immediately upon any drawdown against the line of credit, or against the corpus of the trust, for the purpose of paying any public liability claim. The applicant's self-insurance authorization shall lapse with the expiration date of such guarantee, unless similar written evidence of a substitute or extended guarantee for a further term of at least one year shall have been submitted to the BMCS before that date.

(5) The applicant shall demonstrate, in the manner prescribed in paragraph (c)(9) of this section, that it has a net worth of not less than twice the minimum amount of financial responsibility the applicant is required to maintain under § 387.9 of this subpart, and shall agree in writing, as prescribed in paragraph (c)(10) of this section, to having its self-insurance authorization conditioned on continuous maintenance of such minimum net worth.

(6) The applicant, in order to demonstrate to the BMCS that the foregoing net worth requirement is being maintained, shall agree in writing, as prescribed in paragraph (c)(10) of this section, to:

(i) provide the BMCS with certified quarterly and independently audited annual financial statements (balance sheets and income statements) that contain notations estimating, in accordance with generally accepted accounting principles, the number and total dollar amount of public-liability claims known to applicant but not yet paid; and

(ii) permit unannounced inspection of its financial records by BMCS personnel at any reasonable time.

(c) *Applications.* The executed and notarized original of a motor carrier self-insurance application, together with ________ copies, shall be submitted to the BMCS in Washington, DC and shalll be addressed to the attention of the Director. No form is prescribed for such applications, and an ICC-regulated motor carrier may incorporate by reference all or part of its self-insurance request to the ICC if copies of that request are appended to the application under this section. The motor carrier's application to the BMCS shall contain, as a minimum, the following information:

(1) The applicant's name, the street address of its principal office, and the "MC" number assigned to it by the ICC, if any.

(2) A statement indicating whether applicant is subject to a minimum financial responsibility level of $750,000, of $1,000,000, or $5,000,000 under § 387.9 of this subpart. If an applicant is subject to a minimum higher than $750,000, it shall indicate the percentage of its gross operating revenue derived from the commodities giving rise to the $1,000,000 and (if applicable) the $5,000,000 requiremens under § 387.9.

(3) A complete description of the proof of financial responsibility currenty maintained by the applicant under § 387.7(d) of this subpart, including:

(i) The name and address of every insurance carrier or surety company providing all or a part of such coverage;

(ii) The dollar amount of the premium, and a description of any other financial requirements the applicant must satisfy, under the terms of each insurance policy or surety bond providing all or a part of such coverage;

(iii) The effective date and the expiration date of each such insurance policy or surety bond;

(iv) The deductible amount and the pre-accident dollar limitation of each such policy or bond; and

(v) A complete description of any self-retention features of each such policy or bond.

(4) A complete description of the applicant's loss experience under tis current financial responsibility arrangements pursuant to § 387.7(d) of this subpart, including the number of claims filed; their total amount; the number of individual claims that exceeded the applicant's self-retention amount, if any; and the number and total dollar amount of claims not filed within thirty days after the accidents or other occurrences on which they were based. Any environmental restoration claim shall be separately identified and fully described.

(5) A similar description of the applicant's previous financial responsibility arragement under § 387.7 of this subpart for a period of five years preceding the date of the application. Any cancellations of public-liability insurance policies or surety bonds during that period shall be disclosed and the reasons for such cancellations explains if known.

(6) An estimate of monetary savings to the applicant resulting from self-insurance approval, if granted.

(7) A complete description of the applicant's safety program, including arrangements for pre-employment screening of drivers, driver training, driver physical examinations, equipment maintenance and accident investigation.

(8) A complete description of the applicant's proposed arrangements for processing of public liability claims, including description of any claims processing currently handled by the applicant under self-retention arrangements.

(9) Certified or independently audited financial statements, including balance sheet and income statement, for the applicant's most recent complete fiscal year and the two fiscal years prior thereto. The financial statements for the most complete fiscal year shall contain notations of known but unpaid

claims in accordance with paragraph (b)((6)((i) of this section.

(10) The applicant's written consent to the eligibility conditions set forth in paragraphs (b) (5) and (6) of this section.

(11) The applicant's written evidence of the third-party financial guarantee described in paragraph (b)(4) of this section. Copies of the letter or letters of credit will be acceptable, except that a signed original or originals should be filed with original of the self-insurance application under this section unless previously filed with the ICC.

(12) A notarized signature by a principal officer of the applicant verifying, under penalty of perjury, that the contents of the self-insurance application are true and accurate.

(d) *Approval Criteria and Procedures.* The Director of the BMCS, or the Director's delegate, shall grant a self-insurance application which complies with the foregoing eligibility and informational requirements, if he or she is satisfied, after appropriate investigation, that the self-insurance arrangements proposed by the applicant will afford the security for protection of the public contemplated by Section 30 of the Motor Carrier Act of 1980, Pub. L. 96-296. In evaluating any application hereunder, the BMCS will consider the information presented in the application and, in addition, may consider any information available in its own files, in those of the ICC, and in the files of State agencies cooperating with the BMCS under the Part 350 of this subchapter. If an application of an eligible motor carrier complies with all of the foregoing information requirements and no other information is deemed necessary by the BMCS, the application normally will be decided within the thirty days of its filing. If further items of information are required, they will be specified in a written notice giving the applicant twenty days to supply them. If the required additional information is not provided within that period, the application will be denied. If the additional information is timely supplied, the application normally will be decided within the subsequent thirty days.

(e) *Revocation.* The BMCS may, at any time, revoke its authorization of a motor carrier to act as a self-insurer if, in its judgment, the carrier is failing to comply with this section or for any reason is failing to provide the security for protection of the public contemplated by Section 30 of the Motor Carrier Act of 1980, Pub. 96-296. Notwithstanding any other provisions of this section or § 387.7 of this subpart, all self-insurance authorizations hereunder will expire (unless otherwise ordered by the Director or the Director's delegate) sixty days after the effective date of any permanent rules issued by the BMCS that permit use of self-insurance as a means of establishing financial responsibility under § 387.7(d) of this subpart, or thirty days after the effective date of any decision by the BMCS not to issue such rules.

Petitioner's Rationale

In its petition, May argues that changed circumstances require reconsideration of the BMCS' past refusal to permit self-insurance. The conditions in the insurance marketplace have changed radically since 1981, when the BMCS last considered self-insurance. Alternatives to self-insurance do not provide meaningful relief in today's insurance market. May claims that the criteria it proposes will impose no substantial administrative burdens on the BMCS, and that it is unlikely that a safe and financially stable carrier would face substantial "long tail" liabilities. (It should be noted that the petition seems to address long tail liabilities as though they were claims incurred but not reported, as would happen if an accident victim, such as one who owned property damaged by an accident, did not discover the damage and file his claim promptly. The use of the term "long tail" liabilities in the FHWA final rule on this subject referred to claims filed but not settled, as would happen where an accident victim files a claim promptly but the litigation drags on for years. To avoid further confusion this rulemaking will accept May's definition of "long tail" as meaning claims incurred but not reported and will use the term "contingent liabilities" to mean claims filed but not settled.) A self-insurer would also have greater financial incentive to improve safety, according to the petitioner.

Petitioner corroborates its claim that the insurance marketplace has changed since 1981 with testimony of the American Trucking Associations, Inc. (ATA) on rising insurance costs (Insurance Problems Facing the Transportation Industries: Hearings Before the Subcommittee on Surface Transportation of the House Committee on Public Works and Transportation, 99th Cong., 1st Sess. 300 (1985) (statement of Ms. Lana Batts, Vice-President of Policy, American Trucking Associations, Inc. (ATA)). The ATA testified that high interest rates and easily obtainable reinsurance caused relatively soft prices from the mid-1970s to early 1984. The ATA further testified that insurers engaged in "cash flow underwriting" seeking premium dollars to invest with rates of return from 18-20 percent annually, making it very easy for trucking companies to obtain insurance.

Petitioner found further support for its position from National Risk Management of West Falmouth, Maine, which said that motor carrier insurance premiums only rose an average of 12 percent between 1979 and 1983, but doubled from 1984 to 1985.

Petitioner has declared that the number of financially sound insurance companies willing to write insurance for other than shipper owned motor carriers is dwindling rapidly. More and more motor carriers are being forced to resort to assigned risk pools, some of which are out of capacity, meaning that they cannot write any more policies under their States' regulations because their potential exposure would exceed regulatory limits, or do not provide the minimum coverages required by the Motor Carrier Act of 1980.

Petitioner states that the BMCS did not anticipate the changes in the insurance industry when it originally contemplated self-insurance in 1981.

It is the petitioner's view that there are no meaningful alternatives to self-insurance in today's insurance market. In an earlier rulemaking, the BMCS indicated that it believed that there were several viable alternatives to self-insurance. Alternatives then included the use of a high deductible or an open-end retrospective plan with a very low minimum and a very high maximum, or the use of surety bonds. Petitioner reports that it recently sought a high deductible plan, a one million dollar policy with a one million dollar deductible, but could not find an insurer to underwrite such a policy.

May's current public liability policy has retrospective rating clauses, but still has premiums exceeding administrative and claims expenses by approximately one million dollars.

May further states that it investigated the possibility of surety bonding and found that the companies providing surety bonds were the same companies providing liability insurance. It appears that none of the surety companies was willing to write a bond for May. May also found that the surety companies required irrevocable letters of credit before they would issue a bond. May's bank objected to issuing a letter of credit merely to neutralize a bonding firm's risk. May's bank preferred to issue a letter of credit directly to the ICC to secure the public for claims against its customer.

Petitioner argues that, if its proposal is adopted, administrative burdens will be minimized because BMCS could rely on the letter of credit and the carrier's net worth to protect the public.

Petitioner also says that the proposed criteria would be stringent enough that there would not be a flood of applicants for self-insurance. Petitioner maintains that only a few carriers will be able to meet the proposed criteria.

Petitioner says that it is unlikely that a safe and financially stable carrier would face substantial "long tail" liabilities. As noted before, FHWA, in prior rulemakings, used the term "long tail liabilities" to mean "contingent liabilities". May stated that only nine out of 1,650 claims were filed against it more than thirty days after the accidents or events giving rise to the claims, and these claims totaled less than $3,400. May also points out that BMCS records for 1982 showed only 6 accidents out of 32,393 reported by motor carriers to the BMCS resulted in aggregate societal costs exceeding $500,000.

The petitioner also claims that relaxation of regulatory barriers to self-insurance would promote the objectives of Executive Order 12291 through elimination of marketplace distortions and harmonization of conflicting regulations. Petitioner argues that the marketplace is distorted because surety bonds are not available, leaving no competitive alternative to insurance. Petitioner says that the benefits of removing the barriers to self-insurance, which would create a competitive alternative to insurance, would outweigh the societal costs.

Petitioner says that removing barriers to self-insurance would result in some carriers self-insuring, thereby freeing insurance capacity, resulting in lower insurance premiums for those carriers still using insurance. This would lower the cost of operation, encouraging more competition in the motor carrier industry, and thereby achieving the goals of deregulation.

Another benefit that the petitioner claims is the elimination of what petitioner sees as a conflict between ICC regulations regarding self-insurance and BMCS regulations regarding self-insurance. Petitioner says that, as long as ICC and BMCS regulations are inplementing the same statute, their regulations ought to be consistent. Petitioner says that the rules are inconsistent because ICC regulations provide for self-insurance, while BMCS regulations do not.

Discussion

The FHWA has a statutory responsibility to see that each motor carrier maintains a legislatively mandated level of financial responsibility for all vehicles it operates on public highways. At present, only insurance policies and surety bonds are accepted as evidence of financial responsibility by the FHWA. May Trucking has asked the FHWA to amend its existing regulations to permit motor carriers of property to use self-insurance as a means of meeting the financial responsibility requirement.

In considering this petition, the FHWA must balance any potential advantages and cost savings to motor carriers against any potential reduction in the level or security of resources necessary to maintain an adequate available level of compensation to potential claimants. Potential administrative and cost burdens on both the FHWA and motor carriers must also be evaluated.

Under the current regulations for both insurance policies and surety bonds, funds sufficient to satisfy judgments up to the Congressionally mandated level for each occurrence are guaranteed for each vehicle by an insurance company or surety licensed to do business in each State in which the motor carrier operates, or licensed to do business in the State in which the motor carrier has its principal place of business and willing to designate a person upon whom process may be served in any State in which the motor carrier operates. The individual States are responsible for regulating the financial condition of the insurance companies and in most cases have provided guarantee funds or other mechanisms to provide coverage in case of insurance company failure.

In the case of self-insurance mechanisms, the FHWA is concerned about the level of assets and other financial guarantees necessary to provide equivalent protection to the present alternatives. This includes the ability to provide coverage up to the federally mandated level for each occurrence and vehicle. THe FHWA also is concerned that these assets be safeguarded so that they will be available regardless of the future financial condition of the motor carrier. Compensation funds should also be isolated from other potential creditors in the event that the motor carrier becomes insolvent.

In considering self-insurance mechanisms, attention should be paid to options which allow high self-retention with excess reinsurance coverage as well as options which do not require any traditional insurance coverage.

The purpose of the following questions is to elicit information and views of interested persons which would be helful to the FHWA in deciding how to proceed in this area.

Questions

If the FHWA amended the existing regulations to permit motor carriers of property to self-insure as a way to meet the minimum financial responsibility requirements, the FHWA would probably propose a process whereby the FHWA would expressly authorize applicant motor carriers as self-insurers. Such a process would include the submission of an application by the motor carrier, review by the FHWA, and approval by the FHWA subject to an agreement that the motor carrier would meet certain criteria. The motor carrier's failure, at any time, to continue to meet the criteria established by the FHWA would result in termination of the approval by the FHWA. This process is essentially what has been proposed by May. What follows are certain specific questions related to various steps in such a process. The purpose of the questions is to elicit the views of interested persons and to secure information for the use of the FHWA in deciding whether to permit self-insurance.

Application

1. The financial condition, safety record and claims experience of potential self-insurers are all of concern to the FHWA. What type of information should be required to support a self-insurance application? Who should certify the validity of this information? How often should this information be updated and/or verified?

2. Should the FHWA accept verified statements, or should it conduct independent investigations of the applicant's financial and safety conditions? Should the FHWA require the submission of financial information which has been prepared for the applicant, at the applicant's expense, and certified by an independent auditor?

3. If funds are set aside or other guarantees are provided to satisfy financial responsibility requirements, how can those funds be secured to prevent their use by the motor carrier of other creditors, particularly in event of the financial deterioration of the motor carrier?

4. What assets of an applicant should the FHWA consider as available to pay

claims filed against the applicant? For example, real or tangible property, cash, retained earnings, irrevocable letters of credit, etc.? Should an applicant be required to hold certain property in trust for the benefit of potential claimants? If so, what kind of instrument would be required to make this effective? Who should qualify as an acceptable trustee? What reporting requirements should be imposed on either the applicant or the trustee?

5. The use of some form of financial guarantee from a bank or other financial institution has often been advanced as a financial responsibility alternative. These financial instruments have specific dollar values. How can the single monetary limit be made consistent with the traditional per occurrence, per vehicle limit used in insurance policies? What level of coverage should a motor carrier with a large fleet be required to obtain if it uses a fixed value guarantee?

6. Should the FHWA accept financial guarantees from nonfinancial institutions (e.g. parent companies)? What forms could such guarantees take? Upon what basis should the FHWA judge the value of such guarantees?

7. Most financial instruments have a fixed life or date of termination. Insurance policies are issued on an occurrence basis and insurance coverage for a particular claim is provided until a claim is settled or closed even if the insurance company is no longer on the risk. What conditions or restrictions could be placed on financial instruments used by motor carriers to satisfy financial responsibility requirements to ensure that those funds would indeed be available to satisfy judgments which might occur several years after the initial claim?

8. Will banks issue irrevocable letters of credit to motor carriers who do not carry public liability insurance? Assuming such letters of credit are typically issued to third parties, or are required to be so issued to qualify for consideration by the FHWA in the approval process, who would be an acceptable third party?

9. Should the FHWA assess a nonrefundable application fee for each applicant to defray the cost of processing such application, including the cost of any safety or financial audit the agency deems necessary to fulfill its responsibilities?

Criteria

1. Should the FHWA adopt express, specific criteria for evaluating applications, or should general principles be established?

2. If specific criteria are established, what should they be? Should the FHWA set qualifying standards such as minimum net worth, maximum acceptable accident ratio, etc.? What assets should be considered in determining net worth (e.g., receivables, equipment, intangibles such as "good will," others)?

3. Should the FHWA adopt criteria that would reject any applicant for authority to be self-insured if the applicant has a less than satisfactory safety rating as assigned by the FHWA under 49 CFR Part 385, regardless of the actual accident experience of the applicant or the applicant's financial condition?

Administration or Implementation

1. The minimum financial responsibility requirements require motor carriers to maintain certain levels of financial responsibility, either through insurance or surety bonds, which cover each occurrence (i.e., the coverage is per vehicle and per accident or incident). Thus, a motor carrier currently required to maintain a level of $750,000 is required to have an insurance policy or surety bond that would pay up to $750,000 per occurrence. Clearly a motor carrier operating more than one vehicle (or even one operating a single vehicle) faces an exposure which is greater than the minimum level the carrier is required to maintain. Should motor carriers who have been authorized to be self-insurers be required to establish a separate trust account or other reserves for each claim filed against it? What alternatives are there to establishing "reserves" for each reportable accident, without regard to whether a claim has been filed? What kind of property should be placed in such a trust account or other reserves—cash only, or other assets? Should the level of the reserves for each occurrence equal the minimum level of financial responsibility (i.e., $750,000, $1 million, $5 million, as the case may be), the amount of the claim, or the adjusted value of the claim? Can a trust account or other reserves be established with a named beneficiary (i.e., the claimant, or injured party expected to file a claim) to pay the beneficiary upon agreement or judgment, with the remainder, if any, to revert to the motor carrier? Could such a trust account or other reserves be reached by other creditors, for example, during bankruptcy? Can contingent beneficiaries be named, for example, other claimants or potential claimants? Who would be an acceptable trustee for such a trust account or other reserves? What reporting requirements should be imposed on the trustee?

2. If such trust accounts or other reserves are established, should the motor carrier be required to replenish its depleted reserves in order to continue to be authorized to be a self-insurer?

Monitoring

1. Should the FHWA require motor carriers authorized to be selfinsurers to file annual financial and safety reports? Quarterly reports? Reports for each claim filed and trust account or other reserve established when filed or established?

2. Should the FHWA require authorized motor carriers to file periodic financial and safety audit reports prepared by independent auditors, the cost to be borne by the motor carrier?

3. Should the FHWA perform annual or more frequent financial and safety audits, the cost to be borne by the authorized carrier?

4. Self-insurance applications will require adminsitrative oversight and review, and may entail inspections and audits. To financial the oversight and review, what level of user fees would be appropriate and how should they be administered?

5. Any system of self-insurance is likely to rely heavily on the voluntary compliance of individual motor carriers with respect to the regulations governing the system. What types of fines or penalities are appropriate for a failure to comply with regulations?

Termination of Authorization

1. The FHWA assumes termination of a self-insurance authorization would typically occur upon notice and opportunity to reply. Should third parties be permitted to appear in any such proceeding? Should an expedited proceeding, or a summary termination with a hearing after the fact, be provided in certain cases to ensure the public protection?

General Questions

1. What economic effects, if any, would the addition of this rule have on small business entities?

2. What other alternatives exist which could increase the supply of insurance available to motor carriers, or otherwise decrease the price of insurance coverage?

3. A major value of most insurance policies is the company's obligation to adjust claims and bear court and legal defense costs. What provisions should a potential self-insurer be required to demonstrate with respect to an ability to investigate, adjust or verify claims?

List of Subjects in 49 CFR Part 387

Highways and roads, Insurance, Motor carriers, Surety bonds.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. (49 U.S.C. 10927 note, 49 CFR 1.48 and 301.60.))

Issued on June 13, 1986.

R.P. Landis,

Associate Administrator for Motor Carriers, Federal Highway Administration.

[FR Doc. 86–13717 Filed 6–13–86; 12:19 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards Controls and Displays

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking requesting the agency to standardize the location of motor vehicle controls and displays. The agency has concluded that any safety benefits associated with such standardization are too speculative to justify rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW. Washington, DC 20590 (202–426–2153).

SUPPLEMENTARY INFORMATION: A private individual, Mr. C.R. Blydenburgh, petitioned the agency for rulemaking action to standardize the location of controls and displays. The petitioner noted that such rulemaking was included in NHTSA's five-year rulemaking plan published in 1979. Mr. Blydenburgh argued that standardization of the location of controls and displays is necessary to avoid driver confusion when driving different vehicles. The petitioner asserted that the use of international symbols to identify controls and displays creates confusion and fails to utilize two important human characteristics, habit and instinct. The agency agrees that certain symbols may create confusion and has refused to permit such symbols to be used. However, Mr. Blydenburgh did not provide arguments or data to support his view that the use of *all* international symbols creates confusion.

NHTSA recognizes that there may be some benefits associated with a degree of standardization of controls and displays and notes that the industry has largely standardized the location of some controls and displays. Further, individual manufacturers have standardized the location of other controls and displays within their respective fleets. The agency has sponsored research on this issue in the past and solicited public comments. See Docket No. 1–18, Notice 15.

The agency cannot, however, conclude that rulemaking to standardize the location of controls and displays is justified at this time. Federal Motor Vehicle Safety Standard No. 101, *Controls and Displays*, already requires that motor vehicle controls and displays be adequately identified, thus helping drivers to quickly locate and easily understand their controls and displays. Given the existing requirements, any additional safety benefits associated with standardization of controls and displays are largely speculative. The agency believes that most of the benefits associated with such standardization relate to driver convenience rather than to safety.

The costs associated with standardization of controls and displays are not speculative. The design of the instrument panel and location of controls and displays are important factors in how manufacturers differentiate their products to maximize consumer choice and satisfaction. Any requirements that standardized the location of controls and displays would require changes to current instrument panel design, resulting in vehicle cost increases.

The agency also notes that manufacturers are utilizing new electronic technologies to communicate with drivers. The use of these new technologies can result in safety benefits, as additional information can be presented to the driver using limited space, reducing the need for the driver to scan the vehicle interior to locate the desired display. NHTSA is currently in rulemaking to ensure that the existing requirements of Standard No. 101 do not unnecessarily restrict the use of new technologies. Given the innovations now taking place, the agency believes that it would be a particularly inappropriate time to conduct rulemaking to consider standardizing the location of controls and displays. Apart from utilizing limited agency resources on an issue of speculative safety significance, any agency analyses completed as part of such rulemaking could be outdated by the time they were completed.

For all of these reasons, NHTSA denies Mr. Blydenburgh's petition for rulemaking.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, National Highway Traffic Safety Administration, Rubber and rubber products, Tires.

(Secs. 103, 119, Pub. L. 889–563, 80 Stat. 719 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50 and 501.8)

Issued on June 12, 1986.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 86–13703 Filed 6–17–86; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Public Hearing and Reopening of Comment Period on Proposed Endangered Status for Five Mississippi and Alabama Clams

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of public hearing and reopening of comment period.

SUMMARY: The Service announces a public hearing on the proposal to list Marshall's mussel, Curtus mussel, Judge Tait's mussel, the stirrup shell, and the penitent mussel as endangered species. This hearing was requested by Mr. Donald G. Waldon, Administrator, Tennessee-Tombigbee Waterway Development Authority, as provided in section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended. This notice reopens the comment period until 10 days after the date of the public hearing.

DATES: A public hearing will be held from 7 p.m. to 10 p.m. on July 10, 1986. Comments on this proposal must be received by July 20, 1986.

ADDRESSES: The public hearing will be held at Poindexter (Music) Hall, Mississippi University for Women, College Street, Columbus, Mississippi. Written comments and materials should be sent to the Endangered Species Office, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

These five species of freshwater mussels are known to exist in only the East Fork Tombigbee, Buttahatchie, and Sipsey Rivers and up to three gravel bars in the Tombigbee River. Much of the historic habitat has been modified by construction of the Tennessee-Tombigbee Waterway and by impoundments on the Alabama River. These species were included in a notice of review published in the Federal Register on April 11, 1980 (45 FR 24904). All five species were included as Category 1 species in a Notice of Invertebrate Wildlife for Listing as Endangered or Threatened Species (May 22, 1984; 49 FR 21664).

On April 7, 1986, the Service proposed all five species as endangered in the Federal Register (51 FR 11761). Public hearings are provided for in section 4(b)(5)(E) of the Act if requested within 45 days of publication of the proposal. On May 22, 1986, a request for a public hearing on this proposal was received from Mr. Donald G. Waldon, Administrator, Tennessee-Tombigbee Waterway Development Autority. The Service has scheduled this hearing for July 10, 1986, from 7 p.m. to 10 p.m. at Poindexter (Music) Hall, Mississippi University for Women, College Street, Columbus, Mississippi.

Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing on July 10, 1986. Oral statements may be limited to 5 or 10 minutes, if the number of parties present that evening necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service. The comment period of the proposal originally closed on June 6, 1986. In order to accommodate the hearing, the Service also reopens the public comment period. Written comments may now be submitted for this proposal until July 20, 1986, to the Jackson Endangered Species Field Office (see **ADDRESSES** section).

Author

The primary author of this notice is Mr. James H. Stewart (see **ADDRESSES** section) at 601/965-4900 or FTS 490-4900.

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; Pub. L. 97-304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: June 9, 1986.

James W. Pulliam,

Regional Director.

[FR Doc. 86-13706 Filed 6-17-86; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 51, No. 117
Wednesday, June 18, 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 OFFICE OF THE UNITED STATES COURTS

United States Courts of Appeals Circuit Executive; Certification Applications

AGENCY: Board of Certification, United States Courts of Appeals, Circuit Executive.

ACTION: Board of Certification accepting applications from applicants interested in being certified as qualfied for the position of circuit executive.

SUMMARY: Individuals who wish to serve as circuit executives in the United States judicial system must be certified as qualified by the statutorily created Board of Certification (28 U.S.C. 332 (f)). While certification is a prerequisite for appointment as circuit executive, it does not ensure employment. By action of the Judicial Conference of the United States, persons who wish to be appointed as district court executive must also be certified by the Board.

A personal interview with the Board is necessary for certification, and the Board cannot reimburse candidates for attendant travel expenses. The Board, however, would be pleased to meet from time to time in cities other than Washington, DC, if the number of candidates in any particular region would appear to justify it.

Details on how to apply may be had by writing to: Board of Certification, Administrative Office of the U.S. Courts, Washington, DC 20544.

L. Ralph Mecham,
Secretary of the Board of Certification and Director, Administrative Office of the U.S. Courts.

[FR Doc. 86-13757 Filed 6-17-86; 8:45 am]

BILLING CODE 2210-01-M

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

Notice of Meetings, Solicitation of Comments on Low Income Assistance Programs

SUMMARY: In the State of the Union Message in January 1986, the President called upon the White House Domestic Policy Council to evaluate federal programs and develop a strategy to meet the financial, educational, social and safety concerns of poor families.

At the request of the Domestic Policy Council the Advisory Commission on Intergovernmental Relations, (ACIR) an independent agency established by Congress in 1959, will hold a series of public meetings at selected locations around the country during the summer of 1986 to solicit public input on the issues involved with low income assistance. State and local government officials, public interest groups, public assistance recipients and other interested parties are invited to attend and participate in the hearings. In addition, a docket is being maintained to receive comments on welfare reforms. The docket will remain open through September. Individuals and groups are invited to submit testimony and suggestions throughout the study.

Dates and Locations

July 2, Faneuil Hall, Boston, Massachusetts, 9:00 a.m.–4:30 p.m.—July 14, San Francisco, August 4, Chicago, August 25, Atlanta, September 8, Pittsburgh, September 22, Denver.

Conduct of Meeting

Each meeting will begin at 9:00 a.m. There will be a morning and an afternoon session. The morning session will be reserved for witnesses speaking as individuals. The afternoon session will be reserved for public officials and representatives of interested organizations.

All persons wishing to testify should call ACIR at 800-624-8430 or write to: Kelly McManus, The Advisory Commission on Intergovermental Relations, 1111 20th Street NW., Washington, DC 20575.

Requests to testify at the morning and afternoon sessions will be granted in the order they are received. Witnesses should indicate their name, address, telephone number, affiliation (if any) and the location where they wish to speak. In addition, those wishing to testify are requested to bring at least five copies of their testimony to the meetings. In order to accomodate as many views as possible, each oral presentation will be limited to five minutes. Testimony that cannot be accomodated at the meeting can be submitted for the record.

At each meeting, one hour will be set aside, 11 a.m. to noon, for brief presentations from members of the audience who have not been scheduled to testify. There will be a sign-up sheet at the hearing site at 8:30 a.m. to accomodate those individuals.

Maintenance of Docket

A docket will be maintained at ACIR throughout the study. This will contain the full record of the public meetings and the written statements of those who testify. Those who are not able to testify are invited to submit material to the docket by writing to: Kelly McManus, ACIR, 1111 20th Street NW., Washington, DC 20575.

The docket will remain open through September.

FOR FURTHER INFORMATION CONTACT: Kelly McManus, Information Officer, The Advisory Commission on Intergovernmental Relations, 202-653-5536.

John Shannon,
Executive Director.

[FR Doc. 86-13698 Filed 6-17-86; 8:45 am]

BILLING CODE 6115-01-M

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 13, 1986.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will

be required or asked to report; (6) An estimate of the number of resposes; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submissioin but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

- Agricultural Stabilization and Conservation Service
Reporting and/or Recordkeeping Requirements Under the U.S. Warehouse Act and Processed Agricultural Commodities and Regulations WA-50, -51, -51-2, -53, -54, -99, -137, -220, -221, -222, -302, -303, -308, -561, -570
Recordkeeping; Annually
Businesses or other for-profit; Small businesses or organizations; 28,585 responses; 16,979 hours; not applicable under 3504(h)
Harry J. Wishmire, (202) 475-4028

- Agricultural Stabilization and Conservation Service
Standards for Approval of Warehouses for Cotton and Cotton Linters CCC-49, -54, -823, -823-1
On occasion
Businesses or other for-profit; Small businesses or organizations; 885 responses; 995 hours; not applicable under 3504(h)
Lynn W. Howe, (202) 447-5785

- Agricultural Stabilization and Conservation Service
Application for payment of Amounts Due Persons Who Have Died, Disappeared, or Who Have Been Declared Incompetent
ASCS-325
On occasion
Individuals or households; 3,000 responses; 1,500 hours; not applicable under 3504(h)
Harold Connor, (202) 447-5103

- Rural Electrification Administration
Annual financial and Statistical Report (Electric)
REA-7
Annually
Small businesses or organizations; 976 responses; 15,616 hours, not applicable under 3504(h)
Milton E. Wright, (202) 382-1933.

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 86-13720 Filed 6-17-86; 8:45 am]

BILLING CODE 3410-01-M

Commodity Credit Corporation

1986 Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22-23), Dark Air-Cured (Types 35-36), Virginia Sun-Cured (Type 37), Cigar-Filled and Binder (Types 42-44, 53-55) and Cigar-Filler (Type 46) Tobaccos

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice of proposed determination of 1986 price support levels for six kinds of tobacco.

SUMMARY: The purpose of this Notice of Proposed Determination is to request comments with respect to levels of price support for fire-cured (type 21) tobacco, (2) fire-cured (types 22-23), (3) dark air-cured (types 35-36), (4) Virginia sun-cured (type 37) tobacco, (5) cigar-filler and binder (types 42-44; 53-55) tobacco, and (6) cigar-filler (type 46) kinds of tobacco for the 1986 marketing year. The levels of price support for these kinds of tobacco are required to be determined under the provisions of section 106 of the Agricultural Act of 1949, as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985.

DATE: Comments must be received on or before July 18, 1986 to be assured of consideration.

ADDRESS: Written comments should be sent to the Director, Commodity Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday, in Room 3741, USDA South Building, 14th and Independence Avenue SW., Washington DC.

FOR FURTHER INFORMATION CONTACT: Robert H. Miller, (202) 447-8839 or Kenneth Robison, (202) 447-5188. A Preliminary Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Mr. Robinson.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512-1, and has been classified as "not major." The provisions of this notice will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local Governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment productivity, innovation, the environmental, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets..

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

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

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983). It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Determination of Price Support

Price support is required to be made available for each crop of a kind of tobacco for which quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1986 crop of the six kinds of tobacco covered by the notice, the respective maximum level of support is determined in accordance with section 106 of the Agricultural Act of 1949, as amended (the "Act").

Section 106(f)(6)(A) of the Act provides that the level of support for the 1986 crop of a kind tobacco shall be the level in cents per pound at which the

1985 crop of such kind of tobacco was supported, plus or minus, respectively, the amount by which (i) the support level for the 1986 crop, as determined under section 106(b) of the Act, is greater or less than (ii) the support level for the 1985 crop, as determined under section 106(b) of the Act, as that difference may be adjusted by the Secretary under section 106(d) of the Act if the support level under clause (i) is greater than the support level under clause (ii). Accordingly, under section 106(f)(6)(A) of the Act, the support level for the 1986 crop of such kind of tobacco will be the 1985 level, adjusted by the difference between (plus or minus) the 1986 "basic support level" and the 1985 "basic support level".

In addition, section 106(f)(6)(B) provides that to the extent requested by the board of directors of an association through which price support is made available to producers (producer association) the Secretary may reduce the support level determined under section 106(f)(6)(A) for any kind of tobacco (except flue-cured and burley) to more accurately reflect the market value and improve the marketability of tobacco.

The levels of price support for the 1985 crops of various kinds of tobacco, which are determined in accordance, with sections 106(f)(6)(A) of the 1949 Act, are as follows:

Kind and type	Support (cents per pound)
Virginia fire-cured, type 21	118.8
KY-TN fire-cured, types 22-23	123.0
Dark air-cured, types 35-36	104.7
Virginia sun-cured, type 37	109.4
Cigar-filler and binder, types 42-44, 53-55	90.7
Puerto Rican, type 46	74.0

Section 106(b) of the Act provides that the "basic support level" for any year is determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers including wage rates, interest, and taxes (referred to as the "parity index") for the three previous calendar years to the average index of such prices paid by farmers, including wage rates, interest, and taxes for the 1959 calendar year (298). For the 1986-crop year, the average parity indexes for the three previous years are: 1983—1104; 1984—1130; and 1985—1121. The average of the parity indexes for these years is 1118 and the ratio of the 1983–85 index to the 1959 index is 3.75. For the 1985-crop year, the average parity indexes used to calculate the 1985 "basic support level" were: 1982—1076; 1983—1105; 1984—1130. The ratio of the 1982–84 index to the 1959 index equaled 3.70. Thus, the "basic support level" for the 1985 and 1986 crops of the various kinds of tobaccos and the annual increase are as shown in the following table:

Kind and type	Basic support level		Increase in 1986 from 1985	
	1985	1986	Unadjusted	Adjusted [1]
	Cents per pound			
Virginia fire-cured type 21	143.6	145.6	1.9	1.2
Kentucky-Tennessee fire-cured, types 22-23	143.6	145.5	1.9	1.2
Dark air-cured, types 35-36	127.7	129.4	1.7	1.1
Virginia sun-cured, type 37	127.7	129.4	1.7	1.1
Cigar filler and binder, types 42-44, 54-55	105.8	107.2	1.4	.9
Puerto Rican, type 46	109.9	111.4	1.5	1.0

[1] 65 percent of total increase.

Section 106(d) of the Act provides the Secretary of Agriculture may reduce the level of support which would otherwise be established for any grade of such kind of tobacco which the Secretary determines will likely be in excess supply. In addition, the weighted average of the level of support for all eligible grades of such tobacco must, after such reduction, reflect not less than 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the Act if the support level is higher than the support level for the proceding crop. Before any such reduction is made, the Secretary must consult with the associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota tobacco. In determining whether the supply of any grade of any kind of tabacco of a crop will be excessive, the Secretary shall take into consideration the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, and anticipated domestic and export demand, based on the maturity, uniformity and stalk position of such tobacco.

As noted in the following table, the supplies of all these kinds of tobacco for which price support is made available are currently at, or in excess of, the supply deemed adequate to meet domestic use and export needs. As a result of these increased supplies of tobacco, the quantity of tobacco pledged as collateral for CCC price support loans has also become ample to excessive.

Kind and type	1985/86 production	1985/86 total supply	1985/86 reserve supply	1985-crop CCC loan collateral	1985/86 CCC loans as % of production
	Million pounds				
Virginia fire-cured, type 21	4.4	14.4	11.6	.8	18
Kentucky-Tennessee fire-cured types 22-23	43.9	128.2	118.0	9.6	22
Dark air-cured, types 35-36	15.7	63.5	57.6	4.5	29
Virginia sun-cured, type 37	.2	1.4	1.4	.1	25
Cigar-filler and binder, types 42-44, 53-55	17.9	81.5	75.2	6.0	33
Puerto Rican, type 46	.6	7.0	[1]2.7	.6	100

[1] Three times annual disappearance past 3 marketing yers.

Because of the oversupply situation for fire-cured (type 21), fire-cured (types 22–23), dark air-cured, Virginia sun-cured, Puerto Rican filler, and cigar-filler and binder (types 42–44; 53–55), the proposed 1986 maximum support level for eȧch kind consists fo the 1985 level of support and a minimum increase which is 65 percent of the increase that would otherwise be established. However, this level could be lower if any of the producer associations' request that the support level for their respective kind be reduced.

Proposed Determinations

Accordingly, the Secretary of Agriculture proposes to determine and announce the maximum price support level for the following kinds of tobacco (1986-crop) at the levels set forth below:

Kind and type	Amount (maximum) (cents per pound)
Virginia fire-cured, type 21	120.0
KY-TN fire-cured, types 22-23	124.2
Dark air-cured, types 35-36	105.8
Virginia sun-cured, type 37	110.5
Cigar-filler and binder, types 42-44, 53-55	91.6
Puerto Rican filler (type 46)	75.0

Comments are requested with respect to the appropriate level of price support for such kinds of tobacco.

Authority: Secs. 4 and 5, Stat. 1070, as amended, 1072, as amended, 15 U.S.C. 714b, 714c; Secs. 101, 106, 401, 403, 406, 63 Stat. 1051, as amended, 74 Stat. 6, as amended, 63 Stat. 1054, as amended, 1055, 7 U.S.C. 1441, 1445, 1421, 1423, 1426, Pub. L. 99–279.

Signed at Washington, DC, on June 12, 1986.

William C. Bailey,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 86-13773 Filed 6-17-86; 8:45 am]

BILLING CODE 3410-05-M

Soil Conservation Service

Environmental Statements; Upper Tioga River Watershed, PA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of a record of decision.

SUMAMRY: James H. Olson, State Conservationist, responsible Federal official for projects administered under the provision of Pub. L. 83-566, 16 U.S.C. 1001-1008, in the State of Pennsylvania, is hereby providing notification that a record of decision to proceed with the installation of the Upper Tioga River Watershed project is available. Single copies of this record of decision may be obtained from James H. Olson, State Conservationist, at the address shown below.

FUR FURTHER INFORMATION CONTACT: Mr. James H. Olson, State Conservationist, Soil Conservation Service, 228 Walnut Street, Room 850, Box 985 Federal Square Station, Harrisburg, Pennsylvania 17108-0985, telephone (717) 782-4453.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. State and local review procedures for federal and federally-assisted programs and pojects are applicable.

Dated: June 11, 1986.

James H. Olson,

State Conservationist.

[FR Doc. 86-13705 Filed 6-17-86; 8:45 am]

BILLING CODE 3410-16-M

Nibbs Creek Watershed, VA

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of Deauthorization of Federal Funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L 83-566, and the Soil Conservation Service Guidelines (7 CFR 622), the soil Conservation Service gives notice of the deauthorization of Federal Funding for the Nibbs Creek Watershed project, Amelia County, Virginia, effective on April 14, 1986.

FOR FURTHER INFORMATION CONTACT: James W. Spieth, Acting State Conservationist, Soil Conservation Service, 400 North Eighth Street, Richmond, Virginia 23240-9999, telephone (804) 771-2457.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904-Watershed Protection and Flood Prevention Program, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials)

James W. Spieth,

Acting State Conservationist.

June 5, 1986.

[FR Doc. 86-13740 Filed 6-17-86; 8:45 am]

BILLING CODE 3410-4-M

COMMISSION ON CIVIL RIGHTS

Tennessee Advisory Committee; Agenda and Notice of 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 Tennessee Advisory Committee to the Commission will convene at 3:00 p.m. and adjourn at 6:00 p.m. on July 11, 1986, at the Vanderbilt Plaza Hotel, Chancellor Board Room, 2100 West End Avenue, Nashville, Tennessee. The purpose of the meeting is to discuss the postponed community forum on desegregation in higher education in Tennessee and formulate plans for its implementation.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, James Blumstein or Bobby Doctor, Director of the Southern Regional Office at (404) 221-4391, (TDD 404/221-4391). 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, June 11, 1986.

Ann E. Goode,

Program Specialist for Regional Programs.

[FR Doc. 86-13758 Filed 6-17-86; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC

Docket No. 85-219R. Applicant: Baylor College of Medicine, (USDA/ARS) Children's Nutrition Research Center, 6608 Fannin Street, Medical Towers Building, Room 519, Houston, TX 77030. Instrument: Gas-Isotope-Ratio Mass Spectrometer, Model Delta-E with Accessories. Manufacturer: Finnigan MAT Corporation, West Germany. Intended use: Original notice of this resubmitted application was published in the **Federal Register** of July 9, 1985.

Docket No. 86-056R. Applicant: SRI International, 333 Ravenswood Avenue, Menlo Park, CA 94025. Instrument: CO_2 Laser, Model # 5822. Manufacturer: Ultra Lasertech, Canada. Intended use: Original notice of this resubmitted application was published in the **Federal Register** of January 3, 1986.

Docket No. 86-073R. Applicant: University of Illinois, Urbana-Champaign Campus, Purchasing Division, 223 Administration Building, 506 South Wright Street, Urbana, IL 61801. Instrument: Excimer Laser, Model EMG 150E. Manufacturer: Lambda-Physik GmbH, West Germany. Intended use: The instrument is intended to be used in atomic and molecular spectroscopic experiments:

(1) Examination of two and three photon excitation and ionization of rare gases with the aim of measuring absolute photoabsorption cross-sections for these processes.

(2) Similar experiments conducted with F_2 and Cl_2.

(3) Examination of the free bound absorption (photoassociation) of a 5eV photon by a colliding pair of Kr and F atoms.

The instrument will also be used in EE 397—Projects and Lectures in Quantum and Electronics which introduces advanced undergraduate and incoming graduate students to the uses and properties of lasers. Application received by Commisisoner of Customs: December 13, 1985.

Docket No. 86-079R. Applicant: Lutheran Institute of Human Ecology, 1775 West Dempster, Park Ridge, IL 60068. Instrument: Electron Microscope, Model H-600-3 with Accessories. Manufacturer: Hitachi Limited, Japan. Intended use: Original notice of this resubmitted application was published in the **Federal Register** of February 6, 1986.

Docket No. 86-181. Applicant: Yale University, Peabody Museum of Natural History, 170 Whitney Avenue, P.O. Box 6666, New Haven, CT 06511. Instrument: Reflex Microscope with Counting Interface. Manufacturer: Reflex Measurement Ltd., United Kingdom. Intended use: The instrument is intended to be used for the study of shape on diverse objects in the natural sciences. These objects will include modern and fossil bones, teeth, shells, artifacts, fruits, seeds, rocks, minerals and leaves among other things. The diverse investigations that will use this instrument have various specific objectives including: classifying speciments into taxonomic categories; studying the growth process or the evolutionary change between species; analyzing the mechanical strength properties of organismal structures; or streamlining. The instrument will also be used for educational purposes in two graduate/advanced undergraduate courses. Application received by Commissioner of Customs: May 19, 1986.

Docket No. 86-214. Applicant: San Diego State University, 5300 Companile Drive, San Diego, CA 92182. Instrument: Chlorophyll Fluorescence System with Accessories. Manufacturer: Heinz Walz, West Germany. Intended use: The instrument is intended to be used to teach students modern techniques and approaches to physiological ecology in the course Physiological Ecology. Application Received by Commissioner of Customs: May 19, 1986.

Docket No. 86-215. Applicant: The University of Wyoming, Laramie, WY 82071. Instrument: Electron Microscope, Model H-7000 with Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use: The instrument is intended to be used to study the structural features of specimens of biological origin. The materials will include macromolecules and macromolecular complexes (proteins, nucleic acids, viruses, microtubules). Experiments will be conducted to determine the nature, composition, origin and function of cellular structure. In addition, the instrument will be used to provide graduate students with instruction in theoretical and practical aspects of electron microscopy in the course Biological Electron Microscopy—Zool. 830D. Application Received By Commissioner of Customs: May 22, 1986.

Docket No. 86-216. Applicant: University of New Mexico, School of Medicine, North Campus, BMSB I, Albuquerque, NM 87131. Instrument: Electron Microscope, Model H-600-3 with Accessories. Manufacturer: Hitachi Instruments, Japan. Intended use: The instrument is intended to be used for biomedical research. Images of biological materials will be analyzed visually and by computerized morphometry. All experiments will involve direct imaging of biological specimens with the objectives of elucidation of biological structure and composition at the highest possible resolution. Application Reveived by Commissioner of Customs: May 21, 1986.

Docket No. 86-217. Applicant: University of New Mexico, School of Medicine, North Campus, BMSB I, Albuquerque, NM 87131. Instrument: Scanning Electron Microscope, Model S-530-2. Manufacturer: Hitachi Instruments, Japan. Intended use: The instrument is intended to be used for biomedical research. Images of biological materials will be analyzed visually and by computerized morphometry. All experiments will involve direct imaging of biological specimens with the objectives of elucidation of biological structure and composition at the highest possible resolution. Application received by Commissioner of Customs: May 21, 1986.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Director, Statutory Import Programs Staff

[FR Doc. 86-13699 Filed 6-17-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-505]

Antidumping Duty Order; Oil Country Tubular Goods from Taiwan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the United States Deprtment of Commerce determined that oil country tubular goods (OCTG) were being sold at less than fair value within the meaning of the antidumping duty law. In a separate investigation, the United States International Trade Commission (the ITC) determined that oil country tubular goods are materially injuring a United States industry. Additional, the Department found that "critical circumstances" do not exist with respect to oil country tubular goods from Taiwan. Therefore, based on these findings, all unliquidated entries, or warehouse withdrawals, for consumption of oil country tubular goods from Taiwan made on or after January 7, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register,** will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption made on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: June 18, 1986.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel or Charles Wilson, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5404 or (202) 377-5288.

SUPPLEMENTARY INFORMATION: The products under investigation are "oil country tubular goods," which are hollow steel products of circular cross section intended for use in drilling for oil or gas. These products include oil well casing, tubing, and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or non API specifications (such as proprietary) as currently provided for in the *Tariff Schedules of the united States Annotated* (TSUSA) items 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4225, 610.4230, 610.4235, 610.4240, 610.4310, 610.4320, 610.4325, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244. This investigation includes OCTG that are in both finished and unfinished condition.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on January 7, 1986, the Department published its preliminary determination that there was reason to believe or suspect that OCTG were being sold at less than fair value (51 FR 663). On May 29, 1986, the Department published its final determination that these imports were being sold at less than fair value (51 FR 19371).

On June 2, 1986, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such importations materially injure a United States industry.

Therefore, in accordance with section 736 of the Act (19 U.S.C. 1673e), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of OCTG from Taiwan. These antidumping duties will be assessed on all unliquidated entries of OCTG entered, or withdrawn from warehouse, for consumption on or after January 7, 1986, the date on which the Department published its "Preliminary Determination" notice in the **Federal Register** (51 FR 663).

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as noted below:

Manufacturers/producers/exporters	Weighted-average margins (pct)
Far East Manufacturing Co	26.32
All other Manufacturers/Producers/Exporters	26.32

Article VI.5 of the General Agreement on Tariffs and Trade provides that "(n)o product . . . shall be sublect to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 722(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. However, in the final countervailing duty determination on OCTG from Taiwan, we found no export subsidies (51 FR 19514). Thus, we will not subtract any amount of export subsidies for deposit or bonding purposes from the dumping margins.

This determination constitutes an antidumping order with respect to OCTG from Taiwan, pursuant to section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48). We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping findings and orders currently in effect. Instead, interested parties may contact the Office of Information Services, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 9, 1986.

[FR Doc. 86-13789 Filed 6-17-86; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. C-211-602]

Preliminary Affirmative Countervailing Duty Determination: Operators for Jalousie and Awning Windows from El Salvador

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We preliminarily determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in El Salvador of operators for jalousie and awning windows. The estimated net subsidy is 0.70 percent *ad valorem.* We also preliminarily determine that critical circumstances do not exist.

We have notified the U.S. International Trade Commission (ITC) and the U.S. Customs Service (Customs) of our determination. We are directing Customs to suspend liquidation of all entries of operators for jalousie and awning windows from El Salvador that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, and to require a cash deposit or bond on entries of this product in the amount equal to the estimated net subsidy.

If this investigation proceeds normally, we will make our final determination on or before August 26, 1986.

EFFECTIVE DATE: June 18, 1986.

FOR FURTHER INFORMATION CONTACT: Steven Morrison or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1248 or 377-2438.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in El Salvador of operators for jalousie and awning windows. For purposes of this investigation, we preliminarily determine that the "Income Tax Exemption for Export Earnings" is countervailable. We preliminarily determine the estimated net subsidy to be 0.70 percent *ad valorem.*

Case History

On March 19, 1986, we received a petition in proper form from The Anderson Corporation and the Caribbean Die Casting Corporation, manufacturers of operators for jalousie and awning windows in Puerto Rico. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in El Salvador of operators for jalousie and awning windows receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten material injury to, a U.S. industry. In addition, the petition alleges that "critical circumstances" exist within the meaning of section 703(c)(1) of the Act.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 8, 1986, we initiated an investigation (51 FR 12633). We stated that we expected to issue a preliminary determination on or before June 12, 1986.

Since El Salvador is a "country under the Agreement" within the meaning of section 701(b) of the Act, the ITC is required to determine whether imports of the subject merchandise from El Salvador materially injure, or threaten material injury to, a U.S. industry. Therefore, we notified the ITC of our initiation. On May 5, 1986, the ITC determined that there is a reasonable indication that imports from El Salvador of operators for jalousie and awning windows threaten material injury to a U.S. industry (51 FR 17683).

We presented questionnaires concerning the petitioners' allegations to the government of El Salvador in Washington, D.C. on April 18, 1986. We received responses to the questionnaires on May 20, 1986, as amended on May 21, 22, 27, 29, June 2 and 3. According to these responses, Industries Metalicas, S.A., (IMSA) is the only manufacturer of operators of jalousie and awning windows. Both IMSA and Die Casting Productos S.A de C.V. (DIE CAST), which are owned by a common holding company, sold the subject merchandise in the United Stated during the review period (calendar year 1985). DIE CAST ceased selling after February 1985. Other commonly-owned companies were involved in manufacturing and/or selling the subject merchandise in earlier time periods or in markets other than the United States.

Scope of Investigation

The products covered by this investigation are operators for jalousie and awning windows as provided for in item number 647.0365 of the *Tariff Schedules of the United States Annotated* (TSUSA).

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of "Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order," which was published in the April 26, 1984 issue of the **Federal Register** (49 FR 18006).

Consistent with our practice in preliminary determinations, where a response to an allegation denies the existence of a program, receipt of benefits, or eligibility of a company or industry under a program, and the Department has no persuasive evidence showing that the response is incorrect, we accept the response for purposes of the preliminary determination. All such responses are subject to verification. If the response cannot be supported at verification, and the program is otherwise countervailable, the program will be considered a subsidy in the final determination.

For purposes of this preliminary determination, the period for which we are measuring subsidies ("the review period") is calendar year 1985, which corresponds to respondents' fiscal year. Based upon our analysis of the petition and the responses to our questionnaire, we preliminarily determine the following:

I. Program Preliminarily Determined To Confer a Subsidy

We preliminarily determine that a subsidy is being provided to manufacturers, producers, or exporters in El Salvador of operators for jalousie and awning windows under the following program:

Income Tax Exemption for Export Earnings

Under Chapters 2, 3 and 4 of the Export Promotion Law of 1974, approved exporting companies do not pay income tax on income earned from exports to destinations outside the Central American Common Market. According to the responses, DIE CAST is the only company involved in the manufacture or export of operators for jalousie and awning windows which was eligible for exemption from income tax and which claimed this exemption during and after the review period. Because this income tax exemption is limited to income derived from exports, we preliminarily determine that it confers a countervailable benefit.

IMSA did not apply for benefits under the 1974 Export Promotion Law. Therefore, unlike DIE CAST, it was not eligible to receive income tax benefits on its exports. However, IMSA and DIE CAST are 99 percent owned by one holding company. Further, DIE CAST's sales to the U.S. are composed entirely of operators supplied by IMSA. Finally, under the 1974 Export Promotion Law, DIE CAST may transfer its benefits to another company.

Because it appears that DIE CAST may be able to transfer the benefits to IMSA, we have included IMSA as a potential beneficiary of the income tax benefits. Accordingly, we calculated the benefit by dividing the amount of the income tax benefit received by DIE CAST, based on the income tax return filed during the review period, by total exports of operators for jalouise and awning windows for 1985 that were exported to destinations outside the Central American Common Market. The estimated net subsidy is 0.70 percent *ad valorem.*

II. Program Preliminarily Determined Not To Confer a Subsidy

We preliminarily determine that the following program does not confer a subsidy on manufacturers, producers or exporters in El Salvador of operators for jalousie and awning windows:

Exemptions to Exporters of Fiscal Stamp Tax

In El Salvador, a five percent stamp tax is levied on the value of sales and other commercial and legal activity. Export sales are specifically exempt from the stamp tax. Insurance on exports is subject to the stamp tax. The amount of the stamp tax exemption equals the amount of stamp tax due on each export sale.

Under the Act, the non-excessive remission of indirect taxes levied at the final stage is not considered a subsidy. According to the responses, the amount of the exemption is not greater than the amount of stamp tax due. Therefore, we determine that this program does not confer a subsidy on exports of operators for jalousie and awning windows.

III. Programs Preliminarily Determined Not To Be Used

We preliminarily determine that manufacturers, producers or exporters in El Salvador of operators for jalousie and awning windows do not use the following programs:

A. Exemptions to Exporters on the City Tax on Assets

Under parts B, C, and D of the Ley de Validad, municipalities charge a monthly tax on the value of total assets held at the end of each year by corporations, trusts, professionals and sole proprietors. According to the company responses, none of the subject companies have been exempted from this municipal tax.

B. Exemptions from Taxes on Imported Capital Equipment Used for Export Production

Under Chapters 2, 3, and 4 of the 1974 Export Promotion Law, approved exporters are entitled to import duty exemptions for imported capital equipment, including machinery, equipment, spare parts and accessories. The responses state that companies did not import capital equipment during the review period and, consequently received no tax advantage from the program.

C. Duty Exemption on Imported Inputs Not Physically Incorporated into Exported Products

Under chapters 2, 3, and 4 of the 1974 Export Promotion Law, materials used by approved exporters, including raw materials, imtermediate and semi-finished products, containers, packaging, samples, and patterns used in the production of goods for export could be exempt from import duty. We did not initiate an investigation on duty exemptions for items, such as raw materials, which are physically incorporated into exported products. Duty exemptions on physically incorporated imported inputs are not countervailable under Annex I to the Commerce Regulations (19 CFR Part 355, Annex I). We did initiate an investigation on such items as imported samples, patterns and lubricants not physically incorporated into exported products. The responses stated that the companies did not import any items which are not physically incorporated into the finished operators for jalousie and awning windows.

D. Operation in a Bonded Area

Under chapters 2 and 3 of the 1974 Export Promotion Law, exporting companies located in bonded areas were entitled to special duty-free privileges. The response of the government of El Salvador states that there were no manufacturers, producers or exporters of operators for jalousie or awning windows operating in bonded areas.

E. Central America Convention for Fiscal Incentives (Convenio Centro Americano de Incentives Fiscales al Desarrollo Industrial)

After we initiated our investigation and presented our questionnaire, petitioners alleged that subsidies may be provided to manufacturers, producers, or exporters of the subject merchandise under this treaty. On April 30th, we requested that the government of El Salvador address this treaty in its responses. In its response, the government of El Salvador states that, of the companies subject to the investigation, only IMSA was eligible for benefits during the review period under this treaty. The response futher states that under the treaty, IMSA obtained only impot duty exemptions for parts and materials physically incorporated into window operators. As stated previously, the exemption of import duties on items physically incorporated into the export product is not considered a subsidy within the meaning of the countervailing duty law. We note that other provisions of this agreement are similar to the Export Promotion Law; but, according to the government response, these provisions were not used in the review period.

IV. Programs Preliminarily Determined not to Exist

A. Tax Credit Certificate (Del Certificado de Descuento Tributario

Under Chapter 14 of the 1974 Export Promotion Law and Chapter 9 of the 1986 Export Promotion Law, exporters were eligible for certificates, as a percentage of exports, to be used for payment of taxes owed. The responses state that the implementing regulations have not yet been put into effect for either law, and thus, no program exists under which tax certificates are issued.

B. Pre-Export and Export Credit Guarantees

Chapter 13 of the 1974 Export Promotion Law authorizes the provision for pre-export and export guarantees. In its response to our questionnaire, the government of El Salvador states that no such benefits have been conferred because this part of the law was never implemented through applicable regulations.

C. Export Credit Insurance

Chapter 15 of the 1974 Export Promotion Law authorizes the provision of export credit insurance for commercial and political risks. In its response, the government of El Salvador states that an export credit insurance program has not been established and that this provision of the law was never implemented.

V. Programs for Which Additional Information is Needed

A. Asset Tax Exemption

Under Chapters 2 and 3 of the 1974 Export Promotion Law, certain persons and companies who qualify because of export activities, are not required to pay this tax on their assets and net capital worth. The responses indicate that the companies did not take advantage of this provision during the review period. In addition, the responses state that all companies are exempt from this tax, regardless of whether the company exports. Although the companies state that they did not take advantage of this provision, we need additional information to determine if the exemption was passed through to the individual owners who are otherwise liable for such taxes under Part A of the Ley de Validad (see section III.A above), and if it was passed through, whether it is provided only to exporters or to all owners.

B. Pre-Export and Export Loans

The petitioners allege that pre-export and export loans were provided under Chapter 13 of the 1974 Export Promotion Law. In its response to our questionnaire, the government of El Salvador states that no pre-export or export loans were extended because there were never any implementing regulations for chapter 13. U.S. Department of Commerce publication FET-85-107, dated November 1985, states that rediscount rates for pre-export and export loans have been lowered. We will attempt to reconcile this information in our subsequent verification.

VI. Program Preliminarily Determined To be Terminated

Preferential Exchange Rate Treatment for Exporters

Petitioners allege that under El Salvador's two-tier exchange rate system, exporters purchase imports at the lower official exchange rate, while the returns from their exports are converted using the higher parallel exchange rate. According to the responses, a two-tier exchange rate system was in effect in El Salvador until January 21, 1986. Under the two-tier system, imports of raw materials were purchased at a blended rate; fifty percent of the dollars used to pay for the imports were purchased at the official exchange rate, while the other fifty percent were purchased at the higher parallel rate. Exports earnings were also exchanged at a blended rate except that the percentage exchanged at the parallel rate was higher than the percentage at the official rate.

The responses state that as of June 17, 1985, the exchange rate applicable to all purchases of imported materials and all export earnings was the parallel rate. Then on January 21, 1986, the official rate was abolished and a new unified rate was set that currently applies to all commercial and financial transations involving foreign currency. Of the companies subject to this investigation, only IMSA purchased imports and made exports under the two-tier system. However, as of June 17, 1985, the only exchange rate appolicable to all of IMSA's import and export transactions was the parallel rate. Furthermore, since January 21, 1986, IMSA's exchange transactions have been subject to the new unified rate.

Although IMSA may have benefitted during the first half of 1985 from the two-tier exchange rate system for its import purchases, any benefits arising from this program would have been used on a current basis. Therefore, since June 1985, when IMSA was required to exchange all foreign currency for both import and export transactions at a single rate, no benefits could have been accorded to exports of operators for jalouise and awning windows. Furthermore, with the implementation of the unified exchange rate system in January 1986, the two-tier exchange rate system was terminated.

We note, however, that under the unified exchange rate system, all foreign currency accounts are prohibited except for exporters that need to import raw materials. During verification, we intend to examine whether this provision provides countervailable benefits to exporters.

Preliminary Negative Determination of Critical Circumstances

The petitioners allege that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act, with respect to imports of operators for jalousie and awning windows from El Salvador. In determining whether critical circumstances exist, we must examine whether there is a reasonable basis to believe or suspect that:

(a) The alleged subsidy is inconsistent with the Agreement and

(b) There have been massive imports of the subject merchandise over a relatively short period.

In determining whether imports have been massive over a relatively short period of time, we have considered the following factors:

1. Whether recent imports have increased significantly;

2. Whether recent import penetration ratios have increased significantly; and

3. Whether recent imports are significantly above average import levels calculated over the last three years.

A review of the information indicates that imports from El Salvador have not been massive over a relatively short period of time. In 1986, they have decreased substantially from imports in the review period.

Since we have not found massive imports over a relatively short period of time, we need not determine whether the alleged subsidies are inconsistent with the Agreement. Therefore, we preliminarily determine that critical circumstances do not exist.

Suspension of Liquidation

In accordance with section 703(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of operators for jalousie and awning windows from El Salvador, which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit or bond for each entry of this merchandise in the amount of the estimated net subsidy. The estimated net subsidy is 0.70 percent *ad valorem* for all manufacturers, producers, or exporters in El Salvador of operators for jalousie and awning windows. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-confidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If our final determination is affirmative, the ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days after the Department makes its final affirmative determination.

Verification

In accordance with section 776(a) of the Act, we will verify the information used in making our final determination.

Public Comment

In accordance with § 355.35 of the Commerce Regulations, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on July 28, 1986, at the U.S. Department of Commerce, Room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed. In addition, pre-hearing briefs with at least ten copies of the confidential version and seven copies of the non-confidential version must be submitted to the Deputy Assistant Secretary by July 21, 1986. Oral presentation will be limited to issues raised in the briefs.

In accordance with 19 CFR 355.33(d) and 19 CFR 355.34, written views will be considered if received not less than 30 days before the final determination or, if a hearing is held, within ten days after the hearing transcript is available.

This notice is published pursuant to section 703(f) of the Act (19 U.S.C. 1671b(f)).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

June 12, 1986.

[FR Doc. 86-13790 Filed 6-17-86; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

[Solicitation No: DRO-86-Austin]

Financial Assistance Application Announcement; Texas

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a *three (3) year period*, subject to available funds and satisfactory performance. The cost of performance for the first *twelve (12) months* is estimated at *$181,818* for the project's performance period of *October 1, 1986 thru September 30, 1987*. The MBDC will operate in the *Austin Standard Metropolitan Statistical Area (SMSA)* consisting of the Texas counties of Hays, Travis and Williamson.

The funding instrument for the MBDC will be cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDC supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDC, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: All applications must be received in this office by: C.O.B. (5:00 p.m.) July 18, 1986.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790.

FOR FURTHER INFORMATION, CONTACT: Marie Hearne, Business Development Clerk, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Dated: June 12, 1986.

Melda Cabrera,

Acting Regional Director, Minority Business Development Agency, Dallas Regional Office.

Project Specification for Minority Business Development Centers

Fiscal Year 1986

Program Number and Title: 11.800 Minority Business Development.

Project Name: Austin, Texas SMSA (Geographic Area or SMSA) MBDC.

Project Identification Number DRO–86–Austin.

Project Start and End Dates: 10/1/86 thru 9/30/87.

Project Duration: 12 Months

Total Federal Funding Level (85%): $154,545
Minimum Non-Federal Cost Share (15%): 27,273
Total Project Cost (100%): 181,818

Closing Date: All applications must be received in this office by Close of Business (5:00 p.m.) July 18, 1986.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of the Austin Standard Metropolitan Statistical Area (SMSA), consisting of the following Texas counties: *Hays, Travis and Williamson.*

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non -profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MEDC will receive continued funding, after the initial competitive year, at the discretion of MBDA, based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's Minimum Level of Effort

Financial packages: $2,387,000
Billable M&TA: $137,000
Billable M&TA Hours: 2,740
Procurements: $5,360,000
Number of clients: 54
Minimum No. Professional Manyears: 3

[FR Doc. 86–13827 Filed 6–17–86; 8:45 am]

BILLING CODE 3510-21-M

[Solicitation No: DRO-86-Brownsville]

Financial Assistance Application Announcement; Texas

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a *three (3) year period,* subject to available funds and satisfactory performance. The cost of performance for the first *twelve (12) months* is estimated at *$181,818* for the project's performance period of *October 1, 1986 thru September 30, 1987.* The MBDC will operate in the *Brownsville, Texas Standard Metropolitan Statistical Area (SMSA)* consisting of Cameron County, Texas.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and oeration of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: All applications must be received in this office by: C.O.B. (5:00 p.m.) July 18, 1986.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790.

FOR FURTHER INFORMATION CONTACT: Marie Hearne, Business Development Clerk, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Dated: June 12, 1986.

Melda Cabrera,

Acting Regional Director, Minority Business Development Agency, Dallas Regional Office.

Project Specification for Minority Business Development Centers

Fiscal Year 1986

Program Number and Title: 11.800 Minority Business Development.

Project Name: Brownsville, Texas SMSA (Geographic Area or SMSA) MBDC.

Project Identification Number: DRO–86–Brownsville.

Project Start and End Dated: 10/1/86 thru 9/30/87.

Project Duration: 12 months

Total Federal Level (85%): $154,545
Minimum Non-Federal Cost Share (15%): 27,273
Total Project Cost (100%): 181,818

Closing Date: All applications must be received in this office by: C.O.B. (5:00 p.m.) July 18, 1986.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of the *Brownsville, Texas Standard Metropolitan Statistical Area* consisting of Cameron County, Texas.

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discreation of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's Minimum Level of Effort

Financial packages: $2,387,000
Billable M&TA: $137,000
Billable M&TA Hours: 2,740
Procurements: $5,360,000
Number of clients: 54
Minimum No. Professional Manyears: 3

[FR Doc. 86-13828 Filed 6-17-86; 8:45 am]
BILLING CODE 3510-21-M

[Solicitation No. DRO-86-El Paso]

Financial Assistance Application Announcement; Texas

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a *three (3) year period*, subject to available funds and satisfactory performance. The cost of performance for the first *twelve (12) months* is estimated at *$310,160* for the project's performance period of *October 1, 1986 thru September 30, 1987*. The MBDC will operate in the *El Paso, Texas Standard Metropolitan Statistical Area (SMSA)* consisting of the Texas County of El Paso.

The funding instrument for the MBDC will be cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDA's satisfactory performance, the availability of funds, and Agency priorities.

DATE: All applications must be received in this office by: C.O.B. (5:00 p.m.) July 18, 1986.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242-0790.

FOR FURTHER INFORMATION CONTACT: Marie Hearne, Business Development Clerk, Dallas Regional Office; 214/767-8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Dated: June 12, 1986.

Melda Cabrera,

Acting Regional Director, Minority Business Development Agency, Dallas Regional Office.

Project Specification for Minority Business Development Centers

Fiscal Year 1986

Program Number and Title: 11.800 Minority Business Development.

Project Name: (Geographic Area or SMSA) El Paso, Texas SMSA, MBDC.

Project Identification Number: DRO-86-El Paso.

Project Start and End Dates: 10/1/86 thru 9/30/87.

Project Duration (months): 12 months.

Total Federal Funding Level (85%): $263,636.

Minimum Non-Federal Cost Share (15%): $46,524.

Total Project Cost (100%): $310,160.

Closing Date: All applications must be received in this office by: C.O.B. (5:00 p.m.) July 18, 1986.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of the *El Paso, Texas Standard Metropolitan Statistical Area* consisting of the Texas County of El Paso.

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDA's minimum level of effort:

Financial packages $4,073,000
Billable M&TA $233,000
Billable M&TA Hours: 4,660
Procurements $9,143,000
Number of Clients, 91
Minimum No. Professional Manyears, 5.

[FR Doc. 86-13829 Filed 6-17-86; 8:45 am]
BILLING CODE 3510-21-M

[Solicitation No: DRO-86-Laredo]

Financial Assistance Application Announcement; Texas

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a *three (3) year period*, subject to available funds and satisfactory performance. The cost of performance for the first *twelve (12) months* is estimated at *$181,818* for the project's performance period of *October 1, 1986 thru September 30, 1987*. The MBDC will operate in the *Laredo, Texas Standard Metropolitan Statistical Area (SMSA)* consisting of Webb County, Texas.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American and Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATE: All applications must be received in this office by: C.O.B. (5:00 p.m.) July 18, 1986.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790.

FOR FURTHER INFORMATION, CONTACT: Marie Hearne, Business Development Clerk, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Dated: June 12, 1986

Melda Cabrera,

Acting Regional Director, Minority Business Development Agency, Dallas Regional Office.

Project Specification for Minority Business Development Centers

Fiscal Year 1986

Program Number and Title: 11.800, Minority Business Development

Project Name: (Geographic Area or SMSA) Laredo, Texas SMSA, MBDC.

Project Identification Number: DRO–86–Laredo.

Project Start and End Dates: 10/1/86 thru 9/30/87.

Project Duration (months): 12 months.

Total Federal Funding Level (85%): $154,545.

Minimum Non-Federal Cost Share (15%): $27,273.

Total Project Cost (100%): $181,818.

Closing Date: All applications must be received in this office by: C.O.B. (5:00 p.m.) July 18, 1986.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of the *Laredo, Texas Standard Metropolitan Statistical Area* consisting of Webb County, Texas.

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be approximately three years consisting of three separate budget periods. Performance evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA, based upon the availability of funds, the MBDC's performacne, and Agency priorities.

MBDA's minimum level of effort:

Financial packages $2,387,000
Billable M&TA $137,000
Billable M&TA Hours: 2,740
Procurements $5,360,000
Number of Clients 54
Minimum No. Professional Manyears 3,

[FR Doc. 13830 6–17–86; 8:45 am]

BILLING CODE 3510-21-M

[Solicitation No: DRO–86–McAllen]

Financial Assistance Application Announcement; Texas

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a *three (3) year period,* subject to available funds and satisfactory performance. The cost of performance for the first *twelve (12) months* is estimated at *$245,989* for the project's performance period of *October 1, 1986 thru September 30, 1987.* The MBDC will operate in the *McAllen, Texas Standard Metropolitan Statistical Area (SMSA)* consisting of Hidalgo County.

The funding instrument for the MPDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance (M&TA) to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance (M&TA); and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance (M&TA); the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA, based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

DATE: All applications must be received in this office by: C.O.B. (5:00 p.m.) July 18, 1986.

ADDRESS: MBDA—Dallas Regional Office, 1100 Commerce Street, Suite 7B23, Dallas, Texas 75242–0790.

FOR FURTHER INFORMATION CONTACT: Marine Hearne, Business Development Clerk, Dallas Regional Office, 214/767–8001.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

Dated: June 12, 1986.

Melda Cabrera,

Acting Regional Director, Minority Business Development Agency, Dallas Regional Office.

Project Specification for Minority Business Development Centers

Fiscal Year 1986

Program Number and Title: 11.800, Minority Business Development.

Project Name: (Geographic Area or MSA) McAllen, Texas, MBDC.

Project Identification Number: DRO–86–McAllen.

Project Start and End Dates: 10/1/86 thru 9/30/87.

Project Duration (months): 12 months

Total Federal Funding Level (85%): $209,091.

Minimum Non-Federal Cost Share (15%): $36,898.

Total Project Cost (100%): $245,989.

Closing Date: All applications must be received in this office by: C.O.B. (5:00 p.m.) July 18, 1986.

Geographic Specification: The Minority Business Development Center shall offer assistance in the geographic area of the *McAllen, Texas Standad Metropolitan Statistical Area* consisting of Hidalgo County, Texas.

Eligibility Criteria: There are no eligibility restrictions for this project. Eligible applicants may include individuals, non-profit organizations, for-profit firms, local and state governments, American Indian Tribes, and educational institutions.

Project Period: The competitive award period will be approximately three years consisting of three separate budget periods. Performing evaluations will be conducted, and funding levels will be established for each of three budget periods. The MBDC will receive continued funding, after the initial competitive year, at the discretion of MBDA, based upon the availability of funds, the MBDC's performance, and Agency priorities.

MBDS's minimum level of effort:

Financial packages $3,230,000
Billable M&TA $185,000
Billable M&TA Hours: 3,700
Procurements $7,251,000
Number of Clients 72
Minimum No. Professional Manyears 4.

[FR Doc. 13831 Filed 6-17-86; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team will convene a public meeting at 11 a.m., June 24, 1986, at the Pacific Council's office (address below), through June 26, 1986, to review groundfish landings under current trip limits; to determine if two major species are under biological stress; to review and finalize the third draft of issues for amending the groundfish fishery management plan; to review progress on mesh studies and stock assessment, and to develop a report for the Council's July 9–10, 1986 meeting in Portland, OR. For further information contact Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland OR 97201; telephone: (503) 221-6352.

Dated: June 10, 1986.

Richard B. Roe,

Director, Office of Fisheries Management, National Marine Fisheries Service.

[FR Doc. 86-13801 Filed 6-17-86; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limits for Certain Cotton Textile Products Produced or Manufactured in Turkey

June 13, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 19, 1986. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On May 30, 1986 a notice was published in the **Federal Register** (51 FR 19590) announcing that, effective on May 30, 1986, imports of women's, girls' and infants' cotton coats in Category 335 and men's and boys' cotton shirts in Category 340, produced or manufactured in Turkey and exported during the twelve-month period which began on May 30, 1985 and extended through May 29, 1986 would be permitted entry into the United States for consumption and withdrawal from warehouse for consumption in amounts not to exceed 8,415 dozen (Category 335) and 50,075 dozen (Category 340) during each of five thirty-day periods beginning on May 30, 1985, and extending through October 26, 1986.

CITA has learned that shipments of cotton textile products in Category 340 which entered in excess of the limit established for the category during the twelve-month period which began on May 30, 1985 and extended through May 29, 1986, exceeded the 50,075 dozen designated for entry during the thirty-day period which began on May 30, 1986 and extends through June 28, 1986. As a consequence, the category did not reopen, as scheduled on May 30, 1986.

To alleviate trade problems, the Chairman of CITA is directing the Commissioner of Customs in the letter which follows this notice to amend the directive of May 27, 1986 to permit entry of cotton textile products in Category 340 in amounts not to exceed 143,883 dozen during the thirty-day period beginning on May 30, 1986 and extending through June 28, 1986 and 37,500 dozen during the period beginning on June 29, 1986, extending through July 28, 1986. This amendment does not change the periods or amounts permitted entry during those periods of cotton textile products in Category 335 which will remain in effect.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of May 27, 1986 concerning cotton textile products in Categories 335 and 340, produced or manufactured in Turkey.

Effective on June 19, 1986, the directive of May 27, 1986 is hereby amended to adjust the limit for cotton textile products in Category 340 which may be permitted entry during each of the following thirty-day periods:

Category	30-day limit (dozen)	Period
340	143,883	May 30, 1986–June 28, 1986.
340	37,500	June 29, 1986–July 28, 1986.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-13783 Filed 6-13-86; 4:26 pm]

BILLING CODE 3510-DR-M

Officals Authorized to Issue Export Visas and Exempt Certificates for Certain Cotton and Wool Textile Products Produced or Manufactured in the Republic of Uruguay

June 13, 1986.

Under the terms of the Bilateral Wool Textile Agreement of January 23, 1984, as amended, between the Governments of the United States and the Republic of Uruguay, the Government of Uruguay has notified the United States Government that Mrs. Julieta Lacarte and Mr. Jose Pedro Urraburu are replacing Mrs. Esther Ortellano and Dra. Clotilde Giambruno as officials authorized to issue export visas and exempt certificates for textiles and textile products covered by the agreement. The purpose of this notice is to advise the public of this change. The following is a complete list of officials currently authorized to issue these documents:

Julieta Lacarte
Jose Pedro Urraburu
Rodolfo Perez Blanco
Susan G. de Sarachaga
Tomas Garrido.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-13788 Filed 6-17-86; 8:45 am]

BILLING CODE 3510-DR-M

Establishing an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

June 13, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 19, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On May 22, 1986, a notice was published in the **Federal Register** (51 FR 18823) which announced that, on April 27, 1986, the Government of the United States, under Article 3 of the Arrangement Regarding International Trade in Textiles, had requested the Government of Pakistan to enter into consultations concerning exports to the United States of lightweight, plainweave polyester/cotton fabric in Category 613-C (only TSUSA numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058 and 338.5059), produced or manufactured in Pakistan.

In order to forestall serious market disruption during the consultation period, the United States Government, under the terms of Article 3.6 of the Arrangement, has decided, effective on June 19, 1986, to control imports in the category which have been exported on and after April 27, 1986 and extending through October 26, 1986, at a level of 7,376,185 square yards.

Accordingly, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agremeents directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of lightweight, plainweave polyester/cotton fabric in Category 613-C exported during the six-month period which began on April 27, 1986 and extends through October 26, 1986, in excess of the designated level of restraint.

The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Pakistan, further notice will be published in the **Federal Register.**

A description of the textile categories in terms of T.S.U.S.A. members was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 13, 1986.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 19, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of lightweight, plainweave polyester/cotton fabric in Category 613-C,[1] produced or manufactured in Pakistan and exported during the six-month period which began on April 27, 1986 and extends through October 26, 1986, in excess of 7,376,185 square yards.[2]

Textile products in Category 613-C which have been exported to the United States prior to April 27, 1986 shall not be subject to this directive.

Textile products in Category 613-C which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

A description of the Textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-13787 Filed 6-17-86; 8:45 am]

BILLING CODE 3510-DR-M

[1] In Category 613, only TSUSA numbers 338.5039, 338.5042, 338.5043, 338.5047, 338.5048, 338.5053, 338.5054, 338.5058 and 338.5059.

[2] The limit has not been adjusted to account for any imports exported after April 26, 1986.

Establishing an Import Limit for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

June 12, 1986.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on June 19, 1986. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202 377-4212.

Background

On April 11, 1986, a notice was published in the **Federal Register** (51 FR

12537), which established an import restraint limit for cotton textile products in Category 310/318 (cotton yarn-dyed fabric), produced or manufactured in the People's Republic of China and exported during the ninety-day period which began on March 21, 1986 and extends through June 18, 1986. The notice also stated that the Government of the People's Republic of China is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, if no mutually satisfactory solution is reached on a level for this category during consultations, to limit its exports during the twelve-month period immediately following the ninety-day consultation period to 4,649,800 square yards.

No solution has been reached in consultations on a mutually satisfactory limit. The United States Government has decided, therefore, to control imports of cotton textile products in Category 310/318, exported during the twelve-month period beginning on June 19, 1986 at the level described above. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

In the event the limit established for the ninety-day period has been exceeded, such excess amount, if allowed to enter, will be charged to the level established for the designated twelve-month period.

A description of the textile categories in terms of T.S.U.S.A numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 12, 1986.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,

Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 19, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 310/318, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on June 19, 1986 and extending through June 18, 1987, in excess of 4,649,800 square yards.[1]

Textile products in Category 310/318 which are in excess of the ninety-day limit previously established shall be subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisons of 5 U.S.C. 553(a)(1).

Sincerely,

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86-13700 Filed 6-17-86; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Consultations With the Government of Bangladesh on Categories 337/637 and 641

June 12, 1986.

On May 29, 1986, the United States Government, under Article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of Bangladesh to enter into consultations concerning exports to the United States of certain cotton and man-made fiber textiles in Categories 337/637 and 641, produced or manufactured in Bangladesh.

The purpose of this notice is to advise that, if no solution is agreed upon in consultations with Bangladesh, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of cotton and man-made fiber playsuits in Category 337/637 and woven blouses and shirts of man-made fibers in Category 641, produced or manufactured in Bangladesh and exported to the United States during the twelve-month period which began on May 29, 1986 and extends through May 28, 1987, at levels of 75,000 dozen for Category 337/637 and 305,940 dozen for Category 641.

Summary market statements for these categories follow this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Categories 337/637 and 641 under the agreement with Bangladesh, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in the category, is invited to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating

[1] The limit has not been adjusted to account for any imports exported after June 18, 1986.

to matters which constitute "a foreign affairs function of the United States."

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Bangladesh—Market Statement

Category 337/637—Cotton and Man-Made Fiber Playsuits

May 1986.

U.S. imports of Category 337/637 from Bangladesh were 73,695 dozen during the year ending March 1986, 17 times greater than the imports a year earlier. In 1985, Category 337/637 playsuit imports from Bangladesh were 16,386 dozen. There were no imports in 1984. Imports through the first quarter of 1986 reached 61,597 dozen, 14 times the first quarter 1985 level.

Imports from Bangladesh of Category 337, cotton playsuits, reached 68,424,000 dozen in the year ending March 1986, 16 times the year earlier level. Bangladesh is a new supplier of Category 637, man-made fiber playsuits, shipping 5,271 dozen during the first quarter of 1986. There are no previous imports from Bangladesh in Category 637.

The U.S. Category 337/637 market has been disrupted by imports. The sharp and substantial increase in imports from Bangladesh has contributed to this disruption and continuation of the growth would create a real risk of further disruption.

U.S. Production and Market Share

U.S. production of Category 337/637 continued a downward trend, declining 14 percent, from 8,646,000 dozen in 1982 to 7,454,000 dozen in 1984. Imports increased 61 percent from 1982 to 1984 and the U.S. producer's share of the market for domestically produced and imported category 337/637 dropped from 78 percent in 1982 to 66 percent in 1984.

U.S. production of Category 337; cotton playsuits, declined by 22 percent, from 3,254,000 dozen in 1982 to 2,531,000 dozen in 1984. Imports increased 48 percent during the same period as the U.S. producer's share of the market dropped from 64 percent to 48 percent over the period.

U.S. Imports and Import Penetration

Between 1982 and 1984, imports of Category 337/637 grew from 2.4 million dozen to 3.9 million dozen, a 61 percent increase. Imports continued to grow in 1985, rising 11 percent to 4.4 million dozen. Imports reached 2.3 million dozen in the first quarter of 1986, 34 percent above the first quarter 1985 level. The ratio of imports to domestic production increased from 28 percent in 1982 to 33 percent in 1983 to 53 percent in 1984.

Between 1982 and 1984, imports of Category 337 grew from 1.9 million dozen to 2.8 million dozen, a 48 percent increase. Imports continued to grow in 1985, rising 8 percent to 3.0 million dozen. The ratio of imports to domestic production increased from 57 percent in 1982 to 61 percent in 1983 and then jumped to 109 percent in 1984.

Duty-Paid Values and U.S. Producer's Prices

Approximately 90 percent of Category 337/637 imports during the first quarter 1986 from Bangladesh entered under TSUSA No. 384.5105—women's and girls' cotton corduroy playsuits, woven, not ornamented, and TSUSA No. 384.5234—women's and girls' cotton playsuits, excluding those made of corduroy, woven, not ornamented. These garments from Bangladesh enter the U.S. at landed, duty-paid values below the U.S. producer's price for comparable garments.

Bangladesh—Market Statement

Category 641—Womens', Girls' and Infants' Non-knit Blouses

May 1986.

Summary and Conclusions

U.S imports of Category 641 from Bangladesh were 416,000 dozen during the year ending March 1986, a six-fold increase over the year ending March 1985 level. Bangladesh is the ninth largest supplier of Category 641 and the largest uncontrolled supplier, accounting for 9 percent of the total imports during 1986. In 1984, imports of Category 641 from Bangladesh were 58,000 dozen and reached 158,000 dozen in 1985. Imports reached 286,000 dozen in the first quarter of 1986, 10 times the first quarter 1985 level and 81 percent above Bangladesh's total 1985 imports.

The sharp and substantial increase of low-valued imports of Category 641 from Bangladesh is disrupting the U.S. market for women's, girls' and infants' non-knit blouses.

U.S. Production and Market Share

U.S. Production of Category 641 declined 10 percent in 1984 from 20.9 million dozen in 1983 to 18.7 million dozen. U.S. production in 1984 was approximately equal to the 1982 recession level. The U.S. producers' share of the market declined from 78.1 percent in 1982 to 73.5 percent in 1984.

U.S. Imports and Import Penetration

Between 1982 and 1984 imports of Category 641 grew from 5.2 million dozen to 6.8 million dozen, a 29 percent increase. Imports continued to grow in 1985, rising 39 percent to 9.4 million dozen. The ratio of imports to domestic production has grown steadily, increasing from 28.1 percent in 1982 to 36.1 percent in 1984.

Duty-Paid Value and U.S. Producers' Price

Approximately 77 percent of Bangladesh's first quarter 1986 imports of Category 641 entered under TSUSA No. 384.9115 (previously 383.9015)—women's other man-made fiber blouses and shirts, not knit or ornamented. These garments enter the U.S. at landed, duty-paid values below the U.S. producers' prices for comparable garments.

[FR Doc. 86–13701 Filed 6–17–88; 8:45 am]

BILLING CODE 3510–DR–M

Requesting Public Comment on Bilateral Textile Consultations With the Government of India on Category 641; Correction

June 12, 1986.

On April 24, 1986, a notice was published in the **Federal Register** (51 FR 15526) which announced a ninety-day limit on imports of certain man-made fiber textile products in Category 641, produced or manufactured in India and exported to the United States during the period which began on March 31, 1986 and extends through June 28, 1986. In the notice document and the letter to the Commissioner of Customs which follows that notice, the ninety-day limit should be 187,357 dozen instead of 187,411 dozen.

Also, in the notice document, the prorated specific limit should be corrected to cover the period beginning on March 31, 1986 and extending through December 31, 1986 at a level of 485,735 dozen.

Leonard A. Mobley,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 86–13702 Filed 6–17–86; 8:45 am]

BILLING CODE 3510–DR–M

COMMODITY FUTURES TRADING COMMISSION

Contract market proposals; New York Cotton Exchange, U.S. Dollar Index

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures option contract.

SUMMARY: The New York Cotton Exchange ("NYCE") has applied for designation as a contract market in options on U.S. Dollar Index futures. The Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission"), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before July 18, 1986.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the NYCE U.S. Dollar Index futures option contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, (202) 254–7227.

Copies of the terms and conditions of the proposed NYCE U.S. Dollar Index futures option contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the NYCE in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the terms and conditions of the proposed futures option contract, or with respect to other materials submitted by the NYCE in support of their application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by July 18, 1986.

Issued in Washington, DC, on June 13, 1986.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 86-13755 Filed 6-17-86; 8:45 am]

BILLING CODE 6351-01-N

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Closed Meeting

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board will meet in closed session on July 20–August 1, 1986 at the U.S. Air Force Academy, Colorado Springs, Colorado.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense. At the meeting on July 20–August 1, 1986 the Board will examine the substance, interrelationships, and the U.S. national secretary implications of three critical areas identified and tasked to the Board by the Secretary of Defense and Under Secretary of Defense for Research and Engineering. The subject areas are Commercial Components in Military Equipment, Land Mine Warfare, and U.S. Forces Air Defense in NATO. The period of study is anticipated to culminate in the formulation of specific recommendations to be submitted to the Secretary of Defense, via the Under Secretary of Defense for Research and Engineering, for his consideration in determining resource policies, short- and long-range plans, and in shaping appropriate implementing actions as they may affect the U.S. national defense posture.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Panel meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

June 13, 1986.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 86-13726 Filed 6-17-86; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Pacific Command Air Defense; Closed Meetings

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Pacific Command Air Defense will meet in closed session on July 15 and September 9–10, 1986 in the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they effect the perceived needs of the Department of Defense. At these meetings, the Task Force will examine defense capabilities for shore installations in the Pacific Command and assess relevant technology, equipment, and modernization plans.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Panel meetings, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 13, 1986.

[FR Doc. 86-13727 Filed 6-17-86; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Land determinations Montana, North Dakota and South Dakota

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

ACTION: Notice of determination by the Secretary of the Army to retain certain lands by the United States located in Fort Peck, Montana; Riverdale, North Dakota; and Prikstown, South Dakota.

SUMMARY: This notice advises the public that, as provided in Pub. L. 99-88 (96 Stat. 293), approved August 15, 1985, the Secretary of the Army made the following determination concerning lands located within the boundaries of the townsites of Fort Peck, Montana; Riverdale, North Dakota; and Pickstown, South Dakota, that must be retained by the United States to enable the Corps of Engineers to carry out its duties and responsibilities:

Fort Peck, Montana

In order for the Army Corps of Engineers to carry out its duties and responsibilities, certain rights, title or interests must be retained by the United States. Pursuant to section 2, Pub. L. 99-88, I determine that the following areas must be retained:

a. Area A—Administration Building and immediate land. This building houses the headquarters and administrative offices for the Fort Peck project area. This building also houses the offices of the Western Area Power Administration, U.S. Geological Survey, and the Fort Peck Federal Credit Union under lease.

b. Area B—Maintenance Buildings and immediate land. These buildings, located on a 42.6 acre tract of land, serve as support facilities and storage of project floating plant, heavy equipment and vehicles. These facilities are essential for the routine operation and maintenance of the project.

c. Area C—Garage and Fire Station and immediate land. This building, located on a 1.0 acre tract of land, provides storage for all gas and diesel powered vehicles during the winter so as to ensure cold weather starting. It also provides storage for the fire trucks, an ambulance and a police vehicle. The storage space for those emergency vehicles will be leased to the municipal corporation. This building is essential for the routine operation and maintenance of the project. This areas noted are shown on a map available for inspection in the Chief of Engineers Office, HQDA (DAEN-CWO-M), 20 Massachusetts Avenue, NW., Washington, DC 20314-1000.

Robert K. Dawson

Assistant Secretary of the Army (Civil Works).

Signed: March 26, 1986.

Riverdale, North Dakota

In order for the Army Corps of Engineers to carry out its duties and responsibilities, certain rights, title or interests must be retained by the United States. Pursuant to section 2, Pub. L. 99-88, I determine that the following areas must be retained:

a. Area A—Administration Building and immediate land. This building houses the headquarters and administrative offices for the Garrison Dam/Lake Sakakawea project area.

b. Area B—Maintenance Buildings and immediate land. These buildings serve as support facilities for the project and are essential for the routine operation and maintenance of the project.

c. Area C—A 26-acre tract of land must be retained for project operations and recreational purposes as specified below:

(1) Area C1—An 8-acre strip of land lying along the lake shoreline and subject to saturation and sloughing of steep banks. Retention of this area is required to contain project-induced erosion on government land and to enable remedial erosion prevention measures to be taken when appropriate.

(2) Area C2—An 18-acre strip of land serving as a low density recreation area. A project scenic overlook road with parking and picnic areas is adjacent to the tract. The area provides an unobstructed view of the lake, fulfilling the project's recreational purposes. Retention will provide a buffer zone from possible future commercial or residential development that would detract from the scenic vista. The existing adjacent town road serves as a natural boundary.

d. Area D—A 30-acre tract of land is retained for project operational purposes. The area is adjacent to the lake shoreline and is subject to inundation during high pool levels. The inundated land must be retained by the government for project purposes. Retention of this area is also required to assure that project induced erosion is contained on government property.

e. Area E—Wildlife management area. A 210-acre tract of land is set aside for wildlife habitat and management practices in accordance with the Fish and Wildlife Coordination Act of 1958. There is no other equivalent acreage suitable or acceptable as a substitute. Retention fulfills project purposes, and enables continuation of wildlife program management.

The areas noted are shown on a map available for inspection in the Chief of Engineers Office, HQDA (DAEN-CWO-M), 20 Mass. Ave, NW. Wash, DC 20314-1000.

Robert K. Dawson,

Acting Assistant Secretary of the Army (Civil Works).

Signed: October 9, 1983.

Pickstown, South Dakota

In order for the Army Corps of Engineers to carry out its duties and responsibilities, certain rights, title or interests must be retained by the United States. Pursuant to section 2, Pub. L. 99-88, I determine that the following areas must be retained:

a. Area A—Maintenance Office Building, Maintenance Garage Building, Warehouse and Vehicle Storage Building and immediate land. These buildings, located on a 9-acre tract of land, serve as support facilities for the project and are essential for the routine operation and maintenance of the project. The office building also house the town's Post Office and Credit Union under lease.

b. Area B—Cold Storage Warehouses and immediate land. These buildings, located on a 16-acre tract of land, serve as storage of powerhouse spare parts and emergency equipment, as well as emergency supplies needed during flood fighting activities. These facilities are essential for the routine operation and maintenance of the project.

The areas noted are shown on a map available for inspection in the Chief of Engineers Office, HQDA (DAEN-CWO-M), 20 Mass Ave., NW. 20314-1000.

Robert K. Dawson,

Acting Assistant Secretary of the Army (Civil Works).

Signed: November 5, 1985.

SUPPLEMENTARY INFORMATION: Public Law 99-88 (99 Stat. 293) provides, in part, that the Secretary of the Army shall transfer, without consideration, all right, title, and interest of the United States in the land (including improvements) referred to as Fort Peck, Montana; Riverdale, North Dakota; and Pickstown, South Dakota, (described on drawings MFP118-2E1, MGR160-2E1, and MR315-2E1, respectively, on file in the U.S. Army Corps of Engineers, Omaha District) to the municipal corporations serving the inhabitants of such land. This transfer is to take place as soon as possible after the incorporation of such municipal corporations. Notwithstanding this provision, the Secretary of the Army is not required to transfer any rights, title, or interests in the United States in any lands or improvements that the Secretary of the Army determines must be retained by the United States to enable the Corps of Engineers to carry out its duties and responsibilites. The Secretary of the Army made the determination that the lands described herein are necessary to carry out the duties and responsibilities of the Corps of Engineers and, therefore, will be retained by the United States. Maps depicting these areas to be retained are also on file in the office of the District Engineer, United States Army Engineer District, Omaha, ATTN: Real Estate Division, 6014 U.S. Post Office and Courthouse, Omaha, Nebraska 68102-4978.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 86-13696 Filed 6-17-86; 8:45 am]

BILLING CODE 3710-08-M

Defense Communications Agency

Privacy Act of 1974; Altered Record System

AGENCY: Defense Communications Agency (DCA), Department of Defense (DoD).

ACTION: Notice of an altered DCA record system.

SUMMARY: The Defense Communications Agency (DCA) proposes to alter an existing system of records subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a). The specific changes to the record system notice being amended are set forth below followed by the record system notice, as amended, published in its entirety.

DATE: The proposed action shall be effective without further notice on or before July 18, 1986, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the System Manager identified in the record system notice.

FOR FURTHER INFORMATION CONTACT: Mr. John Whealen, General Counsel, Code 105, Defense Communications

Agency, Washington, D.C. 20305-2000. Telephone: 202/692-2009.

SUPPLEMENTARY INFORMATION: The Defense Communications Agency systems of records as prescribed by the Privacy Act of 1974, as amended (5 U.S.C. 552a) have been published in the **Federal Register** at 50 FR 22608, May 29, 1985 (FR Doc. 85-10237).

An altered system report as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on May 19, 1986, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 13, 1986.

KNCS.01

Amendments

System Name:

National Communications System Continuity of Operation Plan (NCS COOP).

Changes:

System Name:

Add after "(NCS COOP)" "Automated Support".

Changes:

System Location: Add after "Arlington, Virginia 22204" "and the Regional Offices."

Changes:

Categories of Individuals covered by the System:

Third Paragraph—change "officials of the major and minor" to "Officials of the NCS Member Entities"

Fourth Paragraph—Delete from "for example" to end of paragraph.

Add "represented in the National Coordinating Center (NCC)."

Changes:

Categories of Records on the System: Add after "roster giving the" "resident address,"

Changes:

Purpose(s):

First Paragraph, second line—Add after "on the staff" "and the regional staffs * * *"

Second Paragraph, lines 3 & 4—Change "Office of Telecommunications Policy (OTP)" to "Office of Science and Technology Policy (OSTP).

Line 11 Add after "Central Intelligence Agency" "and all other Government agencies with a National Security Emergency Preparedness (NSEP) responsibility who"

Third Paragraph, first line—Change "Energy Research and Development Administration" to "Department of Energy"

Line 13—Add after "Department of the Interior" "and all other Government agencies with an NSEP responsibility and"

Fourth Paragraph, Delete first sentence Add—"Selected personnel of the major commercial carriers represented in the NCC."

Changes:

Storages: Add second sentence—"The automated portions are housed in a classified computer system."

Changes:

Retrievability: Add second sentence—"The automated portion is filed by communication network."

Changes:

Retention and Disposal: Add after "the Manager NCS" "and the Regions."

Changes:

Notification Procedures: Add after "Office of" "the Manager" Delete after "NCS" "Plans and Operations"

Changes:

Records Access Procedures: Add after "addressed to the" Office of The".

Changes:

Records Source Categories: Change "common carriers" to "major telecommunication carriers represented in the National Coordinating Center (NCC)."

KNCS.01

SYSTEM NAME:

National Communications Systems Continuity of Operations Plan (NCS COOP) Automated Support.

SYSTEM LOCATION:

Office of the Manager National Communications Systems, 8th and South Court House Road, Arlington, Virginia 22204 and the NCS Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All members of the Office of the Manager, National Communications Systems Staff.

Selected individuals of the National Communications Systems/Defense Communications Agency Operations Center (NCS/DCAOC).

Selected telecommunications officials of the NCS Member Entities and selected personnel of Federal agencies in the Washington Metropolitan Area.

Selected key personnel of the commercial communication carriers represented in the National Coordinating Center (NCC).

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains a plan which provides the guidance and procedures for insuring the continuity of operations of the Office of the Manager, NCS, and the NCS/DCAOC in the event of enemy attack, periods of international crisis, tension, or national catastrophe. It provides a roster giving the residence addresses, office and residence phone numbers of personnel to contact as an emergency situation develops.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 12472. Subject: Assignment of National Security and Emergency Preparedness Telecommunications Functions, April 3, 1984.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

PURPOSE(S):

Office of the Manager, NCS—To apprise individuals on the staff and regional staffs of their responsibilities and emergency relocation assignments in conditions of emergency.

Selected telecommunications officials of the Federal Government—Certain designated personnel of the Office of Science & Technology Policy (OSTP), the Executive Agency of the NCS (who is the Secretary of Defense), the Department of State, Department of Defense, Federal Aviation Administration, General Services Administration, National Aeronautics and Space Administration, the Central Intelligence Agency and all other Government agencies with a National Security Emergency Preparedness (NSEP) responsibility who use this plan as their guidance for procedures to follow under conditions of emergency. Provides them the focal point for contracts and coordination on short notice.

Certain telecommunications officials of the Office of Science and Technology Policy (OSTP), executive Office of the President, the Executive Agent of the NCS (who is the Secretary of Defense), the Department of State, the Department of Defense, Federal Aviation Administration, General Services Administration, Central Intelligence Agency, Department of Energy, the Department of Commerce and Department of the Interior and all other Government agencies with an NSEP responsiblity, to be informed of their responsibilities in the face of worsening emergency conditions and to know where to report.

Selected personnel of the major commercial carriers represented in the NCC to be knowledgeable of current telecommunications problems so that certain priorities for support and services can be coordinated with designated Federal officials.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the "BLANKET ROUTINE USES" set fouth at the beginning of DCA's listing of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

This is a classified plan filed in standard secure safes. The automated portions are housed in classified computer systems.

RETRIVEABILITY:

Filed by category of plan. The automated portion is filed by communication network.

SAFEGUARDS:

The agency employs building security guards. Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

This is a permanent plan. It will be an active file indefinitly and will be updated periodically by the Manager, NCS and the Regions.

SYSTEM MANAGER(S) AND ADDRESS:

The manager, National Communication System, Washington, D.C. 20305–2010.

NOTIFICATION PROCEDURE:

Information may be obtained from the Office of the Manager, National Communication System, Washington, D.C. 20305–2010.

RECORD ACCESS PROCEDURES:

Requests from individuals should be addressed to the Office of The Manager, National Communication System, Washington, D.C. 20305–2010.

Written requests should contain the full name of the individual, current address and telephone number.

For personal visits, the individual should be able to provide some acceptable identification.

CONTESTING RECORD PROCEDURES:

The Agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned may be obtained from the SYSTEM MANAGER.

RECORD SOURCE CATEGORIES:

Informal coordination with representatives of the agencies concerned. Informal telephone coordination with personnel of the major telecommunication carriers represented in the National Coordination Center (NCC).

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 86–13778 Filed 6–17–86; 8:45 am]

BILLING CODE 3810-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

[BPA File No. NF-86]

Intent To Convene Workshops On Nonfirm Energy Rate Design

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice; Intent to convene workshops on nonfirm energy rate design and request for comments. BPA File No: NF–86. BPA requests that all comments submitted contain the file number NF–86.

SUMMARY: By letter dated May 22, 1986, BPA notified parties to its 1985 rate case and other interested persons of BPA's intent to convene two technical workshops on the design of BPA's nonfirm energy rates. The first workshop will convene in July and involve consideration of issues such as nonfirm energy price predictability and price flexibility. The second workshop will convene after conclusion of the first workshop and involve consideration of a share-the-savings rate. Issues such as price predictability, implementation, and share-the-savings experience to date will be discussed in the second workshop. The purpose of this **Federal Register** notice is to publish the contents of the May 22 letter and provide notice of the upcoming workshops to all persons who were not addressees.

Responsible official: Shirley Melton, Director, Director, Division of Rates, is the official responsible for conducting the workshops.

DATES: The first workshop will convene in July 1986. Comments on the concept of the two proposed workshops and the issues to be discussed should be submitted in writing and received by July 3, 1986.

ADDRESSES: Written comments should be submitted to Shirley Melton, PL, Director, Division of Rates, P.O. Box 3621, Portland, Oregon 97208 on or before July 3, 1986. BPA File No. NF–86 should be referenced in all comments.

FOR FURTHER INFORMATION CONTACT: Kathleen S. Johnson, Public Involvement office, at the address listed above, 503–230–3478. Oregon callers outside Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Wyoming, and Washington may use 800–547–6048. Information may also be obtained from:

- Mr. Terence G. Esvelt, Puget Sound Area Manager, Room 250, 415 First Avenue North, Seattle, Washington 98109, 206–442–4130
- Mr. George E. Gwinnutt, Lower Columbia Area Manager, Suite 288, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97208, 503–230–4551
- Mr. Ladd Sutton, Eugene District Manager, Room 206, 211 East Seventh street, Eugene, Oregon 97401, 503–687–6952
- Mr. Wayne R. Lee, Upper Columbia Area Manager, Room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–456–2518
- Mr. Ronald K. Rodewald, Wenatchee District Manager, P.O. Box 741, Wenatchee, Washington 98801, 509–662–4377, extension 379
- Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060
- Mr. Thomas Wagenhoffer, Snake River Area Manager, West 101 Poplar, Walla Walla, Washington 99362, 509–522–6226, extension 701
- Mr. Robert N. Laffel, Idaho Falls District Manager, 531 Lomax Street, Idaho Falls, Idaho 83401, 208–523–2706
- Mr. Frederic D. Rettenmund, Boise District Manager, Federal Building, 550 W. Fort Street, Rm 376, Boise, Idaho 83724, 208–334–91237.

SUPPLEMENTARY INFORMATION: On March 5, 1986, Bonneville Power Administration reopened the record of its 1985 general rate case in order to take official notice of dramatically declining prices for oil and natural gas, which compete with BPA's nonfirm energy for sales to California utilities. After considering comments submitted by customer groups and other interested parties, BPA on April 2, 1986, revised nonfirm energy rate schedule NF–85 through issuance of the Administrator's Record of Decision (ROD). This revised schedule gave BPA greater pricing flexibility to assure that BPA nonfirm energy remained competitive with low-cost gas and oil sold in California. The Federal Energy Regulatory Commission (FERC) granted interim approval of the revised NF–85 schedule effective April 30, 1986.

In commenting on BPA's proposal to revise schedule NF–85, several parties questioned whether a rate modification should be made permanent without considering questions of a long-term nature, such as whether nonfirm energy rates should be upwardly flexible in response to potentially higher gas and oil prices in the future. As noted in the ROD, the modification to NF–85 was an emergency measure designed to minimize revenue losses, particularly during the spring and summer period when BPA sells the majority of its nonfirm energy. BPA agreed that it was advisable to consider broader issues of a more long-term nature, and indicated in the ROD that BPA would soon institute a process to consider such issues.

Since issuance of the ROD, BPA has had informal discussions with customers and others on how such a process should be structured. Many have expressed interest in informal, technical 'workshops' among BPA, its customers, and other interested parties before institution of a formal hearing process under secton 7(i) of the Pacific Northwest Power Act. BPA believes that workshops focused on specific nonfirm energy rate designs would facilitate preparation of BPA's initial proposal for its upcoming 1987 rate case. BPA proposes to conduct two separate workshops addressing: (1) Improvements to the NF–85 rate currently in effect, and (2) potential use of a share-the-savings rate. BPA proposes to sequence these workshops in order to allow full participation by all interested parties, and to assure adequate BPA staff involvement.

BPA proposes to convene the first workshop in July, and consider issues such as nonfirm energy price predictability and upward and downward price flexibility. Issues concerning the costs assigned to BPA's nonfirm energy, and other issues pending in litigation before FERC will not be addressed. After conclusion of the first workshop, BPA proposes to hold its share-the-savings workshop. Issues such as price predictability, implementation and share-the-savings experience to date will be discussed in this second workshop. Both workshop processes will in turn be used to develop BPA's initial proposal in its 1987 rates process.

In addition to the workshop described above, BPA seeks to develop nonfirm energy marketing expertise through use of the existing SS–85 share-the-savings rate. In the near future BPA will solicit customers interested in negotiating a contract for the purchase of nonfirm energy under this rate.

Comments on the concept of the proposed workshops and the issues to be discussed should be submitted in writing to Shirley Melton, PL, Director, Division of Rates, P.O. Box 3621, Portland, Oregon, 97208, on or before July 3, 1986.

Issued in Portland, Oregon on June 10, 1986.

Peter T. Johnson,

Administrator.

[FR Doc. 86–13733 Filed 6–17–86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 86-23-NG]

ICG Energy Marketing, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of order granting blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting blanket authorization to import natural gas from Canada to ICG Energy Marketing, Inc. (ICG Energy). The order issued in ERA Docket No. 86–23–NG authorizes ICG Energy to import up to 25.6 Bcf over a two-year period for sale in the domestic spot market.

A copy of this order is available in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, (202) 252–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, on June 12, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86–13734 Filed 6–17–86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-21-NG]

IGI Resources, Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Order Granting Blanket Authorization To Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting IGI Resources, Inc. (IGI) blanket authorization to import natural gas from Canada. The order issued in EPA Docket No. 86–21–NG authorizes IGI to import up to 50 Bcf per year over a two-year period, for sale in the domestic spot market.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA–076, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., 20585, (202) 252–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

Issued in Washington, DC, June 12, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 13756 Filed 6–17–86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. TA86-2-45-000, 001]

Inter-City Minnesota Pipelines Ltd., Inc.; Interim Purchased Gas Adjustment Filing

June 12, 1986.

Take notice that on June 9, 1986, Inter-City Minnesota Pipelines Ltd., Inc. (Inter-City) tendered for filing Twenty-Eighth, Revised Sheet No. 4 to Original Volume No. 1 of Inter-City's FERC Gas Tariff. Inter-City has requested an effective date of June 2, 1986 for the rates set out therein.

Inter-City represents that the Current Purchased Gas Cost rate adjustment reflected on Twenty-Eighth Revised Sheet No. 4 consists of a negative 50 cents adjustment in commodity costs and a demand charge increase of $1.26 for Inter-City's Eastern Zone (GS–29) sales. The revised sheet also reflects an 85 cent reduction in gas costs for the

Western Zone (GL-29). These rates embody overall reductions in the rates charged by Inter-City's sole supplier, ICG Transmission Holdings Ltd., as approved by the National Energy Board of Canada (NEB) on June 2, 1986. The Company further states that these rates do not recover over or under collections incurred in the interim between November 1, 1985, the effective date of Inter-City's most recent PGA filing, and June 2, 1986. Those amounts, which are reflected on the enclosed Exhibits, are proposed to be deferred for collection in Inter-City's regularly scheduled PGA to become effective November 1, 1986.

In order that the rate reduction may be incorporated in Inter-City's tariff at the earliest date consistent with the NEB's authorization, Inter-City's application requests waiver of 18 CFR 154.38(d)(4)(iv)(a) and (v) insofar as these sections of the Commission's regulations require 30 days notice of any PGA change and establish a single annual PGA filing date for Inter-City. Inter-City states that it is not aware of further waiver that may be necessary to effect the new rates but hereby requests any waiver required to permit that end.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 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 June 19, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-13769 Filed 6-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI86-431-000 et al.]

Joseph P. Mueller et al.; Applications for Abandonment

June 11, 1986.

Take notice that each of the applicants 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 applications meet the criteria for consideration on an expedited basis, pursuant to § 2.77 of the Commission's rules as promulgated by Order Nos. 436 and 436-A, issued October 9, and December 12, 1985, respectively, in Docket No. RM85-1-000, all as more fully described in the applications 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 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, .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 proceedings. Any person wishing to become a party in any 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
CI86-431-000, B, May 15, 1986 [1]	Joseph P. Mueller, 1010 First City Tower II, Corpus Christi, Texas 78478.	United Gas Pipe Line Company, Ramirena Field, Live Oak County, Texas.	(2)	
CI86-440-000, B, May 28, 1986	United Gas Pipe Line Company, filing on behalf of Pogo Producing Company, P.O. Box 1478, Houston, Texas 77251.	United Gas Pipe Line Company, West Cameron Block 587, Offshore Louisiana.	(3)	
CI86-441-000, B, May 23, 1986	do	United Gas Pipe Line Company, West Cameron Block 352, Offshore Louisiana.	(3)	
CI86-443-000, B, May 28, 1986	Ladd Petroleum Corporation, 370 17th Street, Suite 1700, Denver, Colorado 80202-5617.	El Paso Natural Gas Company, Ignacio Blanco Field, La Plata County, Colorado.	(4)	
CI86-444-000, B, May 29, 1986	David Crow, Trustee, et al., 666 Travis Street, Suite 900, Shreveport, Louisiana 71101 [5].	Texas Gas Transmission Corporation, North Shongaloo-Red Rock Field, Webster Parish, Louisiana.	(6)	
CI86-446-000, B, May 29, 1986	United Gas Pipe Line Company, filing on behalf of Pogo Producing Company, P.O. Box 1478, Houston, Texas 77251.	United Gas Pipe Line Company, West Cameron Block 586, Offshore Louisiana.	(3)	

[1] Additional information filed June 5, 1986.

[2] Applicant requests authorization to abandon a sale of gas to United pursuant to a contract dated July 12, 1972, authorized under his small producer certificate issued in Docket No. CS71-269. Applicant states that the one producing well under the contract (the Mueller Engineering Corp.—G.B. Spradley #1) is classified as an NGPA section 108 stripper gas well, and that the well, at United's request, is producing at rates below its efficient rate or production (no more than 10% of the 50-75 Mcf of deliverability). Applicant states that United is not paying for gas not taken. Therefore, in order not to suffer shut-in and potential loss of the well, Applicant requests abandonment so that he can market the gas elsewhere.

[3] United is filing on behalf of Pogo requesting abandonment of sales to United by Pogo. United further requests termination of the certificates issued to Pogo and cancellation of Pogo's related FERC Gas Rate Schedules. United states that the drastic and permanent decline in its markets has forced it to reduce purchases from Pogo to as low as 1% deliverability. Therefore, United states it meets the standard of § 2.77 with substantially reduced takes without payment. These reduced takes, United states, have resulted in substantial take-or-pay exposure and payments. Numerous lawsuits are pending against United seeking damages and injunctive relief and specific performance, including a lawsuit filed by Pogo with respect to the subject blocks. United states that this exposure will have a substantial negative effect on its ability to compete as a merchant and as a transporter. United indicates that the subject gas qualifies under NGPA sections 102 and 104 at prices ranging from $.999711 to $4.330242 per MMBtu. United states Pogo's remaining reserves shown below constitute only the indicated percentage of United's existing dedicated reserves. United further states that it should not be precluded from making the instant filing on behalf of Pogo on some technical grounds, the practical effect of which would be to insulate producers from market-based competition. Such a result would, according to United, be contrary to the teaching of Order No. 436 and the Felmont decision (33 FERC ¶ 61,333 (1985)).

West Cameron Block	Bcf of remaining reserves	Percentage of United's existing dedicated reserves
587	13	0.4
352	0.9	0.02
586	0.9	0.03

[4] Applicant requests authorization to abandon a sale of gas from the Black Mesa #1-33 well pursuant to a contract dated September 26, 1960, authorized under Applicant's small producer certificate issued in Docket No. CS71-646. Applicant states that the well qualifies as an NGPA section 108 stripper gas well and that El Paso is currently taking approximately 50% of deliverability from the proration unit, and anticipates that its takes will decline in the future. Applicant states that El Paso has made no take-or-pay payments to Applicant. Applicant states that

at present 177 MMcf of remaining recoverable reserves are booked to the Black Mesa No. 1-33 well. Applicant also states that it has completed a second well into the proration unit, the Black Mesa No. 2-33 well, which qualifies under NGPA section 103 and does not require abandonment authority by virtue of NGPA section 601(a)(1)(B).

[5] *Et al.* parties are: Irwin I. Muslow; James Muslow; Sam Sklar; August Erickson; Morris B. White; Mary S. Walker; R.R. Robinson; C.C. Robinson; S.L. Florsheim; T.D. Robinson; Sklar and Phillips, Inc.; Sam Dorfman, Jr.; and Louis Dorfman.

[6] Applicant requests authorization to abandon a sale of gas from the No. 1 Hayes Unit well covered by a contract which was terminated on April 2, 1985. This sale was authorized under Applicant's small producer certificate issued in Docket No. CS71-841. Applicant states that the well qualifies as an NGPA section 104—recompletion well. Applicant states the well ceased to produce in the Smackover Formation in 1982, that the well was recompleted in the Haynesville Formation in February 1986, and Applicant intends to stimulate the well by fracturing. Applicant states that Texas Gas will only be able to take approximately 8% of the daily deliverability from this well which will produce in the range of approximately 100 Mcf per day. Applicant states it wishes to seek other markets for this gas since the underlying contract has expired and Applicant is subject to substantially reduced takes without payment.

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. 86-13772 Filed 6-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-506-000]

Texas Eastern Transmission Corp.; Application

June 13, 1986.

Take notice that on May 21, 1986, Texas Eastern Transmission Corporation (Texas Eastern), Post Office Box 2521, Houston, Texas 77252, filed in Docket No. CP86-506-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited term certificate of public convenience and necessity authorizing the transporation of natural gas with pre-granted abandonment, for Algonquin Gas Transmission Corporation (ALgonquin), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern requests authorization to transport natural gas on an interruptible basis for Algonquin up to a maximum daily quantity (MDQ) of 850,000 dekatherms (dt) per day, and such additional daily quantities in excess of the MDQ as Texas Eastern in its sole judgment determines it is able to transport pursuant to its gas transportation agreement with the Algonquin. Texas Eastern further requests that the authorization be limited to a term commencing upon acceptance of the certificate and terminating on and including October 31, 1987.

Texas Eastern states that it proposes to receive the transportation volumes at the receipt points, set forth in Appendix A, and that it proposes to deliver such quantities to Algonquin at the delivery points set forth in Appendix B. Texas Eastern also states that the proposed transportation would be subject to Section 12.6 of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Fourth Revised Volume No. 1. Texas Eastern further states that upon approval of the stipulation and agreement filed March 13, 1986, in Texas Eastern's rate proceeding in Docket No. RP85-177-000, priority of the proposed transporation service would be determined by section 12.7 of the General Terms and Conditions of the Tariff's Fifth Revised Volume No. 1.

Texas Gas states that beginning with the month in which the transportation commences, Algonquin would pay Texas Eastern each month a charge equal to the product of the posted TS-3 rate in effect during such month times the quantity of gas delivered by Texas Eastern during such month. It is further stated that Texas Eastern would collect, where applicable, the currently effective Gas Research Institute surcharge per dekatherm for the gas transported. Texas Eastern states that it would retain applicable shrinkage, which is currently one percent per dekatherm of natural gas received by Texas Eastern per zone which the natural gas is transported.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 3, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules and Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

APPENDIX A—RECEIPT POINTS

Description	Maximum daily receipt quantity (dth)
1. Existing interconnection between Texas Eastern and United Gas Pipe Line (United) in Attala County, MS (Texas Eastern's M&R No. 217)	200,000
2. Existing interconnection between Texas Eastern and United in Ouachita Parish, LA (Texas Eastern's M&R No. 1000)	100,000
3. Texas Eastern's facilities on the West Cameron Block 253 Platform (Texas Eastern's M&R No. 2310)	44,000
4. Texas Eastern's facilities on the Chandaleur Block 29 Platform (Texas Eastern's M&R No. 2369)	50,000
5. Subsea interconnection on Texas Eastern's system in East Cameron Block 281 (Texas Eastern's M&R No. 2375, East Cameron Block 299)	100,000
6. Subsea interconnection on Texas Eastern's system in East Cameron Block 281 (Texas Eastern's M&R No. 2502, West Cameron Block 556)	100,000
7. Existing interconnection between Texas Eastern and Valero Transmission Company in Lavaca County, TX (Texas Eastern's M&R No. 2248)	100,000
8. Existing interconnection between Texas Eastern and ANR Pipeline Company in Dubois County, IN (Texas Eastern's M&R No.1825)	25,000
9. Existing interconnection between Texas Eastern and Houston Pipe Line Company (Houston) in Matagorda County, TX (Texas Eastern's M&R No. 1844)	50,000
10. Existing interconnection between Texas Eastern and Houston in Chambers County, TX (Texas Eastern's M&R No.1886)	100,000
11. Existing interconnection between Texas Eastern and the outlet of the Shell Western E&P Inc., Houston Central Plant in Colorado County, TX (Texas Eastern's M&R No.1305)	25,000
12. Existing interconnection between Texas Eastern and Texas Gas Transmission Corporation (Texas Gas) located near Texas Eastern's Iowa liquid receiving facility, Jefferson Davis Parish, LA (Texas Eastern's M&R No. 1944)	75,000
13. Existing interconnection between Texas Eastern and Texas Gas in Evangeline Parish, LA (Texas Eastern's M&R No. 525)	75,000
14. Existing interconnection between Texas Eastern and Texas Gas in Bossier Parish, LA (Texas Eastern's M&R No. 1592)	100,000
15. Existing interconnection between Texas Eastern and Columbia Gulf Transmission Corporation in St. Landry Parish, LA (Texas Eastern's M&R No. 1750)	125,000
16. Existing interconnection between Texas Eastern and Consolidated Gas Supply Corporation in Clinton County, PA (Texas Eastern's M&R No. 931)	150,000
17. Texas Eastern's facilities on the Main Pass Block, 102 Platform (Texas Eastern's M&R No. 2370)	20,000
18. Existing interconnection between Texas Eastern and State Gas Pipeline in Lafourche Parish, LA (Texas Eastern's M&R No. 2487)	40,000
19. Existing interconnection between Texas Eastern and Champlin Petroleum Company (Champlin) in Panola County, TX (Texas Eastern's M&R No. 182)	50,000

APPENDIX A—RECEIPT POINTS—Continued

Description	Maximum daily receipt quantity (dth)
20. Existing interconnection between Texas Eastern and Cities Service Gas Company in Gregg County, TX (Texas Eastern's M&R No. 338)	25,000
21. Existing interconnection between Texas Eastern and Hydrocarbon Limited in Gregg County, TX (Texas Eastern's M&R No. 2230)	75,000
22. Existing interconnection between Texas Eastern and Rio Bravo Oil Company in Jasper County, TX (Texas Eastern's M&R No. 448)	10,000

Appendix B

DELIVERY POINTS

Description	Maximum daily delivery quantity (dth)
Existing interconnection between Texas Eastern and Algonquin in Hunterdon County, NJ (Texas Eastern's M&R No. 087).	554,000 less applicable shrinkage
Existing interconnection between Texas Eastern and Algonquin in Morris County, NJ (Texas Eastern's M&R No. 1078).	306,000 less applicable shrinkage

[FR Doc. 86-13766 Filed 6-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP86-525-000]

United Gas Pipe Line Co.; Application

June 12, 1986.

Take notice that on May 30, 1986, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP86-525-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing United to continue or implement transportation of natural gas in interstate commerce for certain designated shippers for a period ending, (1) when the Commission issues a final decision on United's application in Docket No. CP86-526-000 for certificate authorization to provide transportation under a proposed permanent open access program consistent with the objectives of Commission Order Nos. 436 and 436-A or, (2) when the contract terms of each transaction terminate, whichever is earlier, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it has initiated and is now providing transportation services pursuant to section 311 of the Natural Gas Policy Act for 52 various shippers involving 105 separate transactions (see Appendix) pursuant to the transitional provisions of Order Nos. 436 and 436-A which, absent the limited-term authorization requested herein, will terminate on June 30, 1986. It is indicated that the affected shippers will lose access to up to 2.5 Bcf of contracted daily gas supplies subject to transportation by United under 113 contracts. In order to continue providing transportation services for those shippers while the Commission considers United's permanent program, United requests an interim, limited-term certificate.

United further requests blanket authority to enter into new contracts to transport gas on behalf of local distribution companies and intrastate pipelines, with terms not to exceed the date of a final Commission order disposing of United's open-access application in Docket No. CP86-526-000. It is proposed that the rates for the transportation services to be performed under the authorizations requested hearin would be the same as those separately file by United to cover its grandfathered transportation services as required by section 284 of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 26, 1986, filed with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motionpetition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for United to appear or be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

UNITED GAS PIPE LINE CO. PROPOSED TRANSACTIONS

	Contract No	Contract date	MDQ (MCF)
ANR Gathering/ Louisville Gas & Elec.	T-606	03-11-86	10,000
ANR/Louisville Gas & Electric.	T-626	04-16-86	25,000
Amalgamated Pipeline	T-546	02-21-86	73,500
Amalgamated Pipeline	T-547	02-21-86	1,000
Arco Oil & Gas	T-662	05-05-86	20,000
B & A Pipeline Company.	T-625	03-18-86	1,000
Bishop Pipeline Corp.	T-598	04-11-86	15,000
Bishop Pipeline Corp.	T-599	04-11-86	5,000
Bishop P/L Corp./ Western Kentucky.	T-621	04-07-86	15,000
Cheney Energy Corp.	T-630	05-26-86	4,500
Citizens Resources/ Various LDC's.	T-557	02-24-86	80,000
Citizens Res./Niagara Mohawk Power.	T-579	03-21-86	10,000
Citizens Resources/ Eastex Gas Trans..	T-593	03-27-86	9,000
Citizens Resources/ Cincinnati Gas.	T-646	04-25-86	10,000
City of Bay Minette	T-590	03-04-86	335
City of Milton	T-600	02-26-86	12,000
City of Pensacola	T-654	03-04-86	3,500
Clajon Industrial Gas	T-571	03-07-86	7,000
Clajon Industrial Gas	T-617	03-11-86	20,000
Clajon Industrial Gas	T-656	04-30-86	7,000
Clajon Trans.	T-659	02-28-86	4,000
Clajon Industrial Gas	T-660	02-24-86	75,000
Delhi Pipeline	T-536	02-20-86	125,000
Delhi Pipeline	T-537	02-20-86	14,000
Delhi Pipeline	T-578	03-21-86	100,000
Delta Gas, Inc	T-580	03-20-86	30,000
Delta Gas, Inc	T-581	03-21-86	4,000
Delta P/L/Memphis Light Gas & Water.	T-560	03-07-86	40,000
New Orleans Public Service, Inc..	T-562	03-11-86	60,000
Eastex Gas Transmission.	T-585	03-07-86	25,000
Eastex Gas Transmission.	T-586	04-09-86	20,000
EnTrade/Southern Indiana Gas & Elec..	T-522	02-27-86	50,000
EnTrade/Columbia Gas of Ohio.	T-552	02-25-86	50,000
EnTrade/Indiana Gas Co..	T-552	02-25-86	([1])
EnTrade/UGI Corp.	T-553	02-27-86	50,000
EnTrade/Mountaineer Gas Co..	T-553	02-27-86	([1])
EnTrade/Baltimore Gas & Elec..	T-553	02-25-86	([1])
EnTrade/Western Kentucky Gas.	T-591	03-12-86	2,300
EnTrade/Indiana Gas Co..	T-623	04-15-86	3,000
EnTrade/Rochester	T-668	04-05-86	2,000
EnTrade/Rochester	T-669	04-06-86	4,000
End Users Supply	T-594	03-31-86	3,000
Endevco Inc	T-575	03-10-86	4,000
Endevco	T-634	05-26-86	7,000
Endevco	T-635	05-26-86	25,000
Endevco	T-673	05-29-86	4,000
Escambia Co. Utility	T-565	03-10-86	15,000
Exxon Co. USA/Clarke-Mobile.	T-639	04-24-86	7,000
Exxon Co. USA/Clarke-Mobile.	T-640	04-24-86	10,000
Exxon Co. USA/Clarke-Mobile.	T-641	04-24-86	10,000
Gulf Coast Energy	T-597	04-15-86	500
Gulf Coast Energy	T-678	05-18-86	
HNG Internorth/Indiana Gas Co..	T-604	03-31-86	50,000
HNG Internorth/Peoples Gas Co..	T-604	04-01-86	15,000
HNG Internorth/Various LDC's.	T-610	04-01-86	50,000
Hadson Gas/LLano	T-543	03-07-86	20,000
Hadson Gas/LLano	T-563	03-10-86	20,000

UNITED GAS PIPE LINE CO. PROPOSED TRANSACTIONS—Continued

	Contract No	Contract date	MDQ (MCF)
Hadson/Llano, Inc.	T-651	04-30-86	40,000
Humble Gas System, Inc.	T-618	03-24-86	5,000
IMC Pipeline	T-567	02-24-86	10,000
IMC Pipeline	T-667	05-09-86	1,500
J-W Gathering	T-568	02-24-86	5,500
K-M Texas Pipeline	T-615	04-16-86	20,000
LGS Intrastate, Inc	T-582	04-14-86	16,500
LGS Intrastate, Inc	T-583	04-17-86	15,000
Llano, Inc./Hadson	T-628	04-10-86	5,000
Louisiana State Gas Corp.	T-548	02-24-86	2,000
Louisiana State Gas Corp.	T-548	02-25-86	9,000
Louisiana State Gas Corp.	T-569	03-06-86	5,000
Louisiana State Gas Corp.	T-570	03-07-86	5,000
MidCon Mkt./Bethlehem Steel	T-658	04-30-86	300,000
MidCon Mkt./UGI Corp.	T-658	04-30-86	(1)
MidCon Mkt./Colony Natural Gas	T-658	04-30-86	(1)
Mississippi Gulf South	T-608	05-23-86	—
Mississippi Valley Gas Co.	T-559	02-24-86	4,000
Mississippi Valley Gas Co.	T-602	04-11-86	600
Natural Gas Clearinghouse/Cincinnati	T-627	04-25-86	15,000
New Orleans Public Service, Inc.	T-676	04-08-86	60,000
PhenTex	T-592	03-10-86	1,000
PhenTex/West Ohio Gas Co.	T-601	03-05-86	60,000
PhenTex	T-682	05-29-86	80,000
Quivira Gas Company	T-620	03-07-86	2,000
Quivira Gas Company	T-648	04-30-86	6,000
Quivira Gas Company	T-652	04-30-86	6,000
Reliance Pipeline	T-566	03-07-86	50,000
Reliance P/L/Peoples Gas Light	T-605	03-31-86	60,000
Reliance Pipeline Co.	T-611	04-01-86	60,000
Resource Group/Peoples Nat. Gas	T-650	04-30-86	2,100
SNG Alabama Gas Corp.	T-538	02-27-86	65,000
SNG Alabama Gas Corp.	T-538	02-27-86	(1)
SNG Chattanooga Gas Co.	T-538	02-27-86	(1)
SNG Mississippi Valley Gas	T-538	02-27-86	(1)
SNG So. Carolina Pipeline	T-538	02-27-86	(1)
SNG Trading/Atlanta Gas Light Co.	T-538	02-27-86	(1)
SNG Southeast Alabama Gas	T-538	02-27-86	(1)
SNG Southeast Alabama Gas Corp.	T-539	02-27-86	40,000
SNG South Carolina Pipeline	T-539	02-27-86	(1)
SNG Mississippi Valley Gas	T-539	02-27-86	(1)
SNG Chattanooga Gas Co.	T-539	02-27-86	(1)
SNG Alabama Gas Corp.	T-539	02-27-86	(1)
SNG Atlanta Gas Light Co.	T-539	02-27-86	(1)
SNG Trading	T-540	02-27-86	15,000
SNG Alabama Gas Corp.	T-541	02-27-86	25,000
SNG Atlanta Gas Light Co.	T-541	02-27-86	(1)
SNG Chattanooga Gas Co.	T-541	02-27-86	(1)
SNG Mississippi Valley Gas	T-541	02-27-86	(1)
SNG South Carolina Pipeline	T-541	02-27-86	(1)
SNG Southeast Alabama Gas	T-541	02-27-86	(1)
SarVic Gas Company	T-624	03-11-86	5,000
Seagull Marketing	T-657	04-23-86	8,000
Seagull Marketing/Consumer Power Co.	T-663	04-23-86	

UNITED GAS PIPE LINE CO. PROPOSED TRANSACTIONS—Continued

	Contract No	Contract date	MDQ (MCF)
Shell/Various LDC's	T-613	03-31-86	100,000
Shreveport Intrastate Gas	T-576	03-12-86	62,000
Shreveport Intrastate Gas	T-677	05-08-86	3,000
Shreveport Intrastate Gas	T-679	05-09-86	15,000
TIECO	T-558	03-12-86	6,000
Tejas Gas Corp	T-551	04-17-86	15,000
Tejas Gas Corp	T-577	03-18-86	8,000
Tejas Gas Corp	T-589	04-01-86	25,000
Tejas Gas Corp	T-629	04-20-86	15,000
Temco	T-619	03-19-86	10,000
Texican/Dayton Power & Light	T-564	03-19-86	10,000
Trans American	T-595	04-23-86	50,000
UER/Caddo Natural Gas	T-544	02-28-86	300,000
UER/City of Bay Minette	T-544	02-28-86	(1)
UER/City of Pensacola	T-544	02-28-86	(1)
UER/Clajon Industrial Gas	T-544	03-11-86	(1)
UER/Conoco, Inc	T-544	02-28-86	(1)
UER/Dupont	T-544	02-28-86	(1)
UER/EnTrade/Citizens Gas & Coke Util.	T-544	02-28-86	(1)
UER/EnTrade/Indiana Gas Co.	T-544	02-28-86	(1)
UER/EnTrade/Louisville Gas & Electric	T-544	02-28-86	(1)
UER/EnTrade/Orange & Rockland Util.	T-544	02-28-86	(1)
UER/Entex	T-544	02-28-86	(1)
UER/Kimball/Consumer Power Co.	T-544	02-28-86	(1)
UER/Kimball/McSouth Steel	T-544	02-28-86	(1)
UER/MidCon Ven/Bethlehem Steel	T-544	02-28-86	(1)
UER/MidCon Ven/Dayton Power & Light	T-544	02-28-86	(1)
UER/MidCon Ven/East Ohio Gas Co.	T-544	02-28-86	(1)
UER/MidCon Ven/Niagara Mohawk Power	T-544	02-28-86	(1)
UER/MidCon Ven/Western Kentucky Gas	T-544	02-28-86	(1)
UER/Mississippi Valley Gas	T-544	02-28-86	(1)
UER/Mobile Gas Service	T-544	02-28-86	(1)
UER/Norco Fuel & Gas	T-544	02-28-86	(1)
UER/Okaloosa County Gas	T-544	02-28-86	(1)
UER/Public Service Elec. & Gas	T-544	02-28-86	(1)
UER/Public Service Electric & Gas	T-544	02-28-86	(1)
UER/Clinton Gas Mkt./Col. Gas of Ohio	T-544	02-28-86	(1)
UER/Willmut Gas & Oil	T-544	02-28-86	(1)
UER/EnTrade/Iowa Southern Utilities	T-544	02-28-86	(1)
UER/Kimball	T-544	02-28-86	(1)
UER/Shreveport Intrastate Gas	T-544	02-28-86	(1)
United Texas Transmission	T-616	03-06-86	1,000
Vesta/Peoples Gas	T-649	04-30-86	18,000
Victoria Gas Corp	T-554	02-26-86	10,000
Victoria Gas Corp	T-555	02-26-86	32,000
Victoria Gas Corp	T-556	02-26-86	10,000
Victoria Gas Corp	T-596	03-21-86	1,000
Victoria Gas Corp	T-642	04-23-86	20,000
Victoria Gas Corp	T-653	04-29-86	10,000
Victoria Gas Corp	T-655	04-30-86	10,000
Victoria Gas Corp	T-680	05-08-86	
Wellhead Ventures	T-545	03-10-86	2,000

[1] Total Contract MDQ.

[FR Doc. 86-13767 Filed 6-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-739-000]

United Refining Co.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

June 6, 1986.

On May 19, 1986, United Refining Company (Applicant), of 15 Bradley Street, Warren Pennsylvania 16365, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at Applicant's crude oil refinery in Warren, Pennsylvania. The 12 MW facility will consist of a combustion turbine generating unit and a waste heat recovery steam generator (HRSG). Steam from the HRSG will be utilized in Applicant's oil refining process. The primary energy source will be waste in the form of refinery gas. Construction of the facility is expected to begin in May 1986.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rule 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-13771 Filed 6-17-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA86-5-46-000, 001]

Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

June 12, 1986.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on June 9, 1986, tendered for filing with the Federal Energy Regulatory Commission (Commission) its Twentieth Revised Sheet No. 27A to its FERC Gas Tariff, First Revised Volume No. 1, to become effective June 7, 1986.

The proposed tariff sheet amends the PGA filing made by Kentucky West herein on March 27, 1986, 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 independent producers and purchases of natural gas from affiliated companies, effective June 7, 1986.

The current purchase gas adjustment is a reduction of 20.47¢ per dekatherm (dth). This reduction results in a total net jurisdictional purchase gas charge of 194.53¢ per dth, to become effective June 7, 1986.

Apart from reflecting the decrease in purchase gas costs resulting from Kentucky West's exercise of market-out provisions effective June 7, 1986, no other amendment is proposed by Kentucky West to its PGA filing herein of March 27, 1986. Kentucky West requests 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 June 7, 1986.

Kentucky West further states that by an Order of June 3, 1986, issued in Docket No. TA82-2-46-008, the Commission required Kentucky West to submit on or before its next regular PGA a proposal to implement the repricing of Kentucky West's pipeline production for the period after October 1, 1979, as contemplated by the United States Court of Appeals for the Fifth Circuit in its opinion issued in *Kentucky West Virginia Gas Co.* v. *FERC*, No. 82-4504. Since this filing is an out-of-cycle PGA filing and not the regular PGA filing, this filing does not address and is not intended to address this repricing. Such repricing instead will be addressed in a separate filing.

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 June 19, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-13770 Filed 6-17-86; 8:45 am]

BILLING CODE 6717-01-M

Municipal Electric Utilities Association of New York State et al., Order Establishing a Hearing, Granting Interventions, Extending the Time for the Filing of Motions to Intervene, Consolidating Proceeding, and Denying Motion to Initiate Enforcement Action

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

In the matter of Municipal Electric Utilities Association of New York State, Docket No. EL86-24-000 v. Power Authority of the State of New York, Connecticut Municipal Electric Energy Cooperative and Massachusetts Municipal Wholesale Electric Company, Docket No. EL86-29-000 v. Power Authority of the State of New York, Municipal Electric Utilities Association of New York State, Docket No. EL78-24-044 v. Power Authority of the State of New York, Village of Ilion, New York, Docket No. EL78-37-000 v. Power Authority of the State of New York.

Issued: June 13, 1986.

On February 14, 1986, in Docket No. EL86-24-000, the Municipal Electric Utilities Association of New York State (MEUA) filed a complaint and motion for summary disposition against the Power Authority of the State of New York (PASNY), and sought expeditious treatment, stating that PASNY has violated the Niagara Redevelopment Act (NRA), 16 U.S.C. 836 *et seq.*, and it license for the Niagara Project No. 2216, by selling some of the power and energy the NRA and the license set aside for the needs of "public bodies and nonprofit cooperatives" to entities that are not entitled to receive this preference power. As amended,[1] MEUA's complaint requests the Commission to determine that since July 1, 1985, PASNY has violated the Federal Power Act (FPA), the NRA, and its license by selling to municipal distribution agencies (MDAs) in New York some of the preference power the United States Court of Appeals for the Second Circuit directed PASNY to sell to New York preference customers between 1985 and 1989. *See PASNY v. FERC*, 743 F.2d 93, 113 (2d Cir. 1984).[2] MEUA requests the Commission to order PASNY to sell its members all of this preference power immediately, and to compensate its members for the additional costs of power they have incurred since July 1, 1985.

Notice of MEUA's complaint was published in the **Federal Register**,[3] and comments, protests, and motions to intervene were due on or before April 28, 1986. Timely motions to intervene were filed by New York State Electric & Gas Corporation, the Village of Ilion, New York, Orange and Rockland Utilities, Inc., Connecticut Municipal Electric Energy Cooperative and Massachusetts Municipal Wholesale Electric Company, Niagara Mohawk Power Corporation, Consolidated Edison Company of New York, Inc., the County of Westchester Public Utility Service Agency, Allegheny Electric Cooperative, Inc., the Port Authority of New York and New Jersey, New York City Public Utility Service, and the City of Cleveland, Ohio.

PASNY filed a timely answer in opposition to the Village of Ilion, New York's (Ilion) motion to intervene. In support of its opposition, PASNY asserts that Ilion's participation in this proceeding is unnecessary because Ilion is a member of MEUA and has adopted MEUA's complaint as its position on the allegations raised therein. PASNY also states that Ilion seeks intervention to raise certain antitrust claims which are unrelated to the issues raised in MEUA's complaint and that these claims should therefore be brought in a different forum.

On March 18, 1986, PASNY filed an answer to MEUA's original complaint, in which it denied all allegations of unlawful behavior, asserted affirmative defenses, and requested the Commission to dismiss the complaint. While PASNY admitted that it is currently selling 39 megawatts (MW) of Niagara preference power to MDA's, it defended this action

[1] On March 18, 1986, MEUA amended its complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, to eliminate its request for punitive damages.

[2] These allegations were also contained in MEUA and the Village of Ilion, New York's motion to initiate enforcement action, filed July 5, 1985, in Docket Nos. EL78-24-044 and EL78-37-006.

[3] 51 FR 11608 (1986).

on the grounds that these MDA's are "public bodies" under the NRA, and are therefore entitled to purchase some of the preference power the Second Circuit directed PASNY to sell to preference customers.

On March 13, 1986, a similar complaint against PASNY was filed in Docket No. EL86-29-000 by Connecticut Municipal Electric Energy Cooperative (CMEEC) and Massachusetts Municipal Wholesale Electric Company (MMWEC). CMEEC and MMWEC allege that PASNY is violating the NRA and its license by selling preference power to the Vermont Department of Public Service (VDPS) for resale to the customers of investor-owned utilities. After the Commission issued Opinion No. 229, 30 FERC ¶61,323 (March 27, 1985), holding that VDPS was not a "public body" under the NRA, Vermont amended its state law to authorize VDPS

> to distribute and sell at retail electric energy purchased from the Niagara and St. Lawrence power projects to all rural and domestic customers of electricity in Vermont by entering into agreements with Vermont electric utilities that include, without limitation, the leasing of facilities and the providing of services to the department to distribute such electrical energy.

30 VSA Ann. section 212a.

Although the Commission was aware of this statutory amendment when it denied rehearing in Opinion No. 229-A, 32 FERC ¶61,194 (July 30, 1985), the Commission could not determine on that record whether the new authority would enable VDPS to qualify as a "public body" under the NRA. *Id.* at p. 61,451 n.12. Moreover, the Commission stated that it wished to accord PASNY the first opportunity to determine the legality of the new arrangement. The CMEEC and MMWEC complaint alleges that PASNY has now found Vermont's new arrangement valid under the NRA. Since these complainants contend that VDPS has not altered the substance of its activities, and that the legislative action was designed to circumvent the Commission's ruling interpreting the NRA and PASNY's license, CMEEC and MMWEC request the Commission to order PASNY to cease sales of preference power to VDPS for resale to investor-owned utilities or their customers, and to award restitution to PASNY's out-of-state preference customers. Finally, although CMEEC and MMWEC stated that they did not believe a hearing would be necessary to resolve this dispute, they requested that the Commission act expeditiously if it decides that a hearing would be useful.

On April 25, 1986, PASNY filed an answer to CMEEC and MMWEC's complaint, in which it denied all allegations of unlawful behavior, asserted affirmative defenses, and requested the Commission to dismiss the complaint. In particular, PASNY alleged as an affirmative defense that VDPS is a "public body" eligible to purchase Niagara preference power.

Although notice of this complaint was issued on March 28, 1986, by accident this notice was not published in the **Federal Register**. Timely motions to intervene have already been filed by Consolidated Edison Company of New York, Inc., Westchester Public Utility Service Agency, the Vermont Department of Public Service, Allegheny Electric Cooperative, Inc., New York City Public Utility Service, the City of Cleveland, Ohio, the Public Power Association of New Jersey, and the Municipal Utilities Association of New York State. To assure that all interested persons have an opportunity to comment and to file motions to intervene, we will publish this order in the **Federal Register** and extend the time for the filing of motions to intervene until July 10, 1986.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 (1985)), the timely motions to intervene serve to make New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., Connecticut Municipal Electric Cooperative and Massachusetts Municipal Wholesale Electric Company, Niagara Mohawk Power Corporation, Consolidated Edison Company of New York, Inc., County of Westchester Public Utility Service Agency, Allegheny Electric Cooperative, Inc., the Port Authority of New York and New Jersey, the New York City Public Utility Service, the City of Cleveland, Ohio, the Public Power Association of New Jersey, the Municipal Utilities Association of New York State, and the Vermont Department of Public Service parties to these proceedings. Notwithstanding the opposition to the intervention of Ilion, we find that good cause exists to grant its motion to intervene. We are satisfied that it has expressed interests in the outcome of these proceedings that are not adequately represented by other parties and that its participation may be in the public interest. However, we direct the administrative law judge to ensure that Ilion's participation in this proceeding is focused upon the issues set forth in this order, so that we may obtain a prompt resolution of the questions presented here in order to minimize the need for retroactive relief.

These complaints and the motion to initiate enforcement action are predicated upon the claim that PASNY is violating the NRA and its license by allocating preference power to entities created by state or local governments which do not perform enough of the functions of a municipal utility to constitute "public bodies" under the NRA. These filings mark the latest round in a decade-long struggle by these complainants to obtain additional low-cost hydropower from the Niagara Project. In *PASNY* v. *FERC*, 743 F.2d 93 (2d Cir. 1984),[4] the United States Court of Appeals for the Second Circuit affirmed the Commission's finding that PASNY had not set aside sufficient preference power to meet the needs of its New York preference customers.

In Opinion Nos. 229, 30 FERC ¶ 61,323 (1985), and 229-A 32 FERC ¶ 61,194 (1985), we applied the Second Circuit's construction of the NRA in *PASNY* to define "public bodies" under the NRA as "publicly-owned sellers and distributors of electricity at retail." [5] Although Opinion Nos. 229 and 229-A set out a legal definition of "public bodies" and applied that definition in two factual situations, it did not resolve the legality of PASNY's sale of preference power to the MDA's or to VDPS as presently constituted. Consequently, a decision on the appeals of Opinion Nos. 229 and 229-A will not resolve the issues presented in these complaints.

The MDAs consist of municipal corporations within the State of New York which lease distribution facilities

[4] The court ordered PASNY to provide its New York preference customers with an additional 150.33 MW of Niagara Project power between 1985 and 1990. In a subsequent order, the court explained that PASNY should furnish the additional 150.33 NW in incremental amounts, beginning with 39 MW on July 1, 1985, and increasing to an additional 150.33 MW in 1989. In re: Municipal Electric Utilities Association of New York State, 2d Cir. No. 85-3027.

The court there rejected PASNY's arguments that the NRA preference runs to end users. Rather, the court found that Congress had rejected an end-use preference and adopted instead a federal-type preference premised upon the principle of yardstick competition, "which assumes that if the municipal utilities (as distinguished from the end-users) are supplied with cheap hydropower their lower competitive rates will force the private utilities in turn to reduce their rates, with resulting benefits to all, including rural and domestic customers." 743 F.2d at 105.

[5] We found that the Metropolitan Transportation Authority (MTA), a consumer, was not a "public body" under the NRA because it did not resell and distribute electricity, and that VDPS, as then constituted, was not itself an NRA "public body." Rather, it could only purchase preference power as the designated state bargaining agency for "public bodies" in Vermont. Appeals are pending in the United States Court of Appeals for the Second Circuit. Metropolitan Transportation Authority, et al. v. FERC, 2d Cir. Nos. 85-4115, et al.

from existing investor-owned utilities and resell power at retail.[6] Although the MDAs are not all the same, it appears that, under a typical private utility-MDA agreement, an MDA agrees to service consumers in the private utility's service territory and is prohibited from establishing competitive facilities in the utility's service territory or exercising any power of condemnation of the utility's facilities; the private utility agrees to retain billing and collecting responsibilities and to indemnity the MDA from potential tort liability. MEUA's complaint is founded upon the contention that a "publicly-owned seller and distributer of electricity" must be directly responsible for the needs of its retail consumers in order to qualify as a "public body" under the NRA.

Vermont's recently enacted legislation is similar. VDPS distributes and sells NRA preference power directly to consumers at retail by entering into agreements with private utilities for the leasing of facilities and provision of services. Under the agreement between the VDPS and Citizens Utilities Company, for example, the utility agrees to retain "exclusive control of its entire utility system and its utility operation" and to "indemnify and hold [the VDPS] harmless from and against any and all liability. . . ." CMEEC and MMWEC claim that the new statutory powers of VDPS do not transform VDPS into a legitimate "public body" under the NRA, because the present Vermont distribution scheme is in no way different from the arrangment in place prior to the issuance of Opinion No. 229, which we determined did not render VDPS an NRA "public body."

In its answers, PASNY asserts that the NRA [7] does not require "public bodies" to own or control distribution facilities in order to be eligible for an allocation of preference power and, in any event, that under each of the private utility-public utility agreements it has approved, the legal responsibility for delivering NRA preference power to the ultimate consumers rests with the public utility.

In response to the contentions of MEUA, CMEEC, and MMWEC that PASNY's allocation of NRA preference power to these entities will frustrate yardstick competition, PASNY asserts that there is nothing in either the NRA or its legislative history which indicates that the marketing of NRA preference power must actually achieve a competitive economic effect or that the concept of yardstick competition was anything more than a policy basis for the Congressional enactment of the fifty percent preference to public bodies. In light of the Second Circuit's ruling in *PASNY* and our decision in Opinion Nos. 229 and 229–A, we reject this contention. However, we note that PASNY has raised as an alternative a defense that yardstick competition is being advanced by the wide distribution of preference power to the MDAs and VDPS as currently constituted. This is one of the factual disputes that we believe requires an evidentiary hearing.

Although these issues were not addressed by Opinion Nos. 229 and 229–A, the legality of the MDAs was presented to a district court in *PASNY v. MEUA*, 83 Civil 6584, *et al.* At an oral argument on December 13, 1985, the district court judge stated that he would decline the parties' cross motions for summary judgment and grant the Commission's motion to dismiss, in order to permit this Commission to determine in the first instance whether the MDAs constitute NRA "public bodies."

It is not disputed that conventional municipal electric utilities, such as the members of MEUA, CMEEC, and MMWEC, are "public bodies" entitled to receive preference power under the NRA. In Opinion Nos. 229 and 229–A, we determined that governmental agencies without retail sale and distribution responsibility do not qualify as NRA "public bodies." In Opinion No. 229–A, we also clarified the fact that "an ownership requirement has not been Commission policy in the past." 32 FERC ¶ 61,194 at n. 12. We have not, however, determined what utility functions "publicly-owned distributors and sellers of electricity at retail" must maintain to qualify as "public bodies" under the NRA.

The time has come to resolve in one proceeding how much utility responsibility a municipally-owned utility must demonstrate to qualify to purchase preference power from the NRA. We know that municipal utilities do not have to own transmission lines. For years, we have permitted municipal utilities to purchase power from investor-owned utilities and to have the power wheeled to their customers. *See, e.g., Town of Massena v. Niagara Mohawk Power Corp.*, 13 FERC ¶ 63,036 (1980), *complaint withdrawn and decision vacated as moot*, 20 FERC ¶ 61,406 (1982). At the same time, we need to ensure that PASNY is complying with conditions in its license that Congress required us to include. 16 U.S.C. § 836 *et seq.* By setting these complaints for one consolidated hearing, we can perform our statutory duties in the most expeditious manner, and ensure that the low-cost hydropower will continue to reach the entities Congress intended to benefit.

The complainants have presented sufficient evidence that the MDAs and the VDPS are not NRA "public bodies" to warrant an evidentiary hearing on the legality of PASNY's allocation of preference power to the MDAs and VDPS. The administrative law judge assigned to this proceeding should assure that the parties address the following legal issues:

(1) How many governmental entities which lease distribution facilities from investor-owned utilities qualify as NRA "public bodies?"

(2) Does an NRA "public body" need to compete with investor-owned utilities for customers in order to perform a yardstick competition function?

(3) What other responsibilities, if any, must a governmental entity assume to qualify as a "public body" under the NRA?

In addition, the judge should evaluate each of the individual agreements between the public and private utilities to determine whether the particular arrangement is lawful and whether there has been any attempt to circumvent the law or the Niagara license.

In light of our decisions to set these complaint proceedings for one consolidated hearing, we see no need to initiate the enforcement action MEUA and Ilion have requested. Accordingly, we shall deny their motion at this time. [8] We further direct the judge to conduct this hearing on an expedited schedule in order to minimize the need for retroactive relief.

The Commission Orders

(A) MEUA's motion for summary disposition is denied.

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[6] The Commission has accepted for filing and suspended seven private utility-MDA agreements. These proceedings have been consolidated for our consideration of the underlying question of the legality of the MDAs. See 32 FERC ¶ 61,316 (1985); 32 FERC ¶ 61,429 (1985); 33 FERC ¶ 61,194 (1985); 34 FERC ¶ 61,392 (1986).

[7] Although PASNY also argues that the question of whether a public utility is a legitimate NRA "public body" capable of selling and distributing power at retail is controlled by state law, the Second Circuit in *PASNY* made clear that the Commission must interpret the NRA under federal, not state, law. 742 F.2d at 106.

[8] On May 16, 1986, MEUA filed a motion for leave to reply to PASNY'S answer to MEUA's complaint. PASNY filed an answer in opposition to this motion on May 27, 1986. Rule 213 of the Commission's Rules of Practice and Procedure (18 CFR 385.213 (1985)) prohibits an answer to an answer, unless otherwise ordered. We see no reason for making an exception to this rule, since all parties will be given a further opportunity to address the merits of the complaints in the hearing provided for by this order. Accordingly, we will deny MEUA's motion for leave to reply to PASNY's answer.

(B) MEUA's request for an evidentiary hearing is granted.

(C) New York City Public Utility Service and Consolidated Edison Company's motions to dismiss MEUA's complaint are denied.

(D) VDPS' motion to reject CMEEC and MMWEC's complaint is denied.

(E) VDPS' motion for an evidentiary hearing is granted.

(F) Allegheny's motion for an order directing PASNY to allocate out-of-state preference power only to Pennsylvania and Ohio is denied.

(G) The motions to intervene of New York State Electric & Gas Corporation, Orange and Rockland Utilities, Inc., Connecticut Municipal Electric Energy Cooperative and Massachusetts Municipal Wholesale Electric Company, Niagara Mohawk Power Corporation, Consolidated Edison Company of New York, Inc., County of Westchester Public Utility Service Agency, Allegheny Electric Cooperative, Inc., the Port Authority of New York and New Jersey, New York City Public Utility Service, the City of Cleveland, Ohio, the Public Power Association of New Jersey, the Municipal Utilities Association of New York State, the Vermont Department of Public Service, and the Village of Ilion, New York are granted. Relevant motions to intervene will be deemed timely if filed on or before July 10, 1986.

(H) Pursuant to sections 306 and 308 of the FPA, 16 U.S.C. 825e, 825g, section 1(b)(2) of the NRA, 16 U.S.C. 836(b)(2), and the license for Project No. 2216, this matter shall be set for hearing to consider all matters of fact and law consistent with the provisions of this order.

(I) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference, to be held within fifteen (15) days after July 10, 1986, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. The presiding judge is directed to set this proceeding on an expedited schedule, and is authorized to establish procedural dates and to rule upon all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(J) Docket Nos. EL86-24-000 and EL86-29-000 are hereby consolidated.

(K) MEUA and Ilion's Motion to Initiate Enforcement Action in Docket Nos. EL78-24-044 and EL78-37-006 is denied.

(L) MEUA's Motion for Leave to File Reply in Docket No. EL86-24-000 is denied.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 86-13768 Filed 6-17-86; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-240069; FRL-3032-7]

State Registrations of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 16 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the **Federal Register.**

DATE: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Owen F. Beeder, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC, Office location and telephone number: Rm. 716A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7893).

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c) applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in March and April of 1986. Receipts of State registrations will be published periodically. Of the following registrations, none involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Arkansas

EPA SLN No. AR 86 0003. Chevron Chemical Co. Registration is for Orthene 75-S Soluble Powder to be used for treatment of cotton seed hopper box to control thrips, cotton aphids, and black (greasy) cutworms. February 21, 1986.

California

EPA SLN No. CA 86 0010. Yolo County Dept. of Agriculture. Registration is for Commensal Rodent Bait Bromadiolone Treated Grain .005% for use against Norway rats, roof rats, and house mice in and around the periphery of homes; industrial, commercial, and public buildings located in urban areas; and alleys located in urban areas. February 11, 1986.

EPA SLN No. CA 86 0011. Riverside County Agriculture Dept. Registration is for Commensal Rodent Bait Bromadiolone Treated Grain .005% for use against Norway rats, roof rats, and house mice in and around the periphery of homes; industrial, commercial, and public buildings located in urban areas; and alleys located in urban areas. February 11, 1986.

EPA SLN No. CA 86 0013. Stanislaus County Dept. of Agriculture. Registration is for Horned Lark Bait to be used on croplands to control horned larks. February 11, 1986.

EPA SLN No. CA 86 0014. Forest Pest Management. Registration is for Captan 50-W to be used on conifer seed to control fungi of various types. February 14, 1986.

EPA SLN No. CA 86 0015. San Diego County Dept. of Agriculture. Registration is for Pyrenone Crop Spray to be used on persimmons to control greenhouse thrips. February 14, 1986.

EPA SLN No. CA 86 0016. De Martini & Gerlomes. Registration is for Kocide 101 to be used on chestnuts to control shot hole and scab. February 28, 1986.

EPA SLN No. CA 86 0017. University of California, Davis, CA. Registration is for Temik 10G to be used on ornamental research plants to control whiteflies and leafminers. March 3, 1986.

EPA SLN No. CA 86 0018. University of California, Davis, CA. Registration is for Ridomil 2E to be used on head lettuce to control downy mildew. March 14, 1986.

EPA SLN No. CA 86 0019. Pfizer, Inc., Chem. Division. Registration is for Mycoshield Brand of Agricultural Terramycin to be used on pears to enable aerial application to control fire blight. March 20, 1986.

EPA SLN No. CA 86 0022. Sutter County. Registration is for Cythion Insecticide, The Premium Grade

Malathion 57% E.C., to be used on wild rice to control rice leafminers, grasshoppers, and lepidopterious larvae. April 8, 1986.

EPA SLN No. CA 86 0023. John P. Baranek. Registration is for Pro-Gib 4% to be used on grapes to control bunch rot. April 15, 1986.

Florida

EPA SLN No. FL 86 0002. Ciba-Geigy Corp. Registration is for Ridomil 2E to be used on head lettuce to control downy mildew. March 7, 1986.

EPA SLN No. FL 86 0003. Motomco, Ltd. Registration is for Contrax-D to be used on fields adjacent to sugar cane and sweet corn to control Norway and roof rats. March 7, 1986.

EPA SLN No. FL 86 0004. Shell Oil Co. Registration is for Pydrin 2.4 E.C. to be used on collards to control various insects. March 21, 1986.

EPA SLN No. FL 86 0005. Shell Chemical Co. Registration is for Vendex 4L Miticide to be used on citrus to control mites. March 21, 1986.

EPA SLN No. FL 86 0006. ICI Americas, Inc. Registration is for Ambush to be used on watercress to control diamondback moths. March 21, 1986.

EPA SLN No. FL 86 0007. Chevron Chemical Co. Registration is for Orthene 75S Soluble Powder to be used on splash pine seed orchards to control slash pine flower thrips. March 26, 1986.

EPA SLN No. FL 86 0008. Decco Tiltbelt Div. of Pennwalt Corp. Registration is for Deccosalt No. 19 to be used on citrus, apples, pears, and bananas to control penicillin molds. April 16, 1986.

Idaho

EPA SLN No. ID 86 0001. FMC Corp. Registration is for Aqua 8 Parathion to be used on lentils to control armyworms, loppers, lygus, and aphids. March 13, 1986.

EPA SLN No. ID 86 0002. U.S. Fish and Wildlife Service. Registration is for Compound DRC 1339 98% Concentrate to be used on waterfowl to protect against ravens and magpies. March 13, 1986.

EPA SLN No. ID 86 0003. Lipha Chemicals, Inc. Registration is for Rozol Tracking Powder for use against nuisance bats. March 28, 1986.

EPA SLN No. ID 86 0004. Gowan Co. Registration is for Prokil Dimethoate E-267 to be used on lentils to control aphids and lygus bugs. April 1, 1986.

EPA SLN No. ID 86 0005. Merck & Co. Registration is for Mertect LSP Fungicide to be used on chickpeas to control seedborne ascochyta blight. April 1, 1986.

EPA SLN No. ID 86 0007. Hoechst-Roussel Agri-Vet Co. Registration is for Hoelon 3 E.C. Herbicide to be used on winter wheat to control downy brome and ripgut brome as germination occurs. April 10, 1986.

EPA SLN No. ID 86 0008. Wilbur-Ellis Co. Registration is for Dimethoate 267 to be used on ornamental, shade, and nursery trees to control aphids and elm leaf beetles. April 10, 1986.

EPA SLN No. ID 86 0009. Gustafson, Inc. Registration is for Gustafson Apron FL to be used on garbanzo beans (chickpeas) as seed treatment for control of pythium and phytophthora. April 15, 1986.

EPA SLN No. ID 86 0010. Wilbur-Ellis Co. Registration is for Parathion 8 Flowable to be used on lentils to control armyworms. April 16, 1986.

EPA SLN No. ID 86 0012. Wilbur-Ellis Co. Registration is for Dimethoate 267 to be used on lentils to control aphids and lygus. April 23, 1986.

Mississippi

EPA SLN No. MS 86 0002. Union Carbide Agricultural Products Co. Registration is for Larvin 3.2 Thiodicarb insecticide to be used on sweet corn to control corn earworms, European corn borers, and armyworms. March 10, 1986.

Montana

EPA SLN No. MT 86 0001. Degesch America, Inc. Registration is for Degesch Magtoxin Pellets Prepac to be used on food and feed processing equipment to control flour beetles and other stored-products insects listed on the Federal label. April 2, 1986.

Nebraska

EPA SLN No. NE 86 0003. Shell Chemical Co. Registration is for Atrazine 4L Herbicide to be used on fallow grounds to control annual broadleaf and grass weeds following harvest of corn, sorghum, and wheat. March 20, 1986.

EPA SLN No. NE 86 0004. Shell Chemical Co. Registration is for Atrazine 80W Herbicide to be used on fallow grounds to control annual broadleaf and grass weeds following harvest of corn, sorghum, and wheat. March 20, 1986.

EPA SLN No. NE 86 0005. Shell Chemical Co. Registration is for Atrazine 4L Herbicide to be used on grain sorghum to control weeds. March 20, 1986.

Nevada

EPA SLN No. NV 86 0003. U.S. Fish and Wildlife Service. Registration is for 1339 Treated EGG Baits 98% Concentrate to protect shorebirds, waterfowl, and newborn lambs from raven predation. January 22, 1986.

EPA SLN No. NV 86 0004. Nevada Dept. of Agriculture. Registration is for Gramoxone Paraquat Plus to be used on onions to control broadleaf weeds and grasses. April 14, 1986.

EPA SLN No. NV 86 0005. FMC Corp.–ACG. Registration is for Thiodan 3EC to be used on seed alfalfa to control spotted alfalfa aphids. April 22, 1986.

New Jersey

EPA SLN No. NJ 86 0004. Union Carbide Agricultural Products Co. Registration is for Temik 15G to be used on potatoes to control aphids, Colorado potato beetles, and leafhoppers. March 3, 1986.

New Mexico

EPA SLN No. NM 86 0001. American Cyanamid Co. Registration is for Counter to be used on field corn to control Banks grass mites. July 17, 1985.

North Carolina

EPA SLN No. NC 86 0001. Y-Tex Corp. Registration is for Max-Con Insecticide Ear Tags to be used on cattle to control horn flies and Gulf Coast ticks. March 5, 1986.

Oregon

EPA SLN No. OR 86 0003. American Cyanamid Co. Registration is for Counter to be used on sugar beets to suppress sugar beets cyst nematodes. March 5, 1986.

Utah

EPA SLN No. UT 86 0002. U.S. Fish and Wildlife Service. Registration is for Pigeon Bait Poisoned Grain to be used for control of feral or domestic pigeons in municipalities and around farm buildings during winter months. February 26, 1986.

Virginia

EPA SLN No. VA 86 0001. Y-Tex Corp. Registration is for Max-Con Insecticide Ear Tag to be used on cattle to control horn flies and ticks. March 20, 1986.

Washington

EPA SLN No. WA 86 0005. Merck & Co. Registration is for Agri-Strep Type D to be used on pears and apples to control blossom blight. February 5, 1986.

EPA SLN No. WA 86 0006. Chacon Chemical Co. Registration is for Diazinon 5% Granular Insecticide to be used on turf to control European crane fly larvae. February 7, 1986.

EPA SLN No. WA 86 0007. FMC Corp. Registration is for Elgetol to be used on apples to control blossom thinning on various varieties. March 4, 1986.

EPA SLN No. WA 86 0008. Aceto Agricultural Chemicals. Registration is for Dimethoate/Dimethogon 267 Systemic Insecticide to be used on cherries to control cherry fruit flies. March 4, 1986.

EPA SLN No. WA 86 0009. Wilbur-Eillis Co. Registration is for Dimethoate 267 to be used on cherries to control cherry fruit flies. March 4, 1986.

EPA SLN No. WA 86 0010. UAP Special Products. Registration is for Diazinon 5% Granules to be used on home lawns, turf, and ornamental turf areas to control European crane fly larvae. March 18, 1986.

Wisconsin

EPA SLN No. WI 86 0001. Chevron Chemical Co. Registration is for Ortho Diquat Herbicide H/A to be used on ponds, lakes, reservoirs, etc. to control duckweeds, watermilfoil, and elodea. March 21, 1986.

(Sec. 24 as amended, 92 Stat. 835 (7 U.S.C. 136))

Dated: June 5, 1986.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-13615 Filed 6-17-86; 8:45 am]

BILLING CODE 6560-50-M

[PF-457; FRC-3033-2]

Pesticide Tolerance Petitions; Mobay Chemical Corp.

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA has received pesticide, feed and food additive petitions from the Mobay Chemical Corp. relating to the amendment of tolerances for the combined residues of the fungicide beta-(4-chlorophenoxy)-alpha-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol and its metabolites containing chlorophenoxy and triazole moieties (expressed as the fungicide) in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-457] and the petition number, attention Product Manager (PM-21), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to:

Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in reponse to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Henry M. Jacoby, (PM-21), Registration Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 229, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA, (703-557-1900).

SUPPLEMENTARY INFORMATION: EPA has received pesticide (PP), feed and food additive petitions (FAP), from Mobay Chemical Corp., P.O. Box 4913, Hawthorn Road, Kansas City, MO 64120, relating to the amendment of tolerances for the combined residues of the fungicide, beta-(4-chlorophenoxy)-alpha-(1,1-dimethyllethyl)-1*H*-1,2,4-triazole-1-ethanol and its metabolites containing chlorophennoxy and triazole moieties (expressed as the fungicide) in or on certain agricultural commodities.

Amended Petitions

1. *PP 5F3224.* EPA issued a notice published in the **Federal Register** of April 10, 1985, (50 FR 14156), which announced that Mobay Chemical Corp., had submitted PP 5F3224 to the Agency proposing to amend 40 CFR Part 180 by establishing tolerances for the combined residues of the fungicide in or on certain raw agricultural commodities.

Mobay has amended the petition by increasing the tolerance levels as follows:

Commodities	Part per million (ppm)	
	From	To
Grapes	0.5	1.0
Wheat, grain	0.75	1.0
Wheat, green forage	85.0	100.0
Wheat, straw	17.0	20.0

and by increasing the tolerance level in or meat, fat and meat byproducts of poultry from 0.01 to 0.02 ppm.

The proposed analytical method for determining residues is gas chromatography.

2. *FAP 5H5458.* EPA issued a notice, published in the **Federal Register** of April 10, 1985 (50 FR 14156), which announced that Mobay Chemical Corp. proposed amending 21 CFR Parts 193 (food) and 561 (feed) by establishing a regulation permitting the combined residues of the fungicide in or on certain processed commodities.

Mobay has amended the petition by increasing the tolerance levels as follows:

CFR affected	Commodities	PPM	
		From	To
21 CFR Part 193	Grape juice	0.6	1.5
	Wheat, milled fractions (except flour).	3.5	4.0
21 CFR Part 561	Grape pomace (wet and dry).	2.5	50.0
	Raisin waste	1.8	5.0

Authority: 21 U.S.C. 346a and 348.

Dated: June 9, 1986.

James W. Akerman,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 86-13747 Filed 6-17-86; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-51622A; FRL-3033-1]

Certain Chemicals Premanufacture Notices; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice corrects the PMN chemical names on four premanufacture notices (PMNs) published in the **Federal Register** on May 9, 1986 (51 FR 17232).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street, SW, Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 9, 1986 (51 FR 17232), EPA issued a notice of receipt of four PMNs.

In FR Doc. 86-10441 appearing at page 17234, column three under "PMN No. 86-973," the chemical "(G) Allyl ether of an unsaturated fatty acid" is corrected to read "(G) Isophorone diisocyanate urethane formed from a beta hydroxy ester of an unsaturated fatty acid", "PMN No. 86-974," the chemical "(G) Isophorone diisocyanate urethane formed from a beta hydroxy ester of an unsaturated fatty acid" is corrected to read "(G) Allyl ether ester of an unsaturated fatty acid", and "PMN No. 86-976," the chemical "(G) Diisocyanate" is corrected to read "(G) Diisocyanate polymers with polyether polyols." On page 17235, column one under "PMN 86-977," the chemical "(G) Polymer with polyether polyols" is corrected to read "(G) Diisocyanate polymers with polyether polyols."

Dated: June 9, 1986.

Denise Devoe,

Acting Director, Information Management Division.

[FR Doc. 86-13748 Filed 6-17-86; 8:45 am]

BILLING CODE 6560-50-M

[SAB-FRL-3033-4]

Science Advisory Board Environmental Health Committee Metals Subcommittee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that a two-day meeting of the Metals Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on July 15-16, 1986, in the Anderson Room (Room G-8534) of the Medical Education Wing in the School of Medicine, University of Rochester, 601 Elmwood Avenue, Rochester, New York 14642. The meeting will start at 1:00 p.m. on July 15 and adjurn no later than 4:00 p.m. on the following day.

The principal purposes of the meeting will be (1) to review the scientific adequacy of a revised draft Health Assessment Document for Beryllium prepared by the Office of Research and Development (ORD) and dated April, 1986 (EPA-600/8-84-026B) and (2) to discuss other issues of interest to the Subcommittee. To obtain copies of the draft Health Assessment Document for Beryllium, please write the ORD Publications Office, Center for Environmental Research Information, U.S. EPA, Cincinnati, Ohio 45268 or call (513) 684-7562.

The meeting will be open to the public. Any member of the public wishing to attend or present information, or desiring further information, should contact either Dr. Daniel Byrd, Executive Secretary to the Committee, or Mrs. Brenda Johnson, by telephone at (202) 382-2552 or by mail to: Science Advisory Board (A-101F), 401 M Street SW., Washington, DC 20460, no later than c.o.b. July 11, 1986.

Dated: June 9, 1986.

Terry F. Yosie,

Staff Director, Science Advisory Board.

[FR Doc. 86-13745 Filed 6-17-86; 8:45 am]

BILLING CODE 6560-50-M

(SAB-FRL-3033-5)

Science Advisory Board Executive Committee; Open Meeting—July 10-11, 1986

Under Pub. L. 92-463, notice is hereby given of a meeting of the Executive Committee of the Science Advisory Board (SAB) on July 10-11, 1986. The meeting will be held at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, North EPA Conference Center, Room #3. The meeting will begin at 9:00 a.m. July 10 and will adjourn at approximately 3:30 p.m. on July 11.

The purpose of the meeting is to brief and discuss with the Committee a number of issues including: reports of Science Advisory Board committees and subcommittees; relationships with the Health Effects Institute; SAB initiatives for fiscal years 1987 and 1988; EPA's Risk Assessment Forum and Risk Assessment Council; and other issues of member interest.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street, SW, Washington, DC. 20460 or call (202) 382-4126 by close of business July 3, 1986.

Dated: June 11, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-13744 Filed 6-17-86; 8:45 am]

BILLING CODE 6560-50-M

(SAB-FRL-3033-3)

Science Advisory Board Water Quality Standards Research Review Subcommittee; Open Meeting—July 8, 1986

Under Pub. L. 92-463, notice is hereby given of a meeting of the Water Quality Standards Research Review Subcommittee of the Science Advisory Board on July 8, 1986. The meeting will be held at the U.S. Environmental Protection Agency's Environmental Research Laboratory, 6201 Congdon Boulevard, Duluth, Minnesota, in the main conference room. The meeting will begin at 8:30 a.m. and will adjourn at approximately 5:30 p.m.

The purpose of the meeting will be to discuss the current and proposed research needs in support of the Agency's water quality standards program. The major issues under discussion will be: Exposure Parameters; Validation; Monitoring Strategy; Criteria Methodology; Toxicity Identification and Modeling; Methods Standardization and Accuracy; Use Attainability; Waste Load Allocation; Multiple Sources; Focusing; and Technology Transfer.

The meeting is open to the public. Any member of the public wishing to attend or obtain information should contact Dr. Terry F. Yosie, Director, Science Advisory Board or Mrs. Joanna Foellmer located at 401 M Street, SW, Washington, DC 20460 or call (202) 382-4126 by close of business July 1, 1986.

Dated: June 10, 1986.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 86-13746 Filed 6-17-86; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. 86-585]

Mutual to Stock Conversion Application Forms

June 11, 1986.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted for extension, without revision, an information collection request, "Mutual to Stock Conversion Application Form" to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35.)

Comments: Comments on the information collection request are welcome and should be submitted within 15 days of publication of this notice in the **Federal Register.** Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection request and supporting documentation are obtainable at the Board address given below: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552, Phone: 202-377-6933.

FOR FURTHER INFORMATION CONTACT: J. Larry Fleck, Office of the General Counsel, (202) 377-6413, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

Jeff Sconyers,

Secretary.

[FR Doc. 86-13761 Filed 6-17-86; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreements pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-008054-023.

Title: South and East Africa/U.S.A. Agreement.

Parties:

The Bank Line, Limited
Lykes Bros. Steamship Co., Inc.
South African Marine Corp., Ltd.
United States Lines, Inc.

Synopsis: The proposed modification would amend the voting provisions of the agreement from requiring the parties' unanimous consent on all actions to requiring a vote of two-thirds on shipper-initiated polls and unanimous consent on carrier-initiated polls. The parties have requested a shortened review period.

Agreement No.: 202-009502-017.

Title: United States/South and East Africa Conference Agreement.

Parties:

The Bank Line, Limited
Lykes Bros. Steamship Co., Inc.
South African Marine Corp. Ltd.
United States Lines, Inc.

Synopsis: The proposed modification would amend the voting provisions of the agreement from requiring the parties' unanimous consent on all actions to requiring a vote of two-thirds on shipper-initiated polls and unanimous consent on carrier-initiated polls. The parties have requested a shortened review period.

Agreement No.: 224-010960.

Title: Los Angeles Terminal Agreement No. 224-010960.

Title: Los Angeles Terminal Agreement.

Parties:

City of Los Angeles (City)
D'Amico Societa de Navigazionw S.P.A. (D'Amico)

Synopsis: The proposed agreement would permit the City to pay D'Amico the sum of $22,300 in return for which D'Amico agrees to move all cargo shipped on vessels owned or operated by it into or out of the Southern California area through the Port of Los Angeles. The agreement shall remain in effect for one year.

Agreement No.: 224-010961.

Title: Galveston Terminal Agreement.

Parties: Board of Trustees of the Galveston Wharves (Board)
Southern Compress and Warehouse Co. (SC&W)

Synopsis: The proposed agreement would permit the Board to rent warehouse space known as Pier 9 of the Galveston Wharves to SC&W for the storage of cotton. The initial term of the agreement shall be for a period of one year with options for three one-year extensions. The parties have requested a shortened view period.

By order of the Federal Maritime Commission.

Dated: June 13, 1986.

John Robert Ewers,

Secretary.

[FR Doc. 86-13728 Filed 6-17-86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Johnston County Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the applicaiton must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 1986.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoening, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Johnston County Bancshares, Inc.*, Tishomingo, Oklahoma; to acquire Johnston County Insurance Agency, Inc., Tishomingo, Oklahoma, and thereby engage in the sale of life, accident and health insurance directly related to extensions of credit made by Applicant or its subsidiaries pursuant to section 4(c)(8)(A) of the Bank Holding Company Act and § 225.25(b)(8)(I)(A) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 12, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13694 Filed 6-17-86; 8:45 am]

BILLING CODE 6210-01-M

Peoples Financial Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.24) 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)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than July 10, 1986.

A. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Peoples Financial Corporation*, Linton, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Trust Company, Linton, Indiana.

Board of Governors of the Federal Reserve System, June 12, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13695 Filed 6-17-86; 8:45 am]

BILLING CODE 6210-01-M

Consumer Advisory Council; Solicitation of Nominations for Membership

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Solicitation of nominations for membership on the Board's Consumer Advisory Council.

SUMMARY: The Board is asking the public to nominate qualified individuals for appointment to its Consumer Advisory Council. Seven new members will be selected for three-year terms that will begin in January 1987. Nominations should include the name, address, and telephone number of the nominee, together with information about past and present positions held, and special knowledge, interests or experience related to consumer credit or other consumer financial services. The Board is particularly interested in receiving nominations of persons from consumer advocacy groups, community organizations, state and local government offices, and the academic community who have taken special interest in consumer or mortgage credit or other consumer financial services. It is contemplated that the Board will announce its selection of new members by year-end.

DATE: Nominations should be received by August 22, 1986.

ADDRESS: Nominations should be submitted in writing to Dolores S. Smith, Assistant Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. This information about nominees is available for inspection upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information. (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: Bedelia Calhoun, Staff Specialist, Division of Consumer and Community Affairs, (202) 452-3305; or for Telecommunications Device for the Deaf (TD) users, Earnestine Hill or Dorothea Thompson, (202) 452-3544; Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: The Consumer Advisory Council was established by the Congress in 1976 to advise the Federal Reserve Board on the exercise of its duties under the Consumer Credit Protection Act and on other consumer-related matters. The Council by law represents the interests both of consumers and of the financial community. Members serve three-year terms that are staggered to provide the Council with continuity.

Seven new members will be selected this year to replace members whose terms expire on December 31, 1986. In making the appointments, the Board will seek to complement the qualifications of continuing Council members in terms of affiliation and geographic representation, and to ensure the representation of women and minority groups. The Board expects to announce its selection of new members by year-end.

The Board is interested in candidates who have some familiarity with current issues in the area of consumer credit and other consumer financial services. The Board is particularly interested in receiving nominations of persons associated with consumer and community organizations, state and local government offices, and the academic community who have taken special interest in consumer or mortgage credit or other consumer financial services.

The Council meets in Washington, DC three times a year. Council members are paid $100 per day for participating in the one and a half day meetings and for travel time. The Board also pays travel expenses.

The names and affiliations of current Council members (and the expiration date of each term of office) are listed below:

Chairman

Margaret M. Murphy, Associate Professor and Director, Columbia Center, Johns Hopkins University, Columbia, Maryland, December 31, 1986

Vice Chairman

Lawrence S. Oikinaga, Partner, Carlsmith, Carlsmith, Wichman and Case, Honolulu, Hawaii, December 31, 1986

Members

Rachel G. Bratt, Assistant Professor, Department of Urban and Environmental Policy, Tufts University, Medford, Massacusetts, December 31, 1986

Edwin B. Brooks, President, Security Federal Savings & Loan Association, Richmond, Virginia, December 31, 1988

Jonathan A. Brown, Director, BankWatch, Washington, DC., December 31, 1987

Michael S. Cassidy, Senior Vice President, Chase Manhattan Bank, N.A., New York, New York, December 31, 1988

Theresa Faith Cummings, Social Services, Consultant, Springfield, Illinois, December 31, 1987

Neil J. Fogarty, Senior Attorney, Hudson County Legal Services, Jersey City, New Jersey, December 31, 1988

Steven M. Geary, Associate General Counsel, Consumer Credit, Missouri Division of Finance, Jefferson City, Missouri, December 31, 1986

Kenneth A. Hall, President, Great Southern National Bank of Jackson, Jackson, Mississippi, December 31, 1988

Steven W. Hamm, Administrator, South Carolina Department of Consumer Affairs, Columbia, South Carolina, December 31, 1988

Robert J. Hobbs, Senior Attorney, National Consumer Law Center, Boston, Massachusetts, December 31, 1988
Robert W. Johnson, Professor of Management and Director, Credit Research Center, Purdue University, West Lafayette, Indiana, December 31, 1988
John M. Kolesar, President, Ameritrust Development Bank, Cleveland, Ohio, December 31, 1988
Edward N. Lange, Partner, Davis, Wright, Todd, Riese & Jones, Seattle, Washington, December 31, 1987
Alan B. Lerner, Senior Executive Vice President, Associates Corporation of North America, Dallas, Texas, December 31, 1988
Fred S. McChesney, Assistant Professor of Law, Emory University Atlanta, Georgia, December 31, 1987
Fred H. Miller, Professor of Law, University of Oklahoma College of Law, Norman, Oklahoma, December 31, 1986
Robert F. Murphy, Chairman, General Motors Acceptance Corporation, Detroit, Michigan, December 31, 1986
Helen E. Nelson, President, Consumer Research Foundation, Mill Valley, California, December 31, 1987
Sandra R. Parker, Chairman, Banking Committee, Richmond United Neighborhoods, Richmond, Virginia, December 31, 1988
Joseph L. Perkowski, Chief Executive Officer, Minneapolis Federal Employees Credit Union, Centerville, Minnesota, December 31, 1987
Brenda L. Schneider, Director of Community Relations, Manufacturers National Bank, Detroit, Michigan, December 31, 1987
Jane Shull, Director, Institute for the Study of Civic Values, Philadelphia, Pennsylvania, December 31, 1988
Ted L. Spurlock, Vice President and Director of Credit and Consumer Banking Services, J.C. Penney Company, Inc., New York, New York, December 31, 1987
Mel R. Stiller, Executive Director, Consumer Credit Counseling Service of Eastern Massachusetts, Boston, Massachusetts, December 31, 1987
Christopher J. Sumner, President and Chief Executive Officer, Western Savings & Loan Company, Salt Lake City, Utah, December 31, 1987
Edward J. Williams, Senior Vice President, Consumer Banking Group, Harris Trust and Savings Bank, Chicago, Illinois, December 31, 1988
Mervin Winston, Vice President, First Bank System, Inc., Minneapolis, Minnesota, December 31, 1986
Michael Zoroya, Retail Services Consultant, The May Department Stores, St. Louis, Missouri, December 31, 1987

Board of Governors of the Federal Reserve System, June 12, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13693 Filed 6-17-86; 8:45 am]

BILLING CODE 6210-01-M

Application to Engage de Novo in Permissible Nonbanking Activities; Bank of Virginia Company

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to 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.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competiton, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 9, 1986.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 2361:

1. *Bank of Virginia Company*, Richmond, Virginia; to engage *de novo* through its subsidiary UTB Agency, Inc., Baltimore, Maryland, in general insurance activities pursuant to section 4(c)(8)(G) of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, June 13, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13802 Filed 6-17-86; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Citizen's Bancorp Investment, Inc., et al.

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 July 11, 1986.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Citizen's Bancorp Investment, Inc.*, Lafayette, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Citizen's Bank, Layfayette, Tennessee.

B. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South Lasalle Street, Chicago, Illinois 60690:

1. *Michigan National Corporation*, Bloomfield Hills, Michigan; to acquire 100 percent of the voting shares of Independence One Bank, National

Association, Rapid City, South Dakota, a de novo bank.

C. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Brighton Bancorp, Inc.*, Brighton, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Brighton Bancshares Corporation, Brighton, Tennessee, and thereby indirectly acquire Brighton Bank, Brighton, Tennessee.

D. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Galenabanc, Inc.*, Galena Park, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Galena Park State Bank, Galena Park, Texas.

2. *Texas Commerce Bancshares, Inc.*, Houston, Texas; to acquire 100 percent of the voting shares of Texas Commerce Bank-San Antonio Loop 410, San Antonio, Texas.

Board of Governors of the Federal Reserve System, June 13, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13803 Filed 6-17-86; 8:45 am]

BILLING CODE 6210-01-M

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; Metroplex North Bancshares, Inc., et al.

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. 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 each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than July 10, 1986.

A. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Metroplex North Bancshares, Inc.*, Plano, Texas; to acquire DataBank Services Corporation, Plano, Texas, and thereby engage in providing to others financially related data processing and data processing and data transmission services, facilities, and data bases, or access to them pursuant to § 225.25(b)(7) of the Board's Regulation Y. These activities will be conducted in the State of Texas.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Metro Bancorp, Incorporated*, Phoenix, Arizona; through its subsidiary, MB Mortgage Company, Phoenix, Arizona, to acquire 100 percent of the outstanding voting shares of Mesa Mortgage Company, Phoenix, Arizona, and thereby engage in mortgage banking activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. Comments on this application must be received by July 4, 1986.

Board of Governors of the Federal Reserve System, June 13, 1986.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 86-13804 Filed 6-17-86; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Stay of rule and invitation to comment on exemption.

SUMMARY: The Commission is requesting public comment with respect to a request from Austin Rover Cars of North America for an exemption from the requirements of the Franchise Rule. The Commission has also stayed the Franchise Rule (16 CFR Part 436) insofar as it applies to such Automobile Company pending a final decision by the Commission on the exemption request.

DATE: Written comments will accepted until August 15, 1986. The stay is effective June 18, 1986.

ADDRESS: Comments may be filed in person or mailed to: Secretary, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Neil J. Blickman, Esq., PC-B-425, Federal Trade Commission, 6th and Pennsylvania Avenue, NW., Washington, DC 20580, (202) 376-2893.

SUPPLEMENTARY INFORMATION: On December 21, 1978, the Federal Trade Commission promulgated a trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures." (16 CFR Part 436) In general, the Rule provides for pre-sale disclosure to prospective franchisees of important information about the franchisor, the franchise business and the terms of the proposed franchise relationship. A summary of the Rule appears as *Appendix A* below.

Section 18(g) of the Federal Trade Commission Act provides that any person or class of persons covered by a trade regulation rule may petition the Commission for an exemption from such rule, and if the Commission finds that the application of such rule to any person or class of persons is not necessary to prevent the unfair or deceptive act or practice to which the rule relates, the Commission may exempt such person or class from all or any part of the rule.

Austin Rover Cars of North America filed a petition for exemption pursuant to section 18(g) on January 15, 1986. Briefly stated, Petitioner alleges that an exemption should be granted to Austin Rover Cars of North America because: (1) The disclosures required by the Rule would not provide any meaningful assistance to prospective franchisees; (2) the Rule was not intended to cover franchisors such as automobile manufacturers or distributors selling automobile dealerships; instead, the Rule was intended to protect franchisees from financially unstable franchisors, using high-pressure sales tactics to acquire franchisees as a source of low-cost capital; (3) existing federal and state regulations provide all the necessary protection; (4) some disclosures would be extremely burdensome, especially the Rule's requirements regarding financial statements and the Rule's requirement that out-of-court settlements of litigation be disclosed; (5) none of the three characteristics which the Commission has articulated in its Statement of Basis and Purpose for the Franchise Rule as creating the potential for unfair and deceptive trade practices by franchisors is present with respect to Petitioner; for example, Petitioner neither grants dealerships in order to raise low-cost capital, nor selects dealers who are unsophisticated persons with little previous business experience, nor uses high-pressure sales tactics to sign up new dealers; (6) coverage by the Rule is not necessary because sufficient disclosure to prevent potential abuses is already provided to prospective dealers as a matter of standard industry practice, and (7) since the Commission has previously granted exemptions from the Rule to several other automobile companies and their subsidiaries who conduct their business in a manner quite similar to that of Petitioner, it would be unfair to apply the Rule to Petitioner but not to other automobile companies.

For a complete presentation of the arguments submitted by Petitioner, please refer to the full text of the petition set forth as *Appendix B*.

In assessing the present exemption request, the Commission would like comments on all relevant issues germane to the proceeding including the following: (1) Does Petitioner engage in unfair or deceptive acts or practices in the offer and sale of motor vehicle franchises? If it does not, is it in the public interest to exempt it from coverage under the franchise Rule? (2) If an exemption is appropriate, should it be (a) limited to Petitioner; (b) expanded and made applicable to all motor vehicle manufacturers, or (c) expanded only to a particular class, and if so, what is the proper definition of the class sharing the characteristics that make applicability of the Franchise Rule unnecessary?

The Commission is also interested in receiving comments on whether provisions of the Automobile Dealer Franchise Act or the Automobile Dealers Day in Court Act constitute industry-specific federal substantive law sufficient to remedy the same abuses that the Rule attempts to remedy through information disclosure.

The Commission has analyzed the arguments made by Petitioner and concluded that further inquiry is warranted before a determination regarding the petition can be made. The Commission, therefore, seeks comment regarding the exemption requested by Petitioner. In addition, after weighing the potential harm to Petitioner, and the public interest, the Commission has determined that a stay of the Franchise Rule (16 CFR Part 436) insofar as it applies to the automobile company Petitioner, pending a final Commission decision on the exemption request, is appropriate and shall become effective this date.

All interested parties are hereby notified that they may submit written data, views or arguments on any issues of fact, law or policy that may have some bearing on the requested exemption whether or not such issues have been raised by the petition or in this notice. Such submissions may be made for sixty days to the Secretary of the Commission.

Written comments will be accepted until August 15, 1986. Comments may be filed in person or mailed to: Secretary, Federal Trade Commission, 6th & Pennsylvania Avenue, NW., Washington, DC 20580.

Comments should be identified as "Auto Industry Franchise Rule Exemption Comment" and, if possible, be submitted in five copies.

By direction of the Commission.

Emily H. Rock,

Secretary.

Appendix A—Franchise Rule Summary

Bureau of Consumer Protection

The Franchise Rule, which is formally titled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," was adopted in response to widespread evidence of deceptive and unfair practices in connection with the sale of the types of businesses covered by the Rule. These practices often appear when prospective franchisees lack a ready means of obtaining essential and reliable information about their proposed business investment. This lack of information reduces the ability of prospective franchisees either to make an informed investment decision or otherwise verify the representations of the business' salespersons.

The Rule attempts to deal with these problems by requiring franchisors and franchise brokers to furnish prospective franchisees with information about the franchisor, the franchise business and the terms of the franchise agreement. Franchisors and franchise brokers must furnish additional information if they have made any claim about actual or potential earnings, either to the prospective franchisee or in the media. All disclosures must be made (i) before any sale is made and (ii) by means of disclosure documents whose form and content are set forth in the Rule.

The Rule requires disclosure of material facts. It does not regulate the substantive terms of the franchisor-franchisee relationship. It does not require registration of the offering or the filing of any documents with the Federal Trade Commission in connection with the sale of franchises.

A. Businesses Covered by the Rule

Either of two types of continuing commercial relationships are defined as a "franchise" and covered by the Rule.

The first type involves three characteristics: (1) The franchisee sells goods or services which meet the franchisor's quality standards (in cases where the franchisee operates under the franchisor's trade make, service mark, trade name, advertising or other commercial symbol designating the franchisor ("mark")) or which are identified by the franchisor's mark; (2) the franchisor exercises significant control over, or gives the franchisee significant assistance in, the franchisee's method of operation; and (3) the franchisee is required to make a payment of $500 or more to the franchisor or a person affiliated with the franchisor at any time before to within six months after the business opens.

The second type also involves three characteristics: (1) The franchisee sells goods or services which are supplied by the franchisor or a person affiliated with the franchisor; (2) the franchisor assists the franchisee in any way with respect to securing accounts for the franchisee, or securing locations or sites for vending machines or rack displays, or providing the services of a person able to do either; and (3) the franchisee is required to make a payment of $500 or more to the franchisor or a person affiliated with the franchisor at any time before to within six months after the business opens.

Relationships covered by the Rule include those which are within the definition of "franchise" and those which are represented as being within the definition when the relationship is entered into, regardless of whether, in fact, they are within the definition.

The Rule exempts (1) fractional franchises; (2) leased department arrangements; and (3) purely verbal agreements. The Rule excludes (1) relationships between employer/employees, and among general business partners; (2) membership in retailerowned cooperatives; (3) certification and testing services; and (4) single trademark licenses.

B. The Disclosure Document

All franchisors must furnish the document described in this section. The disclosure document requires information on the following 20 subjects:

1. Identifying information about the franchisor
2. Business experience of the franchisor's directors and key executives
3. The franchisor's business experience
4. Litigation history of the franchisor and its directors and key executives
5. Bankruptcy history of the franchisor and its directors and key executives
6. Description of the franchise
7. Money required to be paid by the franchisee to obtain or commence the franchise operation
8. Continuing expenses to the franchisee in operating the franchise business that are payable in whole or in part to the franchisor
9. A list of persons who are either the franchisor or any of its affiliates, with whom the franchisee is required or advised to do business
10. Realty, personalty, services, etc. which the franchisee is required to purchase, lease or rent, and a list of any persons from whom such transactions must be made
11. Description of consideration paid (such as royalties, commissions, etc.) by third parties to the franchisor or any of its affiliates as a result of a franchisee's purchase from such third parties
12. Description of any franchisor assistance in financing the purchase of a franchise
13. Restrictions placed on a franchisee's conduct of its business
14. Required personal participation by the franchisee
15. Termination, cancellation and renewal of the franchise
16. Statistical information about the number of franchises and their rate of terminations
17. Franchisor's right to select or approve a site for the franchise
18. Training programs for the franchisee
19. Celebrity involvement with the franchise
20. Financial information about the franchisor.

The disclosures must be made in a single document. The document may not include information other than that required by the Rule or by State law not preempted by the Rule. However, the franchisor may furnish other information to the prospective franchisee which is not inconsistent with the material set forth in the disclosure document.

The information in the disclosure document must be current as of the completion of the franchisor's most recent fiscal year. In addition, a revision of the document must be prepared quarterly whenever there has been a material change in the information contained in the document.

The disclosure document must be given to a prospective franchisee at the earlier of either (1) the prospective franchisee's first personal meeting with the franchisor, or (2) ten days prior to the execution of a contract or payment of money relating to the franchise relationship.

In addition to the document, the franchise must receive a copy of all agreements which he will be asked to sign.

C. Earnings Claims

The Rule prohibits earnings representation about the actual or potential sales, income, or profits of existing or prospective franchisees unless (i) reasonable proof exists to support the accuracy of the claim, (ii) the franchisor has in its possession, at the time the claim is made, information sufficient to substantiate the accuracy of the claim, (iii) the claim is geographically relevant to the prospective franchisee's proposed location (except for media claims) and (iv) an earnings claim disclosure document is given to the prospective franchisee at the same time that the other disclosures are given. The earnings claim document must contain six items:

1. A cover sheet in the form specified in the Rule
2. The earnings claim
3. A statement of the bases and assumptions upon which the earnings claim is made
4. Information concerning the number and percentage of outlets that have earned at least the amount set forth in the claim, or a statement of lack of experience, as well as the beginning and ending dates of the time period covered by the claim
5. A mandatory caution statement, whose text is set forth in the Rule, concerning the likelihood of duplicating the earnings claim
6. A statement that information sufficient to substantiate the accuracy of the claim is available for inspection by the franchisee (except for media claims).

Prospective franchisees must be notified of any material changes in the information contained in the earnings claim document prior to becoming a franchisee.

D. Acts or Practices Which Violate the Rule

It is an unfair or deceptive act or practice within the meaning of section 5 of the Federal Trade Commission Act for any franchisor or franchise broker:

1. to fail to furnish prospective franchisees, within the time frames established by the Rule, with a disclosure document containing information on 20 different subjects relating to the franchisor, the franchise business and the terms of the franchise agreement [§ 436.1(a)];
2. to make any representation about the actual or potential sales, income, or profits of existing or prospective franchises except in the manner set forth in the Rule [§ 436.1(b)–(e)];
3. to make any claim or representation (such as in advertising or oral statements by salespersons) which is inconsistent with the information required to be disclosed by the Rule [§ 436.1(f)];
4. to fail to furnish prospective franchisees, within the time frames established by the Rule, with copies of the franchisor's standard forms of franchise agreements and copies of the final agreements to be signed by the parties [§ 436.1(g)]; and
5. to fail to return to prospective franchisees any funds or deposits (such as down-payments) identified as refundable in the disclosure document [§ 436.1(h)].

Violators are subject to civil penalty actions brought by the Commission of up to $10,000 per violation.

The Commission believes that the courts should and will hold that any person injured by a violation of the Rule has a private right of action against the violator, under the Federal Trade Commission Act, as amended, and the Rule. The existence of such a right is necessary to protect the members of the class for whose benefit the statute was enacted and the Rule is being promulgated, is consistent with the legislative intent of the Congress in enacting the Federal Trade Commission Act, as amended, and is necessary to the enforcement scheme established by the Congress in that Act and to the Commission's own enforcement efforts.

E. State Franchise Laws

The Commission's goals are to create a minimum federal standard of disclosure applicable to all franchisor offerings, and to permit states to provide additional protection as they see fit. Thus, while Federal Trade Commission trade regulation rules have the force and effect of federal law and, like other federal substantive regulations, preempt state and local laws to the extent that these laws conflict, the Commission has determined that the Rule will not preempt state or local laws and regulations which either are consistent with the Rule or, even if inconsistent, which would provide protection to prospective franchisees equal to or greater than that imposed by the Rule.

Examples of state laws or regulations which would not be preempted by the Rule include state provisions requiring the registration of franchisors and franchise salesmen, state requirements for escrow or bonding arrangements and state required disclosure obligations exceeding the disclosure obligations set forth in the Rule. Moreover, the Rule does not affect state laws or regulations which regulate the franchisor/franchisee relationship, such as termination practices, contract provisions and financing arrangements.

The following states have franchise disclosure laws:

California	North Dakota
Hawaii	Oregon
Illinois	Rhode Island
Indiana	South Dakota
Maryland	Virginia
Minnesota	Washington
New York	Wisconsin

F. The Uniform Franchise Offering Circular

The Uniform Franchise Offering Circular ("UFOC") now is accepted in satisfaction of the disclosure requirements in the 14 States which have franchise registration and disclosure laws. The UFOC format is not identical to the disclosure format prescribed in the Rule. For example, there are minor differences in language on similar disclosure requirements; there are subjects about which the UFOC requires more disclosure than the Rule, and subjects where the Rule requires more disclosure than the UFOC. Even though the two documents are not identical in language, they are quite similar; in any event, both documents are designed to achieve the same result regardless of any minor variations in the means used to reach that result. Accordingly, the Commission will permit franchisors to use the UFOC format in lieu of the disclosure document provided by the Rule. This alternative use is limited to the UFOC version adopted by the Midwest Securities Commissioners Association on September 2, 1975 plus any modifications thereof which do not diminish the protection accorded to the prospective franchisee which may be made by a State in which such registration has been made effective.

Certain provisions of the Rule still will control even if the UFOC format is used in lieu of the Rule's disclosure document, such as: (1) The persons required to make disclosure; (ii) transactions requiring disclosure; (iii) the timing of the disclosure; and (iv) the types of documents to be given to prospective franchisees.

The Commission's decision to permit use of a State disclosure document in lieu of its own docuemt does not constitute Commission deferral to State law enforcement. The Commission is expressly providing for concurrent jurisdiction between the Commission and the States in appropriate instances. The Commission's action does not and is not intended to deprive the Commission of its responsibility to determine whether particular franchisors have complied with the Rule.

G. Relevant Legal Citations

1. The Rule—16 CFR Part 436.
2. Final interpretive guides to the Rule (including text of the rule)—44 FR at pp. 49966–49992, (August 24, 1979).
3. Statement of Basis and Purpose of the Rule. A discussion of the historical, legal and evidentiary basis for the Rule—43 FR at pp. 59621–59733, (December 21, 1978).
4. Rule—definition of franchise § 436.2(a)(1) and (2).
5. Rule—description of disclosure document § 436.1(a)(1)–(20).
6. Rule—earnings claims § 436.1(b)–(e).
7. Staff Advisory Opinions are issued in appropriate cases. They are published in several legal publications and are on file at the Commission's Public Record Office.

Appendix B—Petition of Austin Rover Cars of North America for Exemption

In the Matter of the Trade Regulation Rule "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures"; TRR. No. 215–34 16 CFR Part 436.

Austin Rover Cars of North America ("Arcona" or "petitioner") hereby petitions [1] the Federal Trade Commission ("FTC" or "Commission"), pursuant to 15 U.S.C. 57 a(g), for exemption from its Trade Regulation Rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures", 16 CFR Part 436 ("Franchise Rule") as it may apply to motor vehicle distributorship of Arcona.

As grounds therefore, petitioner states that application of the Franchise Rule to Arcona is unneccessary "to prevent the unfair or deceptive act(s) or practice(s) to which the rule relates", since the automobile dealers with whom petitioner will do business and through whom it will distribute its vehicles are already established, sophisticated automobile dealers who understand the business, and are fully aware of the "relevant and essential facts germane to the proposed investment".

I. The Petitioner

Arcona is a general partnership whose principal place of business is located in Miami, Florida. Arcona's managing general partner is Norman Braman Enterprises., Inc., a Florida corporation owned principally by Norman Braman, who also is the principal owner of seventeen retail automobile dealerships. Arcona's other general partner is Austin Rover USA Inc., a Delaware corporation and a subsidiary of Austin Rover Group Limited, an English corporation which is Britain's largest motor manufacturer (see Appendix A).* Arcona was formed in March, 1985 for the purpose of importing and distributing into the United States a new line of vehicles manufactured by Austin Rover Group Limited.[2] It is anticipated that retail sale of cars, which is scheduled to commence in January, 1987, will be accomplished through a network of approximately 100–125 independent dealers. Arcona recently began the process of selecting its dealers.

II. The Purpose of the Franchise Rule

In promulgating its Franchise Rule, the Commission, in its Statement of Basis and Purpose, noted that the Rule was intended to prevent fraud or deceptive practices from occurring in franchise marketing, and catalogued various deceptive practices which have attended the marketing of some franchises: (a) Factual misrepresentations relating to the

[1] This petition supersedes Arcona's exemption petition filed on October 23, 1985, which the Commission has not acted upon. This petition is submitted by Arcona based upon the assumption, *arguendo*, that the Franchise Rule applies to Arcona, but Arcona in no way acknowledges the application of the rule to its business.

* Appendices A through E of this petition are not reproduced here for reasons of economy. The documents are available for inspection at the FTC's Public Reference Branch, H–130, 6th St. & Pa. Ave., NW., Washington, DC 20580.

[2] While the new vehicle line has been created and designed jointly by Austin Rover Group Limited and Honda Motor Company Limited, primary manufacture of the engine, transmission and power steeting unit of the cars to be imported by Arcona will be done by Honda Motor Company Limited.

franchise's nature and value; (b) unsupported claims of potential profits; (c) failure by franchisors to comply with refund provisions; and (d) nondisclosure of material facts respecting the franchise offering.[3] Those evils were more likely to occur, the Commission found, where the following conditions were present:

(1) A relative lack of business sophistication of the proposed franchisee,

(2) A lack of adequate time for franchisees to review complex franchise agreements prior to establishment of the franchise relationship, and

(3) A serious informational imbalance between the franchisor and the franchisee such that the franchisee often was unaware of relevant and essential facts germane to the proposed investment." [4]

The commission further noted that, characteristically, a potential for unfair and deceptive franchise practices exists where franchisors use the sale of franchises to raise low-cost capital and franchise salesman employ hardsell sales tactics to collect quick franchise fees.

Where those deceit-breeding conditions are not present, as is the case here, the remedial but burdensome provisions of the Franchise Rule "may be redundant and unnecessary".[5] Based upon such circumstances, the Commission has previously exempted thrity-seven motor vehicle manufacturers, importers and distributors.[6] Those very circumstances apply to, and support the granting of, the present petition.

III. The Conditions Which Foster Deceitful Practices Are Absent Here

A. Arcona Does Not Raise Capital by Selling Franchises

Arcona does not use its dealers as a source of capital. Although dealers will make substantial investments which could reach $300,000 to $500,000 or more (depending upon building costs), all of that investment will be used for *bona fide* startup inventory (cares, parts and accessories), special tools, product signs and establishment of sale and service facilities. Not one penny of any dealer's investment will be paid to petitioner as a "fee" for the franchise, directly or indirectly. (See Affidavit of Raymond A. Ketchledge, Appendix B.) The partners of Arcona have agreed in writing to capitalize their business from their own sources. It is wholly unrealistic for Arcona to consider new dealers as a source of low-cost (or high-cost) capital. This is especially so since only 100–125 dealers are planned to be appointed initially, the turnover rate of dealers is expected to be minimal and the number of additional dealers which may be appointed in any given year will, to a large extent, be determined by the number of new vehicles Austin Rover Group Limited, the British manufacturer, will supply to Arcona.

B. No Hard-Sell Was Used To Attract Dealer Candidates

Contrary to a common practice used by unscrupulous franchisors who are seeking and luring persons with no prior business experience, Arcona did not advertise for dealership candidates in any media of general circulation. Rather, because Arcona's success will be measured by its ability to gain entrance into the highly competitive luxury import market, Arcona determined that its dealer candidates, or necessity, had to be limited to quality retail automobile dealers with years of experience in the retail automobile business. Thus, Arcona's only media announcement to date appeared in the May 20, 1985 edition of the *Automotive News*, the largest automotive industry weekly trade newspaper. (See Appendix C.) From the industry responses to that announcement and from the published dealer lists (See Appendix D) of other automobile manufacturers and importers (all of whom already have been exempted from the Franchise Rule), Arcona sent personal invitations to a limited number of selected dealers to attend a product preview which was held in Chicago on June 13 and 14, 1985. Interested dealers paid their own way to Chicago and were invited to submit to Arcona by mail Dealer Candidate Background Information Sheets (See Appendix E). Over 650 such Sheets have been received from these knowledgable, experienced dealers for the initial 100–125 potential appointments. The Commission should note the complete absence of any hard-sell technique and any franchise fee requirement. Of equal or greater importance, however, is the fact that the typical Arcona dealer candidate currently represents an average of five (5) other automobile franchises, usually at multiple locations (See Appendix B).

Arcona is not willing to risk its multi-million dollar investment by selecting as its dealers inexperienced businessmen who are not thoroughly familiar with the retail motor vehicle business, even if such persons were to offer to pay for the right to be appointed. The mere fact that Arcona does not have the staff to train its dealer-appointees in the establishment or operation a dealership [7] requires Arcona to appoint established dealers who possess and/or have available persons already knowledgable in the technical and operational aspects, as well as the legal and financial aspects of the retail automobile business. Thus, it is evident that business sophistication, experience and retail automobile business background are the hallmarks of the petitioner's dealer candidates.

C. Acquisition of Essential Facts by Dealer Candidates

Arcona will not *sell* dealerships at any price! Arcona will *grant* dealerships to those few dealers who exhibit sufficient business acumen and retail automobile experience to manifest a high probability of success as a dealer representing the products to be distributed by Arcona. Should a successful candidate later change his mind or elect not to become an Arcona dealer, Arcona's remedy will be limited to selecting anohter candidate. In such an unhappy (and unexpected) circumstance, it is Arcona, not the dealer, who will suffer. Arcona will receive no "franchise fee" upon which it may rely to make itself whole or help pay its ongoing expenses.

Because of the huge capital investment, a new dealer candidate will necessarily have many conferences with Arcona representatives, and the dealership transaction will necessarily be reviewed by the new dealer's independent bankers, attorneys and accountants as well as by the new dealer principals themselves. Petitioner already has received letters and phone calls from advisors representing some of the early successful dealer candidates, thus evidencing their use by such candidates. (See Appendix B.) In this setting, the disclosure statement mandated by the Franchise Rule seems unnecessary. The relevant information mandated by the disclosure statement, as well as considerable quantities of additional information, is not only already well-known by the dealer candidates, but will necessarily be demanded by the new dealer's bankers and financial and legal advisors, and will be provided by Arcona for their evaluation.

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[3] *Statement of Basis and Purpose*, 43 FR at 59628, 59637; *Final Guides*, 44 FR at 49966.

[4] Order of October 28, 1983, 49 FR 13677.

[5] Order of July 17, 1980 (45 FR 51763).

[6] Orders of October 28, 1983 (49 FR 13677) and July 17, 1980 (45 FR 51763), hereinafter referred to as the "Volkswagen" and "American Importers of America" cases respectively.

[7] Of course, Arcona intends to offer product acquaintance and training courses for dealer sales and service personnel, as do all of Arcona's competitors.

D. Granting an Exemption Will Not Harm any Motor Vehicle Dealer

Arcona will make no claims to any dealer candidates concerning profit potential of a dealership. Nor will Arcona make any representations as to the value, if any, of the dealership. Moreover, statutes in more than three-quarters of the states regulate almost every aspect of the relationship between a motor vehicle distributor and dealer, including transferability, termination and establishment of new dealerships. See also the Federal Dealer's Day In Court Act, 15 U.S.C. 1221 *et seq.*, which gives a federal cause of action to automobile dealers whose manufacturer has failed to act in "good faith" in performing of complying with the terms or provisions of the franchise or in terminating or not renewing the dealership.

That the granting of an exemption to petitioner will not harm prospective dealer candidates is underscored by the fact that the Commission already has exempted at least 37 distributors of imported automobiles and has ratified FTC staff opinions to General Motors, Ford Motor Company and Chrysler Corporation, stating that the manner in which they "sell" automobile dealerships would not constitute a "franchise" within the meaning of the Franchise Rule. Petitioner should be accorded the same exemption granted to its competitors.

E. Compliance With the Rule Is Burdensome

Petitioner respectfully submits that compliance with the Franchise Rule will present substantial burdens which are completely unnecessary in view of the fact that application of the Franchise Rule to petitioner is not necessary to prevent the unfair or deceptive acts the Rule is intended to prevent. The Commission should take administrative notice that petitioner is exempt from state franchise disclosure laws because no franchise fee is reqired.

Application of the Franchise Rule to Arcona would require Arcona to hire extra personnel solely to administer a continuing program of preparing, updating, monitoring and disseminating disclosure documents, including financial statements, and would cause Arcona to ensure that its financial statements were not only useful for internal management purposes, but were in such form and detail as is required of such a public document.[8] Moreover, refusal to exempt Arcona would place it at a severe competitive disadvantage in light of the exemptions previously granted to most of petitioner's competitors who appoint dealers in a manner substantially similar to Arcona (See Appendix B). In order to gain the same flexibility enjoyed by its competitors [9] to change its relations with its dealers as the industry progress dictates, Arcona requests an exemption from the Franchise Rule on the same terms. Petitioner further submits that the requirement of disclosure of certain confidential information will also result in substantial harm to its competitive position.

Finally, as other automobile petitioners have aptly pointed out, a continuing duty of disclosure of dispositions of dealer litigation for seven years would have a chilling effect upon Arcona's ability to negotiate fair future settlements.

IV. Summary

As the Commission noted in the *Volkswagen* case, automobile dealer franchises entail "extraordinarily large investments" on the part of dealers. Such capital outlays are made not by gullible novices but by veteran, savy businessmen who are astute in the ways of commerce and are advised by independent experts. Automobile dealer agreements are almost always entered into by experienced businessmen thoroughly familiar with the retail automobile sales business and not by persons acting upon impulse fueled by dreams of a quick fortune. As previously noted, the Commission has already considered similar automobile-dealer franchises and, finding no appreciable risk of deceptive abuses, granted exemptions from the Franchise Rule. The validity of that finding is underscored by the absence of a single adverse comment on the franchising of automobile dealers in either the 30,000 page rulemaking record which preceeded promulgation of the Franchise Rule, or in the *Volkswagen* and *Automobile Importers of America* exemption matters or in the ratification of the staff opinions concerning General Motors, Ford Motor Company and Chrysler Corporation. Further, as evidenced by this petition and the supporting materials contained in the Appendices, Arcona, which is only now commencing business operations and will introduce a new automobile into a highly competitive segment of the market, cannot risk and will not be transacting business with neophytes. Each dealer selected by Arcona will already be a party to at least one, and probably more than one, automobile dealer agreement with a manufacturer, importer or distributor which the Commission has already exempted from the Franchise Rule. The dealership agreements, which will be granted not sold by petitioner, will be similar to the standard agreements which prevail in the business. Finally, petitioner believes that Norman Braman's extensive dealership holdings assure an empathetic view of the dealer's position.

Accordingly, Austin Rover Cars of North America respectfully submits that application of the Franchise Rule to the petitioner's business is not necessary to prevent the unfair or deceptive acts to which the Rule relates, and will impose unnecessary burdens upon the petitioner. The requested exemption should, therefore, be granted pursuant to 15 U.S.C. 57a(g).

Respectfully submitted,

Stanley J. Krieger,

Counsel for Petitioner, Austin Rover Cars of North America, Suite 101, 8325 NW 53 Street, Miami, Florida 33166, Telephone (305) 593-1878.

[FR Doc. 86-13251 Filed 6-17-86; 8:45 am]

BILLING CODE 6750-01-M

[8] Presently, Arcona, as a non-publicly owned business, does not prepare financial statements for public view or distribution.

[9] All of the initial 100-125 dealers appointed by Arcona already are car dealers appointed by Arcona's exempted competitors.

GENERAL SERVICES ADMINISTRATION

Availability of Revised Government Bill of Lading and Government Transportation Request Forms

AGENCY: Federal Supply Service, GSA.

SUMMARY: This document notifies all Federal agencies that the revised Government bill of lading (GBL) and Government transportation request (GTR) are now available. The GBL and GTR were revised in July 1985 (see 50 FR 30705 and 30710 dated July 29, 1985); however, adequate supplies of these forms have just been stocked. Agencies should immediately order and start using these forms by July 1, 1986. The revised GBL set (SF 1103), GBL Privately Owned Personal Property set (SF 1203), and the GTR set (SF 1169) may be obtained by submitting a requisition in FEDSTRIP or MILSTRIP format to the GSA regional office providing support to the requesting activity.

Supplies of the old versions of these forms should be retained until January 1, 1987, and then destroyed. The National Capital Region, Federal Supply Service (WFCI), 7th and D Streets, SW, Washington, DC 20407, 202-472-1530, maintains records of serial numbers of all GBL's and GTR's furnished to agencies, and they should be informed of the serial numbers of all forms destroyed.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Chief, Regulations, Procedures, and Review Branch, Office of Transportation Audits, 202-786-3014.

By delegation of the Commissioner.

Dated: June 6, 1986.

William B. Foote,

Assistant Commissioner for Policy and Agency Liaison.

[FR Doc. 86-13584 Filed 6-17-86; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 86M-0231]

CILCO®, Inc.; Premarket Approval of Model L1-L5 Optiflex™ Anterior Chamber Intraocular Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by CILCO®, Inc., Huntington, WV, for premarket approval, under the Medical Device Amendments of 1976, of Model L1-L5 Optiflex™ Anterior Chamber Intraocular 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 July 18, 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: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION: On May 28, 1982, CILCO® Inc., Huntington, WV 25701, submitted to CDRH an application for premarket approval of Model L1-L5 Optiflex™ Anterior Chamber Intraocular Lens. The device is indicated for the replacement of the natural lens in the visual correction of aphakia by either primary or secondary implanation in persons 60 years old and older whose cataractous lens has been removed by intracapsular or extracapsular cataract extraction methods. The device is a vaulted lens that ranges in distance powers from 4 diopters (D) to 32 D in 0.5 D steps.

On November 15, 1982, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On February 28, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

Under the Medical Device Amendments of 1976 (Pub. L. 94-295, 90 Stat. 539-583), intraocular lenses are regulated as class III devices (premarket approval).

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 Nancy C. Brogdon (HFZ-460), 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 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 July 18, 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 the 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: June 10, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86-13690 Filed 6-17-86; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 86M-0239]

Optical Radiation Corp.; Premarket Approval of UV400 Ultraviolet-Absorbing Posterior Chamber Intraocular Lenses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Optical Radiation Corp., Azusa, CA, for premarket approval, under the Medical Device Amendments of 1976, of the UV400 Ultraviolet- (UV-) Absorbing Posterior Chamber Intraocular Lenses. 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 July 18, 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: Nancy C. Brogdon, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7536.

SUPPLEMENTARY INFORMATION: On October 24, 1985, Optical Radiation Corp., Azusa, CA 91702, submitted to CDRH an application for premarket approval of the UV400 VU-Absorbing Posterior Chamber Intraocular Lenses. The devices are indicated for primary implantation in patients 60 years of age or over where a cataractous lens has been removed by the extracapsular cataract extraction method. The devices are available in a range of powes from 10 diopters to 28 diopters in 0.5 diopter increments. The haptics of the lenses may be colored with a color additive which is listed for use in general and ophthalmic sutures and conforms to requirements of § 74.3045 *[Phthalocyaninato(2-)] copper* (21 CFR 74.3045).

On January 23, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On March 28, 1986, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

Under the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), intraocular lenses are regulated as class III devices (premarket approval).

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 Ms. Nancy C. Brogdon (HFZ–460), 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. 356e(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 July 18, 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: June 11, 1986.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 86–13691 Filed 6–17–86; 8:45 am]

BILING CODE 4160-01-M

Health Resources and Services Administration

Health Education Assistance Loan Program; "Rate of Insurance Premium"

Sections 727–739 of the Public Health Service Act (the Act) (42 U.S.C. 294–294*l*) authorize the Secretary to provide a Federal program of insurance for loans made to students in schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, public health, pharmacy, and chiropractic, and graduate students in health administration, clinical psychology and allied health. The loans may be made by eligible lenders such as banks, credit unions, savings and loan associations, pension funds, and insurance companies.

Pub. L. 99–129 amended section 732 of the Act, effective July 22, 1986. This section, as amended, states that the Secretary shall, pursuant to regulations, charge for insurance on each HEAL loan a premium in an amount not to exceed 8 percent of the amount of the loan payable in advance at the time the loan is made and in a manner as may be prescribed by the Secretary. Further, the Secretary may not increase the percentage charged for insurance premiums, unless the Secretary has, prior to an increase—

(A) Requested a qualified public accounting firm to evaluate whether an increase in the percentage is necessary to ensure the solvency of the student loan insurance fund (SLIF) established by section 734, and to determine the amount of any increase, if necessary; and

(B) the accounting firm has recommended an increase and has determined the amnount of the increase necessary to ensure the solvency of the SLIF.

The Secretary requested a financial evaluation of the SLIF by a qualified public accounting firm to estimate an insurance premium rate necessary to maintain the solvency of the SLIF. This evaluation has been conducted by Peat, Marwick, Mitchell & Company, in association with the Developmental Assistance Corporation. The insurance premium rate was previously established by the Department based on a model developed by Touche Ross & Company specifically for this purpose. The model has been reviewed and all loan activities (e.g., length of repayment periods, default and bankruptcy claims rates, loan volume, and insurance premiums collected) re-examined to determine their impact on the projections for the SLIF. The model has been modified to incorporate updated program data and expanded loan activities and to revise assumptions, as appropriate.

Based on its evaluation to date, Peat, Marwick, Mitchell & Company has recommended that a premium rate of at least the 8 percent permitted by statute is necessary to maintain the solvency of the SLIF throughout the life of the HEAL program.

Accordingly, the Secretary announces that for HEAL loans made on or after July 22, 1986, the amount of the insurance premium which shall be charged is 8 percent of the principal of each HEAL loan.

(Catalog of Federal Domestic Assistance No. 13.108, Health Education Assistance Loans)

Dated: June 12, 1986.

John H. Kelso,

Acting Administrator.

[FR Doc. 86–13692 Filed 6–17–86; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-86-1616; FR-2257]

Housing Development Grant Program; Invitation for Applications and List of Designated Eligible Areas; Clarification

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

ACTION: Notice.

SUMMARY: This notice provides certain additional information concerning the Invitation for Applications and List of Designated Eligible Areas, for the Housing Development Grant Program published on June 5, 1986, in 51 FR No. 108, Part II. It also lists those designated eligible areas that are actually independent communities in Virginia but were erroneously identified as being in York County, Virginia.

FOR FURTHER INFORMATION CONTACT: Jessica Franklin, Acting Director, Housing Development Grant Division, Room 6110, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410-8000, telephone (202) 755-6142. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Designated Eligible Areas Located in More Than One County

The list of Designated Eligible Areas published on June 5, 1986, at 51 FR 20576 contained a List of Designated Eligible Areas Other Than Eligible Counties. This List grouped the eligible areas first by state and within each state by county. The eligible areas on this list are units of general local government other than counties. Users of this list should note that a unit of general local government that is located in more than one county is listed *only* under the county that contains the largest portion of the unit of general local government's population. This method of listing, of course, has no effect on eligibility. The entire unit of general local government is a designated eligible area and may submit an application for a project located anywhere within its jurisdiction.

Eligible Counties With Other Eligible Units of General Local Government Within its Jurisdiction

A county that is a designated eligible area might have one or more units of general local government within its boundaries. Such a county may submit an application for a project that is located anywhere within its jurisdiction.

Independent Virginia Communities

The List of Designated Eligible Areas Other Than Eligible Counties at 51 FR 20634 (June 5, 1986) erroneously listed certain designated eligible areas as being in York County, Virginia. There are no designated eligible areas in York County. The designated eligible areas listed are independent communities within Virginia. The listing should read as follows:

Independent Virginia Communities

Bristol	Petersburg
Clifton	Richmond
Covington	Roanoke
Emporia	South Boston
Franklin	Suffolk
Norton	Winchester

Authority: Sec. 17(d), United States Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 13, 1986.

Silvio J. DeBartolomeis,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 86-13780 Filed 6-17-86; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, D.C. 20503, telephone 202-395-7340.

Title: Tribal Participation Budget Planning Forms.

Abstract: As set forth by Congress and Department/Bureau policy, these forms are needed to assure maximum Indian participation in the planning, administration, and direction of Indian progams. The forms enable tribal officials to participate in establishing progam priorities and setting program funding levels at each tribe/agency budget location.

Bureau Form Numbers: BIA-4256, BIA-4257, and BIA-4259.

Frequency: Annually.

Description of Respondents: Tribal Officials participating in the tribal priority setting process.

Annual Responses: 220.

Annual Burden Hours: 1,910.

Bureau clearance officer: Cathie Martin, 202-343-7684.

Richard J. Glynn,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 86-13707 Filed 6-17-86; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

Colorado; Filing of Plats of Survey

May 9, 1986.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., May 9, 1986.

The plat representing the dependent resurvey of the east boundary, portions of the north boundary, subdivisional lines, and subdivision of section 14, the boundaries of Homestead Entry Survey No. 125 and Mineral Survey No. 19700, Fairview lode, and the survey of the subdivision of certain sections, T. 6 N., R. 84 W., Sixth Principal Meridian, Colorado, Group No. 712, was accepted May 27, 1986.

The plat representing the dependent resurvey of the east boundary, T. 7 N., R. 84 W., Sixth Principal Meridian, Colorado, Group No. 712, was accepted May 27, 1986.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2020

Arapahoe Street, Denver, Colorado 80205.

Jack A. Eaves,

Acting Chief Cadastral Surveyor for Colorado.

[FR Doc. 86-13709 Filed 6-17-86; 8:45 am]

BILLING CODE 4310-84-M

[OR-22094, OR-36343]

Oregon; Proposed Continuation of Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Coast Guard proposes that two land withdrawals for the Cape Arago Light Station continue for an additional 25 years. The land would remain closed to surface entry and mining but has been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: The U.S. Coast Guard proposes that the existing land withdrawals made by the Executive Orders of September 11, 1854, and June 14, 1876, be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The land involved is located approximately three miles west of Charleston and contains 19.2 acres within Section 4, T. 26 S., R. 14 W., W.M., Coos County, Oregon.

The purpose of the withdrawals is to protect the Cape Arago Light Station. The withdrawals segregate the land from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: June 5, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86-13710 Filed 6-17-86; 8:45 am]

BILLING CODE 4310-33-M

[ORE-016674]

Oregon; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers proposes that a land withdrawal for the Lost Creek Lake Project continue in part for an additional 100 years. The lands would remain closed to surface entry and mining but have been and would remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office; P.O. Box 2965, Portland, Oregon 97208 (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: The Department of the Army, Corps of Engineers, proposes that the existing land withdrawal made by Public Land Order No. 5105 of August 6, 1971, be continued in part for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located approximately 24 miles northeast of Medford and aggregate approximately 1,731.72 acres within T. 33 S., Rgs. 1 and 2 E., W.M., Jackson County, Oregon.

The purpose of the withdrawal is to protect the Lost Creek Lake Project. The withdrawal segregates the lands from operation of the public land laws generally, including the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal. The Corps of Engineers has also relinquished the balance of the withdrawal, aggregating approximately 746.13 acres, which is no longer needed for project purposes.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specificed above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: June 6, 1986

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations

[FR Doc. 86-13711 Filed 6-17-86; 8:45 am]

BILLING CODE 4310-33-M

[WASH-02114, WASH-02850, WASH-03205, OR-22188 (WASH), OR-22372 (WASH), OR-22373 (WASH), OR-22374 (WASH), OR-22619 (WASH), OR-25898 (WASH)]

Washington; Proposed Continuation of Withdrawals

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Energy proposes that nine separate land withdrawals for the Hanford Nuclear Reservation continue for an indefinite period. The lands would remain closed to surface entry and mining but would be opened to mineral leasing subject to Department of Energy concurrence.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy proposes that the existing land withdrawals made by the Secretarial Order of April 26, 1937; Public Land Orders Nos. 165 of September 6, 1943, 191 of November 1, 1943, 261 of January 24, 1945, 1273 of March 14, 1956, 2122 of June 9, 1960, and 2265 of February 13, 1961; Bureau of Land Management Order of June 18, 1947; and Public Law 88-557 of August 31, 1964, as modified and/or amended, be continued for an indefinite period pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C 1714.

The lands involved are located adjacent to the Columbia River north of

Richland and aggregate 64,709.37 acres within Benton, Franklin, and Grant Counties, Washington.

The purpose of the withdrawal is to protect the Hanford Site also known as the Hanford Nuclear Reservation. The withdrawals segregate the lands from operation of the public land laws generally, including the mining laws, and except for 1,214 acres, the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawals except to open 63,495.37 acres to applications and offers under the mineral leasing laws. The Department of Energy also has jurisdiction over approximately 300,000 acres of adjacent acquired lands which are affected by this notice.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawals will be continued and if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Dated: June 6, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–1372 Filed 6–17–86; 8:45 am]

BILLING CODE 4310-33-M

(WASH-0911)

Washington; Proposed Continuation of Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers proposes that a land withdrawal for the Chief Joseph Dam Project continue for an additional 100 years. The lands would remain closed to surface entry and mining, but would be opened to mineral leasing subject to Department of Army concurrence.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, (Telephone 503-231-6905).

SUPPLEMENTARY INFORMATION:

The Department of the Army, Corps of Engineers, proposes that the existing land withdrawal made by Public Land Order No. 1356 of November 5, 1956, be continued for a period of 100 years pursuant to section 204 of the Federal Land Policy and Management Act 1976, 90 Stat. 2751, 43 U.S.C. 1714.

The lands involved are located adjacent to the Columbia River downstream from the Grand Coulee Dam and aggregate 1,474.19 acres within T. 30 N., Rgs. 26, 27, 28, and 29 E., and T. 31 N., R. 30 E., W.M., Douglas County, Washingon.

The purpose of the withdrawal is to protect the Chief Joseph Dam Project. The withdrawal segregates the lands from operation of the public land laws generally, including the mining laws and mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal except to open the lands to applications and offers under the mineral leasing laws.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Dated: June 9, 1986.

B. LaVelle Black,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 86–13713 Filed 6–17–86; 8:45 am]

BILLING CODE 4310-33-M

Las Vegas District Advisory Council Meeting

Notice is herby given in accordance with Pub. L. 92–463 that a meeting of the Bureau of Land Management, Las Vegas District Advisory Council will be held July 16, 1986.

The meeting will begin at 9:00 a.m., in the conference room of the Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

The meeting agenda will include:

1. Aerojet exchange update.
2. Riparian projects update.
3. Forest Service/Bureau of Land Management Interchange update.
4. Review of the River Mountain Resource Management issues.
5. Nominations for Advisory Council membership.
6. CRMP (restructuring)

The meeting of the Advisory Council is open to the public. Interested persons may make oral statements to the board. Written statements for the Board's consideration can be mailed in care of the Las Vegas District Manager, 4765 W. Vegas Drive, Las Vegas, Nevada 89126. Anyone wishing to make an oral statement must notify the District Manager, Las Vegas District, at the above address, by July 11, 1986. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours 7:30 a.m. until 4:15 p.m. within 30 days following the meeting.

Dated: June 9, 1986.

Ben F. Collins,

District Manager.

[FR Doc. 86–13708 Filed 6–17–86; 8:45 am]

BILLING CODE 4310-84-M

Oregon: Proposed Management Framework Plan Amendment and Environmental Assessment for Management of Wild Horses, Burns District

AGENCY: Bureau of Land Management, Interior.

ACTION: Availability of proposed land use plan amendment and environmental assessment in the Burns, Oregon District.

SUMMARY: Pursuant to section 202 (c) and (f) of the Federal Land Policy and Management Act (FLPMA), and section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management has prepared a proposed Land Use Plan Amendment and Environmental Assessment (EA) for

public lands administered by BLM in the Burns District. The Amendment and Environmental Assessment address three alternatives for managing wild horses on the Riddle Mountain Herd Management Area. One of the alternatives would affect land use plans for the Drewsey, Riley and Andrews Planning Areas. The other two alternatives would affect only the Drewsey Management Framework Plan.

All of the herd areas are in central or southern Harney County Oregon.

The document has been mailed to the Burns District's list of known interested or affected groups and individuals.

In addition, public reading copies will be available for review at the following locations:

Bureau of Land Management, Office of Public Affairs, 825 NE Multnomah Street, Portland, Oregon 97208

Bureau of Land Management, Burns District Office, 74 South Alvord, Burns, Oregon 97720.

A limited number of copies of the document are available upon request to the BLM Burns District Office.

Written comments should be sent by August 18, 1986 to District Manager, Bureau of Land Management, 74 South Alvord, Burns, Oregon 97720.

An open house will be held Friday, July 11, 1986 at the Bureau of Land Management Burns District Office from 9:00 A.M. to 4:30 P.M. BLM personnel will be available to answer questions regarding the Plan Amendment and Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: Joshua L. Warburton, District Manager, Burns District Office, Telephone (503) 573–5241.

SUPPLEMENTARY INFORMATION: The plan amendment process was started with publication of the Notice of Intent in the February 6, 1986 **Federal Register** and local newspaper, proposed planning issues and criteria and possible alternatives were published on February 13, 1986.

The proposed Plan amendment and Environmental assessment identifies three alternatives for adjusting management of the wild horses in the Riddle Mountain Herd Management Area. The preferred alternative would remove all wild horses from a portion of the Herd Management Area which is now under State and private ownership and compensate for their removal by adjusting management levels in other areas.

After the comment period, a proposed decision will be published subject to a 30 day protest period. Subsequently a final decision will be issued.

Dated: June 10, 1986.

Joshua L. Warburton,

Burns District Manager.

[FR Doc. 86–13739 Filed 6–17–86; 8:45 am]

BILLING CODE 4310-33-M

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the telephone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone (202) 395–7340.

Title: Recreation and Wildlife Summary

Abstract: Recreation and Wildlife Summary data are needed to plan, develop, administer, and monitor recreation areas on Reclamation projects. These data are used in making land management decisions and in responding to Congressional and public inquiries. Respondents are State and county government agencies and water user organizations that have recreation management agreements with the Bureau of Reclamation.

Bureau Form Number: None

Frequency: Annual

Description of Respondents: Non-Federal Public Bodies

Annual Responses: 166

Annual Burden Hours: 664

Bureau Clearance Officer: Alma Gonzales—(202) 343–4249

Dated: June 10, 1986.

C. Dale Duvall,

Commissioner.

[FR Doc. 86–13697 Filed 6–17–86; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

Receipt of Applications for Permits; Endangered Species

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

Applicant: Ervin Nutter, Xenia OH, PRT-707609.

The applicant requests a permit to import a trophy from a bontebok (*Damaliscus dorcas dorcas*) which was a member of a captive herd maintained by F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa. The herd is maintained for the purpose of sport hunting. The applicant contends that permission to import trophy will enhance the likelihood of the continued maintenance of this herd and thereby enhance the likelihood of the survival of the species.

Applicant: Chicago Zoological Society, Brookfield, IL 60513, PRT–707747.

The applicant requests a permit to import one captive-born male margay (*Felis weidii*) from the Regent Park Zoo in London, for the purpose of enhancement of propagation and survival of the species.

Applicant: Michael Worley, DVM, San Diego, CA; PRT-704049.

The applicant requests a permit to import blood and/or tissue from captive-bred snow leopards (*Panthera uncia*) and wild-caught cheetahs (*Acinonyx jubatus*) for the purpose of determinig disease prevalence and exposure to infectious organisms. This replaces the two notices published in May 1986 for the Zoological Society of San Diego and Michael Worley respectively, PRT 704949, to import blood and/or tissue from wild-caught endangered felids/cheetahs.

Applicant: Int'l Succulent Institute, Inc., Orinda, CA; PRT–707277.

The applicant requests a permit to export artificially propagated *Coryphantha minima* to Mr. N.E. Wilbraham, Cheshire, England, for the purpose of enhancement of propagation.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 611, 1000 North Glebe Road, Arlington, Virginia 22201, or by writing to the Director, U.S. Fish and Wildlife Service of the above address.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Dated: June 13, 1986.

Earl B Baysinger,

Chief, Federal Wildlife Permit Office

[FR Doc. 86-13776 Filed 6-17-86; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit; Marine Mammals

The public is invited to comment on the following applications for permits to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Part 17 and 18).

Applicant: Name: Bob Brownell, U.S. Fish and Wildlife Service, Denver Wildlife Research Center, San Simeon, CA, PRT-672624.

Type of Permit: Scientific Research.

Name and Number of Animals: 240 California sea otters (*Enhydra lutris nereis*).

Summary of Activity to be Authorized: The applicant proposes to capture, tag and release these animals in support of long term life history studies.

Source of Marine Mammals for Research: Off the coast of California.

Period of Activity: 3 years.

Applicant: Name: Dr. Donald Siniff, University of Minnesota, Minneapolis, MN, PRT-678319.

Type of Permit: Scientific Research.

Name and Number of Animals: 960 Alaskan sea otters (*Enhydra lutris lutris*).

Summary of Activity to be Authorized: This amends the applicant's previous permit to take Alaskan sea otters in the Prince William Sound.

The applicant proposes to take otters to obtain information on population parameters and to determine the cause of observed large magnitude variation in the density of otters on the North Aleutian shelf in the vicinity of False Pass. The applicant proposes to tag a total of 960 otters at the two locations (Prince William Sound and False Pass). One hundred and sixty will be surgically implanted with a radio transmitter, and have a blood sample and a premolar tooth extracted. Pups will be recaptured up to 3 times for growth data.

Source of Marine Mammals for Research: Prince William Sound and False Pass, Alaska.

Period of Activity: 2½ years.

Applicant: Name: Mr. Anthony DeGange, U.S. Fish & Wildlife Service, Alaska Office of Fish & Wildlife, Research, Anchorage, AK, PRT-708155.

Type of Permit: Scientific Research.

Name and Number of Animals: 200 Alaskan sea otters (*Enhydra lutris lutris*).

Summary of Activity to be Authorized: The applicant proposes to take these animals to determine population parameters and other management information. Two hundred animals will be tagged, up to 70 will be surgically implanted with radio transmitters and have blood extracted, and 50 will be tagged and have a premolar extracted. Pups will be recaptured up to 3 times for growth data.

Source of Marine Mammals for Research: Off of Kodiak Island and Shuyak Island, Alaska.

Period of Activity: 2 years.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of these applications to the Marine Mammal Commission and the Committee of Scientific Advisor's for their review.

Written data or comments, requests for copies of the complete applications, or requests for a public hearing on these applications should be submitted to the Director, U.S. Fish and Wildlfie Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connection with the above applications are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601, North Glebe Road, Arlington, Virginia.

Dated: June 13, 1986.

Earl B. Baysinger,

Chief, Federal Wildlife Permit Office.

[FR Doc. 86-13775 Filed 6-17-86; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Illinois and Michigan Canal National Heritage Corridor Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Illinois and Michigan National Heritage Corridor Commission will be held June 24, 1986, beginning at 10 a.m. at Moraine Valley Community College, Employment Training Center, 6201 West 115th Street, Worth, Illinois.

The Commission was originally established on August 24, 1984, pursuant to provisions of the Illinois and Michigan Canal National Heritage Corridor Act of 1984, 98 Stat. 1456, 16 U.S.C. 461 to implement and support the conceptual plan.

Matters to be discussed at the meeting will include introduction of the recently appointed Director of the Illinois and Michigan Canal National Heritage Corridor Commission, discussion of various projects scheduled for funding during the remainder of FY 86, reports from the boundary subcommittee and the subcommittee on signs. There will also be a tour of the Cal-Sag Channel.

The meeting will be open to the public. Interested persons may submit written statements to the official listed below prior to the meeting. Further information concerning the meeting may be obtained from Alan M. Hutchings, Chief, Division of External Affairs, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102, telephone 402-221-3481 (FTS 864-3481). Minutes of the meeting will be available for public inspection at the Midwest Regional Office 3 weeks after the meeting.

Dated: June 10, 1986.

Charles H. Odegaard,

Regional Director, Midwest Region.

[FR Doc. 86-13782 Filed 6-17-86; 8:45 am]

BILLING CODE 4310-70-M

Plan of Operations for the Purpose of Oil Drilling; Big Cypress National Preserve

Notice is hereby given pursuant to § 9.52(b) of Title 36 of the Code of Federal Regulations of the availability for comment and review of a Supplement to the Master Plan of Operations submitted by Exxon Company, U.S.A., for the purpose of oil drilling in the Big Cypress National Preserve. Copies of the Supplement to the Master Plan of Operations are available for review at: Big Cypress National Preserve, S.R. Box 110, Satinwood Drive, Ochopee, Florida, 33943 (telephone 813-695-2000); National Park Service, Southeast Regional Office, 75 Spring Street SW., Atlanta, Georgia, 30303 (telephone 404-331-4916) and at the Miami-Dade Public Library, 1 Biscayne Boulevard, Miami, Florida, 33139. Comments received within thirty days of the publication of this notice will be entered into the official record. For further information contact Fred Fagergren, Suprintendent, Big Cypress National Preserve, (813) 695–2000.

Fred J. Fagergren,

Superintendent.

[FR Doc. 86–13781 Filed 6–17–86; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–143]

Certain Amorphous Metal Alloys and Amorphous Metal Articles; Decision To Review Initial Advisory Opinion and To Remand the Proceedings to the Presiding Administrative Law Judge for Further Findings

AGENCY: International Trade Commission.

ACTION: Review of initial advisory opinion and remand to the presiding administrative law judge (ALJ) for additional findings of fact and other information.

SUMMARY: The Commission has ordered a review of an initial advisory opinion (IAO) finding that the modified amorphous metal casting processes of the following parties would not infringe the process patent protected by the general exclusion order in the above-captioned investigation: Hitachi Metals, Ltd.; Hitachi Metals International, Ltd.; and Vacuumschmelze GmbH. The Commission also has remanded the IAO to the presiding ALJ for additional findings of fact and other information.

FOR FURTHER INFORMATION CONTACT: Jean A. Heck, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0350.

SUPPLEMENTARY INFORMATION:

Background

Investigation No. 337–TA–143 initially was conducted between April 13, 1983, and October 15, 1984, to determine whether there was a violation of section 337 of the Tariff Act of 1920 (19 U.S.C. 1337) in the importation or sale of certain amorphous metal alloys and amorphous metal articles from Japan and West Germany. (*See* 48 FR 15963, Apr. 13, 1983; 48 FR 43108, Sept. 21, 1983; and 49 FR 4047, Feb. 1, 1984.) After finding a violation in the importation of the accused amorphous metal articles (*see* 49 FR 29159, July 18, 1984), the Commission issued a general exclusion order that prohibits the entry of amorphous metal articles manufactured abroad by the casting process disclosed in claims 1, 2, 3, 5, 8, or 12 of complainant Allied Corp.'s U.S. Letters Patent 4,221,257 (the '257 patent). *See Certain Amorphous Metal Alloys and Amorphous Metal Articles,* Investigation No. 337–TA–143, USITC Publication 1664 (October 1984); 49 FR 42083 (Oct. 24, 1984). The exclusion order was based on the Commission's final determination (an unreviewed initial determination (ID)) holding that the casting processes used by the foreign respondents would infrings one or more claims of the '257 patent if those processes were used in the United States. (See 49 FR 29159, July 18, 1984, and USITC Publication 1664—ID of May 14, 1984.)

The Commission is currently conducting advisory opinion proceedings pursuant to 19 CFR 211.54(b) to determine whether the modified casting processes of the following respondents would infringe the '257 patent if such processes were used in the United States: Hitachi Metals, Ltd. (Hitachi), Hitachi Metals International, Ltd. (Hitachi), and Vacuumschmelze GmbH (Vacuumschmelze). (*See* Commission Action and Order of July 26, 1985, and Commission Action and Order of Sept. 11, 1985.) These proceedings stem from a conclusion in the aforementioned ID from the original investigation, to the effect that the respondents' casting processes were infringing, but that certain modification would avoid noninfringement. (*See* USITC Pub. 1664—ID at 30–73.) Instead of seeking judicial review of the ID, Hitachi and Vacuumschmelze returned to the Commission, claiming to have made modifications in their casting processes, and seeking (1) modification of the exclusion order or (2) issuance of an advisory opinion to facilitate the importation of articles cast by the allegedly modified processes. (*See* Motion No. 143–86"C" (Feb. 22, 1985), and Motion No. 143–89"C" (May 23, 1985).)

The Commission also is conducting exclusion order modification proceedings pursuant to 19 CFR 211.57 to determine whether the planned means of enforcing the exclusion order are such that the order should be modified, vacated or left unchanged. *See* Commission Action and Order of July 26, 1985, 50 FR 31260 (Aug. 1, 1985).

On March 3, 1986, the presiding ALJ issued an IAO, together with findings of fact and conclusions of law. The IAO states that Hitachi and Vacuumschmelze now have the capability to manufacture good quality wide amorphous metal strip in commercial quantities by casting processes that have been modified to avoid infringement of the '257 patent.

On March 3, 1986, the ALJ also issued a recommended determination (RD) concerning the proposed modification of the exclusion order issued in the exclusion order. The RD states that the exclusion order should be modified to include (1) a description of the patented process, (2) the width of amorphous metal articles covered by the order, (3) provisions for recordkeeping and a certification process, and (4) a provision for further administrative proceedings, as needed. The RD also states that the Commission should issue an order directing all respondents to cease and desist from importing into the United States and selling amorphous metal articles made by the patented process.

Review of the IAO

Allied and the Commission investigative attorney petitioned for review of the IAO, citing alleged errors of law and fact in the ALJ's reading of the patent, interpretation of the claims, application of the doctrine of equivalents and conclusion of noninfringement. Opposing responses were filed by the following respondents: Hitachi, Vacuumschmelze, Nippon Steel Corp., and Nippon Steel U.S.A., Inc.[1]

After reading the IAO and the accompanying findings of fact, and after considering the arguments of the parties, the Commission ordered a review of the IAO. The Commission also remanded the IAO to the ALJ for additional findings of fact and other information. The scope of the review and the additional findings and information to be provided by the ALJ are set forth in detail in the Commission Action and Order of June 5, 1986. The additional findings and information will be considered by the Commission in determining whether to adopt or reverse the IAO.

The Commission also referred Allied's recently filed motion to admit new evidence (and request for sanctions)

[1] The Nippon respondents were parties in the original investigation (*see* 48 FR 43108, Sept. 21, 1983), and were found to have imported amorphous metal articles made by a process that would infringe claims of the '257 patent, if that process were used in the United States. (*See* USITC Pub. 1664—ID at 70–73.) Nippon did not request an advisory opinion, but did particpate in the Hitachi-Vacuumschmelze advisory opinion proceedings to a limited extent.

against Hitachi to the ALJ for disposition. The Commission has ordered the ALJ to determine if the new evidence (if admitted) and sanctions (if ordered) would change the findings and conclusions in the IAO with respect to Hitachi. *See* Motion No. 143–120"C", and Commission Action and Order of June 5, 1986.

No deadlines have been set for the ALJ to issue a revised IAO upon completion of the remand or for the Commission to conclude its review. The remand and the Commission's review will be completed as expeditiously as possible, however.

Commission Action on the RD

The Commission also has remanded the RD to the ALJ for the limited purpose of determining if the advice in the RD would change if Allied's new evidence is admitted and sanctions are imposed against Hitachi. *See* Commission Action and Order of June 5, 1986. In reaching a final disposition of the RD, however, the Commission will consider whether to adopt or reject the advice set forth in the RD concerning modification of the exclusion order.[2] The Commission's final disposition to the RD will take into account the arguments set forth in the exceptions to the RD (and the responses thereto), as well as any additional findings or modifications to the RD resulting from the remand.

Public inspection

Nonconfidential copies of all documents filed in the current proceedings and all nonconfidential documents filed in the original investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, Docket Section, U.S. International Trade Commission, 701 E Street NW., Washington, DC, 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information concerning the current proceedings and the original investigation can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: June 13, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–13795 Filed 6–17–86; 8:45 am]

BILLING CODE 7020-02-M

[2] Allied, the Commission investigative attorney, Hitachi, and the U.S. Customs Service have filed exceptions to the RD.

[Investigation No. 337-TA-242]

Certain Dynamic Random Access Memories, Components Thereof and Products Containing Same; Commission Determination Not To Review Initial Determination Designating the Investigation More Complicated

AGENCY: International Trade Commission.

ACTION: Nonreview of an initial determination (ID) designating the investigation more complicated.

SUMMARY: Notice is hereby given that the Commission has determined not to review the administrative law judge's (ALJ) ID designating the above-captioned investigation more complicated.

FOR FURTHER INFORMATION CONTACT: Judith M. Czako, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0359.

SUPPLEMENTARY INFORMATION: On April 23, 1986, respondents Toshiba Corp. and Toshiba American, Inc. (Toshiba) filed a motion (Motion No. 242–8) for an order designating the above-referenced investigation more complicated. The Commission investigative attorneys on April 28, 1986, filed a response in support of Toshiba's motion. On May 2, 1986, complainant Texas Instruments, Inc. (TI) filed a response opposing Toshiba's motion.

On May 12, 1986, the presiding administrative law judge (ALJ) issued an ID (Order No. 7) designating the investigation more complicated. No petitions for review or comments from government agencies were received.

The Commission has determined not to review the ID. The case has been designated more complicated due to the large number of patents involved, the complexity of the domestic industry issue, and the need for time-consuming discovery.

Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: June 12, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–13796 Filed 6–17–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-237]

Certain Miniature Hacksaws; Commission Decision Denying Court Enforcement of Subpoenae

AGENCY: International Trade Commission.

ACTION: Denial of request for court enforcement of two subpoenae.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has denied a request for court enforcement of two subpoenae issued in the above-captioned investigtion.

FOR FURTHER INFORMATION CONTACT: Clark Lutz, Esq., Office of the General Counsel, U.S. International Trade Commission, Telephone 202–523–1641.

SUPPLEMENTAL INFORMATION: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.36 of the Commission's Rules of Practice and Procedure (19 CFR 210.36).

On March 14, 1986, the presiding administrative law judge (ALJ) issued two subpoenae to a non-participating respondent, the Disston Company (Disston). Disston failed to comply with the subponea and, on May 1, 1986, complainant The Stanley Works (Stanley) filed Complainant's Motion to Certify to the Commission a Request or Immediate Court Enforcement of Disston Subpoena. No responses to the motion were filed and, on May 15, 1986, the ALJ issued an order granting Stanley's motion.

Copies of the Commission's action and order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on 202–724–0002.

Issued: June 12, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86-13797 Filed 6-17-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-237]

Certain Miniature Hacksaws; Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a consent order agreement: En I Machinery Co. Ltd., Yuo Noun Enterprise Co. Ltd. and Kyuwn Industrial Co. Ltd.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on June 10, 1986.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street NW., Washington, DC 20436, no later than 10 days after publication of this notice in the Federal Register. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

Issued: June 9, 1986.

By order of the Commission.

Kennth R. Mason,

Secretary.

[FR Doc. 86-13798 Filed 6-17-86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-248]

Certain Plastic Fasteners and Processes for the Manufacture Thereof; Investigation

AGENCY: International Trade Commission

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and 19 U.S.C. 1337a.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 12, 1986, under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and under 19 U.S.C. 1337a, on behalf of Dennison Manufacturing Company, 300 Howard Street, Framingham, Massachusetts 01701. A supplement to the complaint was filed on May 28, 1986. The complaint, as supplemented, alleges unfair methods of competition and unfair acts in the importation of certain plastic fasteners into the United States, and in their sale, by reason of alleged manufacture abroad by a process which, if practiced in the United States, would infringe (1) at least claims 1-4 and 8-12 of U.S. Letters Patent 4,183,894; (2) at least claims 1-6, 9-11, and 13 of U.S. Letters Patent 4,304,743; (3) at least claims 1-2, 6-7, and 11-15 of U.S. Letters Patent 4,416,838; and (4) by reason of alleged infringement of at least claims 1-4 and 8-12 of U.S. Letters Patent 4,429,437. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Steven H. Schwartz, Esq., or Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-4877 and 202-523-0419, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on June 9, 1986, ordered that:

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930 an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain plastic fasteners into the United States, or in their sale, by reason of alleged manufacture abroad by a process which, if practiced in the United States, would infringe (1) claims 1-4 and 8-12 of U.S. Letters Patent 4,183,894; (2) claims 1-6, 9-11, and 13 of U.S. Letters Patent 4,304,743; (3) claims 1-2, 6-7, and 11-15 of U.S. Letters Patent 4,416,838; and (4) by reason of alleged infringement of claims 1-4 and 8-12 of U.S. Letters Patent 4,429,437, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Dennison Manufacturing Company, 300 Howard Street, Framingham, Massachusetts 01701.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Dai Won Chemical, a/k/a Daewon, 152-12, HwaYand-dong, SungKong-Ku, Seoul, Korea

Hong Sung Ind. Inc., 27, 2-Ka, HweHyung/dong, Choong-ku, Seoul, Korea

Epven Corp., 120-27, Do Hwa-Dong, Nam-Klu, Inchon, Korea

Kyung-Won Ind. Company (No. B-6-18, Ban Wol Industrial Estate), 399-2, MokNae-Ri, JunJa-Myun, SiHeung-kun, KyungKi-Do, Korea

Dae Yu Sang Sa Company, 32, 1-Ka, EulJi-Ro, Chong-Ku, Seoul, Korea

Sam Sung Chemical, 528, 1-Ka, SungSoo-Dong, SungDong-Ku, Seoul, Korea

K and K Company, 98, BukChang-Dong, Choong-Ku, Seoul, Korea

Dae San Precision Company, 4–8 KwangMyung 1-Dong, KwanMyung City, KyungKi-Do, Korea
Dong-Hwa (Don-Hwa Marking Co.), 330–35, DockSan-Dong, KuRo-Ku, Seoul, Korea
Jin Sung Trading Company, 93–62, BukChang-Dong, Choong-ku, Seoul, Korea
MiSung Trading, 47–12, 1-Ka, WonHyo-Ro, YongSan-Ku, Seoul, Korea
Chang-In Trading, 24–28, 1-Ka, ChoongMoo-Ro, Choong-Ku, Seoul, Korea
LeMar, Inc., 305 E. 8th Street, Los Angeles, California 90014
Amram Attachments, Inc., 960 Alabama Avenue, Brooklyn, New York 11207
Ben Clements & Sons, Inc., a/k/a Clements Industries, Inc., 50 Ruta Court, S. Hackensack, New Jersey 07606
Central Notion Company, Inc., a/k/a Target, 800 Roebling Street, Brooklyn, New York 11211
Kwik-Ticket, Inc., 1328 Broadway, New York, New York 10001
Monarch Marking Systems, P.O. Box 608, Dayton, Ohio 45401
A. Meyers & Sons Corp., 325 W. 38th Street, New York, New York 10018
DARA, Inc., a/k/a/ Angeland, Inc., 3624 S. Broadway, Los Angeles, California 90007
Jon Barry Company, P.O. Box 20038, Greely Station, New York, New York 10001–9992
Acme Thread & Supply, Inc., 826 S. Los Angeles Street, Los Angeles, California 90014
International Merchandise, Inc., 1117 Tower Road, Schaumburg, Illinois 60195
Texamerican, Inc., 2080 N.W. 21st Street, Miami, Florida 33142
B & N Distributors, 907 Tankledge Street, San Carlos, California 94070.

(c) Steven Schwartz, Esq., and Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, United States International Trade Commission, 701 E Street NW., Room 124, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D.Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to § 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemd to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202–523–0471. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: June 12, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–13799 Filed 6–17–86; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337–TA–231]

Certain Soft-Sculpture Dolls Popularity Known as Cabbage Patch Kids, Related Literature and Packaging Therefor; Commission Decision Not to Review Initial Detemination Terminating Investigation as to Respondent International Panasound on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Termination of investigation as to a respondent on the basis of a settlement agreement.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 18) granting a motion to terminate the investigation as to respondent International Panasound, Ltd., on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0421.

SUPPLEMENTARY INFORMATION: On October 1, 1985, Original Appalachian Artworks, Inc. (OAA), and Coleco Industries, Inc., filed a section 337 complaint with the Commission alleging unfair methods of competition and unfair acts in the importation and sale of certain Cabbage Patch Kids dolls, together with the related literature and packaging. The unfair acts alleged were infringement of OAA's copyrights, failure to mark country of origin, and violation of 17 U.S.C. § 601(a). On March 3, 1986, OAA and Coleco moved to terminate the investigation as to International Panasound, Ltd. (Panasound), pursuant to rule 210.51 on the basis of a settlement agreement. The motion was supported by the Commission investigative attorney. On May 7, 1986, the presiding administrative law judge issued an ID (Order No. 18) granting the motion and terminating the investigation as to Panasound on the basis of the settlement agreement. No petitions for review or comments from the public or Goverment agencies concerning the ID were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and the Commission's rule 210.53 (19 CFR 210.53).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during offical business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that informaiton on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

Issued: June 11, 1986.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 86–13800 Filed 6–17–86; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Release of Waybill Data To Check Validity of Waybill Sample

The Commission has received a request from R.L. Banks & Associates, Inc., a consulting firm, for permission to

use certain waybill data to ascertain the reliability of recent Commission waybill samples. They are not requesting the data on behalf of any client.
Specifically, they seek the following: (1) Waybill data by individual railroad to compare with the data in the Freight Commodity Statistics (FCS) for 1980, 1983, 1984, and 1985, when available, (2) any analyses or studies prepared by Commission contractors concerning any limitations on the quality of the waybill data, (3) any commodity specific comparisons of waybill sample and QCS (Quarterly Commodity Statistics Report) carloads and tons by railroad, and (4) summary statistics by individual railroads for 1980, 1983, 1984, and 1985, when available, and railroad junction volumes sorted by forwarding railroads as contained in the Enhancement Reports prepared by ALK Associates (ALK) for the Commission. With regard to the junction volumes, R.L. Banks wants to compute the waybill sample's estimate of forwarded and received traffic and compare them with the FCS.

The Commission requires rail carriers to file waybill sample information if in any of the past three years they terminated on their lines at least: (1) 4,500 revenue carloads or (2) 5 percent of revenue carloads in any one State (49 CFR Part 1244). From this waybill information, the Commission has developed a Public Use Waybill File that has satisfied the majority of all our waybill data requests while protecting the confidentiality of proprietary data submitted by the railroads. However, if confidential waybill data are requested, as in this case, we will consider releasing the data only after certain protective conditions are met and public notice is given. More specifically, under the Commission's current policy for handling waybill requests, we will not release any confidential waybill data until after: (1) Public notice is provided so affected parties have an opportunity to object and (2) certain requirements designed to protect the data's confidentiality are agreed to by the requesting party (48 FR 40328, September 6, 1983).

Accordingly, if any parties object to this request, they should file their objections (an original and 2 copies) with the Director of the Commission's Office of Transportation Analysis (OTA) within 14 calendar days of the date of this notice. They should also include all grounds for objection to the full or partial disclosure of the requested data. The Director of OTA will consider these objections in determining whether to release the requested waybill data. Any parties who objected will be timely notified of the Director's decision.

Contact: Elaine Kaiser, (202) 275-7003.

Noreta R. McGee,

Acting Secretary.

[FR Doc. 86-13722 Filed 6-17-86; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30806]

Notice of Exemption for Joint Project Involving Relocation of a Line of Railroad; Interstate Railroad Co. et al

On April 16, 1986, Interstate Railroad Company (IRC), Norfolk and Western Railway Company (NW), Seaborad System Railroad, Inc. (SBD), Southern Railway Company (SRC), and Virginia and Southwestern Railway Company (VSR) filed a notice of exemption under 49 CFR 1180.2(d)(5) to relocate a line of railroad. The exemption was effective April 23, 1986.

IRC and VSR are owned and controlled by SRC. SRC and NW, in turn, are controlled by Norfolk Southern Corporation. IRC's lines are operated by NW.[1]

The Virginia Department of Highways (Virginia) is relocating the U.S. Highway 23 (Main Street) grade crossing at Appalachia, VA. Since the location of IRC's line in Appalachia is interfering with this project, Virginia has requested that the line also be relocated. The parties have reached an agreement to facilitate the line's relocation. Under the agreement, IRC will abandon, and NW will discontinue service over, 4678.4 feet of main line track between stations 312+36.6 and 359+15. Operations will be relocated over parallel, connecting line segments belonging to IRC, SBD, and VSR.

The relocation project will also require the removal, realignment, relocation, and construction of certain track segments which are exempt from Commission jurisdiction under 49 U.S.C. 10907.

Joint projects involving the relocation of a line of railroad which do not disrupt service to shippers are exempt from 49 U.S.C. 11343. The proposed relocation will not affect any shippers because no operational or service changes are involved. Accordingly, the relocation meets the criteria of 49 CFR 1180.2(d)(5).

The Railway Labor Executives' Association and the United Transportation Union have expressed concern about the impact of the proposal on labor. Because a portion of IRC's operations will conducterd over lines leased from other carriers, we shall impose the labor protective conditions set forth in *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978), as modified in 360 I.C.C. 653 (1980). Further because the relocation project involves and incidential abandonment, we also shall impose the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). Together, these conditions satisfy the statutory requiements of 49 U.S.C. 10505 (g)(2).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may filed at any time. The filing of a peition to revoke will not stay at any time. The filing of a petition to revoke will not stay the transaction.

Decided: June 13, 1986.

By the Commission, Richard Lewis, Acting Director, Office of Proceedings.

Noreta R. McGee,

Acting Secretary.

[FR Doc. 86-13955 Filed 6-17-86; 11:49 am]

BILLING CODE 7035-01-M

[1] Pursuant to an exemption granted in Finance Docket No. 30582 (Sub-No. 1), *Norfolk & W. Rwy. Co., Southern Rwy. Co., and Interstate R.R. Co.-Exempt.—Contract to Operate & Track. Rts.* (not printed), served February 25, 1985.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on June 13, 1986 a proposed consent decree, Civil Action No. 85 C 8394 was lodged with the United States District Court for the Northern District of Illinois. The proposed consent decree concerns control of air pollution at Interlake's cast-house at its steel plant in Chicago, Illinois. The proposed consent decree requires the defendant to comply with air pollution emission standards that represent reasonably available control technology or to install additional secondary controls. Defendant is also required to pay a civil penalty and must pay stipulated penalties if it fails to comply with the terms of the consent decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States v. Interlake, Inc.*, D.J. Ref. 90-5-2-1-853.

The proposed consent decree may be examined at the office of the United States Attorney, Northern District of Illinois, 2444 Federal Building, 219 S.

Dearborn Street, Chicago, Illinois 60604 and at the Region V Office of the Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.40 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 86-13737 Filed 6-17-86; 8:45 am]

BILLING CODE 4410-01-M

Senior Executive Service (SES) Performance Review Boards; Membership

AGENCY: Department of Justice.

ACTION: Notice of the Department of Justice's 1986 SES Performance Review Boards.

SUMMARY: Pursuant to the requirement of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its SES Performance Review Boards. The purposes of the Performance Review Boards are to provide fair and impartial review of Senior Executive Service performance appraisals and to make recommendations to the Deputy Attorney General regarding the ratings.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Oser, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, D.C. 20530. Telephone: 633-3221.

Harry H. Flickinger,

Executive Secretary, Senior Executive Resources Board.

Performance Review Board #1

Offices of the Attorney General, Deputy Attorney General, and Associate Attorney General; Justice Management Division:

Principal Members

Samuel Rosenthal (Board Chair) Chief, Appellate Section, Criminal Division
Mark R. Disler, Deputy Assistant Attorney General; Civil Rights Division
Gilbert L. Ingram, Assistant Director for Correctional Programs, Bureau of Prisons

Alternate Members

Donald A. Carr; Chief, Wildlife and Marine Resources Section, Land and Natural Resources Division
Gerald M. Farkas, Assistant Director/Associate Commissioner for Federal Prisons Industries, Inc., Bureau of Prisons

Performance Review Board #2

Criminal Division; Community Relations Service; Offices of Professional Responsibility, Intelligence Policy and Review, Legal Policy, and Public Affairs; Executive Office for U.S. Attorneys:

Principal Members

Catherine G. O'Sullivan (Board Chair), Chief, Appellate Section, Antitrust Division
James A. Shealey, Assistant Director for Financial Management; U.S. Marshals Service
Stanley F. Krysa, Chief, Criminal Section; Tax Division

Alternate Members

William J. Kollins, Chief, Land Acquisition Section, Land and Natural Resources Division
Terry Appenzellar, Director, Systems Policy Staff, Justice Management Division

Performance Review Board #3

Civil Division; Office of the Solicitor General; U.S. Marshals Service; Foreign Claims Settlement Commission:

Principal Members

John F. Shaw (Board Chair), Assistant Commissioner for Investigations, Office of Enforcement, Immigration and Naturalization Service
P. Terry Lubeck, Chief, Litigation II Section, Antitrust Division
Michael A. Defeo, Deputy Chief, Organized Crime and Racketeering Section, Criminal Division

Alternate Members

Jack A. Nadol, Comptroller, Office of Justice Programs
Irvin Klavan, Assistant Commissioner for Records System, Office of Information Systems, Immigration and Naturalization Service

Performance Review Board #4

Antitrust Division; Office of Legal Counsel; Office of Legislative Affairs; Executive Office for Immigration Review:

Principal Members

J. Michael Quinlan (Board Chair), Deputy Director, Bureau of Prisons
John J. McCarthy, Senior Litigation Counsel, Tax Division
John J. Lane; Deputy Assistant Attorney General, Office of Information Technology, Justice Management Division

Alternate Members

Mary C. Lawton, Counsel for Intelligence Policy, Office of Intelligence Policy and Review
Federick D. Hess, Director, Office of Enforcement Operations, Criminal Division

Performance Review Board #5

Immigration and Naturalization Service; Civil Rights Division:

Principal Members

Margaret N. Strand (Board Chair), Chief, Environmental Defense Section, Land and Natural Resources Division
John J. Farley, III, Director, Torts Branch, Civil Division
C. Madison Brewer, Director, Office of Management Information Systems and Support Staff, Executive Office for U.S. Attorneys

Alternate Members

Robert N. Ford, Deputy Assistant Attorney General, Office of the Comptroller, Justice Management Division
James R. Weiss, Chief, Transportation, Energy, and Agriculture Section, Antitrust Division

Performance Review Board #6

Tax Division; Land and Natural Resources Division:

Principal Members

Wade B. Houk, Jr. (Board Chair), Assistant Director for Administration, Bureau of Prisons
Richard E. Norton, Associate Commissioner for Examinations, Office of Examinations, Immigration and Naturalization Service
Charles A. Lauer, General Counsel, Office of Justice Programs

Alternate Members

Gary W. Allen, Director, Torts Branch, Civil Division
David L. Rose, Chief, Employment Litigation Section, Civil Rights Division

Performance Review Board #7

Bureau of Prisons; Office of Justice Programs:

Principal Members

Robert L. Dennis (Board Chair), Assistant to the Director, Executive Office for Immigration Review
Mary E. Mann, Special Litigation Counsel, Civil Rights Division
Michael F. Hertz, Director, Commercial Litigation Branch, Civil Division

Alternate Members

Richard L. DeHaan, Director, Office of Administration and Review, Executive Office for U.S. Attorneys
Thomas J. Stanton, Director and Counsel, Executive Office for U.S. Trustees
James A. Kennedy, Assistant Commissioner for Administration, Office of Management, Immigration and Naturalization Service
Theodore D. Peyser, Jr., Special Litigation Counsel, Tax Division.

[FR Doc. 86-13736 Filed 6-17-86; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated February 10, 1986, and published in the **Federal Register** on February 14, 1986 (51 FR 5613), Sigma Chemical Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Ibogaine (7260)	I
Bufotenine (7433)	I
Dimethyltryptamine (7435)	I
Diethyltryptamine (7434)	I

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: June 5, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-13752 Filed 6-17-86; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Registration

By Notice dated March 31, 1986, and published in the **Federal Register** on April 7, 1986; (51 FR 11846), Stepan Chemical Company, Natural Products Department, 100 West Hunter Avenue, Maywood, New Jersey 07607, made application to the Drug Enforcement Administration to be registered as an importer of coca leaves (9040), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008 (a) of the Controlled Substances Import and Export Act and in accordance with Title 21 Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: June 4, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-13753 Filed 6-17-86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated April 9, 1986, and published in the **Federal Register** on April 12, 1986; (51 FR 13113), Smithkline Chemicals, Division Smithlkine Corporation, 900 River Road, Conshohocken, Pennsylvania 19428, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
4-methoxyamphetamine (7411)	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Phenylacetone (8501)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: June 6, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86-13754 Filed 6-17-86; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances

Notice of Application; Penick Corp.

Pursuant to section 1008 of the Controlled Substance Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II, and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 19, 1986, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Raw opium (9600)	II
Opium plant form (9650)	II
Concentrate of poppy straw (9670)	II

As to the basic classes of controlled substances listed above for which application for registration has been made, any other applicant therefore, and any existing bulk manufacturer registered therefore, may file written comments on or objections to the issuance of such registration and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than July 18, 1986.

This procedure is to be conducted

simultaneously with an independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: June 6, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administrator.

[FR Doc. 86–13751 Filed 6–17–86; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances Notice of Application; Western Fher Laboratories, Inc.

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 8, 1986, Western Fher Laboratories, Inc., Carretera 132, KM 25.3, P.O. Box 7468, Ponce, Puerto-Rico 00732, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule II controlled substance Phenmetrazine and its salts (1631).

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than July 18, 1986.

Dated June 12, 1986.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 86–13750 Filed 6–17–86; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Annual Status Report for Titles II–A and III Programs

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of revised annual status report for Titles II–A and III.

SUMMARY: The Department of Labor is issuing revised annual reporting requirements for programs under Titles II–A and III of the Job Training Partnership Act (JTPA). Revisions include the collection of new data necessary to establish proposed performance standards measures for Program Year 1988. Revisions also include new data items to identify the more difficult-to-serve groups within the eligible population so that standards may be set which take account of such individuals.

EFFECTIVE DATE: July 1, 1986.

FOR FURTHER INFORMATION CONTACT: Mr. Herman Williams. Telephone (202) 535–0687.

SUPPLEMENTARY INFORMATION: On January 14, 1986, proposed revisions to the JTPA Annual Status Report (JASR) for Titles II–A and III programs were published in the **Federal Register**, Volume 51, pages 1576–86. Interested parties were invited to submit written comments through February 3, 1986. At the same time, the proposed revisions were forwarded to the Office of Management and Budget (OMB) for review pursuant to the Paperwork Reduction Act. The purpose of this notice is to advise the system of the nature of the comments received and the final action taken pursuant to the OMB review.

A. Authority and Purpose of the JTPA Annual Reporting Requirements

Reporting instructions are necessary to comply with the JTPA statutory provisions regarding the Secretary's responsibilities and authority for setting performance standards and for recordkeeping and reporting as indicated below:

- Section 106—Performance Standards. This section directs the Secretary to prescribe standards for adult and youth programs under Title II and dislocated worker programs under Title III. To set performance standards, the Secretary must have data on performance.
- Section 165—Reports, Recordkeeping, and Investigations. This section requires federal grant recipients to maintain records and report information regarding program performance as specified by the Secretary.
- Section 169—Administrative Provisions. The Secretary is directed at (d)(1) to submit an annual report to the Congress summarizing the achievements of the program. Such a report will include data on program performance.

These proposed revisions are intended to extend and update the reporting system for the first time in three years. The justification for having reporting at the service delivery area (SDA) level has not changed since the initial establishment of the reporting requirements, namely:

- Data on program performance, participant characteristics and local economic conditions must be available at the SDA level to set standards.
- Federal reporting is the most cost effective method for collecting program performance and participant characteristics. In addition, such a system ensures the consistency of the data across SDAs.
- Without SDA-level data, objective and defensible local standards cannot be set, because the effects on performance of varying local conditions cannot be systematically predicted.

B. Reasons for the Revisions

These revisions are being made for several reasons:

- The Department anticipates adding new standards for Program Year (PY) 88 measuring post-program outcomes. Data collection must begin in PY 86 for the Secretary and the Governors to have adequate information for setting these standards in PY 88.
- Whether JTPA programs are serving the more difficult to serve has been of increasing concern. Identifying better those difficult-to-serve within the eligible JTPA population and adjusting the standards when SDAs disaproportionately serve these target groups will address this concern.
- Attaining PIC-recognized youth employment competencies included in the definition of the youth positive termination standard, yet absent from the current reporting system. This outcome is specifically cited in the statute at Section 106 as one of the factors which the Secretary shall designate for the evaluation of youth programs. Including it in the reporting system will allow SDAs to receive credit for a statutorily mandated outcome and will eliminate confusion in the current system.

C. Discussion of Comments

There were 81 comments received within the comment period. Additional comments received after the deadline were reviewed and considered to the extent possible. The position of the department following review with OMB is indicated below and reflected in the reporting instructions as appropriate:

Participation and Termination Summary

This section contains the overall summary of participants and terminations. Commenters indicated that it was unnecessary to report on the percent of economically disadvantaged participants because by law at least 90% of the participants have to be so designated. Because this information is intended to monitor compliance with the eligibility criteria and is not related to the development of performance standards, it more appropriately should be obtained from the compliance review process. For this reason it has been deleted.

Terminee Characteristics

The Department received considerable comment on the omission of two characteristics elements. Over forty commenters noted the omission of the 55 and above age category. Because the JASR is considered to be the principal reporting source for JTPA, the omission of this age group erroneously implies a lack of concern for this age cohort. We agree and have added this age break to the report.

Many commenters noted the omission of displaced homemaker. While the Department is concerned with this target group that is specifically cited in the Act, there was no empirical evidence that the collection of this data would provide a statistically adequate basis for adjusting performance standards. Further, the Department has national performance data on displaced homemaker participation through JTLS.

Long-term welfare recipients were added to the reporting system to enable standards to be adjusted to account for the more difficult-to-serve chronic welfare recipients. This item is deleted because commenters indicated that it would be particularly difficult to obtain accurate and consistent data on welfare duration due to difference in local welfare regulations.

Follow-Up Information

The general comment was overwhelmingly favorable toward the initiation of postprogram data collection. Specific comments focused on two areas. Many expressed concern over the additional costs involved with the new data collection requirements.

The Department was very much aware of this aspect of initiating postprogram data collection. The experience of States which are already collecting postprogram data indicates an average cost of $15 per follow-up. Many commenters felt that this was low, but not appreciably lower than their expected cost. Some commenters recommended that the Department provide additional funds to assist in the startup costs, or allow a broad interpretation of the use of six percent funds for this purpose. The Department still maintains that six percent funds are not allowable for follow-up data collection and States and SDAs will need to tap other sources for postprogram data collection. States can clearly use five percent funds and SDAs can use fifteen percent funds to support this cost. The Department considers the typical cost of $4–8,000 per SDA as significant but by no means insurmountable. It is the Department's judgement that the program improvement accruing from the initiation of postprogram measures is well worth the investment.

Many commenters noted that the data collection guidelines were overly prescriptive. The Department carefully reviewed all such comments and considered revisions which would not compromise the validity and quality of the data. Some commenters noted that the phone contact requirement was impractical. The Department will allow other participant contact procedures if phone contact is not possible or successful. The Department will not require up to six contact attempts, but will encourage that number in order to reach the prescribed response rate. The data collection period is expanded from two to four weeks. Many commenters were apprehensive about the 70% response rate provision. The Department believes the validity of the data would be seriously compromised if the response rate were reduced. The Department is mindful of these concerns, however, and is requiring that SDAs report the response rate and sample size for adults, adult welfare recipients and dislocated workers. This will enable the Department to fully track the progress of the system in attaining the required response rate in PY 86. A technical assistance guide will be distributed to supplement these instructions in an effort to minimize data collection problems prior to the time the data is required for measuring performance against standards in PY 88. Finally, there was some misunderstanding about the exact date when followup data collection was to begin. For PY 86 only, postprogram data collection must start anytime between July 1, 1986 and October 5, 1986.

Youth Competency Attainment

Nearly all commenters supported the concept of youth competency attainment and its inclusion in the JASR. However, many commenters raised questions regarding the use, burden, and consistency of the detailed data included in Part IV. The Department's purpose in adding Part IV was to try to provide the basis for a new youth measure (youth competency attainment) and to try to capture data that would provide information on achievement of basic skills. In order to set such standards, the Department believed it needed to collect separate data on how successful SDAs are at responding to deficiencies in pre-employment/work maturity, basic educational, and job specific skills.

Commenters indicated concern with the amount of detail required in the new reporting provision and the fact that it would require service deliverers to assess the deficiencies of youth. In addition, most of those objecting to Part IV of the proposed JASR believed that Item I.B.2.a was sufficient, that the prescription of youth competency breaks was an intrusion on the PIC's authority and that this addition had not been reviewed with the Performance Standards Advisory Committee. Given these concerns, Part IV is withdrawn.

Other Comments

Commenters asked that we clarify instructions on concurrent enrollment in more than one reportable title or program. We have done so by indicating that persons who are receiving concurrent employment, training and/or services in more than one title or program are to be considered participants in both titles and reported accordingly. If participants are no longer receiving employment, training and/or services from the title or program of initial participation, such participants should not be considered concurrently enrolled and should be reported as participants only in the title or program into which they have transferred. This does not apply to those youth, however, who are enrolled in the Title II–B Summer Program. SDAs should not terminate those youth intending to return to Title II–A programs even when they are not receiving any Title II–A services during the time the youth are enrolled in summer programs.

We have also defined "inactive status" as that single 90-day period prior to actual termination from a program during which an individual does not receive any employment and/or training. Time in inactive status is not to be included in the calculation of the average weeks participated.

Paperwork Reduction Act of 1980

The appendix to this notice has been reviewed in accordance with the Paperwork Reduction Act by the Office of Management and Budget and approved for the period through June 30, 1988 (OMB No. 1205-0211).

Signed at Washington, DC, this 12th day of June, 1986.

Roger D. Semerad,

Assistant Secretary of Labor.

Appendix—JTPA Annual Status Report (JASR)

1. *Purpose.* The JTPA Annual Status Report (JASR) displays cumulative data on participation, termination, performance measures and the socio-economic characteristics of all terminees on an annual basis. The information will be used to determine levels of program service and performance measures. Selected information will be aggregated to provide quantitative program accomplishments on a local, State, and national basis.

2. *General Instructions.* The Governor will submit: (1) A combined Statewide JASR for Title III Formula and National Reserve (Column D only) and (2) for Title II-A (Columns A-C) a separate JASR for *each* designated Service Delivery Area (SDA). (A Statewide summary of these SDA data need not be submitted.) Grantees may determine whether the reports are submitted on JASR forms or as a computer printout, with data, including signature and title, date signed and telephone number, arrayed as indicated on the JASR form. If revisions are made to the JASR data after the reporting deadline, revised copies of the JASR should be submitted to DOL as soon as possible according to the required reporting procedures.

Note.—For JASR reporting purposes, Title II-A shall refer to programs operated with funds authorized under section 202(a) of the Act or otherwise distributed by the Governor under section 202(b)(3) (six percent) of the Act—incentive grants for service to the hard-to-serve and programs exceeding performance standards. Do not include data on (six percent) funds authorized under section 202(b)(3) for technical assistance. Participants and expenditures under Title I, Sections 123 (8%) and 124 (3%), and expenditures under Title II, section 202(b)(4) (five percent) and any participants, if applicable, are likewise excluded from the JASR.

Note.—Participant and expenditure information under Title II-B, Summer Youth Employment and Training Program (SYETP), is also excluded from the JASR.

SDAs should not terminate from Title II-A *youths* who participate in the Title II-B Summer Program unless they are not expected to return to Title II-A for further employment, training and services.

If the youths receive concurrent employment, training and/or services under both Title II-A and II-B, they are to be considered participants in both titles for purposes of recording actual number of weeks participated, dollars expended, and other pertinent data.

If, however, these youths do not receive Title II-A employment, training and/or services while participating in Title II-B, this period is *not* to be included in the calculation of actual number of weeks participated in Title II-A at line 27, Column C.

The reporting period begins on the starting date of each JTPA program year, as stated in Section 161 of the Act. (For PY 86 only, the postprogram reporting period will start on October 5, 1986.) Reports are due in the national and regional offices no later than 45 days after the end of each program year. Two copies of the JASR are to be provided to: Employment and Training Administration, U.S. Department of Labor, ATTN: TSVR—Rm. S-5306, 200 Constitution Avenue, NW., Washington DC. 20210.

At the same time an additional copy of the JASR is to be provided to the appropriate Regional Administrator for Employment and Training in the DOL regional office that includes the State in which the JTPA recipient is located.

3. *Facsimile of Form.* See the following page.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR Employment and Training Administration JTPA ANNUAL STATUS REPORT	a. STATE/SDA NAME AND ADDRESS	b. REPORT PERIOD FROM	TO

I. PARTICIPATION AND TERMINATION SUMMARY			Total Adults (A)	Adults (Welfare) (B)	Youth (C)	Dislocated Workers (D)
A. TOTAL PARTICIPANTS						
B. TOTAL TERMINATIONS						
1. Entered Unsubsidized Employment						
2. Youth Employability Enhancement Terminations						
a. Attained PIC-Recognized Youth Employment Competencies						
b. Entered Non-Title II Training						
c. Returned to Full-Time School						
d. Completed Major Level of Education						
3. All Other Terminations						
Line No.	II. TERMINEES PERFORMANCE MEASURES INFORMATION					
1	Sex	Male				
2		Female				
3	Age	14 - 15				
4		16 - 17				
5		18 - 21				
6		22 - 29				
7		30 - 54				
8		55 and over				
9	Education Status	School Dropout				
10		Student				
11		High School Graduate or Equivalent (No Post-High School)				
12		Post-High School Attendee				
13	Family Status	Single Head of Household With Dependent(s) Under Age 18				

c. SIGNATURE AND TITLE	d. DATE SIGNED	e. TELE. NO.

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a. STATE/SDA NAME AND ADDRESS	REPORT PERIOD FROM	TO

Line No.		II. TERMINEES PERFORMANCE MEASURES INFORMATION - CONTINUED	Total Adults (A)	Adults (Welfare) (B)	Youth (C)	Dislocated Workers (D)
14	Race/Ethnic Group	White (Not Hispanic)				
15		Black (Not Hispanic)				
16		Hispanic				
17		American Indian or Alaskan Native				
18		Asian or Pacific Islander				
19	Other Barriers To Employment	Limited English Language Proficiency				
20		Handicapped				
21		Offender				
22	U.C. Status	Unemployment Compensation Claimant				
23	Labor Force Status	Unemployed 15 or More Weeks of Prior 26 Weeks				
24		Not in Labor Force				
25	Welfare Grant Info.	Welfare Grant Type: AFDC				
26		GA/RCA				
27		Average Weeks Participated				
28		Average Hourly Wage at Termination				
29		Total Program Costs (Federal Funds)				
		III. FOLLOW-UP INFORMATION				
30		Employment Rate (At Follow-up)				
31		Average Weekly Earnings of Employed (At Follow-up)				
32		Average Number of Weeks Worked in Follow-up Period				
33		Sample Size				
34		Response Rate				

REMARKS:

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BILLING CODE 4510-30-C

4. *Instructions for Completing the JTPA Annual Status Report (JASR).*

a. State/SDA Name, Number and Address.

Enter the name and address of the State agency that will administer the grant recipient's program (Title III report). Enter the name, ETA assigned SDA number and address of the designated SDA subrecipient, as appropriate (Title II–A report).

b. Report Period.

Enter in "From" the beginning date of the designated JTPA program year and enter in "To" the ending date of that program year.

c. Signature and Title (at botton of the page).

The authorized official signs here and enters his/her title.

d. Date Signed.

Enter the date the report was signed by the authorized official.

e. Telepone Number.

Enter the area code and telephone number of the authorized official.

5. *General Information.* For purposes of the JASR, the adult and adult welfare columns will include terminees age 22 years and older. Thus, the column breakouts are based strictly on age rather than on program strategy. The youth column will include terminees who were age 14–21 at the time of eligibility determination. The dislocated workers column may include adults and youth, as applicable.

Unless otherwide indicated, data reported on characteristics of terminees should be based on information collected at the time of eligibility determination.

Characteristics information obtained on an individual at the time of eligibility determination for the recipient's JTPA program should *not* be updated when the individual terminates from the JTPA program.

Column Headings

Column A Total Adults

This column will contain an entry for each appropriate item for *all* adult participants in Title II–A only.

Column B Adults (Welfare)

This column will contain an entry for each appropriate item for adult participants in Title II–A who were welfare recipients or whose family received cash payments under AFDC (SSA Title IV), General Assistance (State or local government), or the Refugee Assistance Act of 1980 (Pub. L. 96–212) at the time of JTPA eligibility determination. For performance standards purposes, *exclude* those individuals who receive only SSI (SSA Title XVI) from entries in Column B.

Note.—Column B is a sub-breakout of Column A; therefore, Column B should be less than or equal to Column A for each line entry.

Column C Youth

This column will contain an entry for each appropriate item for All participants, aged 14–21, in Title II–A only.

Column D Dislocated Workers

This column will contain an entry for each appropriate item for *all* participants in Title III who were determined to be eligible dislocated workers.

Note.—Column A, B, and C apply to Title II–A. Column D applies to Title III only. All information regarding a given participant must be entered in the same column, e.g., Column C for a youth in Title II–A.

The sum of the entries (all SDAs in a State) in Columns A and C, Item I.A. of the JASR should equal the entry in Column A, Item III.A.1. of the JSSR, for the same recipient, that includes the final quarter of the same program year. The entry in Column D, Item I.A. of the Statewide JASR for Title III should be the sum of the entries in Columns B and C, Item III.A. of the JSSR, for the same recipient, that includes the final quarter of the same program year for the same grant.

Section I—Participation and Termination Summary

Section I displays the program's accomplishments in terms of the total cumulative number of participants in the program and the number and types of terminations from the program, as of the end of the reporting period.

Entries for Items I.A and I.B are cumulative from the beginning of the program year through the end of the reporting period.

Item I.A. Total Participants

Enter by column the total number of participants who are or were receiving employment, training or services (except post-termination services) funded under that program title through the end of the reporting period, including both those on board at the beginning of the designated program year and those who have entered during the program year. If individuals receive concurrent employment, training and/or services under more than one title, they are to be considered participants in both titles for purposes of recording actual number of weeks participated, dollars expended, and other pertinent data.

"Participant" means any individual who has: (1) Been determined eligible for participation upon intake; and (2) started receiving employment, training, or services (except post-termination services) funded under the Act, following intake. Individuals who receive *only* outreach and/or intake and assessment services or postprogram follow-up are excluded.

Participants who have transferred from one title to another, or between programs of the same title, should be recorded as terminations from the title or program of initial participation and included as participants in the title or program into which they have transferred.

Item I.B. Total Terminations

Enter by column the total number of participants terminated after receiving employment, training, or services (except post-termination services) funded under that program title, for any reason, from the beginning of the program year through the end of the reporting period. This item is the sum of Items I.B.1 through I.B.3.

"Termination" means the separation of a participant from a given title of the Act who is no longer receiving employment, training, or services (except post-termination services) funded under that title.

Note.—Individuals may continue to be considered as participants for a single period of 90 days after last receipt of employment and/or training funded under a given title. During the 90-day period, individuals may or may not have received services. For purposes of calculating average weeks participated, this period between "last receipt of employment and/or training funded under a given title" and actual date of termination is defined as "inactive status" and is not to be included in Line 27.

Item I.B.1. Entered Unsubsidized Employment

Enter by column the total number of participants who, at termination, entered full- or part-time unsubsidized employment through the end of the reporting period. Unsubsidized employment means employment not financed from funds provided under the Act and includes, for JTPA reporting purposes, entry into the Armed Forces, entry into employment in a registered apprenticeship program, and terminees who became self-employed.

Item I.B.2. Youth Employability Enhancement Terminations

Enter the total number of youth who were terminated under one of the Youth Employability Enhancements through the end of the report period. "Youth Employability Enhancement" means an outcome for youth, other than entered unsubsidized employment, which is recognized as enhancing long-term employability and contributing to the potential for a long-term increase in earnings and employment. Outcomes which meet this requirement shall be restricted to the following: (1) Attained PIC-Recognized Youth Employment Competencies; (2) Entered Non-Title II Training; (3) Returned to Full-Time School; (4) Completed Major Level of Education; or (5) Completed Program Objectives (14–15 year olds).

Note.—For reporting purposes, a youth shall *not* be counted in this item, if s/he entered unsubsidized employment, and shall be counted in only *one* of these categories, even though more than one may have been achieved.

Item I.B.2.a. Attained PIC-Recognized Youth Employment Competencies

Enter the total number of youth who, at termination, have demonstrated proficiency as defined by the PIC in one or more of the following three skill areas in which the terminee was deficient at enrollment: pre-employment/work maturity, basic education, or job-specific skills. Competency gains must be achieved through program participation and be tracked through sufficiently developed systems that must include: quantifiable learning objectives, related curricula/training modules, pre- and post-assessment, employability planning, documentation, and certification. This item is a sub-breakout of Item I.B.2.

Item I.B.2.b. Entered Non-Title II Training

Enter the total number of youth who, at termination, entered an employment/training program not funded under Title II of the JTPA. This item is a sub-breakout of Item I.B.2.

Item I.B.2.c. Returned to Full-Time School

Enter the total number of youth who, at termination, returned to full-time school if, at the time of entry, the participant was *not* attending school and had *not* obtained a high school diploma or equivalent. This item is a sub-breakout of Item I.B.2.

Item I.B.2.d. Completed Major Level of Education

Enter the total number of youth who, at termination, had completed, during enrollment, a level of educational achievement which had not been reached at entry. Levels of educational attainment are elementary, secondary, and postsecondary. This item is a sub-breakout of Item I.B.2.

Note.—The sum of Column C, Items I.B.2.a. through I.B.2.d should be equal to or less than Item I.B.2., Youth Employability Enhancement Terminations, in that column. *Line I.B.2. includes the number of 14–15 year olds who completed program objectives even though there is no separate line for this number on this form.*

Item I.B.3. All Other Terminations

Enter by column the total number of participants who were terminated for reasons other than those in Items I.B.1. and I.B.2., successful or otherwise, through the end of the reporting period. *Include intertitle transfers here.*

Section II—Terminee Performance Measures Information

Section II displays performance measures/parameters information. As indicated previously, data reported on characteristics of terminees should be based on information collected at time of eligibility determination unless otherwise indicated.

Governors may develop any participant record which meets the requirements of § 629.35 (c) and (d) of the JTPA regulations. The DOL/ETA *Technical Assistance Guide: The JTPA Participant Record,* dated May 1983, may be used as a reference.

Line Item Definition and Instructions

Sex

Line 1 Male
Line 2 Female

Distribute the terminees by column according to Sex. The sum of Lines 1 and 2 in each column should equal Item I.B. in that column.

Age

Line 3 14–15
Line 4 16–17
Line 5 18–21
Line 6 22–29
Line 7 30–54
Line 8 55 and over

Distribute the terminees by column according to Age. The sum of Lines 31 through 8 in each column should equal Item I.B. in that column.

Education Status

Line 9 School Dropout
Line 10 Student
Line 11 High School Graduate or Equivalent (No Post-High School)
Line 12 Post-High School Attendee

Distribute the terminees by column according to Education Status. The sum of Line 5 through 12 in each column should equal Item I.B. in that column.

Family Status

Line 13 Single Head of Household with Dependent(s) Under Age 18.

Enter the total number of terminees by column for whom the above Family Status classification applies.

Race/Ethnic Group

Line 14 White (Not Hispanic)
Line 15 Black (Not Hispanic)
Line 16 Hispanic
Line 17 American Indian or Alaskan Native
Line 18 Asian or Pacific Islander

Distribute the terminees by column according to Race/Ethnic Groups listed above. For purposes of this report, Hawaiian Natives are to be recorded as "Asian or Pacific Islander". The sum of Lines 14 through 18 in each column should equal Item I.B. in that column.

Other Barriers to Employment

Line 19 Limited English Language Proficiency
Line 20 Handicapped
Line 21 Offender

Enter the total number of terminees by column for whom each of the above Other Barriers to Employment apply.

U.S. Status

Line 22 Unemployment Compensation Claimant

Enter the total number of terminees by column for whom the above Unemployment Compensation Status classification applies.

Labor Force Status

Line 23 Unemployed: 15 or More Weeks of Prior 26 Weeks
Line 24 Not in Labor Force

Enter the total number of terminees by column for whom each of the above Labor Force Status classification apply.

Welfare Grant Information

Line 25 Welfare Grant Type: AFDC
Line 26 GA/RCA

Enter by column the total number of adult and youth welfare terminees who, at eligibility determination, were receiving or whose family was receiving cash payments under AFDC (SSA Title IV), GA, General Assistance (State or local government) or RCA of the Refugee Assistance Act of 1980 (PL 96–212).

Other Program Information

Line 27 Average Weeks Participated

Enter by column the average number of weeks of participation in the program for all terminees. Weeks of participation include the period from the date an individual becomes a participant in a given title through the date of a participant's last receipt of employment and/or training funded under that title. Exclude the period of up to 90 days during which an individual may remain in an inactive status prior to termination. Time in inactive status for all terminees should not be counted toward the actual number of weeks participated. Inactive status is defined as that period between "last receipt of employment and/or training funded under a given title" and actual date of termination. See note at Item I.B.

To calculate this entry: Count the number of days participated for each terminee, including weekends, from his/her date of entry into the program until his/her last receipt of employment and/or training. For those who receive services only, use date of last receipt of such services. Divide this result by 7. This will give the number of weeks participated for the terminee. Sum all the terminees' weeks of participation and divide the result by the number of terminees, as entered (by column) in Item I.B.

Line 28 Average Hourly Wage at Termination

Enter by column the average hourly wage at termination for the total number of terminees in Item I.B.1.

To calculate this entry: Sum the hourly wage at termination for all the terminees shown in Item I.B.1. Divide the result by the number of terminees shown in Item I.B.1.

Hourly wage includes any bonuses, tips, gratuities and commissions earned.

Line 29 Total Program Costs (Federal Funds)

Enter the total accrued expenditures, through the end of the reporting period, of the funds allocated to SDAs under Section 202(a) of the Act or otherwise distributed by the Governor to SDAs under section 202(b)(3)—incentive grants for services to the hard-to-serve and programs exceeding performance standards—for Title II–A programs in Columns A and C (includes costs of services to participants aged 14–21), as appropriate for *all* participants served. Do not include expenditures on funds authorized under section 202(b)(3) for technical assistance. Exclude expenditures under Title I, sections 123 (8%) and 124 (3%) and Title II, section 202(b)(4) (5%). Enter the total accrued expenditures of Title III funds received by the Governor under section 301 of the Act in Column D only, for *all* Title III participants served through the end of the reporting period. Include expenditures of Federal funds only, both formula and discretionary national reserve.

Note.—Entries will be made to the nearest dollar. The JASR program cost data will be compiled on an accrual basis. If the recipient's accounting records are not normally maintained on an accrual basis, the accrual information should be developed through an analysis of the records on hand or on the basis of best estimates.

The sum of the entries in Columns A and C, in Line 29, of the JASR (i.e., total for the State's SDAs under Title II–A) should equal the entry in Column A, Item I.A.1. of the JSSR, and the entry in Column C, Line 29 of the JASR should equal the entry in Column A, Item II. of the JSSR, for the same recipient, that includes the final quarter of the same program year. The entry in Column D, Line 29, of the Statewide JASR for Title III should be the sum of the entries in Columns B and C, Item I.A. of the JSSR, for the same recipient, that includes the final quarter of the same program year for the same grant.

Section III—Follow-up Information

Section III displays information based on follow-up data which must be collected through participant contact to determine an individual's labor force status and earnings, if any, during the 13th full calendar week after termination and the number of weeks s/he was employed during the 13-week period. Follow-up data should be collected from participants whose 13th full calendar week after termination ends during the program year (the follow-up group). Thus, follow-up will be conducted for individuals who terminate during the first three quarters of the program year and the last quarter of the previous program year.

For PY 86 follow-up may be conducted for individuals who terminate during the first three quarters of the program year and postprogram data collection need not begin until October 5, 1986. For States and SDAs already collecting postprogram data, data collection may begin on July 1, 1986.

Follow-up data will be collected for the following terminees: Title II-A adults, adult welfare recipients, and Title III dislocated workers (Columns A, B, and D). No follow-up information is required for Title II-A youth (Column C).

The procedures used to collect the follow-up data are at the discretion of the Governors. However, in order to insure consistency of data collection and to guarantee the quality of the follow-up information, follow-up procedures must satisfy certain criteria. (See the Follow-up Guidelines included in these JASR instructions, Appendix A.)

Note: Every precaution must be taken to prevent a "response bias" which could arise because it may be easier to contact participants who were employed at termination than those who were not and because those who entered employment at termination are more likely to be employed at follow-up. Special procedures have been developed by which SDAs and States can monitor response bias. If your response rates for those who were and were not employed at termination differ by more than 5 percentage points, the follow-up entries for the JASR must be calculated using the "Worksheet for Adjusting Follow-up Performance Measures" in the Follow-up Technical Assistance Guide which will be issued at the same time as these reporting instructions. If the response rates differ by 5 percentage points or less, the following instructions for completing Lines 30–32 may be used.

Line 30 Employment Rate (At Follow-up)

Enter by column the employment rate at follow-up.

Calculate the employment rate by dividing the total number of respondents who were employed (full-time or part-time) during the 13th full calendar week after termination by the total number of respondents (i.e., terminees who completed follow-up interviews). Then multiply the result by 100.

Line 31 Average Weekly Earnings of Employed (At Follow-up)

Enter by column the average weekly earnings of those employed (full-time or part-time) at follow-up.

Calculate the (before-tax) average weekly earnings by dividing the sum of weekly earnings of respondents employed during the 13th full calendar week after termination by the number of respondents employed at the time of follow-up. Respondents not employed at follow-up are not included in this average.

Weekly earnings include any wages, bonuses, tips, gratuities, commissions *and* overtime pay earned.

Line 32 Average Number of Weeks Worked in Follow-up Period

Enter by column the average number of weeks worked.

To calculate the average number of weeks worked (full-time or part-time), divide the sum of the number of weeks worked during the 13 full calendar weeks after termination for all respondents who worked, by the *total* number of all respondents, whether or not they worked any time during this 13-week follow-up period.

Line 33 Sample Size

Enter by column the size of the actual sample selected to be contacted for follow-up. (For Title III only, a *statewide* sample of dislocated workers must be selected. For Title II-A, i.e., adults and adult welfare recipients, SDA samples must be selected.)

Note: If oversampling was used, the sample size should include all those selected, not just the required minimum sample size. Those deceased or severely incapacitated to the point of being unable to respond at follow-up may be excluded from the sample size.

Line 34 Response Rate

Enter by column the overall response rate, i.e., the percentage of completed surveys obtained.

To calculate the overall response rate, divide the number of terminees with completed follow-up information by the total number of terminees included in the follow-up sample (Line 33) and multiply by 100.

Note.—Complete follow-up information consists of substantive answers to the required follow-up questions and may not include "don't know," or "don't remember."

Appendix A

Follow-up Guidelines

To ensure consistent data collection and as accurate information as possible, procedures used to obtain follow-up information must satisfy the following criteria:

• Participant contact should be conducted by telephone or in person. Mail questionnaires may be used in those cases where an individual does not have a telephone or cannot be reached.

• Participant contact must occur as soon as possible after the 13th full calendar week after termination but no later than the 17th calendar week after termination.

• Data reported are to reflect the individual's labor force status and earnings during the 13th full calendar week after termination and the number of weeks she/he was employed throughout the 13-week period after termination.

• Interview questions developed by DOL (see following Exhibit) must be used to determine the follow-up information reported on the JASR. These questions are also included in the *Follow-up Technical Assistance Guide* which will be issued at the same time as the JASR.

Respondents must be told that responding is voluntary and that information provided by them will be kept confidential. Other questions may be included in the interview but shoud be asked after the DOL questions.

Exhibit

Minimum Postprogram Data Collection Questions

Our records indicate that you officially left (*specify program name*) on ________. I first want to ask you about the 13th week after you left the program; that is, the seven-day period starting on Sunday, ________, and ending on Saturday, ________, which was (last week/two/three/four weeks ago).

1. Did you do any work for pay during that week?

_____ Yes (Go to 2)

_____ No (Go to 4)

2. How much did you get paid for work you did during that week before deductions? Include wages on all jobs, tips, overtime, bonuses, commissions, and any work you may have done on the side.

_____ Dollars per week

3. Now I want to ask you about the entire 13 weeks starting with the week after you left the program. That is, from Sunday, ________, to Saturday, ________. Including the week we just talked about, how many weeks did you work at all for pay during the 13-week period?

_____ Weeks

Alternative Questions

4. If answered "no" to question 1:

Now I want to ask you about the entire 13 weeks starting with the week after you left the program. That is, from Sunday, ________, to Saturday, ________. Did you do any work for pay during the 13-week period?

_____ Yes (Go to 5)

_____ No (Go to end)

5. How many weeks did you do any work at all for pay during that 13-week period?

_____ Weeks

• Attempts must be made to contact *all* individuals unless terminee populations are large enough to use sampling.

• At least six attempts may need to be made to contact enough individuals in the follow-up group to obtain the required response rate.

• For each SDA (Title II-A) or combined Statewide (Title III Formula and National Reserve) report (JASR), minimum response rates of 70% are required for each of the following six groups: among adults, those who entered employment at termination and those who did not enter employment at termination; among welfare recipients, those who entered employment at termination and those who did not enter employment at termination; and among dislocated workers, those who entered employment at termination and those who did not enter employment at termination. The response rate is calculated as the number of terminees with complete follow-up information divided by the total number of terminees included in the group eligible for follow-up.

Sampling Procedures

Where sampling is used to obtain participant contact information, it is necessary to have a system which ensures consistent random selection of sample participants from *all* terminees in the group requiring follow-up.

• No participant in the follow-up group may be arbitrarily excluded from the sample.

• Procedures used to select the sample must conform to generally accepted statistical practice, e.g., a table of random numbers or other random selection techniques must be used.

• The sample selected for contact must meet minimum sample size requirements indicated in Table 1.

The use of sampling will depend on whether the terminee populations are large enought to provide estimates which meet minimum statistical standards. If the number of terminees for whom follow-up is required is less than 138, sampling cannot be used. In such cases attempts must be made to contact all the appropriate terminees.

Minimum Sample Sizes for Follow-up

To determine the minimum number of terminees to be included in the follow-up sample, refer to Table 1 in the following instructions. Find the row in the left-hand column that contains the planned number of terminees for each of the groups requiring follow-up: Adults, welfare recipients and dislocated workers. The required minimum sample size is given in the right-hand column of that row.

Note.— The welfare recipients in the adult sample may be used as part of the welfare sample. In this case, an additional number of welfare recipients must be randomly selected to provide supplemental sample large enough to meet the same accuracy requirements as other groups requiring follow-up. To determine the minimum size of this supplemental welfare sample, find the row in the left-hand column of Table 1 that contains the planned *total* number of welfare recipients requiring follow-up. From the corresponding entry in the right-hand column, subtract the number of welfare recipients included in the adult sample. The remainder represents the minimum size of the supplemental sample of welfare recipients required for contact.

TABLE 1—MINIMUM SAMPLE SIZES FOR FOLLOW-UP

Number of terminees in follow-up population	Minimum sample size
1 to 137	All
138 to 149	137
150 to 159	143
160 to 169	149
170 to 179	154
180 to 189	159
190 to 199	164
200 to 224	175
225 to 249	185
250 to 274	194
275 to 299	202
300 to 349	217
350 to 399	229
400 to 449	240
450 to 499	250
500 to 599	265
600 to 749	282
750 to 999	302
1,000 to 1,499	325
1,500 to 1,999	338
2,000 to 2,999	352
3,000 to 4,999	364
5,000 or more	383

Correcting for Differences in Response Rates

Different response rates for those terminees who entered employment at termination and those who did not are expected to bias the performance estimates because those who entered employment at termination are more likely to be employed at follow-up. It is assumed that those who were employed at termination are easier to locate than those who were unemployed because the interviewer has more contact sources (e.g., name of employer). The resulting response bias can artificially inflate performance results at follow-up.

To account for this problem, separate response rates should be calculated for those who were employed at termination and for those who were not. These separate response rates should be calculated for three groups: all adult II–A terminees, welfare recipients and Title III terminees.

For each group, if the response rates of those employed at termination and those not employed differ by more than 5 percentage points, then the "Worksheet for Adjusting Follow-up Performance Measures" in the Follow-up Technical Assistance Guide must be used to correct the follow-up measures for that group.

Appendix B—Definitions of Terms Necessary for Completion of Reports

Employment/Training Services

Assessment—services are designed to initially determine each participant's employability, aptitudes, abilities and interests, through interviews, testing and counseling to achieve the applicant's employment related goals.

Follow-up—is the collection of information on a terminee's employment situation at a specified period after termination from the program.

Intake—includes the screening of an applicant for eligibility to determine: (1) Whether the program can benefit the individual; (2) the employment and training activities and services which would be appropriate for that individual; (3) availability of an appropriate employment and training activity; (4) a decision on selection for participation and (5) dissemination of information on the program.

Outreach—activity involves the collection, publication and dissemination of information on program services directed toward economically disadvantaged and other individuals eligible to receive JTPA training and support services.

Pic-Recognized Youth Employment Competencies

In order to attain a youth employment competency, an individual must have demonstrated proficiency in one or more of the following three skill areas in which the terminee was deficient at enrollment: pre-employment and work maturity, basic education and job specific skills.

• *Pre-employment skills* include world of work awareness, labor market knowledge, occupational information, values clarification and personal understanding, career planning, decision making, and job search techniques (resumes, interviews, applications, and follow-up letters). They also encompass survival/daily living skills such as using the phone, telling time, shopping, making change, renting an apartment, opening a bank account, and using public transportation; *and*

Work maturity skills include positive work habits, attitudes, and behavior such as punctuality, regular attendance, presenting a neat appearance, getting along and working well with others, exhibiting good conduct, following instructions and completing tasks, accepting constructive criticism from supervisors and co-workers, showing initiative and reliability, and assuming the responsibilities involved in maintaining a job. This category also entails developing motivation and adaptability, obtaining effective interpersonal relations, coping and problem-solving skills, and acquiring an improved self image.

• *Basic education skills* include reading comprehension, math computation, writing, speaking, listening, and the capacity to use these skills in the workplace.

• *Job-specific skills*—Primary job-specific skills encompass the proficiency to perform actual tasks and technical functions required by certain occupational fields at entry, intermediate or advanced levels. Secondary job-specific skills entail familiarity with and use of set-up procedures, safety measures, work-related terminology, recordkeeping and paperwork formats, tools, equipment and materials, and breakdown and clean-up routines.

Education Status

School dropout—An adult or youth (aged 14–21) who is not attending school full-time and has not received a high school diploma or a GED certificate.

Student—An adult or youth (aged 14–21) who has not received a high school diploma or GED certificate and is enrolled full-time in an elementary, secondary or postsecondary-level vocational, technical, or academic school or is between school terms and intends to return to school.

High school graduate or equivalent (No Post-High School)—An adult or youth (aged 14–21) who has received a high school diploma or GED Certificate, but who has not attended any postsecondary vocational, technical, or academic school.

Post high school attendee—An adult or youth (aged 14–21) who has received a high school diploma or GED certificate and has attended (or is attending) any postsecondary-level vocational, technical, or academic school.

Family Status

Single head of household—A single, abondoned, separated, divorced or widowed individual who has responsibility for one or more dependent children under age 18.

Race Ethnic Group

White (not hispanic)—A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

Black (not hispanic)—A person having origins in any of the black racial groups of Africa.

Hispanic—A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin (including Spain), regardless of race.

Note: Among persons from Central and South American countries, only those who are of Spanish origin, descent, or culture should be included in the Hispanic category. Persons from Brazil, Guiana, and Trinidad, for example, would be classified according to their race, and would not necessarily be included in the Hispanic category. Also, the Portugese should be excluded from the Hispanic category and should be classified according to their race.

American Indian or Alaskan Native—A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Asian or Pacific Islander—A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent (e.g., India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan), or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa. Hawaiian natives are to be recorded as Asian or Pacific Islanders.

Other Barriers to Employment

Limited English language proficiency—Inability of an applicant, whose native language is not English, to communicate in English, resulting in a job handicap.

Handicapped individual—Refer to Sec. 4(10) of the Act. Any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employment. NOTE: This definition will be used for performance standards purposes, but is not required to be used for program eligibility determination (Sec. 4(8)(E)).

Offender—For reporting purposes, the term "offender" is defined as any adult or youth who requires assistance in overcoming barriers to employment resulting from a record of arrest or conviction (excluding misdemeanors).

U.C. Status

Unemployment compensation claimant—Any individual who has filed a claim and has been determined monetarily eligible for benefit payments under one or more State or Federal unemployment compensation programs, and who has not exhausted benefit rights or whose benefit year has not ended.

Labor Force Status

Employed—(a) An individual who, during the 7 consecutive days prior to application to a JTPA program, did any work at all: (i) as a paid employee; (ii) in his or her own business, profession or farm, or (iii) worked 15 hours or more as an unpaid worker in an enterprise operated by a member of the family; or (b) an individual who was not working, but has a job or business from which he or she was temporarily absent because of illness, bad weather, vacation, labor-management dispute, or personal reasons, whether or not paid by the employer for time off, and whether or not seeking another job. (This term includes members of the Armed Forces on active duty, who have not been discharged or separated; participants in registered apprenticeship programs; and self-employed individuals.)

Employed part-time—An individual who is regularly scheduled for work less than 30 hours per week.

Unemployed—An individual who did not work during the 7 consecutive days prior to application for a JTPA program, who made specific efforts to find a job within the past 4 weeks prior to application, and who was available for work during the 7 consecutive days prior to application (except for temporary illness).

Unemployed: 15 or more weeks of prior 26 weeks—An individual who is unemployed at the time of eligibility determination and has been unemployed for any 15 or more of the 26 weeks immediately prior to such determination.

Not in labor force—A civilian 14 years of age or over who did not work during the 7 consecutive days prior to application for a JTPA program and is not classified as employed or unemployed.

[FR Doc. 86-13665 Filed 6-17-86; 8:45 am]

BILLING CODE 4510-30-M

NUCLEAR REGULATORY COMMISSION

Intent To Relocate Records for the Quad Cities Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to relocate the records for the Quad Cities Station.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is moving the Local Public Document Room (LPDR) records collection for Commonwealth Edison Company's Quad Cities Station from the Moline Public Library (Library), Moline, Illinois, to another as yet undetermined location. Because of the size of the collection, which now measures almost 60 shelf feet of material, the Moline Public Library has asked that the collection be relocated since it receives little use and the resources needed for maintaining it are no longer available. The purpose of this notice is to invite public comment on possible LPDR sites.

DATE: Comment period expires July 18, 1986. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before this date.

ADDRESSES: Written comments may be submitted to Mr. John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Jona L. Souder, Chief, Local Public Document Room Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-7536, or Toll Free 800-638-8081.

SUPPLEMENTARY INFORMATION: Since the early 1970's, the Moline Public Library, located at 504 17th Street, Moline, Illinois, has served as the NRC Local Public Document Room repository for records relating to the Quad Cities Station. The document collection includes essentially all publicly available records considered by the NRC in the licensing and regulation of the Quad Cities Station. Because of the growth in the size of the LPDR collection, its infrequent use, and the unavailability of resources to maintain the collection, the Library has asked that it be relocated.

Among the factors the NRC will consider in selecting a new location for the collection are:

(1) The willingness and ability of the library to house and maintain the collection;

(2) The physical facilities available, including shelf space, workspace and copying and micrographics equipment;

(3) The willingness and ability of the library staff to assist the public to locating records;

(4) The public accessibility of the library, including parking, ground transportation, and hours of operation, particularly evenings and weekends hours;

(5) The proximity (within 50 miles) of the library to the Quad Cities Station located in Cordova, Illinois; and

(6) The proximity of the library to existing user groups of the collection, if known.

Public comments are requested on the desirability to moving the Quad Cities LPDR collection to any appropriate library in the vicinity of the Quad Cities Station.

Dated at Bethesda, Maryland, this 13th day of June 1986.

For the U.S. Nuclear Regulatory Commission.

Donnie H. Grimsley,

Director, Division of Rules and Records, Office of Administration.

[FR Doc. 86-13784 Filed 6-17-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-413]

Duke Power Co.; North Carolina Electric Membership Corp., Saluda River Electric Cooperative, Inc.; Environmental Assessment and Finding of no Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the schedular requirements of 10 CFR 50.71 (e)(3)(i) to the Duke Power Company, North Carolina Electric Membership Corporation and Saluda River Electric Cooperative, Inc. (the licensee) for the Catawba Nuclear Station, Unit 1, located at the licensee' site in York County, South Carolina.

Environmental Assessment

Identification of Proposed Action: The proposed action would grant an exemption from the requirement of 10 CFR 50.71(e) to submit an updated Final Safety Analysis Report (UFSAR) for Unit 1 of the Catawba Nuclear Station (CNS) within 24 months of the issuance of the operating license. An operating license was issued for Catawba Unit 1 on July 18, 1984. By letter dated November 25, 1985, supplemented by letter dated May 21, 1986, Duke Power Company requested an exemption to 10 CFR 50.71(e) which would defer submittal of the UFSAR by 12 months on the basis that the Catawba FSAR applies to both Catawba Units. It has been updated on January 31, 1986, prior to the issuance of the Catawba Unit 2 low power license on February 24, 1986.

The Need for the Proposed Action: The full operating license for Catawba Unit 2 was issued on May 15, 1986. The licensee is now engaged in startup testing and expects to complete such testing within the next six months. Thus, station personnel are unavailable for a detailed review of the FSAR. It is also desirable to complete power ascension testing and to place the plant in commercial operation before updating the FSAR so that design modifications found necessary by testing can be incorporated and so that licensee's engineering personnel who are heavily involved in the support of startup testing and resultant plant modifications can be used in preparing and reviewing the updated FSAR. Thus, for Catawba Unit 1, there is a need to extend the date for submittal of the updated FSAR. The requested extension to July 18, 1987, will allow the licensee's engineering personnel necessary and sufficient time to concentrate on startup testing and resultant design changes before concentrating on the engineering review associated with the preparation of the UFSAR.

Environmental Impact of the Proposed Action: The proposed exemption affects only the required date for updating the FSAR and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents, or any significant occupational exposures. With regard to potential non-radiological impacts, the proposed exemption does not affect plant non-radiological effluents and has no other environmental impact. Therefore, the Commission concludes there are no measurable radiological or non-radiological environmental impacts associated with the proposed exemption.

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives either will have no environmental impact or will have a greater environmental impact. The principal alternative to the exemption would be to require an earlier date for submittal of the UFSAR. Such an action would not enhance the protection of the environment and would result in unnecessary diversion of utility engineering resources from safety related work.

Alternative Use of Resources: This action does not involve the use of resources not considered previously in the Final Environmental Statement for Catawba Nuclear Station.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the licensee's letters dated November 25, 1985 and May 21, 1986. These letters are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Dated at Bethesda, Maryland, this 12th day of June 1986.

For the Nuclear Regulatory Commission.

Paul O'Connor,

Acting Director, PWR Project Directorate No. 4, Division of PWR Licensing-A.

[FR Doc. 86-13786 Filed 6-17-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-528, 50-529 and 50-530]

Public Service Co. of New Mexico; Proposed Transfer of Control of Licenses

Notice is hereby given that the Nuclear Regulatory Commission (Commission) is considering approval of the transfer of the Public Service Company of New Mexico (PNM), a licensee having an approximate 10.2 percent interest in Palo Verde Nuclear Generating Station, Units 1, 2, & 3, to the PNM Holding Company (Holding Company). By letter of April 22, 1986, PNM informed the Commission that PNM's management proposed that PNM be transferred and become a subsidiary of the Holding Company with each share of common stock in PNM being converted into a common share of stock in the Holding Company.

Pursuant to 10 CFR 50.80 the Commission may approve the transfer of control of a license, after notice to interested persons, upon the Commission's determination that the proposed transferee is qualified to be the holder of the license and the transfer of the license is otherwise consistent with applicable provisions of law, regulations and orders of the Commission.

For further details with respect to the subject transfer, see letters from PNM's attorneys', Keleher and McLeod, of April 22, 1986 (and attachments thereto) and May 22, 1986, available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Palo Verde Nuclear Generating Station Local Public Document Room, Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Bethesda, Maryland this 12th day of June, 1986.

For the Nuclear Regulatory Commission.

Robert S. Lee,

Acting Director PWR Project Directorate #7 Division of PWR Licensing-B.

[FR Doc. 86-13785 Filed 6-17-86; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-346-ML and ASLBP No. 86-525-01-ML]

Toledo Edison Co., et al., (Davis-Besse Nuclear Power Station, Unit No. 1; Order Postponing Hearings of June 24, 25 and 26, 1986

June 11, 1986.

On June 11, 1986 I received a letter from Jay E. Silberg, Counsel for the Toledo Edison Company (TEC)[1], in which TEC requested a postponement for filing of direct testimony on June 19, 1986 and the commencement of evidentiary hearing scheduled for June 24 and 25. The reason given for the request was the continuing strike at the Davis-Besse Nuclear Power Station seriously interfering with TEC counsel's ability to prepare for the hearings with key technical personnel and company management and legal staff. TEC proposes that direct testimony on the issues identified in my Order 29, 1986 could be submitted two weeks following the conclusion of the strike.

Based upon these representations by TEC to counsel for the lead intervenor, State of Ohio Assistant Attorney General Jack Van Kley, that TEC will not conduct any on-site burial of the waste prior to my decision in this matter, this intervenor has no objection to the request for postponement.

In view of the matters expressed by TEC counsel in the June 11, 1986 letter, the concurrence of the Ohio Assistant Attorney General, who had no objection to a grant of a postponement, and, in particualar, that TEC committed that it will not conduct any on-site burial of the wastes prior to my decision, the request for postponement of the hearings scheduled for June 24, 25 and 26,[2] 1986 is *granted.*

Upon receipt of notice that the strike is concluded, a new scheduling order setting times and place will be promptly issued.

Helen F. Hoyt,

Administrative Judge.

[FR Doc. 86-13792 Filed 6-17-86; 8:45 am]

BILLING CODE 7590-01-M

[1] The letter has been served on the parties by TEC counsel.

[2] June 26, 1986 hearing was scheduled for limited appearances only.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-23316; File No. SR-Amex-86-11]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change

Pursuant to Section 19(b) (1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b) (1), notice is hereby given that on April 24, 1986, the American Stock Exchange, Inc. ("Amex") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to amend its schedule of approved member firm charges for handling proxy solicitations (Rule 576) to increase by 10¢ the rate for initial proxy mailings. The text of the proposed rule change is available at the Exchange, care of the Office of the Secretary, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) Purpose

Member organizations who hold customer securities in "street name" are required to transmit proxy solicitation material, financial reports, and other material to beneficial owners, provided the issuer furnishes the material and agrees to reimburse the firm for reasonable expenses plus postage. Since 1952, the Amex and the New York Stock Exchange, Inc. ("NYSE") have published a schedule of suggested rates of reimbursement (Amex Rule 576 and NYSE Rule 451).[1]

In February, the Commission approved an amendment to NYSE Rule 451 which increased by 10¢ the rate for initial proxy mailings.[2] This raised the cost for initial mailings from 50¢ to 60¢ per set for those meetings which do not require beneficial owner instructions and from 60¢ to 70¢ per set where instructions are required. The NYSE rate increase was supported by both the Securities Industry Asociation ("SIA") and the American Society of Corporate Secretaries ("ASCS").

It is proposed that the Exchange now adopt a similar 10¢ rate increase for initial proxy mailings. This increase is intended solely to permit member firms to recoup the costs associated with performing these services. In this connection, it should be noted that there has not been an increase in the rate for initial proxy mailings since 1974.

Subject to Commission approval, the new rate would take effect on July 1, 1986.

(b) Basis

The proposed amendment is consistent with section 6(b) in general and furthers the objectives of section 6(b) (4) in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among Amex members and issuers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will have no adverse impact on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments,

[1] Member firms remain free to charge lower rates; higher rates may be charged with prior notice and consent of the issuer.

[2] Securities Exchange Act Release No. 22908 (February 14, 1986), 51 FR 6847.

all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 9, 1986.

IV. Date of Effectiveness of the Proposed Rule Change

As noted in Item II above, on February 14, 1986, the Commission approved a proposed rule change by the NYSE which increased the fees charged for the forwarding of proxy and annual report mailings to beneficial shareowners.[3] Among the fees approved was an increase in the charge for initial mailings of proxy material of $.10 per set. The charge for those mailings, which do not include a proposal which requires beneficial owner instructions, was increased from $.50 to $.60, and the charge for those mailings which include a proposal which does require beneficial owner instructions was increased from $.60 to $.70.

The Amex's proposed rule change would implement the same charges in the same amount that were approved in the prior NYSE proposal.[4] In support of the proposed charges, Amex also notes that the proxy mailing fees previously approved for the NYSE were supported by both the SIA and the ASCS.

The Commissin therefore finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6, and the rules and regulations thereunder.

The Commission further finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof, in that Commission, as discussed above, already has approved a similar proposal by the NYSE, and the Amex has indicated that its new rate will take effect on July 1, 1986.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 11, 1986.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13724 Filed 6-17-86; 8:45 am]

BILLING CODE 8010-01-M

[3] *See* note 2, *supra*.

[4] Previously, the Commission approved a proposed rule change by Amex which increased other rates charged in connection with the forwarding of proxy and annual report mailings to beneficial shareowners. Securities Exchange Act Release No. 22187, (June 28, 1985), 50 FR 27672 (File No. SR-Amex-85-14). The combination of the charges approved in the prior Amex proposed rule change and the charge contained in the current proposal will provide Amex with rates which parallel the rates approved for the NYSE.

The Commission also has approved recently a proposed rule change from the National Association of Securities Dealers ("NASD") (File No. SR-NASD-86-10) which implemented a similar set of fees to be charged by NASA member organizations. Securities Exchange Act Release No. 23283 (May 30, 1986).

[Rel. No. IC-15145; File No. 811-4309]

Washington Area Growth Fund; Application for Investment Company Deregistration

June 11, 1986.

Notice is hereby given that Washington Area Growth Fund ("Applicant"), 4550 Montgomery Avenue, Suite 1000N, Bethesda, Maryland 20814, registered as a closed-end, diversified, management investment company under the Investment Company Act of 1940 ("Act"), filed an application on March 13, 1986, and amendments thereto on April 24 and June 6, 1986, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the relevant provisions thereof.

According to the application, Applicant was organized as a Massachusetts business trust on May 22, 1985, and registered under the Act on May 23, 1985. Applicant represents that it has never a public offering, has no securityholders and has retained no assets. Applicant further represents that it is not a party to any litigation or administrative proceeding and does not intend to engage in any business activities other than those necessary to effectuate the winding-up of its business and affairs.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than July 3, 1986, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, be certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 86-13725 Filed 6-17-86; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 969]

Certain Nonimmigrant Visas; Validity

Public Notice 913 of August 22, 1984 authorized consular officers to issue, in their discretion, nonimmigrant, visas under section 101(a)(15)(B) of the Immigration and Nationality Act valid for an indefinite period of time to otherwise eligible nationals of certain countries which offer reciprocal or more liberal treatment to nationals of the United States who are in a similar class.

This Notice deletes Brunei from the list contained in Public Notice 913 in order to accord its nationals the same reciprocal treatment currently accorded U.S. nationals.

This Notice amends Public Notice 913 of August 22, 1984 (49 FR 33392).

Dated: June 6, 1986.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 86-13735 Filed 6-17-86; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Jessamine County, KY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issued this notice to advice the public that an enviornmental impact statement will be prepared for a proposed highway project in Jessamine County, Kentucky.

FOR FURTHER INFORMATION CONTACT: Robert E. Johnson, Division Administrator, FHWA, 330 W. Broadway, P.O. Box 536, Frankfort, Kentucky 40602, Phone (502) 227-7321; FTS 352-5468.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Kentucky Transportation Cabinet, intends to prepare an EIS for a proposal to improve US 27 in Jessamine County, Kentucky. The basic project extends from existing US 27 at Camp Nelson, north a distance of 4.7 miles to the southern limits of the city of Nicholasville, Kentucky. At this point, it will interchange with the Nicholasville, By-Pass as well as existing US 27. The proposed alternates under consideration, at this time, consist of three "build" alternates as well as the "no-build" alternative. Postponement of the project has also been considered. The "build" alternates involve different combinations of the various alignments within a basic cooridor.

An early public information meeting was held on the propsoed action on December 19, 1985, in the area of the proposed project. The input received at that meeting has been considered. On February 21, 1986, an Interdisciplinary Team Meeting was held by the Kentucky Transportation Cabinet. An opportunity for a formal location/design public hearing will be advertised and held as appropriate. No formal scoping meeting is planned.

To ensure that the full range or issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

The draft EIS will be ready for public review and comment in late October 1986.

Issued on: June 9, 1986.

Robert E. Johnson,

Division Administrator.

[FR Doc. 86-13715 Filed 6-17-86; 8:45 am]

BILLING CODE 4910-22-M

UNITED STATES INFORMATION AGENCY

Reporting and Information Collection Requirement Under OMB Review

AGENCY: United States Information Agency.

ACTION: Notice of reporting requirement submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed or established reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. USIA is requesting approval of a form used in the processing of applications for auditions under our Artistic Ambassador Program.

DATE: Comments must be received by July 18, 1986.

Copies: copies of the request for clearance (SF-83), supporting statement, instructions, transmittal letter and other documents submitted to OMB for review may be obtained from the USIA Clearance Officer. Comments on the item listed should be submitted to the Office of Information and Regulatory Affairs of OMB, attention Desk Officer for USIA.

FOR FURTHER INFORMATION CONTACT: Agency Clearance Officer, John Davenport, U.S. Information Agency, M/ASP-Room 623, 301 4th Street, SW., Washington, DC, 20547, telephone (202) 485-7505. And OMB Review: Bruce McConnell, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC, 20503, telephone (202) 395-3785.

SUPPLEMENTARY INFORMATION: Title: "Artistic Ambassador Program", Biographic Information Form for Auditioners, and unnumbered form.

Abstract: This form is intended to obtain information from aspiring musicians who are interested in competing for the chance to represent the United States overseas. Candidates are screened, and through a process of elimination, 4 or 5 finalists are selected. Overseas tours are from 5 to 6 weeks in duration, during which the successful candidates will give concerts for foreign audiences and represent the United States through personal contacts and the presentation of American art and culture. This program is intended to fulfill the requirements of the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87-256, imposed upon USIA to strengthen international cooperative relations through tours in foreign countries by creative and performing artists.

Dated: June 12, 1986.

Charles N. Canestro,

Federal Register Liaison.

[FR Doc. 86-13738 Filed 6-17-86; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 117
Wednesday, June 18, 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).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 5:55 p.m. on Thursday, June 12, 1986, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution making funds available: (1) For the payment of insured deposits made in PetroBank, National Association, Houston, Texas, which was closed by the Senior Deputy Comptroller for Bank Supervision, Office of the Comptroller of the Currency, on Thursday, June 12, 1986, and (2) for an advance payment to uninsured depositors and other general creditors of the closed bank equal to 45 percent of their uninsured claims.

In calling the meeting, the Board determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke, (Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 13, 1986.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 86-13837 Filed 6-16-86; 11:41 am]

BILLING CODE 6714-01-M

2

INTERNATIONAL TRADE COMMISSION

[USITC SE-86-24]

TIME AND DATE: Thursday, June 26, 1986 at 11:00 a.m.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and complaints:
   (a) Certain ventilated motorcycles helmets (Docket Number 1322).
5. Investigation 701-TA-274 (P) (Softwood lumber from Canada)—briefing and vote.
6. Items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

June 9, 1986.

[FR Doc. 86-13794 Filed 6-13-86; 4:37 pm]

BILLING CODE 7020-02-M

3

INTERSTATE COMMERCE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, June 25, 1986.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423

STATUS: Open Special Conference.

MATTERS TO BE CONSIDERED:

Ex Parte No. MC-43 (Sub-No. 17)—Authorized Carrier Lease of Equipment and Drivers to Private Carriers.

Ex Parte No. MC-122 (Sub-No. 2)—Lease of Equipment and Drivers of Private Carriers—Petitions for Modification.

CONTACT PERSON FOR MORE INFORMATION: Alvin H. Brown, Office of Legislative and Public Affairs, Telephone: (202) 275-7252.

Noreta R. McGee,

Acting Secretary.

[FR Doc. 86-13836 Filed 6-16-86; 11:41 pm]

BILLING CODE 7035-01-M

4

MERIT SYSTEMS PROTECTION BOARD

TIME AND DATE: 10:00 a.m., Monday, June 30, 1986.

PLACE: Eighth Floor, 1120 Vermont Avenue, NW., Washington, DC 20419.

STATUS: Open.

MATTER TO BE CONSIDERED: An oral argument will be held in the appeals of:

1. *Stephens* v. *Office of Personnel Management*, MSPB Docket No. SF831L84A9006.
2. *Shirley* v. *Office of Personnel Management*, MSPB Docket No. DC083184A0458; *Johnston* v. *Office of Personnel Management*, MSPB Docket No. PH831L85A0120; *Nichols* v. *Office of Personnel Management*, MSPB Docket No. DA831L81A0329.

These appeals have been reopened to consider the issue of whether the Board should give retroactive effect to the Federal Circuit's decision in *Simons* v. *Merit Systems Protection Board*, 768 F.2d 323 (Fed. Cir. 1985), which held that the Board may award attorney fees in retirement cases.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Robert E. Taylor, Clerk of the Board, (202) 653-7200.

Dated: June 13, 1986.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 86-13863 Filed 6-16-86; 1:50 pm]

BILLING CODE 7400-01-M

5

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 16, 23, 30 and July 7, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 16

Tuesday, June 17

2:00 p.m.

Discussion of Pending Enforcement Action (Closed—Ex. 5 & 7)

Wednesday, June 18

2:00 p.m.

Briefing on La Crosse Request for an Exemption to Reduce Primary Property Value Insurance (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting)

a. Insider Safeguards Rules (Search Requirements and Misc. Amendments) (Does not include Access Authorization)

Thursday, June 19

10:00 a.m.

Discussion/Possible Vote on Safety Goals (Public Meeting)

Week of June 23—Tentative

Wednesday, June 25

3:30 p.m.

Affirmative Meeting (Public Meeting) (if needed)

Week of June 30—Tentative

Tuesday, July 1

10:00 a.m.

Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Wednesday, July 2

3:30 p.m.

Affirmative Meeting (Public Meeting) (if needed)

Week of July 7—Tentative

Tuesday, July 8

10:00 a.m.

Discussion/Possible Vote on Full Power Operating License for Hope Creek (Public Meeting)

Wednesday, July 9

10:00 a.m.

Briefing on Accident Source Term Reassessment (NUREG–0956) (Public Meeting)

Thursday, July 10

2:00 p.m.

Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634–1410.

Robert S. McOsker,

Office of the Secretary.

June 12, 1986.

[FR Doc. 86–13791 Filed 6–13–86; 4:33 p.m.]

BILLING CODE 7590-01-M

6

POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote To Close Meeting

By telephone vote on June 13, 1986, the Governors unanimously voted to close to public observation an executive meeting of the Governors scheduled for June 25, 1986. The meeting will be held in Denver, Colorado. The meeting will concern a discussion of personnel matters.

The executive meeting will be attended by Governors Camp, Griesemer, McConnell, McKean, Peters, Ryan and Setrakian.

The Board of Governors has determined that, pursuant to section 552b(c)(6) of Title 5, United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations, the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. The Board also determined that the public interest does not require the Board's discussion of this matter to be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting to be closed may properly be closed to public observation, pursuant to section 552b(c)(6) of Title 5, United States Code, and § 7.3(f) of Title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

[FR Doc. 86–13919 Filed 6–16–86; 3:55 pm]

BILLING CODE 7710-12-M

7

RAILROAD RETIREMENT BOARD

Notice of Public Meeting.

Notice is hereby given that the Railroad Retirement Board will hold a meeting on June 24, 1986, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 Rush Street, Chicago, Illinois 60611. The agenda for the meeting follows:

(1) Proposed Changes in the RUIA Regulations
(2) Modification of Retirement Claims Processing System—Advanced Systems Team
(3) Funding Request and Contact Modifications Due to Social Security Equivalent Benefit (SSEB) Taxation Project
(4) Treasury Draft Legislation Regarding Trust Fund Investments
(5) Proposed to Establish a New Office of RRA Taxation Programs Within the Bureau of Retirement Claims
(6) Annual Report to Congress on the Actuarial Status of the Railroad Retirement System as required by Section 502 of the Railroad Retirement Solvency Act of 1983
(7) Board Order 75–3
(8) National Meeting
(9) Reclassification or Conversion of District Offices and Base Points (Raleigh, North Carolina, Youngstown, Ohio, and Richmond and Norfolk, Virginia)
(10) Railroad Unemployment Repayment Tax Payments
(11) Appeal of Nonwaiver of Overpayment, Edna A. Sheppard
(12) Appeal of Nonwaiver of Overpayment, Wilson McCall, Sr.
(13) Appeal of J. R. Dickerson under the Railroad Unemployment Insurance Act

The entire meeting will be open to the public. The person to contact for more information is Beatice Ezerski, Secretary to the Board, COM No. 312–751–4920, FTS No. 387–4920.

Dated: June 13, 1986

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86–13835 Filed 6–16–86; 11:06 am]

BILLING CODE 7905-01-M

8

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 meeting during the week of June 23, 1986:

A closed meeting will be held on Tuesday, June 24, 1986, at 10:00 a.m. An open meeeting will be held on Thursday, June 26, 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 a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Tuesday, June 24, 1986, at 10:00 a.m., will be:

Institution of administrative proceedings of an enforcement nature.

Institution of injunctive actions.
Settlement of injunctive action.
Settlement of administrative proceedings of an enforcement nature.
Regulatory matter regarding financial institution.

The subject matter of the open meeting scheduled for Thursday, June 26, 1986, at 10:00 a.m., will be:

Consideration of whether to issue an advance notice of proposed rulemaking for the operational Edgar system. This release would request comment on the rulemaking necessary to require electronic filing for most filings processed by the Division of Corporation Finance and Investment Management. It also would seek comment on the rulemaking changes necessary to accommodate electronic filing, as well as to update the rules to take advantage of the efficiences of electronic filing and processing. For further information, please contact Patricia M. Jayne at (202) 272-7054.

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: Patrick Daugherty at (202) 272-3077.

Shirley E. Hollis,

Acting Secretary.

June 13, 1986.

[FR Doc. 86-13842 Filed 6-16-86; 12:09 pm]

BILLING CODE 8010-01-M

federal register

Wednesday
June 18, 1986

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 270, 271 and 284
Ceiling Prices; Old Gas Pricing Structure; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 270, 271 and 284

[Docket No. RM86-3-000; Order No. 451]

Ceiling Prices; Old Gas Pricing Structure

Issued June 6, 1986.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: On November 18, 1985, the Department of Energy (DOE) issued a Notice of Proposed Rulemaking (NOPR) under section 403 of the Department of Energy Organization Act, 42 U.S.C. 7173 (1982), for action by the Commission. 50 FR 48540 (Nov. 25, 1985). DOE proposed that the Commission (1) exercise its authority under sections 104(b)(2) and 106(c) of the Natural Gas Policy Act of 1978 (NGPA), to eliminate vintage-based pricing of old gas through the establishment of a uniform ceiling price equal to the highest current ceiling price for old gas, which is that for the post-1974 vintage and (2) establish incentive prices for certain categories of old gas under section 107 of the NGPA.

The Commission is amending its regulations to adopt DOE's proposed ceiling price and thereby eliminate vintaging. Producers may collect the new ceiling price only to the extent permitted by their contracts. Indefinite price escalation clauses in existing contracts provide the necessary authority; however the producer must comply with a "good faith negotiation rule" before collecting a higher price under an existing contract. The Commission has modified the good faith negotiation rule proposed by DOE in order to increase the rights of purchasers in renegotiating prices under old gas contracts. Accordingly, if the producer seeks renegotiation to increase the price of old gas, the purchaser may seek renegotiation to decrease the price of certain higher-priced gas purchased from the same producer.

The Commission is providing blanket sales certificates to producers and blanket transportation certificates to interstate pipelines to facilitate marketing any gas for which the producer and pipeline cannot agree on price under the good faith negotiation rule.

The Commission in deferring action on that part of the DOE proposal concerning new incentive prices under section 107 of the NGPA.

EFFECTIVE DATE: July 18, 1986.

FOR FURTHER INFORMATION CONTACT:
Christopher J. Warner, (202) 357-8440;
Howard B. Schneider, (202) 357-8511;
James J. Hoecker, (202) 357-8530;
Richard Howe, Jr., (202) 357-8308;
Darrell Blakeway, (202) 357-8213;
Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION:

Table of Contents

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

I. Introduction

The Federal Energy Regulatory Commission (Commission) is adopting a final rule that revises the maximum lawful price for natural gas priced under sections 104 and 106 of the Natural Gas Policy Act of 1978 (NGPA),[1] and that establishes procedures designed to make the price for those categories of natural gas responsive to actual conditions in the competitive wellhead markets for gas. The Commission's final rule establishes a single alternative ceiling price for those categories of so-called "old gas" that were committed or dedicated to interstate commerce before the enactment of the NGPA, or subject to an intrastate rollover contract under the NGPA. The rule thereby provides for elimination of the various ceiling prices for different "vintages" of old gas previously set according to when the gas reserves were produced.

This rulemaking proceeding was initiated by the Secretary of Energy under section 403 of the Department of Energy Organization Act.[2] The Commission's objectives in adopting a final rule, like the Secretary's initial objectives, are to enable the prices for regulated natural gas to more closely reflect its value in the market, to provide more accurate price signals to consumers of natural gas, to ensure the efficient and rational development of the gas supplies that will be needed in future years, and to prevent the loss of substantial portions of the nation's supply of least-cost natural gas.

Because the current regulatory structure prices the commodity at drastically differing levels, and without regard to the actual cost of replacing dwindling reserves of gas or the costs of competing alternative fuels, the Commission is eliminating these existing market distortions, to the extent permitted under its statutory charter. It is taking action under both the NGPA and the Natural Gas Act [3] so that consumers are assured of long-term access to reasonably-priced supplies of natural gas.[4]

II. Background

A. Procedural History

This rulemaking proceeding began with a notice of proposed rulemaking issued by the Secretary of the Department of Energy, under section 403 of the Department of Energy

[1] 15 U.S.C. 3314 and 3316 (1982).

[2] 42 U.S.C. 4273 (1982).

[3] 15 U.S.C. 717-717w (1982).

[4] *Transcontinental Gas Pipe Line Corp.* v. *State Oil and Gas Board of Mississippi*, 474 U.S.____, 88 L. Ed. 2d 732, 745, slip op. at 14 (January 22, 1986) ("The change in regulatory perspective embodied in the NGPA rested in significant part on the belief that direct federal price control exacerbated supply and demand problems by preventing the market from making long-term adjustments.").

Organization Act.[5] The Secretary proposed final action by the Commission by June 1, 1986.

The Secretary's proposal provided the Commission with the flexibility to establish the public hearing and comment procedures. Accordingly, the Commission established a procedural schedule for initial public comment.[6] This procedural notice identified several issues to which it directed commenters' attention. The Commission requested comment on the scope of Commission authority to implement the Secretary's proposal, including the elements of the just and reasonable rate standard that apply to old gas prices, the operation of indefinite price escalator clauses in existing contracts for old gas, the relationship of the Secretary's proposal to the Commission's block billing proposal,[7] and the likely response of the market in developing or delivering old gas supplies. The Commission later asked for reply comments.[8] On April 10 and 11, 1986, the Commission also held a two-day public conference. There were approximately 45 participants in the public conference representing consumers, state utility commissions, producers, pipelines, local distribution companies, end-users, and other interested members of the public.

The record in this proceeding consists of approximately 113 initial and 37 reply comments, including numerous studies, and 584 pages of hearing transcript. The Commission is acting in compliance with the Secretary's schedule. This rule will become effective 30 days after publication in the **Federal Register.**

[5] 50 FR 48540 (November 25, 1985). Section 403 provides in pertinent part:

Sec. 403. (a) The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 402 of this Act.

(b) The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a), and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.

[6] 50 FR 52935 (December 27, 1985).

[7] As a means of addressing many of the same gas market problems highlighted by the Secretary, the Commission had previously proposed a rule that would require categories of gas purchased by interstate pipelines to be billed in ways that eliminate the distortions caused by "rolled-in" pricing of gas by pipelines. 50 FR 24180 (June 7, 1985) (Docket No. RM85-1-000; Part D); 50 FR 42372 (October 18, 1985).

[8] 51 FR 7583 (March 5, 1986).

B. The Secretary's Proposal

The Secretary's proposal to revise old gas[9] prices is intended as a companion to the Commission's Order No. 436, enabling all segments of the gas industry to participate in an open and competitive gas market with non-discriminatory access to self-implementing and blanket transportation and flexible transportation rate structures.[10] As the Commission recognized in Order No. 436, gas should be priced to bring about efficiency in both its production and its consumption and to reflect the resource cost of bringing the commodity to market. In other words, prices should ensure that the consumer's willingness to pay for a unit of gas corresponds to the cost of producing a unit of gas at that time.[11] Prices should also allow the market to clear; that is, gas supplied should equal gas demanded. In addition, natural gas must be priced to avoid wasteful depletion of such a non-renewable resource. In sum, prices should respond to current conditions and decisions and not to conditions, costs, and decisions in the past.[12] The Commission and the Secretary agree that certain gas ceiling prices do not now reflect these pricing standards. The Secretary's proposal to resolve current old gas pricing problems is generally adopted by the Commission, with revisions discussed below, in furtherance of these mutual objectives. In his November 18, 1985, notice of proposed rulemaking (hereinafter, DOE proposal), the Secretary proposes that the Commission:

(1) Establish a single new just and reasonable ceiling price, equivalent to the current price for post-1974 old gas,[13] for all old "flowing" gas subject to NGPA sections 104 and 106(a), including elimination of the current system of pricing such old gas by the vintage of its production;[14]

(2) Establish an incentive ceiling price under NGPA section 107, equivalent to 60 percent of the section 102 price in 1986 and escalated in annual increments to the full section 102 price in 1991, for certain old gas for which recovery involves "extraordinary risks or costs," [15] namely production enhancement projects,[16] new infill wells, and existing low production or "marginal" wells; [17]

(3) Provide for good faith renegotiation of contracts between producers and pipeline purchasers to prevent the higher price for old gas from being automatically collected under existing contracts, and provide for procedures that allow producers that are not offered a higher price for old gas supplies to conditionally abandon sales service to the existing purchaser and to sell the gas to a new purchaser for no less than a two-year term.[18]

[9] "Old gas" or "old flowing gas" as used in this rule is generally natural gas that was committed or dedicated to interstate commerce on the day before enactment of the NGPA, as well as intrastate flowing gas subject to the price ceilings for intrastate rollover contracts under section 106(b). These gas supplies are priced according to NGPA sections 104 and 106, which permit the Commission to prescribe by rule or order a price higher than the otherwise applicable maximum lawful price, provided it is "just and reasonable within the meaning of the Natural Gas Act." "New gas" as used in this rule is gas priced under NGPA sections 102, 103, 105, and 108. "High-cost gas" is gas incentively priced under NGPA section 107.

[10] Order No. 436, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42408 (October 18, 1985); Order No. 436-A, 50 FR 52217 (December 23, 1985).

[11] *See, e.g.*, Kahn, The Economics of Regulation: Principles and Institutions, I, 65-70.

[12] *See, e.g.*, Order No. 436, 50 FR at 42373-74, 42415-21 (October 18, 1985).

[13] Under § 271.101, Table II, of the Commission's regulations, the price of post-1974 gas subject to sections 104 and 106 was $2.525 per MMBtu for deliveries during November 1985. The June 1986 price for that vintage of gas, adjusted for inflation, is $2.57 per MMBtu.

[14] Under "vintaging," first adopted by the Federal Power Commission in the *Permian Basin Rate Proceedings* ("Permian") (34 FPC 159, 185-88 (1965), aff'd 390 U.S. 747 (1968)), separate prices were set for old and new gas, with new gas prices designed to reflect current costs of new supply. As used in this final rule, "vintaging" refers to both the separate prices set by the Commission for various categories of old, flowing gas in area and national rate cases under its NGA jurisdiction prior to enactment of the NGPA, and to the NGPA's continuation of these separate prices through separate maximum ceiling prices for those categories under the NGPA.

[15] 15 U.S.C. 3317 (b) and (c) (1982).

[16] The current production enhancement maximum lawful price is the lesser of the NGPA section 109 price or the renegotiated price agreed to by the parties under § 271.704(b)(3) of the Commission's regulations.

[17] The DOE proposal would create two new incentive price categories. "New infill wells" are defined by DOE in the same way as new, onshore production wells under NGPA section 103, except that outer continental shelf (OCS) wells would be included and the qualifying date would be January 1, 1986. Gas produced from such wells would be eligible for a price up to the new ceiling and would be subject to the good faith negotiation rule. DOE also proposes an incentive price category for "marginal wells", defined like stripper wells under NGPA section 108, except that 120 Mcf per day would be the production limit instead of 60 Mcf per day.

[18] Under the DOE proposal, if the purchaser nominates the ceiling price, sale of the gas would continue at the ceiling price. If the purchaser nominates a lower price, the seller may accept the nominated price or refuse it, in which case sales would continue at the existing price, but the seller would have the right at any time to sell the gas to another purchaser at a higher price if the sale was for a term of at least two years. In that event, the producer would automatically be released from any

Continued

The Secretary cites several conditions that support his proposal. He contends that vintaging distorts price signals in the natural gas market, raises consumer prices above market clearing levels, inhibits efficient production of least-cost supplies, and will, unless modified, result in the permanent loss of some 11 trillion cubic feet of natural gas. According to DOE, a primary problem is that overall prices for gas have not responded to competitive market conditions, despite the current surplus of available gas supplies. This failure, says DOE, is caused by the "cushion" provided by current old gas ceiling prices, which are below market-clearing levels and are "rolled in" with higher-cost gas supplies to produce a deceptively low weighted average cost of gas ("WACOG"). As a result, consumers have not realized the full benefits of wellhead market competition mandated by the NGPA. In its *Second DOE Section 123 Report*, DOE concluded:

> Price controls create an incentive for pipeline companies to purchase a mix of low-cost and highcost gas. Consumers pay an average of these prices. Price controls on low-cost, old gas allow high-cost domestic and imported gas to receive prices above the average price. The prices paid for high-cost gas will exceed the average price by an amount that results in the average price matching the price that consumers are willing to pay for natural gas. The price consumers are willing to pay for gas is equal to the cost of not using gas or the price of alternative fuels. Thus, the major beneficiaries of price controls on old gas are high-cost domestic producers and gas importers, *not* consumers.[19]

Vintage pricing fails to assign a reasonable share of the replacement cost or marginal cost of new supplies to purchasers of old gas, and old gas ceiling prices must therefore be corrected to take into account current competition in natural gas markets, according to the DOE proposal. In addition, existing incentive prices for high-cost gas are largely unavailable for enhanced recovery of low-cost gas supplies and, according to the Secretary, will result in the loss of over 20 trillion cubic feet of reserves. The DOE proposal is designed to eliminate market distortion, promote efficient production of gas reserves, and result in lower average gas prices as well as reduced dependence on foreign energy supplies. The Secretary claims that it will provide net benefits to the American economy of over $25 billion over the next 10 years.

The DOE proposal would enable first sellers to claim the proposed new ceiling price only if authorized by contract. Approximately 90 percent of old gas is sold under contracts incorporating sufficient authorization in the form of indefinite price escalation clauses such as area rate clauses.[20] Most old gas producers would therefore be entitled to the new ceiling price, under the DOE proposal, only to the extent they negotiate a new or amended contract price, or find a new purchaser under the DOE "good faith negotiation" proposal. Under the DOE proposal, the existing vintage categories and applicable ceilin prices would remain in effect for sales made under contracts lacking the necessary authority.

C. *The Commission's Authority under the NGA and the NGPA*

1. Just and Reasonable Old Gas Prices

With the enactment of the NGPA, Congress comprehensively changed the method of pricing natural gas produced in the United States. Congress provided for partial phased deregulation of prices at the wellhead in recognition of the competitive nature of the wellhead market and the commodity nature of natural gas. Gas that was not contractually committed or dedicated to interstate commerce before enactment of the NGPA has been removed from the Commission's NGA jurisdiction. However, Congress retained controls over sales for resale of gas commenced before the date of enactment of the NGPA in interstate commerce. Under the NGA, gas that is dedicated to interstate commerce cannot be abandoned without the Commission's approval.

Title I of the NGPA sets prices for all interstate and intrastate "first sales" of natural gas. The ceiling prices established by sections 102 through 109 of Title I, adjusted for inflation, are the maximum lawful prices (MLPs) allowed for such gas at the wellhead. Section 121 removes ceiling prices for certain gas under sections 102, 103, 105 and 107. Sections 102 and 103 established the MLP for certain categories of new gas, section 105 established the MLP for certain intrastate gas, section 107 established the MLP for high-cost gas, section 108 established the MLP for stripper well gas, and section 109 established the MLP for any category of gas which was not covered by the MLP prescribed in any other section.

This rule deals specifically with two categories still under the Commission's pricing jurisdiction. Section 104 established the MLP for gas which was committed or dedicated to interstate commerce on November 8, 1978, and for which a just and reasonable rate under the NGA was in effect on that date. In all, the Congress incorporated into the NGPA some 16 different categories of prices for section 104 gas established according to vintage. These various prices had been established by the Commission in area and national rate proceedings.[21] The NGPA incorporated these rates by reference, with monthly adjustments for inflation.

The second category of gas affected by the rule is subject to section 106 of the NGPA, which establishes an MLP for sales of gas subject to interstate and intrastate "rollover contracts," meaning any contracts that replace expired contracts which were in effect on the date of NGPA enactment.[22]

Sections 104, 106, and 109 [23] give the Commission the authority to prescribe, by rule or order, for any first sale of gas subject to the MLP of sections 104, 106, and 109, a price higher than the MLP otherwise applicable to such gas, *if* the price is just and reasonable within the meaning of the NGA.

Section 4 of the NGA requires that any rates for sales of natural gas be just and reasonable. This "just and reasonable" standard must guide any Commission exercise of its authority to raise the maximum lawful price of old

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further obligation in law or contract to the existing purchaser upon 30 days notice. If a purchaser refused to nominate a price within 60 days after being requested to do so, the seller would be free to sell to another purchaser subject only to the new ceiling price and would be released from all obligation to the purchaser upon 30 days notice. In either case, abandonment would be deemed granted generically and the producer would not be required to file an abandonment application with the Commission.

[19] U.S. Department of Energy, *Increasing Competition in the Natural Gas Market: Second report required by section 123 of the Natural Gas Policy Act of 1978*, p. 137 (1985).

[20] Interstate Natural Gas Association of America, Initial Comments, p. 24. *See also, Pennzoil Co.*v. *FERC*, 645 F.2d 360 (5th Cir. 1981). I83C. The Commission's Authority Under the NGA and the NGPA

[21] Area Rate Proceeding—Opinion Nos. 598 and 598–A, Southern Louisiana Area II, 46 FPC 86 and 633, respectively (1971); Opinion No. 586, Hugoton-Anadarko Area, 44 FPC 71 (1970); Opinion Nos. 595 and 595–A, Texas Gulf Coast Area, 45 FPC 674, 714 and 46 FPC 827, respectively (1971); Order Nos. 411, 411–A, and 411–B, Appalachian and Illinois Basin Areas, 44 FPC 1112, 1334, and 1487, respectively (1970); Opinion Nos. 468 and 468–A, Permian I, 34 FPC 159 and 1068, respectively (1965), and Opinion Nos. 662 and 662–A, Permian II; National Rate Proceedings—50 FPC 390 and 932 (1973); Opinion No. 699–H, 52 FPC 1604 (1974), Opinion No. 749, 54 FPC 3090 (1975), Opinion No. 770, 56 FPC 509 (1976), Opinion No. 770–A, 56 FPC 2698 (1976).

[22] NGPA section 2(12), 15 U.S.C. 3301 (1982).

[23] This final rule does not affect the price of gas under NGPA section 109, which governs gas committed or dedicated to interstate commerce but for which no just and reasonable rate was in effect on the date the NGPA was enacted. By statute, the MLP for this gas is equal to the highest section 104 price.

gas. The Commission has been setting just and reasonable rates for nearly fifty years under the NGA, and there is substantial judicial guidance in establishing rates that comply with the just and reasonable mandate of NGPA sections 104 and 106.

Rates are just and reasonable if they are within a "zone of reasonableness," [24] meaning that a rate is neither so excessive as to exploit the consumer nor an unconstitutional confiscation of the property of the regulated entity, in this case the gas producer. In other words, higher producer rates that do not provide offsetting benefits to the consumer are above the zone of reasonableness. Likewise, rates that do not provide the producer enough revenue to cover its operating costs and attract investment capital are below the zone.

The courts have described the breadth of Commission discretion in setting just and reasonable rates. The "end result" of a ratemaking proceeding governs whether the rate is just and reasonable, [25] as long as the rates established fall within the zone of reasonableness. The courts have indicated they will affirm rates based on any of several methodologies, ranging from a conventional utility-type ratemaking using the cost of service, to market-based pricing designed to promote certain public interests. In *City of Detroit* v. *FPC ("Detroit")*, [26] the circuit court indicated that it would have approved a rate based on the market price of gas, if the Commission compared the results to a rate based on the conventional cost of service, and if the rate increase were no more than necessary to encourage exploration and development, the agency's stated purpose. Moreover, the only basis on which the Court disallowed exclusive reliance on market prices to regulate rates of small producers in its *FPC* v. *Texaco* ("*Texaco*") decision,[27] was a finding that the Congress, in enacting the NGA, had subjected producers to regulation because the market was not competitive. In 1978, the Congress recognized the competitive nature of natural gas wellhead markets when it adopted Title I of the NGPA.[28]

In sum, court decisions afford the Commission significant latitude in setting just and reasonable rates. Under *Detroit*, the Commission should use the cost of service as a starting point. Other cases stress the Supreme Court's statement in *Hope* that the ratemaking method alone does not determine whether a rate is just and reasonable. A variety of methods have met the end result test. For example, the courts approved generic ratemaking in the area and national rate cases that established uniform rates for certain categories of gas. In those cases, the FPC attained certain administrative and policy objectives by setting rates for a particular category of gas that did not necessarily coincide with actual costs to the individual to produce that gas. In reviewing orders that included a minimum rate higher than the price in many existing contracts, the Fifth Circuit approved rates that exceeded producer costs. [29] Rates for old gas may be based on the cost of replacing reserves, *i.e.*, on the marginal or replacement cost.[30] The FPC even established a new maximum rate for old gas that accounted for replacement cost by using a 1972 test year to determine cost of production from the wells, many of which were drilled up to 40 years earlier at lower absolute cost.[31]

In addition to cost-based methods that diverge from original cost ratemaking, a variety of non-cost-based factors may be used in determining a just and reasonable rate under the NGA. Those factors embody other public interest considerations such as increasing supply, managing demand, influencing industry structure, and achieving price stability.[32]

The FPC adopted the vintaging system in its area rate cases, phased it out under a national rate scheme that allowed old gas under "rollover" contracts to rise to the price of the newest gas, and later reinstated vintaging to mitigate the effects on consumers of dramatic increases in the cost of new gas.[33]

The history of just and reasonable rates under the NGA therefore demonstrates that the Commission has broad discretion to set rates using historical, marginal, or replacement costs and non-cost factors. When the Congress adopted the FPC's vintages in NGPA sections 104 and 106, it incorporated rates that had already departed to various degrees from the original cost of production. Significantly, the Congress expressly gave the Commission further authority to raise even those prices, provided the result would be just and reasonable under the NGA. It is this discretion that the Commission exercises here.

2. Authorization for Abandonment of Service

Another statutory mechanism enables the Commission to oversee a comprehensive regulatory scheme of interstate natural gas service. A sale for resale of natural gas in interstate commerce is subject to the Commission's "abandonment" authority under NGA section 7. While section 7(c) requires that the Commission grant a certificate of public convenience and necessity prior to such a sale, once gas reserves have been committed to an interstate pipeline, any sales from these reserves cannot be sold to another purchaser without Commission approval under section 7(b). In other words, a producer cannot cease service to an interstate pipeline without a Commission grant of abandonment authority. Abandonment, while typically considered on a case-specific basis, has been generically authorized.[34]

During natural gas shortages in the 1970's, the Commission seldom authorized abandonment of producer sales. However, recently, for example,

[24] *FPC* v. *Natural Gas Pipeline Co.*, 315 U.S. 575 (1942).

[25] *FPC* v. *Hope Natural Gas Co. ("Hope")*, 320 U.S. 591 (1944).

[26] 230 F.2d 810, 818–19 (D.C. Cir. 1955), *cert. denied*, *352 U.S. 289 (1956)*

[27] 417 U.S. 380 (1974). The Court would have allowed the Commission to regulate small producers indirectly if the Commission had used criteria in addition to the market price to judge the reasonableness of the prices charged.

[28] See *Pennzoil Co. et al.* v. *FERC*, 645 F.2d 360, 378–89 (5th Cir. 1981), cert. denied, 454 U.S. 1142 (1982); Permian Basin Area Rate Cases, 390 U.S. 747, at 756–7 (1968) ("Producers of natural gas cannot usefully be classed as public utilities. . . . They are intensely competitive vendors of a wasting commodity they have acquired only by costly and often unrewarded search.")

[29] *Tenneco Oil Co.* v. *FERC*, ("*Tenneco*") 571 F.2d 834 (5th Cir. 1978), in which the Commission was held to have authority to establish a minimum rate, even though to do so abrogated existing contracts for lower prices. Among other things, the agency believed increasing prices would maximize production from existing wells and redress a bargaining imbalance among the pipelines. *See also* Permian Basin Area Rate Cases, 390 U.S. 747, 820–21 (1968).

[30] In *Shell Oil Co.* v. *FPC* ("Shell"), 520 F.2d 1061 (5th Cir. 1975), the court approved orders establishing rates for "rollover" gas equal to rates for the newest gas. Thus, for gas sold under contracts replacing expiring contracts, the rate had no relation to the actual cost of production. *See also, Mobil Oil Corp.* v. *FPC* ("Mobil"), 417 U.S. 283, 320 (1974).

[31] *Tenneco Oil Co.* v. *FERC*, 571 F.2d 834, 840–42 (5th Cir. 1978).

[32] *See generally, Detroit*, 230 F.2d at 816, *Permian*, 390 U.S. at 796, 815, Southern Louisiana Area Rate Cases (*"SoLa I")*, 428 F.2d 407, 426–27, 441 (5th Cir. 1970), *cert. denied*, 400 U.S. 950 (1970), *Mobil*, 417 U.S. at 320, *Tenneco*, 571 F.2d at 846, *American Public Gas Ass'n* v. *FPC* ("*APGA*"), 567 F.2d 1016, 1030, 1058 (D.C. Cir. 1977).

[33] *See*, *Permian*, 390 U.S. 747, *SoLa I*, 428 F.2d 407, *Mobil*, 417 U.S. 283, *Shell*, 520 F.2d 1061, *APGA*, 567 F.2d 1016.

[34] *See, e.g.*, *FPC* v. *Moss*, 424 U.S. 494, 501 (1975); Order No. 319, 48 FR 34872 (August 1, 1983).

circumstances have allowed the Commission to further consider its policy on abandonment.[35] Recognizing that the natural gas market has moved from a regional market to a national market, the Commission broadened its abandonment policy to mitigate price distortions that restrained sales of low-priced gas. The Commission sought to provide purchasers with the opportunity to lower their gas costs by displacing high-cost gas or other fuels with purchases of more reasonably-priced gas, a policy of considerable importance to this proceeding. The Commission noted that if a party can demonstrate that abandonment would have beneficial effects on the natural gas market overall, such as increasing competition and thus contributing to a corresponding reduction in prices, and that the benefits of the abandonment outweigh any adverse effects to the purchaser to whom the gas is presently committed by contract, or that purchaser's customers, the Commission will grant abandonment.[36]

In this rule, the Commission grants conditional authority to abandon service if the good faith negotiation procedure fails to produce an agreement between existing sellers and purchasers of old gas under the revised MLP provisions of § 271.402. This conditional authority is provided in order to assure the overall goal of more competitive wellhead pricing and greater access to market-responsive gas under the new ceiling price structure for old gas.

D. The Need for the Final Rule

Over the last ten years, natural gas wellhead and transmission markets have undergone substantial changes in both structure and behavior. In addition, Congress has found that wellhead markets are workably competitive, and has partially deregulated wellhead prices.[37]

During this period, the Commission itself continuously has revised its natural gas regulatory policies, in order to fulfill its obligations under the NGA and NGPA to update its regulations in light of changes in natural gas markets.[38]

On the one hand, the Commission has reviewed and adjusted its regulation of natural gas in response to increased competition in gas markets brought about by the NGPA and changes in world energy prices.

On the other hand, during this period, the Commission has not revised its methodology of regulating producer sales of old gas in response to these changes in market conditions. As a result and as discussed in more detail in the Commission's response to comments, *infra*, the existing rate structure for old, flowing gas has created at least three problems for natural gas consumers, pipelines, and producers.

First, the existing rates for most old gas are below the replacement cost of gas reserves. For example, according to the Energy Information Administration, 2.1 Tcf of "old gas," out of a total of 8.4 Tcf of all gas purchased from non-affiliated producers by major interstate pipelines, were priced at or below $2.12 per MMBtu in 1984, as compared to overall average wellhead prices of $2.78 per Mcf, and average new gas prices of $3.65 per Mcf in the same year. Therefore, consumers of gas are neither seeing nor paying the true costs of replacing each unit of old gas with a new unit of reserves. Most producers of old gas are not receiving revenues equivalent to the marginal costs of replacing depleted old gas reserves, and gas reserves are being consumed faster than they are being replaced. Between 1978 and 1984, reserve additions averaged only 90% of consumption. As the comments in this record indicate, in many cases producers are shutting in existing reserves of old gas because they are uneconomic to produce under the artificially low ceiling prices. On the other hand, producers are obtaining higher prices for new and high-cost gas reserves which are frequently more expensive to recover than existing old gas reserves. As of March 1986, the average cost of new and high-cost gas was $3.38 per Mcf, while the Energy Information Administration estimates over 11 Tcf of additional old gas could be recovered at $2.57 per MMBtu. Thus, valuable supplies of inexpensive old gas are being inadequately developed or prematurely abandoned, while investment capital is being inefficiently allocated to more expensive supplies of new gas.

Second, the existing rates for old, flowing gas vary widely by vintage, based on the date of its dedication to interstate commerce. The overall prices consumers pay for gas depend directly on the access of their pipeline suppliers to these cheaper vintages of gas. Therefore, wide variations in pipeline access to old gas have created huge disparities in the prices consumers pay for gas at the burner-tip around the country. For example, in 1984, the average residential price of gas in Washington, DC was $8.05 per Mcf, while the average price in Kansas was $4.49 per Mcf. Kansas is served by KN Energy and Northern Natural whose old gas "cushions" in 1984 amounted to 65 percent and 47 percent of their wellhead purchases, respectively. On the other hand, Washington, D.C. is served by Transcontinental Gas Pipe Line, whose 1984 old gas cushion was only 28 percent of its total purchases. Unequal access to low-cost old gas gives certain consumers and regions of the country artificial and unfair competitive advantages over other consumers and regions not served by pipelines with large "cushions" of such gas. This means consumers, purely by the historical accident of vintaging, pay different gas prices for reasons wholly unrelated to the value of the commodity or the cost of replacing it.

Third, the pricing of old, flowing gas below replacement cost gives pipelines with large "cushions" of such gas the ability to "roll-in" their prices of new and deregulated gas with artificially low old gas prices. This allows the pipelines to effectively subsidize the prices of new and deregulated gas above what consumers would otherwise be willing to pay, and therefore frustrates the efficient working of competitive wellhead markets. This cross-subsidy is unfair to consumers, because they pay above-market prices for incremental supplies of gas. It also creates distortions in the price signals which are transmitted from the wellhead to the burner-tip and back again, and thus misallocates capital and expenditures by consumers and producers alike.

In considering whether old, flowing gas rates need to be revised in order to resolve these problems, the Commission has reviewed the history of its efforts to regulate producer rates, both before and after enactment of the NGPA.

1. Producer Ratemaking Under Phillips

In 1954, the year the Supreme Court held that independent producer rates were subject to regulation under the

[35] *See, e.g., Felmont Oil Corp. and Essex Offshore, Inc.*, 33 FERC ¶ 61,333 (1985) (Opinion No. 245), *reh'g denied*, 34 FERC ¶ 61,296 (1986) (Opinion No. 245–A).

[36] 33 FERC at 61,657.

[37] Transcontinental Gas Pipe Line Corp., 474 U.S. ______, 88 L.Ed.2d 732, 745, *supra*, slip op. at 14, n. 6 ("Congress clearlyintended to eliminate the distortive effects that NGA pricecontrol had had on supply and demand."); Pennzoil v. FERC,645 F.2d 360, 378–79 (5th Cir. 1981), *cert. denied*, 454 U.S.1142 (1982).

[38] Permian Basin Area Rate Cases, *supra* at 777 (1968) (". . . ratemaking agencies are not bound to the service of any single regulatory formula; they are permitted, unless their statutory authority otherwise plainly indicates, 'to make the pragmatic adjustments which may be called for by particular circumstances,' FPC v. Natural Gas Pipeline Co., *supra*, at 586.").

Natural Gas Act,[39] the level of proved domestic reserves of natural gas stood at 211 trillion cubic feet (Tcf), and gas markets consumed 8 Tcf of those reserves. Wellhead prices averaged 10 cents per thousand cubic feet (Mcf), and domestic producers added more than 20 Tcf to the domestic reserve base, more than double the annual consumption rate.[40]

In 1960, six years later and the year the Federal Power Commission (FPC) formally abandoned its efforts to regulate producer rates on a case-by-case basis, the average wellhead price was only 14 cents per Mcf, despite a 50 percent increase in demand to 12 Tcf and a 30 percent decline in the average rig count over the intervening years. Proved reserves stood at 262 Tcf, but the ratio of reserves to production (R/P ratio) had declined 25 percent, from 27 to 1 in 1950 to 20 to 1 in 1960.

2. Area Rates and Vintaging

In response to the infeasibility of case-by-case ratemaking, the FPC between 1960 and 1965 initiated area-wide producer ratemaking with the *Permian Basin Area Rate Cases*.[41]

[39] Phillips Petroleum Co. v. Wisconsin, ("Phillips") 347 U.S. 672 (1954).

[40] Unless noted otherwise, all statistical data and calculations in this section are derived from the following sources: U.S. Energy Information Administration ("EIA"), *Natural Gas Monthly*, Table 1 (Summary of Natural Gas Production in the United States, 1980–February 1986), Table 3 (Natural Gas Consumption in the United States, 1980–January 1986), Table 5 (Projected Volumes and Prices of Wellhead Purchases by NGPA Category, 1981-March 1986), Table 6 (Estimated Surplus Natural Gas, 1981-January 1986) (February 1986) (DOE/EIA–0130(86/02)); EIA, *Natural Gas Annual 1984*, Volume I, Table 13 (Consumption of Natural Gas), Table 17 (Average City Gate Price of Natural Gas, 1984, by State), Table 19 (Average Price of Natural Gas Delivered to Consumers, 1983 and 1984, by State), Table 24 (Quantity and Average Price of Natural Gas Production, 1930–1984), Table 26 (Natural Gas Consumption in the United States, 1930–1984), (1985) (DOE/EIA- 0131(84)/1); EIA, *Annual Energy Review 1984*, Table 11 (Fossil Fuel Prices, 1949–1984), Table 31 (Oil and Gas Exploration and Rotary Rigs in Use, 1949–1984), Table 32 (Exploratory Wells Completed, by Well Type, 1949–1984), Table 33 (Total Wells Completed, by Well Type, 1949–1984), Table 36 (Proved Reserves of Liquid and Gaseous Hydrocarbons, Yearend 1949–1983), Table 59 (Natural Gas Production, 1949–1984), Table 60 (Natural Gas Supply and Disposition, 1949–1984), Table 61 (Consumption of Natural Gas by End-Use Sector, 1949–1984), Table 63 (Natural Gas Wellhead and Import Prices, 1949–1984) (April 1985) (DOE/EIA–0384(84)); EIA, *U.S. Crude Oil, Natural Gas, and Natural Gas Liquids Reserves, 1984 Annual Report* (September 1985), discussed in Wingenroth and Davis, "U.S. Natural Gas Reserves Statistics," *Gas Energy Review* (Vol. 13, No. 11, American Gas Association, November 1985).

[41] Statement of General Policy No. 61–1, 24 F.P.C. 818 (1960); Opinion 468,34 F.P.C. 159, Opinion 468–A, 34 F.P.C. 1068 (1965), *aff'd* Skelly Oil Co. v. F.P.C., 375 F.2d 6 (10th Cir. 1967), *aff'd* Permian Basin Area Rate Cases, *supra*, 390 U.S. 747 (1968).

However, the FPC based its area rates on the premise that gas contracted for *prior to* January 1, 1961, was merely a by-product of exploration for oil, and therefore "replacement cost" rates were inappropriate for such "flowing" gas. However, it relied primarily on replacement cost for setting rates for new gas. Because two different cost rationales were used to set prices for the same commodity, the experiment of "vintaging" was thus begun.[42]

Despite the FPC's area rates and first vintaging experiment, the decline in reserves and exploratory drilling continued. Between 1960 and 1972, wellhead prices rose five cents, from 14 cents per mcf to 19 cents per mcf. At the same time, gas demand increased substantially from 12 Tcf to 22 Tcf and proved reserves declined from a peak of 293 Tcf in 1967 to 266 Tcf in 1972 and 228 Tcf in 1975, a 22 percent drop in eight years. The average rig count hit a 20-year low of 976 in 1971 and curtailments of gas supplies to the interstate market began.[43]

[42] Opinion 468, 34 F.P.C. at 186–87 (1965).

[43] H.R. Rep. No. 95–496, Part 4, 95th Cong., Ist Sess. (1977), "Committee on Interstate and Foreign Commerce, H.R. 6831), "National Energy Act", at pp. 90–92. "Beginning in 1967 and continuing in each succeeding year up to the present, U.S. natural gas consumption has exceeded additions to proven reserves in the contiguous 48 states. . . . Moreover, due to increasing demand for natural gas and relatively stable rates of production, annual demand for natural gas has exceeded natural gas production since 1973. As a result, many interstate natural gas pipeline companies have been increasingly unable to meet their contractual delivery requirements to customers in many regions of the country. Many natural gas distribution companies have in turn found it necessary to deny gas service to new customers and to curtail service to some existing customers. Firm curtailments reported by interstate pipelines have grown from 1.0 Tcf during the April 1970 through March 1971 delivery year to 3.4 Tcf during the 1976–77 delivery year. The Federal Power Commission projects that firm curtailments will reach 3.8 Tcf during the 1977–78 delivery year. This would amount to 26.6 percent of firm requirements.

"In response to the rapid expansion in natural gas demand, unregulated intrastate natural gas prices rose above regulated interstate prices. During the period from 1969 to 1976, interstate natural gas prices for new contracts rose by "more than 700 percent, from approximately 19.8 cents per Mcf to over $1.42 per Mcf. However, during the same period, intrastate natural gas prices rose at an even greater rate, from approximately 18 cents per Mcf in 1969 to as high as $2.39 per Mcf in 1977, better than a 1,300-percent increase.

"As a result of the recently developed disparity in natural gas prices between the intrastate and interstate markets, new discoveries of natural gas reserves have been sold with increasing frequency in the intrastate, rather than the interstate, market. In large measure, present stable supply conditions in intrastate markets have resulted from the inability of the interstate market to compete for new supplies of natural gas.")

3. National Rates

When it became clear to the FPC that area rates were too low to call forth adequate supplies for interstate consumers, the Commission initiated national rate proceedings in 1973 in order to stimulate increased production.[44] In these proceedings, Commission found that its different vintages of area rates were distorting gas prices not only below the current replacement cost of gas, but also below the actual market prices for alternative fuels, such as oil. As a result, the FPC determined to phase-out the "vintaging" of rates for old and new gas.[45] In a companion proceeding, the Commission also determined to collapse all pre-1973 vintages of old, flowing gas into one minimum national rate.[46] The Commission found that "there is no rational basis for setting differing price levels based upon date of discovery," and therefore determined to establish "a uniform base price for gas sold in interstate commerce, which equates to the cost of replacing the unit of gas consumed." [47]

But in 1976, the FPC partially reversed itself, and in Opinions No. 770 and 770–A reinstated a limited form of vintaging for both pre-1973 vintages and 1973–1974 "biennium" gas.[48] The Commission justified its decision by noting that it was nearly tripling the base rate for *new* post-1974 gas supplies from $0.52 per mcf to $1.42 per mcf, and therefore had "carefully scrutinized the disparity between new prices and old prices to avoid an unreasonable increase in rates."[49] However, the FPC restated its previous finding that "it is only fair that consumers of 'flowing gas' share the burden of financing the added exploration" and its intention to apply rates for flowing gas "functionally in order to assist in the generation of sufficient capital for expanded exploration and development programs."[50]

4. The Failure of National Rates and Adoption of the NGPA

Despite the adoption of new national rates for new and flowing gas, average wellhead prices continued to be below the Btu-equivalent prices of alternative

[44] *See* Opinion No. 699–H, *supra;* Opinion No. 749, *supra*.

[45] Opinion No. 699–H, *supra*, 52 F.P.C. 1604, 1636–38 (1974).

[46] Opinion No. 749, *supra*.

[47] Opinion No. 699–H, *supra*, 52 F.P.C. at 1636–38.

[48] Opinion No. 770, *supra*, 56 F.P.C. 509, 521(1976).

[49] Id., at 523.

[50] Opinion No. 770–A, supra, 56 F.P.C. 2698, 2714–15 (1976).

fuels following the 1973–4 OPEC oil embargo. Curtailment of gas supplies to interstate markets widened between 1973 and 1977, culminating in the emergency gas shortages of the winter of 1976–1977.[51] Proved reserves continued their decline, reaching a thirty-year low of 195 Tcf in 1979, despite stable levels of demand averaging about 20 Tcf between 1972 and 1979. And in spite of the increase in average wellhead prices from 30 cents per Mcf in 1974 to 91 cents per Mcf in 1978, reserve additions in the lower-48 states averaged only 46 percent of annual production during the decade preceding enactment of the NGPA.[52]

The NGPA interrupted the Commission's third national rate proceeding in five years.[53] It did this by comprehensively removing new gas from the NGA jurisdiction of the Commission, by establishing new ceiling price categories for new and high-cost gas, and by setting incentive prices for certain marginal old gas supplies ("stripper wells"). The NGPA also partially removed the Commission's NGA jurisdiction over old, flowing gas, by incorporating the then-existing national rate structure for such gas into the statute, and applying to it an annual inflation factor. However, the NGPA authorized the Commission in its discretion to revise old, flowing gas rates—as long as it revised the rates up, not down, and as long as it determined that such revised rates were "just and reasonable within the meaning of the Natural Gas Act." [54]

Finally, to protect against interstate pipelines "bidding up" new gas prices above market-clearing levels due to the "rolled-in" pricing of disparate prices for old and new gas, the NGPA established a scheme of incremental pricing to allocate a disproportionate share of higher gas prices to those major fuel-switchable users expected to be most able to "bargain down" any such "bidding up." [55]

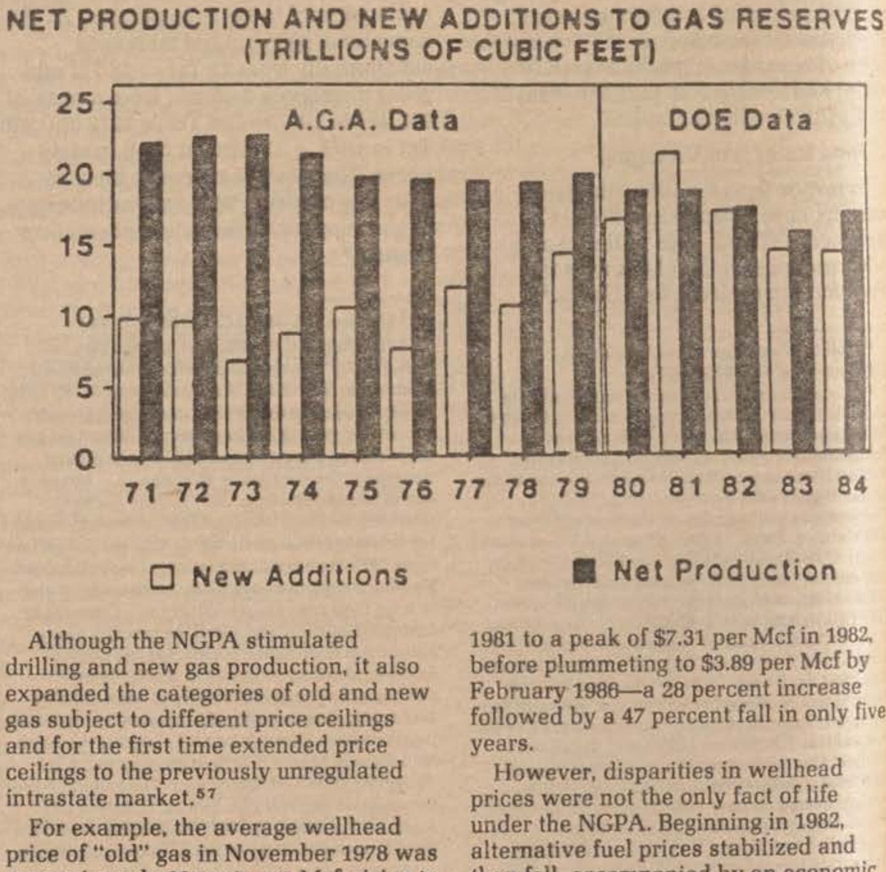
The alternative fuel ceilings on which incremental prices were based under the NGPA had little effect on the bidding-up of new gas prices. The Commission in 1980 declined to expand incremental pricing to smaller fuel-switchable users, and its decision was supported in Congress.[56]

5. Market Disorders Under the NGPA

The market initially responded to the NGPA with a boom in drilling. The average rig count jumped from 2001 in 1977 to 2909 in 1980 and 3970 in 1981. Exploratory gas well completions, which had hit a low of 470 in 1971, jumped from 1560 in 1977 to 2550 in 1981.

However, this drilling boom could be misleading. Although average wellhead prices increased from 91 cents per Mcf in 1978 to $1.98 per Mcf in 1981, additions to reserves continued to fall short of replacing production, even though lower-48 additions did increase to 90% of production for the period 1978–1984, as Figure 1 indicates.

Figure 1



Although the NGPA stimulated drilling and new gas production, it also expanded the categories of old and new gas subject to different price ceilings and for the first time extended price ceilings to the previously unregulated intrastate market.[57]

For example, the average wellhead price of "old" gas in November 1978 was approximately 90 cents per Mcf, rising to $1.62 per Mcf by January 1983, before stabilizing between $1.40 to $1.45 per Mcf since 1983. The average price of "new" gas rose from $2.03 per Mcf in December 1978 to $3.75 in December 1984, a nearly 85 percent increase in six years. But the average price of "high-cost" gas under section 107 of the NGPA went for a roller-coaster ride, up from approximately $5.70 per Mcf in early 1981 to a peak of $7.31 per Mcf in 1982, before plummeting to $3.89 per Mcf by February 1986—a 28 percent increase followed by a 47 percent fall in only five years.

However, disparities in wellhead prices were not the only fact of life under the NGPA. Beginning in 1982, alternative fuel prices stabilized and then fell, accompanied by an economic slowdown and warmer than normal weather. What happened next was a 17 percent decline in gas consumption between 1979 and 1983, coinciding with the NGPA drilling boom and the rush by interstate pipelines to bid up prices of new and high-cost gas committed to the interstate market.

By 1982, pipelines were stuck with large volumes of unmarketable new and

[51] H.R. Rep. No. 95–496, Part 4, "National Energy Act," *supra; see also* Emergency Natural Gas Act of 1977, Pub. L. 95–2, 91 Stat. 4, enacted by Congress in early 1977 in eight days, as an urgent response to a severe natural gas shortage endangering the supply of natural gas for high-priority uses. The Act gives the president extraordinary authority to declare a natural gas emergency and mandate transportation and sale of natural gas to meet the requirements of high-priority users.

[52] Wingenroth and Davis, "U.S. Natural Gas Reserves Statistics," Gas Energy Review (Vol. 13, No. 11, AGA, November 1985) ("Overall, reserve additions in the lower-48 states [in1984] were 82.4% of production, thus for the period of 1981–1984 reserve additions in the lower-48 states have averaged 96%. This compares with a 46% replacement level during the decade preceding enactment of the Natural Gas Policy Act of 1978.")

[53] National Rates for Jurisdictional Sales of Natural Gas From Wells Commenced On or After January 1977, For the Period January 1, 1977, to December 31, 1978, Docket No. RM77–13, 57 F.P.C. 1238 (1977).

[54] 15 U.S.C. §§ 3314(b)(2), 3316(c).

[55] Statement of Rep. Dingell, 95 Cong. Rec. H13114 (daily ed. October 14, 1978).

[56] For an explanation of the effect of incremental pricing on new gas prices, *see* H.R. Rep. No. 96–938, 96th Cong., 2d Sess. (1980), H Res. 655, "Incremental Pricing of Natural Gas," Committee on Interstate and Foreign Commerce.

[57] 18 CFR 271.501–.504, .601–.603 (1985); 15 U.S.C. 3315, 3316(b) (1982).

high-cost gas whose above-market prices contrasted with their below-market priced old gas. As oil prices fell below equivalent burner-tip prices of gas, large fuel-switchable users shifted to oil, and the pipelines were forced to raise their city-gate prices in order to recover the costs of their unmarketable gas and fixed transmission costs from a decreasing customer base.[58]

These market disorders, attributable by many to the distortions in wellhead purchasing practices caused by vintage pricing and the NGPA itself,[59] created the paradox of 1982–1984: The city-gate price to consumers of gas went up in the midst of a surplus of deliverability and declining demand.

In response to these market disorders at both ends of the pipe, the Commission between 1982 and 1985 made a number of changes in its regulations. For example, in response to fuel-switching by industrial users, the Commission authorized, on an experimental basis, special marketing programs for the transportation of "self-help" gas to fuel-switchable users by producers willing to provide take-or-pay relief to their pipeline purchasers. Likewise, in order to ensure that post-1982 wellhead contracts were more market-responsive, the Commission adopted a presumption that take-or-pay requirements in excess of 75% were imprudent in new wellhead contracts. In order to ensure that all gas consumers would share in the benefits of increased gas-on-gas competition caused by lower demand and falling oil prices, the Commission promulgated a rulemaking prohibiting pipelines from including variable costs for gas not taken in the minimum bills they charge their sales customers at the city-gate.[60] However, the Commission considered but failed to adopt any changes to its vintage rates for old, flowing gas.[61]

Despite increased competition and changed regulations at the city-gate, demand failed to revive with the general economic recovery in 1984. Immediately prior to partial wellhead deregulation in 1985, wellhead prices widely diverged among different categories and on different pipeline systems, with some categories of new and high-cost gas still averaging $3.93 per Mcf while old gas remained at $1.54 per Mcf. Finally, by the end of 1984, the marketplace was still failing to clear some 3 Tcf of surplus deliverability that had built up since 1981.

6. Natural Gas Markets Since January 1, 1985

The Commission adopted rules to implement the partial deregulation of new gas on January 1, 1985, as required by the NGPA, even over the objections of some producers that deregulation would subject them to lower prices instead of their higher contract prices pegged to regulated price ceilings.[62]

In anticipation of further competition at the city- gate following partial wellhead deregulation, the Commission engaged in a year-long inquiry into its policies governing the transportation of gas for others, and the impact of its policies on the industry's ability to respond to the new competition. Following this inquiry, the Commission adopted comprehensive regulatory changes designed to encourage pipelines to offer non-discriminatory access to transportation services, in return for providing pipelines with regulatory flexibility to provide such services.[63]

In the same docket, the Commission continued to review wellhead market disorders, this time focusing on the ability of pipelines to purchase deregulated or high-cost natural gas at above-market prices, and then to "roll-in," or otherwise subsidize, those high prices at the city-gate with below market prices for regulated "old" gas.[64]

Despite these further regulatory changes, the first year of partial wellhead deregulation failed to eliminate wellhead price disparities. Prices in the burgeoning spot gas market declined from approximately $3 per Mcf to close to $2 per Mcf through the year. Similarly, the average wellhead price of new gas fell from $3.78 per Mcf to $3.33 per Mcf over the 12-month period, despite the predictions by some that wellhead prices would "fly-up" on January 1, 1985.[65] But in spite of an

[58] H.R. Rep. No. 98-814, 98th Cong., 2nd Sess. (1984), Committee on Energy and Commerce, H.R. 4277, "Natural Gas Market Policy of 1984" at pp. 22–24. (". . . The drop in the world oil price late in 1982 caused residual fuel oil prices to fall below natural gas prices, so that those industrial plants capable of doing so switched from gas to oil. In response to steadily increasing prices, significant conservation was achieved by industrial, commercial, and residential users. In the winter of 1983, abnormally warm weather reduced space heating demand for gas by residential and commercial users. . . . [T]he loss of large blocks of gas sales on any given system leaves the remaining customers paying a larger share of the fixed costs of the transmission and distribution systems.").

[59] S. Rep. No. 98-205, 98th Cong., 1st Sess. (1983), Committee on Energy and Natural Resources, S. 1715, "Natural Gas Policy Act Amendments of 1983" p. 10 ("In part the NGPA is not operating as originally designed. . . . [W]hat was not fully appreciated was that despite federal cost-passthrough regulations, pipelines could in effect use this 'cushion' [of 'old' price-controlled gas] to subsidize the acquisition of new and deregulated gas supplies. This occurs as a result of 'rolled in' gas pricing whereby a pipeline's customers are charged the average price of the gas they are consuming, rather than the marginal cost of new gas supplies."); Comments of Natural Gas Supply Association (NGSA), Docket RM85-1-000 (Parts A–D), at p. 1 (NGSA "believes that current disorders in the natural gas market can only be eliminated if the industry is placed on a true competitive footing. This can be accomplished if . . . (ii) existing market distortions resulting from prior regulatory policies are eliminated."); Maryland Peoples Counsel v. FERC, 761 F.2d 770–71 (1985) ("The problem ultimately giving rise to the present litigation is that the 1978 predictions of the 1985 market were much in error. Factors ranging from the increased wellhead prices and impending total decontrol, to greater energy conservation, to the lower prices of competing fuels, have turned the natural gas shortages of the 1970's into a natural gas surplus. Thus, as early as the summer of 1983—a year and a half before the scheduled deregulation of new gas—the formulary statutory maximum price for new gas had already reached or exceeded the market-clearing price in many geographic markets");

Testimony of C.M. Butler III, Chairman, Federal Energy Regulatory Commission, before Committee on Energy and Natural Resources, United States Senate, November 5, 1981, p. 2 (". . . the most serious deficiency of the NGPA has not been its complexity or the dependence on the active participation of state agencies, but rather the statute's establishment of a new *dual market*, that is, one in which some gas prices are regulated while others are not. . . . The market-ordering problems created by NGPA's regime of partial regulation are already evident in the prices being paid for deregulated gas and in the supply problems of some interstate and intrastate pipelines.");

Testimony of George H. Lawrence, President, American Gas Association, before the Subcommittee on Energy Regulation and Conservation, United States Senate, July 11, 1985, p. 5 (citing "the dramatic improvement in natural gas supplies since the NGPA was enacted. These supply improvements in response to the higher NGPA prices have demonstrated conclusively that interstate market gas supply problems during the 1970's reflected the inadequacies of wellhead price controls rather than the limits of the domestic gas resource base.")

[60] See Tenneco Oil Co., *et al.*, 28 FERC ¶ 61,383, *order on reh'g*, 29 FERC ¶ 61, 334 (1984); Maryland Peoples Counsel v. FERC, 761 F.2d 768 (D.C. Cir. 1985); Maryland Peoples Counsel v. FERC, 761 F.2d 780 (D.C. Cir. 1985); Statement of Policy on Take-or-Pay Provisions in Gas Purchase Contracts, Docket No. PL-83-1-000, 3 FERC Stat. and Reg. ¶ 30,410 (1982), 47 FR 57268 (1982), (*codified* at 18 CFR part 2) Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, 49 FR 22778 (June 1, 1984) (Order No. 380); *order on reh'g*, 49 FR 31259 (August 6, 1984), *aff'd*, Wisconsin Gas Co. v. FERC, 770 F.2d 1144 (D.C. Cir. 1985).

[61] Impact of the NGPA on Current and Projected Natural Gas Markets, 47 F.R. 19,157 (May 4, 1982) (Docket No. RM82-26). The Commission formally incorporates the public record in Docket No. RM82-26 into the record of this proceeding.

[62] Deregulation and Other Pricing Changes on January 1, 1985, Under the Natural Gas Policy Act, 49 FR 46874 (November 29, 1984) (Order No. 406); *order on reh'g*, 49 FR 50,637 (December 31, 1984) (Order No. 406–A).

[63] Order No. 436, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42408 (October 18, 1985), *order on reh'g*, Order No. 436–A, 50 FR 52217 (December 23, 1985).

[64] Order No. 436, *supra*, Notice Requesting Supplemental Comments (Docket No. RM 85-1-000 (Part D)).

[65] "Analysis of Price Fly-Up Under the Natural Gas Policy Act," April 1984, Interstate Natural Gas Association of America ("In the absence of significant renegotiation or a legislative solution, non-market sensitive price and take provisions in

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overall 15 percent decline in the weighted average cost of gas to interstate pipelines between February 1985 and February 1986, average monthly gas utility prices at the city-gate declined only 5 percent over the same period.[66] This lag in city-gate prices persists at a time when demand continues to be soft and wellhead markets continue to face over 3 Tcf in surplus deliverability.

Today, ten years after the Commission partially reinstated vintaging and one-and-a-half years after partial decontrol, the inequality of incentives for production has widened, not narrowed. Four trillion cubic feet of gas, 43% of wellhead purchases by interstate pipelines, remains subject to base rates which have not been updated since 1976. Of the 4 Tcf of old, flowing gas, 2.1 Tcf, or 25 percent of all interstate purchases, is subject to rates substantially below even current spot prices of $2 per Mcf.[67] As of March 1986, the average wellhead price of all vintages of old, flowing gas is $1.39 per Mcf, $1.08 (44 percent) below the $2.47 per Mcf average price for all wellhead purchases by major interstate pipelines.

Massive disparities in consumer gas prices persist across different pipeline systems and regions of the country. In 1984, average delivered gas prices to consumers in the continental U.S. varied from a high of $9.58 and $8.80 per Mcf in Maine and Connecticut, to a low of $4.37 and $4.49 per Mcf in Arkansas and Kansas. Pipeline purchased gas costs in 1984 varied, because of unequal access to old gas, from a low of $1.71 and $2.12 per Mcf on KN Energy and Northwest Central pipelines, respectively, to a high of $3.95 and $3.60 per Mcf on Columbia Gas Transmission and Trunkline, respectively.[68] This unequal access to old gas persists even though eight years have elapsed since Congress enacted the NGPA, a statute expressly intended to create a uniform national market for gas at the wellhead.[69]

The current surplus deliverability of gas cannot blind this Commission to the data on long-term supply reliability. In 1984, according to EIA, proved gas reserves fell to their lowest level since 1979. In addition, AGA in its "1986 Base Case" for gas supply and demand, issued before the 1986 collapse in world oil prices, has projected that under current wellhead price regulations, exploratory oil and gas drilling activity in the lower-48 states will continue to fall from approximately 11,000 wells in 1985 to under 8,000 in 1995 and under 7,000 by the year 2000. The result, according to AGA, will be a precipitous decline in lower-48 conventional natural gas reserve additions from over 15 Tcf in 1985 to under 11 Tcf in 1995 and 10 Tcf by the year 2000. In other words, AGA projects, under current wellhead prices, "the combined effect of falling discoveries and more stable extensions and revisions is a reduction in the level of total reserve additions of 41 percent between 1985 and 2000." [70] The gap between domestic conventional reserve additions and imports and unconventional sources, according to AGA, will grow from 4 percent of supplies in 1985 to 20 percent in the year 2000, under current wellhead regulations.

AGA has recently updated its "1986 Base Case" projections to reflect substantially lower oil prices.[71] According to the up date, lower wellhead natural gas and oil prices will reduce future exploratory drilling activity by an additional 8 percent if oil prices average $20 per barrel; and by an additional 20 percent if oil prices average $15 per barrel, compared with the "1986 Base Case" assumption of $25 per barrel. These lower levels of drilling activity, says AGA, could reduce future gas reserve additions by an additional 6 percent in the $20 per barrel case and by 17 percent in the $15 per barrel case. In other words, the bad news for future drilling prospects in the "1986 Base Case" only gets worse in AGA's update.

7. The New Just and Reasonable Ceiling Price

In setting a new single just and reasonable ceiling price for all vintages of old, flowing gas, the Commission has considered a number of factors.

The Commission has determined that the new ceiling price should be set at the *replacement* cost of old, flowing gas, not its *original* cost. The Commission is obligated under the NGA to assure consumers long-term reliable gas service at reasonable cost. To the extent original-cost rates do not reflect the replacement cost of depleted reserves, such rates fail to assure adequate supply and therefore fail to fulfill the goals of the NGA. In addition, original-cost rates represent, in part, an effort by previous Commissions to keep *old* gas rates artificially low, in order to offset any immediate increases in consumer prices due to higher *new* gas rates. These efforts did not prevent gas shortages before the enactment of NGPA, and the NGPA itself has removed the Commission's jurisdiction to increase new gas rates. For all these reasons, the Commission concludes that it should not use original cost methodology as a "back-door" means of keeping old gas prices artificially low in order to offset the higher, market-based prices for new gas mandated by the NGPA.

However, the Commission's authority over old gas ceiling prices under the NGPA is limited to *raising, not lowering* such ceiling prices. In addition, any effort to define the current "replacement cost" of gas must take into account the distortions and disorders which already exist in gas markets today. Therefore, the Commission cannot unduly rely on price signals in those markets as an absolutely accurate measure of "replacement cost." Finally, the NGPA itself constitutes a finding that wellhead markets are workably competitive, but gives the Commission little guidance—besides the NGA "just and reasonable" standard—on how to exercise its own NGPA discretion to raise old gas ceiling prices beyond their previous, primarily original-cost based levels. The highest numerical level set by the NGPA for old gas ceiling prices is that for the post-1974 vintage, currently $2.57 per MMBtu.

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existing contracts will push the average wellhead price up to 9% to 12% above inflation in 1985."); "C/LEC's Rothschild Out to Capture Competitive Benefits for Consumers," *Inside FERC's Gas Market Report*, April 18, 1986, at p. 3 ("The Citizen/Labor Energy Coalition, once a staunch opponent of gas price deregulation, now believes that in markets that are competitive, regulation is not necessary, says Edwin Rothschild, assistant director and chief Washington lobbyist. . . . 'We were wrong,' Rothschild willingly admits about the predictions of a catastrophic runup in gas prices that C/LEC made about the effect of partial gas-price decontrol on Jan. 1, 1985. While conceding that gas prices have gone the opposite way from C/LEC's projections, Rothschild added that 'we were in wonderful company, AGA, most of the financial analysts and the pipelines were also wrong about the price direction as well.'"); Testimony of George H. Lawrence, President, American Gas Association, before Subcommittee on Energy Regulation and Conservation, Committee on Energy and Natural Resources, United States Senate, April 15, 1986 ("The ultimate goal should be to make all gas, old and new, market-responsive. In today's volatile energy marketplace, which is dominated by rapidly declining crude oil and product prices, we need to do everything possible to stimulate gas demand by making prices more market-responsive and removing outdated constraints on its use. . . . The best solution to the take-or-pay problem has always been to sell more gas.")

[66] Monthly Gas Utility Statistical Report, American Gas Association January 1986.

[67] EIA, "An Analysis of Natural Gas Contracts, Volume I: Old Interstate Gas," *Service Report*, Table 3 (February 1986) (RNGD–86–01) (hereafter "EIA Old Gas Study").

[68] EIA Old Gas Study, *supra*, at Table 4.

[69] Public Service Commission of New York v. Mid-Louisiana Gas Co., 463 U.S. 319, 330–1 (1983); Joint Explanatory Statement of the Committee on Conference, H.R. 5289, Natural Gas Policy Act of 1978, at 67.

[70] Initial Comments of American Gas Association, Appendix B attaching "A.G.A.-TERA BASE CASE 1986–I" (hereafter "AGA 1986 Base Case"), Docket No. RM 86–3–000.

[71] "AGA Analysis Shows Effect of Oil Prices on Natural Gas Sales," *Washington Letter* (American Gas Association, April 18, 1986) at 5–6.

Third, the Commission's NGPA discretion permits it to mitigate, but not entirely eliminate, disparities in gas prices. It can only set new ceiling prices for old gas under NGPA sections 104, 106, and 109, and cannot revise the maximum lawful price ceilings for gas still regulated under sections 102, 103, 105, and 108. Nor can it set rates for old gas; it can only set maximum lawful ceiling prices for purposes of the NGPA. Thus, any new ceiling prices for old, flowing gas will not eliminate all price distinctions between old gas, still-regulated new and high-cost gas, and deregulated gas.

Fourth, recognizing the difficulties in calculating the replacement cost of gas, the Commission has considered a range of other wellhead prices as criteria for a just and reasonable ceiling price. For example, the Commission notes the current conditions in gas markets, where spot gas prices are below $2 per Mcf, and "market-responsive" contracts are not getting much more.[72] It also notes that pipeline WACOGs are still averaging in the $2.50 range, long-term contract prices for new gas are in the same range, and oil and gas drilling has collapsed in response to plummeting energy commodity prices.[73] This collapse in drilling, coupled with declining reserve replacement in 1985, indicates current short-term prices for gas are actually below the long-term replacement cost of gas, thereby undermining incentives to drill for new supplies. Finally, the Commission has also reviewed these long-term downward trends in reserve replacement, and notes that the existing proved reserve base reflects a mixture of already-discovered old gas fields and new gas fields yet to be developed in expensive frontier areas such as the outer continental shelf (OCS).[74]

For these reasons, and as discussed in more detail herein, the Commission has determined that the just and reasonable ceiling price is within a "zone of reasonableness" which represents the current replacement cost of gas established in Part IV, *infra*.

Within this range, the Commission has also determined that a new single just and reasonable ceiling price for all vintages of old, flowing gas should be no higher than the lowest price in the range of replacement cost, the current $2.57 per MMBtu price for post-1974 flowing gas, escalated for inflation. This ceiling price is within the zone of reasonableness for replacement cost, but is no higher than the highest vintage rate Congress itself retained for flowing gas under the NGPA. This price is the minimum necessary to permit producers to recover the cost of capital to replace depleted reserves over the long-term. Because this price does not exceed the highest cost-based price set by Congress for old gas, it is also a price which protects consumers against exploitation by producers inconsistent with the competitive conditions in wellhead markets, mandated by the NGPA. As natural gas markets evolve further under competitive conditions, the Commission will review this new national ceiling price to assure that it remains within the zone of reasonableness for replacement cost.

Furthermore, as an integral part of the new ceiling price itself, the Commission is adopting a "good faith negotiation" procedure which prevents any producer from automatically collecting a higher price under an existing contract unless a purchaser expressly agrees and unless the producer is willing to renegotiate certain other gas contracts the purchaser considers non-market responsive. Finally, in order to protect a pipeline's firm sales customers from any adverse impacts on their existing gas services, the new ceiling price provides such customers a right of first refusal and transportation authority for gas released by a pipeline under the good faith negotiation procedure. The implementation of the good faith negotiation procedure itself is delayed until November 1, 1986 in order to permit voluntary price renegotiation before any gas is released under the rule.

III. Summary of the Rule Adopted

The rule adopted today by the Commission represents an endorsement of the objectives set forth in the DOE proposal, modified to recognize the current needs of the natural gas market for regulatory change and the most practical means of meeting those needs. Before specifically addressing the issues presented by comments in the record, the Commission offers the following summary of the changes in its regulations that will become effective July 18, 1986.

Part 271 of the Commission's regulations governs ceiling prices for all categories of natural gas. It includes a table (Section 271.101(a), Table II) that specifies the maximum lawful prices (MLPs) for all vintages of gas subject to NGPA sections 104 and 106(a). Subpart D of Part 271 implements the NGPA's maximum lawful prices for old gas sold in interstate commerce, namely, gas subject to NGPA sections 104 and 106(a). Subpart F implements those prices for old gas sold under intrastate rollover contracts, if the gas is not otherwise deregulated. This gas is subject to NGPA section 106(b).

The new rule provides an alternative MLP for all vintages of gas under NGPA sections 104 and 106 at the price set forth in Table II for post-1974 gas, currently $2.57 per MMBtu, subject to an inflation factor adjustment. The Commission amends § 271.402(c) to make available the higher MLP for section 104 and 106(a) gas as an alternative to the otherwise applicable vintage prices. A producer of section 104 and 106(a) gas may collect a price up to the alternative MLP if the price is established under a contract provision executed by the purchaser after July 18, 1986, or the purchaser has agreed to pay a higher price under the terms of an existing contract. Therefore the rule precludes the automatic effectiveness of indefinite price escalator clauses in existing contracts and ensures that a purchaser will not be obligated to pay the higher price after promulgation of this rule unless it agrees to continue purchases under an existing contract.

Under § 271.602, which pertains to MLPs under intrastate rollover contracts, the Commission also allows collection of the MLP listed for post-1974 gas in Table II, if it is higher than the other available prices specified, but only if the price is established under a contract provision executed after July 18, 1986.

The final rule also establishes a good faith negotiation procedure under a new § 270.201. The negotiation procedure is available to a producer whose interstate contract provides for escalation of the contract price to a higher MLP. This negotiation rule grants producers abandonment if the producer seeks a higher price for its old gas, is unable to agree with the purchaser on a suitable price, and finds another purchaser. If the

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[72] E.g. "Spot Gas Prices Down," *The Energy Daily* (May 6, 1986), p.1 (citing spot gas wellhead prices ranging between $1.35/MMBtu and $1.70/MMBtu on eight interstate pipeline systems for contracts of 1–6 months duration).

[73] See *Natural Gas Monthly, supra*, Table 5; "An Analysis of the Department of Energy's Notice of Proposed Rulemaking (NOPR), 'Ceiling Prices: Old Gas Pricing Structure,' " *Service Report* EIA, May, 1986 at figure 1–4 (RNGD–86–03). The oil and gas active rotary rig count was 757 for the week ending May 19, 1986.

[74] See generally U. S. Natural Gas Availability: *Gas Supply Through the Year 2000* (Washington, D.C.: U.S. Congress, Office of Technology Assessment, (OTA–E–245, February 1985) (hereafter "OTA Report"); AGA Gas Supply Committee, "Conventional Natural Gas Production in the Lower-48 States Through 2010," *Gas Energy Review* (Vol. 13, No. 11, American Gas Association, November 1985) (hereafter "AGA Gas Supply Committee Report").

tentative new purchaser is not a firm sales customer of the existing purchaser, and the existing purchaser is not an open-access transporter under Order No. 436, firm sales customers of the existing purchaser have a right of first refusal. The rule applies to renegotiations of the price for sales under contracts in effect on the effective date of the rule as well as sales made under certificates of public convenience and necessity where the underlying contract has expired. However, formal negotiations under the rule may not begin prior to November 1, 1986. The abandonment provisions of the rule are not available for gas sold under interstate contracts that do not provide for escalation of the contract price to a higher MLP or for gas sold under intrastate rollover contracts. However, the price of gas sold under such contracts may be increased up to the new higher MLP if the producer can nevertheless secure the purchaser's agreement to a higher price.

Producers will be granted blanket certificates of public convenience and necessity authorizing the sale of gas abandoned under the provisions of this rule, as well as authority to abandon future sales of such gas upon termination of the contract. The rate filing requirements for sales of such gas under existing regulations are waived. However, producers will be required to report annually to the Commission on their jurisdictional sales of gas abandoned pursuant to this rule.

Interstate pipelines that are not open-access transporters under the provision of Order No. 436 will be granted blanket transportation certificates and will be deemed to have agreed to deliver on behalf of any shipper any gas released under this rule to any of its existing customers or interconnected pipelines. Pipelines will not become open-access transporters by virtue of transportation performed under the blanket certificate.

The mechanics of the good faith negotiation rule are as follows. The producer may, at any time after October 31, 1986, request in writing that the purchaser nominate a price it is willing to pay for the producer's old gas. Such a request constitutes an offer by the producer to release the purchaser from its obligation to continue purchasing gas subject to price renegotiation under the good faith negotiation rule. If the purchaser does not respond within sixty days, the producer may enter into a written contract for the sale of the gas to a new purchaser, subject to a right of first refusal by firm sales customers of an existing purchaser which is not an open-access transporter under Order No. 436, and thereafter abandon sale of the gas to the existing purchaser upon 30 days' written notice. However, if the purchaser responds by offering the highest price permitted under the existing or expired contract up to the alternative MLP, the producer must accept the offer and continue to sell the gas to the purchaser.[75] Alternatively, the producer may accept or reject any price offered below the highest price permitted. If the producer accepts, sales continue at the agreed-upon price. If the producer rejects the offer and enters into a written contract with another purchaser, the producer is granted abandonment.

The interests of purchasers are protected by permitting them to request the producer to nominate a price at which it will continue to sell any gas being sold under any contract sought to be renegotiated by the producer as well as any gas under any or all contracts with that producer which provide for the sale of any old gas. If the purchaser rejects the price nominated by the producer, the purchaser may accept the producer's offer of a release and terminate its contractual obligation to take the gas after 30-days notice. Once the purchaser discontinues purchasing the gas, terminating its contractual obligation under authority of this rule, the producer is granted authority to abandon sale of the jurisdictional gas to the purchaser.

The right to renegotiate under this rule, with the attendant rights of abandonment and contract termination, are available only once for each contract. If a producer has initiated negotiations under the good faith negotiation rule, or the producer and purchaser have agreed on the price of gas after July 18, 1986, whether or not after negotiations in accordance with the rule, the abandonment and contract termination rights are not subsequently available for any gas sold under the contract in question. However, nothing in the rule precludes the parties from thereafter negotiating mutually agreeable revisions in price or other terms of their contracts.

[75] An offer of the highest permitted price must conform to all other terms of the contract. A purchaser may not, for example, preclude the producer's rejection by offering the highest permitted price for only a portion of the volume of takes required by the contract. If a contract with an indefinite price escalator clause has been superseded by a contract amendment imposing a temporary cap on the price of the gas, the highest permitted price would be the temporary cap until expiration of the amendment and, thereafter, as provided by the indefinite price escalator clause.

IV. Raising the Maximum Lawful Price for Old Gas

A. Scope of Commission Authority

The Commission's adoption of the old gas proposal is predicated on the exercise of its authority under sections 104(b)(2) and 106(c) of the NGPA. These sections provide that the Commission may prescribe a maximum lawful price for any first sale (or category thereof) which is higher than the otherwise applicable price, provided the higher price is "just and reasonable within the meaning of the Natural Gas Act."[76] DOE argues that the Commission has wide discretion to establish the structure as well as the level of just and reasonable rates for old gas consistent with applicable standards and precedent developed under the NGA, including authority to eliminate vintaging of old gas and to consider both cost and non-cost factors in establishing ceiling prices.

In the notice of December 20, 1985, the Commission requested comments concerning its legal authority to establish new just and reasonable rates under NGPA sections 104 and 106. The Commission noted that the cost-based methodologies used in the past to establish just and reasonable rates were developed in the context of different market conditions which were not competitive and a different regulatory framework from that which exists today. The Commission requested comments concerning the legal and practical effects of using prior methodologies and the extent to which the Commission may rely on non-cost factors in determining just and reasonable rates. The Commission also expressly requested the commenters to include quantitative as well as qualitative analyses of the legal, policy, economic and technical issues raised in the DOE proposal.

Comments. Numerous opposing commenters argue that the old gas proposal is beyond the scope of Commission authority and therefore cannot be lawfully adopted. Their position is that Congress, acting through the NGPA, has established a permanent, unalterable pricing system for old gas

[76] The text of section 104(b)(2) is as follows:

(2) Ceiling prices may be increased if just and reasonable—The Commission may, by rule or order, prescribe a maximum lawful ceiling price, applicable to any first sale of any natural gas (or category thereof, as determined by the Commission) otherwise subject to the preceding provisions of this section if such price is—

(A) higher than the maximum lawful price which would otherwise be applicable under such provisions; and

(B) just and reasonable within the meaning of the Natural Gas Act.

and that the Commission's authority to raise rates under NCPA sections 104(b)(2) and 106(c) is limited to adjustments that reflect increases in costs that are not adequately compensated for by the NGPA's inflation adjustments, or on a case-by-case basis, where production has become uneconomic under existing prices.[77] Opposing commenters also cite certain legislative history as authority for the proposition that Congress did not contemplate that the Commission could or would apply a different just and reasonable standard than that underlying the 1977 benchmark prices incorporated in the NGPA as the ceiling prices for old gas.[78]

Commission Response. The Commission rejects the arguments of the opposing commenters and concludes that there is ample authority under the NGPA for the Commission's adoption of the old gas proposal. The express and unambiguous terms of the statute specifically authorize the Commission to raise old gas prices, subject only to the requirement that the Commission find that the higher rates are just and reasonable within the meaning of the NGA.

The Commission is not persuaded by the excerpts from the Senate and House debates on the NGPA cited by MPC–NASUCA [79] that Congress intended to forever keep the price of old gas at an absolute minimum. The Commission can discern no basis in the NGPA's legislative history for concluding that Congress intended to foreclose the Commission's ability to consider changes in the old gas price structure such as those proposed by DOE or to otherwise limit the Commission's authority under the NGA to establish just and reasonable rates for old gas. Indeed, the NGPA's legislative history leads to the conclusion that Congress fully understood the broad scope of Commission authority to establish regulated wellhead prices under the NGA.[80] While Congress' decision to leave old gas under the largely cost-based ceilings of NGA regulation was clearly intended to mitigate the effects of allowing higher prices for new gas, the Commission was not precluded from achieving the same result by different methods, such as reliance on replacement cost and good faith renegotiation requirements as in this rule, provided the end result is just and reasonable.

The NGPA incorporated the just and reasonable rates established by the Commission in Opinion Nos. 749 and 770–A, plus an adjustment for inflation. Sections 104(b)(2) and 106(c) also provided the Commission with authority to increase maximum lawful ceiling prices above those levels if the increased prices are just and reasonable within the meaning of the NGA. The Commission may exercise this authority by rulemaking or on a case-by-case basis.[81] The just and reasonable standard of the NGA is not, however, precise and rigid. The standard has been interpreted by the Commission and the courts to permit consideration of many non-cost factors in establishing just and reasonable rates.[82] These non-cost factors have included market forces, the need to stimulate production, alternative fuel prices, current exploration and development needs, and competitive conditions in wellhead markets. Factors that may be significant in determining just and reasonable rates in an era when gas supplies are scarce and competition virtually nonexistent are less significant now when those conditions are reversed. Thus, the studies presented by AGD, recalculating current ceiling prices with the methods employed by the FPC in the mid-1970's, do not necessarily establish just and reasonable price ceilings under present conditions.

MPC–NASUCA cite comments by Senator Domenici allegedly demonstrating that the NGPA was intended to preclude administrative elimination of the vintaging of old gas.[83] However, the statement on its face refers to *legislative* deregulation of natural gas prices, *not* the *regulatory* revision of ceiling prices under NGPA sections 104(b) and 106(a). On April 11, 1985, Senator Domenici transmitted to the Commission a letter disavowing MPC–NASCUA's interpretation of his 1978 floor statements concerning the NGPA.[84] In his letter, Senator Domenici states as follows:

> While I did refer to "vintaging", the reference was solely in the context of stating that the legislation at hand did not remove price regulations on old gas. My reasons were as stated—the politics of the Congress in 1978 simply did not permit total deregulation. However, I did not intend—nor did Congress intend in passing the NGPA—to alter existing law with regard to the Commission's complete discretion over vintaging.
>
> It is my own belief that vintaging has been and continues to be a matter of policy for and by the Commission. That was the law under the NGA, and that was the state of the law at the time Congress adopted the NGPA. As such, the Commission is free to change it—or even terminate it—at the option of a majority of the Commissioners. Nothing in the legislative history and particularly nothing in my own statements, can be read to inhibit the Commission if it chooses to exercise that freedom in the current [RM 86–3–000] proceeding.

In light of this letter and numerous cases upholding decisions of the Commission to phase-out or reinstitute vintaging, the Commission concludes that whether or to what extent vintaging should be continued and old gas rates revised is a matter within its discretion.[85] Thus the Commission concludes that there is no question of its authority under the NGPA to adjust old gas MLPs under the just and reasonable standards on the basis of non-cost factors, and to eliminate vintaging if circumstances so warrant. The real issue presented, therefore, is whether the Commission should exercise its authority in the manner proposed by DOE.

B. Deficiencies in Old Gas Price Structure.

DOE asserts that the existing old gas price structure is "woefully outmoded," [86] characterized by

[77] Maryland Peoples Counsel—National Association of State Utility Consumer Advocates (MPC–NASUCA) at 3–7; New York Public Service Commission (New York) at 3–13; *see also* California PUC at 5–12; Arkansas PSC at 4; PSC of Wisconsin at 2–5; PSC of West Virginia at 6–9; PSC of Kentucky at 1–4; PSC of District of Columbia at 2–9. (Unless otherwise indicated, all references to comments above and hereinafter are to initial comments.)

[78] New York at 3–13.

[79] MPC–NASUCA at 3–7.

[80] *See* statements of Senators Jackson, 124 Cong. Rec. 28,633 (Sept. 11, 1978); Abourezk, 124 Cong. Rec. 30,018 (Sept. 19, 1978); and Kennedy, 124 Cong. Rec. 30,023 (Sept. 19, 1978).

[81] Wisconsin Gas Co. v. FERC, 770 F.2d 1144, 1153 (DC Cir. 1985).

[82] *See infra* at 84–92.

[83] The statement relied on is as follows: "I am saying that [elimination of vintaging] is not in this bill, that is not doable. No one has even suggested deregulating old gas. That is what I was referring to as being not doable." 124 Cong. Rec. 28,865 (Sept. 12, 1978).

[84] The Commission has included the letter in the record of RM86–3–000.

[85] Shell Oil Co. v. FPC, 491 F.2d 82 (5th Cir. 1974) (FPC's decision to permit gradual phase-out of vintaging is "rational, reasonable and therefore fully permissible," Shell Oil Co. v. FPC, 520 F.2d 1061 (5th Cir. 1975), *cert. denied*, 426 U.S. 941 (1976) (Commission not bound by its previous policies on vintaging and has latitude to evaluate old experiments and modify or abandon them in its best judgment); Tenneco Oil Co. v. FERC, 571 F.2d 834 (5th Cir. 1978), *cert. denied*, 439 U.S. 801 (1978) (Commission's decision to reinstitute vintaging and ignore the cost of replacing flowing gas is within the Commission's discretion to balance policy considerations); Mobil Oil Corp. v. FPC, 417 U.S. 283 (1974) (Commission could raise maximum lawful rates, for old gas even without new evidence of cost of that gas in order to spread burden of cost of producing new gas to all users).

[86] DOE Notice of Proposed Rulemaking (DOE Proposal) 50 FR 48540 (November 25, 1985).

"distortions, inequities, inefficiencies and disincentives",[87] and thus demands reform. Noting that it has been nine years since the last national ratemaking was completed, DOE argues that the economic data and information concerning replacement costs, commodity values, and other factors which were considered by the Commission in formulating the old gas prices have been overtaken by events.[88]

DOE's principal criticisms of the existing price structure are that it (1) results in inefficient production and the permanent loss of old gas reserves, (2) distorts the market, harming both producers and consumers, and (3) is illogical and unnecessarily complex.

On the issue of production, DOE relies on studies showing that if current old gas prices are held at their present levels, approximately 11 Tcf of old gas reserves will be permanently lost. DOE argues that domestic gas which is not produced as a result of vintaging may be replaced by foreign imports of both oil and gas that are higher in price or quantity than necessary, and that the nation's energy security would thereby be compromised and the trade balance weakened.[89]

Concerning the issue of market distortion, DOE states that the Commission and the courts have recognized the inequity and discrimination between customers arising as a consequence of separately vintaged pricing for old and new gas.[90] According to DOE, this inequity has evolved as the rates for old gas were no longer able to recover a reasonable share of the cost of developing new reserves to replace the old gas being consumed. DOE reasons, however, that any presumed benefits to consumers of old gas are illusory, since their interest in secure long-term supply is not furthered, and the overall price they pay is not reduced since higher-cost gas is rolled into the pipeline's supply mix.[91]

DOE also argues that the differences between new and old gas prices as well as among old gas vintages are anomalous and excessive. Under the Permian Basin and Southern Louisiana area rate proceedings, the ratio between new and old gas ceiling prices was less than 1.2 to 1, whereas today the ratios between new gas ceiling prices under NGPA sections 102 ($4.26) and 103(b)(2) ($3.68) and ceiling prices for pre-1973 old gas ($.52) are about eight to one and seven to one respectively. The ratio between the post-1974 ceiling price of $2.57 and the pre-1973 ceiling price is approximately five to one; the ratio between current spot market prices (roughly $2.00) and the pre-1973 price is about four to one. DOE argues that these differences in prices for a fungible product such as natural gas serve no useful economic purpose.[92] DOE also argues that the existing old gas pricing system, made up of some fifteen separate old gas vintages (including minimum rate gas), is overly and unnecessarily complex as well as administratively unwieldy.

DOE recommends judging the justness and reasonableness of NGPA old gas prices on the four criteria employed by the Commission in its notice requesting supplemental comments on Part D, the block billing proposal, issued on October. 9, 1985, in Docket No. RM85-1-000.[93] Under these standards, a just and reasonable rate must (1) permit efficiency in the production and consumption of natural gas;[94] (2) permit fair competition. petition;[95] (3) prevent wasteful depletion;[96] and (4) respond to changing conditions in the industry.[97] DOE concludes that current old gas prices fail to meet any of these standards and are therefore not just and reasonable.

DOE concludes that many of the problems identified by the Commission in Docket No. RM85-1-000 (Part D) result primarily from the structure of old gas prices and not from rolled-in pricing, and that those problems would be resolved by replacing vintaging with a uniform ceiling price based on replacement costs and other relevant factors. That price, according to DOE, is the ceiling price for post-1974 gas.

Comments. Producer commenters[98] and producing states[99] support DOE's position that old gas vintaging at artificially low prices is a principal cause of current market distortions. Such distortions, they say, include wide disparities in city-gate prices on different pipeline systems, the ability of pipelines to maintain above-market prices for some gas by rolling it in with low-priced old gas, and inaccurate price signals to consumers of the true replacement cost of the gas they consume. Indicated Producers and NGSA support DOE's analysis of deficiencies in the old gas price structure with their own legal and economic analyses. Indicated Producers argue that neither the Commission nor the courts have considered vintaging to be an intrinsic part of just and reasonable rates under the NGA. NGSA supports its position with a comparative analysis of block billing and market pricing of old gas.[100] Process Gas.Consumers Group (PGC), an association of industrial consumers of natural gas, also supports the old gas proposal as likely to reduce the market distortions arising from remaining wellhead price controls as does the Fertilizer Institute, representing agricultural consumers.[101]

Pipeline and distributor commenters, as well as certain state commissions argue that the proposed rule erroneously targets old gas prices as economically inefficient and a source of market disorder. Interstate Natural Gas Association of America (INGAA), for example, disagrees with DOE's analysis and argues that the proposed rule would do nothing to address the "overarching" problem of high-price/high-take contracts and that the DOE proposal "increases the likelihood of market distortions, since the high-price/high-

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[87] DOE initial comments at 2.

[88] DOE Proposal, 50 FR at 48541.

[89] *Id.* at 4; *see also* Secretary Herrington's Comments, April 10, 1986 Hearing in Docket No. RM86-3-000, Transcript at 5-7.

[90] DOE Proposal, 50 FR at 48541 *citing* Tenneco Oil Co. v. FERC, 571 F.2d at 839.

[91] *Id* at 48,541.

[92] The Permian Basin and Southern Louisiana area ratemakings established but a single rate for old gas; Opinion No. 749 (the "minimum rate" case) collapsed area rate vintages into a single national rate for flowing gas; and the first national rate proceeding allowed a single new gas price when old gas contracts rolled over, thereby collapsing various old gas prices into a new single price. *See id.* at 48,542, *citing* Shell Oil Co. v. FPC, 520 F.2d at 1077.

[93] 50 FR 42372 (October 18, 1985).

[94] That is, the price for natural gas in a given market should reflect the resource cost of bringing that natural gas into that market.

[95] Such competition, whether between pipelines or between a pipeline and a competing fuel supplier (such as gas, oil, coal, or electricity), should reflect the *current* decisions and efficiencies with which those suppliers operate and should not be distorted by the effects of decisions that proved to be wrong or right in past years.

[96] That is, consumers should not be encouraged to use up supplies of natural gas whose value to them is less than the cost of making those supplies available.

[97] Thus, rates for natural gas should not inhibit the growth of competition envisioned by the NGPA, and should permit, for example, the full benefits to be derived from the optional expedited certificate procedures established in Order No. 436.

[98] *See e.g.,* NGSA at 7-22; Indicated Producers at 15-29; Independent Petroleum Association of America (IPAA) at 5; Independent Petroleum Association of Mountain States at 1-2.

[99] Interstate Oil Compact Commission at 2-4.

[100] This study, prepared by Prof. Joseph P. Kalt of Harvard University, discusses the distorting effects of below-market pricing and how this creates a cushion to subsidize the otherwise uneconomic development of high cost gas. Professor Kalt argues that vintage pricing inhibits development of low-cost supply sources and stimulates prematurely higher-cost supply development, and that the benefits of the existing structure accrue chiefly to high-cost gas producers and not to the consuming public as a whole.

[101] PGC at 3. PGC finds a shortcoming in DOE's proposal, however, in that it does not link increases in old gas prices to reductions in high-priced new gas.

take contract problems can be expected to worsen," if old gas prices are permitted to increase.[102]

Other opposing commenters assert that there is no factual evidence of any market distortion attributable to old gas vintaging, or that market distortions, which may have existed in the past, are no longer present. United Distribution Companies (UDC), for example, states that while DOE alleges there are market distortions caused by the current pricing structure applicable to old gas, the "specific factual bases for these contentions are not identified . . ." [103]

Commission Response. Upon consideration of all of the comments and views with regard to alleged deficiencies in the old gas structure, the Commission concludes that serious distortions remain in the natural gas markets and that these distortions emanate primarily from the old gas vintage price structure. This is not a new insight. Beginning with the Notice of Inquiry in Docket No. RM82–26–000, and more recently in the Docket No. RM85–1–000 (Part D) proceedings, the Commission has grappled with the problems arising out of the old gas price structure, either directly or indirectly. The Commission has long recognized distortions and deficiencies in the old gas pricing system. Thus, the DOE proposal is the culmination of a long period of Commission review of the problem of the old gas price structure in prior proceedings.

In Docket No. RM82–26–000, for example, the Commission issued its notice of inquiry on the impact of the NGPA on current and projected natural gas markets.[104] The central purpose of the notice of inquiry was to gather information on the existence of market distortions due to rolled-in pricing of old and new gas supplies and to study recommendations that the Commission revise the prices of old flowing gas to eliminate the distortions.[105] More recently, in the block billing proposal in Docket No. RM85-1-000 (Part D),[106] the Commission proposed to remedy the continuing market imbalances but only indirectly, without affecting the root cause of these imbalances—the old gas pricing structure.[107] The record in the present proceeding confirms the inadequacy of the old gas price structure, and the continuing necessity to act on it. For example, the price disparities engendered by it have led to the continued failure since the NGPA to achieve replacement of reserves equivalent to demand, as would occur in an economically rational market.[108] Also, the old gas cushion has failed to keep burner tip prices competitive with oil. Rather, as the wellhead price of gas has rapidly plummeted to remain competitive, city-gate rates have declined with disproportionate slowness, due in large part to the favorable access of some consumers to artificially low-priced old gas, compared to other not so fortunate consumers.[109]

We note the contention that the distorting effect of old gas prices has been dissipated. Maryland People's Counsel (MPC) for example, argues that market distortions caused by the old gas cushion are now largely dissipated, since any original advantage attributable to cushion gas has now been "used up" and prices of new gas coming on the market are now fully subject to the discipline of the marketplace.[110] Texas Gas Transmission Corporation (Texas Gas) also asserts that low prices of NGPA sections 104 and 106(a) gas are no longer skewing purchasing decisions. While agreeing that market disorders arising from the past contracting practices remain, Texas Gas argues that the remedy should be directed to the high-cost "problem" contracts rather than old gas prices. It is true that the bidding wars of the 1978–1981 period are over, and that prices for new supplies on the spot market have fallen well below the levels experienced during that period and, indeed, below the highest old gas ceiling price (post-1974 vintage). But, while the bidding-up of prices for new gas, (caused in large part by reliance by purchasers on their old gas cushions) may have ended, the distorting effects of the artificially low prices established by the vintage price system remain. Once the present deliverability surplus [111] is eliminated and natural gas supply and demand come into balance,[112] new gas prices could potentially be required to bear the brunt of price increases permitted by the market, resulting in disproportionate increases in new gas prices and increased distortion in the overall price structure as between old and new gas. If vintaging is not eliminated now, the price distortions it causes will be aggravated when the surplus disappears and bidding on new gas supplies accelerates.

Because NGPA sections 104(b)(2) and 106(c) expressly authorize the revision

[102] INGAA at 4-5.

[103] UDC at 3.

[104] 47 FR 19157 (May 4, 1982).

[105] In its Notice of Inquiry, at Appendix A, Docket No. RM82–26–000, the Commission noted two reasons why the elimination of vintaging may be appropriate: (1) "[T]he elimination of vintaging may be appropriate because, combined with partial decontrol, it may be a major factor exacerbating the market ordering problem." * * * (2) "[V]intaging may discriminate unreasonably against customers of pipelines that have a much smaller price cushion. . . This advantage is the result of a pipeline's historical, fortuitous opportunities to contract for large volumes of low-priced vintaged gas and bears no rational relationship to its customers' demands or priority uses." FERC Stats. & Regs. ¶ 35,512 at 35,574. Thus the DOE old gas proposal was presaged almost exactly by the Commission in the Notice of Inquiry.

[106] 50 FR 42408 (October 18, 1985); 50 FR 45907 (November 5, 1985).

[107] The block billing approach eschewed adjustment of the old vintages, partly as a result of an implicit narrow reading of the Commission's authority to set just and reasonable rates under NGPA sections 104(b)(2) and 106(c). Analysis of the DOE proposal and the comments generated by it leads the Commission to conclude that its discretion under sections 104 and 106 is wide enough to allow the Commission to collapse the old gas vintages, thereby directly attacking the source of distortions. As has been pointed out, Congress in Title I intended to treat gas producers as a naturally competitive sector, and the DOE proposal permits market forces to work in that competitive sector on old gas, while keeping within the bounds of a price ceiling circumscribed by the just and reasonable replacement cost of the commodity. *See e.g.*, Pennzoil Co. v. FERC, 645 F.2d 360, 378-79 (5th Cir. 1981) ("Congress apparently decided that gas producers do not have 'natural' monopoly power") *cert. denied*, 454 U.S. 142 (1982); *see also* NGSA at 9–12.

[108] *See e.g.* Initial Comments of AGA, Appendix B, "AGA-TERA BASE CASE 1986-I" (AGA projects under current wellhead prices, that "the combined effect of falling discoveries and more stable extensions and revisions is a reduction in the level of total reserve additions of 41 per cent between 1985 and 2000.")

[109] The high city-gate rates have vintaging as a "root cause", because the high-cost contracts that are indirectly contributing to these rates were entered into when pipelines relied on the misleading economic signals intrinsic in the unrealistically low old gas cushion vintages to which they had access.

[110] What MPC is referring to is the "bidding war" by pipelines during the 1978–81 period of relative supply scarcity. Anxious to attach additional reserves to replenish inventories severely depleted during the curtailment era, pipelines paid maximum lawful prices for new gas and contracted for deregulated supplies at prices as high as $8-$10 per MMBtu. Those pipelines with larger cushions of old gas vintages were able to outbid their competitors, not on the basis of efficiency of operation and management, but solely based on the amount of "old" gas they could roll-in without adversely affecting their weighted average cost of gas (WACOG) vis-a-vis other pipelines. After 1982, most pipelines added market-out clauses in new contracts to make them market-responsive.

[111] The Commission has recognized a surplus of gas available for delivery amounting to between 1 and 4 Tcf or an annual basis. Notice Requesting Supplemental comments, RM85–1–000 (Part D) 50 FR at 42383; AGA estimates excess production capacity at between 2.5 and 2.8 Tcf in 1986. AGA, Appendix A, at 3.

[112] DOE estimates that under its old gas proposal, surplus deliverability will be reduced to between 1–2 Tcf at the end of 1986, and will be totally dissipated during 1987. Without adoption of its proposal, the surplus will not be dissipated until 1989, at which time, if vintages persist, bidding up of deregulated gas may be renewed and drilling budgets inefficiently allocated to those marginal supply prospects with the highest per unit price, rather than those with the highest value in terms of additions to reserves. DOE at 13.

of old gas ceiling prices, the Commission need not find existing old gas price ceilings unjust and unreasonable under the NGA in order to change them. However, insofar as the existing old gas price structure *is* unjust and unreasonable within the meaning of the NGA, because of the continuing distortions on prices and reserve replacement it engenders, it must be changed pursuant to the authority vested in the Commission by Congress.[113] There is no legislative mandate for permanent vintaging. The history of vintage pricing supports this conclusion. The history of vintaging in producer regulation under the NGA commenced with the original Statement of General Policy No. 61-1,[114] in which the Federal Power Commission (FPC) outlined its plan for establishing area rates. In the Statement of General Policy No. 61-1, the FPC, while establishing separate schedules for initial prices in new contracts and increased prices in existing contracts, stated that "[i]t is anticipated that these differences in price levels will be reduced and eventually eliminated as subsequent experience brings about revisions in the prices in the various areas."[115] The Commission subsequently acted to eliminate vintaging in Opinion No. 639 (Appalachian Area Rate Proceeding) stating that "[w]e believe vintaging to be an anachronism which we should now move to eliminate,"[116] and Opinion No. 699-H[117] (first nationwide rate proceeding), and these decisions were affirmed by the Courts.[118] Vintaging was subsequently re-established by the Commission in Opinion Nos. 770 and 770-A and has remained in effect since then.

Since vintaging is the major cause of the market distortions identified by the Commission in Docket No. RM85-1-000, the current problems being experienced in natural gas markets would largely be remedied by collapsing vintages and raising ceiling prices of below-market priced gas. The elimination of vintages, as necessitated by market trends, is not a total departure from past practice. Congress' grant to the Commission in sections 104(b)(2) and 106(c) allowing increased ceiling prices to be established if just and reasonable must be understood in this historical context.

The evidence in this proceeding demonstrates that existing old gas prices prevent fair competition because pipelines and distributors with proportionately greater access to low-priced old gas are placed in an advantageous competitive position in acquiring and marketing supplies relative to those pipelines and distributors with less access to cushion gas. MPC has argued that the unfair advantage given certain pipelines by their old gas cushion has been expended through the process of bidding-up the price of deregulated gas. However, the old gas cushion *continues* to distort downstream markets by providing an unfair competitive advantage to some pipelines.[119] The field WACOGS of interstate pipelines continue to be related to the size of their old gas cushions.[120] Indicated Producers provide a relatively detailed analysis of the impact of the old gas cushion on pipelines' competitive positions that rebuts MPC's argument.

Indicated Producers' analysis includes an index to measure a company's relative old gas cushion by accounting for both the old gas percentage of its total field purchases and the average price paid for old gas. The index is computed by dividing the old gas percentage by the old gas price for each pipeline and then dividing this number into the composite index of 100 for the 24 pipelines. Thus, a pipeline with a cushion index of 182, would have twice the old gas cushion as a pipeline with an index of 91. This index system demonstrates the wide differences in old gas cushions among interstate pipelines, with the largest cushion (Northwest Central's) 8.8 times greater than the smallest cushion (of Florida Gas).

More importantly, these data, based on information in the Commission's public files, illustrate the distorting impact the old gas cushion has on pipelines' competitive positions. An excerpt from Indicated Producer's tabulation, (derived from PGA filings in effect as of January 1, 1986), shows the following:[121]

Pipeline	Cushion index	Old gas		New Gas		(WACOG) average price
		Bcf	Price	Bcf	Price	
Northwest Central	251.1	198	$0.85	102	$3.79	$1.82
Colorado Interstate	182.2	99	0.87	103	2.98	1.95
Texas Eastern	154.0	229	0.72	438	2.85	2.12
El Paso Natural	100.0	322	1.27	497	3.20	2.44
Southern Natural	97.4	141	1.39	196	3.95	2.88
Transwestern	79.6	54	1.20	129	3.19	2.60
Columbia Gas	56.6	162	1.58	424	3.64	3.07
Transcontinental	53.1	141	1.63	387	3.58	3.06
Consolidated Gas	40.3	20	1.00	123	3.80	3.41

As can be seen, El Paso and Transwestern have a 16¢ spread in WACOG even though they serve the same market and pay virtually the same price for new gas. Similarly, Southern Natural enjoys an 18¢ competitive advantage in WACOG over Transco, and can still afford to pay more for new gas than Transco. This competitive advantage has little to do with current or just operating efficiencies or any other fair measure of competition. Instead, the advantage may be traced in substantial part to Southern Natural's old gas cushion index which is nearly twice as large as Transco's.

Since the pipeline's WACOG substantially affects the city-gate rates, the ultimate consumer feels the distorting effect of old gas vintages. While some consumers will pay less than the replacement cost of their gas, many more will find prices stubbornly higher than they would be if competitive forces in the field were allowed to operate at the burner-tip.

Thus the old gas price structure has become a structural source of market distortion and unfair competition since it engenders widely varying prices based on chance historical costs for a fungible commodity produced and sold in an otherwise competitive market. In reviewing the Commission's determination of area rates for the Southern Louisiana area, the court in *Placid Oil Co.* v. *FPC*, 483 F.2d 880, 899-900 (5th Cir. 1973) stated that:

> Natural gas is a fungible commodity as it comes from the bowels of the earth, neither severed nor identified to a particular contract. One molecul of gas flowing from a particular producer's wells in [the Southern Louisiana Area] might be ultimately piped to a large industrial factory pursuant to a 1962

[113] See Wisconsin Gas Co. v. FERC, 770 F.2d 1144 (D.C. Cir. 1985).

[114] 24 FPC 818 (1960).

[115] *Id.* at 819.

[116] 48 FPC 1299 at 1309 (1972).

[117] 52 FPC 1604 (1974). *See also* Opinion No. 749, 54 FPC 3090 (1975).

[118] Opinion No. 699-H, *aff'd sub nom.* Shell Oil Co. v. FPC, 520 F.2d 1061 (1975), *cert. denied sub nom.* California Co. v. FPC, 426 U.S. 941 (1976); Opinion No. 749, *aff'd sub nom.* Tenneco Oil Co. v. FERC, 571 F.2d 834 (1978), *cert. dismissed*, 439 U.S. 801 (1978).

[119] *See* Indicated Producers reply comments at 16-20, rebutting MPC comments at 14-15.

[120] *See* Indicated Producers reply comments, Appendix E at 18, chart 2.

[121] *Id.* at 19, Table 5.

contract, which under the terms of Opinion No. 598 would permit a maximum well-head price of 22.375¢/Mcf. At the same time its identical contiguous twin might cook the dinner for the famed 'little lady at the burner-tip' and, yet, yield a well-head price of 26¢/Mcf merely because it happened to be covered by a 1969 contract. It is therefore anomalous, if not downright inaccurate, to speak of 'old' gas. There is no 'old' gas. As it presses to freedom at the well-head, it is as new as any other of nature's offspring. It may be 'old' in the sense that some arrangement confected long prior to its release made production possible. But if—and this can be no if—rates for so-called 'new' gas must carry an increment to enable the continued re-supply of this depleting commodity, this 'old' gas, indistinguishable molecularly, must carry this burden like an added atom in its carbon ring. *Cf. Ziegler* v. *Phillips Petroleum Co.*, (5th Cir. 1973), 483 F.2d 858.

This is exactly the Commission's view.

The Commission fully recognizes that the old gas price system is not the sole source of the problems facing the natural gas industry at this time, and that numerous commenters argue that the current problems in the natural gas market are caused primarily by non-market responsive new gas contracts. AGA, for example, states that "the DOE proposal is attacking the wrong problem. That problem, as we have said time and time again, is non-market-responsive new gas contracts." [122] Texas Gas, another example of such commenters, argues that the proposed rule will result in an increase in average gas prices and further loss of sales because of rigidities in high-cost new gas contracts. Yet Texas Gas implicitly acknowledges that collapsing vintaging will stimulate recovery of additional old gas reserves but argues this additional supply is not needed now in light of current oversupply conditions.[123]

Of course, many factors have contributed to the current situation, characterized by falling wellhead market prices, unresponsive city-gate prices, fuel switching, loss of loads, and excess production and transmission capacity. Among the causes of present industry conditions is the unexpected decline in world oil prices and the related decline in prices of competing fuels derived from oil, notably, No. 6 fuel oil. The Commission is also keenly aware of the problems attributable to non-market responsive new gas contracts on pipeline systems.[124] The Commission nevertheless must reject the arguments of certain parties that any change in the old gas price structure be made subject to or conditioned upon some form of relief to purchasers from the terms of their uneconomic contracts. Such general intervention into private contractual arrangements has not been proven necessary. On the contrary, data indicate that many of these contractual difficulties are being settled by negotiation between the parties involved. (*See* discussion *infra*, pp. 147-49).

Yet the Commission can, and must, address the problems related to the old gas vintages. In this way the market itself will exert pressure on contracts outside of the ambit of the Commission's direct jurisdiction, to lessen the "spread" between high-cost contract prices and actual market prices. The Commission has addressed the question of uneconomic contracts for new gas and has provided a framework under Order No. 436's expedited abandonment procedure and the April, 1985 "Take or Pay Statement of Policy" for the resolution of this problem.

The Commission believes that the natural forces of competition will resolve the issues surrounding high cost contracts. The Commission notes that substantial competition already exists at the burner-tip, and the open access to alternative supplies made available through Order No. 436 can only result in increased competitive pressure on gas prices in the future. The Commission has previously stated and reaffirms its position that problem contracts are primarily a matter for resolution between the parties involved.[125] The Commission has adopted a policy statement issued April 10, 1985, designed to facilitate that process.[126] For largely the same reasons expressed in Order Nos. 436 and affirmed in 436–A,[127] the Commission declines to go beyond the April 1985 policy statement, and has confidence that the free operation of market forces will provide a resolution of this issue.[128]

In sum, the record in this proceeding demonstrates that the old gas price structure is a substantial source of market distortion causing producers to prematurely abandon easily accessible supplies, and consumers to react to misleading market signals based on chance historical costs rather than current economic efficiencies. The Commission therefore concludes that the old gas price structure is unjust and unreasonable and should be changed.

C. Proposed Old Gas Ceiling Price.

DOE proposes that the Commission establish a uniform ceiling price for old gas equal to the current price for post-1974 vintage gas and that once established that price continue to be adjusted for inflation as provided for in NGPA section 104. DOE describes the proposed ceiling price as being based on two factors, the first being the ceiling price established in Opinion No. 770 for post-1974 gas and the second being the inflation adjustment factor incorporated in the NGPA and used to adjust that price monthly for inflation commencing in April 1977.[129] DOE argues that the Commission is obliged to establish a rate which is within a "zone of reasonableness" and that this zone may be established by reference to both cost and non-cost factors as well as policy considerations.[130] DOE argues that the

[122] AGA at 2; *but see* AGA's endorsement of legislation deregulating old gas upon contract renegotiation or expiration p. 38, *supra*, at n.65. AGD endorses AGA's identification of non-market responsive contracts as the principal source of market disorder. *See also* ANR Pipeline Company at 2; Consumer Power Company and Michigan Gas Storage Company at 4–5; California PUC at 24; Florida Gas Transmission Company at 7; Kansas Power and Light Company at 15–16; Michigan Consolidated Gas Company at 21-22; Midwest Energy, Inc. at 4; Northern Illinois Gas Company at 18–19; Peoples Gas Light and Coke Company and North Shore Gas Company at 23; Piedmont Natural Gas Company, Inc. at 7; Questar Corporation at 7; Transwestern Pipeline Company at 7; Southern California Gas Company at 22.

[123] *See e.g.*, MPC-NASCUA at 16, ANR Pipeline Co. at 2–3, Public Utilities Commission of the State of California at 24 and Appendix, Public Service Co. of Colorado at 6–7.

[124] See discussion, *infra* at pp. 146, 156–57 regarding price disparity between pre-1982 and post-1982 new and high-cost gas contracts.

[125] *See* Order No. 436, Regulation of Natural Gas Pipelines After *See* Partial Wellhead Decontrol, Docket No. RM85–1–000, 50 FR 42408, at 42462–64 (October. 18, 1985); Order No. 436–A, 50 FR 52217 (December 23, 1985).

[126] Regulatory Treatment of Payment Made in Lieu of Take-or-Pay Obligations, Docket No. PL85–1–000, Statement of Policy and Interpretive Rule, 50 FR 16076 (April 24, 1985), FERC Stats. & Regs. ¶ 30,637 (1985).

[127] "In particular, we have no wish to upset current renegotiations. . . . Therefore, . . . we reaffirm our April 1985 Policy Statement. . . . We note that pipelines have been successful in buying out past incurred take-or-pay in a number of instances. [Table omitted]." Order No. 436, 50 FR at 42464 (October 18, 1985).

[128] *See e.g.*, the "released" gas programs undertaken by many pipelines, where their takes of system supply gas are low and where their takes temporarily released from high-cost contracts with renegotiated prices ("released gas") are extremely high. For example, Southern Natural Gas Company has applied to the Commission to release certain gas under contract between it and various producers, Docket No. CP86–277–000. The parties to the contract have agreed to release each other from their respective gas sales and purchase obligations so that the suppliers can sell the released gas to a marketing affiliate of Southern. The suppliers will credit all released gas that is sold to the marketing affiliate toward satisfying Southern's take-or-pay obligations.

[129] DOE initial comments at 26.

[130] DOE Proposal, 50 FR 48541 (November 25, 1985). *See* FPC v. Conway, 436 U.S. 271 (1976).

zone of reasonableness can expand in accordance with factors such as replacement costs, prices of alternative fuels, and competition.[131] DOE states that it has developed a "Two-Market Model" to analyze the natural gas market, and that the model "utilizes information on natural gas replacement costs, alternative fuel prices and wellhead price regulations to calculate market price and quantity projections for natural gas." [132] DOE states that it has used the Two-Market model to estimate that a just and reasonable price would be between $2.44 per Mcf and $2.68 per Mcf assuming oil prices of approximately $22 per barrel "in real terms from 1986 through 1990." [133] According to DOE, the model relies on replacement costs and other factors including supply, reserve and demand estimates, production-to-reserves ratios, and gas transmission and distribution costs.[134] DOE's actual price recommendation is based primarily on replacement costs with additional weight being given to current commodity values of unregulated gas supplies and alternative energy sources including No. 2 distillate, No. 6 fuel oil and crude oil.[135]

Comments. Producer commenters support the post-1974 ceiling price as being just and reasonable based on both cost and non-cost factors and consistent with prior producer rate decisions of the Commission and relevant judicial precedent. Indicated Producers argue that the Opinion No. 770 replacement cost methodology fully supports the justness and reasonableness of the proposed ceiling price. They also submit that replacement cost is the only relevant cost in a competitive industry and that the Commission has previously recognized this fact by providing in the first national rate proceeding (Opinion No. 699–H) for the uniform pricing of natural gas at the level of replacement cost. Indicated Producers further support the justness and reasonableness of the post-1974 rate based on the consideration of various non-cost factors including supply response, commodity value estimates, and the alleged favorable impact the proposed ceiling price would have on all segments of the gas industry including consumers.[136] NGSA supports the proposed ceiling price primarily on the basis of its predicted beneficial effects rather than by reference to specific cost considerations. PGC supports the post-1974 price as being administratively efficient, rationally calculated to reduce market disorders, and properly based on cost and non-cost factors.[137]

Pipeline, distributor and consumer commenters object strongly to the pricing of all old gas at the post-1974 ceiling price. A number of commenters oppose DOE's ceiling price recommendation as being based primarily or exclusively on non-cost factors.[138] AGA, for example argues that DOE's proposal to establish a uniform ceiling price ignores the history of cost differences based on vintages and would improperly rely on market forces to determine the actual price under particular contracts as a result of the good faith negotiation rule.[139] UDC likewise argues that the proposed ceiling price lacks adequate cost support. UDC alleges that the proposed rule fails to acknowledge cost as being a necessary foundation for just and reasonable rates and criticizes DOE for failing to consider numerous Commission and judicial precedents holding that costs are a necessary foundation from which a determination of rates must proceed.[140] UDC complains that the proposed rule is based on arguments designed to establish the Commission's authority to base rates on such non-cost factors as "competition, supply, demand, reserves and industry structure." [141] Similarly, Peoples Gas Light and Coke Company and North Shore Gas Company interpret the proposed rule as premised on the assumption that cost may be ignored in establishing just and reasonable rates. They argue that while non-cost factors may be considered, costs must be given primary consideration, and that the Supreme Court has held that in setting rates the Commission lacks authority to place exclusive reliance on market prices.[142] Similar arguments are made by pipelines. INGAA, for example, argues that the proposed rule, "by not even considering the cost data required under the NGA is asking the Commission to exercise powers beyond its authority." [143] Tennessee Gas Pipeline argues that although the courts have approved the use of non-cost factors in conjunction with costs to achieve relevant regulatory purposes, the courts have rejected the idea that just and reasonable rates can be based solely on "non-cost, market factors." [144] Natural Gas Pipeline Company of America argues the proposed rule improperly ignores costs and is instead based on arbitrary rates which "merely allow old gas prices to increase, based solely on market or commodity value factors." [145] Many commenters also argue that the just and reasonable rate for the various old gas vintages must be determined strictly on the basis of historical as opposed to replacement costs.[146] These commenters argue that to the extent the proposed ceiling price exceeds the price which would result from application of prior, Commission-approved historical cost methodologies, it is unjust and unreasonable within the meaning of the NGA and therefore cannot lawfully be adopted.

In its December 20, 1985, notice of procedural schedule, the Commission requested comments concerning alternative methodologies by which just and reasonable rates could be determined in light of contemporary market needs and conditions. In response the United States Department of Justice (DOJ) submitted an alternative old gas price proposal together with supporting comments. DOJ argues that in light of the fact that the natural gas producing industry is competitive, there is no longer any reason or need to continue using costs as a basis for determining just and reasonable rates and recommends that the Commission adopt a rule providing that any price paid for natural gas subject to sections 104, 106(a) and 109 of the NGPA be

[131] DOE Proposal, 50 FR 48541.

[132] DOE at 28.

[133] *Id.* at 28–29.

[134] *Id.* at 29–36.

[135] *Id.* at 36–41, n.33.

[136] Indicated Producers at 49–53.

[137] PGC at 6.

[138] *See e.g.* AGA at 15–24; American Public Gas Association (APGA) at 41–44; UDC petition for dismissal (February 10, 1986), Appendix A at 3–11; Peoples Gas Light and Coke Company and North Shore Gas Company (joint comments) at 10–13; Michigan Consolidated Gas Company at 620; Rochester Gas and Electric Corporation at 16–20; Southern California Gas Company at 1–12; Southwest Gas Company at 18; Southern Illinois Gas Company at 1–12; Southwest Gas Corporation at 3–5; Columbia Gas Distribution Companies at 2–4; Laclede Gas Company at 6–11; Northern Distributor Group at 6–8; Piedmont Natural Gas Company at 3–7; New York at 3–13; California PUC at 5–12; Arkansas PSC at 4; PSC of Wisconsin at 2–5; PSC of West Virginia at 6–9; PSC of Kentucky at 1–4; PSC of District of Columbia at 2–9.

[139] AGA at 21.

[140] UDC petition for dismissal (February 10, 1986) Appendix A at 4.

[141] *Id.*

[142] Peoples Gas Light at 11–12, *citing* FPC v. Texaco, 417 U.S. 380 (1974).

[143] INGAA at 10.

[144] Tennessee Gas Pipeline at 11, *citing* FPC v. Texaco, 417 U.S. 380 (1974).

[145] Natural Gas Pipeline at 25.

[146] UDC reply comments at 26–41; APGA reply comments at 20–41; AGD reply comments at 6–10, Appendix A; AGA reply comments at 7–9; MPC-NASUCA reply comments at 9–10; Southern Califorhia Gas Company reply comments at 10; Panhandle Eastern Pipe Line Company and Trunkline Gas Company reply comments at 4–5; Peoples Gas Light and Coke Company and North Shore Gas Company reply comments at 14–17.

presumed to be just and reasonable. According to DOJ, the courts have held that the Commission has broad discretion in adopting particular methods of regulation and that it is the "end result" which controls, citing *Hope*. DOJ argues that the proper tests of a just and reasonable rate are (1) does it protect consumers against excessive charges and (2) is it consistent with the maintenance of adequate and reliable service.[147] DOJ reasons that since the natural gas market is effectively competitive, market-based rates satisfy the stated criteria.

Commission Response. The just and reasonable rate standard is set forth in sections 4 and 5 of the Natural Gas Act of 1938. In 1954, the Supreme Court held in the seminal decision in *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954), that the Commission has authority under the NGA to regulate the wellhead price of natural gas. Following *Phillips*, the Commission first attempted to regulate rates on a producer-by-producer basis but abandoned this approach as administratively infeasible and moved to determine rates on an area-wide basis. The first area rate case resulted in the landmark *Permian Basin* decision, Opinion No. 468, 34 FPC 159 (1965), which was affirmed by the Supreme Court.[148] In *Permian* the Commission established separate prices for "new" and "flowing" (old) gas. The price for new gas was based on current costs while the price for old gas was based on historical costs. Commencing in 1974, the Commission established producer rates on a national rather than area-wide basis.[149]

In determining just and reasonable producer rates under the NGA, the Commission has consistently relied primarily on costs while also considering relevant non-cost factors. Courts reviewing the Commission's decisions have generally affirmed the Commission's selection of particular cost methodologies and rate structures as being permitted by the reasonable exercise of the Commission's discretion.[150] Notably, the courts have not mandated the use of historical cost methodologies and have affirmed the Commission's use of replacement cost as a proper basis for establishing just and reasonable rates.[151]

There is much controversy reflected in the comments concerning the extent to which the Commission can or should rely on non-cost factors in determining just and reasonable rates. It will be helpful at this point to clarify the issue of reliance on cost versus non-cost factors in evaluating the lawfulness under the NGA of DOE's proposed ceiling price. The rate proposed by DOE has its source in Opinion No. 770, 56 FPC 509, 560–75 (1976). The FPC there established the post-1974 rate at $1.42 per Mcf based on the midpoint of a zone of reasonableness defined by prices derived from two separate estimates of productivity of drilling and the use of two separate DCF cost models. 56 FPC at 567. The price included a four cent per Mcf annual escalation designed to assure a constant rate of return and thereby assure that the price remained representative of the cost of finding and producing natural gas in the future. The price, in other words, represented the replacement cost of gas.[152] The FPC went on at length to consider a number of non-cost factors to ensure that the "end result" was just and reasonable as required by *FPC* v. *Hope Natural Gas Co. supra.* Non-cost factors considered by the FPC included intrastate market prices, commodity value, and economic impact. 56 FPC at 578–86. However, the FPC did not make any adjustments whatever to the cost-based rate of $1.42 per Mcf based on its consideration of non-cost factors, and used its consideration of such factors solely as a means of verifying or confirming the justness and reasonableness of the purely replacement cost-based rate. [153] That rate was escalated at the rate of one cent per quarter (four cents per annum) until enactment of the NGPA, and since that time the then-effective rate has been adjusted pursuant to the NGPA's inflation adjustment factor rather than the quarterly adjustment provided for in Opinion No. 770. The rate resulting from this process is the current post-1974 ceiling price of $2.57 per MMBtu as of June 1986.

As a consequence of the adjustment-for-inflation feature of the NGPA it is reasonable to assume the current post-1974 vintage price remains representative of replacement costs, absent a showing that changes in the cost of finding and producing gas have been significantly more or less than average inflation in the economy as a whole. The record demonstrates that the post-1974 price remains reasonably representative of current replacement costs. Indicated Producers provide a study estimating the 1985 replacement cost of gas based on a recalculation of the Opinion No. 770 discounted cash flow (DCF) cost model using current costs and updated values for such items as rate of return, federal income taxes, investment tax credits, and working capital.[154] The result of this calculation is a current replacement cost of $2.77 per MMBtu. Since the ceiling price is a purely replacement cost-based rate and does not include any allowance for non-cost factors, it is unnecessary in evaluating the reasonableness of the proposed ceiling price to consider the extent to which the Commission could or should base the ceiling price for old gas on non-cost factors. The question presented is straightforward and simple, namely, is the proposed uniform ceiling price for old gas, based on replacement cost, just and reasonable within the meaning of the NGA? For the reasons hereinafter discussed, we conclude that it is.

The just and reasonable rate standard has never been interpreted to require that rates be based on historical or original cost. As early as 1945, Justice Jackson, concurring in *Colorado Interstate Gas Co.* v. *FPC*, 324 U.S. 581 (1945), a case involving the justness and reasonableness of pipeline rates established under the NGA, stated that "farsighted gas rate regulation will concern itself with the present and future, rather than with the past, as the rate base formula does." 324 U.S. at 612. More recently, in affirming the Commission's establishment in Opinion No. 749 of a uniform price for flowing gas, the Fifth Circuit stated that "the choice between actual cost and replacement cost is for the Commission to make, subject to the sole requirement that the end result be within the 'zone of reasonableness.' " *Tenneco Oil Co.* v. *FERC, supra*, 571 F.2d at 840.[155] The

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[147] DOJ at 14. *See* Shell Oil Co. v. FPC, 520 F.2d 1061 (5th Cir. 1975).

[148] Permian Basin Area Rate Cases, 390 U.S. 747 (1968).

[149] Opinion No. 699–H and Opinion Nos. 770 and 770–A, *supra*.

[150] Opinion No. 699–H, *aff'd* Shell Oil Co. v. FPC, 520 F.2d 1061 (5th Cir. 1975) *cert. denied* 435 U.S. 907 (1978); Opinion No. 749, *aff'd* Tenneco Oil Co. v. FERC, 571 F.2d 834 (5th Cir. 1978), *cert. denied* 439 U.S. 801 (1978); Opinion Nos. 770 and 770–A, *aff'd* American Public Gas Association v. FPC, 567 F.2d 1016 (D.C. Cir. 1977), *cert. denied* 435 U.S. 907 (1978). *See also* Placid Oil Co. v. FPC, 483 F.2d 880 (5th Cir. 1973), aff'd, Mobil Oil Corp. v. FPC, 417 U.S. 283 (1974); In re Permian, 390 U.S. 747 (1968).

[151] Shell Oil Co. v. FPC, 520 F.2d 1061 (5th Cir. 1975).

[152] 56 FPC at 521.

[153] 56 FPC at 515; *APGA v. FPC, supra*, 567 F.2d at 1030.

[154] Indicated Producers, Appendix A.

[155] The old gas ceiling price established in Opinion No. 749 was 29.5 cents per Mcf. The Tenneco court commented on the disparity between this rate and the then-effective new gas price of $1.42 per Mcf as follows: "Complicating the Commission's attempts to resolve this difficult balance [between producers and consumers] is the *gargantuan inequity* that results when some consumers, merely because they contracted first, get natural gas at a price which is less than one-fifth of the price that other consumers pay for natural gas or any other comparable energy source." 571 F.2d at 839 (emphasis added).

Supreme Court has recognized that gas producers are not typical public utilities. Justice Harlan, speaking for the Supreme Court in *Permian*, stated that "Producers of natural gas cannot usefully be classified as public utilities. They enjoy no franchises or guaranteed areas of service. They are intensely competitive vendors of a wasting commodity they have acquired only by costly and often unrewarded search. Their unit costs may rise or decline with the vagaries of fortune."[156]

It is beyond doubt that producers must, on average, and over the long run, receive revenues for sales of gas which are sufficient to encourage and enable them to explore for and develop new reserves needed to replace those being consumed. Only in this way can there be any reasonable assurance that natural gas will be available in quantities sufficient to provide adequate and reliable service to current as well as future generations of consumers. Under the existing old gas price structure, many categories of old gas are frozen at prices well below replacement costs as well as below current market prices, which are themselves well below replacement costs. Where prices for a substantial portion of natural gas are regulated at prices substantially below (and in some cases only a fraction of) current market prices, and where the remainder of the market is unregulated, it is inevitable that the price of the unregulated supply will, over time, increase disproportionately relative to the market price, such that the average price realized by producers is at least equal to the market price. The result is an extreme difference between regulated and unregulated prices. This fact accounts for the wide disparity which occurred in the price structure of natural gas both as between interstate and intrastate prices and among vintages of old gas prior to enactment of the NGPA, and as between old gas and new gas under the NGPA. The pricing of old gas at below-market prices has led, in principal part, to prices being realized by producers for new and deregulated gas under the NGPA which are far in excess of market prices and which are a prime cause of dysfunction in today's natural gas market.

The Commission has previously determined that natural gas ceiling prices should be established at a uniform level based on replacement costs. In the first national rate proceeding, Opinion No. 699-H, the Commission established a rate for new gas based on current replacement costs and provided that producers selling gas under expiring contracts would be entitled to the new gas ceiling price upon negotiation of renewal contracts with their purchasers. Opinion No. 699-H, 52 FPC at 1631-32. The effect of this decision would have been to eliminate vintaging gradually as old contracts expired and were renegotiated with the result that all categories of gas would ultimately be priced at the new gas ceiling price based on replacement costs or at current market prices, whichever is lower. Furthermore, the Commission held that all gas which initially qualified for the new gas ceiling price would be entitled to the ceiling prices determined in succeeding national rate proceedings. 52 FPC at 1636. In explaining its actions in Opinion No. 699-H, the Commission stated as follows (52 FPC at 1637):

> The adjustment of all rates for post-December 31, 1972, dedications to the newly established rate will also over an extended period of time result in a uniform base price for gas sold in interstate commerce, which equates to the cost of replacing the unit of gas consumed. This uniform price will constitute a recognition of the fact that gas is a consumable, irreplacable commodity and not a service which can be renewed by man. (footnote omitted).

Opinion No. 699-H was upheld on judicial review in *Shell Oil Co.* v. *FPC*, *supra*. In affirming the Commission, the court in *Shell* stated as follows (520 F.2d at 1076-77):

> The practical result of allowing flowing or "old" gas to be sold at the new national rate upon expiration or renegotiation of preexisting contracts is that the former "vintaging" of gas according to its period of discovery will gradually disappear. The Commission is not bound by its previous policies. As this Court and the Supreme Court have noted on various occasions, the rate structures which introduced or adjusted vintaging were experimental. It is necessary without a doubt that agencies be permitted latitude to evaluate old experiments and modify or abandon them when their best judgment requires such a course of action. The Commission's reasons for permitting old gas to be repriced at the new rate apply equally to the related decision to abandon vintaging.

In the second national rate proceeding, Opinion Nos. 770 and 770-A, the Commission reversed its decision in Opinion No. 699-H, and reestablished vintaging. Opinion No. 770, 56 FPC at 521. The Commission held that while it was "aware of the problems occasioned by the continuance of the vintaging concept," it was necessary to reimpose vintaging in light of the magnitude of the increase in the previous national rate (from 50 cents to $1.42 per Mcf) and the need to "preclude the exaction of excessive and unjustifiable economic rent from flowing gas." 56 FPC at 521 (footnote omitted). Opinion Nos. 770 and 770-A were likewise affirmed on appeal, *American Public Gas Association* v. *FPC*, *supra*, in which the court held that "the Commission has latitude to reconsider its experiment in abandoning vintaging." 567 F.2d at 1033.

It seems clear based on the above-cited judicial precedents that the issues of replacement costs versus historical costs as well as vintage-based versus uniform rates are matters within the Commission's reasonably exercised discretion. Based on the record in this case, the Commission concludes that to continue the decision in Opinion Nos. 770 and 770-A to reinstate vintaging is no longer wise or consistent with sound regulatory policy. The record in this proceeding demonstrates that the pricing of regulated gas below the marginal cost of gas produces distortions in the exploration and development of additional gas supplies and in the consumption of all gas supplies.[157]

The NGPA provides strong economic support for pricing old gas at the long-run marginal cost of gas, which is equivalent to replacement cost. As we have previously noted, Congress in enacting the NGPA implicitly recognized that the natural gas producing industry is workably competitive.[158] This fact has been recognized by the Commission [159] as well as the courts [160] and the validity of the competition premise has been amply demonstrated by experience subsequent to the NGPA's enactment.[161] We agree with the persuasive analysis of the Department of Justice concerning the determination of prices in a competitive market. DOJ summarizes that process as follows (DOJ at 7-8):

> In a competitive industry, market forces drive prices toward the producer's marginal cost. Where price equals marginal cost, consumers are paying precisely the social cost incurred to produce the last unit of output. If at any time the price is too high, excessive returns will encourage other producers to enter the market, thereby increasing production, lowering prices, and eliminating excessive returns. Similarly, if demand increases, price will rise, encouraging additional production that was not economically viable at the lower price. This process will continue until supply and

[156] *Permian*, 390 U.S. at 756-57 (footnote omitted). *See also* Southern Louisiana Area Rate Cases, 428 F.2d 407 at 634 (5th Cir. 1970).

[157] *See* discussion in Sections IV. B and IV. D.

[158] *See* discussion, *infra* at 140-41.

[159] Order No. 436, 50 FR at 42418.

[160] Pennzoil v. FERC, 645 F.2d 360 (5th Cir. 1981); Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Mississippi, 474 U.S., 88 L.Ed. 2d 732 (Jan. 22, 1986).

[161] *See* discussion, *infra* at 140-44.

demand reach equilibrium and price reflects marginal cost. Prices established by competitive market forces are in this way driven toward marginal cost. Such prices send the proper signals to both producers and consumers, leading them to produce and consume the optimal amount of goods and services, and thus ensuring that society makes the most efficient use of its resources. (Footnotes omitted).

Thus, in a competitive market, prices are driven toward marginal or replacement cost. In the terminology of economics this is referred to as unconstrained marginal cost pricing.[162] Since the natural gas market is in fact competitive, DOJ argues that market prices are just and reasonable *per se*, absent fraud, abuse or similar conduct. We agree that marginal costs best reflect the level at which prices would be established if deregulation of old gas were to occur. Since the purpose of regulation is to attempt to achieve the price, profit, output and efficiency levels that would exist were the regulated market actually competitive,[163] it follows that the regulated price should reflect marginal cost to the extent allowed by law. It should be noted that the post-1974 rate constitutes only a ceiling price. Under DOE's good faith negotiation rule, old gas would actually be priced at the prevailing market price or the new ceiling price, so the practical effect of the proposed rule is to provide a price for old gas equal to the market price or replacement cost, *whichever is lower*. Thus, to the extent the new ceiling price is not constraining DOJ's analysis and conclusions apply. However, the new ceiling price serves as a regulatory guarantee that old gas prices will not exceed replacement cost even if marginal cost pricing would require such a result.

The fact that there is an excess of gas deliverability at the present time in no way affects the determination of the just and reasonable rate. As prices fall due to the current surplus, exploration and supply will decline [164] and demand and consumption will increase. At such time as supply and demand reach equilibrium, as they surely will, the price of deregulated gas will rise disproportionately above the market determined price unless the old gas price structure is modified, and the cycle of boom and bust will be repeated.

[162] In Tenneco v. FERC, *supra*, the court recognized that "in a free market, competitive bidding would tend to equalize the prices of flowing and new gas. The Commission's vintaging policy insulates consumers from market forces and provides them with gas at one-fifth the price of replacement gas" 571 F.2d at 841.

[163] Northern Natural Gas Co. v. FPC, 399 F.2d 953 (D.C. Cir. 1968).

[164] *See* IPAA at 3–4.

Allowing old gas to be priced up to the level of replacement cost will help break the cycle. Obviously there can be no guarantee that the post-1974 price will remain market responsive due, among other things, to possible changes in the supply of and demand for gas, which ultimately determines the market price of gas. Thus there can be no assurance that there will not occur in the future a divergence in price as between new and old gas. However, we believe that the action taken in this rule represents a pragmatic approach the Commission can take within its authority under the NGA and NGPA to eliminate distortions in the price structure of natural gas and to make that structure more economically efficient. The effect of this rule will be to reduce significantly price distortions which would occur in the event no changes were made in the existing price structure.

Once the Commission has determined to base the new ceiling price for old gas on replacement cost, it must define the current replacement cost of gas. Then the Commission must determine how to incorporate replacement cost into the new ceiling price. The Commission must also decide whether to further adjust the new ceiling price by including additional factors in its definition besides replacement cost. Finally, the Commission must determine whether the new ceiling price, based on replacement cost and other relevant factors, is just and reasonable within the meaning of the Natural Gas Act.

In defining the current replacement cost of gas, the Commission has considered the comments in the record, its own precedents, and data on the technology of exploring for and developing natural gas reserves.

First, the Commission has considered its most recent definition of replacement cost, incorporated into the rate for new gas for the 1975–1976 biennium under Opinion No. 770–A and adjusted for inflation by Congress under the NGPA. Because this definition of replacement cost was affirmed on judicial review and incorporated by Congress into the NGPA, the Commission considers it an approved point of departure for determining the replacement cost of gas in 1986.

In Opinion Nos. 770 and 770–A, the Commission established a "zone of reasonableness" for the replacement cost of gas in the 1976 test year of between $1.31 per Mcf and $1.54 per Mcf, each escalating at 4 cents annually.[165] Based on this estimate of

[165] 56 FPC 567.

replacement cost, the Commission then set $1.42 per Mcf, also escalated 4 cents annually, as the new rate for post-1974 gas. NGPA section 101 then provided for escalation of the post-74 rate according to an implicit GNP deflator. Thus, the Opinion 770–A "zone of reasonableness" for the current replacement cost of gas, adjusted by the NGPA price deflator, would be between $2.37 per MMBtu and $2.79 per MMBtu in June, 1986.

To determine whether the Opinion 770–A replacement cost is still reasonable, the Commission has reviewed the "discounted cash flow" ("DCF") methodology on which it was based. The DCF methodology, first used by the Commission in Opinion 699–H, recognizes that the value of an investment extends over time and that the present value of the cash flow from that investment must yield a rate of return comparable to other investments with similar risk. By examining the cash flow of the investment over the life of the project, the DCF analysis is able to account for cost of capital for invested funds, including dry hole expenditures, and variations in cash flow. By viewing the project in its entirety, the DCF analysis permits determination of a rate of return that compensates investors for their risks and encourages future drilling efforts.

Specifically, the DCF methodology used in Opinions No. 699–H and 770–A assumes a single project and focuses an anticipated cash flows over the life of a well rather than on revenues and costs in any one year as does a rate base cost of service method. The principal costs or negative cash flows are assumed to occur in the 3-year preproduction period. Operating expenses and other expenditures, as well as projected revenues, are assumed to occur during a 15-year productive period.

In addition to DCF analysis, Opinion Nos. 699–H and 770–A also applied modifications to the replacement cost methodology which originated in *Permian I*.[166] Basically, *Permian I* estimated the average unit cost per Mcf of gas produced from successful gas wells during a selected test period. The unit cost is derived by dividing the cost per foot of drilling and equipping the average successful gas well by its estimated productivity. Estimated productivity was derived by dividing the additions to non-associated gas reserves by related gas well footage. However, the costs of unsuccessful wells were treated as expenses, and were not included in the investment rate base.

[166] 34 FPC 159, aff'd 390 U.S. 747 (1968).

Permian I then provided an average investment recovered over the depletion life of the average gas well.

Besides modifying *Permian I* to adopt DCF analysis, Opinion 699–H included dry-hole expenditures in the rate base and considered the effects of federal income taxes in its cost analysis. This is because exploratory drilling is the principal source of new gas supplies, and a successful exploratory drilling routinely will result in the drilling of many dry-holes. Thus, a key variable in the Opinion Nos. 699–H and 770–A cost methodology becomes "productivity," in terms of the amount of natural gas added to reserves for every foot of drilling that results in some addition to reserves. The productivity factor determines successful well cost per Mcf, which in turn underlies other cost inputs, such as dry-hole cost per Mcf, lease acquisition cost per Mcf, and other production and exploratory costs per Mcf.

In establishing the $1.42 per Mcf post-74 new gas rate, Opinion 770–A itself modified the Opinion No. 699–H cost inputs in certain respects. Drilling costs were changed to reflect higher costs actually incurred in 1973 and 1974. Productivity data were expanded from 7 years (1966–1972) to also include 1973 and 1974 data. The depletion life of the average well was changed from 18 years to 15 years (with a 3-year pre-production period). In view of the repeal of the percentage depletion allowance in the Tax Reduction Act of 1975, income tax liabilities were estimated based on a marginal tax rate of 48 percent. A 15 percent rate of return was allowed.

On judicial review, the D.C. Circuit affirmed the Opinion No. 770–A rate of $1.42 per Mcf against challenges to the DCF methodology and the inputs chosen by the Commission for drilling productivity and income taxes payable. In response to the charge that the Commission relied on unverified industry-collected data for successful feet of drilling and for gas reserves added, the court held that such reliance was not unreasonable, especially where the Commission attempted to correct for any weakness in the data by using an 8–9 year multi-year average. Using the two multi-year averages (8 years and 9 years), the Commission had calculated average productivity as 300 Mcf/ft, the midpoint of a range between 279 Mcf/ft (9 years) and 323 Mcf/ft (8 years). In response to the contention that the Commission had estimated tax liability based on an economic model rather than on actual taxes paid, the court sustained the economic model. The model had assumed taxes payable at a 48 percent corporate rate, and estimated that 27 cents of the total 43 cents allowed for taxes was attributable to the repeal of the percentage depletion allowance effective July 1, 1976.

Based on this review, the Commission concludes that the Opinion No. 770–A DCF methodology, as sustained on judicial review, is still a reasonable methodology for calculating the replacement cost of gas. DCF analysis calculates replacement cost on the basis of the more reliable time value of money, and thus produces an estimate of the true yield over the life of an investment. In addition, the key input of productivity is calculated by using trended drilling costs and reserve additions over a multi-year range representative of the long-term nature of reserve replacement. The capitalization of dry-hole costs also recognizes the inherent long-term risks of exploratory drilling, itself the key variable in replacing gas reserves. Finally, Opinion No. 770–A includes an estimate for income taxes payable, in order to quantify the key role tax liability plays in drilling investments.

The Commission notes that Congress intended the replacement cost rate for post-'74 gas to be updated by reference to the implicit price deflator included in NGPA section 101. This is because section 101, when read in conjunction with sections 104(b)(2) and 106(c), preempts any attempt by the Commission to revise the NGPA ceiling price for post-'74 gas *downward*, based on any Opinion No. 770–A DCF analysis that yields a current replacement cost of gas less than that yielded by the NGPA price deflator.

The second estimate of replacement cost the Commission has considered is the $2.77 per MMBtu estimate included in the initial comments of the Indicated Producers. The Indicated Producers updated the Opinion No. 770–A DCF analysis to include the most recently available data on productivity, reserve additions, income tax liability, drilling costs, and the industry capital structure.

A price adjustment of 4 percent annually over 15 years beginning in 1986 was used for the NGPA price deflator. Productivity was estimated at 145 Mcf/ft, based on a 5-year range of 120 to 159 Mcf/ft between 1980 and 1984. Income taxes were estimated on the basis of the current 46 percent corporate income tax rate and the 8 percent rate for investment tax credits.

Successful gas well and dry-hole costs per foot were calculated on the basis of an average of 1984 and 1985 costs calculated by the American Petroleum Institute and the Energy Information Administration. Lease acquisition costs were estimated as decreasing at the same rate as producing well costs, 15 percent annually since 1982, the most recent year for which actual lease costs are available. Other exploratory costs were estimated on the basis of an assumption that they have decreased at the same rate as successful gas well costs since 1982, the last year actual data is available. In any case, the ratio of other exploratory costs to successful gas well costs is calculated to be the same as the 1979–1982 average, which itself is less than one-third the 1970–1974 average used in Opinion No. 770–A. Similarly, exploratory overhead costs are assumed to have decreased at the same rate as dry-hole costs since the last available data in 1982. Dry-hole footage and deeper dry-hole-costs are based on 1981–1984 ranges.

Inputs not changed from the Opinion No. 770–A data include operating expenses, regulatory expenses, cost allocations to gas, royalty costs, other production facilities costs, and recompletion and deeper drilling costs. Finally, based on the increased debt/equity ratios in the industry capital structure, a 13.25 percent computational rate of return was used, compared to 14.16 percent under Opinion No. 770–A.

The Commission considers productivity to be the factor most likely to affect the accuracy of the Indicated Producers' estimate. Productivity is the ratio of reserve additions to successful drilling footage, and the Indicated Producers use a 5-year range, as opposed to longer 8 and 9 year ranges used by the Commission in Opinion No. 770–A. In order to assure that the 1980–1984 productivity range of 120 to 159 Mcf/ft is not inconsistent with a more reliable range, the Commission has recalculated the productivity factor based on data for the most recent 8 years available, 1977–1984. This requires adding data for the years 1977–1979 to the 1980–1984 data used by the Indicated Producers. The following table summarizes the data:

Year	Reserve additions (Bcf)	Drilling footage (000's)	Productivity (Mcf/foot)
1977	13,098	59,538	220
1978	16,122	70,196	230
1979	13,326	77,756	171
1980	12,102	85,032	142
1981	15,351	96,846	159
1982	12,819	107,159	120
1983	10,131	83,202	122
1984	12,099	82,107	147
Used by Indicated Producers			145

This data indicates the 145 Mcf/ft estimate is within the range of productivity factors experienced since 1977. In addition, the other cost factors used by the Indicated Producers, such as dry-hole costs and successful well costs, are within the range of cost increases indicated by the general rate of inflation in the overall economy since Opinion No. 770-A. Finally, where certain cost factors, such as production facilities costs, other exploratory costs, and lease acquisition costs, are extrapolated from less recent actual data by comparison to the general downward trend of drilling costs, the calculation appears reasonable.

For these reasons, the Commission concludes the Indicated Producers' $2.77/MMBtu replacement cost estimate is reasonable because it updates the Opinion 770-A DCF inputs to reflect changed industry conditions since 1976.

In reviewing these two estimates for replacement cost, the Commission has considered technological factors which affect the economics of reserve replacement.

As the Office of Technology Assessment (OTA) has explained, the discovery of new gas fields represents the single most important force necessary for building a sustainable natural gas supply.[167] A new gas field not only adds to current reserves, it also provides a source of considerably larger additions to future reserves through field growth after the discovery year. Therefore, the economics of new field discovery rates are an important factor in defining the long-term replacement cost of gas.

According to OTA, the rate of annual additions to reserves from new field discoveries depends on several key variables:

—*The undiscovered resource base.* The geologic nature of the remaining resource base, such as amount; location, size, and distribution of fields; and types of geologic traps; all influence the future discovery of new fields. In this respect, the Commission notes that the *average size* of new gas fields has become considerably smaller over the last twenty years. Thus, the *rate* of new field discoveries is much more dependent today on sustaining a strong and stable level of drilling over time, than on the erratic discovery of a small number of giant fields.[168] For this reason, the Commission considers that the decline in gas well completions since 1981, accelerated by this year's collapse in drilling, will, if continued for several years, cause a serious shortfall in reserve additions beginning when the current surplus deliverability disappears. The Commission concludes that setting old gas prices at replacement cost would not only help stem any overall shortfall in gas drilling, it would also assure the availability of enhanced old gas supplies to plug the gap in reserve replacement when today's drilling slump causes a decline in new field discoveries by the early 1980s.[169]

—*Exploration, drilling, and production technology.* Overall discovery rates are affected by drilling success rates and development costs. These costs themselves are dependent on improvements in technology, hydraulic fracturing for tight sands, and offshore drilling techniques for deep water drilling. In this regard, the Commission notes that, although drilling costs may have declined since their late-1970s peak, the basic trend of new field discoveries—from high-permeability to low-permeability sands, from shallow to deeper zones, and from conventional techniques to more costly, complex, capital-intensive techniques—has not changed. For example, although most new field discoveries continue to come from more traditional gas producing areas, such as onshore and in the Gulf of Mexico, these areas are considered mature and future discoveries are expected to come by more expensive means, such as drilling in deeper waters of the Gulf or in tighter sands on-shore. For this reason, although the success rate of the domestic drilling industry can remain high, the Commission concludes that the real costs of this success rate are likely to increase over the long-term, as the technology necessary to sustain the success rate keeps pace with the more complex and difficult geology of the new areas explored.

—*Historic and current gas prices, and industry willingness to take risks.* With new gas field discoveries coming from smaller fields and under more risky technologies and geology, gas prices and return on investment become much more important. Higher gas prices for current gas production increase cash-flow and internally generated capital in the drilling industry overall. But, as demonstrated by the commenters in this record, they also allow delayed abandonment or enhanced recovery of wells whose production would otherwise be uneconomic at current prices.[170] Higher prices are also a primary factor in encouraging exploration and development of those new field prospects that already known through previous exploratory activities, but have not been developed because of economic conditions or the availability of more promising prospects elsewhere. According to OTA, the past exploratory experience of existing producers is therefore a principal determinant of positive changes in new field discovery rates over the short-term.[171]

Based on the technology and geology of new gas field discovery rates, the replacement cost of gas should be that price necessary to compensate for likely long-run increases in real drilling and development costs in frontier areas. The price should also assure that exploration and development capital is more efficiently allocated to enhancing recovery in existing fields or to drilling new prospects which are already known from past exploratory experience.

The Commission considers that the current pre-1985 weighted average cost of new gas under sections 102 and 103 of the NGPA represents a reasonable non-cost factor on which to compare the two replacement cost prices established under DCF analysis. This is because the most recent period in which drilling levels sustained the highest level of reserve replacement was 1979-1984, the years when pipelines purchased the bulk of their new supplies of offshore and onshore gas. Because of the continuing distortions of the old gas cushion, these years also represent a balancing between the price distortions caused by perceived shortages at the beginning of the period and a perceived surplus at the end of the period. The years 1985 and early 1986 themselves represent one extreme of the these distortions. However, the *current* 1986 average cost of sections 102 and 103 gas ($3.14 per Mcf as of April 1, 1986) is used in order to assure an estimate at the conservative end of actual replacement cost.

Based on these two DCF estimates of replacement cost and the non-cost factor of current average new gas prices, the Commission concludes that the long-term replacement cost of gas is within a range whose low point is the estimate of

[167] *U.S. Natural Gas Availability: Gas Supply Through the Year 2000.* Office of Technology Assessment, OTA-E-245 (February 1985) at pp. 82-86

[168] *Id.* at 85.

[169] *Id.* at 83.

[170] *See e.g.* initial comments of Indicated Producers, DOE, AGA.

[171] *U.S. Natural Gas Availability*, op. cit. at 83.

replacement cost in Opinion Nos. 770 and 770–A, adjusted by the NGPA deflator ($2.57 per MMBtu as of June, 1986). The Commission concludes the high point of the range of current replacement cost is the Indicated Producers' updated DCF replacement cost estimate ($2.77 per MMBtu). The midpoint of this zone of reasonableness for replacement cost is $2.67 per MMBtu.[172] However, because of the volatility of the Indicated Producers' estimate of the productivity factor, the Commission will incorporate the low point of the replacement cost range, $2.57 per MMBtu, into the definition of the new ceiling price; $2.57 per MMBtu is the most recent estimate of replacement cost based on a full national rate case and is expressly updated by Congress to reflect the general effects of inflation. Although $2.57 per MMBtu may not as accurately reflect the changes in DCF inputs since 1976 as the Indicated Producers' $2.77 estimate does, the Commission nevertheless considers the lower estimate more reasonable, because it recognizes that any prediction of replacement cost is subject to constant changes in its input variables, such as productivity, income taxes payable, and drilling costs. Therefore, defining the new ceiling price for old gas based on the $2.57 per MMBtu low estimate will protect consumers against potential inaccuracies in the Indicated Producers' updated estimate. At the same time, $2.57 per MMBtu is within the minimum estimate of replacement cost necessary to compensate producers for the time value of money invested in finding and developing new supplies of gas for future consumers. For these reasons, the Commission determines that $2.57 per MMBtu is a just and reasonable ceiling price within the meaning of the Natural Gas Act.

However, the Commission also recognizes that current average wellhead prices, especially those in spot markets, are likely to be *below* the $2.57 per MMBtu new ceiling price when it takes effect. Because reserve replacement is tied closely to drilling, and drilling levels have declined substantially over the last 2 years, the Commission considers that current wellhead prices are themselves below the long-term cost of replacing gas reserves at the margin, even though they may accurately reflect the short-term marginal costs of buying gas in the market place.

In order to assure that old gas prices are paid at the current market price or the ceiling price, *whichever is lower*, the Commission has incorporated the "good faith negotiation" procedures into the ceiling price as a further restriction on its collection under existing contracts. The "good faith negotiation" procedure prohibits a first seller from collecting the new ceiling price from an existing purchaser under an indefinite price esclator clause, unless the parties have mutually agreed to the new price under current market conditions. The "good faith negotiation" procedure thus is an integral part of the definition of the new ceiling price itself.

The $2.57 per MMBtu price established by this rule will operate only as a ceiling price, and actual prices paid for old gas in the market place are likely to be substantially *below* the ceiling price as long as the current surplus deliverability keeps short-term marginal costs below the actual replacement cost of gas. Of course, as the market clears the surplus and supply and demand come into balance, the market prices for old gas will more closely reflect its long-term replacement cost. When this happens, the $2.57 per MMBtu price will restrict market forces from raising old gas prices above the just and reasonable ceiling price set by this final rule.

Based on the foregoing considerations as well as our findings concerning the unjustness and unreasonableness of the existing old gas price structure and the effect of the proposed rule on gas supply and overall prices, the Commission finds that the proposed ceiling price is just and reasonable within the meaning of the NGA.

D. Effect of Higher Prices on Old Gas Production.

The Commission finds that eliminating vintaging will substantially increase recoverable reserves of old gas through delayed abandonment of wells. Since a well's pressure and production decline over time, revenues from the well also decline. When those revenues no longer offset the costs of production (which remain relatively constant), a producer will abandon the well. Therefore, raising the ceiling prices for pre-1974 gas will permit production to continue to a lower pressure and level of production, since revenues will not outstrip costs until production has fallen to a lower level.

Comments. DOE, large and small producers, public service commissions in producing states, and trade associations representing industrial and other large end-users generally agree that the proposed rule will result in increased production of old gas, since wells will remain economic to lower pressure levels. DOE estimates that the increase will be between 9 and 12 Tcf. Its best estimate is 11 Tcf.

DOE's estimate is based on a methodology first developed in a study by C. S. Matthews of the Shell Oil Company in April 1983 (the 1983 Shell study). That study sought to estimate the increased production resulting from total decontrol of natural gas prices. Dr. Matthews picked the fourteen largest gas fields in the U.S., accounting for approximately thirty percent of total nationwide production of old gas, as representative of all gas in the nation. For each field, the increase in recoverable reserves from lower abandonment pressure was estimated. The fourteen field data were then extrapolated to a nationwide basis [173] to estimate the total increase in production.[174] While DOE uses the same general methodology as Shell, it makes certain modifications both in the methodology and data employed. It makes these modifications in response to various criticisms of the Shell study made by Congress' Office of Technology Assessment (OTA) [175] and to reflect increased production from DOE's old gas proposal as opposed to total decontrol. For example, DOE assumes a price increase only to the new ceiling price. Also, it scales down the final result in order to correct for the fact that some of the increased production predicted by the Shell methodology would occur in any event under existing NGPA incentive prices.

Indicated Producers present an update of the Shell study to show the effect of the DOE proposal. The updated study

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[172] The Commission notes that even the $2.77/MMBtu replacement cost estimate by the Indicated Producers is below the $3.14 per Mcf current average cost of new gas under NGPA sections 102 and 103.

[173] The extrapolation was made as follows: First, total January 1, 1981 national reserves of old gas responsive to deregulation were calculated to be 115 Tcf. This figure was divided by the January 1, 1981 recoverable reserves in the fourteen fields of 41.3 Tcf to obtain a scaling factor of 2.8.

[174] The Shell study estimated that decontrol would permit production of an additional 27 Tcf through delayed abandonment. It also found that decontrol would bring about production of an additional 18 Tcf through infill drilling and 7 Tcf through additional production enhancement work, for a total of 52 Tcf.

[175] These criticisms were made in a memorandum by the OTA staff entitled *Effects of Decontrol on Old Gas Recovery* dated February 1984. Congress's Technology Assessment Board neither reviewed nor approved the memorandum. The memorandum, while criticizing the Shell study, found that decontrol would permit production of an additional 7–20 Tcf through delayed abandonment, 7–14 Tcf through infill drilling, and 4 Tcf through well stimulation, for a total of 19–38 Tcf. OTA assumed that under decontrol prices would rise to $3.50 to $4.00 per MMBtu.

assumes an increase in price to the new ceiling price but otherwise uses essentially the same data and methodology as the original study.[176] This study predicts that the old gas proposal will increase old gas production by 16 Tcf through delayed abandonment over the life of the old gas fields. Individual producers present data showing that their wells would remain economic for a longer period if vintaging is eliminated.[177]

Pipelines, distributors, their trade associations and consumer representatives generally either deny that elimination of vintaging will increase recoverable reserves or state that DOE and producers have greatly overestimated the increase. These commenters state that the DOE and Shell studies are flawed. For example, they claim that the fourteen fields chosen by Shell are not representative of the nation's gas fields generally, that much of the data used to estimate the increased production in the fourteen fields is unreliable or outdated, and that the studies improperly include in the predicted increase in production some gas which would be produced in any event under existing NGPA incentive prices such as those for stripper wells and production enhancement activities. AGA presents the most detailed critique of the DOE and Shell studies. A number of other commenters, including the Associated Gas Distributors, Northern Distributor Group, and the Northern Indiana Public Service Company, adopt AGA's comments.

Commission Response. The Commission believes that raising the MLP for all old gas to that permitted for post-1974 gas will substantially increase recoverable reserves of old gas since the additional revenue on pre-1975 wells should permit those wells to produce to lower pressure levels. The evidence presented by individual producers that elimination of vintaging would permit their wells to operate longer before costs outstrip revenues confirms this conclusion. For example, Hewit and Dougherty state that under the present 61¢ small producer ceiling price for flowing gas, their wells in the Normanna Field in Texas can produce only fifty percent of remaining reserves before costs outstrip revenues. An increase in price to $2.00, however, would permit their wells to produce 85 percent of those reserves, and an increase to the new ceiling price of $2.54 would permit production of 88 percent of reserves. They also observe that since the wells will in any event "water out" before production declines to the level necessary to qualify as a stripper well, none of this increased production could occur under NGPA section 108 incentive prices.[178]

Even the AGA, which has provided the most detailed critique of the Shell and DOE old gas supply response studies, concedes that there will be some increase; however it claims that the increase will be only about a third of that claimed by DOE.[179] While eliminating vintaging will increase recoverable reserves, the Commission recognizes the difficulty in predicting the precise amount of the increase in recoverable reserves. However, for the reasons stated below, the Commission believes that the increase will be substantial and that the DOE prediction of an approximate 11 Tcf increase is the most convincing analysis in the record of what that increase will be.

Some commenters argue that the fourteen fields relied upon in the DOE and Shell studies are unrepresentative of gas fields generally since they are larger than average. This allegedly results in overestimation of any increase in production since larger fields generally have larger increases in reserves over time. The commenters refer to the OTA's study in support of this contention. However, while OTA stated that most of the experts it consulted believed that the fourteen fields might have a larger supply response than the remaining fields, the reverse may be just as likely. OTA explained that economies of scale may have already permitted greater recovery of large fields' reserves than small fields' at current regulated prices.[180] Accordingly, small fields might have a greater remaining potential supply response than large fields, and use of the fourteen fields may lead to an underestimate of the overall supply response. In any event, while the size of the fourteen fields may mean that the predicted increase in reserves for those fields is not totally representative of that for the nation as a whole, no commenter presents any evidence to suggest that this problem so significantly distorts the results of the DOE study as to undermine the conclusion that elimination of vintaging will bring about a substantial increase in recoverable reserves.[181] In addition, the Commission observes that while the fourteen fields are larger than average, they do represent a wide range of characteristics, including discovery years from 1918 to 1963, depths ranging from 1450 to 20,000 feet, and both carbonate and sandstone reservoirs.

The opposing commenters' criticisms of the reliability of the data used in calculating the increased production from the fourteen fields do not undermine the conclusion that elimination of vintaging will cause a substantial increase in recoverable reserves in those fields. These commenters' specific criticisms are as follows. First, they state that the data for the pressure at which wells in the fields would be abandoned under existing prices is based on subjective engineering judgments which do not take into account the facts that pipelines might absorb certain costs such as the cost of compression and that producers might continue operating wells even after revenues go below production costs to avoid the costs of plugging the well. An overestimate of current abandonment pressures would lead to an overestimate of the supply response. They allege that some of the fourteen fields would not produce below their current abandonment pressure because water would intrude into the field below that pressure. They also complain that the data for current reserves and current pressure are for January 1981, are thus outdated, and that a more accurate result would be obtained by using current data. They also complain that the figures for current field pressure are not the actual current field pressures, but represent estimates based on data for initial field pressure,[182] ultimate reserves, production to date, remaining reserves, and existing abandonment pressure.[183] Finally, the commenters

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[176] The only change from the previous methodology was to use a somewhat smaller ratio in scaling the fourteen field result to the national level. This was done in order to account for the fact that certain intrastate gas which would have been allowed a higher price under total decontrol will not be allowed a higher price under the DOE proposal.

[177] *See* Hewit and Dougherty 17–20 and DuPont at 23–25.

[178] *See also* DuPont at 23–25.

[179] *See AGA reply comments at Appendix A, page 1.*

[180] *See* OTA study at 43–45.

[181] A recent EIA analysis of DOE's proposed rule supports the conclusion that the size of the fourteen fields does not cause DOE's study to underestimate the overall supply response. EIA did an independent study to determine the supply response from DOE's proposal. EIA based its study on production data from 557 fields in Texas rather than the 14 fields relied on by DOE. The 557 fields included many small fields as well as large fields. EIA nevertheless estimated the DOE proposal would result in increased production through delayed abandonment of 11.7 Tcf compared to DOE's 11 Tcf estimate. An Analysis of the Department of Energy's Notice of Proposed Rulemaking (NOPR), "Ceiling Prices: Old Gas Pricing Structure," EIA (May 1986) at 19–25. *See* further discussion of EIA analysis, *infra* at p. 164.

[182] These figures are also criticized as being estimated based on field depth, rather than being the actual field pressures.

[183] *See* MPC/NASUCA at 12.

contend that the Shell and DOE studies unrealistically assume that if vintaging is eliminated, prices for old gas will rise to the new ceiling price ($2.57 as of June 1986) even though current market prices allegedly are only $1.90 to $2.00 per Mcf.[184] The lower the prices resulting from eliminating vintaging, the less the additional production that can be expected. AGA has presented a table substituting data for the fourteen fields which it alleges is more reliable than that used by Shell and DOE, including a price rise to $1.90 instead of $2.54.[185] AGA's table shows increased production in the fourteen fields of about 2.3 Tcf as a result of eliminating vintaging rather than the 7.2 Tcf found by Shell and the 5.7 Tcf found by DOE.

However, even accepting these criticisms and using the data suggested by the AGA as more accurate than that used by DOE for expected market prices, current reserves, field pressure, and abandonment pressure,[186] there would be an increase in reserves for the fourteen fields of about 2.3 Tcf compared to the 5.7 Tcf predicted by DOE.[187] This is still a significant increase. In any event, the Commission believes that a number of the commenters' criticisms of the data used by DOE are unjustified and that AGA's data contain errors causing it to understate significantly the likely supply response. First, AGA assumes that prices will rise to only $1.90 per Mcf after elimination of vintaging. While $1.90 may be an accurate estimate of the prices producers could obtain at the present time, the problem here is to estimate the increase in recoverable reserves which would occur over the next ten or more years. For this purpose, estimated average prices over the next ten or more years should be used, not currently depressed spot market prices which are unlikely to continue over the long term.[188] The Commission believes that DOE's use of $2.52 per Mcf in 1985 dollars is more realistic than AGA's use of $1.90. While DOE's assumed price is not projected to occur until 1990, abandonment decisions are not based solely on current prices. Rather, a producer abandons a well when total predicted future costs are greater than total predicted future revenues. Thus, a producer might delay abandonment if it expects higher prices in the future. The majority of abandonment decisions will be made after 1990 in any event since old gas is not expected to be exhausted for approximately forty years.

Another error made by AGA is the fact that its figures for current reserves and field pressure mix 1981 and 1985 data. All but one of the reserve figures are for 1985, but only about half of the pressure figures are. This leads AGA to a further understatement of the predicted increase in recoverable reserves. This is because the Shell methodology calculates the predicted increase in recoverable reserves as a fraction of the total reserves remaining in the field at any particular time.[189] Generally, it makes no difference in the predicted increase in reserves at what time in the life of the field the figures for current reserves and pressure are taken, so long as consistent data are used. Both a field's reserves and pressure decline over time. While a lesser amount of remaining reserves would mean a lower predicted increase in reserves all other variables remaining the same, lower current pressure leads to a higher predicted fractional increase.[190] Thus, any decline in reserves resulting from using data for a later period in the life of the field is counterbalanced by the greater fractional increase in reserves resulting from lower current pressure. It follows that the commenters' criticism of Shell and DOE for using 1981, rather than current, data is unjustified. However, AGA's use of figures from different time periods distorts its results. For about half the fields, AGA fails to counterbalance use of the lower 1985 reserve figures with lower 1985 abandonment pressures. Instead, it uses the higher 1981 abandonment pressure figures, thus leading to a lower predicted fractional increase than if it had used 1985 abandonment pressures.

The Commission concludes that the commenters' criticisms of the data used by DOE in determining the increases in recoverable reserves in the fourteen fields do not undermine the essential conclusion that an increase in price to the post-1974 ceiling would cause a substantial increase in recoverable reserves in those fields. The Commission notes that some of the data, in particular the estimate of the pressures at which fields will be abandoned, is by its nature uncertain. Subjective engineering judgments are required, as OTA observed. Thus, no prediction of the increase in recoverable reserves in the fourteen fields can be exact. At best, one can predict a range within which the increase is likely to fall. The Commission believes that AGA's prediction, if adjusted for the errors discussed, would represent a prediction at the low end of the range. Even so, there would be a significant increase in recoverable reserves in the fourteen fields.

Once increased production from the fourteen fields as a result of an increase in price has been estimated, there remains the problem of extrapolating the nationwide increase. Furthermore, the predicted increase for the fourteen fields does not take into account the fact that some old gas may qualify for NGPA incentive or deregulated prices and thus be produced regardless of the elimination of vintaging or that other old gas, such as that subject to fixed price clauses, may not receive an increased rate, and thus may not be produced in any event. Opposing commenters contend that the Shell and DOE studies do not deal with these problems adequately. While the Shell study appears not to, the Commission believes that the DOE study did.

The 1983 Shell study dealt with both these problems simultaneously when it multiplied the predicted fourteen field increase by the ratio of January 1981 national reserves responsive to decontrol [191] to January 1981 reserves in the fourteen fields.[192] DOE, however, in

[184] *See* AGA, Appendix A at 1.

[185] *See* AGA, Appendix A.

[186] AGA's suggested data for current abandonment pressure presumably take into account its contention that pipelines will absorb certain costs including compression, and that the producer may continue operating the well even after costs outstrip revenues in order to avoid the costs of plugging the wells.

[187] *See* Table 2 of Appendix A to AGA's initial comments.

[188] OTA in its study emphasized the importance of using long-term, rather than short-term, prices. OTA study at 34–35.

[189] Specifically, Shell and DOE calculate the increase in recoverable reserves is calculated as follows: where:

A = remaining reserves in field
B = abandonment pressure at current prices
C = abandonment pressure at new prices
D = current field pressure
E = increase in recoverable reserves

$$A \times \frac{B-C}{D-B} = E$$

[190] Pursuant to the formula set forth in the preceding footnote, the fractional increase is

$$\frac{B-C}{D-B}$$

Since current field pressure is D, lower pressure, means a lower denominator in the fraction, thereby increasing the fraction.

[191] It calculated those reserves to be 115 Tcf as follows. From January 1, 1981 national wet gas reserves of 206 Tcf, it subtracted 33 Tcf for North Slope gas, 20 Tcf for gas dissolved in oil, and 20 Tcf for water drive reservoirs. Based on AGA data for newly discovered reserves, it estimated that about 85% of the remainder, or 115 Tcf, was old gas that would respond to deregulation.

[192] The ratio used for purposes of extrapolating from the fourteen field results an estimate of nationwide increased recoverable reserves is referred to as the "scaling factor."

light of OTA's criticism of Shell's methodology, addressed separately the problems of scaling the fourteen field results to the national level and adjusting for the fact that the fourteen field results include non-responsive gas. With regard to the first problem, OTA noted that Shell's use of the ratio of remaining national reserves to remaining reserves in the fourteen fields could cause distortions if a different percentage of the gas in the fourteen fields had been produced than that of the nation as a whole.[193] For example, if the fourteen fields were less depleted than the national average, the scaling factor would be too large.

In order to avoid these possible distortions, OTA suggested use of the ratio of ultimate national reserves [194] to ultimate reserves in the fourteen fields. As OTA said, the reserve response from increased prices is a function of the true physical size of the field, not the amount of gas that happens to remain at any one time. DOE followed OTA's suggestion and scaled the fourteen field results to the national level by a ratio based on ultimate reserves. In fact, the fourteen fields do appear to be less depleted than the average fields so that use of a scaling factor based on remaining reserves tends to underestimate the national increase in recoverable reserves due to elimination of vintaging. The scaling factor obtained by DOE is 3.5 [195] as opposed to Shell's scaling factor of 2.8. AGA failed to correct for this distortion, but continued to use a scaling factor based on remaining reserves. Thus, for this reason alone, its methodology underestimates the increase in recoverable reserves resulting from adoption of this rule.

Having extrapolated the fourteen field results to a national level, DOE, like OTA, then addresses the problem of adjusting the predicted increase in reserves to include only that increase which would occur as a result of elimination of vintaging. First, DOE recognizes that some increased production would occur in any event under the existing section 108 incentive prices for stripper wells.[196] DOE estimates that such production accounts for about four percent of the estimated increase and subtracts that amount from its estimate of the total increased production resulting from elimination of vintaging.[197] Thus, it is not true, as some commenters contend, that DOE has not accounted for the production which would occur in any event pursuant to section 108 stripper prices. Second, in order to account for other gas that would also receive adequate prices to stimulate full economic production under current regulations, DOE made a further, more significant adjustment to the predicted increase. While the 1983 Shell study had calculated a January 1, 1981 responsive reserve base of 115 Tcf, DOE estimated that, in fact, only about 66 Tcf of old gas would not receive adequate prices under current regulations but would respond to higher prices, as of January 1, 1981. Accordingly, DOE scaled down its estimate of increased production by 66/115, or about 57 percent, to achieve its final estimate of 11 Tcf.

DOE's estimate of responsive reserves is at the low end of OTA's estimated range of 65 to 75 Tcf and is based on a methodology suggested by OTA. Relying on data in a study prepared for AGA,[198] DOE determined the percentages of each category of old gas likely to respond to higher prices allowed by eliminating vintaging. It then multiplied the amounts of old gas in each category as of December 31, 1980, by these percentages and totalled the results.[199]

AGA contends that the responsive reserve base is only 45.5 Tcf, as opposed to DOE's estimate of 66 Tcf.[199] However, the Commission considers DOE's estimate more accurate than AGA's for present purposes. AGA makes at least two errors in its analysis. First, it subtracts all intrastate gas. However, in light of the fact that contracts for the sale of some intrastate gas are keyed to federal price ceilings and that the Commission is amending the DOE proposal to allow intrastate rollover gas to qualify for higher prices, inclusion of some intrastate gas appears appropriate. Second, and more important, AGA has subtracted from reserves all production through 1985. However, Shell's 115 Tcf represents an estimate of national reserves as of January 1, 1981. This allowed Shell to use consistent data in extrapolating its results from the fourteen fields to the national level, since its figures for reserves in the fourteen fields were also for January 1, 1981. Obviously, use of 1985 national reserve figures for this purpose would result in too low a scaling factor unless the reserves for the fourteen fields were also reduced to account for 1981–1985 production from those fields. For similar reasons, DOE correctly used December 31, 1980 reserves in adjusting for Shell's overestimate of responsive reserves. As explained above, DOE scaled down its prediction of increased production by the ratio of its estimate of responsive reserves to Shell's. Since Shell's was an estimate for January 1, 1981, consistency required DOE to use an estimate for the same period.

For all the reasons stated above, the Commission concludes that elimination of vintaging will substantially increase recoverab old gas reserves and that DOE's 11 Tcf estimate of that increase is a reasonably reliable estimate. The Commission recognizes, as emphasized by OTA, that no estimate of the increase in recoverable reserves can be exact. Much of the data used in making the estimate is itself estimated, including abandonment pressures in the fourteen fields and the amount of reserves responsive to elimination of vintaging. Also, the increase in production depends in part upon uncertain future market prices which will determine the producers' ability to charge up to the new ceiling price. Nevertheless, even if the increase in recoverable reserves cannot be quantified exactly, the Commission finds that there is a direct relationship between price levels and the length of time operation of a well remains economic. Pre-1975 gas will receive a substantial price increase as a

[193] *See* OTA study at 45–46.

[194] Ultimate reserves equal proved reserves plus cumulative production.

[195] In light of OTA's statements that Shell's data for the ultimate reserves of both the nation and the fourteen fields might be unreliable, DOE used for ultimate reserves the lower-48 states estimate for Dec. 31, 1977, reported in Reserves of Crude Oil, Natural Gas Liquids, and Natural Gas in the United States and Canada—1979, American Petroleum Institute/America Gas Association, Volume 34, June 1980. DOE based its figure for ultimate reserves in the fourteen fields on a 1980 study prepared for the AGA and presented by it to OTA. *See* OTA study at 73.

[196] OTA criticized Shell for failing to take this into account. OTA study at 49–51.

[197] In its May 1986 study analyzing DOE's proposed rule (*see* note 181, *supra*), EIA stated that production from stripper wells accounts for only about 2.3 percent of annual U.S. production. EIA concluded that the NGPA incentive price for stripper gas has not resulted in significant additional supplies of gas, and therefore EIA made no adjustment in its prediction of increased supplies due to delayed abandonment to account for gas which would be produced in any event under stripper prices. Thus, the EIA study supports DOE's estimate that no more than 4 percent of increased production as a result of higher prices would occur pursuant to NGPA stripper prices.

[198] *Trend in Natural Gas Purchases by NGPA Category*, Foster Associates (for the AGA), May 1983.

[199] AGA apparently assumes that only proven reserves committed to interstate commerce at the time the NGPA was enacted would respond to elimination of vintaging. It therefore takes 1978 national proven reserves and subtracts North Slope gas, gas associated with oil, water drive gas, and all intrastate gas to obtain 1978 year-end reserves affected by decontrol of about 95 Tcf. It then estimates the amount of such gas produced since 1978 as about 50 Tcf. Subtracting this from the 95 Tcf gives 1986 reserves affected by decontrol of about 45 Tcf.

result of the rule. That price increase will cause a substantial increase in recoverable reserves through delayed abandonment. The inability to quantify exactly that increase does not vitiate the Commission's finding that it will occur.[200] If producers do not collect at the full ceiling price, reserve additions may not be as substantial but any potential negative impact on consumer prices will likewise be less.

This substantial increase in the production of old gas will benefit the public interest. Apart from the fact that in a workably competitive market it will displace higher cost gas, thus causing overall consumer prices to decline (which will be discussed in more detail in the next section), it will have other benefits. It will aid national security since any increase in domestic gas production reduces the nation's dependence on foreign oil and gas. The less oil and gas we import, the less dependent our economy is on uncertain imports of oil and gas from unstable areas. Also, reducing imports of foreign oil will reduce trade imbalances.

Some commenters have argued that, even assuming DOE's estimate of increased production is correct, the incremental cost of that production would be exorbitant and therefore such production would not be beneficial. For example, United Distribution Companies has presented a study purporting to show that the incremental cost of the additional old gas supplies would be from $3.75 to $5.77 per Mcf in 1985 dollars depending on whether prices for old gas rise to the new ceiling or to a lower market price.[201] These commenters obtain their high incremental cost estimates for additional old gas by determining purchasers' increased cost of purchasing all old gas as a result of this rule and dividing the result by DOE's estimated increase in recoverable reserves. This calculation fails to take into account the reduction in price of higher cost gas which will occur as a result of this rule. As discussed in detail in the next section, the Commission believes that increased production of old gas will reduce overall consumer costs by delaying the need for exploration and development of higher cost gas. This being the case, it is clear that the claims of a high incremental cost for the increased production are invalid.

Overall the only certainty about future natural gas supplies is their extreme uncertainty. The Commission notes that two recent authoritative studies predict that production of natural gas from conventional sources within the lower 48 states could range from 14 to 20 Tcf in 1990 and 9 to 19 Tcf by the year 2000, compared to current production of 17–18 Tcf annually.[202] These studies confirm that the key variables in such projections—price and demand—are highly uncertain and insusceptible of accurate prediction beyond the very short-term.

The Commission does draw several general quantitative and qualitative conclusions from current data on natural gas supplies:

1. Natural gas supplies are adequate for the short-term, but the Commission is obligated to establish rates which call forth adequate supplies for the long-term as well. The current surplus is one of deliverability, not reserves. Although surplus deliverability is reported at an annual level of 3 Tcf, lower-48 proved domestic reserves have declined from 291 Tcf to 197 Tcf since 1970.[203]

2. Even after seven years under the NGPA, 90 percent of gas well completions have been in regions thought to contain only 30 percent of remaining reserves. On the other hand, 63% of our remaining reserves are in "hard to develop" areas—such as Alaska, offshore, or at depths below 15,000 feet.[204] This means that future gas exploration and production will inevitably be more expensive, in real terms, than current production.

3. The risks and costs of exploratory drilling and development of gas reserves in frontier areas, such as the OCS and deep formations, are greater than the likely costs of increased production through delayed abandonment of old gas.[205] Delayed abandonment of old gas is only possible under higher prices, and will enhance more efficient timing of, and investment in, natural gas exploration, development and production. This is because, although delayed abandonment cannot substitute for reserve replacement over the long-term, it can postpone more costly investments in exploration and development of frontier gas areas over the near term by increasing the supply of lower-cost gas.

4. Investment in exploration and development of gas reserves is most efficient if it is made on the basis of long-term risk and return, rather than on the basis of short-term prices in gas markets. This is because oil and gas exploration is risky, and development of reserves requires long-term security of financing. The experience of deep gas drillers under the NGPA proves that short-term perceived shortages in gas markets are no substitute for long-term considerations, such as growth in the general economy and potential fuel substitution. For this reason, the best time to raise old, flowing gas prices is in the midst of a perceived short-term surplus, such as today, because future producer investment will be more efficiently allocated to those projects with the best long-term return to gas purchasers, rather than those more costly projects which would be required absent this rule.

For these reasons, the Commission concludes that the new just and reasonable rate in the final rule will enhance efficient investment in the replacement of domestic natural gas reserves over the long-term, in response to competitive wellhead markets.

E. Effect of Higher Old Gas Prices on Overall Gas Prices.

Comment Summary. DOE, producers, their trade associations, public service commissions representing producer states, and some industrial and other larger end-users contend that the proposed rule will reduce overall natural gas prices. They assert that the increased production of old gas resulting from elimination of vintaging will displace more costly new and imported gas. This will place strong downward pressure on the price of that gas. Furthermore, the expectation of lower future prices will cause some producers to shift production of some less costly reserves to earlier periods when prices are relatively higher. This will add to the downward pressure on current prices. At the same time production of higher cost reserves will be delayed, further reducing costs to consumers.

Elimination of the old gas cushion, which currently subsidizes above-market prices for some gas, will reinforce these downward pressures on the price of high-cost gas. Purchasers will no longer be willing or able to pay above-market prices for new and high-cost supplies. Producers will have to reduce the price of that gas or face a significant loss of sales. In short, both producers and purchasers will find it

[200] *See* Mobil Oil Corp. v. FPC, 417 U.S. 283, 318–19 (1974).

[201] *See* UDC reply comments, Appendix A.

[202] OTA Study, *supra* at p. 6; AGA Gas Supply Committee Report, *supra* at p. 7.

[203] EIA, *Natural Gas Monthly, supra* at Table 6 (Feburary 1986); EIA, *U.S. Crude Oil, Natural Gas, and Natural Gas Liquids Reserves, 1984 Annual Report* (September 1985), supra. In addition, if the recent collapse in oil and gas drilling and drastic reduction in exploration and development budgets persists, reserve replacement in 1986 and subsequent years can be expected to decline on a more accelerated basis, unless the existing price structure for old gas is revised.

[204] AGA Gas Supply Committee Report, *supra* at p. 6.

[205] OTA Study, *supra* at pp. 7–10.

mutually advantageous to renegotiate high-cost contracts in order to market the gas. DOE's computerized mathematical model of the United States natural gas market predicts that the decrease in prices to consumers will range from 19¢ to 55¢ per Mcf during the period 1986 to 1995.

Pipelines, distributors, and consumer representatives all dispute the contention that overall prices will decline. They assert that the claim of a price decline is based solely on economic theory and is without factual support. They argue that the elimination of vintaging will cause a huge increase in prices to consumers. Elimination of vintaging allegedly will cause almost all pre-1975 gas, which currently sells for an average of approximately $1.26,[206] to rise at least to the current market price of about $2.00. However, the increased cost of pre-1975 gas will not be offset by reductions in the cost of other gas.[207] Post-1974 old gas will remain at its $2.57 ceiling price since there is no provision in the rule for renegotiating the price of that gas down to market levels. New gas, which is sold under market responsive contracts, has already been reduced to approximate market levels and cannot be expected to decline much further. New gas sold under non-market responsive pricing provisions including take-or-pay clauses also will not come down in price since producers have no incentive to renegotiate such contracts. Opposing commenters state that the fact pipeline WACOGs remain substantially above the spot market price of gas demonstrates pipelines' inability to renegotiate take-or-pay contracts. Since a surplus of natural gas lasting over two years has not forced renegotiation of inflexible contracts to market levels, the production of still more gas is not likely to have that effect.[208]

Both AGA and INGAA have presented studies asserting that in the absence of significant renegotiating of non-market responsive contracts, interstate pipeline WACOGs will rise substantially.[209] Many individual pipelines and their customers have presented analyses calculating the increase in their pipeline's WACOG if DOE's proposed rule is adopted. A number state that even a reduction in price of the pipeline's high-cost gas to market levels would not offset the increased cost of old gas.[210]

Finally, opposing commenters state that DOE's proposed rule will have a particularly adverse impact on captive (primarily residential) consumers.[211] The increased prices pipelines will be forced to charge their customers will encourage those who can to buy cheaper gas on the spot market. These customers are primarily large industrial users, electric utilities and some distributors. The remaining customers will have to bear a larger share of the pipeline's fixed costs and take-or-pay liabilities.

Commission Response. The Commission believes that the more accurate price signals and increased supply of old gas encouraged by the elimination of vintaging will reduce natural gas prices below what they would be with continued vintage-based pricing. Because the additional old gas is produced by continuing the operation of existing wells, the costs of producing that gas will be less than the costs of producing new gas. New gas is generally produced either through drilling for and discovering new sources of gas or applying expensive development techniques to existing fields. In addition, the transmission cost of the old gas is generally less than that of the new, since the old gas is already connected to a pipeline. The Commission believes that in today's highly competitive market, an increased supply of low-cost gas, and more accurate prices signals for all gas, will reduce prices to pipelines and consumers.

Commenters who claim prices will rise rely on an assumption that the natural gas market is not fully competitive. That is the only basis for contentions that, in spite of the loss of the old-gas cushion, take-or-pay clauses will prevent high-cost gas from falling. in price. The Commission believes, however, that the market for wellhead natural gas sales is workably competitive. In the first place, Congress so found when it enacted the NGPA. Implicit in the removal of the Commission's authority to regulate the price of new gas is a finding that the wellhead market for natural gas is competitive. As the court stated in *Pennzoil* v. *FERC*, 645 F.2d 360, 378–79 (5th Cir. 1981), "Contrary to the Supreme Court's assumption in *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954), which subjected gas producers to utility-type regulation under the NGA, Congress apparently decided that gas producers do not have 'natural' monopoly power." Similarly, in *Transcontinental Gas Pipe Line Corp.* v. *State Oil and Gas Board of Mississippi*, 106 S. Ct. 709, 717 (1986), the Supreme Court stated, "the NGPA reflects a Congressional belief that a new system of natural gas pricing was needed to balance supply and demand . . . The new federal role is to 'overse[e] a national *market price* regulatory scheme" (emphasis added).

Congress' determination that wellhead markets are workably competitive has been borne out by experience under the NGPA and strengthened by past Commission decisions. In the past two years, as a surplus of natural gas has developed, market forces have significantly reduced overall prices paid by pipelines for gas. As shown below in Table 1, WACOGs of the major interstate pipelines have fallen from $2.84 in February 1984 to $2.51 in February 1986.

TABLE 1.—TREND IN PROJECTED DECONTROLLED GAS PRICES AND PIPELINE WACOGS: 30 MAJOR INTERSTATE PIPELINES [1] ($/MMBTU)

Month/year	107 deep gas	Other Decontrolled gas	Total field purchases	Canadian imports	Total purchases [2]
(1)	(2)	(3)	(4)	(5)	(6)
2/84	$5.82	—	$2.75	$4.58	$2.84
4/84	5.45	—	2.73	4.63	2.88
6/84	5.45	—	2.74	3.96	2.84
8/84	5.42	—	2.75	3.86	2.84
10/84	5.47	—	2.77	3.79	2.84
12/84	5.29	—	2.76	3.91	2.85
2/85	5.16	$3.67[3]	2.76	3.70	2.84
4/85	4.85	3.63	2.72	3.53	2.80
6/85	4.60	3.52	2.66	3.40	2.72
8/85	4.43	3.38	2.60	3.20	2.66
10/85	4.40	3.28	2.57	3.20	2.64
12/85	4.31	3.19	2.47	3.04	2.55
2/86	4.21	3.09	2.44	3.02	2.51

[1] Gas prices and WACOGs beginning 2/84, 4/84, 11/84, 1/85 and 6/85 are for 24, 26, 28 29 and 30 pipelines, respectively.

[2] WACOGs exclude inter-pipeline transactions.

[3] Effective 1/1/85 sections 102(c), 103 wells deeper than 5,000 ft., and 107(c)(5) were decontrolled.

Source: PGA filings of interstate pipelines effective as of the date shown as tabulated in Foster Associates' *Current Purchased Gas Costs of Interstate Pipeline Companies* (monthly).

The price of all gas decontrolled under the NGPA has fallen from $3.67 in February 1985 to $3.09 in February 1986. In addition, the price of gas still subject to price ceilings has fallen substantially below those ceilings. For example, in November 1984 the ceiling price for price-controlled section 102(d) gas was $3.82 and the actual price was $3.78. By February 1986, the ceiling price was $4.19 but the average price had fallen to $3.24.[212] As shown below in Table 2, since November 1985 pipelines have been regularly marketing out under contracts in all NGPA categories at prices significantly below the post-1974 gas ceiling price.

[206] DOE, Appendix C at 3.

[207] APGA at 21–24.

[208] *See*, for example, MPC/NASUCA at 17.

[209] AGA, Appendix B. INGAA at 32–38.

[210] *See*, for example, the comments of KN Energy, Inc.; Natural Gas Pipeline Co. of America; El Paso Natural Gas Co.; Peoples Gas Light and Coke Co.; Northern Illinois Gas Co; and Citizen/Labor Energy Coalition at 24–25.

[211] *See*, for example, UDC Appendix A at 37–38.

[212] Indicated Producer's reply comments, Appendix E at 8.

TABLE 2

Date	Pipeline	NGPA Categories Affected	New Price	Notes
(1)	(2)	(3)	(4)	(5)
11/85	Mid-Louisiana	All	2.25	
11/85	Houston Natural Gas	All	2.20	Gas well gas.
11/85	Northwest Pipeline	All	2.58	85% of No. 6 Seattle/Portland.
11/85	Texas Gas Transmission	All	2.25	
11/85	Transcontinental Gas P.L.	All	2.15	
11/85	United Gas Pipe Line	All	2.00	Includes taxes.
1/86	ANR Pipeline	All	2.10	Includes taxes.
1/86	Colorado Interstate Gas	All	2.15	
1/86	Columbia Gas Transmission	All	2.70	Appalachian SW, Rockies, Mid-Cont.
			2.50	
1/86	Natural Gas Pipeline	All	1.90	Includes taxes.
1/86	Northern Natural Gas	All	2.35	Floor.
2/86	Florida Gas Transmission	All	1.90	Not to exceed 65% of No. 6 oil.
2/86	Transwestern Pipeline	All	2.50	
4/86	Northwest Pipeline	All	2.08	
4/86	Southern Natural Gas	All	2.06	
4/86	El Paso Natural Gas	All	2.20	

Source: Indicated Producers Reply Comments, Appendix E at 9.

The competitive forces bringing down the price of gas include not only competition in producer markets among suppliers of natural gas, but also competition in consumer markets among suppliers of gas and alternative fuels including residual fuel oil. As the prices of crude oil and residual fuel oil have fallen, producers and pipelines have had to reduce their prices in order to remain competitive and avoid losing markets. Many natural gas customers can easily switch to alternate fuels if these fuels become cheaper than gas. For example, electric utilities can burn residual fuel oil in some boilers now burning gas. A number of large industrial and commercial customers can also switch fuels.[213]

It is true, as observed by opposing commenters, that pipeline WACOGs continue to average above the spot market price of gas ($2.42 per MMBtu as opposed to $1.90 to $2.00 per MMBtu).[214] However, this fact does not negate the conclusion that the natural gas market is workably competitive. First, in a competitive market, spot market prices should be different than overall prices. Spot market sales are short-term sales. Purchasers will generally have to pay higher prices for long-term sales since such sales give them greater security of supply. Furthermore, contracts entered into immediately after the NGPA was enacted were negotiated at a time of serious natural gas shortages caused at least in part by earlier rigid, cost-based regulation of wellhead prices under the NGA. Pipelines were just emerging from a period of curtailments and were anxious to replenish their reserves. The result was that new gas was purchased at the applicable NGPA maximum lawful prices and even higher prices were paid for price-deregulated supplies. These high prices increased supply and reduced demand, converting the shortage into a surplus. This has brought about today's lower market prices, demonstrating that the natural gas market is workably competitive. To the extent overall prices remain above spot market prices, it is largely because pipelines continue to have contracts entered into during the earlier period of shortage. Furthermore, the existence of the old-gas cushion has permitted the price of new gas sold under non-market responsive contracts to remain at higher levels. However, in a market characterized by surplus deliverability and intense interfuel competition, supplies of gas cannot sustain above-market prices even under existing contracts, and elimination of the old gas cushion will put added pressure on already-declining high-cost gas prices, which in time will reduce pipeline WACOGs.

Given the fact that the wellhead natural gas market is workably competitive, and that the Commission is allowing for the renegotiation of all gas in contracts containing any old gas under the good faith renegotiation rule, the Commission is unconvinced by the opposing commenters' contentions that prices will rise if vintaging is eliminated. These contentions are all based, in one form or another, on the assumption that prices for pre-1975 gas will rise substantially, and relatively high-cost gas will not decline sufficiently to offset this increase. However, this cannot happen in a competitive market. The opposing commenters contend, for example, that new high-cost gas sold under market responsive contracts [215] cannot be expected to decline in price very much since it has already been reduced approximately to market levels.[216] However, the current market price of such gas takes into account the old-gas cushion. Once the cushion is removed, and pipelines pay more for pre-1975 gas, competition will require pipelines to seek a lower price for high-cost new gas. Where contracts for sale of new gas have market-out clauses, pipelines clearly have the ability to force down the price of such gas and any assumption that the price of this high-cost gas cannot decline significantly is unrealistic.

Opposing commenters also contend that high-cost gas sold under so-called non-market responsive contracts [217] cannot come down in price. These commenters claim that producers will have no incentive to renegotiate high-cost contracts. They state that pipelines cannot link renegotiation of take-or-pay obligations to allowing increased prices for the old gas, since if they do producers can simply sell the old gas to someone else. Furthermore, they state that Order No. 436 prohibits pipelines offering non-discriminatory transportation from refusing to transport the gas to a third party unless the producer grants take-or-pay relief. The Commission believes, however, that the elimination of the old-gas cushion, together with the increased production of low-cost old gas, will accelerate renegotiation of the price of substantial volumes of that gas. Producers and

[213] Increasing Competition in the Natural Gas Market. The Second Report Required by section 123 of the Natural Gas Policy Act of 1978 (January 1985).

[214] *See*, for example, MPC–NASUCA at 16, 17.

[215] These contracts were entered into primarily after 1982 and, according to INGAA (at page 30), account for approximately 25% of all gas.

[216] INGAA (at 30) estimates that the price of such gas now averages about $2.35.

[217] These contracts were primarily entered into from 1978 through 1981 and, according to INGAA, cover about 28% of all gas.

pipelines will simply have to renegotiate lower prices for this gas in order to avoid a significant loss of market to lower-priced gas and alternate fuels.

Opposing commenters' contentions concerning the impossibility of renegotiating contracts for the sale of this gas are unconvincing. In April 1985, the Commission issued a policy statement, reaffirmed in Order No. 436, stating that pipelines may buy out their take-or-pay liability without violating NGPA ceiling prices and that the Commission will grant expedited treatment of abandonment requests necessary to implement take-or-pay buyouts.[218] Pipelines have been successfully renegotiating their take-or-pay contracts pursuant to the April 1985 policy statement. For example, in Order No. 436, the Commission noted that its records disclose eight settlements by major pipeline companies discharging $421,275,035 in take-or-pay liability for $80,761,007 or less than 20¢ on the dollar.[219] NGSA has presented a table showing nine settlements discharging take-or-pay liabilities of $3,626,275,035 for $435,461,007, or about 12¢ on the dollar.[220] An NGSA survey of producers shows that they have settled over two thirds of their outstanding take-or-pay liabilities and that most of the remaining liability is of recent origin.[221] Finally, a survey of interstate pipeline financial statements filed with the Securities and Exchange Commission shows pipelines repeatedly stating that they expect to renegotiate take-or-pay contracts.[222] Thus, pipelines have been able to renegotiate high-cost take-or-pay contracts for new gas.

The Commission believes that elimination of vintaging can only accelerate this process. Pipelines will be able for the first time to offer higher prices for old gas in return for voluntary renegotiation of take-or-pay contracts. In addition, since there will no longer be an old-gas cushion available to protect high-priced contracts through rolled-in pricing, both pipelines and producers will find it mutually advantageous to renegotiate such contracts in order to retain a market for their supplies in the face of competition from cheaper gas and alternate fuels. Furthermore, in cases where pipelines threaten to stop purchases by invoking the *force majeure* provisions of their contracts, producers may prefer the certainty of receiving the market price to the delay and uncertainty of litigation in attempting to enforce high-price take-or-pay contracts.[223] The Commission therefore rejects the assertion that high-cost gas sold under take-or-pay contracts will not come down in price in response to the elimination of vintaging.

Moreover, while the Commission believes that high-cost non-market responsive gas under all contracts would come down in price gas even under the rule as proposed by DOE, the Commission is modifying the good faith negotiation rule in order to give the purchaser the right to renegotiate gas prices on a contract-by-contract basis under that rule. Specifically, the Commission is providing that where the producer requests the purchaser to nominate a new price for old gas in one contract, the purchaser may request the producer to nominate a new price for any new gas in that contract or in any other contract between the parties which also contains old gas. If the purchaser rejects the price nominated by the producer, it may discontinue purchases of that gas upon thirty days notice. This modification of the good faith negotiation rule provides the purchaser a powerful additional bargaining card to negotiate a lower price for new gas in multi-vintage contracts including those which are not market-responsive and buttresses the Commission's conclusion that the average price of high-cost gas will be significantly reduced under this rule. The Commission therefore rejects the assertion that high-cost gas sold under take-or-pay contracts will not come down in price in response to the elimination of vintaging.

Opposing commenters also assert that post-1974 gas will remain at its $2.57 ceiling price since there is no provision in the rule as proposed for renegotiating contracts covering that gas. The Commission believes, for the reasons already amply stated above, that even in the absence of market-out clauses in the contracts for the sale of this gas, competitive forces released by the elimination of vintaging will work to lower the price of post-1974 gas so long as overall market prices remain below the ceiling price for this gas. However, in order to provide that renegotiation of old gas prices under the good faith negotiation rule is undertaken on a generic basis, the Commission's modification of DOE's good faith negotiation rule will provide additional assurance that this occurs. Under the rule as modified, where a producer requests its purchaser to nominate higher prices for any old gas, the purchaser may request the producer to nominate lower prices for old gas which the purchaser believes is being sold at above-market prices. The modification of the good faith negotiation rule thus assures that all old gas will be market-responsive and will assure that all old gas will be priced at a market-clearing level. There is no merit to commenters' arguments that the ceiling price for post-1974 gas, which this rule makes applicable to all old gas, will act as a floor for the price of old gas. The evidence cited previously that pipelines are currently marketing out on gas at prices well below the post-1974 ceiling price demonstrates that in today's competitive natural gas market that ceiling does not act as a price floor.

Elimination of vintaging will reduce overall prices below what they otherwise would have been by increasing production of cheaper gas and eliminating the old-gas cushion. This conclusion is supported by the movement of gas prices following partial decontrol of natural gas on January 1, 1985. Before decontrol, there were predictions of a price fly-up unless actions were taken to deal with take-or-pay contracts and to cap indefinite price escalators.[224] Yet no such fly-up occurred. In the first year after partial decontrol, natural gas prices at the wellhead declined by 33¢ per Mcf. This demonstrates that the natural gas

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[218] *See* 18 CFR 2.76 and 2.77(a)(1) (1985).

[219] 50 FR 42,408, 42,464 (Oct. 18, 1985).

[220] *See* NGSA reply comments, Appendix B, Attachment 3.

[221] *See* NGSA reply comments, Appendix B, Attachment 1. The survey shows that settled liabilities equal $5.698 billion, while unsettled liabilities equal $2.552 billion.

[222] Indicated Producers reply comments, Appendix C.

[223] *See, e.g.* various "released" gas programs undertaken by many pipelines, in which they take substantial volumes of new and high-cost gas in exchange for price relief.

[224] For example, in April 1984, INGAA issued a study entitled "Analysis of Price Fly-Up under the Natural Gas Policy Act," in which it stated, "In the absence of significant renegotiation or a legislative solution, non-market sensitive price and take provisions in existing contracts will push the average wellhead price up by 9% to 12% above inflation in 1985." Significantly, the INGAA fly-up prediction was based on the same incorrect assumption made by similar comments in this rulemaking: that producers will automatically collect the highest prices authorized by indefinite price escalators in their existing contracts, despite competitive market conditions.

market is sufficiently competitive that removing price ceilings does not cause an increase in prices. The forces of the marketplace require producers and purchasers to keep their prices at market clearing levels so as to avoid loss of sales. The fact that oil prices have declined since oil prices were decontrolled in January 1981 is further evidence that removal of price ceilings in a competitive market does not cause price increases.

Finally, the Commission observes that eliminating vintaging will not only reduce prices below what they otherwise would have been, it will make prices more stable. When the current surplus is dissipated,[225] natural gas prices will rise in order to encourage producers to produce the additional gas necessary to satisfy demand. So long as current old-gas price ceilings remain in effect, the entire additional supply increase must come from new gas. Thus, new-gas prices would have to increase substantially. However, if vintaging is eliminated so that a supply response will occur for old gas, then new-gas prices will not have to rise dramatically to encourage exploration and development since some of the necessary supply response will be obtained through higher prices for old gas. In short, more gas will be made responsive to the market, prices will be more stable, and the tendency toward inefficient price disparities in the natural gas market will be reduced.

Commenters have included numerous studies and statistics in the record concerning the likely impact of the DOE proposal on consumers. To the extent they illustrate the wide mixture of old gas, new gas, and non-market responsive gas on individual pipeline systems, these studies are helpful. Over 20 years of vintaging have splintered the old gas "cushion" into as many pieces as there are different pipeline systems. This unequal access to the cushion means that the Commission must take into account the transitional impacts of the final rule on individual pipeline systems, as well as its long-term impacts nationwide.

However, many of these studies commit the fundamental error of assuming that, on a pipeline-by-pipeline basis, wellheadmarkets are static and do not change in response to changing city-gate and burner-tip markets. For example, a number of commenters in this docket have assumed that old, flowing gas prices will *immediately and automatically* rise to the highest price permitted by the final rule, but that existing high-cost gas prices will *not* be renegotiated downward commensurately.[226]

These studies beg the question. The real question is not *whether* high-cost prices will come down in response to higher old gas prices, it is *how fast* they will come down. Nor is it a question of the impact of the rule on a *pipeline's* gas acquisition costs *per se*. Instead, the NGA requires the Commission's ultimate concern to be protection of *consumers* downstream from the wellhead, and therefore it must seek a balance of risks and return at the wellhead which achieve this goal.

For this reason, the Commission has analyzed the evidence in the record as to how quickly existing wellhead prices, especially those for new gas, can respond to changes in city-gate and burner-tip markets. In addition, the Commission has scrutinized the current and past purchased gas adjustment filings ("PGAs") made by the 20 major interstate pipelines. The most current PGA data, included in the record, breaks down for each pipeline its purchased gas costs by NGPA pricing category, volumes, weighted average cost, and major producer-suppliers. Past PGA data, compiled by EIA, indicates the trend of high-cost gas prices under NGPA section 102 and section 107 on major pipeline systems between early 1983 and the present.[227]

These tables indicate that high-cost gas WACOGs have trended *substantially downward* since 1985 following the partial deregulation of these wellhead categories mandated by the NGPA on January 1, 1985.

However, because pipelines are only required to file PGAs twice a year, these data do not reflect the full impact of recent falling oil prices on pipeline WACOGs. This decline in oil prices, combined with additional gas-on-gas competition under Commission Orders No. 380 and 436, is already exerting substantial pressure on pipelines to reduce their WACOGs to marketable levels through out-of-cycle or flexible PGA filings in order to maintain fuel-switchable loads.[228]

In addition to PGA data, the Commission has reviewed three studies included or referenced in the record. These three studies all indicate that the most likely impact of the DOE proposal will be further *downward* pressure on consumer prices, as higher old gas prices and additional supplies further accelerate competitive pressures on pipelines and high-cost producers to reduce city-gate prices to market-clearing levels.

The first study, referred to by AGA in its comments, is an "Analysis of High-Cost Gas Purchases by Contract Termination Date." [229] This study (the "Foster Study") was prepared by Foster Associates, Inc., on behalf of AGA, and reviewed PGA data as of mid-1985 in order to estimate the volume, producing area, contract execution date, and average price of NGPA section 102 and section 107 gas purchases with projected prices greater than \$3.80 per MMBtu. The \$3.80/MMBtu price is the Btu-adjusted section 102 ceiling price, and was selected to represent the minimum price under contracts without market-responsive terms.

The Foster Study found that the 1.6 Tcf of gas purchased at an average price of \$4.49/MMBtu, or 17 percent of major interstate pipelines' annual domestic purchases of 9.2 Tcf, constituted purchases under pre-1982 section 102 and section 107 contracts with non-market-sensitive terms. In contrast, only 0.7 Tcf of these pre-1982 section 102 and section 107 purchases were found to be market-sensitive, at an average price of \$3.12/MMBtu.

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[225] DOE predicts a dissipation of the surplus by 1988 under current regulations. The surplus could be dissipated by 1987 if vintaging is eliminated because the natural gas market will operate with greater efficiency.

[226] *See, e.g.*, Initial comments of INGAA, AGA, Northern Natural, Natural Gas Pipeline of America, Panhandle Eastern, Southern Natural, Northwest Central, KN Energy.

[227] EIA, *Natural Gas Monthly, supra* at Table 5 (February 1986).

[228] Pipelines have continued to file for and obtain out-of-cycle or flexible purchased gas adjustment (PGA) authorizations. Listed below are pipelines that have recently obtained a regular PGA at other than the normal effective date (*), an out-of-cycle PGA (**), or a flexible PGA authorization (***):

Pipeline	Effective dates
ANR Pipeline Co	8-1-85* 4-1-86**
Colorado Interstate Gas Co	5-1-85*, 7-1-85*, 9-1-85**, 11-1-85*
Consolidated Gas Supply Corp	7-1-85*
El Paso Natural Gas Co	7-1-85*
Florida Gas Transmission Co	6-1-85*, 2-1-86*, 3-1-86**
Mississippi River Transmission Corp	5-1-85*, 11-1-85*
Natural Gas Pipeline Co. of America	7-1-85*, 1-1-86**
Northern Natural Gas Co	5-1-85*
Northwest Pipeline Corp	5-1-85**, 7-1-85*
Panhandle Eastern Pipeline Co	6-1-85*
Southern Natural Gas Co	5-1-85*
Tennessee Gas Pipeline Co	8-1-85*, 9-1-85**, 11-1-85*
Texas Gas Transmission Corp	12-1-85*, 7-1-85**
Texas Eastern Transmission Corp	3-1-85*, 7-1-85**, 12-1-85**, 4-1-86*
Transcontinental Gas Pipeline Co	4-1-86**
Trunkline Gas Co	3-1-86*
United Gas Pipe Line Co	11-1-85*
East Tennessee Natural Gas Co	4-11-86***
Florida Gas Transmission Co	3-28-86***
Midwestern Gas Transmission Co	4-11-86***
Northwest Pipeline Corp	4-25-86***
Tennessee Gas Pipeline Co	5-2-86***
Transwestern Pipeline Co	3-28-86***

[229] Foster and Reddick, "Analysis of High Cost Gas Purchases by Contract Termination Date,' *Gas Energy Review* (Vol. 13, No. 12, American Gas Association, December 1985).

Of the 1.6 Tcf in non-market sensitive contracts, 52 percent was found to be produced on the OCS, while Texas and Louisiana on-shore each represented only 10% of the high-cost production.

On the other hand, the Foster Study found only 0.2 Tcf, or 20 percent, of post-1982 section 102 and section 107 contracts were non-market sensitive. The Foster Study found that 13 percent of so-called "high-cost" gas contracts were pre-1977 in vintage, and thus were likely to be "multiple vintage" contracts also covering volumes of old, flowing gas.

This data indicates that some 1.8 Tcf of high-cost gas may not be subject to express "market-out" authority on the part of the purchaser. On the other hand, this 1.8 Tcf represented only 33 percent of all 5.4 Tcf of "new" and "high-cost" gas volumes purchased by interstate pipelines in 1985.[230] The composite price of these total volumes fell from $4.00 per Mcf to $3.37 per Mcf between January 1985 and February 1986.[231] Nor does the Foster Study indicate how much gas under such "non-market responsive contracts" is being "released" from its contract terms and being taken by pipelines at market-responsive prices under the so-called "release" program. This indicates that, notwithstanding their volumes of non-market responsive "new gas," pipelines nonetheless have had sufficient leverage on the rest of their gas costs to reduce overall "new" gas prices over 1 percent a month over the last 14 months—at an overall savings of over $3.4 billion in gas costs.[232]

The second study, submitted by AGA in its initial comments is AGA's "1986 Base Case," an economic model which projects natural gas prices, supply, and demand over the short-term and long-term. The Commission notes that this study ("AGA Base Case") was published January 17, 1986, and, therefore, assumes oil prices of $25/barrel in 1986 and 1987, an assumption that understates the downward pressure of falling oil prices on pipeline WACOGs. AGA's recent up-date on the impact of falling oil prices concludes that under the $15 per barrel scenario, the average field acquisition costs of gas will decline from $2.58 per Mcf in 1985 to $1.37 by 1987. The "1986 Base Case" and its updates are based on a system of computer models providing a long-run simulation of natural gas supply, transportation and markets. This model, known as the TERA (Total Energy Resources Analysis) system, is maintained by the AGA under the guidance of an industry advisory committee. The "1986 Base Case" utilizes publicly available information from contracts on file at the Commission, and is intended to represent a "most probable" future based on current market and regulatory conditions.

Table 7, following on page 160, excerpted from the "AGA Base Case," contains AGA's projection of the average pipeline acquisition cost of gas between 1984 and the year 2000 *under current regulation*. Figures 1, 2, and 4, following on pages 161–3, contain AGA's up-dated projections on reserves, wellhead prices, and demand based on $15 and $20 per barrel oil prices. Specifically, the first table projects that the average pipeline acquisition cost of so-called pre-1982 "high-cost" gas under NGPA section 102, section 103, and section 107 will decline from $3.79/MMBtu in 1984 to $2.69/MMBtu in 1986, and $2.15/MMBtu by 1988. According to the AGA "Base Case," at pages 9, and 12 and 21:

> . . . Between 1985 and 1987, the proportion of 1977–1981 gas at the higher price level is gradually reduced reflecting lengthy renegotiation of the contracts containing "indefinite escalator" clauses. Some post-1977 gas, especially § 102 "d" gas (from OCS Leases) technically remains regulated. The ceiling price, however, is above the level on the "free market" price. § 102 "d" gas is assumed also to gradually decline to "free market" levels from current prices by 1987. All post-1981 § 102, § 103, and § 107 deep gas, however, is assumed to be priced at a long-run "free market" level. . . . The long term "free market surrogate" level of wellhead prices (without severance taxes and gathering charges) for decontrolled natural gas has been arbitrarily assumed to be 50% of the refinery acquisition cost of crude oil. . . . As shown on Table 7, the decline of average retail gas prices from $5.08 per MMBtu in 1985 to $4.33 per MMBtu in 1988 represents a 14% [real] decline within 3 years. The decrease from the 1985 retail prices of $5.08 per MMBtu to $4.59 per MMBtu in 2000 represents a cumulative average "real" price drop of about 10%.

[230] EIA, *Natural Gas Monthly, supra* at Table 5 (February 1986).

[231] *Id.*

[232] *Id.*

TABLE 7.—NATURAL GAS PRICES [1]

(1985$/MMBtu)

	1984	1985	1986	1988	1990	1995	2000
Natural:							
Transmsn. Co. Acqstn.[2]							
Old Inter [3]	1.21	1.14	1.16	1.16	1.15	1.20	1.18
Old Intra [4]	2.42	2.41	2.18	2.10	2.11	2.33	2.57
New-Old [5]	3.79	3.46	2.69	2.15	2.15	2.36	2.59
New-New [6]		2.54	2.27	2.17	2.17	2.37	2.60
Average[7]	2.65	2.53	2.10	1.87	1.90	2.17	2.46
Transmission:	1.32	1.26	1.27	1.24	1.26	1.16	1.12
City Gate [8]	3.97	3.79	3.37	3.11	3.16	3.33	3.58
Total Supply:							
Natural [8]	3.97	3.79	3.37	3.11	3.16	3.33	3.58
Supplemental [9]	4.64	3.99	3.62	3.42	3.38	3.70	3.93
Average	4.01	3.82	3.40	3.14	3.19	3.40	3.66
Distribution:							
Residential	2.15	2.00	1.93	1.85	1.82	1.60	1.50
Commercial	1.66	1.62	1.58	1.52	1.49	1.31	1.20
Industrial	.55	.64	.62	.58	.56	.47	.43
Elec. Util. P.P.	.34	.19	.37	.43	.38	.50	.47
Average	1.29	1.26	1.24	1.19	1.17	1.01	.93
Retail Price:[10]							
Residential	6.16	5.82	5.33	4.99	5.01	5.00	5.16
Commercial	5.67	5.44	4.98	4.66	4.68	4.71	4.86
Industrial	4.56	4.46	4.02	3.72	3.75	3.87	4.09

TABLE 7.—NATURAL GAS PRICES [1]—Continued

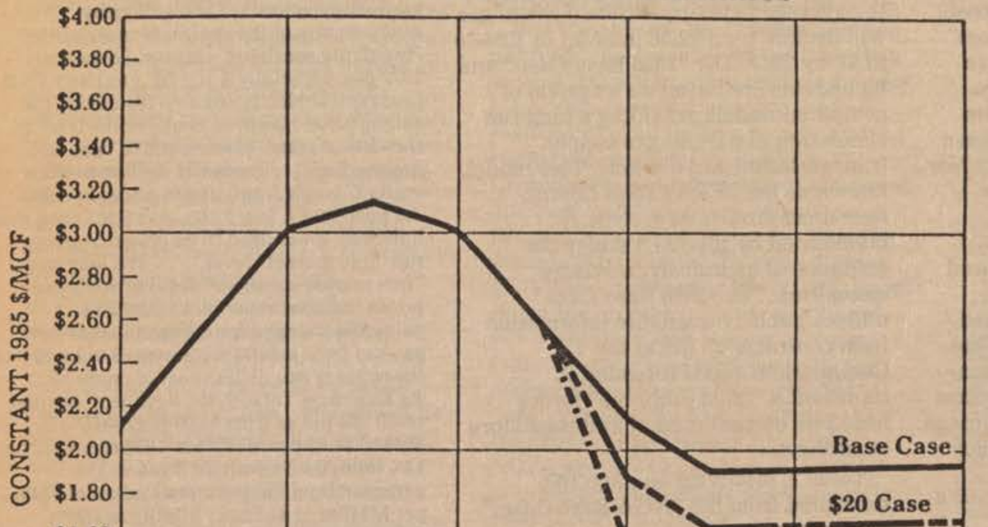
(1985$/MMBtu)

	1984	1985	1986	1988	1990	1995	2000
Elec. Util. P.P.	4.35	4.01	3.77	3.57	3.57	3.90	4.13
Average	5.30	5.08	4.64	4.33	4.36	4.41	4.59

[1] Reflects prices of gas purchased by the natural gas utility industry and sold to its customers.
[2] Includes severance taxes and gathering charges.
[3] Includes sections 104a, 104b, 104c, 106a, and 103"e"/108.
[4] Includes sections 105, 106b, and 103"e"/108.
[5] Supplies attached between 1977 and 1982: Includes sections 102, 102d, 103, 107 tight, and 107 deep.
[6] Supplies attached after 1982: Includes sections 102, 103, 107 tight, and 107 deep.
[7] Reflects changing volumetric mix of various supply categories.
[8] Transmission Company Acquisition Cost plus Transmission Cost.
[9] Includes imports, Alaskan gas, coal gas, gas from new technologies, etc.
[10] City Gate price plus distribution costs.

Figure 1

NATURAL GAS FIELD PRICES UNDER ALTERNATIVE OIL PRICE SCENARIOS*



*Includes inter- and intra-state pipeline acquisitions of gas as well as direct-producer consumer transactions.

Figure 2

U.S. NATURAL GAS CONSUMPTION UNDER ALTERNATIVE OIL PRICE SCENARIOS

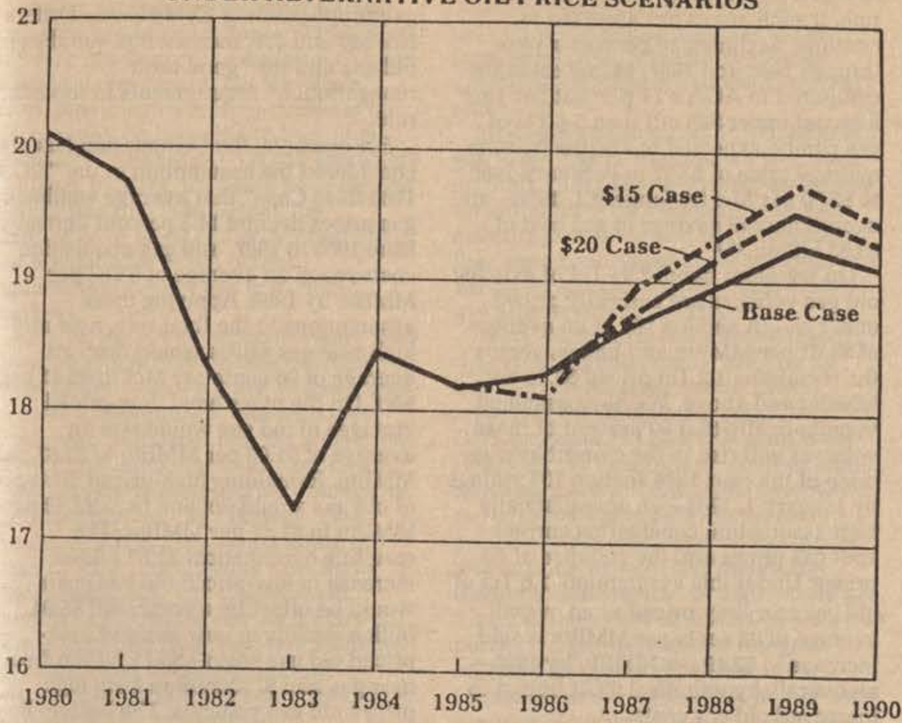
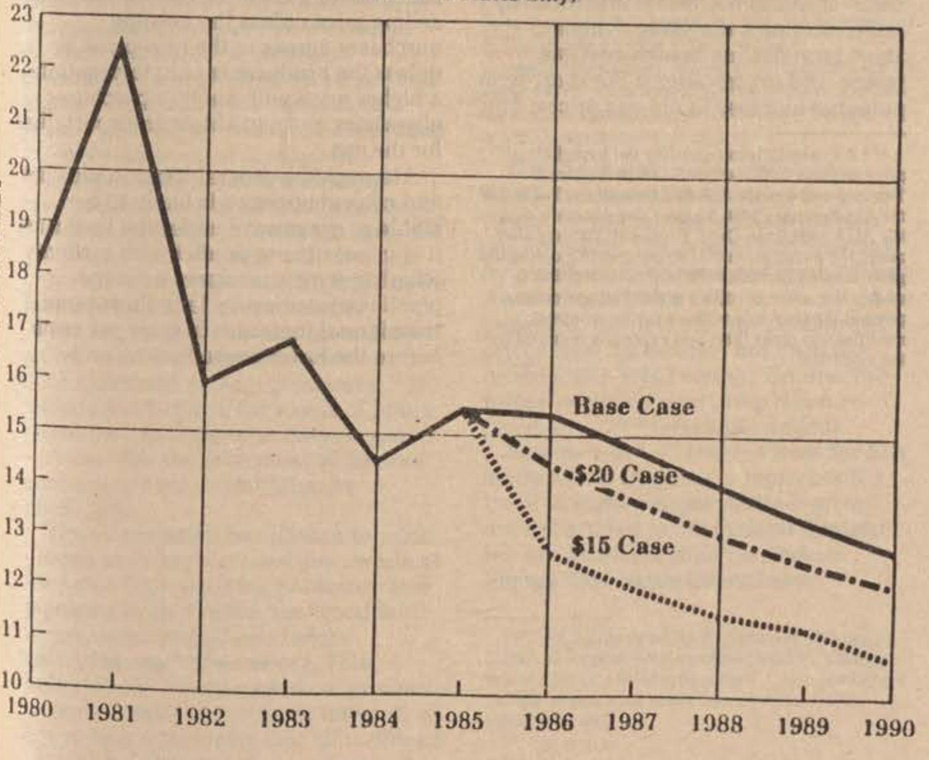


Figure 4

CONVENTIONAL NATURAL GAS RESERVE ADDITIONS UNDER ALTERNATIVE OIL PRICE SCENARIOS

(Lower-48 States Only)



These AGA projections indicate that, even without the pressure of falling oil prices, natural gas markets are expected to force high-cost, "market unresponsive" gas prices down 11% a year between 1984 and 1988.

The third study is an "Analysis of Natural Gas Contracts, Volume I: Old Interstate Gas" prepared by the Energy Information Administration ("EIA") in February 1986.[233] The EIA Old Gas Study evaluated the quantities, average prices, and contractual terms of the various vintages of old, flowing gas still subject to wellhead regulation under section 104 and section 106 of the NGPA and section 4, section 5, and section 7 of the NGA.

Tables 3, 4, 5, and 6 from the EIA study conclude that old, flowing gas under section 104 of the NGPA constituted 3.2 Tcf of total wellhead purchases of 8.4 Tcf from non-affiliated companies by major interstate pipelines in 1984. Of this 3.2 Tcf, 1.1 Tcf is post-1974 gas already subject to the highest MLP under section 104 and priced at an average of $2.49 per MMBtu, while the remaining 2.1 Tcf is priced at $2.12 per MMBtu or below under pre-1974 section 104 vintage prices. The EIA study also concludes that, of the 20 major interstate pipelines, only five had WACOGs in 1984 below the then applicable $2.36 per MMBtu MLP for post-1974 section 104 gas.[234] Finally, the EIA study concludes that 90 percent of existing old, flowing gas contracts contain indefinite price escalators, area rate clauses or other non-market responsive contract terms which could trigger an automatic escalation of contract prices upon wellhead deregulation without any requirement of contract renegotiation or reference to a definite pricing term.

Based on these studies and data in the record, the Commission can make some conservative assumptions concerning the short term trend of new and high-cost gas prices likely under the final rule. If such prices are assumed to continue declining 10 percent a year through 1986 and 1987, (a low estimate compared to AGA's 14 percent per year forecast under $25 oil) then 5.4 Tcf of gas can be expected to decline from an average price of $3.37 in February 1986 to $2.70 per Mcf by January 1, 1988—an overall annual savings in gas cost of $3.63 billion.[235]

On the other hand, 2.01 Tcf of existing old gas volumes are currently priced under NGPA section 104 at an average of $1.61 per MMBtu and below, versus the remaining 1.2 Tcf priced $2.12 per MMBtu and above. We have assumed hypothetically that 90 percent of these volumes will rise to the current average price of the post-1974 section 104 vintage by January 1, 1988—an unrealistically high assumption considering current spot gas prices and the collapse of oil prices. Under this assumption, 1.8 Tcf of old gas currently priced at an overall average of 82 cents per MMBtu would increase to $2.49 per MMBtu by 1988—an overall, hypothetical $3.01 billion in increased old gas costs.

The bottom line under these hypothetical assumptions would be a net *decrease* under the final rule of $620 million in gas costs, an average of 6 cents per MMBtu. However, the Commission considers this a "worst case" scenario because it intentionally *underestimates* the likely dynamic, short-term decline in high-cost gas prices, and *overestimates* the short-term potential increase in old-gas prices. This analysis also ignores the further downward pressures of collapsing oil prices, consumer access to alternative gas supplies under Commission Orders No. 380 and 436, incremental supplies of old gas and the "good faith renegotiation" requirements in the final rule.

For example, the Commission has also considered the assumption in the "AGA 1986 Base Case" that average wellhead gas prices decline 14.3 percent annually from 1985 to 1987, and gas acquisition costs reach an average of $1.87 per MMBtu by 1988. Applying these assumptions to the final rule, new and high-cost gas prices would drop an average of 96 cents per Mcf to $2.41 per Mcf. On the other hand, low-priced vintages of old gas would rise an average of $1.05 per MMBtu to $1.87 per MMBtu. Remaining high-priced vintages of old gas would decline from $2.48 per MMBtu to $1.87 per MMBtu. The resulting hypothetical $1.89 billion increase in low-priced old gas costs would be offset by a combined $5.94 billion decline in new gas and high-priced old gas costs—$5.21 billion from new gas and $730 million from high-priced old gas volumes. The bottom line would be a net *decrease* in overall gas costs under the final rule of $4.05 billion, or 41 cents per MMBtu. Again, however, even this hypothetical projection overestimates any increase in old gas prices under the final rule, because the rule prohibits collection under the higher ceiling price unless the existing purchaser agrees to the new price, or unless the producer is able to negotiate a higher price with another purchaser elsewhere *and* can obtain transportation for the gas.

Although the general trend in pipeline and consumer prices is likely to be stable or downward under the final rule, it is impossible to predict with certainty whether some consumers on some pipeline systems may face short-term, transitional increases in their gas costs before the lower overall prices and

[233] EIA Old Gas Study, *supra*.

[234] Colorado Interstate Gas, KN Energy, Natural Gas Pipeline of America, Northern Natural Gas (Now "Enron"), Northwest Central, and Texas Eastern.

[235] All calculations regarding the hypothetical price impacts in this section are derived from Tables 3 and 4 of the EIA Old Gas Study, Table 5 of the EIA February 1986 *Natural Gas Monthly*, and the AGA 1986 Base Case. These calculations also adopt the assumption that 90 percent of existing old gas contracts contain sufficient authorization to enable the seller to collect under the new ceiling price in the final rule without further contract modification other than that expressly required by the rule itself.

enhanced supplies are made available to all pipelines under the rule.

For example, some pipelines may have quicker success in renegotiating high-cost gas prices to lower levels than others, even though the national trend is definitely downward. On the other hand, pipelines with large cushions of old gas may be less able to keep their producers from selling old gas elsewhere to higher bidders, precisely because one goal of this rule is to reduce the disparities in wellhead prices that are not attributable to the actual replacement cost of gas in national markets.

Finally, the Commission is aware that some pipelines may be less confident of their ability to renegotiate all gas prices to more competitive levels with their producers, and expecting the worst, may file for projected purchased gas costs based on the worst possible outcome of their negotiations. In this way, they would, in effect, be passing along the risks of their negotiations directly to their consumers. The Commission intends to scrutinize any such PGA filings very carefully, and will exercise its suspension authority liberally to assure that PGAs track actual gas costs as realistically as possible.

Despite these potential risks, the Commission considers that, under this rule, the overall competitive benefits of more accurate price signals, coupled with the long-term benefits of enhanced supplies of existing gas reserves, will outweigh the risks of any isolated price increases to consumers on individual pipeline systems. It is clear that consumers have suffered shortages and higher prices under the current price system for old gas, and these distortions can only cause more damage to consumers in the future, if existing reserves continue to be sold on a basis less than replacement cost. Keeping old gas rates below replacement cost can only revive shortages and high prices for future generations of consumers.

The final rule is not only intended to balance the interests of present consumers and present producers, it is intended to balance the needs of future consumers for long-term reliable gas service, with the protection of present consumers from exploitation by producers.

The Commission has chosen to price old gas at its replacement cost, while at the same time requiring producers and pipelines to go through the "good faith negotiation" procedures before collecting any higher prices. This balances the revenue needs of producers to replace reserves with the interests of consumers in assuring that all wellhead prices are subject to the maximum benefits of competition, mandated by the NGPA. The final rule achieves this balance in two ways:

(1) It prevents producers from collecting the higher price for old gas from an existing pipeline purchaser unless the purchaser expressly agrees; and

(2) It allows producers to sell their old gas to anyone in competitive wellhead markets under the new price, as long as they first have offered the gas to their existing purchaser and have completed the "good faith negotiation" process in which the purchaser can renegotiate its gas prices with the producer.

The Commission has also reviewed the recent conclusions of the Energy Information Administration (EIA) regarding the likely price impacts of the DOE proposal.[236] EIA independently reviewed the question of whether high-cost contracts are inflexible downward so that removal of controls on low-priced old gas would cause that gas to rise in price without any offsetting downward movement of high-priced gas. The source of data reviewed by EIA was purchased gas adjustment filings of selected interstate pipelines at the Commission during the first half of 1986, separated out by NGPA price category and contract year. EIA concluded:

> A review of new gas contracts indicates that high-priced gas is flexible downward in all NGPA sections and for all vintages . . . . Whatever their respective contracts stipulate, the wellhead prices of natural gas can be overwhelmed by market forces and that is precisely what is happening in the market today. Thus, current apprehensions concerning a perceived lack of downward price mobility are unfounded, just as earlier apprehensions about a 1985 gas price fly-up were unfounded.[237]

The Commission especially notes EIA's conclusions concerning the price flexibility of pre-1982 section 102 new gas contracts, the category considered by pipelines to be the most troublesome. According to EIA's review, "As might be expected, the new vintage Section 102 prices lead the decline, but even the oldest (1978–1981) vintage Section 102 prices exhibited *surprising downward flexibility.*" [238] (emphasis added)

Figures 1–6, 1–7, and 1–8 from the EIA study which graphically represent the trend in high-cost gas contract prices, are not printed in the **Federal Register** but are available from the Federal Energy Regulatory Commission.

[236] "An Analysis of the Department of Energy's Notice of Proposed Rulemaking (NOPR), 'Ceiling Prices: Old Gas Pricing Structure' ", *Service Report*, Energy Information Administration, May 1986 (RNGD-86-03).

[237] *Id.* at p. v.

[238] *Id.*

The EIA study also reviewed the short-term and long-term price impacts of the DOE proposal, based on $20 per barrel world oil prices and implementation of non-discriminatory transportation under Order No. 436. EIA based these price impact estimates on a base case forecast of gas markets, in which it is assumed that real world oil prices equal $20 per barrel from 1986 to 1995, supply and demand elasticities (e.g. fuel switching) are consistent with the model used in EIA's *Annual Energy Outlook*, and Order No. 436 is implemented aggressively and generically. In the short-term, EIA concluded,

> . . . Since most old interstate gas is currently priced below the average U.S. wellhead price, the addition of such gas will put downward pressure on prices . . . . It is EIA's judgment that, if implemented generically, Order 436 would create sufficient competition in gas markets to drive the average price down to near the level of the current spot market, a decrease of about $.30 per Mcf in 1986–1988. Based upon historical experience, this decrease would increase demand by about .25 Tcf per year and thus cause the gas bubble to be drawn down earlier, probably before 1990. The effect of FERC Order 436, coupled with the shrinking of the current gas bubble, is to *keep wellhead prices below $2.00 per Mcf through 1990.*[239] (emphasis added)

Over the long-term, EIA concludes that 28 Tcf of additional gas supplies would be stimulated by the DOE proposal, beginning after the "bubble" of surplus gas deliverability disappears in 1990. If these supplies are produced over a 20-year period, about 1.5 Tcf would reach the market each year. According to EIA, these additional supplies brought on-line under the DOE proposal would keep wellhead prices throughout the 1990s at $.35 per Mcf lower than the price of natural gas without the additional supplies. By 1995, the average wellhead price of natural gas would be $2.91 per Mcf under the DOE proposal, compared to $3.26 per Mcf without the proposal.[240]

EIA's supply enhancement estimates are based on an independent reservoir engineering study it applied to field-specific data available for 557 Texas gas fields under a stipulated wellhead price of $2.50 per Mcf, in order to estimated the effects of delayed abandonment. EIA also estimated infill drilling recovery, on the basis of a thorough review of a sample of five specific gas fields which already were expected to yield 75 percent of the additional supplies projected for delayed

[239] *Id.* at pp. viii–ix.

[240] *Id.* at pp. 43, 45.

abandonment. Finally, EIA accepted the estimates of other studies as to the potential recovery of 6 Tcf by well stimulation.

The Commission notes that, under $20 per barrel oil prices and even without Order No. 436, EIA projects that average wellhead prices will decline over 5 percent per year, from $2.60 per Mcf in 1985 to $2.07 per Mcf in 1988. When the impact of Order No. 436 is factored in, EIA estimates average wellhead prices will decline nearly 8 percent per year over the short-term, from $2.60 per Mcf in 1985 to $1.80 per Mcf in 1988.[241]

For these reasons, the Commission concludes that the final rule will not unreasonably increase consumer gas prices over the short-term, and over the long-term will reduce city-gate gas prices in response to competitive wellhead markets and enhanced recovery of old gas supplies.

F. Good Faith Negotiation Rule.

Producers may collect the new ceiling price only to the extent permitted by their contracts. Indefinite price escalation clauses in existing contracts provide the necessary contractual authority.[242] However, the Commission believes that producers with indefinite price escalation clauses should not automatically receive the new ceiling price. Otherwise, the ceiling price would become a floor and that would distort the market as much as current artificially low ceiling prices. Therefore, the Commission will require that parties to existing contracts who do not voluntarily negotiate a new or amended contract price, comply with a "Good Faith Negotiation Rule" before raising the price above current ceiling prices. By allowing each party to assess the value of the old gas in light of competition and other market forces, that rule should prevent old-gas prices from rising above market prices.

The Commission generally adopts the good faith negotiation rule proposed by DOE in its NOPR. However, in order to provide more balanced negotiating rights among the parties, the Commission modifies DOE's proposed rule so that when a producer seeks a higher price for old gas in one contract the purchaser may seek a lower price for all gas (both old and new) in any contract between the parties containing any old gas. This should result in all old gas being priced at the lower of the market or the ceiling price and eliminate the possibility that a purchaser under a multi-vintage contract could be required to continue purchasing the high-cost new gas while the purchaser abandons sales of the low-cost old gas. In addition, this modification should significantly assist in bringing down the price of high-cost gas, including that sold under non-market responsive contracts. The Commission also makes certain other changes in the good faith negotiation rule.

Comments. In the NOPR, DOE proposed that each producer be given a one-time right, exercisable at any time, to request the existing purchaser of old gas under a contract in effect on July 1, 1986, to nominate within 60 days the price the purchaser is willing to pay for the gas. If the existing purchaser refuses to nominate a price, the producer would be free to sell the gas to a new purchaser and would be released from all obligations in law and contract to the existing purchaser upon 30 days written notice that a new purchaser had been found. In the interim, however, the producer would be required to continue to sell the gas to the original purchaser at the existing contract price.

If the purchaser nominates the highest price permitted by the existing contract (in most cases the post-1974 MLP), the producer would be required to sell the gas to the purchaser at that price. If the purchaser nominates a price less than the highest price permitted by the contract, the producer would have 30 days to indicate whether it accepts or rejects the nominated price. If the producer accepts the nominated price, the producer would be required to sell the gas to the existing purchaser at that price. If the producer rejects the nominated price, the producer would be free to sell the gas to a new purchaser who offered to pay a price higher than the nominated price for a term of at least two years. Once a new purchaser is found, the producer would be released from all obligations in law and contract to the existing purchaser upon 30 days notice. However, in the interim the producer would be required to continue to sell the gas to the existing purchaser at the existing contract price.

Pipeline, distributor and consumer commenters contend that the DOE good faith negotiation rule is illegal and unsound in policy.[243] First, they contend that the provision of the good faith negotiation rule releasing the producer from all obligations in law to the purchaser if the purchaser fails to nominate an acceptable price grants producers blanket abandonment in violation of NGA section 7(b). Producers sell old gas under certificates of public convenience and necessity issued under section 7(c) of the NGA. Therefore, they may not terminate sales without abandonment authorization from the Commission pursuant to section 7(b) of the NGA. Section 7(b) permits the Commission to grant abandonment only after a hearing and a finding that abandonment is warranted because the available gas supply is depleted or the present or future public convenience or necessity warrant the abandonment. The opposing commenters argue that the good faith negotiation rule would permit abandonment without the necessary hearing or finding that abandonment is in the public interest.

Opposing commenters also contend that the good faith negotiation rule violates the *Mobile-Sierra* doctrine and section 5(a) of the NGA. In *United Gas Pipeline Co.* v. *Mobile Gas Corp.*, 350 U.S. 332 (1956), the Supreme Court held that a natural gas company may not unilaterally change its contract. The court further stated that a producer dissatisfied with the existing contract rate may obtain relief only through an NGA section 5(a) proceeding in which the Commission may, after a hearing and based on substantial evidence, determine the existing rate to be unjust and unreasonable. Commenters argue that, contrary to the *Mobile-Sierra* doctrine, the good faith negotiation rule allows a producer unilaterally to abrogate its contract if dissatisfied with the price nominated by the purchaser

[241] *Id.*

[242] The record indicates that 85 to 90 percent of old gas contracts have indefinite price escalation clauses.

[243] Northwest Central Pipeline Corporation at 13–15, 18–19; Columbia Gas Transmission Corporation at 7; ANR Pipeline Company at 4–5; KN Energy Inc. at 10–11; Kansas Power & Light Company at 14–16; Public Service Commission of West Virginia at 10–11; Transcontinental Gas Pipe Line Corporation, at 5–7; Texas Eastern Transmission Corporation at 23–25; Natural Gas Pipeline Company of America at 14–16, 34–36; Baltimore Gas & Electric Company at 3–4; El Paso Natural Gas Company at 6–10, 16–17; Public Utilities Commission of California at 31–34; Southern California Gas Company at 19–21; Interstate Natural Gas Association of America at 21–24; Tennessee Gas Pipeline Company at 8–9, 19–23; Peoples Gas Light and Coke Company and North Shore Gas Company at 13–15; Northern Illinois Gas Company at 7; Panhandle Eastern Pipe Line Company and Trunkline Gas Company at 13–16, 25; Southwest Gas Corporation at 6; Minnesota Department of Public Service at 6; Dorchester Hugoton at 7; American Public Gas Association at 62–73; Rochester Gas and Electric Corporation at 25–27; Illinois Commerce Commission at 15–16; Consumer Advocate Division of Public Service Commission of West Virginia at 7–8; E. I. DuPont de Nemours & Company at 14–19; Delhi Gas Pipeline Corporation, reply comments at 2–4; American Gas Association, reply comments at 18–23; People's Gas System Inc., reply comments at 9–10; United Distribution Companies, reply comments at 47–50; American Gas Association at 3, at 10–11, 27–31; Texas Independent Producers and Royalty Owners Ass'n at 6–7; Northern Natural Gas Company at 3, 5; Northwest Pipeline Corporation at 6–13.

without the hearing or findings required by section 5(a) of the NGA.

Finally, the opposing commenters argue that the good faith negotiation rule is unduly weighted in favor of producers. By permitting producers who do not get a satisfactory offer from purchasers unilaterally to walk away from their contracts, the rule allegedly would require purchasers to bid the maximum lawful price or face the loss of formerly "low-cost" gas supplies. Commenters contend that as a result the proposed rule's new ceiling price for gas will become the floor.[244] Some opposing commenters also contend that the good faith negotiation rule leads to particularly unfair results with respect to multi-vintage contracts. In such contracts the purchaser may have agreed to a relatively high price for new gas in reliance upon the old gas being priced at or less than current ceiling prices. However, the good faith negotiation rule would permit the producer to seek a higher price for the old gas and, if dissatisfied with the price offered by the purchaser, abandon the sales of the old gas while requiring the purchaser to continue purchasing the high-cost new gas.[245]

Producer commenters and DOE contend that the rule as proposed does not violate NGA section 7 since the requirement of a hearing before granting abandonment is satisfied by the hearing and comment procedure provided in this rulemaking proceeding and automatic abandonment under the good faith negotiation rule is in the public interest. Furthermore, these commenters contend that the good faith negotiation rule does not allow producers unilaterally to change or abrogate contracts where the pipeline refuses to agree to a new higher contract price desired by the producers. Instead, there would be a bilateral agreement not to continue under the existing contract and its existing authority to collect the higher ceiling price without renegotiation. Therefore, there is no violation of the *Mobile-Sierra* doctrine. Finally, these commenters contend that the good faith negotiation rule is not unduly weighted in favor of the producer but provides for balanced negotiation.

In their comments supporting the DOE proposal, Indicated Producers present a modified good faith negotiation procedure designed to avoid the legal challenges raised by parties opposing the DOE rule. Under this proposal, the Commission would impose a moratorium on rate increase filings for old gas subject to the new ceiling price until one of three conditions is met. The first condition would be that the producer files a new or amended contract together with a petition requesting authorization to collect the applicable contract rate, up to the new maximum lawful price. The second condition would be that the producer files for collection of the applicable contract rate, up to the new maximum lawful price, together with an agreement by the purchaser that the moratorium be lifted. The third condition would be that the producer files an application for abandonment of the sale of the gas and tenders to the purchaser a release from the contract for the gas which is the subject of the abandonment application. If this is done, the producer could simultaneously file for collection of the applicable contract rate agreed to by a third party, up to the new maximum lawful price, and would be entitled to collect this rate from the original purchaser until abandonment is granted. The pipeline and its customers could either contest the abandonment application or support it and accept the release offered by the producer.

Indicated Producers argue that the modified proposal will give pipelines as well as producers compelling economic incentives to renegotiate their contracts in order to provide for market-responsive old-gas prices while avoiding possible legal infirmities in the good faith negotiation rule proposed by DOE. The Natural Gas Supply Association (NGSA) supports Indicated Producers' proposed modification of the good faith negotiation rule.

Commission Response. The Commission rejects opposing commenters' contentions that the grant of abandonment to a producer if the purchaser fails to nominate a price or nominates an unacceptable price violates NGA section 7(b). The Commission finds, based on the present record, that the present and future public convenience or necessity permit abandonment in such circumstances. Granting abandonment where the existing purchaser fails to make an acceptable offer is in the interest of the market as a whole.[246] This abandonment is necessary to ensure that all old gas, with its relatively low production cost, can obtain the market-responsive prices permitted by this rule. Without the possibility of abandonment, the purchaser could simply insist on a continuation of the present price. Only through such higher prices will increased production through delayed abandonment occur, as described in section IV D, *supra*. The resulting increased supply of old gas will displace higher-cost gas, create more competition in the market place, and thus bring down overall prices as described in section IV E, *supra*.

The Commission also finds without merit the opposing commenters' contention that the good faith negotiation rule's provision for abandonment violates NGA section 7(b)'s hearing requirement. That hearing requirement is satisfied by the hearing and opportunities to comment provided in the present rulemaking. Section 7(b) does not require that the Commission hold individual case-by-case hearings.[247] The Commission has determined in this proceeding that the public interest permits abandonment of old gas wells in cases where a purchaser fails to nominate an acceptable price. Therefore, it would make no sense for the Commission to require individual producers to file abandonment applications and to hold a hearing on each application. Since there are thousands of producers of old gas, that procedure could result in a vast proliferation of hearings. Given the Commission's limited resources, the inevitable result would be lengthy delays before individual abandonments could be granted. This would seriously impede the achievement of this rule's goals of increasing production of old gas and reducing overall prices. As the Supreme Court said in *Texaco* v. *FPC*, "We see no reason why under this statutory scheme the processes of regulation need be so prolonged and crippled." [248] Accordingly, the

[244] See, for example, INGAA at 22–24.

[245] See Northwest Pipeline Corporation at 10–11.

[246] In *Felmont Oil Corp. and Essex Offshore Inc.*, 33 FERC ¶ 61,333 at 61,657 (1985), the Commission announced a change in its abandonment policy, stating that there would be "a shift in the identification of the public interest, from the interest of only specific customers to the interests of the market as a whole."

[247] *See Phillips Petroleum Co.* v. *FPC*, 475 F.2d 842, 848-852 (10th Cir. 1973), and *American Public Gas Ass'n.* v. *FPC*, 567 F.2d 1016, 1064-1067 (D.C. Cir. 1977), holding that the Commission may establish area and national rates in rulemaking proceedings as opposed to case-by-case adjudications without violating the similar hearing requirements of NGA sections 4 and 5. *See also FPC* v. *Moss*, 424 U.S 494, 500-501 (1976), stating that the Commission has discretion to determine the timing of its finding that the public convenience or necessity permit abandonment, including the discretion to pre-grant abandonment on a generic basis even though years may elapse before the abandonment actually occurs.

[248] 377 U.S. at 33, 44 (1964). *See also Phillips Petroleum Co.* v. *FPC*, 475 F.2d at 849, 851, citing Permian, 390 U.S. at 777, holding the the Commission has broad discretion to contrive expeditious administrative methods in order to achieve its regulatory purposes.

Commission holds that where the purchaser fails to nominate a price, or nominates a price which the producer rejects, the producer is granted abandonment upon 30 days notice.[249]

Second, the Commission rejects the opposing commenters' contention that the good faith negotiation rule permits producers unilaterally to change or abrogate contracts in violation of the *Mobile-Sierra* doctrine and section 5(a) of the NGA. This contention is based on a misunderstanding of how the good faith negotiation rule works. As DOE and supporting commenters observe, the producer cannot alter the contract in any way under the good faith negotiation rule. It can obtain a higher price only if the existing contract already provides for such higher price through an indefinite price escalation clause. Furthermore, the purchaser has an absolute right to continue the existing contract if it is willing to pay the highest price permitted in that contract. However, as a condition to obtaining a higher price under the contract, the producer must give the purchaser an opportunity to seek a lower price under that contract and certain other contracts, or terminate the contracts if it is unwilling to pay the contract price or such lower price as the producer is willing to accept. The producer is required to give the purchaser this right in order to prevent indefinite price escalation clauses in existing contracts from automatically raising the price to the new ceiling price. In the case of other old gas for which the purchaser affirmatively requests a lower price or other categories of gas under a multi-vintage contract containing old gas, again, the pipeline, not the producer, is initiating the renegotiation process, and only as a condition precedent to the producer being authorized to collect a higher price under an existing contract pursuant to an indefinite escalation clause. Thus, only the purchaser, not the producer, has a right to terminate the contract, and the purchaser has that right only because the producer has chosen to give it to him. There is, therefore, no violation of the *Mobile-Sierra* doctrine. To the extent the Commission must, pursuant to NGA section 5, hold a hearing and find that the existing rate is unjust and unreasonable before the producer can obtain a rate higher than the present rate, the Commission has in the present proceeding already made such a finding after a hearing. *See* section IV B, *supra*.

[249] As explained in more detail later, *infra* at pages 196–199, the abandonment will be limited to the old gas wells for which the producer sought a higher price.

The Commission generally disagrees with the opposing commenters' contention that the good faith negotiation rule, as proposed, is unfairly weighted in favor of producers and would result in pre-1975 gas escalating to the new price ceiling while no other gas would come down in price. As explained in Section IV E, the Commission believes that competitive forces in the natural gas market, including competition from alternative fuels, would prevent this from happening. However, the Commission does agree that the rule as proposed could be unbalanced in two respects. First, the rule provides only for the renegotiation of old gas contracts with below-market prices and does not permit purchasers to obtain the renegotiation of old gas contracts with above-market prices. For example, if a producer and purchaser had two contracts, one covering primarily pre-1973 flowing gas and the other covering primarily post-1974 gas, the producer could seek a higher price only for the first contract. There would be no way for the purchaser to seek a lower price for the post-1974 old gas in the second contract under the good faith negotiation rule even though the post-1974 ceiling price may be above the current market price for gas.

Second, the Commission agrees with the contentions of opposing commenters that the good faith negotiation rule, as proposed, could be unbalanced in its treatment of multi-vintage contracts. For example, if a contract included both old and other gas, the producer could seek a higher price for the old gas but the purchaser could not seek a lower price for the other gas. If the producer was not satisfied with the price nominated by the purchaser for the old gas, the producer could terminate sales of the old gas to the purchaser, sell that gas to a third party, but require the purchaser to continue purchasing the other gas. Yet the purchaser may have agreed to the high price for the other gas in reliance on the fact the low cost of the old gas lowered the average price under the contract to reasonable levels.

In order to cure these inequities in the operation of the good faith negotiation rule as proposed and to assure that purchasers will have the ability to substantially reduce their cost of purchasing high-cost gas, the Commission will modify the good faith negotiation rule as follows. If a producer makes a nomination request with respect to old gas in one contract, the Commission will permit the purchaser to seek a lower price for any gas, whether old or new, in any contract between the parties which contains some old gas. In the event the producer and purchaser cannot agree on a new price for the gas for which the purchaser made a nomination request, the purchaser shall have the right to terminate its purchases of that gas under the contract in question.[250] If the purchaser exercises this right with respect to gas subject to the Commission's NGA jurisdiction, the Commission will also permit abandonment. The public convenience and necessity permits that abandonment for the same reasons discussed above with respect to the producer's abandonment of sales of below-market old gas and because the purchaser is no longer taking the gas. Permitting the purchaser to seek a lower price for all gas in any contract containing any old gas will enable purchasers to bring down the cost of all above-market old gas and the cost of any other above-market gas in multi-vintage contracts. This should substantially reinforce the purchaser's ability to reduce its cost of purchasing high-cost gas, including that sold under non-market responsive contracts.[251]

The Commission also modifies the good faith negotiation rule so as to eliminate the requirement that any contract the producer enters into with a third party after rejecting the price nominated by the purchaser be for a higher price and a term of at least two years. The Commission believes that

[250] This would, of course, include a right for the purchaser to terminate purchases of some gas removed from the Commission's NGA jurisdiction. *Pennzoil Co.* v. *FERC*, 645 F.2d 360 (5th Cir. 1981), *cert. denied*, 454 U.S. 1142 (1982), holding that the Commission can no longer interpret contracts that cover gas removed from the Commission's NGA jurisdiction, does not prevent the Commission from requiring that producers provide purchasers this opportunity under the good faith negotiation rule. The Commission is acting pursuant to its authority under NGPA sections 104(b)(2), 106(c), and 501(a) to condition the producer's eligibility to obtain a higher price for jurisdictional old gas under the good faith negotiation rule on its giving the purchaser an opportunity to renegotiate all gas under multi-vintage contracts containing any old gas. *Shell Oil Co.* v. *FPC*, 520 F.2d 1061, 1077 (5th Cir. 1975), supports the Commission's authority to condition collection of a new just and reasonable ceiling price under NGPA sections 104 and 106 on a contractual *quid pro quo*. *See also Pennzoil Co.* v. *FERC*, 671 F.2d 119, 127 (5th Cir. 1982), holding that the Commission may place such conditions on eligibility for a ceiling price as are"reasonably calculated to further [the Commission's] legitimate regulatory policy."

[251] *See* the more detailed discussion of this matter, *supra* at 149–1500

The Commission will also deem any pipeline which has not accepted Order No. 436 to have agreed to transport gas whose sale has been abandoned or released by either the producer or the pipeline under the good faith negotiation rule to any existing customer of the pipeline or another pipeline interconnected with the first pipeline. This matter is discussed in more detail in section VI D.

these requirements would be contrary to the goal of making natural gas contracts more market-responsive. The two-year requirement effectively prohibits market-out clauses for a period of two years. Most new contracts contain such clauses and such clauses have been instrumental in permitting pipelines to reduce their purchased gas costs in recent years. Also, both the two-year and higher price requirements seem unfair and unnecessary in light of the increased bargaining rights the Commission has given the purchaser with respect to above-market old gas and to other gas in multi-vintage contracts. Finally, the higher price requirement is also unnecessary since it is extremely unlikely the seller would sell gas for less than the price it could obtain from the original purchaser. Furthermore, the final rule provides the firm sales customers of the original purchaser with a right of first refusal of any offer to sell the gas to a new purchaser.

For the reasons described above, the Commission believes that the good faith negotiation rule, as modified, provides for balanced negotiation between the parties. In addition, the Commission finds unconvincing the contention of opposing commenters that the good faith negotiation rule would require purchasers to nominate the new ceiling price for old gas since otherwise they would risk loss of that gas. The good faith negotiation rule is designed to benefit purchasers by giving them a right, not generally provided by their contracts, to seek a price lower than that which the contracts would otherwise require them to pay. Any assertion that this right is illusory overlooks the substantial incentive producers have to reach an agreement with the existing purchaser. The producer is unlikely to sell to another purchaser unless it finds one willing to offer a better bargain than the existing purchaser. In today's market that may be difficult. Until the producer commences sales to an alternative purchaser, it must continue sales to the original purchaser at the old low prices. Also, the purchaser's right under the modified good faith negotiation rule to terminate purchases of above-market gas, whether old or new, in any contract containing any old gas gives the purchaser an additional strong bargaining card in any negotiation with the producer. In light of these pressures on the producer to negotiate in good faith, it is unreasonable to believe that, in today's competitive market, pipelines will feel constrained to nominate the ceiling price in order to avoid loss of old gas. The fact that pipelines are currently marketing out on all categories of gas at prices less than the post-1974 ceiling price (see table 2 at page 143) further supports the Commission's belief that pipelines will not automatically nominate the ceiling price.

Some commenters contend that a pipeline's sales customers may be harmed when old gas sales to that pipeline are abandoned under this rule. The pipeline's customers may have relied on the pipeline's continued access to that gas, pursuant to the producer's NGA service obligation, as insuring that they had access to an adequate supply of gas at reasonable prices. The commenters contend that the pipeline's loss of the gas may increase the pipeline's system supply sales costs, thereby harming the pipeline's firm customers.[252] The Commission believes that generally a pipe-line's customers will not suffer higher prices under this rule. As explained in Section IV E, *supra*, the Commission believes that competitive pressures, including competition from alternative fuels, will create strong pressures on pipelines to take such actions as are necessary to keep their WACOGs down in order to avoid loss of market.

However, in order to afford additional protection to the pipeline's customers, the Commission makes a further modification in the good faith negotiation rule. The Commission will require that, whenever gas is released under this rule and the existing purchaser is not an Order No. 436 transporter, the producer may not sell gas subject to the Commission's NGA jurisdiction to anyone other than the pipeline's firm sales customers until it has given those customers a right of first refusal. If the seller makes an offer to a third party encompassing non-jurisdictional, as well as jurisdictional gas, the right of first refusal will apply to the entire offer. The right of first refusal would give the firm sales customers an opportunity to purchase the gas under the identical terms agreed to between the producer and the third party. If more than one firm sales customer accepts the third party offer, the producer may at its discretion choose which firm sales customer it will sell the gas to. The pipeline is deemed to agree to transport the gas to the firm sales customers.[253] There is no need to provide the firm sales customers a right of first refusal when their pipeline is an Order No. 436 transporter, since the customers of an Order No. 436 pipeline could purchase gas from any producer connected to that pipeline and have the gas transported to them.

This procedure should enable firm sales customers to purchase any gas abandoned under this rule at a price approximately equal to or less than the pipeline's WACOG.[254] Thus, the firm sales customer's access to adequate supply at reasonable cost is protected.

Finally, the Commission alters the good faith negotiation rule as proposed in one other respect. The Commission provides that no producer may request a purchaser to nominate a price under the good faith negotiation rule until November 1, 1986. This will allow the parties an opportunity to voluntarily renegotiate their contracts before negotiations begin pursuant to the good faith negotiation rule. It will also provide all affected parties an opportunity to familiarize themselves with the operation of the rule.[255]

The following is a summary of the operation of the good faith negotiation rule, as modified. The Commission will illustrate the summary by reference to the following example. A producer and purchaser have two contracts, Contract A and Contract B, both existing on the effective date of this rule and both with indefinite price escalation clauses permitting the producer to collect the highest price allowed by law. Each contract provides for the sale of gas from pre-1973 flowing gas wells, post-1974 old gas wells, and new gas wells. However, most of the gas sold under Contract A is pre-1973 flowing gas while most of the gas sold under Contract B is post-1974 old gas and new gas. The good faith negotiation process is initiated by a producer requesting in writing that a purchaser of old gas under a contract or service obligation existing on the effective date of this rule nominate a new price[256] for the old gas. Of course,

[252] In particular, some commenters fear that off-system purchasers, such as large industrial users, could outbid the pipeline for the gas since they generally do not have the take-or-pay obligations for new gas that many pipelines have and that this would cause the pipeline's system supply sales cost to rise.

[253] See Section VI D.

[254] The firm sales customer will probably pay more for any abandoned gas than the pipeline paid for that particular gas, but this does not mean the customer will be paying more than it previously paid the pipeline for a comparable amount of gas since the price the customer paid the pipeline represented the rolled-in cost of all the pipeline's gas.

[255] See petitions of AGA, AGD, INGAA, and UDC filed May 23, 1986.

[256] Obviously, the producer's goal would be to obtain a higher price. However, nothing in the rule prevents a purchaser from nominating either the same price currently being paid or a lower price.

there must be contractual authority for a higher price, for example through an indefinite price escalation clause. The producer may make a request at any time after October 31, 1986, but no more than once with respect to any particular contract. The producer may also specify the particular old gas wells for which it desires the purchaser to nominate a price.

Thus, in the Commission's example, since both contracts existed on July 18, 1986, and contain indefinite price escalation clauses, the producer may request the purchaser to nominate a new price for the old gas in either or both contracts.[257] Therefore, the producer might well choose, initially at least, to make a request only with respect to Contract A since most of the gas covered by Contract B is already at above-market prices. The producer might also specify that the purchaser nominate a new price only for the pre-1973 flowing gas wells in Contract A. Assuming the producer does this, however, it may not subsequently request the purchaser to nominate a price for the post-1974 old gas under Contract A.[258] However, since Contract B has not yet been placed on the negotiating table, nothing would prevent the producer from making a subsequent nomination request with respect to old gas under that contract. For convenience, the Commission will refer to the producer's initial nomination request as "step 1" in the nomination request process under the good faith negotiation rule.

Within thirty days of the producer's request in step 1, the purchaser may request in writing that the producer nominate a new price[259] for any old or other gas sold under the contract covered by the producer's request. In addition, the purchaser may request that the producer nominate a new price for any gas sold under any other contract between the parties which contains some old gas. As is the case with the producer, the purchaser may specify the particular wells both in the contract covered by the producer's original request and in the other old gas contracts for which it desires the producer to nominate a price, but may not subsequently request that the producer nominate a new price for any wells in either contract for which it does not request the producer to nominate a price. Also, the purchaser may include in its request the same old gas wells covered by the producer's request. This constitutes step 2 in the nominating request process under the good faith negotiation rule.

Accordingly, in the Commission's example, where the producer had requested that the purchaser nominate a new price only for the pre-1973 flowing gas in Contract A, the purchaser could request that the producer nominate a new price[260] for any gas in Contract A.[261] In addition, since Contract B contains old gas, the purchaser could request that the producer nominate a new price for any gas in that contract. If, however, Contract B had contained only new gas, the purchaser could not request that the producer nominate a new price for the gas in that contract.

Within thirty days of the purchaser's request that the producer nominate a new price for any gas in contracts not included in the producer's original request, the producer may request in writing that the purchaser nominate a new price for any old gas in those contracts. This is identified as step 3 of the nominating request procedure. Thus, if in the Commission's example the purchaser requested that the producer nominate a new price for the post-1974 old gas and the new gas in Contract B, the producer could request that the purchaser nominate a new price for the pre-1973 flowing gas in Contract B. If the producer failed to request that the purchaser nominate a price for pre-1973 flowing gas in Contract B, it could not subsequently make such a request since that contract is now on the negotiating table and a contract may be renegotiated only once under the good faith negotiation rule.

A request by a producer that the purchaser nominate a new price in either step 1 or step 3 will initiate the following procedures. The purchaser will have sixty days from the producer's request to nominate in writing the price it is willing to pay. If the purchaser nominates the highest price permitted by the existing contract (in most cases the post-1974 MLP), the producer would be required to sell the gas to the purchaser at that price under the existing contract. If the purchaser nominates a price less than the highest price permitted by the contract, the producer would have 30 days to indicate whether it accepts or rejects the nominated price. If the producer accepts the nominated price, the producer would be required to sell the gas to the existing purchaser at that price under the existing contract. If the producer rejects the nominated price, the producer would be free to sell all the gas to a new purchaser subject to a right of first refusal on the part of the existing firm customers of the existing purchaser. There would be no required term for the new contract, nor any higher price requirement. Once a new purchaser is found, the producer would be released from all obligations in law and contract to the existing purchaser upon 30 days notice. However, in the interim, the producer would be required to continue to sell the gas to the existing purchaser at the existing contract price. If the purchaser failed to nominate a price in writing, the producer's rights would be the same as when it rejected the purchaser's offer.

The operation of these procedures may be illustrated using the

[257] The Commission has assumed both contracts existed on July 18, 1986. If one had expired on June 1, 1986 but sales were continuing pursuant to a service obligation, the producer could still make a nomination request so long as the expired contract contained an indefinite price escalation clause. However, if one of the contracts was not entered into until August 1, 1986 that contract could not be renegotiated under the good faith negotiation rule. The contract is considered entered into as of the date it is executed. The Commission also assumed in the example that both contracts contained indefinite price escalation clauses. There could be more complicated situations. For example, a contract mignt have an indefinite price escalation clause and cover 1973–1974 Biennium gas. However, the parties may have executed an amendment providing that the gas be sold at a fixed price less than the 1973–1974 Biennium ceiling price for the period May 1, 1986 to April 30, 1987. In this case, the producer may at any time after October 31, 1986 request the purchaser to nominate a new price for the 1973–1974 Biennium gas but such price would only apply starting May 1, 1987 since there is no contractual authority for a higher price before then.

[258] In the Commission's example, the producer has lost nothing by not making a nomination request with respect to the post-1974 gas in Contract A since that gas is already priced at the new ceiling price. However, if the contract had included 1973–1974 Biennium gas and the producer made no nomination request with respect to that gas, the producer would have lost the right to negotiate a higher price for that gas under the good faith negotiation rule. Accordingly, if a producer believes that it could not in present market conditions obtain a higher price for 1973–1974 Biennium gas, as an example, it may wish to postpone making any nomination request with respect to the contract until a later date when it believes market conditions are more favorable.

[259] The producer is free to nominate a higher price than is currently being paid to the extent applicable ceiling prices would not be violated and the contract permits it.

[260] Presumably, the only old gas in those contracts the purchaser would request that the producer nominate a new price for would be the post-1974 old gas and new gas since that is the only gas it could reasonably expect to obtain a lower price for.

[261] If the purchaser believes that some of the gas for which the producer requested it to nominate a price is overpriced, the purchaser may want to request that the producer nominate a price for the same gas. This is because, even if the purchaser nominated a lower price in response to the producer's request, the producer could reject the nominated price but not terminate sales. In this event, the purchaser would be required to continue purchases at the existing price unless it had requested that the producer nominate a price and rejected the price nominated by the producer. In the latter circumstance, the purchaser could terminate its purchases. Such a situation is perhaps most likely to occur with respect to 1973–1974 Biennium gas, which is not included in the Commission's example.

Commission's example described above. If in step 1 the producer requested that the purchaser nominate a new price for the pre-1973 flowing gas in Contract A and the purchaser either failed to nominate a price or the producer rejected the nominated price,[262] the producer would be free to sell the pre-1973 flowing gas to another party subject to the right of first refusal of the existing purchaser's firm customers. If the producer found a purchaser for part or all of that gas, the producer could abandon the sales of the gas to be sold to the other purchaser upon 30 days notice.[263] Contract A would, however, remain in effect with respect to all other gas subject, however, to further alteration as a result of any nomination requests made with respect to that contract in other steps of the nominating request procedure.

A request by a purchaser that a producer nominate a new price in step 2 will initiate the following procedures. The producer will have 60 days from the purchaser's request to nominate in writing the price it is willing to accept. The purchaser will have 30 days thereafter to indicate whether it accepts or rejects the nominated price. If the purchaser accepts the nominated price, it will continue purchasing the gas at that price under the existing contracts; if the purchaser rejects the nominated price, it shall be permitted at any time thereafter, upon 30 days written notice to the producer, to discontinue purchases from the wells subject to the nomination request. Pending expiration of the 30 day notice period, the purchaser shall be required to continue its purchases at the existing price under the contract. Once purchases are discontinued, the sales of the gas will be deemed abandoned and the producer will be free to sell the gas to another purchaser.

Accordingly, in the Commission's example, if in step 2 the purchaser requests that the producer nominate a new price for the post-1974 old gas and the new gas in Contracts A and B and rejects the price nominated by the producer for each contract,[264] it may discontinue purchases from some or all of the post-1974 and new gas wells at its discretion upon 30 days notice. Both contracts remain in effect, however, with respect to all other gas, subject to further alteration resulting from other nomination requests made under the good faith negotiation rule.

Whenever any gas previously sold to a pipeline which has not accepted Order No. 436 is abandoned under this rule, the producer must give the pipeline's firm sales customers a right of first refusal before selling jurisdictional gas (or any other gas included in an offer to a third party for the sale of jurisdictional gas) to anyone else. Existing firm sales customers are those as of the date the third party accepts the first seller's offer. The procedures governing the right of first refusal generally track those set forth in 18 CFR 277.206 governing the right of first refusal which NGPA section 315 requires that sellers give existing purchasers of gas removed from the Commission's NGA jurisdiction by the NGPA. Significant differences include (1) that the pipeline must inform the producer of the names and addresses of its firm customers so as to enable the producer to send the third party offer to the firm customers and (2) that the producer has discretion to determine which firm customer to which to sell the gas when more than one accepts the third party offer. If the firm customers reject the third party offer and the producer sells the gas to the third party, no further right of first refusal will arise when the contract with the third party expires or is renegotiated.

A pipeline purchaser which has not accepted Order No. 436 is deemed to agree to transport on behalf of any shipper any gas released under this rule to an existing customer of the pipeline or to any pipeline interconnected with the releasing pipeline.

Finally, the parties to any contract shall be free by mutual agreement at any time prior to abandonment under the terms of this rule to extend any deadline for action by either party under the rule and to maintain the status quo during the period of extension. In addition, the parties may, of course, renegotiate a contract at any time without using the good faith negotiation procedures except that such renegotiation of any contract will prevent any subsequent renegotiation of that contract under the good faith negotiation rule.

The Commission recognizes the complexity of the operation of the good faith negotiation rule. However, the complexity of the rule is necessary to provide balanced negotiating rights for both producers and purchasers. The Commission believes that the rule can be applied efficiently, however. The Commission expects that, before invoking the formal procedures of the good faith negotiation rule, the parties will informally consult with one another in an effort to voluntarily renegotiate their contracts. If the parties reach agreement, the good faith negotiation procedures would never be invoked. The parties would simply amend their contract, thereby removing that contract from the application of the good faith negotiation procedure in the future for purposes of this rule.[265] Accordingly, the Commission expects that the formal procedures of the good faith negotiation rule will be invoked only if the parties are unable to reach agreement and one or the other desires termination of some or all sales under a contract.

V. Adoption of the Old Gas Proposal

A. Ceiling Price and Procedures

Sections 271.402 and 271.602 of the Commission's regulations are amended to incorporate the NGPA section 104 post-1974 price as an alternative ceiling price for gas subject to maximum lawful prices under NGPA sections 104 and 106, effective July 18, 1986. Producers may collect any price up to the alternative ceiling price based on mutual agreement with their purchasers. The new ceiling price will also be available to producers in cases where the seller and purchaser renegotiate the terms of their existing contract and thus enter into a new contract. There will be no change in applicable Commission rate filing requirements.[266] However those

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[262] The producer must either accept or reject the purchaser's nomination in its entirety. The producer may not accept the nominated price for half the pre-1973 flowing gas wells but reject the nominated price for the other half. A partial acceptance is the equivalent of complete rejection. Sales continue for all the wells at the existing price, but the producer may abandon the sales upon 30 days notice.

[263] The producer need not abandon all the pre-1973 flowing gas. If it finds a new purchaser willing to pay a higher price for some of the gas, it may abandon the sales of just that gas and continue selling the other pre-1973 flowing gas to the original purchaser at the original price.

[264] The purchaser must accept or reject the producer's offer with respect to gas in one contract in its entirety. Thus, the purchaser could not accept the producer's offer for the post-1974 gas in Contract A but reject the offer for the new gas in that contract. Any attempt to do so would amount to total rejection. The purchaser would continue purchasing all the gas at the existing price subject to its right to terminate all or part of the purchases upon 30 days notice. However, the purchaser could reject the price nominated by the producer for Contract A but accept the nominated price for Contract B.

[265] Neither party may invoke the good faith negotiation rule with respect to a contract after that contract has been voluntarily amended after July 18, 1986.

[266] Pursuant to sections 154.91–154.94 of the Commission's regulations, large producers are required to maintain their contracts for jurisdictional sales of natural gas on file with the Commission as rate schedules and to file with the Commission notices of any change in rate together with the contractual authority for the change. Section 154.94(h) provides that rate changes that merely reflect application of the monthly inflation adjustment factor can be made on the basis of a

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filing requirements are waived for sales of gas abandoned under the good faith negotiation rule and resold under a blanket certificate.

A new § 270.201 of the Commission's regulations will also be adopted incorporating the good faith renegotiation procedures established by this rule.

B. Applicability

The new alternative ceiling price will be available subject to the terms of this order for any and all sales of gas which would be, absent this rule, subject to existing maximum lawful prices under sections 104 and 106 of the NGPA.

C. Affiliate Purchases and Pipeline Production

Under the NGPA, producers affiliated with interstate pipelines are entitled to applicable NGPA ceiling prices. Under the Supreme Court's decision in *Public Service Commission of New York* v. *Mid-Louisiana Gas Company*,[267] pipelines are also entitled to NGPA maximum lawful prices for gas which they produce and take into their own system.[268] In both cases, recovery of maximum lawful prices by interstate pipelines is subject to the "affiliated entities" test set forth in section 601(b)(1)(E) of the NGPA. That section provides that the amount paid is deemed just and reasonable if it does not exceed the amount paid in comparable first sales between persons not affiliated with the interstate pipeline. Consistent with existing Commission policy, affiliate and pipeline production will be eligible for the alternative ceiling price established by this rule, subject to the requirements of the affiliated entities test.

D. Minimum Rate and Fixed Price Gas

Minimum rate gas is gas sold under a contract that provides for a price lower than the minimum rate ($.32 per Mcf in April 1986) and which is thus entitled to the minimum rate as a result of the incorporation by the NGPA of the minimum rate provisions of Commission Order No. 749.[269] Fixed price gas is sold under a contract that provides for a fixed price greater than the minimum rate but less than the applicable maximum lawful price. Neither minimum rate nor fixed price contracts provide for automatic escalation to applicable maximum lawful prices.

The ability of producers under this rule to negotiate increased prices, with recourse to abandonment if agreement is not reached, is predicated on the existence of contractual authority to receive the new ceiling price. Since producers selling gas at the minimum rate or a fixed price below the applicable NGPA ceiling price do not have the required contractual authority, this rule will not provide for automatic abandonment when the purchaser refuses to agree to price increases in such cases. The Commission intends that producers with such contracts be eligible for the new ceiling price, but absent the purchaser's agreement, they must continue selling under their existing contractual arrangements. Accordingly, sellers of minimum rate or fixed price gas will be eligible for the alternative ceiling price only if and to the extent their purchasers agree.

E. NGPA Section 106(b) Gas—Intrastate Rollover Contracts

Pursuant to NGPA section 121(a)(3), most gas sold in intrastate commerce was price deregulated as of January 1, 1985. One of the categories not deregulated is intrastate rollover gas selling under section 106(b) for $1.00 per MMBtu or less on December 31, 1984. Several commenters have suggested that producers of section 106(b) gas subject to continued regulation should be eligible for the new alternative ceiling price.[270]

The Commission perceives no reason why gas sold under section 106(b) contracts should not be eligible for the alternative ceiling price. The Commission does not wish to hinder the integration of the interstate and intrastate markets, which the NGPA was intended to achieve, by fostering unnecessary price disparities between those markets. We note, however, that section 106(b) sales are not subject to Commission jurisdiction under the NGA. The Commission thus has serious doubt as to whether it has authority to prevent automatic escalation of prices under section 106(b) contracts to the new ceiling by imposition of the good faith negotiation rule adopted as part of this order. We agree that producers subject to section 106(b) should not be precluded from receiving the new ceiling. At the same time we do not feel that purchasers should automatically be required to pay the new ceiling by virtue of indefinite price escalator clauses. Accordingly, the alternative ceiling will be applicable to section 106(b) sales, but the question of whether or to what extent 106(b) producers can obtain a higher price up to that ceiling shall be a matter for negotiation between the parties. Purchasers in such cases are not required to pay any price above the existing price unless they agree. We thus adopt the same rule for section 106(b) contracts as we have for minimum rate and fixed price contracts.

VI. Other Issues

A. Block Billing

In its December 20, 1985, notice of procedural schedule, the Commission requested comments on the interrelationship between the block billing proposal in Docket No. RM85-1-000 and the DOE proposal, and whether the respective proposals were mutually exclusive, or might be merged or adopted concurrently. Block billing would require pipelines to bill their customers separately for old gas (Block 1) and new gas (Block 2). Block 1 old gas is gas which was committed to interstate commerce when the NGPA was enacted. This gas is subject to the relatively low price ceilings established by NGPA sections 104, 106(a), and 109. Block 2 new gas is gas whose price has been decontrolled or is subject to the relatively high incentive prices established by other sections of the NGPA. Under the block billing proposal, a pipeline's customers could purchase a specified percentage of the pipeline's Block 1 gas based on their level of purchases during the period 1979–1984.

Most commenters state that block billing and the DOE proposal are mutually exclusive. Producers, producing state representatives, and certain industrial customers assert that the DOE proposal is preferable to block billing on legal and policy grounds and should be adopted in lieu of block billing,[271] while most pipelines,

blanket affidavit without making rate change filings each month. Section 157.40 provides that small producers, *i.e.*, not affiliated with a major pipeline company and with jurisdictional sales of less than 10,000,000 Mcf of natural gas per year, are exempted from the rate filing requirements described above for sales under their small producer certificates.

[267] 463 U.S. 319 (1983).

[268] The Commission implemented the Mid-Louisiana decision in Order Nos. 391, 49 FR 33849 (August. 27, 1984) and 391-A, 50 FR 14374 (April. 12, 1985); 18 CFR 270.203 (1985).

[269] 54 FPC 3090 (1975).

[270] Indicated Producers at 70–71; Mesa Operating Limited Partnership.

[271] *See, e.g.*, Indicated Producers at 83–94; NGSA at 23–24; Independent Petroleum Association of Mountain States at 1–2; Interstate Oil Compact Commission at 4–5; IPAA at 6; PGC at 14; Applied Resources International, Inc., Executive Summary at 2–3; Council of Industrial Boiler Owners at 5–6; Chemical Manufacturers Association at 6–10; E.I. du Pont de Nemours & Company at 27–29; Council of Energy Resource Tribes at 5; Mesa Operating Limited Partnership at 2; Mobil Oil Corporation, et al. at 7–9; Montana Petroleum Association at 2; Mid Continent Oil & Gas Association at 3; Members of Congress Michael G. Oxley, William E. Dannemeyer, Dan Schaefer, Bob Whittaker, Jack

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distributors, and consumer commenters argue that the block billing proposal should be adopted rather than the proposed rule.[272] A few commenters reject both the DOE and block billing proposals.[273] Several commenters suggest that the block billing and the DOE proposal could and should be implemented concurrently,[274] while a few commenters argue that while they could be implemented concurrently, they should not be because of the philosophical and policy differences in the two proposals.[275] Those parties that suggest the proposals could be concurrently implemented provide little guidance as to how this would be accomplished either practically or procedurally.

The Commission concurs with the overwhelming view of parties commenting on this issue that the block billing and DOE proposals are to a large extent mutually exclusive and that it is questionable whether they could be combined or if so what the likely consequences would be. However, we will not terminate the block billing proposal at this time. Rather, the Commission will review the matter in light of the operation of this rule in actual practice and will take such further action in Docket No. RM85-1-000 as is found to be reasonable or necessary.

B. Department of Justice Alternative Proposal

DOJ offers a comprehensive alternative to DOE's proposal which would go beyond that proposal to effectively deregulate all natural gas prices. DOJ contends that since the natural gas market is workably competitive, market-based rates will best achieve the Commission's statutory mandate to assure just and reasonable rates. The market will protect consumers from excessive rates while encouraging production of adequate supplies. Accordingly, DOJ proposes that the Commission exercise its authority under NGPA sections 104(b)(2)(B), 106(c), and 109(b)(2) to declare that any price paid for gas subject to sections 104, 106, and 109 is presumed just and reasonable within the meaning of the NGA. The only exception would be where there was fraud, abuse, or other similar conduct. DOJ would require parties to existing contracts with indefinite price escalation clauses to negotiate a new just and reasonable price. It recommends the Commission do this by cancelling any rate schedule currently on file pursuant to an indefinite price escalation clause. Where the parties fail to renegotiate the contract, the producer could seek expedited abandonment, and there would be a presumption that abandonment is permitted by the public convenience or necessity. Similarly, after any existing contract expired, the producer could seek expedited abandonment with a presumption favoring such abandonment.

While the Commission agrees with DOJ that in a competitive market such as that for natural gas, market-based rates provide the most efficient allocation of resources, the Commission feels constrained to reject the DOJ proposal as beyond its authority. The DOJ proposal amounts to total deregulation of old gas prices. The NGPA does not give the Commission authority to do this. The Commission's authority under NGPA sections 104(b)(2)(B), 106(c), and 109(b)(2) is limited to prescribing "a maximum lawful ceiling price," higher than that otherwise applicable, which is just and reasonable within the meaning of the NGA. Thus, although the Commission can increase existing ceiling prices, Congress nevertheless required that the Commission prescribe some maximum lawful price. DOJ, however, would have the Commission go beyond the prescription of a new maximum lawful ceiling price and effectively remove all ceiling prices. If, as DOJ suggests, all contract prices are presumed just and reasonable, no ceiling price remains.

That Congress did not intend to give the Commission authority to deregulate old gas prices completely is further shown by the NGPA's requirement that the new ceiling price be just and reasonable within the meaning of the NGA. The Commission has no authority to deregulate prices under the NGA. As the Circuit Court of Appeals for the District of Columbia stated shortly before enactment of the NGPA, "If a decision is to be made to deregulate natural gas prices, it must be made by Congress, not by the [Commission]." [276] Accordingly, the Commission must respectfully decline to adopt DOJ's proposal.

C. Incentive Price Proposal.

In light of the comments submitted in this proceeding, the Commission has concluded that there are some remaining open issues with regard to the basis for the incentive price portion of the DOE proposal at this time. Therefore, we are still reviewing the matter and will rule on the incentive price proposal in a separate order to be issued at a later date.

D. Transportation Authority.

A number of commenters express the concern that pipelines may release gas under the good faith negotiation rule but then refuse to provide transportation to another purchaser. As one producer commenter puts it, "[t]he pipeline which can refuse to transport the released gas to an alternative market is in a position to extract unreasonable concessions from the producer, or even to refuse to

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Fields, and James T. Broyhill, letter at 1; Oklahoma Corporation Commission at 5-8; State of New Mexico at 9-13; Plains Petroleum Company at 18-21; Petrochemical Energy Group at 2-3; Southern Regional Energy Council at 2; Texas Land Commissioner at 2; Texas Railroad Commission at 4; Texas Independent Producers and Royalty Owners Association at 1-4; Texaco, Inc. at 5-10; Union Texas Petroleum at 1.

[272] *See, e.g.*, MPC-NASUCA at 19-24; Arkansas Public Service Commission at 8-12; Public Utilities Commission of the State of California at 39-41; Public Service Company of Colorado at 11; Columbia Gas Transmission Corporation at 9-10; Public Service Commission of the District of Columbia at 9; Laclede Gas Company at 6; State of Minnesota at 9; Michigan Consolidated Gas Company at 22-23; Northern Distributor Group at 13; Pennsylvania Office of Consumer Advocate at 11; Peoples Natural Gas Company at 3; Southern California Gas Company at 38; Texas Intrastate Natural Gas Pipelines at 3; Western Gas Interstate Company at 7-8; CLEC at 19-24. Some commenters who prefer the block proposal suggest modifications thereto, such as subdividing block 2 gas still further into market-responsive, and non-market responsive gas, or reallocating the base periods for access to the respective blocks. *See, e.g.*, AGA at 11-12; AGD at 13 adopting AGA comments; Midcon Corporation at 39-40; Consolidated Edison Company of New York at 1; Memphis Light, Gas and Water Division, City of Memphis, Tennessee at 14-15; Public Utilities Commission of Ohio at 7-8; Northern Indiana Public Service Company at 18-22; Northern Illinois Gas Company at 26-28; Public Service Commission of the State of New York at 1; Pennzoil Company and Pennzoil Producing Company at 8-9; Peoples Gas Light and Coke Company and North Shore Gas Company at 23-26; Southwest Gas Corporation at 8; San Diego Gas and Electric Company at 5.

[273] *See, e. g.*, Northern Natural Gas Company at 11-12; Questar Corporation at 3; Public Service Commission of the State of Wyoming at 1-4. One commenter, UDC at 16, neither opposes nor supports block billing but opposes the DOE proposal.

[274] *See, e.g.*, Illinois Commerce Commission at 17-20; Baltimore Gas & Electric Company at 7; Columbia Gas Distribution Companies at 7-9; Citizens Energy Corporation at 5-6; Consolidated Edison Company of New York, Inc. at 1-2; Pennzoil Company and Pennzoil Producing Company at 8-9.

[275] *See, e.g.*, DOJ at 34, n. 71 ("the Commission could . . . consistently adopt both block billing and the DOE proposal"). DOJ believes, however, that block billing would be "obsolete" to the extent the old price cushion will be eliminated. Other commenters, while agreeing that the proposals may lawfully be implemented concurrently, express their preference for the block billing proposal. *See, e.g.*, Arkansas Public Service Commission at 8-12; Public Service Company of Colorado at 8; State of Minnesota at 9; Public Utilities Commission of Ohio at 7-8; Northern Illinois Gas Company at 26-28.

[276] Public Service Commission of New York v. FERC, 589 F.2d 542, 550 (D.C. Cir. 1978). *See also* FPC v. Texaco, Inc., 417 U.S. at 397-98.

negotiate at all."[277] To remedy this perceived deficiency in transportation availability, NGSA proposes that pipelines be allowed to transport gas released as a result of the good faith negotiation process without becoming subject to open-access transportation obligations under Order No. 436.[278] In a similar vein, Indicated Producers state that a blanket transportation certificate should be granted to non-open-access pipelines which would authorize those pipelines to transport released gas on behalf of the seller or the new buyer.[279] Certain industrial end-users suggest that in order for a producer's section 104 and 106 gas to be eligible for the higher just and reasonable price, the producer should first be required to file an affidavit agreeing to renegotiate fully its contracts covering gas other than old gas with any interstate pipeline that accepts Order No. 436.[280] The purpose would be to entice pipelines to elect open-access transportation under Order No. 436 in exchange for the opportunity to renegotiate uneconomic contracts. In return, transportation would be assured for section 104 and 106 gas released under the good faith negotiation process.

The Commission has considered carefully the requests for blanket transportation of gas released under the good faith renegotiation process or for transportation authority without triggering the open access requirements of Order No. 436. We conclude that this rule should establish reasonable procedures by which gas which is released pursuant to the good faith negotiation procedures can be transported by pipelines not under Order No. 436. It is clear that for the potential benefits of this rule to be realized in terms of both supply and price response, released gas must be able to be marketed. However, without Commission action, there is no assurance that first sellers will be able to market their released gas unless their existing purchasers have accepted the terms and conditions of Order No. 436. We believe it is essential to formulate reasonable and fair transportation provisions in light of the revised good faith negotiation procedures adopted as part of this rule so as to assure the availability of transportation service irrespective of whether a particular purchaser has or has not accepted the open-access obligations of Order No. 436. Consequently, we will provide for the availability of conditional transportation services by pipelines not under Order No. 436.

As an integral part of the new ceiling price and the good faith negotiation procedure itself, the Commission is including limited authority for an existing pipeline purchaser to transport gas released under the rule. The Commission also is deeming the releasing pipeline to agree to transport such gas to its existing customers or any interconnecting pipeline, as a condition of the ability of the existing pipeline purchaser to terminate purchases of gas from a first seller under the rule. The purpose of this limited transportation authority is to assure that the prices of gas renegotiated under the rule are subject to the maximum benefits of competitive pressures by alternative buyers and sellers in gas markets. Without access to transportation, the renegotiation process would be insulated from these competitive benefits, and both producers and pipelines would be restricted in their access to gas supplies released under the rule. At the same time, the Commission considers the limited transportation authority as an essential element of the firm sales customers' right of first refusal to old gas released by their pipeline suppliers under the rule. For a firm sales customer, especially a full requirements customer with no access to alternative suppliers, the right of first refusal cannot be exercised in any practical way to avoid the loss of old gas off-system under the rule unless the customer has meaningful access to transportation. Under the good faith negotiation procedure, the existing pipeline purchaser may choose or not choose to terminate purchases of gas under an existing contract with a producer. As a condition on the pipeline's exercise of these options, the limited transportation authority is reasonably intended to assure that the pipeline's existing customers, especially firm sales customers, have a practical means of keeping the gas on-system and getting it transported for their use.

Under the good faith negotiation rule proposed by DOE, indefinite price escalator clauses in old gas contracts are prevented from becoming automatically operative, and pipelines are provided the opportunity to negotiate the price they are willing to pay up to the new ceiling price. In the event no price agreement is reached, the producer has the right to abandon the sale. The procedures adopted by this rule conform to DOE's proposal in providing for producer abandonment in cases where the producer seeks to renegotiate the price of old gas but is unable to do so. This rule also modifies DOE's proposal by providing that in various circumstances purchasers may request price renegotiation of higher-priced categories of gas and may discontinue purchasing such gas in cases where no agreement on repricing is reached. The good faith negotiation procedures adopted by this rule thus extend to purchasers significant and substantial rights in addition to those incorporated in the rule as proposed by DOE. The Commission finds that it is reasonable and consistent with the objectives of this rule to make the exercise by purchasers of their rights under the good faith negotiation rule conditional upon the availability of transportation services for gas released pursuant to the rule. We have previously determined that the existing old gas price structure is inefficient or unjust and unreasonable and should be replaced by a uniform, alternative just and reasonable ceiling price equal to the post-1974 price. In most instances, first sellers would be unable to market released gas to alternative purchasers unless the existing purchaser agreed to transport the gas or is an Order No. 436 transporter. The existing purchaser would have little if any incentive to do so, however, because in the absence of transportation the first seller would have little alternative but to continue selling to the existing purchaser at the current price. The result would frustrate the purposes of this rule and force the first seller to accept a price which we have found to deny both consumers and producers the full benefits of competition and long-term reliable gas service under the NGPA and NGA. We therefore believe that the good faith negotiation procedures would be ineffective to accomplish the goals of this rulemaking unless combined with a transportation provision designed to encourage purchasers to negotiate in good faith and to provide first sellers with reasonable access to an alternative market in the event no agreement on pricing is reached.

Consequently, the Commission is providing for conditional transportation services under its NGPA authority to condition the new ceiling price under sections 104(b)(2) and 106(c), as well as under its NGA authority to determine that the existing ceiling price structure

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[277] Texaco Inc. at 11–12.

[278] *See* NGSA at 28. *See also e.g.*, Indicated Producers at 68 ("to the extent pipelines do not accept open access transportation certificates [under Order No. 436], . . . the Commission must adopt a policy or negotiation process which would assist in providing transportation of released gas, whether or not Order No. 436 certificates are widely used.") Attached to this preamble as Appendix B is a list of the 34 pioelines that, as of the issuance of this rule, have filed under Order No. 436 or have otherwise announced their intention to negotiate settlements in order to file under Order No. 436.

[279] Indicated Producers at 68.

[280] *See* PGC at 4.

for old gas is in need of revision or otherwise unjust and unreasonable pursuant to section 5(a) of the NGA. The Commission need not specifically find that the failure to condition the new ceiling price with a transportation provision would cause the new ceiling price to be unjust and unreasonable under section 5(a) of the NGA. However, the Commission is so finding here, because it considers access to transportation for gas released under this rule to be essential for the protection of consumers and the achievement of market-responsive gas prices intended by the final rule.

We have previously determined that firm sales customers of the existing purchaser should have a right of first refusal enabling them to match any third-party offer to purchase gas released pursuant to this rule. We believe that in cases where firm sales customers exercise their right of first refusal and thereby agree to purchase released gas, the existing purchaser should be deemed to have agreed to transport that gas to the purchasing firm sales customer. Our reasons for this determination are the same as those underlying our decision to grant firm sales customers the right of first refusal as to gas abandoned under this rule. We will also provide that an existing pipeline purchaser shall transport abandoned gas to any of its customers and any interconnecting interstate, intrastate, or Hinshaw pipelines [281] on behalf of any person who purchases abandoned gas. Our decision to include this additional conditional transportation service is designed to provide the releasing pipeline's customers and interconnected pipelines and their customers access to gas released pursuant to this rule. In addition, we seek to provide first sellers with reasonable access to transportation service. We believe that providing for transportation of released gas to customers of the transporting pipeline and to interconnecting pipelines, regardless of who purchases the released gas, will provide first sellers with sufficient access to alternative markets to insure that the purposes and objectives of this rule will be realized. This additional sales market will assure that wellhead markets remain workably competitive, that producers have access to a substantial market as an alternative to continuing sales to the existing purchaser, and that firm sales customers of the releasing pipeline interested in exercising their right of first refusal can obtain the benefits of these competitive forces.

We will therefore consider that in cases where any gas is released from a particular contract under the good faith negotiation procedures, the former pipeline purchaser is deemed to agree to transport the released gas to any of its customers who purchase such gas or to any pipeline with which it is interconnected, upon 30-days written notice from the first seller to the transporting pipeline. The transportation provision, to which releasing pipelines are deemed to have agreed to perform under the good faith negotiation procedures, attaches to the released gas and is not provided for the benefit of any particular purchaser. Therefore, transportation of the released gas through the releasing pipeline on behalf of any purchaser requesting such transportation will continue until the supply is exhausted, or authorization for transportation of such gas ceases upon the expiration of a contract where a pipeline subsequently becomes subject to Order No. 436. In order that the transportation of released gas can be commenced without unnecessary delay or regulatory cost to the pipeline, the Commission will grant a blanket transportation certificate under section 7(c) of NGA to jurisdictional natural gas pipelines not already transporting under Order No. 436. Transportation under the blanket certificate shall be provided as far as practicable in accordance with the terms and conditions requested by the first seller and its purchaser. The rate to be charged shall conform to the requirements of new § 284.225(d) of the Commission's regulations promulgated as a part of this rule. In order to permit existing firm sales customers to obtain full and immediate access to gas released under the rule and subject to the right of first refusal, such customers will be able to obtain transportation of such gas within their existing firm sales contract demand without incurring costs beyond what they would have incurred in purchasing the gas from the releasing pipeline.

Pipelines transporting gas under the blanket certificate shall not become subject to the open-access requirements of Order No. 436 (18 CFR 284.8(b) and 284.9(b) by reason of such transportation. Any pipeline which is not subject to the open-ccess requirements of Order No. 436 and which is requested by the first seller to provide transportation service may apply for a separate transportation certificate under section 7(c) of the NGA. The Commission finds that any refusal by a pipeline to transport gas abandoned under the good faith negotiation procedure would constitute an unduly discriminatory or preferential practice violating section 5(a) of the Natural Gas Act because the refusal could be used by a pipeline as a "bargaining chip" or tying arrangement in establishing a renegotiated price under an existing contract for the sale of old gas under the final rule. The Commission also considers that such a refusal to transport could constitute a violation of antitrust law if it amounts to an effort by a pipeline to extend its regulated monopoly power over access to transportation services to wellhead gas markets that are workably competitive under the mandate of the NGPA. The Commission will carefully scrutinize any such refusals to transport or tying arrangements and intends to fully enforce its obligation under the Natural Gas Act and other law.

E. Blanket Sales Certificates.

Tennessee Gas Pipeline Company asserts that the proposed rule is flawed because it lacks any requirement that a producer first obtain a certificate of public convenience and necessity prior to any new sale for resale in interstate commerce of gas abandoned as a result of the good faith negotiation process.[282] In response to this concern and in order to effectuate the contract renegotiation and market-responsive pricing objectives of the good faith negotiation procedure, the Commission is incorporating a blanket certificate authorization into the rule, with a concommitant pre-granted abandonment authorization. These authorizations will permit a producer to sell gas abandoned as a result of the good faith negotiation rule to a new purchaser and to abandon the sale at the end of the contract.

The Commission finds that such blanket sales certificates with pre-granted abandonment are permitted by the public convenience and necessity. Without a blanket certificate, producers would have to file an application for a certificate (filing fee $2,800 for a large producer) for each jurisdictional sale they proposed to make. This would be costly to producers, administratively burdensome, and hinder smooth implementation of this rule. Regulatory delay in obtaining required certificates and abandonment authority tends to place jurisdictional customers at a competitive disadvantage vis-a-vis non-jurisdictional entities not affected by such requirements. As a result, the relatively low-cost gas made available by the operation of the rule would not

[281] See NGA section 1(c); 15 U.S.C. 717(c) (1982).

[282] Tennessee Gas Pipeline Company at 9.

be as readily available to many LDC's and their customers as it would be to intrastate customers. Congress intended through enactment of the NGPA to establish equality of marketing opportunities as between the interstate and intrastate markets.[283] Accordingly, the public convenience and necessity is served by granting blanket certificate and abandonment authorization.

This action is comparable to the Commission's recent orders in *Pennzoil Producing Company and Pennzoil Gas Marketing Company,* Docket Nos. CI86-54-000 and CI86-57-000, 34 FERC ¶ 61,318 (1986). Pre-granted certificate and abandonment authorizations are also fully consistent with the overall objectives of this rule. By allowing old gas to be marketed to the jurisdictional market without unnecessary regulatory delay, the blanket procedure promotes the supply and price benefits of the rule in both the interstate and intrastate markets.

The NGPA with its phased system of deregulation (section 121) and its limitations on the Commission's Natural Gas Act jurisdiction (section 601), was crafted to lessen the disparities in regulation of interstate and intrastate gas, thereby facilitating a national market based on freer competition. Where the Commission's NGA jurisdiction remains, common sense dictates regulatory policies (such as the traditional case-by-case certification processes) that were grounded in a pre-NGPA era should be pragmatically updated. Congressional purposes are furthered by adapting our certificate procedures to the evolving national competitive environment that was the goal of Congress in enacting the NGPA. Making the Commission's certification function more flexible is legally compatible with the freer competitive market intended by the NGPA, even for those portions of the industry that remain regulated by the Commission. The Commission has adopted the same rationale in eliminating other regulatory vestiges of the pre-NGPA gas industry era. For example, in eliminating pipeline minimum take provisions the Commission observed: [284]

> As the Commission stated in *City of Florence, Alabama v. Tennessee Gas Pipeline Co.,* 24 FERC ¶ 61,395 at 61,839 (1983), competition can and should play an important role even in a regulated industry such as the natural gas industry. "If competition exists, incentives are created for innovation by the regulated companies. This, in turn, encourages lower prices and better service." This is precisely what the Commission is attempting to do by adapting our regulations to respond to evolving competitive forces.

It is reasonable to make certificate procedures more flexible to serve the purposes of this rule. In doing so, the Commission is simply adapting its regulations to respond to evolving industry and market conditions. Given the competitive environment of today's natural gas market, blanket sales certificates will encourage lower prices and better service nationwide.

F. Response to Administrative Law and Procedural Claims

During this proceeding, the Commission received a variety of pleadings that pose procedural requests and objections. Motions, petitions, applications, and answers have no special procedural significance in informal rulemakings, and the Commission therefore disposes of these pleadings here as it would other comments. Elsewhere in this order, the Commission addresses the important substantive issues underlying these pleadings. It therefore makes clear at this point only the results of its review of other issues presented, as follows.

1. Associated Gas Distributors (AGD) filed on January 17, 1986, a petition requesting additional discovery and comment procedures. The petition, submitted early in the Commission's 60-day initial comment period,[285] outlined a variety of formal procedures designed allegedly to facilitate information gathering by the commenters and the Commission, including the submission of interrogatories to the Secretary of Energy for his response,[286] discovery among participants in the proceeding pursuant to special Commission procedures, additional time to accommodate "this more rigorous informational process," and an opportunity to file comments in reply. AGD supplied the Commission with a memorandum of law emphasizing the factual nature of any decision that would implement the DOE proposal in this proceeding.[287] United Distribution Companies (UDC) filed in support of the AGD petition. DOE also answered the AGD petition, committing itself to providing additional analytical support for the rule.

The Commission recognizes AGD's concern that an action to raise the maximum lawful price of old gas, subject to the good faith renegotiation of existing contracts, must be the product of thorough investigation and a reasoned analysis of substantial evidence in the record. The Commission nevertheless firmly believes that it has developed a sound and comprehensive record, without the unnecessary formality and procedural complexity requested by AGD. As requested, the Commission provided an opportunity for submittal of reply comments by any interested persons. The reply comments tested the soundness of the data and arguments submitted in initial comments. The Commission provided for yet another opportunity to present data and views when it held two days of

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[283] Congress intended the NGPA to end the anomaly of ample supplies in the intrastate market and the recurring, severe shortages in the interstate market that existed during the Seventies. The NGPA's pricing scheme was intended to increase the supply of gas reserves and production and to decrease distorted consumption demand at the end-use level. The Commission's intention in this rulemaking is to serve those ends. The provision of blanket sales certificates is intended to maintain the uniformity of national market opportunities intended by the Act. *See* H.R. Rep. 496, pt. IV, 95th Cong. 1st Sess. 101 (1977); Congressional Budget Office, The Natural Gas Compromise Report 2 (1978), *reprinted in* 124 Cong. Rec. H13126-27 (daily ed. Oct. 4, 1978). The Commission in implementing other provisions of the NGPA has similarly responded to the need to keep opportunities in jurisdictional and non-jurisdictional markets egual. See e.g. Order No. 108-A, 46 FR 48,223 (October 18 1983) ("This order on rehearing affords [intrastate] sellers of gas . . . the same opportunity to collect an allowance for State severance taxes under section 110(a)(1) as the Commission has afforded sellers of interstate gas.")

[284] Order No. 380-C, 49 Fed. Reg. at 43,626 (Oct. 31, 1984), *aff'd,* Wisconsin Gas Co. v. FERC, 770 F.2d 1144 (D.C. Cir. 1985), *cert denied,* 54 U.S.L.W. 3761 (U.S. May 19, 1986) (No. 85-1219).

[285] On February 19, 1985, AGD requested 30 additional days to file initial comments. The Commission allowed reply comments instead.

[286] AGD requested such procedures under the general and discretionary provisions of Section 403(d) of the Department of Energy Organization Act (DOE Act), 42 U.S.C. 7173(d) (1982).

[287] The AGD memorandum alleges that the DOE failed to provide adequate notice of the information underlying its proposal, in violation of Section 501(b)(1) of the DOE Act, 42 U.S.C. 7191(b)(1) (1982). The Commission does not believe that Section 501(b)(1) is applicable to this proceeding. To the extent that it may apply, however, the Commission finds no deficiency in the DOE proposal, which fully apprised the public of the legislative facts and policies relied on by the Secretary. For any rulemaking, such as this one, governed by the notice requirements of the Administrative Procedure Act, the DOE proposal contains far in excess of the minimum of necessary information. It is both unusual and unnecessary for a notice of proposed rulemaking to exhibit the same quantum of data that is normally developed by the participants in the proceeding and utilized by the agency for a final rule. Comment procedures are not mere formalities that lead to foregone conclusions.

AGD also filed with DOE a Freedom of Information Act request for all cost and other factual data relating to its proposed rule. DOE subsequently filed in this proceeding the data that it provided in response to that request.

The Commission's December 20, 1985 notice of procedural schedule also expressly requested commenters to include quantitative and qualitative data in their comments, and the record in this proceeding includes numerous responses to this request.

public hearings on the rule. All segments of the gas industry, the public, and state regulators participated. Most participants presented written and oral testimony in response to the initial and reply comments, including additional analytical material for the record. As a consequence of these thorough information-gathering procedures, the record contains a lively debate of the issues and full analyses of the data presented to the Commission. DOE, as well as other commenters, supplied the Commission with extensive quantitative and qualitative studies and analyses discussed throughout this order. In light of the extensive public procedures, the issues in this rulemaking have been fully ventilated and the evidentiary record is complete.

2. On February 10, 1986, UDC filed a petition and supporting memorandum requesting immediate and summary dismissal of the DOE proposal on grounds that the Secretary "would have the Commission embark upon a rulemaking that completely contravenes established bounds of the Commission's authority . . . [under] the Natural Gas Act and Natural Gas Policy Act." Although UDC characterizes its complaint as involving jurisdictional issues, the pleading in fact pertains to whether the Commission has sufficient information and authority to implement the DOE proposal and could do so in a reasoned manner. As this order demonstrates, the Commission does not concede UDC's allegations that its authority is so severely restricted that it is foreclosed from even considering the issues presented by DOE. In any event, the rulemaking process is designed to afford a fair and open examination of such issues by affected parties; summary dismissal would be inappropriate for such proceedings.

3. On May 12, 1986, the American Gas Association (AGA) petitioned the Commission for additional procedures similar to those requested earlier by AGD to permit further development of the record in this proceeding.[288] AGA requests that the Secretary be required to respond to written questions and that discovery among all participants to this rulemaking be sanctioned by the Commission. Based on its review of the entire record, AGA alleges various evidentiary deficiencies that it contends renders the Commission incapable of taking legally defensible actions on core issues.

[288] Answers to AGA's petition were filed by the Indicated Producers, Northern Illinois Gas Company, Office of the Consumers' Counsel, State of Ohio, and Southern California Gas Company.

The Commission recognizes that factual disputes and policy disagreements exist in the record. It is convinced that, by providing for initial and reply comments and a public conference, the Commission has fulfilled its statutory obligations under applicable rulemaking procedures.[289] These procedures have also met the goals of the AGA and other commenters who seek and deserve a critical and thorough examination of the views and information related to the repricing of old gas supplies. Rulemaking proceedings need not resolve all disputes of fact on such subjects. It is enough that a decisionmaker afford an ample and equal opportunity to participate and, if it believes that the evidence is adequate, make its decision in a reasoned manner. The addition or repetition of information-gathering procedures does not necessarily ensure a better or more complete record, in terms of the quality of the data submitted or how well the participants or the decisionmaker use the information. The Secretary's deadline for final Commission action notwithstanding, this rulemaking has not been attenuated. The Commission therefore concludes that it has in this record sufficient information upon which to decide the key issues to which the AGA points. It therefore declines to delay further its consideration of final action based on that record.

4. On May 23, 1986, the American Gas Association, Associated Gas Distributors, the Interstate Natural Gas Association of America, and United Distribution Companies filed a joint petition requesting the Commission to delay the effective date of this rule for 120 days after the issuance of an order on rehearing. The petitioners argue that unless the effective date is deferred, permanent and irreversible actions may be taken by the parties before there is an opportunity to test the legal merits of the order. Petitioners are concerned that reserves may be lost if producers abandon sales under the good faith negotiation provision or that markets may be lost if pipelines must pay higher prices for old gas.

The Commission believes that this final rule will provide price and supply stability to the gas markets, and that the parties represented by petitioners will not be disadvantaged as they allege. However, the Commission separately has concluded for other reasons discussed below, that implementation of the renegotiation provision should be delayed.

[289] Wisconsin Gas Co. v. FERC, 770 F.2d 1144, 1167–68 (D.C. Cir. 1985) *cert denied*, 54 U.S.L.W. 3761 (U.S. May 19, 1986) (No. 85–1219) (*citing* Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519 (1978) and American Public Gas Association v. FPC, 567 F.2d 1016 (D.C. Cir. 1977).

The Commission independently recognizes that the order will affect thousands of gas purchase contracts. The changes to the marketing of natural gas established by the rule are complex. Because of the importance of the rule for the gas industry, the Commission has concluded that more time than proposed by DOE may be needed by the parties to the contracts to determine if, when, and under what terms to renegotiate. Delaying implementation of the good faith negotiation provision until the fall would allow the parties time to examine the economic consequences of the final rule and engage in voluntary renegotiation of their contracts outside of the good faith negotiation procedures.

While the Commission agrees with the petitioners that the portion of the rule requiring renegotiation should be delayed, it does not agree that it should be delayed 120 days from the order on rehearing. The Commission at this time is unable to determine when an order on rehearing may be issued and is reluctant to delay the implementation of any portion of the rule other than to a date certain. Such an unwarranted delay would unjustifiably delay the market-responsive pricing and supply benefits to consumers intended by the final rule. Therefore, the Commission is delaying the effectiveness of the renegotiation provision of the rule until November 1, 1986.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) [290] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[291] Specifically, if an agency promulgates a final rule under the Administrative Procedure Act (APA),[292] a final RFA analysis may be appropriate. A final RFA analysis must contain (1) a statement of the need for and objectives of the rule, (2) a summary of the issues raised by the public comments in response to any initial regulatory flexibility analysis, and the agency response to those comments, and (3) a description of significant alternatives to the rule consistent with the stated objectives of the applicable statute that the agency considered and ultimately rejected. An agency is not required to make an RFA analysis,

[290] 5 U.S.C. 601–612 (1982).

[291] Id. 604(a).

[292] Id. 553.

however, if it certifies that a rule will not have "a significant economic impact on a substantial number of small entities." [293]

As discussed, the Commission believes it must revise its regulation of old, flowing gas prices under the authority of the NGPA sections 104 and 106 because its regulation has created and continues to promote a wide disparity between wellhead prices for natural gas. In particular, the Commission's past regulation fostered prices of old, flowing gas that are unresponsive to changes in wellhead markets, fail to assure that city-gate prices reflect the cost of replacing depleted gas reserves, directly contribute to the "boom and bust" tendency of investment in the gas industry, and inhibit consumers from receiving the full benefits of wellhead competition as Congress intended by enacting the NGPA.

As permitted by the RFA, the Commission certified that the rule proposed by the Secretary of Energy, if promulgated, would not have a significant economic impact on a substantial number of small entities. The Commission concluded that the proposed rule would have a positive impact on the small entities subject to the rule. By raising the maximum lawful price of gas regulated under NGPA sections 104, 106 and 109, the DOE proposal would have enabled small producers that sell old flowing gas to improve their revenues and enhance their ability to sell that gas. Since the RFA requires the Commission to analyze only the impacts on small entities that will be subject to the rule,[294] the Commission concluded that the economic impact of the proposed rule would not be "significant" within the meaning of the RFA, since the impact on these small entities was expected to be beneficial.

Generally, this rule adopts the DOE proposal with modifications, especially to the "good faith negotiation" rule. Specifically, the Commission provides that each pipeline-purchaser has the right, similar to the producer's right, to request a producer to nominate new prices for the producer's gas, if the producer has requested the pipeline to nominate higher prices for old gas which the producer believes is being sold at below-market prices. In other words, the pipeline is entitled to request a new price for the producer's old gas and any other gas sold under any contract containing old gas, if the producer requests the pipeline to nominate a price for old gas. In this way, the producer has the option to seek higher prices for its old gas, but that producer must be ready to renegotiate the price of any gas sold under any contract that contains old gas, if it exercises this option. The Commission believes that this modification provides producers and pipelines balanced negotiating positions, but protects small producers by permitting each producer to decide whether it is to its benefit to seek higher prices for its old gas.

Several commenters disagree with the Commission's certification that the proposal would not, if adopted, cause "a significant economic impact on a substantial number of small entities" within the meaning of the RFA. They contend that the Commission's certification under the RFA is flawed because the Commission considered only an unspecified number of the Nation's approximately 10,000 natural gas producers as small entities and mistakenly predicted that a beneficial economic impact on these small entities will result from the implementation of the proposed rule.

In particular, Northern Indiana Public Service Company (NIPSCO) asserts that the Commission improperly restricted its consideration under the RFA to natural gas producers. NIPSCO maintains that the definition of small entities includes small businesses as defined under section 3 of the Small Business Act, small non-profit organizations and small governmental jurisdictions such as cities and towns with populations of less than 50,000 persons. NIPSCO believes that far more such small entities than simply natural gas producers will suffer significant economic impacts from higher old gas prices. In addition, AGA argues that the Commission's certification ignores the economic impacts of the proposal on such small entities as small distributors and other small gas purchasers, which account for millions of jobs and could be devastated by an increase in the price their pipeline suppliers would be required to pay for old gas under the proposed rule.

AGA also asserts that a large number of small producers will be financially injured if lower prices for high-cost gas result from the proposal. If new gas prices do not fall as much as old gas prices rise under the proposal, however, a large number of small gas distributors and their customers will also be financially injured, maintains AGA. Similarly, the Texas Independent Producers and Royalty Owners Association (TIPRO) expresses concern for its membership whose high-cost contracts could be renegotiated downward under the proposal. TIPRO believes that "tens of thousands" of small entities will be adversely affected without receiving a corresponding benefit in exchange.

The Commission believes that these commenters misunderstand the intent of the RFA. As NIPSCO notes, the definition of small entity includes small businesses as defined under section 3 of the Small Business Act, small non-profit organizations and small governmental jurisdictions. So, the Commission need not analyze the effect on large producers in deciding whether there will be a significant impact within the meaning of the RFA. In addition, the Commission does not consider the effect on pipeline purchasers when it certifies no impact because most jurisdictional natural gas pipelines do not fall with the RFA's definition of small entity; they are (1) too large to be considered "small entities", or (2) holders of exclusive selling rights within a respective field of operation and are therefore dominant in that field of operation. Similarly, commenters' arguments that the Commission must consider the effects of this rule on small end-users, royalty interest owners, and every small producer selling gas in the United States overstates the proper application of the RFA. In particular, Congress was not asking agencies to study any potential economic effect on any small entity even if only indirectly effected by the rule. As noted in previous proceedings,[295] this Commission, like other agencies,[296] is required by the RFA to analyze only the effect of rules on regulated small entities to which the requirements of the rule apply.[297] Congress was clear about the reach of the statute: when an agency issues a rule that applies to small entities, the agency must consider, and try to mitigate, the burden on those small entities of compliance with the rule.[298]

[293] Id. 605(b).

[294] Mid-Tex Electric Cooperative, Inc. v. FERC, 773 F.2d 327, 340–43 (D.C. Cir. 1985).

[295] Construction Work in Progress for Public Utilities; Inclusion of Costs in Rate Base, 48 FR 24323 (June 1, 1983) (Docket No. RM81-38-000) (Order No. 298), *rehearing granted in part and denied in part*, 48 FR 46012 (Oct. 11, 1983); Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, 49 FR 22778 (June 1, 1984) (Docket No. RM83-71-000) (Order No. 380), *order on rehearing*, 49 FR 31259 (Aug. 6, 1984).

[296] *See, e.g.*, 47 FR 5215 (Feb. 4, 1982) (final rule of Securities and Exchange Commission).

[297] Mid-Tex Electric Cooperative, Inc. v. FERC, 773 F.2d at 342 (No RFA analysis is necessary when the agency determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule).

[298] *See* Congressional Findings and Declaration of Purpose, section 2, Pub. L. No. 96-354, codified at 5 U.S.C. 601, note (1982).

The legislative history also echoes a concern about burdensome reporting and compliance requirements.[299]

Although Commission regulation affects in some way all small end-users, small royalty owners, and small producers, neither small end-users, small royalty owners, nor small producers that do not sell NGPA section 104 or 106 gas are subject to the requirements of this rule. In particular, the Commission believes that, because of increased volumes of relatively inexpensive old gas on the market, many producers that sell high-cost gas not subject to NGPA section 104 or 106, including some small producers, may not be able to continue to collect the current above-market price for gas that may be allowed under existing contracts. This is an intended effect of this rule. However, these small producers are not subject to the requirements of this rule and, therefore, the RFA does not require separate analysis of the effects on them when the Commission decides whether an RFA certification is appropriate. Of course, the response of the gas markets, including these high-cost gas contracts, to the renegotiation upward of low old gas costs is a primary focus of this rulemaking.

Direct effects of the rule on small producers is as follows. As explained earlier, this rule would raise the maximum lawful prices for NGPA sections 104 and 106 gas for (1) all new contracts executed after July 18, 1986, and (2) contracts with indefinite price escalator clauses in effect on July 18, 1986, if the producer elects to seek a higher price for some or all of its NGPA sections 104 and 106 gas. The Commission believes that the effect on small producers that have NGPA sections 104 and 106 gas reserves to sell will primarily be beneficial for the following reasons, as well as the reasons cited in this preamble generally, *supra*.

The rule requires a small producer to decide whether to seek a higher price for some or all of its old gas. If the producer does not seek a higher price for its gas, the rule has no effect on the price or service obligation imposed on that small producer under its existing contracts. In this way, if a small producer has contracts for old gas at prices above the market-price, that producer may continue to sell under these contracts without being subject to this rule.

In contrast, if the small producer requests a pipeline to nominate a higher price for some or all of its old gas, a pipeline may request that the producer nominate a price for any old gas and any other gas sold under any contract containing old gas.[300] If the pipeline does not nominate the highest price provided by an existing contract or a price agreeable to the small producer for some of the producer's gas, the small producer is granted automatic abandonment, sales authority and the transportation by the original pipeline-purchaser necessary to market that gas if the producer finds a new purchaser. Similarly, if the pipeline refuses to accept the price nominated by the small producer for some of the producer's gas, the pipeline may terminate its purchases of that gas and the small producer is granted automatic abandonment sales authority and the transportation by the original pipeline-purchaser necessary to market that gas if a small producer finds a new purchaser.

In essence, this rule protects small producers in two major ways. First, the rule permits a small producer to decide whether to participate in the good faith negotiation procedures for existing contracts. Second, the rule provides small producers that participate in the good faith negotiation procedures with abandonment, sales, and transportation authority to market its gas if the small producer and pipeline are unable to agree on a suitable price for some or all of the producer's gas.

The Commission chose this procedure in order to minimize or eliminate any adverse effects on small entities. It could have adopted an alternative of deeming that every contract for sale of NGPA sections 104 and 106 gas to have a "market-outclause" that would permit either the purchaser or the seller to terminate the contract upon notice, if the price is unsuitably above or below a particular established price. But this approach could cause unintended harms and hardships on small producers. Similarly, the Commission could have adopted an alternative of not raising the maximum lawful price for NGPA sections 104 and 106 gas. The Commission decided that new MLP's were necessary to eliminate the distortions caused by Commission regulation, but determined that permitting producers to decide whether to seek higher prices for their gas would prevent unintended harms and hardships, particularly to small producers. By providing producers the option to renegotiate for a higher price for old gas, the Commission permits a small producer to choose the course of action that is most beneficial to that small producer.

For all these reasons, the Commission believes that this rule would be beneficial to small producers by raising the maximum lawful prices for NGPA sections 104 and 106 gas, increasing the ability of small producers to sell their gas, and increasing the price paid to small producers for NGPA sections 104 and 106 gas, without requiring any small producer to modify or change any contract for NGPA sections 104 and 106 gas. Since the impact on the small entities regulated by this rule is expected to be beneficial, the Commission does not believe that the economic impact will be "significant" within the meaning of the RFA. Pursuant to section 605(b), the Commission accordingly certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

VIII. Effective Date and Paperwork Reduction Act Statement

1. The rule becomes effective July 18, 1986; however no producer may make a nomination request under the good faith negotiation rule before November 1, 1986.

2. In general, the Commission is relying on existing reporting requirements and information collection provisions to implement the rules adopted in this proceeding. For example, producers that amend an existing contract must continue to file rate schedules under section 4 of the Natural Gas Act and §§ 154.92 (requiring independent producers to maintain rate schedules on file with the Commission); and § 154.94 (requiring rate schedule filings with the Commission before a change in rate is effective) of the Commission's regulations. In addition, the limited exemption from filing requirements applicable to small producers under § 157.40 of the Commission's regulations remains applicable. In contrast, the Commission does establish a new filing requirement for producers that are granted certificates of public convenience and necessity to sell gas for resale in interstate commerce under new § 157.301 of the Commission's regulations. Under this filing requirement, producers must file an annual report with respect to any sales under that certificate initiated during the previous calendar year. The producer is only required to report each sales

[299] For a discussion of the legislative history, *see* Elimination of Variable Costs from Certain Natural Gas Pipeline Minimum Commodity Bill Provisions, *supra*, 49 FR at 22791.

[300] The Commission notes that small producers have been exempt since 1971 from many of the Commission's rate and certificate filing requirements. 18 CFR 157.40 (1985).

arrangement once. This report would detail, among other information: (1) The new and former purchaser and the terms of sale of gas sold under the blanket certificate authority of new § 157.301; and (2) the total estimated annual sales volumes of gas sold under the blanket certificate authority of that section. In addition, the rate filing requirements of §§ 154.92 and 154.94 of the Commission's regulations are waived for sales under a certificate granted under new § 157.301 of the Commission's regulations.

The information collection provisions in this rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [301] and OMB's implementing regulations.[302] Interested persons can obtain information on these information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown (202) 357-8272). Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer of the Federal Energy Regulatory Commission).

List of Subjects:

18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 270

Natural gas, Price controls, Reporting and recordkeeping requirements.

18 CFR Part 271

Continental shelf, Natural gas, Price controls, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission is amending Parts 154, 157, 270, 271 and 284, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 154—[AMENDED]

1. The authority citation for Part 154 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E. O. 12009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551-557 (1982); Natural Gas Act, 15 U.S.C. 717-717w (1982); Federal Power Act, 16 U.S.C. 791a-828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301-3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601-2645 (1982); Interstate Commerce Act, 49 U.S.C. 1-27 (1976).

§ 154.94 [Amended]

2. In § 154.94, the first sentences of paragraph (h)(1) and paragraph (1) of Appendix A are amended by removing the term "104(b)(1)(A)," and inserting in lieu thereof the term "104,".

PART 157—[AMENDED]

3. The authority citation for Part 157 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12,009, 3 CFR 142 (1978); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982).

§ 157.40 [Amended]

4. In section 157.40, paragraph (c)(1)(v)(A) is amended by removing the term "104(b)(1)(A)," and inserting in lieu thereof the term "104,".

5. The table of contents for Part 157 is amended by adding a new Subpart G to read as follows:

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

* * * * *

Subpart G—Natural Gas Producer Blanket Authorization for Sales and Abandonment

6. Part 157 is amended by adding a new Subpart G to read as follows:

* * * * *

Subpart G—Natural Gas Producer Blanket Authorization for Sales and Abandonment

§ 157.301 Blanket certificate authority, pre-granted abandonment, and reporting requirements.

(a) *Blanket certificate authority.* Any first seller of natural gas that is authorized to abandon the sale of gas under the good faith negotiation procedures set forth in § 270.201 of this chapter is granted a certificate of public convenience and necessity to sell such gas for resale in interstate commerce, subject to the reporting requirements of paragraph (c) of this section.

(b) *Pre-granted abandonment.* Any first seller who sells natural gas under the blanket certificate authority of paragraph (a) of this section is authorized to abandon the sale upon termination of the contract under which the sale is made.

(c) *Reporting requirement.* Any first seller who makes sales under the blanket certificate authority of this section must file a report with the Commission not later than March 1 of each year providing the following information with respect to any sales under that certificate initiated during the preceding calendar year:

(1) Name of former purchaser;

(2) Name of new purchaser;

(3) Location of sale (field, block, county, state, etc.);

(4) Contract date;

(5) Contract term;

(6) Average price; and

(7) Estimated annual sales volume (mcf).

(d) *Waiver of rate filing requirements.* The rate filing requirements of §§ 154.92 and 154.94 of this chapter are waived for sales under a certificate granted by this section.

7. The authority citation for Part 270 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12,009, 3 C.F.R. 142 (1978); Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (1982).

8. The table of contents for Part 270 is amended by adding a new § 270.201 to Subpart B to read as follows:

PART 270—RULES GENERALLY APPLICABLE TO REGULATED SALES OF NATURAL GAS

* * * * *

[301] 44 U.S.C. 3501-3520 (1982).

[302] 5 CFR § 1320 (1986).

Subpart B—Special Rules

Sec.
270.201 Good faith negotiation procedures.

* * * * *

9. Part 270 is amended by adding a new § 270.201 to read as follows:

§ 270.201 Good faith negotiation procedures.

(a) *Applicability and general rule.* (1) This section applies to requests for renegotiation of the price of natural gas subject to NGPA section 104 or 106(a) ("old gas") sold under a contract in effect on July 18, 1986, if the contract provides authority for the first seller to collect a higher price upon establishment by the Commission of a higher maximum lawful price ("existing contract"). Any existing contract under which old gas is sold may be renegotiated or amended at any time to provide for a price up to the maximum lawful price under § 271.402(c)(7)(i) of this chapter without using the good faith negotiation procedures.

(2) The alternative maximum lawful price under § 271.402(c)(7) of this chapter may be collected under an existing contract only if the first seller and purchaser agree upon a price for old gas sold under that contract in accordance with this section.

(3) A first seller may not request a nomination of a price under the provisions of this section for old gas sold under an existing contract, if:

(i) The parties to the contract have renegotiated the price or any other terms for the sale of any old gas under the contract after July 18, 1986, with or without using the good faith negotiation procedures of this section; or

(ii) The first seller or the purchaser has requested nomination of a price under this section for any old gas sold under the contract and the last date has passed for the first seller to request nominations of price under paragraph (b)(3) of this section.

(4) For purposes of this section, "existing contract" includes an expired contract pursuant to which sales of natural gas are continuing under the service obligation of a certificate of public convenience and necessity.

(b) *Requests for negotiation and nominations of price.* (1)(i) At any time after October 31, 1986, a first seller may request the purchaser to nominate a price at which the purchaser is willing to continue buying old gas under any existing contract by submitting a written request to the purchaser, and may specify the wells or category of wells under each contract for which the first seller requests a renegotiated price.

(ii) When requesting a nomination of a price under this paragraph, a first seller may also request the purchaser to provide the first seller with a current list of all of the purchaser's firm sales customers, including the name and address of an employee or agent responsible for negotiating purchases of natural gas on behalf of the customer. The purchaser must send the list of customers to the first seller within 30 days after receiving the request, and must include a certification of its completeness and accuracy. The list must be sent by U.S. mail, return receipt requested.

(2) Within 30 days after receiving a request for nomination of a price under paragraph (b)(1) of this section, the purchaser may request the first seller to nominate a price at which the first seller is willing to continue selling any gas, including old gas for which the first seller has requested a nomination of price by the purchaser, under any existing contract with the purchaser that includes the sale of any old gas, whether or not named in the first seller's request, by submitting a written request to the first seller.

(3) Within 30 days after receiving a request from a purchaser for nomination of a price for any gas under a contract that is not named in the first seller's request and that includes the sale of any old gas, the first seller may request the purchaser to nominate a price at which the purchaser is willing to continue buying any old gas under that contract, including old gas for which the purchaser has requested a nomination of price by the first seller.

(4) A first seller's request for nomination of a price under paragraph (b)(1) of this section constitutes an offer to release the purchaser from its contract obligation to purchase any gas sold under any existing contract with the first seller, whether or not named in the first seller's request, that includes the sale of any old gas.

(c) *No response to request for nomination.* (1) If the purchaser does not nominate a price in writing within 60 days after receiving the first seller's request for nomination of a price, the first seller may offer to sell all or part of the gas named in its request for nomination to a new purchaser. The first seller is authorized, upon 30-days written notice to the existing purchaser, to abandon the sale of the gas if the first seller enters into a written contract for the sale of all or part of the gas to a new purchaser after any necessary compliance with paragraph (g) of this section.

(2) If the first seller does not nominate a price in writing within 60 days after receiving the purchaser's request for nomination of a price, the purchaser may terminate its purchases of all or part of the gas named in its request for nomination at any time upon 30-days written notice to the first seller.

(d) *Purchaser's nomination of highest price.* If the purchaser nominates in writing the highest price to which the existing contract price could escalate under § 271.402(c)(7)(i) of this chapter if the contract were a new or amended contract, the first seller must accept the nominated price and sell the gas to the purchaser at that price. The other terms of the contract continue to apply unless such terms are renegotiated by the parties.

(e) *Purchaser's nomination of lower price; first seller's options.* (1) If the purchaser nominates in writing a price less than the highest price to which the existing contract price could escalate, the first seller must accept or reject the nominated price in writing within 30 days after receiving the nomination. If the first seller does not accept the purchaser's nominated price in writing within 30 days, the nominated price is deemed rejected.

(2) If the first seller accepts the nominated price, sales must continue at the agreed-upon price under the other terms of the existing contract, unless such terms are renegotiated by the parties.

(3) If the first seller rejects the nominated price, the first seller must continue sales to the purchaser at the existing price until the sale of the gas is abandoned under this paragraph. At any time after a rejection, the first seller may offer to sell to a new purchaser all or part of the gas for which no price is agreed upon under this paragraph.

(4) A first seller is authorized, upon 30-days written notice to the existing purchaser, to abandon the sale of any gas offered under this paragraph for which the first seller enters into a written contract with a new purchaser after any necessary compliance with paragraph (g) of this section.

(f) *First seller's nomination of price; purchaser's options.* (1) If the first seller nominates a price in writing in response to the purchaser's request under paragraph (b)(2) of this section, the purchaser must accept or reject the nominated price in writing within 30 days after receiving the nomination. If the purchaser does not accept the first seller's nominated price in writing within 30-days, the nominated price is deemed rejected.

(2) If the purchaser accepts the nominated price, purchases must continue at the agreed-upon price under the other terms of the existing contract,

unless such terms are renegotiated by the parties.

(3) If the purchaser rejects the nominated price, the purchaser may at any time terminate its purchases of all or part of the gas named in its request for nomination upon 30-days written notice to the first seller.

(4) The terms of the existing contract apply until the purchaser accepts the first seller's nominated price or terminates purchases of the gas under this paragraph.

(5) A first seller is authorized to abandon sales of the gas to the purchaser if the purchaser terminates purchases of gas under this section and the first seller enters into a written contract for the sale of the gas to a new purchaser after any necessary compliance with paragraph (g) of this section.

(g) *Existing firm sales customers' right of first refusal*—(1) *General rule.* (i) If the first seller offers to sell gas subject to release due to termination or abandonment under paragraphs (c), (e), or (f) of this section ("offer") to a new purchaser that is not an existing firm sales customer of the existing purchaser, the first seller must present the same offer to all existing firm sales customers, if:

(A) The existing purchaser is not subject to the non-discriminatory access provisions of § 284.8(b) or § 284.9(b) of this chapter, and;

(B) The offer encompasses the sale of any gas subject to the Commission's jurisdiction under section 1(b) of the Natural Gas Act and is substantially accepted in principle by the new purchaser in an arms-length transaction.

(ii) Any existing firm sales customer has a right of first refusal to purchase the gas under the terms of the offer. The offer must be presented in accordance with the provisions of this paragraph.

(2) *Making the offer.* The offer to a new purchaser that is not an existing firm sales customer must be presented to all such customers of the existing purchaser not later than 10 days after the offer is substantially accepted in principle by the new purchaser. The offer must be tendered by U.S. mail, return receipt requested.

(3) *Acceptance and rejection of offer; no counteroffer.* (i) An existing firm sales customer must accept the offer in writing within 20 days after receiving the offer. The offer is deemed accepted when it is signed and placed in the U.S. mail, return receipt requested. If the offer is not accepted by an existing firm sales customer within 20 days of its receipt, the offer is deemed rejected.

(ii) Any written counteroffer by an existing firm sales customer constitutes a rejection.

(iii) If the first seller receives more than one acceptance from an existing firm sales customer, the first seller may determine which such customer will become the new purchaser.

(4) *Termination of right of first refusal.* If no existing firm sales customer accepts the offer made under this paragraph within 20 days of receiving the offer, the first seller may execute a written contract with the new purchaser that substantially accepted the offer before it was sent to the existing firm sales customers. Such written contract with a new purchaser is not subject to a right of first refusal.

(5) *Definition.* For purposes of this section, "existing firm sales customer" means a customer with which the existing purchaser has a contract for the sale of gas not subject to a prior claim by another customer or another class of service, and at the same priority as any other class of firm service, which is in effect on the date a new purchaser substantially accepts in principle an offer under paragraph (g)(1) of this section.

(h) *Transportation by existing pipeline purchaser.* A purchaser that is an interstate pipeline not subject to the non-discriminatory access provisions of § 284.8(b) or § 284.9(b) of this chapter is deemed to have agreed to transport any gas released due to termination or abandonment under this section, on behalf of any shipper, to any existing customer of the interstate pipeline or to any pipeline to which the interstate pipeline is interconnected, and in accordance with § 284.225 of this chapter, if the purchaser:

(1) Does not submit a timely nomination of a price for gas under paragraph (c)(1) of this section in response to the first seller's request for nomination of a price;

(2) Nominates a price under paragraph (e)(1) of this section that is less than the highest price to which its existing contract price could escalate if it were a new or amended contract;

(3) Terminates purchases of gas under paragraph (c)(2) of this section when the first seller does not submit a timely nomination of a price; or

(4) Terminates purchases of gas under paragraph (f)(3) of this section after rejecting a price for gas nominated by the first seller.

PART 271—[AMENDED]

10. The authority citation for Part 271, Subpart D, is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12,009, 3 CFR 142 (1978); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

11. Section 271.402 is amended by revising paragraph (c)(3) and the first sentence of paragraph (c)(5), and by adding paragraph (c)(7) to read as follows:

§ 271.402 Maximum lawful prices.

* * * * *

(c) *Applicable higher rates.* * * *

(3) In the case of any first sale under any rollover contract to which this subpart applies, the maximum lawful price for the month in which the effective date of such rollover contract occurs is the highest of:

(i) the maximum lawful price applicable to the expiring contract in the month in which the rollover contract becomes effective;

(ii) the price specified in Table II of § 271.101(a) for interstate rollover gas; or

(iii) the price specified in Table II of § 271.101(a) for post-1974 gas if the rollover contract becomes effective after July 18, 1986.

* * * * *

(5) Any seller seeking to charge a rate in excess of the applicable maximum lawful price described in paragraphs (a), or (c)(1), (c)(2), or (c)(7) of this section must file a petition seeking special relief fully justifying the relief sought. * * *

* * * * *

(7) The maximum lawful price, per MMBtu, for the first sales of all categories of gas otherwise subject to lower maximum lawful prices under this subpart is the price specified in Table II of § 271.101(a) for post-1974 gas, if the price is established:

(i) Under a contract or contract amendment executed after July 18, 1986; or

(ii) In accordance with the good faith negotiation procedures of § 270.201 of this chapter.

PART 271—[AMENDED]

12. The authority citation for Part 271, Subpart F, is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12,009, 3 CFR 142 (1978); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

13. In § 271.602, paragraph (a) is revised to read as follows:

§ 271.602 Maximum lawful price.

(a) *General rule.* The maximum lawful price for a first sale of natural gas under an intrastate rollover contract to which section 106(b)(1) of the NGPA applies is the highest of:

(1) (i) The maximum lawful price, per MMBtu, paid under the expired contract in the month in which the rollover contract becomes effective; and

(ii) In any month after the month in which the rollover contract becomes effective, the maximum lawful price, per MMBtu, prescribed under this paragraph for the preceding month adjusted for inflation in accordance with § 271.102;

(2) the alternative maximum lawful price specified in Table I of § 271.101(a) for certain intrastate rollover gas; or

(3) the price specified in Table II of § 271.101(a) for post-1974 gas, if the price is established under a contract or contract amendment executed after July 18, 1986.

* * * * *

14. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7107–7352 (1982); E.O. 12009, 3 CFR 142 (1978).

15. The table of contents for Part 284 is amended by adding a new section to Subpart G to read as follows:

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

* * * * *

Subpart G—Blanket Certificates Authorizing CertainTransportation by Interstate Pipelines on Behalf of Others and Service by Local Distribution Companies

Sec.

* * * * *

284.225 Transportation by interstate pipelines of gas released under the good faith negotiation procedures.

16. Part 284 is amended by adding a new § 284.225 to read as follows:

§ 284.225 Transportation by interstate pipelines of gas released under the good faith negotiation procedures.

(a) *Applicability.* This section applies to any interstate pipeline that is deemed to have agreed to transport natural gas under paragraph (h) of the good faith negotiation procedures in § 270.201 of this chapter.

(b) *Blanket certificate.* An interstate pipeline is granted a blanket certificate of public convenience and necessity that authorizes firm and interruptible transportation of natural gas to any existing customer of the interstate pipeline or to any pipeline to which the interstate pipeline is interconnected, if the gas is released due to termination or abandonment under § 270.201(c), (e), or (f) of this chapter.

(c) *Definition.* For purposes of this section, "existing customer" means a customer with which the interstate pipeline has a contract for the sale or transportation of gas which is in effect on the date a written contract is executed to purchase the gas for which transportation service is available under this section.

(d) *Transportation rates.*—(1) *Transportation service within contract demand.* If a pipeline provides transportation of gas to an existing customer under this section and, as a result, the total volumes of gas sold and transported to that customer on a firm basis do not exceed firm existing contract demand by that customer, the pipeline must:

(i) Base its transportation rate for such gas on the transmission, storage, and gathering components, as appropriate, of the commodity charge in the sales rate schedule applicable to that customer; and

(ii) Credit the volumes of gas transported against any minimum commodity bill obligation.

(2) *Transportation service in excess of contract demand.* If a pipeline provides transportation of gas to an existing customer under this section and, as a result, the total volumes of gas sold and transported to that customer on a firm basis exceed existing contract demand to that customer, the pipeline must base its transportation rate for such gas in excess of firm contract demand on the rate in a transportation rate schedule on file with the Commission that conforms to § 284.7 and either § 284.8(d) for firm service or § 284.9(d) for interruptible service. Until such rate becomes effective, the pipeline must use the rate in one of the pipeline's transportation rate schedules on file with the Commission which the pipeline determines covers service comparable to transportation service authorized under this section.

(3) *Transportation service for other customers.* If a pipeline provides transportation of gas under this section to any pipeline or customer other than an existing customer on a firm basis, the transportation rate for such gas must be the rate in a transportation rate schedule on file with the Commission that conforms to § 284.7 and either § 284.8(d) for firm service or § 284.9(d) for interruptible service. Until such rate becomes effective, the pipeline must use the rate in one of the pipeline's transportation rate schedules on file with the Commission which the pipeline determines covers service comparable to transportation service authorized under this section.

(e) *Reporting requirements.* An interstate pipeline that transports gas under a certificate granted by this section is subject to the reporting requirements of § 284.223(f).

(f) *Terms and conditions of service.* (1) The terms and conditions of service provided under a blanket certificate granted by this section must conform to the transportation requirements of the shipper, subject to reasonable operating conditions of the pipeline and its available pipeline capacity.

(2) An interstate pipeline that transports gas under a certificate granted by this section and is not otherwise subject to the non-discriminatory access provisions of § 284.8(b) or § 284.9(b) is not required to transport on behalf of others any gas not released due to termination or abandonment under the good faith negotiation procedures of § 270.201 of this chapter.

(3) If an interstate pipeline that transports gas under acertificate granted by this section becomes subject to the non-discriminatory access provisions of § 284.8(b) or § 284.9(b), its authority and service obligation under the certificate to transport gas purchased under a contract in effect before the pipeline becomes subject to those provisions terminates only when the contract expires or is terminated.

Appendix A.—Comments Filed in Docket No. RM86-3-000

Note.—The following appendix will not appear in the Code of Federal Regulations.

City of Albion, Nebraska
City of Alliance, Nebraska
*†American Gas Association
American Farm Bureau Federation
*American Paper Institute, Inc.
*†American Public Gas Association
*†Amoco Production Company
ANR Pipeline Company
Applied Resources International, Inc.
*†ARCO Oil and Gas Company
Arkansas Public Services Commission
*†Associated Gas Distributors
Association of Texas Intrastate Natural Gas Pipelines
Baltimore Gas and Electric Company
Bass Enterprises Production Company
†California Public Utilities Commission
City of Chadron, Nebraska
†Chemical Manufacturers Association
Chevron U.S.A.
*†Cities Services Oil and Gas Corporation
†Citizen/Labor Energy Coalition
Citizens Energy Corporation
City Gas Company, et al.
Columbia Gas Distribution Companies
†Columbia Gas Transmission Corporation
Consolidated Edison Company of New York, Inc.

Consumer Advocate Division of Public Service Commission of West Virginia
Consumers Power Company and Michigan Gas Storage Company
James L. Coosby, The Hobby House
Council of Energy Resource Tribes
Council of Industrial Boiler Owners
City of Cozad, Nebraska
Davis Gas Processing, Inc.
*Delhi Gas Pipeline Corporation
Donaldson, Lufkin & Jenrette
Dorchester Hugoton Ltd.
*†E.I. Dupont de Nemours and Company
El Paso Natural Gas Company
Elizabethtown Gas Company
*†Department of Energy
Hon. James Exon, and Hon. Edward Zorinsky
*†Exxon Corporation
†Fertilizer Institute
*†Florida Cities
Florida Gas Transmission Company
City of Gering, Nebraska
Hastings Utilities
Hecks Discount Stores
City of Henderson
Hewit & Dougherty and Dougherty Properties
City of Holdredge, Nebraska
Illinois Commerce Commission
City of Imperial, Nebraska
Independent Petroleum Association of Mountain States
Indiana Manufacturers Association, Inc.
*†Indicated Producers
*†Interstate Natural Gas Association of America
Interstate Oil Compact Commission
Interstate Power Company
Iowa Gas Company
†Iowa State Commerce Commission
Jicarilla Apache Tribe
†Department of Justice
Kaneb Operating Company, Ltd.
Kansas Power & Light Company
Hon. Nancy Landon Kassebaum
City of Kimball, Nebraska
†KN Energy Inc.
Laclede Gas Company
City of Lexington, Nebraska
†Hon. Jim Ross Lightfoot
Lone Star Gas Company
†State of Louisiana
Louisiana Association of Business and Industry
Louisiana Chemical Association
*†Maryland Peoples Counsel and National Association of State Utility Consumer Advocates
*Memphis Light Gas and Water Division of City of Memphis, Tennessee
MESA Petroleum Company
*State of Michigan and Michigan Public Service Commission
*Michigan Consolidated Gas Company
Michigan Manufacturers Association
Mid Continent Oil and Gas Association
Midwest Energy Inc.
Minnesota Department of Public Service
*Minnesota Department of Public Utilities, Energy Issues Intervention Office
Mississippi Manufacturers Association
Missouri Public Service Commission
†Mobil Oil Corporation
Montana Petroleum Association
*Montana Public Service Commission
National Association of Manufacturers
National Association of Wheat Growers
National Cattlemen's Association
National Council of State Garden Clubs, Inc.
National Fuel Gas Distribution Corporation
National Grange
*†Natural Gas Pipeline Company of America
*†Natural Gas Supply Association
New England Conference of Public Utilities Commissioners, Inc.
State of New Mexico
City of New York Housing Authority
†Northern Distributor Group
†Northern Illinois Gas Company
Northern Indiana Public Service Company
*†Northern Natural Gas Company
†Northwest Central Pipeline Corporation and the William Companies
Northwest Pipeline
City of Ogallala, Nebraska
State of Ohio, Office of Consumer Counsel
Ohio Farm Bureau Federation, Inc.
Oklahoma Corporation Commission
Oklahoma Kansas Division, Mid-Continent Oil and Gas Association
Hon. Michael G. Oxley, Hon. William E. Dannemeyer, Hon. Dan Schaeffer, Hon. Bob Whittaker, Hon. Jack Fields, and Hon. James T. Broyhill
Pacific Gas and Electric Company
*Panhandle Eastern Pipe Line Company
Pennsylvania Office of Consumer Advocate
Pennzoil Company and Pennzoil Producing Company
*†Peoples Gas Light & Coke Company and North Shore Gas Company
Peoples Gas System Inc.
Petrochemical Energy Group
Piedmont Natural Gas Company, Inc.
†Plains Petroleum Company
Pogo Producing Company
James D. Price, Mississippi House of Representatives
*†Process Gas Consumers Group and Industrial Group and American Iron and Steel Institute
Public Service Commission of Commonwealth of Kentucky
†Public Service Commission of District of Columbia
*†Public Service Commission of New York
Public Service Commission of West Virginia
Public Service Company of Colorado
Public Service Electric and Gas Company
Public Utilities Commission of Ohio
*Public Utilities Commission of Rhode Island
†Questar Corporation
*Rochester Gas and Electric Corporation
San Diego Gas and Electric Company
City of Scottsboro, Nebraska
†Shell Offshore, Inc. and Shell Western E & P Inc.
Ronald C. Shows, Mississippi State Senate
City of Sidney, Nebraska
South Dakota Public Utilities Commission
Southern California Edison Company
*†Southern California Gas Company
*Southern Natural Gas Company
Southern States Cooperative Inc.
Southwest Gas Corporation
Southwest Regional Energy Council
Sun Exploration and Production Company
†Taylor Energy Company
*†Tennessee Gas Pipeline Company
Tenngasco Corporation
†Texaco Inc.
*Texas Eastern Transmission Corporation
*Texas Gas Transmission Corporation
Texas Independent Producers and Royalty Owners Association
Texas Intrastate Natural Gas Pipelines
Texas Railroad Commission
*†Transcontinental Gas Pipe Line Corporation
*Transwestern Pipeline Company and Florida Gas Transmission Company
Union Texas Petroleum
*†United Distribution Companies
Virginia Agribusiness Council
William D. Watson, Esq., Holme Roberts & Owen
West Texas Gas Inc.
West Virginia Highway Users Conference
West Virginia Manufacturers Association
Western Gas Interstate Company
†Governor Mark White of Texas
Williston Basin Interstate Pipeline Company
Wisconsin Public Service Commission
Wisconsin-Southern Gas Company Inc.
Wyoming Public Service Commission

*Submitted reply comments.
†Participated in public conference.

Appendix B.—Filings Submitted for Order No. 436 Blanket Certificates

Note.—The following appendix will not appear in the Code of Federal Regulations.

Company name	Docket No.	Date filed	Order issued
1. Valley Gas Transmission, Inc	CP86-171	11/1/85	11/29/85.
2. Gas Gathering Corp	CP86-129	11/1/85	12/5/85.
3. Mid Louisiana Co.	CP86-214	11/26/85	2/11/86.
4. Columbia Gulf Transmission Co.*	CP86-239	12/13/85	2/25/86.
5. Columbia Gas Transmission Corp.*	CP86-240	12/13/85	2/28/86.
6. Ozark Gas Transmission System	CP86-250	12/24/85	Pending.
7. Gas Transport, Inc.*	CP86-291	1/24/86	Do.
8. Valero Interstate Transmission Co	CP86-300	1/30/86	Do.
9. Consolidated Natural Gas Co.	CP86-311	2/10/86	Do.
10. Erie Pipeline System (ANR Pipeline, Operator).	CP86-330	2/14/86	Do.
11 Transylvania Pipeline Co., Inc. (Transco affiliate)	CP86-334	2/14/86	Do.
12. Seagull Interstate Corp.	CP86-364	3/7/86	Do.
13. Texas Eastern Gas Transmission Co.	CP86-379	3/13/86	Do.
14. Superior Offshore Pipeline Co.	CP86-387	3/17/86	Do.

Company name	Docket No.	Date filed	Order issued
15. Northern Border Pipeline Co	CP86-395	3/19/86	Do.
16. Transco Offshore Gathering Co	CP86-397	3/20/86	Do.
17. Transcontinental Gas Pipeline Corp	CP86-405	3/28/86	Do.
18. Northern Natural Gas Co	CP86-435	4/11/86	Do.
19. Washtenaw Pipeline Co	CP86-445	4/15/86	Do.
20. Standard Gas Marketing Co	CP86-449	4/16/86	Do.
21. Transco Gas Services Inc	CP86-452	4/17/86	Do.
22. Moraine Pipeline Co	CP86-492	5/12/86	Do.
23. Mantaray Transmission Co	CP86-507	5/21/86	Do.
24. Texas Gas Transmission Corp	CP86-521	5/30/86	Do.
25. Sabine Pipe Line Co	CP86-522	5/30/86	Do.
26. Iroquois Gas Transmission Co	CP86-523	5/30/86	Do.
27. Kentucky-West Virginia Gas Co	CP86-526	5/30/86	Do.
28. Tennessee Gas Pipeline Co	CP86-534	6/3/86	Do.

*Company filed November 1, 1985, statement of intent to provide non-discriminatory transportation.

ONGOING SETTLEMENT NEGOTIATIONS WHICH INVOLVE ORDER NO. 436

Company name	Docket number
1. Northern Natural Gas Company	RP85-206
2. Texas Gas Transmission Company	
3. ANR Pipeline Company	
4. Natural Gas Pipeline Co. of America	
5. Panhandle Eastern Pipe Line Company	RP85-194
6. Tennessee Gas Pipeline Co	RP86-119

Note.—Tariff filings submitted 1/31/86 by El Paso Natural Gas Company; a settlement (Docket No. RP85-175) and revised tariffs (CP86-276) filed by Transwestern Gas Company only lay the Foundation upon which these companies may return and file formal Order 436 blanket certificate applications. Recent filings by intrastate companies owned by Oklahoma Natural Gas Pipeline are also considered preliminary filings not formal Order 436 applications.

[FR Doc. 86-13350 Filed 6-17-86; 8:45 am]

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federal register

Wednesday
June 18, 1986

Part III

Nuclear Regulatory Commission

Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice; Applications and Amendments To Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Pub. L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on June 4, 1986 (51 FR 20365) through June 9, 1986.

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U. S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice.

By July 18, 1986 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date.

Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director)*: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the local public document room for the particular facility involved.

Arizona Public Service Company et al., Docket No. STN 50–528, Palo Verde Nuclear Generating Station, Unit No. 1, Maricopa County, Arizona

Date of amendment request: May 14, 1986.

Description of amendment request: The proposed amendment would modify Technical Specification 8.1 by revising the testing requirements for the onsite emergency diesel generators in a manner that is consistent with current regulatory guidance provided in Regulatory Guide 1.108 and in Generic Letter 84–15.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the amendment request follows:

Standard 1—Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change in testing of the emergency diesel generators would result in the tests being performed in accordance with manufacturer's recommendations. The amendment does not, therefore, significantly increase the probability or consequences of an accident.

Standard 2—Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed amendment does not vary or affect any plant operating condition or parameter. For these reasons, the NRC staff has determined that the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Involve a Significant Reduction in a Margin of Safety

The requested amendment does not change the design bases for the equipment or the plant. It would only modify the testing requirements for the emergency diesel generators to be consistent with regulatory guidance, the manufacturer's recommendations, and the testing requirements for similar nuclear facilities (e.g., Palo Verde Unit 2). For the reasons stated above, the NRC staff has determined that the change does not involve a significant reduction in any margins of safety.

Based on the above considerations, the Commission proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room Location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Attorney for Licensees: Mr. Arthur C. Gehr, Snell Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Director: George W. Knighton.

Arkansas Power and Light Company, Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: April 1, 1986.

Description of amendment request: The amendment would revise the Technical Specifications (TSs) for steam generator surveillance to (1) modify the designation of those areas identified as special groups in the steam generator where imperfections have been previously found, (2) allow the installation of steam generator tube sleeves as an option to plugging defective tubes, (3) modify the surveillance requirements of steam generator tubes to take into consideration the critical area at the lower end of the sleeve of a sleeved tube and the area of the tube spanned by the sleeve of the sleeved tube, (4) provide for the identification of sleeved tubes in the report due within 45 days following the completion of the inspection and (5) modify the acceptance criteria to accommodate the proposed allowance of installation of steam generator tube sleeves in lieu of plugging defective steam generator tubes.

With regard to (1) above, the proposed change would define an additional group (A–2) consisting of all sleeved tubes that may, at the licensee's option, be excluded from the first random inspection if the group is fully inspected. The proposed change also expands special group A–3 to include, in addition to the wedge shape group adjacent to the open lane region, an additional 51 tubes which surround the untubed center portion of the steam generator. The proposed modification would require equally or more stringent surveillance of tubes comprising the special group.

With regard to (2) above, the sleeved tubes perform the same function in the same manner as the unsleeved tubes. Tube sleeves are designed, qualified and maintained under the stress and pressure limits of ASME Section III, Appendix F, and draft NRC Regulatory Guide 1.121, and their proper installation is immediately verified by eddy current testing. The slight reduction in primary flow and full-power steam superheat would have an insignificant impact on the performance of the steam generators under accident conditions. The sleeves are considered to be structural members and have been demonstrated to meet normal, upset, emergency and faulted conditions resulting from normal operation and accident transients. Additionally, the sleeves have been demonstrated to be mechanically stronger than the tubes themselves. Therefore, a sleeved tube is no more likely to rupture, collapse, or be pulled apart than an unsleeved tube.

With regard to (3) above, examination methods have been proposed by examining the lower end of the sleeve of the sleeved tube for comparison with the base line sleeve tube inspection. Significant deviation between the indications would be considered sufficient evidence to warrant designation as a degraded tube. Also, the examination in the tube area spanned by a sleeve would not be considered in determining the first sample of inspection or the inspection intervals.

With regard to (4) above, the current TSs require a report of the inspection results within 45 days following the completion of the inspection. The proposed modification would require the reporting of all sleeved tubes in addition to those plugged.

With regard to (5) above, with the addition of the specification which would allow the sleeving of defective tubes, it is necessary to define a tube as being that portion of the tube or sleeve which forms the primary system to secondary system pressure boundary. Also, the definition of a degraded tube would recognize that portion of the sleeve area as not degraded.

Basis for proposed no significant hazards consideration determination: The proposed changes have been reviewed against each of the criteria in 10 CFR 50.92, namely that the proposed changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The modification of the special groups identified in (1) above would in no way increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated. The system would not be compromised through this surveillance requirement. The modification of the special groups would not result in a reduction in a margin of safety since the requirement would require equally or more stringent surveillance requirements than currently provided.

The use of sleeves in lieu of plugs to modify defective tubes would not involve a significant increase in the probability or consequences of an accident previously evaluated, or create the possibility of a new or different kind of accident from any accident previously evaluated or involve a significant reduction in a margin of safety because the proposed method of repairing degraded tubes will restore the original capabilities of the tube and provide a level of safety in operation commensurate with that anticipated of the facility had it not experienced the need to repair steam generators.

The modification of the surveillance requirements of the steam generator tubes, the reporting of the identification of the sleeved tubes, and the modification of the acceptance criteria to accommodate the installation of the tube sleeves in lieu of plugging defective tubes, (3), (4) and (5) above, would not involve a significant increase in the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any previously evaluated since the requirements do not directly affect the operation of the systems involved. These modifications would not result in a reduction in a margin of safety since the proposed surveillance requirements, proposed modifications of the reporting requirements and proposed modifications of the acceptance criteria would have no effect on any margin of safety.

On these bases, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Suite 700, Washington, DC 20036.

NRC Project Director: John F. Stolz.

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of amendment request: February 27, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications pertaining to the Core Protection Calculator (CPC) as a part of the CPC Improvement Program (CIP). The CPC System (CPCS) is an integral part of the ANO-2 Reactor Protective System (RPS) and monitors certain NSSS variables and initiates a reactor trip if fuel design limits are approached as a result of an abnormal event. The proposed changes are discussed hereinafter.

1. This proposed change would revise Technical Specification 2.2.1, "Reactor Trip Setpoints," and its associated Bases. Table 2.2-1, "Reactor Protective Instrumentation Trip Setpoint Limits," requires that the setpoints for trip values of the RPS be set at specified values and kept within a specified allowable value range. The Local Power Density—High Trip Setpoint of Table 2.2.1 specifies the required trip setpoint which is the value at which the CPCS acts to prevent the peak linear heat rate from exceeding its safety limit for transients and anticipated operational occurrences and to mitigate the consequences of accidents. This proposed change revises the value of the Local Power Density—High Trip Setpoint and Allowable Value of Functional Unit 9, which currently requires that both the Trip Setpoint and Allowable Value for the Local Power Density—High Trip be 20.3 kw/ft. This setpoint has been derived by reducing the actual Local Power Density Specified Acceptable Fuel Design Limit (SAFDL) by a certain amount which accounts for thermal dynamic effects in the CPCS calculations. The revised setpoint no longer includes these dynamic allowances; instead, these effects are adjusted for using the addressable constants. The addressable constants are those specifically provided in the CPCS to allow calibration of the CPC to account for physics test measurements, uncertainties, sensor operability status, flow and power measurements, and changes in core design from cycle to cycle. The proposed change increases both the Trip Setpoint and Allowable Value to 21.0 kw/ft, and reflects this revised setpoint in the Bases. This is a generic setpoint for the CIP and reflects an improved methodology and simplification of adjusting for dynamic effects on a cycle dependent basis by using the addressable constants. Effectively, the CPCS local power density protection is not being changed.

General Design Criterion 10, Reactor Design, requires that the reactor core and associated coolant, control and protection systems be designed with appropriate margin to assure that SAFDLs are not exceeded during any condition of normal operation, including the effects of anticipated operational occurrences. The specified trip settings result in confidence that the SAFDLs will not be exceeded during normal operation or as the result of anticipated operational occurrences.

2. In the Bases for Technical Specification 2.2.1, the references will be updated to reflect the appropriate CIP modifications and methodology documents. Also, the CPC range limits will be modified to generic range limits specified by the CIP to promote consistency between the software of CPCS-equipped plants. CPCS accepts only those NSSS values within these limits in calculating the margin to fuel design limits and operation outside of

these limits will result in a CPCS initiated trip. The proposed changes will modify: (1) the RCS Cold Leg Temperature—Low limit from 465 to 490 °F, (2) the High limit from 605 to 585 °F; (3) the Pressurizer Pressure—Low limit from 1750 to 1785 psia; and (4) the High limit from 2400 to 2415 psia. The first three changes represent more restrictive limits in that they reduce the ranges of operation. The fourth change by itself may constitute a less restrictive limit; however, the change will not reduce the margin of safety based on the fact that the non-CPCS part of the ANO-2 RPS provides overpressurization protection with the applicable trip setpoint of 2362 psia.

3. This proposed change will revise the format of Technical Specification 3/4.2.1, "Linear Heat Rate," and the associated Bases, to provide clear and consistent monitoring, action and surveillance requirements when the Core Operating Limits Supervisory System (COLSS) is available or out of service. The COLSS is a monitoring system which continuously calculates and advises operators of margins to core operating limits on fuel design and the licensed power level. Technical Specification 3/4.2.1, "Linear Heat Rate" requires that the linear heat rate limit be maintained by operating within the region of acceptable operation as indicated by either the COLSS or the CPC.

This proposed change is accomplished by replacing the existing Limiting Condition for Operation (LCO) in Technical Specification 3.2.1 with two parts, 3.2.1.a and 3.2.1.b. 3.2.1.a states that when COLSS is in service, the COLSS calculated core power must be maintained less than or equal to the COLSS calculated Power Operating Limit (POL) based on linear heat rate. 3.2.1.b states that when COLSS is out of service, the linear heat rate limit is maintained by operating within the region of acceptable operation of the new Figure 3.2-1 using any operable CPC channel. Also, Surveillance Requirement 4.2.1.2 is revised to allow use of any operable CPC channel for monitoring the linear heat rate limit with COLSS out of service. This proposed change recognizes that it is acceptable to monitor any one channel for control purposes during steady state operation. It is not necessary that the monitored channel be the most limiting since appropriate uncertainty allowances are already implemented in the CPCS calculations and trip setpoints. The CPCS continues to provide the required protection during transient operation. The old Figure 3.2-1 will be deleted and replaced with words to the same effect. Figure 3.2-2 will become the new Figure 3.2-1. The linear heat rate limit value of Figure 3.2-1 will be lowered from 14.5 kw/ft to 13.5 kw/ft due to the removal of the flux peaking augmentation factors (in accordance with prior NRC approval for CE plants as described in the SE related to Calvert Cliffs, Docket No. 50-317, Technical Specification Amendment No. 104) and to accommodate longer fuel cycles. No new data has been developed which would require further analysis of clad collapse for ANO-2. The Combustion Engineering (CE) fuel rod manufacturing process has not changed in any way that would adversely affect the present clad collapse and augmentation factor analysis results. Therefore, flux peaking augmentation factors may be removed from the calculation of linear heat rate since the maximum potential augmentation factor is insignificant with respect to other power distribution uncertainties. The proposed change to Technical Specification 3.2.1 also modifies the existing action statement to be more clear and consistent with the LCO as described above.

4. This proposed change would revise Technical Specifications 3/4.2.4, "DNBR Margin," 3/4.3.1, "Reactor Protective Instrumentation," and the associated Bases, to provide clear and consistent monitoring, action and surveillance requirements for the various conditions with COLSS in service/out of service and Control Element Assembly Calculators (CEACs) operable/inoperable. Technical Specification 3/4.2.4 requires that the departure from nucleate boiling ratio (DNBR) margin be maintained by operating within the region of acceptable operation as indicated by either the COLSS or the CPC. Technical Specification 3/4.3.1 requires that the Reactor Protective Instrumentation System (RPIS) be operable and defines the number and type of RPIS channels required, response times and periodic testing required to assure operability and actions to be taken when the required RPIS is out of service. This proposed change consists of the following two parts:

a. The proposed change to Technical Specification 3.2.4 replaces the existing LCO with four parts, 3.2.4.a through 3.2.4.d. 3.2.4.a states that when COLSS is in service and at least one CEAC is operable, the COLSS calculated core power must be maintained less than or equal to the COLSS calculated POL based on DNBR. This is consistent with the requirements previously presented graphically by Figure 3.2-3. The existing Figure 3.2-3 will thus be deleted and replaced with words to the same effect. 3.2.4.b states that when COLSS is in service and neither CEAC is operable, the COLSS calculated core power must be maintained less than or equal to the COLSS calculated POL based on DNBR decreased by a penalty factor of 13.0% of rated power. 3.2.4.c states that when COLSS is out of service and at least one CEAC is operable, CPC calculated DNBR on any operable channel must be kept within the limits of the new Figure 3.2-2, which is identical to the old Figure 3.2-4. Section 3.2.4.d states that when COLSS is out of service and neither CEAC is operable, CPC calculated DNBR on any operable channel must be kept within the limits of Figure 3.2-3. The new Figure 3.2-3 is a power independent figure similar to the new Figure 3.2-2, but it accommodates the increased margin required when both CEACs are inoperable. The proposed change to Technical Specification 3.2.4 also modifies the existing action statement to be more clear and consistent with the LCO as described above. Also, Surveillance Requirement 4.2.4.2 is revised to allow use of any operable CPC channel for monitoring the DNBR with COLSS out of service. This proposed change recognizes that it is acceptable to monitor any one channel for control purposes during steady state operation. It is not necessary that the monitored channel be the most limiting since appropriate uncertainty allowances are already implemented in the CPCS calculations and trip setpoints. The CPCS continues to provide the required protection during transient operation.

b. This proposed change would revise Technical Specification 3/4.3.1, Table 3.3-1, ACTION 5 which provides conditions under which operation may continue for various operability conditions of the CEACs. ACTION 5.a will be revised to allow operation to continue after 7 days provided ACTION 5.b is met, in which more restrictive actions must be taken. ACTION 5.b addresses operation with both CEACs inoperable and will be revised to be consistent with the changes to 3/4.2.4, described above, by referencing the appropriate requirement of 3/4.2.4, depending on whether COLSS is in service or out of service. The COLSS calculated core power operating limit based on linear heat rate remains conservative without additional penalty for both CEACs inoperable. ACTION 5.b.2.c) is revised to clarify that the CEDMCS may be removed from the "Off" mode as specified in ACTION 5.b.2.a).

5. This proposed change will revise Technical Specification 3/4.3.1, "Reactor Protective Instrumentation," and the associated Bases. Technical Specification 3/4.3.1 requires that the Reactor Protective Instrumentation System (RPIS) be operable and defines the number and type of RPIS channels required, response times and periodic testing required to assure operability and actions to be taken when the required RPIS is out of service. Table 3.3–2 defines the maximum reactor protection instrumentation response times in order to verify that the maximum response times for the RPIS assumed in the Final Safety Analysis Report (FSAR) are not exceeded. The Table notes that these response times are based on a resistance temperature detector (RTD) response time of less than or equal to 6.0 seconds, the value used in the accident analyses for Cycle 5. If the effective RTD response time constant for a CPC channel exceeds 6.0 seconds, the DNBR and linear heat rate penalties for the affected channel(s) are required to be increased per Figure 3.3–1, and the DNBR POL decreased per Table 3.3–3. The CIP and related accident analyses now assume effective response times of 8.0 seconds for the reactor coolant system (RCS) cold leg temperature RTDs, and 13.0 seconds for the RCS hot leg temperature RTDs. The RTD response times and related actions specifications are therefore being modified to be consistent with the CIP changes to the CPCS dynamic compensation algorithms and the assumptions used in the uncertainty analysis. This change will revise the maximum RTD response time from 6.0 to 8.0 seconds in Note ## appended to item 10.c, "Cold Leg Temperature" of Table 3.3–2.

A new Note ### is appended to item 10.d, "Hot Leg Temperature," to reflect the allowable hot leg RTD response time of 13.0 seconds. Figure 3.3–1 is revised accordingly, and Table 3.3–3 is deleted since the analyses assumes longer response times and adjustments are no longer needed for RTD response times of 13.0 seconds. Also, the definition of RTD response time is moved from Table 3.3–2 to a more appropriate location in the related Bases, and the Bases will be modified to reflect the revised RTD response times.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards consideration. Example (i) relates to a purely administrative change to the Technical Specifications: For example, a change to achieve consistency throughout the Technical Specifications, correction of an error or a change in nomenclature. Example (ii) relates to changes which may constitute an additional limitation, restriction or control not presently included in the Technical Specifications. Example (vi) relates to a change which either may result in some increase in the probability or consequences of a previously analyzed accident or may in some way reduce a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan (SRP); for example, a small refinement of a previously used calculation model or design method. The proposed changes are similar to one or more of these examples. The specifics of how each proposed change is similar to the cited examples are discussed below:

1. SRP section 7.2, "Reactor Trip System," requires that the reactor protection system automatically initiate a reactor trip to assure that specified acceptable fuel design limits are not exceeded. This change is similar to Example (vi) of 48 FR 14870. Although the increased LPD trip setpoint may be perceived to reduce in some way a margin of safety, adjustments for dynamic effects which were previously included in the trip setpoint are now accounted for elsewhere in the CPCS algorithms. The net effect is that the CPCS with the revised setpoint will continue to initiate a reactor trip to assure that specified acceptable fuel design limits are not exceeded. Therefore, the proposed change satisfies SRP Section 7.2 acceptance criteria and is similar to Example (vi) of 48 FR 14870.

2. The three proposed changes related to the RCS cold leg temperature limits and the pressurizer pressure low limit are similar to Example (ii) of 48 FR 14870 since they represent more restrictive limits. The proposed change related to the pressurizer pressure high limit appears to be similar to Example (vi) based on the fact that the proposed change may appear to reduce a safety margin, but the proposed change does not reduce the margin of safety in that the non-CPCS part of the ANO–2 RPS provides overpressurization protection with more conservative trip setpoint.

3. This proposed format change is accomplished by replacing the existing Figure 3.2–1 with words to the same effect, revises existing Figure 3.2–2 and makes it the new Figure 3.2–1 and also revises the existing Limiting Conditions for Operation (LCO), Surveillance Requirements and associated Bases of 3/4.2.1 to provide clear and consistent monitoring, action and surveillance requirements. This modification is similar to Example (i) of 48 FR 14870 in that it relates to a purely administrative change to the Technical Specifications. Replacement of a Figure with words to the same effect and revisions of the LCO, Action and Surveillance Requirements will be made to clarify the requirements. The proposed change pertains to a revision of a graphic representation of the LCO with a set of plain administrative control statements easy for understanding. The reduction of the linear heat rate limit value of the new Figure 3.2–1 is similar to Example (ii) in that it constitutes an additional limitation, restriction or control not presently included in the Technical Specifications.

4. The proposed change described in (a) revises Figures 3.2–3 and 3.2–4, replaces the existing LCO with four parts, i.e., Sections 3.2.4.a through 3.2.4.d, and also revises the related Surveillance Requirements and associated Bases to provide clear and consistent monitoring, action and surveillance requirements. This modification is similar to Example (i) of 48 FR 14870 in that it relates to a purely administrative change to Technical Specifications by imposing four applicable administrative control methods and two new Figures in lieu of two existing Figures to maintain an adequate DNBR margin under different states of plant operations. 3.2.4.a and 3.2.4.b replace the existing Figure 3.2–1 with words to the same effect when COLSS is in service. Additionally, both new Figures supplant the existing Figure 3.2–4 for compliance with 3.2.4.c and 3.2.4.d when COLSS is out of service. Thus, DNBR will be maintained by 3.2.4.a (or 3.2.4.c) when at least one CEAC is operable, and by 3.2.4.b (or 3.2.4.d) when neither CEAC is operable. Since the proposed change pertains to a revision of graphic representations of an LCO with a set of plain administrative control statements for easy understanding and two consolidated figures for simplification, it is a change within the scope contemplated by Example (i). This change may also be considered similar to Example (ii) in that the addition of the new Figure 3.2–3 constitutes an additional operating restriction, not presently included in the Technical Specifications, for monitoring DNBR with COLSS and both CEACs out of service.

The proposed change described in Part (b) revises the ACTION statements in Table 3.3-1 of Technical Specification 3.3.1. Specifically, ACTION 5.a is revised to allow continued operation after 7 days with one CEAC inoperable, providing the more restrictive requirements of 5.b are met. ACTION 5.b is revised to provide consistency and reflect changes to 3.2.4.b and d. This is therefore similar to Example (i) in that it is purely administrative change to promote consistency throughout the Technical Specifications. The change to ACTION 5.a is similiar to Example (ii) in that it requires compliance with ACTION 5.b, which in turn references more restrictive requirements of 3.2.4, after 7 days of operation with one CEAC inoperable.

5. This change revises the RTD response time requirements to reflect the CPCS software revisions and assumptions used in the uncertainty analysis for the implementation of the CIP. This change may be considered similar to Example (vi) of 48 FR 14870 in that it reflects the refinement of a previously used calculation model and design method. Although the allowed RTD response times are increased, the CPCS dynamic compensation algorithms and constants reflect these increases and the net margin of safety is preserved.

Based on the above, the Commission has made a proposed determination that the application for amendment involves no significant hazards considerations.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esq., Bishop, Liberman, Cook, Purcell and Reynolds, 1200 Seventeenth Street NW., Washington, DC 20036.

NRC Project Director: George W. Knighton.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment request: April 10, 1985 and April 14, 1986 (partial response).

Description of amendment request: The following proposed technical specification changes are in partial response to BG&E's application dated April 14, 1986. The remaining two issues will be addressed in separate correspondence. The first proposed technical specification, (TS) change is also in response to BG&E's application dated April 10, 1985 and would complete our action on this request. The proposed TS changes are:

1. Change Units 1 & 2 TS 4.1.2.2 surveillance requirement to allow verification of boron injection flow path on SIAS signal at least every 18 months during any time period.

2. Change Units 1 & 2 TS to incorporate the Main Steam Header Noble Gas Effluent Monitor (TS Tables 3.3-6 and 4.3-3) as per guidance provided in Generic Letter 83-37. Several related administrative changes are also submitted with this proposed TS.

3. Change Unit 2 TS Table 3.3-9, "Remote Shutdown Monitoring Instrumentation," thus recognizing the "as-is" plant design.

Basis for proposed no significant hazards consideration determination: Change No. 1 proposes to change the surveillance which requires verification of the proper operation of components in the boron injection flow paths on a SIAS test signal every 18 months during shutdown. This proposal would delete the "during shutdown" restriction and allow this test to be performed at any time. This change was previously proposed for Unit 2 in BG&E's April 10, 1985 amendment request.

The licensee evaluated the proposed change against the standards in 10 CFR 50.92 and has determined that the amendment would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated . . .

This proposal would allow testing of boron injection flow paths during reactor operation. At least two boron injection flow paths would remain operable to meet assumptions used in previous accident analyses. [Thus, the conduct of the test during reactor operation would not reduce the capability of the boron injection function.] Therefore, the probability or consequences of previously evaluated accidents would not be significantly increased.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated . . .

This proposal would not change system design or operation [and, thus,] testing of the boron injection flow paths during reactor operation would not create the possibility of a new or different accident.

(iii) Involve a significant reduction in a margin of safety. Since the minimum required boron injection capability would be maintained [during testing], this proposal would not involve a significant reduction in a margin of safety [for any accident for which boron injection is required].

Based upon the above, the NRC staff agrees with the licensee's evaluation and proposes to determine that the proposed change to TS 4.1.2.2 involves no significant hazard considerations.

Change No. 2 would incorporate the Main Steam Header Noble Gas Effluent Monitor into the Technical Specifications for Units 1 & 2. This change is being proposed as requested by NUREG-0737, "Clarification of TMI Action Plan Requirements," and further guided by Generic Letter 83-37, "NUREG-0737 Technical Specifications."

On April 3, 1983, the NRC published guidance in the **Federal Register** (48 FR 14870) concerning examples of amendments that are not likely to involve a significant hazards consideration.

One example (ii) provided in 48 FR 14870 of a change not likely to involve significant hazards considerations involves a change ". . . that constitutes an additional limitation, restriction, or control not presently included in the technical specification. . . ." Since the proposed TS represent additional limitations not previously in the TS, these proposed changes are consistent with example (ii). Accordingly, the Commission proposes to determine that these proposed changes to the TS which provide new TS for the main steam header noble gas effluent monitor involve no significant hazards considerations.

Several administrative changes to the TS have also been proposed as a part of Change No. 2. The licensee has proposed to correct several typographical errors on Unit 2 TS pages 3-27. In addition, a footnote in Unit 1 and 2 TS Table 4.3-3 would be deleted in that it applied to a previously deleted TS; thus, the footnote is no longer needed.

One example provided in 48 FR 14870 of amendments not likely to involve significant hazards considerations is example (i) which provides for "A purely administrative change to technical specifications: For example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." These proposed changes to the TS are consistent with the above example and thus the Commission proposes to determine that the proposed changes involve no significant hazards considerations.

BG&E has also proposed a change to the TS Bases. A previous license amendment transferred control of the iodine and particulate sampling program to Section 6.0 of the Technical Specifications. Therefore, the bases for Radiation Monitoring Instrumentation should be updated by removing reference to the iodine and particulate samplers.

Change No. 3 would modify the range of the pressurizer pressure instrumentation installed on the Unit 2 remote shutdown panel. At the present time, TS 3.3-9 "Remote Shutdown Monitoring Instrumentation," describes the Pressurizer Pressure indicating range as 0-1600 psia. Recently installed, upgraded, instrumentation for pressurizer pressure on the remote shutdown panel has a range of 0-4000 psia. This proposed change to the TS was previously approved for Unit 1.

The licensee evaluated the proposed change against the standards in 10 CFR 50.92 and has determined that the amendment would not:

(i) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The remote shutdown instrumentation is provided for monitoring purposes only. The instrumentation does not provide inputs for automatically actuated equipment. This change simply recognizes the expanded range of the improved instrumentation.

(ii) The amendment would not create the possibility of a new or different type of accident from any accident previously evaluated.

This equipment is simply passive monitoring instrumentation. No new or different kind of accidents from those previously evaluated are created by this proposed change.

(iii) The amendment would not involve a significant reduction in a margin of safety.

The remote shutdown instrumentation was not credited in any safety analyses and thus no safety margins are impacted.

Based upon the above, the NRC staff agrees with the licensee's evaluation and proposes to determine that the proposed change to TS Table 3.3-9 involves no significant hazard considerations.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC. 20036.

NRC Project Director: Ashok C. Thadani.

Carolina Power & Light Company, Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendment: April 23, 1986.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) for Brunswick Steam Electric Plant, Units 1 and 2 by modifying TS Table 3.3.4-1.

Currently, TS Table 3.3.4-1 indicates that control rod withdrawal block is not initiated on "detector not full in" for the Intermediate Range Monitors (IRM) when the IRM channel indicators are in range position 1. However, this is contrary to actual plant configuration and operation; control rod withdrawal block is initiated when the IRM detectors are not full in regardless of which range position the indicators are set to. Therefore, the proposed TS change deletes footnote (e) from Item 4.a of Table 3.3.4-1. In addition, symbolic footnote annotation is changed to alphabetic.

Basis for proposed no significant hazards consideration determination: The Carolina Power & Light Company (CP&L) has reviewed the request and determined that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the control rod withdrawal block function will continue to be accomplished under other conditions currently described in the TS. In addition, as a result of the proposed amendment control rod withdrawal block would also be accomplished for the IRM detector not full in feature when the IRM channel indicators are in range position 1. This represents an additional restriction on operation of the plant and as such decreases the probability of an accident occurring. The footnote annotation change is an administrative change which has no impact on the probability or consequences of an accident.

(2) The proposed amendment does not create a new or different kind of accident from any accident previously evaluated for the same reasons as stated in item 1.

(3) The proposed amendment does not involve a significant reduction in a margin of safety because the removal of the bypass function from the TS provides for more restrictive operation of the plant by expanding the operating conditions for control rod block. The footnote annotation change is an adminstrative change which has no impact on a margin of safety.

Based on the above reasoning, CP&L has determined that the proposed amendment does not involve a significant hazards consideration.

The staff has reviewed the CP&L determination and finds that the amendment request meets the standards for determining whether a significant hazards condition exists (10 CFR 50.92(c)), that is, the proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Based on the above discussion, the staff therefore proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Southport, Brunswick County Library, 109 W. Moore Street, Southport, North Carolina 28461.

Attorney for licensee: Thomas A. Baxter, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: May 30, 1986.

Description of amendment request: The proposed amendment would revise Technical Specifications 3.22 and 4.15 to add the control room Halon system to the technical specifications and to substitute the 18 smoke detectors associated with the new Halon system for the 10 existing smoke detectors in the control room. The proposed amendment would also delete smoke detectors from the computer room/operations supervisors office.

Basis for proposed no significant hazards consideration determination: The purpose of the Halon suppression system is to prevent/control the spread of a postulated fire in the main control board (MCB). The system has been designed to totally flood the control room, including the MCB with a 6% concentration (by volume) of Halon. This figure was chosen taking into account room leakage so that the Halon concentration will be slightly in excess of the minimum (5%) required to extinguish a fire, while remaining well below the toxic limits (15%) identified by the National Fire Protection Association. At 6% concentration, it is assured that the postulated MCB fire would be controlled before damage to the two (2) adjacent MCB panels could occur. The new computer facility has its own Halon fire suppression system which includes eight smoke detectors on a cross-zoned system. The control room Halon system includes 18 smoke detectors in a cross-zoned pattern.

The Commission has provided examples (48 FR 14870, April 6, 1983) of actions not likely to involve a significant hazards consideration. Example (ii) of this guidance states that a change that constitutes an additional limitation, restriction or control not presently included in the technical specifications, for example, a more stringent surveillance requirement would not likely constitute a significant hazard. The staff has reviewed the proposed license amendment and concluded that it falls within the envelope of example (ii) since the proposed amendment adds the new control room Halon suppression system to Technical Specifications 3.22 and 4.15 and the 18 smoke detectors will replace the 10 existing smoke detectors in the control room.

Accordingly, the staff proposes to determine that the proposed changes do not involve a significant hazards considerations.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry and Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

NRC Project Director: Christopher I. Grimes.

Duke Power Company, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: March 24, 1986.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3/4.8.1, "A.C. Sources", and its associated bases relative to the diesel generators. These changes are described in the following paragraphs:

(a) The proposed changes to TS 3.8.1.1b.1), b.2), 3.8.1.2b.1) and b.2) reflect new fuel oil storage requirements based upon the 5750 kw rating for the diesel generators. The original fuel oil volumes were calculated based upon the diesels' original rating of 7000 kw. The NRC Staff's Supplement 4 to the Catawba SER discusses the change in the rating of the diesel generators. The new limit of 5750 kw for each diesel is adequate to cover all necessary LOCA and blackout loads. There are no current plans to return the diesels' rating back up to 7000 kw since the lower rating is adequate and also causes less wear during testing.

(b) The proposed changes to the action statements of TS 3.8.1.1 and table 4.8–1 are in response to the NRC staff's guidance outlined in Generic Letter No. 84–15 titled "Proposed Staff Actions to Improve and Maintain Diesel Generator Reliability" dated July 2, 1985, and IE Information Notice No. 84–69, Supplement 1 titled "Operation of Emergency Diesel Generators" dated February 24, 1986. These changes would reduce the number of diesel generator test starts currently required in the Catawba Units 1 and 2 Technical Specifications.

The intent of the changes is to improve and maintain diesel generator reliability by reducing the required number of tests conducted on the diesels. By limiting the number of tests required, the diesels will be subjected to less wear with less potential for engine failure due to too frequent testing.

(c) The proposed changes to surveillance requirements 4.8.1.1.1b. and 4.8.1.1.2g. are to allow certain diesel generator Surveillances to be conducted during unit operation. Currently, all of these Surveillances are required to be performed during shutdown, because some of the testing would make the diesels unavailable to supply emergency power. This is true only for those Surveillances proposed to be conducted during shutdown (i.e. 4.8.1.1.2g.1), g.4), g.6), g.7), g.8), g.9), and g.10)). During performance of the other Surveillance tests an override signal would be generated and the diesels would be capable of carrying out their intended functions. Those particular Surveillances are: 4.8.1.1.1b., 4.8.1.1.2g.2), g.3), g.5), g.11), g.12), g.13), and g.14). The effect of this change would be additional flexibility in scheduling Surveillances and the ability to do certain tests at times other than during outages.

(d) The proposed change to Surveillance Requirement 4.8.1.1.2d. is to allow deletion of the footnote associated with this surveillance.

The required date for the Cathodic Protection System operability has passed and the system is now operable. Thus, the footnote is no longer needed, and

(e) The proposed change to Surveillance Requirement 4.8.1.1.3 is to delete the supplemental reporting recommended in Regulatory Guide 1.108 Revision 1, August 1977, if the number of failures in the last 100 valid tests (on a per nuclear unit basis) is greater than or equal to 7. The reporting will continue on a per diesel generator basis. This change is consistent with the intent of Generic Letter 84–15.

Basis for proposed no significant hazards consideration determination: The Commission has provided certain examples (48 FR 14870) of actions likely to involve no significant hazards considerations. The request involved in this case does not match any of those examples. However, the staff has reviewed the licensee's request for the above amendments and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because none of the proposed changes increase the probability or the consequences of an accident previously evaluated. The change in the fuel oil volumes would still maintain the required volumes of fuel oil assumed in the safety analysis. Changes in the action statements of TS 3.8.1.1 and Table 4.8–1 will not have any effect on any previously analyzed accidents because there is no change to any of the assumptions used in the analyses. The changes to the Surveillances conducted during shutdown will likewise not affect any previously evaluated accidents in that the diesels will still be capable of performing their intended safety functions if called upon. The deletion of the footnote is of an administrative nature. Furthermore, the change in the reporting requirement will not have any effect on any previously analyzed accidents. The reporting will be performed on a per diesel generator basis rather than the per unit basis.

Also, it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes introduce no new mode of plant operation and no physical modifications are required to be performed to the plant.

Finally, it would not (3) involve a significant reduction in a margin of safety because the new fuel oil volumes are consistent with the current assumptions in the safety analysis and therefore do not decrease the margin of safety. The changes to the action statements of TS 3.8.1.1 and Table 4.8–1 are intended to increase the diesel generators' reliability and thus result in an increase in the margin of safety. The changes to the Surveillances required during shutdown would not decrease the margin of safety. The tests would still be conducted at least once per 18 months as is currently required. The diesels would continue to be required to carry out their intended safety functions during these tests. Therefore, no reduction in the margin of safety would result if these tests were allowed to be conducted during unit operation. Furthermore, the deletion of the footnote related to the Cathodic Protection System operability and the change in the reporting requirement would not affect the safety margin.

Accordingly, the Commission proposes to determine that this change does not involve significant hazards considerations.

Local Public Document Room Location: York County Library, 138 East Black Street, Rock Hill, South Carolina, 29730.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 7, 1985.

Description of amendment request: The proposed amendments would change the Technical Specifications to add some of the changes required by the NRC in its Generic Letter (GL) 85–09, "Technical Specifications for Generic Letter 83–28, Item 4.3." Item 4.3 of GL 83–28, "Required Actions Based on Generic Implications of Salem ATWS Events," established the requirement for automatic actuation of shunt trip attachments on reactor trip breakers.

The specific changes would: (1) Add a new Action Statement 12 to TS Table 3.3–1 to state that:

With one of the diverse trip features (Undervoltage or shunt trip attachment) inoperable, restore it to OPERABLE status within 48 hours or declare the breaker inoperable and apply ACTION 9. The breaker shall not be bypassed while one of the diverse trip features is inoperable, except for the time required for performing maintenance to restore the breaker to OPERABLE status. (Action 9 requires the McGuire Unit to be in at least hot standby within 6 hours). Action Statement 12 would be referenced within TS Table 3.3–1 by the ACTION column of Table entry item 19, Reactor Trip Breakers.

(2) Add a new note 12 to the Table Notation of TS Table 4.3–1, Reactor Trip System Instrumentation Surveillance Requirements. This note would be referenced within the table with respect to the Trip Actuating Device Operational Test for Reactor Trip Breaker (Table entry item 19).

(3) Modify Table Notation number 11 of TS Table 4.3–1 to delete all references to the time interval and maintenance or adjustment of the Reactor Trip Breakers. The modified Table Notation number 11 would be referenced within the table for the Trip Actuating Device Operational Test for "Manual Reactor Trip" (Table entry item 1), and would be deleted from the Trip Actuating Device Operational Test for "Reactor Trip Breaker" (Table entry item 19).

Basis for proposed no significant hazards consideration determination: The proposed changes to the Technical Specifications are submitted by the licensee in response to GL 85–09. In GL 85–09, the Commission notes its conclusion that:

Technical Specification changes should be proposed by licensees to explicitly require independent testing of the undervoltage and shunt trip attachments during power operation and independent testing of the control room manual switch contacts during each refueling outage. The Commission also concluded that these tests are necessary to ensure reliable reactor trip breaker operation.

The Commission has provided guidance concerning the application of its standards set forth in 10 CFR 50.92 for no significant hazards consideration by providing certain examples (48 FR 14870). One of the examples of an amendment likely to involve no significant hazards consideration relates to changes that (ii) constitute additional limitations, restrictions, or controls not presently included in the Technical Specifications. The proposed amendment of the Technical Specifications matches the example because it would impose additional limitations for operation and additional surveillance requirements for the reactor trip breaker undervoltage and shunt trip attachments not presently included in the Technical Specifications.

The above proposed changes would permit individual testing of the undervoltage and shunt trip attachments and would be in accordance with applicable portions of Generic Letter 85–09 for required actions based on generic implications of the Salem ATWS event. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Additional requirements of Generic Letter 85–09 regarding items to be addressed by Technical Specifications are outside the scope of this notice.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 10, 1986 and supplemented May 12, 1986.

Description of amendment request: The proposed amendments would change Technical Specification 4.4.1.2.3 to require that at least two, rather than at least one, reactor coolant loops shall periodically be verified in operation and circulating reactor coolant when the plant is operating in the hot standby mode.

Basis for proposed no significant hazards consideration determination: In response to the licensee's letter of January 10, 1986, the NRC issued license amendment 56 on Unit 1 and license amendment 37 on Unit 2 to change the Limiting Condition for Operation associated with Technical Specification 3.4.1.2, "Reactor Coolant System—Hot Standby," by increasing by one the number of reactor coolant loops required to be operable and in operation for hot standby. (A reactor coolant "loop" includes its primary piping, steam generator and reactor coolant pump). In its safety evaluation for amendments 56 and 37, the Commission noted that the change to the more restrictive condition was necessary to ensure that sufficient coolant flow is available when operating in hot standby so that the DNB design bases are met for all operating conditions and postulated accidents in hot standby.

By letter dated May 12, 1986, the licensee noted that its January 10, 1986, letter had also requested a corresponding change to Surveillance Specification 4.4.1.2.3 which had not been reflected in Amendments 56 and 37. Thus, the existing surveillance requirement is inconsistent (i.e., less restrictive) with its associated limiting condition for operation. The proposed amendments would correct this inconsistency.

The Commission has provided guidance concerning the application of these standards by providing certain examples (48 FR 14870). One of these examples, (ii), involving no significant hazards consideration is "A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement."

The proposed change to increase by one the number of reactor coolant loops required periodically to be verified in operation and circulating reactor coolant in the hot standby mode represents a more restrictive surveillance requirement in the Technical Specifications. Therefore, the proposed amendments match the example. Accordingly, the Commission proposes to determine that the change does not involve significant hazards considerations.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

NRC Project Director: B.J. Youngblood.

Duke Power Company, Dockets Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: November 14, 1985.

Description of amendment request: The proposed amendments would revise the licenses to include the new schedule for the revised dates to an NRC Confirmatory Order of March 18, 1983. Duke Power Company (the licensee) anticipates installing the noble gas stack high range monitors and having them operational by the end of Cycle 9 for Unit 1 and Cycle 8 for Unit 2. The monitors for Unit 3 were installed during the Cycle 8 refueling outage. The licensee states that these are replacement monitors because erratic behavior, such as moisture contamination of the cable connectors, was observed on the original monitors.

The proposed amendments to the facility operating licenses for Oconee Nuclear Station consist of a schedular change to an Order confirming licensee commitments on Post-TMI related items which was issued by a March 18, 1983 NRC letter. The specific item of concern which requires a schedular revision to the Confirmatory Order is Item II.F.1(1)—Noble Gas Effluent Monitors.

The licensee states that the monitors had been installed on all units prior to January 1, 1982; however, due to their erratic behavior, the monitors have proved to be unreliable. Duke's efforts in trying to resolve the problem were unsuccessful. Additional actions (Duke's September 24, 1984 letter) were initiated to restore operability to these monitors. The compensatory measures which have been implemented, as discussed in the September 24th letter, are adequate to assure that the capability to detect and measure concentrations of noble gas effluents released during and following an accident are met. The licensee states that the corrective actions currently being pursued on resolving the unreliability of these monitors has reasonable assurance of success, inasmuch as the replacement monitors are currently installed and operating at Duke's McGuire and Catawba Nuclear Stations.

The proposed amendments to Oconee's facility operating licenses concern a revision to the March 18, 1983 Confirmatory Order having to do with schedules for implementation. Duke has taken appropriate corrective actions regarding the delays, in resolving the problems encountered and has made a responsible effort to implement this Post-TMI action item (II.F.1(1)). Furthermore, appropriate interim compensatory measures were provided.

Other items included in the licensee's letter of November 14, 1985, have been completed.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

By letter dated March 18, 1983, the NRC transmitted a confirmatory order on certain Post-TMI actions. This order requires that the licensee implement and maintain certain TMI modifications among which is the noble gas monitor-stack high range radiation monitor (NUREG-0737, Item II.F.1(1)).

The licensee has been experiencing problems with the monitors where moisture contamination of the cable connectors causes erratic readings. The licensee would like to extend the dates in the NRC order to install more reliable monitors. In its September 24, 1984 letter, the licensee says that it has implemented the following compensatory measures while trying to replace and restore the monitors to operability:

(1) On each unit, a gas radiation monitor is installed and is operable which can monitor noble gases in the unit vent. The range for these monitors is only one decade less than the range for the presently installed inoperable high range gas radiation monitors;

(2) Procedures are in place to take grab samples from the unit vents, if required during the course of an accident; and

(3) Offsite doses can be estimated from the high range containment monitors (NUREG-0737, Item II.F.1(3)) that are currently operating.

The licensee states that the proposed facility operating license amendments have to do with schedules for implementation. As such, the licensee concludes that: (1) Appropriate corrective actions to resolve the problems regarding the delay have been taken; (2) there is good cause for the delays encountered during initial implementation; and (3) appropriate interim compensatory measures are being taken.

Therefore, the proposed action would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

On this basis, the Commission proposes to determine that the application involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

Attorney for licensee: J. Michael McGarry, III, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW, Washington, DC 20036.

NRC Project Director: John F. Stolz.

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendments request: May 7, 1986.

Description of amendments request: The proposed amendments would delete the Specifications for the Auxiliary Feedwater (AFW) System and the Condensate Storage Tanks (CST) in current Technical Specification 3.8, Steam and Power Conversion Systems. Requirements for the AFW System and CST will be included in new Technical Specifications 3.18 and 3.19. The proposed Specifications provide explicit limiting conditions for operation (LCO), applicability requirements, and ACTION requirements for operation of the AFW System and CST. The format (i.e., LCO, applicability, ACTION requirements) is that of NUREG-0452, Standard Technical Specifications for Westinghouse Pressurized Water

Reactors (WSTS), although the requirements in the proposed Specifications differ from the WSTS because of the uniqueness of the Turkey Point Plant AFW System design (i.e., shared system, three turbine driven pumps, etc.)

The proposed amendments would also provide surveillance requirements for the CST which are not included in the existing Technical Specifications, correct errors in the valve numbers for two primary coolant system pressure isolation valves, and update the Bases to support the changes for the AFW System and CST.

Basis for proposed no significant hazards consideration determination: The proposed changes to the Turkey Point Technical Specifications are:

Pages ii, iii, iv, v

These table of contents pages are revised to reflect the proposed changes.

Section 3.8, Page 3.8–1

The specification for operation of the AFW system and CST are deleted from this section and included in new Sections 3.18 and 3.19.

Table 3.16–1, Page 3.16–2

In Table 3.16–1, the valve numbers for HHSI Loop C Cold Leg and RHR Loop B Cold Leg shown as 3–875B and 3–876A would be corrected to read 3–875C and 3–876B, respectively, to reflect the correct valve numbers.

Section 3.18, Pages 3.18–1 to 3.18–2

Proposed Specification 3.18 would differ from the current Technical Specification 3.8 as follows:

(1) Table 3.18–1 defines the number of independent auxiliary feedwater pumps and their associated flowpaths (steam and water) required to be operable for single and two unit operation.

(2) The proposed Specification (LCO) requires that two of the three turbine driven AFW pumps be operable for both single and two unit operation. A single AFW pump is sized to provide adequate flow to satisfy the minimum AFW flow requirements for two unit operation. A second operable pump would satisfy the single active failure criterion.

Although all three AFW pumps would normally be operable and aligned to the AFW system, as is required by the current Specification for two unit operation, the proposed Specification (LCO) is consistent with the current design basis and safety analyses, would permit additional operational flexibility (reducing heatup/cooldown transients on the units), and is consistent with 10 CFR 50.36(c)(2) which states that LCOs are the lowest functional capability or performance levels of equipment required for safe operation of the facility.

(3) The applicability of the proposed AFW specification in the proposed Technical Specifications is to Modes 1, 2, 3. This change differs from the current requirements in that the action requirements are applicable in all specified modes, whereas, under current Technical Specification, action is only specified to be taken when a limiting condition is not met during power operation, although the AFW System is required to be operable when the reactor coolant temperature is above 350°F. Modes for AFW operation are not specified in the current Technical Specifications.

(4) The ACTION requirements in the proposed AFW Specification are consistent with the current Specification except for the following. The proposed Specification would allow one discharge water flowpath (i.e., a flow control valve) to be inoperable in both trains for a period not to exceed 72 hours and allow one train to be inoperable in both units for a 72 hour period. In both cases, the AFW System will be capable of providing the minimum required flow through the remaining four operable flowpaths, or through the remaining operable train in each unit, respectively.

Section 3.19, Page 3.19–1

Proposed Specification 3.19 would differ from the current Technical Specification 3.8 as follows:

The proposed ACTION requirements are more restrictive in that they require action to be taken within 4 hours (consistent with the WSTS) as opposed to 48 hours in the current Specification.

Page 4.21–1

The proposed amendment would add Technical Specification 4.21, Condensate Storage Tank. This specification provides a surveillance requirement to demonstrate the CST is operable by verifying at least once per 12 hours that the water volume in the CST is within its limits when the CST is the supply source for the AFW pumps. There is no similar requirement in the current Specifications.

Pages B3.8–1, B3.18–1, B3.19–1

The proposed amendment would add separate bases (B3.18 and B3.19) for the AFW system and the CST. The Bases for the Steam and Power Conversion Systems, B3.8, would be modified accordingly to delete reference to the AFW System and CST.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences or an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Operation of Turkey Point Units 3 and 4 in accordance with the proposed amendments would *not:*

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

Technical Specification 3.18 and Table 3.18.1 define the number of independent AFW pumps and their associated flowpaths (steam and water) required to be operable for single and two unit operation. Operation of the system in accordance with this Specification would ensure that adequate core and reactor coolant pump (RCP) heat removal is available to prevent water relief out the pressurizer relief or safety valves. This is the basis for the current Technical Specification and consistent with the FSAR safety analyses.

The requirements for CST operation in proposed Technical Specification 3.19 are as restrictive or more restrictive than the requirements in current Technical Specification 3.8.

The addition of Specification 4.21 to verify operability of the CSTs further ensures that the limiting conditions for operation for the CSTs will be met.

The changes to Table 3.16–1 to correct valve designations and format changes to the table of contents and section 3.8 are administrative. No changes to the systems were made.

Based on the above, operation in accordance with the proposed amendments would not involve an increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of the AFW System and CST is not significantly different from that allowed by the current Technical Specifications, and the conclusions of the safety analyses remain valid (i.e., adequate core and RCP heat removal is available). The change of valve designations and format changes to the table of contents and section 3.8 are administrative and do not result in any system changes.

Based on the above, operation in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

As noted in response to (1) and (2) above, the operation of the AFW System and CST, as permitted by the proposed Technical Specifications, is not significantly different from that allowed by the current Technical Specifications. Adequate heat removal capability is available to remove core and RCP heat and to prevent water relief out the pressurizer relief or safety valves, insuring that the integrity of the core and RCS is not compromised. The addition of CST surveillance requirements further ensures that the LCO for the CST will be met. In addition, the change of valve designations and various format changes are administrative and do not result in any system changes. Thus, operation in accordance with the proposed changes will not involve a significant reduction in a margin of safety.

Based on the above discussion, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated, or create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety.

Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: Lester S. Rubenstein.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units Nos. 1 and 2, Appling County, Georgia

Date of amendment request: March 31, 1986 superseding the submittal of November 7, 1984, as corrected November 20, 1985.

Description of amendment request: This submittal supersedes the submittal of November 7, 1984, as corrected November 20, 1985 which was noticed in the **Federal Register** on March 27, 1985 (50 FR 12144). The amendment proposed in this submittal would modify the Hatch Unit 1 Technical Specifications to:

1. Delete the requirement for demonstrating diesel generator operability when core spray systems, low pressure core injection systems (LPCI), plant service water system components or two reactor heat removal (RHR) service water pumps are inoperable.

2. Add a requirement to verify offsite power availability and correct breaker alignments.

3. Replace the monthly diesel generator start test with tests on a Staggered Test Basis and a test frequency requirement based on the number of failures during the previous 20 valid tests.

4. Add a definition for "Staggered Test Basis."

5. Add a requirement to verify that during the staggered basis start tests, the diesel starts from ambient conditions and is gradually loaded and to specify a permissible load range.

6. Eliminate the requirement for additional operability testing of the diesel every 24 hours following the initial testing.

The amendments would modify the Hatch Unit 2 Technical Specifications to:

1. Increase the time allowed to restore one of two inoperable diesel generators to an operable status from 2 hours to 24 hours.

2. Replace the requirements for testing diesels at 3, 7, 14, or 31 day intervals based on the total number of failures out of the last 100 valid tests of all diesels at a unit with only two of these test intervals, 7 and 31 days, based on the number of failures out of the last 20 valid tests for the specific diesel being tested.

3. Revise the 18-month cycle, 24-hour diesel test requirement to require that the overload test be performed during the last two rather than the first two hours of the test.

4. Extend the test interval for verifying operability of diesel air start receivers from 18 months to 5 years.

5. Replace the staggered basis fast start tests with starts from ambient conditions and gradual loading.

The amendments would modify the Technical Specifications for both Hatch Units 1 and 2 to:

1. Add a requirement that once per 184 days each diesel generator shall be started, verified to read synchronous speed in less than or equal to 120 seconds and operated for greater than or equal to 160 seconds. Load ranges are specified.

2. Increase the time allowed to verify that a diesel is operable after declaring an offsite power source component or another diesel to be inoperable from "immediately" to 24 hours, and add the requirement that the operability verification test be repeated every 72 hours.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of the criteria in 10 CFR 50.92 by providing examples of amendments that are considered not likely to involve a significant hazards consideration (51 FR 7751). One such example is (ii), a change that constitutes an additional limitation, restriction control not presently included in the Technical Specifications.

Items 2, 3, 4 and 5 listed above as changes to the Hatch Unit 1 Technical Specifications are similar to this example.

The Commission has also provided standards for determining whether a significant hazards consideration exists [10 CFR 50.92(c)]. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission's staff, in Generic Letter (GL) 84-15 ("Proposed Staff Action to Improve and Maintain Diesel Generator Reliability"—July 2, 1984), indicated that requirements for testing diesel generators while emergency core cooling equipment is inoperable results in excessive testing and increased degradation of diesel engines. The staff recommended, therefore, that these testing requirements be deleted from the Technical Specifications. Item 1 listed above as a change to Hatch Unit 1 Technical Specifications is one such item as addressed in GL 84-15. The licensee stated in its November 7, 1984, letter that the above proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because it will eliminate a practice of unnecessary and abusive diesel generator testing which can contribute to accelerated diesel generator wear, which consequently degrades diesel generator reliability and availability. The licensee stated that this change will not create the possibility of a new or different kind of accident from any accident previously evaluated because no physical modifications are required to be made to the plant and performance of onsite emergency power systems as described in the Final Safety Analysis Report (FSAR) will remain unchanged. The licensee also stated that this change does not involve a significant reduction in a margin of safety because with the proposed change failures of the core spray, LPCI or RHR service water system components will not adversely affect the reliability and performance of the diesel generators.

The Commission's staff agrees with the licensee's evaluation in this regard, and accordingly, the staff proposes to find that this change involves no significant hazards considerations.

Item 6 listed above as a change to Hatch Unit 1 Technical Specifications, Items 1 through 5 above for Hatch Unit 2 Technical Specifications, and Items 1 and 2 above for both Hatch Units 1 and 2 Technical Specifications are changes directed at enhancing the reliability of the diesel generators. GL 84–15 expressed the staff's position that frequency of fast start tests from ambient conditions of diesel generators should be reduced. The staff in GL 84–15 encouraged licensees to submit changes to their Technical Specifications to accomplish a reduction in the number of fast starts as well as to reduce other diesel testing requirements in the Technical Specifications as discussed above. All these changes could lead to an overall improvement in diesel reliability and availability as outlined in GL 84–15.

The licensee indicates that the above changes do not involve significant hazards considerations because:

(1) The proposed changes will not significantly increase the probability or consequences of an accident previously evaluated because they will eliminate a practice of unnecessary and abusive diesel generator testing contained in the Technical Specifications. Such testing contributes to accelerated diesel generator wear, which consequently degrades their reliability and availability.

(2) The proposed changes will not create the possibility of a new or different accident from any accident previously evaluated because no physical modifications are required to be made to the plant in conjunction with these proposed changes. Therefore, performance of the onsite emergency power system as described in the FSAR remains unchanged.

(3) The proposed changes will not involve a significant reduction in a margin of safety because demonstration of diesel generator operability will be maintained and will be conducted in a more optimum manner that will improve the overall performance of the onsite emergency power system.

The Commission's staff concurs with the licensee's evaluation in this regard, and accordingly, on the basis of the above, the Commission has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Bruce W. Churchill, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: Daniel R. Muller.

Indiana and Michigan Electric Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment request: May 19, 1986.

Description of amendment request: The proposed amendment would revise the Technical Specifications by adding requirements for the containment sump level and flow monitoring system for both Units and to correct a duplication of surveillance requirements on the reactor coolant leakage detection system for Unit 1.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the applications of the standards for making a no significant hazards determination by providing certain examples (48 FR 14870). One of the examples (ii) is a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications. The change to add requirements for the containment sump level and flow monitoring system for both units is directly related to this example. This system was required as part of the TMI Action Plan, NUREG–0737. Another example (i) is a purely administrative change to the technical specifications. Surveillance Requirement 4.4.6.1 is now on page 3/4 4–14 for Unit 1 and is exactly repeated on page 3/4 4–15.

The removal of the duplication is purely administrative and directly related to the example. Therefore, the Commission proposes to find that the changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, DC 20036.

NRC Project Director: B.J. Youngblood.

Iowa Electric Light and Power Company, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: October 17, 1984 revised April 30, 1986.

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center (DAEC) Technical Specifications to direct operator action in the event that the Limiting Condition for Operation (LCO) in Technical Specification Section 3.5.H regarding maintaining certain discharge pipes filled cannot be met. The licensee's application dated October 17, 1984 was previously noticed in the **Federal Register** on December 31, 1984 (50 FR 806). By a letter dated April 30, 1986, the licensee revised and resubmitted the changes to Technical Specification Section 3.5.H including additional information requested in our letter dated January 9, 1986. The licensee also requested additional changes removing the surveillance requirement of the Technical Specifications Section 4.5.H.1 related to HPCI and RCIC subsystems.

DAEC Technical Specification 3.5.H presently requires that the discharge piping of the HPCI, RCIC, LPCI, and Core Spray Systems be maintained filled with fluid up to the last block valve when operability of these systems or subsystems is required. Maintaining the lines filled minimizes the possibility of water hammer and system damage, when the systems are started to provide their designed safety function.

The filled status of the core spray and HPCI lines is continuously monitored by measuring the static pressure in the filled lines; annunication occurs if the pressure decreases below a set limit. The HPCI and RCIC systems are normally aligned to the Condensate Storage Tank (CST) and, in this alignment, the piping is maintained full.

The licensee proposes to add Action Statement 3.5.H.1.a which specifies that, when these systems are required to be operable, the lines must be returned to the filled condition within 1 hour. If the Action Statement 3.5.H.1.a cannot be met, the licensee must follow Action Statement 3.5.H.1.b which requires that the affected system(s) be placed in the test mode (i.e., the pump will be operated, thus assuring the lines are filled) or declared inoperable.

The licensee also proposes to remove Surveillance Requirement 4.5.H.1 from the Technical Specifications. This surveillance test requires that, whenever the HPCI or RCIC systems are aligned to take suction from the torus (the torus serves as a backup water supply to the CST), the discharge piping of the HPCI and RCIC shall be vented from the high point on the injection line and water flow observed on a monthly basis. The reasons for removal of the surveillance requirement are threefold: (1) should the HPCI or RCIC automatically switch from the normal source of water (the CST) to the backup water supply (the torus), the plant operator may return the system to its normal supply (the CST) after the initiating signal is cleared. Thus, the HPCI or RCIC systems line up to the backup water supply (the torus) may occur for only a few minutes, not for an entire month which is currently implied by Technical Specification 3.5.H.1.; (2) the normal torus water level is at an elevation of 729 feet 5¼ inches with the high point vent of the systems at an elevation of 760 feet. Therefore, with neither the HPCI nor pump in operation, a downward gravity flow is assumed and water in the discharge line would reach equilibrium with the torus water level of 729 feet 5¼ inches; and (3) the implementation of proposed Action Statement 3.5.H.1.b provides assurance the plant is placed in a safe condition if the discharge lines from the pump discharge of these systems to the last block valve cannot be filled.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and finds that the proposed amendment: (1) Does not involve significant increase in the probability or consequences of previously evaluated accident because (a) inclusion of action statement to keep the discharge piping filled will reduce the likelihood of water hammer without affecting any of the previously evaluated accidents probabilities or consequences, and (b) deleting the HPCI and RCIC subsystems surveillance during switchover of suction to torus water will have no significant impact on the probability or consequences of previously evaluated accidents; (2) does not create the possibility of a new or different kind of accident because (a) keeping the discharge pipes filled, and (b) deleting the HPCI and RCIC subsystem surveillance requirements are unlikely to create any new or different kind of accident; and (3) does not involve a significant reduction in the margin of safety because (a) keeping the discharge pipes filled and (b) deleting the surveillance of the discharge line venting whenever HPCI or RCIC suction is aligned to torus water, does not affect the DAEC margins of safety.

Therefore, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street SE., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Harold F. Reis, Esquire, Newman and Holtzinger, 1025 Connecticut Avenue NW., Washington, DC 20036.

NRC Project Directorate: Daniel R. Muller.

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: May 19, 1986.

Description of amendment request: The amendment would make four changes in the Technical Specifications: (1) change Tables 3.3.3-1, 3.3.3-2 and 4.3.3.1-1 to include an additional undervoltage protection device for the Division 3 emergency power bus and change Surveillance Requirement 4.8.1.1.2.d.12 to add an emergency override of the test mode for the Division 3 diesel generator; (2) change License Condition 2.C.(20) and Surveillance Requirement 4.7.1.1.a.2 to allow modification of standby service water (SSW) loop "A" so that it will provide design flows to all essential components; (3) change Surveillance Requirement 4.3.4.2.3 "End-of-Cycle Recirculation Pump Trip System Instrumentation" and associated bases and definition to provide a surveillance requirement to validate the breaker arc suppression design characteristics; and, (4) change Surveillance Requirement 4.8.2.1.d.2 for the batteries and battery chargers by increasing test loads to allow for increased loading on the Division 1 and Division 2 batteries.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The licensee has provided an analysis of significant hazards considerations in its request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on April 6, 1983 (48 FR 14870).

The NRC staff has made a preliminary review of the licensee's request for a license amendment. Staff's discussion of the proposed amendment as it relates to the standards in 10 CFR 50.92 and the examples in the **Federal Register** follows.

Change (1) is similar to example (ii) of the Commission's examples of amendments that are considered not likely to involve significant hazards considerations. Example (ii) is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. Change (1) is like example (ii) because it adds Technical Specification Limiting Conditions for Operation and Surveillance Requirements for instrumentation to be installed during the first refueling outage. The design change associated with this proposed technical specification change provides additional assurance that the loads connected to the Division 3 bus will trip before possible damage from a sustained undervoltage condition occurs and returns the Division 3 diesel generator to the standby mode if it is undergoing a surveillance test when an emergency core cooling system actuation signal is received.

Change (2) is like example (iv) which is a relief granted from an operating restriction that was imposed because acceptable operation was not yet demonstrated. The change to License Condition 2.C.(20) will provide interim requirements for standby service water (SSW) system loops "A" and "B" while permitting loop "A" to be modified to achieve design flows by increasing the pump capacity. Loop "B" was similarly modified during the Fall 1985 outage. When loop "A" modifications are completed, the modified SSW system will be tested to verify that design flow can be achieved to all essential components. Surveillance Requirement 4.7.1.1.a.2 requires verification that valves isolating the spent fuel pool cooler are locked closed. Change (2) would also delete this surveillance requirement because the revised License Condition 2.C.(20) provides necessary requirements for isolating the spent fuel pool coolers during the modifications and permits the isolation valves to be open after modifications are completed and design flows are verified.

Change (3) would provide a clarification of breaker arc suppression time in the definitions, bases and the surveillance requirement, add a requirement to validate the breaker arc suppression design characteristics, and make permanent the temporary permission to use the design value of breaker arc suppression time (12 milliseconds) prior to startup after the first refueling outage (footnote to Specification 4.3.4.2.3). The clarification of arc suppression time is similar to example (i), a purely administrative change. The greater probability of failure of the breaker to function due to use of the design value of arc suppression time instead of testing the breaker in the plant under load would be offset by the requirement to validate the breaker arc suppression design characteristics; therefore, the probability of occurrence of an accident previously evaluated would not be significantly increased. Because the plant equipment would not be changed, change (3) does not involve a significant increase in the consequences of an accident previously evaluated and does not create the possibility of a new or different kind of an accident from any accident previously evaluated. The required total response time (190 milliseconds) for the end-of-cycle recirculation pump trip would not be changed; therefore, change (3) does not involve a significant reduction in a margin of safety.

Change (4) is similar to example (ii) of the examples in the **Federal Register** (48 FR 14870) that are considered not likely to involve significant hazards considerations because it is a more restrictive surveillance requirement. The battery capacity would be tested at larger loads because additional loads would be placed on the batteries by design changes to increase the reliability of the power supply for certain equipment by placing it on uninterruptible power supplies. The increased loads to be added have been analyzed by the licensee to ensure that the battery capacity would not be exceeded, based on applicable provisions of industry standards (IEEE 485–1978 and IEEE 450–1980). Because the increased loads would increase the reliability of safety related equipment and the added loads would be within the batteries' capacities, change (4) does not involve a significant increase in the probability of an accident previously evaluated, and it does not involve a significant reduction in a margin of safety. Because equipment design would not be changed, other than to use a more reliable power supply, change (4) does not involve a significant increase in the consequences of an accident previously evaluated, and it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Accordingly, the Commission proposes to determine that these four changes do not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036

NRC Project Director: Walter R. Butler

Mississippi Power & Light Company, Middle South Energy, Inc., South Mississippi Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: June 4, 1986.

Description of amendment request: The amendment would make two changes to the Technical Specifications: (1) Revise Figure 6.2.2–1 "Unit Organization" to reflect changes in the Grand Gulf Nuclear Station (GGNS) operations personnel reporting to the GGNS Unit 1 General Manager; and, (2) change Technical Specification 6.5.1.2 regarding membership composition of the Plant Safety Review Committee (PSRC).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has made an analysis of significant hazards considerations using the standards of 10 CFR 50.92 and has concluded that the proposed amendment does not involve a significant hazards consideration. The NRC staff has made a preliminary review of licensee's analysis and associated bases. Staff's discussion of the proposed amendment as it relates to the three standards follows.

Change (1) consists of changes in the unit operating organization to enhance the conduct of operations, maintenance and licensing activities. A new Plant Licensing group headed by a Superintendent will be formed in the Plant Support section. The Plant Licensing group will be composed of the present Plant Compliance group members and additional members who are familiar with the technical aspects of the plant and with operations. This group will control the interface communications between plant personnel and other MP&L organizational units in licensing and regulatory matters, including the duties of the present Plant Compliance group. The forming of the Plant Licensing group is intended to enhance the licensee's effectiveness in licensing activities. A new Administrative Assistant position reporting to the GGNS Unit 1 General Manager will be added to assist the General Manager in preparation of budgets, monitoring of costs, personnel administration and report preparation. The addition of the Administrative Assistant will allow the General Manager to spend more time on operational and technical aspects of plant management. A new Records and Materials group headed by a Superintendent will be formed in the Plant Support section. The new group will incorporate the members and functions of the present Document Control group in the Plant Support section and the present Materials group in the Plant Maintenance section. The functions of these two groups, records administration and materials management, are appropriate Plant Support functions and their consolidation in one group under Plant Support will improve management effectiveness of these functions. The removal of the materials management function from the Plant Maintenance group will permit increased management effort on the plant maintenance function. The Startup Supervisor position would be deleted because initial plant startup testing is now completed. Based on its preliminary review of the licensee's submittal, the staff concludes that change (1) does not involve a significant increase in the probability or consequences of an accident previously evaluated because change (1) will enhance the effectiveness of the management of plant operations and plant maintenance by relieving managers of administrative functions. Change (1) does not involve the possibility of a new or different kind of accident from any accident previously evaluated because the personnel assigned to these new groups and positions will meet qualification requirements specified in the Final Safety Analysis Report. Change (1) does not involve a significant reduction in a margin of safety because it does not involve a change in plant equipment, operating procedures, or safety analyses.

Change (2) consists of changes to the membership composition of the Plant Safety Review Committee (PSRC). One change to the PSRC composition would be to add the Manager of Plant Support and the Plant Licensing Superintendent to the Committee, thus addition representation to the PSRC for non-line functions including training, security, and licensing. The new Chairman of the PSRC would be the Manager of Plant Support rather than the present chairman. The Manager of Plant Operations would become the Vice-Chairman. This change would enable the Manager of Plant Operations to spend more time on the plant operations function. The proposed removal of the Technical Engineering Supervisor from PSRC membership will not significantly degrade the representation for the plant operations function because four other positions in Plant Operations are members, including the Technical Support Superintendent to whom the Technical Engineering Supervisor reports. Based on its preliminary review of the licensee's submittal the staff concludes that change (2) does not involve a significant increase in the probability or consequences of an accident previously evaluated nor does it create the possibility of a new or different kind of accident from any accident previously evaluated because change (2) would strengthen the PSRC functions by adding representation from the Plant Support group and it would make the PSRC more independent from plant operations by changing the chairmanship from the Manager of Plant Operations to the Manager of Plant Support. Change (2) would not involve a significant reduction in a margin of safety because it does not involve a change in plant equipment, operating procedures, or safety analyses.

Accordingly, the Commission proposes to determine that these two changes do not involve significant hazards considerations.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street NW., Washington, DC 20036.

NRC Project Director: Walter R. Butler.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit No. 3, Eureka, California

Date of amendment request: May 16, 1986.

Description of amendment request: The licensee proposes to change Technical Specification (TS) requirements for the stack gas monitoring system and the condensate demineralizer beds. The stack gas monitoring system will be made more sensitive to the dominant radionuclides such as krypton-85 and the halogen monitoring system will be removed because the halogen radionuclides are no longer present at the shutdown facility.

The required number of condensate beds will be reduced from three beds to two. One of the beds will be converted to a spent fuel storage pool demineralizer to enhance water quality and chemistry in the spent fuel pool.

Basis for proposed no significant hazards consideration determination: The staff has made the determination that the proposed changes in the TS will not increase the probability or consequences of accidents previously evaluated, create the possibility of a new or different kind of accident from any previously evaluated or involve a reduction in a margin of safety because:

(a) The stack gas monitoring system is used for monitoring only and does not control any automatic actions and can, therefore, have no impact on accidents or safety margins. Futhermore, the monitoring system will be made more sensitive to those radionuclides, such as krypon-85, that remain at the facility in its permanently shutdown status and

(b) The condensate demineralizer beds are used for power operation only and not for the present permanently shutdown facility and have no impact on accidents or margins of safety.

Therefore, based on the above considerations, we have determined, in accordance with 10 CFR Part 50.92, that the proposed changes will not involve a significant hazards consideration.

Local Public Document Room location: Eureka-Humboldt County Library, 421 I Street (County Court House) Eureka, California 95501.

Attorney for licensee: Phillip A. Crane, Jr., Pacific Gas and Electric Company, Post Office Box 7442, San Francisco, California 94120.

NRC Project Director: Herbert N. Berkow.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: April 15, 1986.

Description of amendment request: The proposed amendment would add a new section (4.11.A.4) to the Technical Specifications (TS) requiring that a capacity test for the main control room emergency ventilation air supply system be performed every 18 months. The test is intended to verify that the makeup capacity is within plus or minus 10 percent of the design value of 1000 cfm to ensure that the control room is always maintained at a slightly positive pressure. The proposed TS has been submitted in response to Item III.D.3.4 (Control Room Habitability Requirements) of NUREG–0737.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (51 FR 7751). The examples of actions involving no significant hazards consideration include: (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the TS: for example, a more stringent surveillance requirement. The proposed amendment is clearly encompassed by this example since it adds a new surveillance requirement to the TS.

Based on the foregoing, the Commission proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

Attorney for licensee: Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Daniel R. Muller.

Rochester Gas and Electric Corporation, Docket No. 50–244, R.E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: October 16, 1985 and as amended January 6, 1986.

Description of amendment request: The amendment would delete the position of Senior Vice President-Operations. Operations would now report directly to the President of the Corporation. There are title changes in the plant organization and changes within the organizational structure. This includes changes in the reporting hierarchy of organizational elements related to safe operation of the plant. A new group is formed to concentrate on operations, maintenance and health physics and chemistry.

Basis for proposed no significant hazards consideration determination: This reorganization will provide greater management attention to: safety related aspects of plant operation, long-term planning, and make day-to-day operation of the station more effective through the new management structure. These are purely administrative changes that strengthen the plant organization as related to plant safety.

The Commission has provided guidance for the application of standards for determining whether a significant hazards consideration exists by providing examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). One of these examples (i) is a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature. The changes are similar to an example for which no significant hazards consideration exists. As a consequence of the above, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, LeBoeuf, Lamb, Leiby and McRae, Suite 1100, 1333 New Hampshire, NW., Washington, DC 20036.

NRC Project Director: George E. Lear.

Sacramento Municipal Utility District, Docket No. 50–312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: March 19, 1985, as revised June 17, 1985 and November 25, 1985.

Description of amendment request: The amendment would revise the Technical Specifications to (1) divide the steam generator tube bundle surveillance requirements into a normal tube area and a special tube area which operating experience has shown to be particularly susceptible to degradation; (2) add a definition for the special tube area, i.e., which tubes are in the special tube area; (3) specify 100% inspection for the special tube area; (4) specify a standard random steam generator inspection to be conducted on the rest of the tubes in the steam generator (normal tube area), (5) make miscellaneous changes to paragraph numbers, section titles and phrases for consistency; and (6) revise the reporting requirements for the inspection results to make the reporting requirements consistent with 10 CFR 50.72(b)(2).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In addition, the Commission has provided examples of amendments that are considered not likely to involve significant hazards considerations (48 FR 14870). The examples include (vii), a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations; and (i), a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

The change to the surveillance testing of the steam generator tubes (Items 1, 2, 3 and 4) would (a) based on operating experience, divide the steam generator tube bundle into a normal tube area and a special tube area, and (b) augment the inspection (100% inspection) in the special tube area while not changing the surveillance requirements in the normal tube area. These proposed changes are to a surveillance program and do not affect plant operation or plant design. In addition, the proposed changes would enhance surveillance in an area (special tube area) where operation has shown it to be a problem area. Inspections in the normal tube area will not change. Therefore, the proposed changes to the steam generator tube surveillances will not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of an accident of a type different from any evaluated previously, or (3) involve a significant reduction in a margin of safety.

The changes in reporting requirements (Item 6) for inspection results where defective or degraded tubes exceed specific percentage of the total tubes inspected are proposed to make the reporting requirements consistent with the requirements in 10 CFR 50.72(b)(2). This will have no effect on plant operation. This proposed change is similar to example (vii) of an amendment not likely to involve a significant hazards consideration.

The final proposed changes to the Technical Specifications (Item 5) are similar to example (i) of a purely administrative change in that they involve changes to nomenclature, changes to section numbers and paragraph numbers to achieve consistency throughout the Technical Specifications.

Based on the above, the Commission's staff proposes to determine that the application for amendment does not involve a significant hazards consideration.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813.

NRC Project Director: John F. Stolz.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment request: February 7, 1986 (Reference PCN-198).

Description of amendment request: The proposed change would revise Technical Specification 3/4.5.2, "ECCS Sub-Systems Tavg greater than or equal to 350 °F." Technical Specification 3/4.5.2 defines operability requirements for the emergency core cooling system (ECCS), actions to be taken when the minimum operability requirements are not met, and periodic surveillance tests to verify operability. Included in the surveillance testing requirements, Technical Specification 4.5.2.a requires that the position of certain valves be verified as locked open at least once every 12 hours. One such valve, 10"-068, is in the ECCS mini-flow line to the refueling water storage tank. The proposed design change will, in effect, remove this valve from the system by removing its internals. Thus, the flow path will always be open and verification of its position will no longer be required since the valve cannot be closed. The proposed change would delete ECCS mini-flow isolation valve 10"-068 from the list of valves subject to surveillance requirement 4.5.2.a.

Basis for no significant hazards consideration determination: The Commission has provided guidance concerning the application of standards for determining whether a significant hazards consideration existing by providing certain examples (48 FR 14870) of amendments that are considered not likely to involve significant hazards considerations. Example (vi) relates to a change which either may result in some increase to the probability or consequences of a previously-analyzed accident or may reduce in some way a safety margin, but where the results of the change are clearly within all acceptance criteria with respect to the system or component specified in the Standard Review Plan.

Standard Review Plan Section 6.3, "Emergency Core Cooling System," states that the frequency and scope of periodic ECCS surveillance testing to verify operability must be adequate. The proposed change will no longer require that the position of ECCS mini-flow isolation valve 10"-068 be verified to be locked open at least once every 12 hours. The purpose of the existing surveillance requirement is to ensure that the ECCS mini-flow path is always open. A design change which will remove the valve internals and maintain this flow path always open, thus removing the valve internals, is equivalent to the existing surveillance requirement. Removal of the internals of manual valve 10"-068 will not affect operation of the ECCS. This valve is presently locked open. The valve body, valve cover and piping will retain the existing seismic category and quality class. Removal of valve 10"-068 internals will ensure the common portion of piping between the refueling water storage tank and engineered safety features pumps mini-flow line will be open without reliance on administrative controls. Because this flow path will be maintained open even with the proposed change, the SRP acceptance criteria are met; therefore, the proposed change is similar to example (vi) and does not involve significant hazards considerations.

Local Public Document Room location: General Library, University of California at Irvine, Irvine, California 92713.

Attorney for Licensees: Charles R. Kocher, Esq., Southern California Edison Company, 2244 Walnut Grove Avenue, P.O. Box 800, Rosemead, California 91770 and Orrick, Herrington & Sutcliffe, Attn.: David R. Pigott, Esq., 600 Montgomery Street, San Francisco, California 94111.

NRC Project Director: George W. Knighton.

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of amendment request: August 23, September 4, and, November 13, 1984, April 3, May 8, June 27, November 20, and, December 30, 1985 and April 29, 1986.

Description of amendment request: Amendment would revise the Technical Specifications (TS) of the operating license to: (1) Modify the core physics, thermal and hydraulic limits to be consistent with the reanalyses associated with replacing about one-third of the core during the Cycle 6 core reload outage and (2) reflect changes in various specifications as a result of plant modifications performed during the outage. This amendment request was previously noticed on November 21, 1984 (49 FR 45975).

During the review of the amendment request TVA has responded to staff requests for additional details for certain items. In addition, TVA has updated the TS pages involved and made administrative corrections. The submittals made since the original notice and a description of the information contained follows:

1. September 4, 1984—This submittal provides an administrative correction to add a missing page.

2. November 13, 1984—This submittal administratively submits WCAP-10507 to the Browns Ferry Unit 2 docket providing specific data regarding the four Westinghouse demonstration fuel elements.

3. April 3, 1985—This submittal is supplement 1 to the August 23, 1984 amendment. It makes changes to the TS to reference the Westinghouse quad + fuel. The four Westinghouse design fuel assemblies to be loaded into Browns Ferry unit are described in WCAP-10507, forwarded to NRC by Westinghouse letters dated June 5 and July 20, 1984. This report was formally submitted to the Unit 2 docket by the November 13, 1984 submittal. The assemblies are being loaded for demonstration purposes in core locations with sufficient power margin that thermal limits applicable to General Electric P8x8R fuel are bounding by a substantial margin.

4. May 8, 1985—This submittal provided additional information regarding the analog trip system instrumentation in response to a staff request.

5. June 27, 1985—This submittal transmitted an updated copy of NEDO-24088-2 revision 1 (May 1985), a loss of coolant analysis for Unit 2, which was submitted with the August 23, 1984 application.

6. November 20, 1985—This submittal updated the May 8, 1985 submittal regarding the analog trip system instrumentation.

7. December 30, 1985—This submittal is supplement 2 to the August 23, 1984 application. It contains revised core parameters consistent with NEDO-24088-2 revision 1 and provides new calibration frequency and indicator range for the reactor pressure instrumentations in the analog system. In addition, many minor administrative and typographical errors have been made to the TS. The changes to the TS made by intervening amendments affecting the same pages that are included in this amendment were also incorporated in the TS.

8. April 29, 1986—This submittal is supplement 3 to the August 23, 1984 application. It contains a revised calibration frequency for the reactor pressure instrumentations from "once/operating cycle" to "once/18 months" for the required calibration interval in response to a staff request. It also contains added requirements for trip level setting, functional test, and calibration for the trip input to the

Reactor Protection System (RPS) for "Low Scram Pilot Air Header Pressure."

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards by providing examples of actions that are likely, and are not likely, to involve significant hazards considerations (48 FR 14870). Three examples of actions not likely to involve significant hazards considerations are:

(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications: for example, a more stringent surveillance requirement.

(iii) For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable.

Each of the changes to the TS described above is encompassed by one of the above examples of actions not likely to involve a significant hazards consideration or is otherwise bounded by the criteria for such a determination. The basis for this determination for each of the changes is discussed below.

1. The content of this submittal is an administrative correction encompassed by example (i).

2. The content of this submittal is an administrative action encompassed by example (i).

3. The content of this submittal includes administrative changes to make proper references to the four Westinghouse load and fuel assemblies which are encompassed by example (i). The loading of the four elements is encompassed within example (iii) as indicated in the previous notice (item 1).

4. The content of this submittal is encompassed by the previous notice regarding the analog trip system (item 1).

5. The content of this submittal is an administrative update to the original notice and encompassed within example (i).

6. The content of this submittal is encompassed by the previous notice regarding the analog trip system (item 1).

7. The content of this submittal is revised core parameters which is encompassed by example (iii) as indicated in the original notice (item 1) and a new calibration frequency which is encompassed within example (ii). It also contains administrative and typographical corrections and the TS updating which are encompassed within example (i).

8. The content of this submittal is a revised calibration frequency which is encompassed within example (ii) and the added requirement for the trip level setting, functional test and calibration for the trip system to the RPS system which is encompassed within example (ii).

Since all of the changes to the TS given in the areas above are encompassed by an example in the guidance provided by the Commission of actions not likely to involve a significant hazards consideration or otherwise meet the necessary criteria, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Attorney for licensee: H.S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Project Director: Daniel R. Muller.

Tennessee Valley Authority, Docket Nos. 50–259, 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: February 12, 1986.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) of the Browns Ferry Nuclear Plant, Units 1, 2 and 3, to clarify the requirements for Seismic Restraints, Supports and Snubbers (SRSS) by adopting requirements which are consistent with the Standard Technical Specifications (STS) for boiling water reactors. This change would allow 72 hours to perform corrective actions on the SRSS when in the refueling or shutdown modes, as is already allowed for in the startup and run modes of operation, and delete the requirement that all SRSS be operable prior to reactor startup.

The TS are revised in Section 3.6.H to reflect the limiting conditions for operation given in the STS. This results in improved clarity and allows for 72 hours to replace or restore the inoperable SRSS when in the shutdown or refueling modes. The requirements in effect for startup/standby mode and run will not be changed since the 72 hours to perform corrective action in these modes is already allowed. However, the restriction that all SRSS be operable prior to reactor startup would be deleted by adopting STS language.

Section 3.6.H specifies limiting conditions and actions applicable to SRSS for all safety systems. The basis for this requirement is to ensure integrity of the safety systems which depend upon SRSS to accommodate anticipated loads during a seismic event. Because SRSS are only required for relatively low probability events, 72 hours is allowed for repair or replacement. The proposed amendment would not compromise plant safety in that the only substantive change requested is to allow 72 hours to replace or restore the inoperable SRSS when in the shutdown or refueling mode. This allowance is already provided for in the startup and run modes which normally have more restrictive requirements than shutdown and refueling. Therefore, no significant loss of safety margin should result by allowing the same time period to perform corrective actions when in shutdown or refueling modes that is allowed in startup and run modes. The proposed amendment also reflects the guidance provided in NUREG–0123, the Standard Technical Specifications.

The impact on nuclear safety of starting up with an inoperable SRSS and thereby, entering a 72-hour LCO is equivalent to having an SRSS inoperable in any 72-hour period during reactor operation. Therefore, elimination of the specific restriction on reactor startup with an inoperable SRSS versus 72 hours allowable repair time has no significant safety impact. It should be noted that instances of starting the reactor prior to completing a SRSS repair would rarely occur. The BWR STS contain no similar restriction on startup.

The present wording of TS does not allow any time to perform corrective action on SRSS when in the shutdown or refueling modes, resulting in overly restrictive limiting conditions when snubbers are out of service during those operating modes.

Basis for proposed no significant hazards consideration determination: The Licensee evaluated the proposed amendment in accordance with the standards provided in 10 CFR 50.92(c) and determined that:

1. The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated since the probability of occurrence of any evaluated accident does not depend on SRSS being operable and the consequences of any accident which would be dependent on the operability of SRSS, would be less severe during shutdown or refueling mode than a similar accident in the startup or run modes of operation which already have a 72 hour allowance to perform repair or replacement of the SRSS.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because this change does not remove any equipment or affect the performance of any equipment in ways not previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety for the same reasons as described in items (1) and (2) above, and also because the proposed TS is consistent with the guidance provided in the STS and finally because no surveillance requirements would be changed. Therefore, the licensee proposed to determine that the proposed amendment does not involve significant hazards considerations.

The staff has reviewed the licensee's determination and finds it acceptable, therefore, the staff proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Attorney for licensee: H.S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Project Director: Daniel R. Muller.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: February 24, 1986.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) to expand the structural integrity specifications to include the balance of ASME Code Class 1, 2 and 3 equivalent systems. These specifications address a problem discussed in NRC's letter from R.J. Clark to H.G. Parris dated April 20, 1984.

The proposed amendment would replace the Limiting Condition for Operation (LCO) 3.6.G of the Browns Ferry Nuclear Plant (BFN) Units 1, 2 and 3 TS, page numbers 183 and 196 respectively, to expand applicability to include not only the primary coolant boundary but also the balance of ASME Code Class 1, 2 and 3 equivalent systems.

The regulations for inservice inspection (10 CFR 50.55a(g)) were changed on February 27, 1976, to require that facility inservice inspection (ISI) programs be periodically updated to later editions of the ASME, Boiler and Pressure Vessel Code, Section XI. In order to eliminate conflicts between ISI requirements in the TS and those specified by regulation, 10 CFR 50.55a(g)(ii) requires that TS be changed to reference 10 CFR 50.55a rather than contain details of a specific ISI program. The surveillance requirement for ISI has already been revised to include this reference by BFN amendment numbers 98, 92, and 65. Revising the LCO as described here will provide additional clarification and broaden the requirements of LCO 3.6.G to be similar to Standard Technical Specifications (STS). The proposed change should not compromise nuclear safety since it results in an increase in TS requirements and is consistent with STS.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance for the application of criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations. Two of these examples are: (ii) A change that constitutes an additional limitation, restriction, or control not presently included in the TS; and (vii) A change to make a license conform to changes in the regulations where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

The proposed amendments concerning the inclusion of ASME Code Class 1, 2 and 3 equivalent systems is in response to an NRC request regarding a change in 10 CFR 50.55a(g) which required a TS change. Also the change will result in additional requirements which are similar to STS and are therefore encompassed by the above examples.

The Commission has also provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes will not significantly increase the probability or consequences of an accident previously evaluated or create the possibility of a new or different kind of accident from any accident previously evaluated because no operability or surveillance requirements for systems, structures or components used to terminate or mitigate accidents would be reduced and no equipment changes are involved.

The proposed changes will not involve a significant reduction in a margin of safety since the changes conform to NRC guidance in STS and actually increase the requirements for structural integrity over the current TS requirement.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists and are encompassed by the above examples, the licensee proposed to determine that the proposed amendments do not involve a significant hazards consideration.

The staff has reviewed the licensee's proposed determinations and finds it acceptable, therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room location: Athens Public Library, South and Forrest, Athens, Alabama 35611.

Attorney for licensee: H.S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E 11B 33C, Knoxville, Tennessee 37902.

NRC Project Director: Daniel R. Muller.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: April 25, 1986

Description of amendment request: By letter dated April 25, 1986, the licensee, Vermont Yankee Nuclear Power Corporation, submitted a proposed license amendment for NRC review and approval which would revise the Vermont Yankee Technical Specifications to authorize the licensee to increase the storage capacity of the spent fuel pool from the present capacity of 2000 fuel assemblies to 2870 fuel assemblies. The change would be accomplished by the installation of high density fuel rack modules with center to center clearances between cells of 6.218 inches compared to the current design of 7.0 inches. The racks would utilize a neutron absorbing material between cells to assure a subcritical configuration.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751). One of the examples of actions not likely to involve a significant hazards consideration is:

(x) An expansion of the storage capacity of a spent fuel pool when all of the following are satisfied:

(1) The storage expansion method consists of either replacing existing racks with a design which allows closer spacing between stored spent fuel assemblies or placing additional racks of the original design on the pool floor if space permits;

(2) The storage expansion method does not involve rod consolidation or double tiering;

(3) The Keff of the pool is maintained less than or equal to 0.95; and

(4) No new technology or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion.

The storage expansion method proposed by Vermont Yankee consists of replacing existing racks with a design which allows closer spacing between stored fuel element assemblies, thereby meeting criteria (1). Neither rod consolidation nor double tiering is involved thus criteria (2) is satisfied. The licensee has stated that the Keff of the pool will be maintained less than or equal to 0.95, thereby meeting criteria (3). Also, the licensee has stated that no new or improved technology is utilized in either the construction process or the analytical techniques necessary to justify the expansion. All four criteria of example (x) are therefore satisfied.

Therefore, the change is similar to Commission example (x). Accordingly, the Commission proposes to determine that this amendment does not involve a significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

Attorney for licensee: John A. Ritscher, Esquire, Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02110.

NRC Project Director: Daniel R. Muller.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: May 1, 1986.

Description of amendment request: This amendment would delete specific snubber testing and surveillance requirements from the Technical Specifications (TS), revise associated limiting conditions for operation in the TS and include appropriate snubbers in the plant Inservice Inspection Plan.

Basis for proposed no significant hazards consideration determination: There are four affected TS Sections and a change to the Table of Contents. TS 3.14 Shock Suppressors (Snubbers) is being changed to make it consistent with 10 CFR 50.55a(g)(4) and to clarify language of the TS. TS 3.14(b) is being revised to both clarify the language regarding time required to repair a snubber and to gain consistency with other Kewaunee TS with similar provisions. TS 4.2a.1 is being changed to both make the section consistent with 10 CFR 50.55a(g)(4) and to effect an administrative change, namely, moving the Anchor-Holth snubber reference from TS 4.14b to 4.2a.1. The fourth TS change is to delete Section 4.14 in order to bring its former requirements into consistency with 10 CFR 50.55a(g)(4). The rule requires the adoption of the ASME Boiler and Pressure Vessel Code; the Code contains a snubber inspection section which the licensee has incorporated into his Inservice Inspection Plan; thus, making TS 4.14 unnecessary. The Table of Contents is being revised to reflect the above TS changes and is an entirely editorial action.

The Commission has provided guidance for the application of standards for determining whether a significant hazards consideration exists by providing examples of amendments that are considered likely to involve significant hazards considerations (48 FR 14870). Two of these examples are:

(i) a purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature; and

(vii) a change to make a license conform to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations.

All of the changes fall into one or both categories. As a consequence the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: Steven E. Keane, Esquire, Foley and Lardner, 777 E. Wisconsin Avenue, Milwaukee, Wisconsin 53202.

NRC Project Directorate: George E. Lear.

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Duke Power Company, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: March 20, 1986.

Brief description of amendment: The amendments would permit use of Transnuclear, Inc., multielement spent fuel shipping casks for transporting spent fuel from Oconee Nuclear Station to McGuire Nuclear Station.

Date of publication of individual notice in **Federal Register:** May 29, 1986 (51 FR 19428).

Expiration date of individual notice: June 27, 1986.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), nó environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N W., Washington, D C, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

Arizona Public Service Company, et al. Docket No. STN 50-528, Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of application for amendment: February 5, 1986.

Brief description of amendment: The amendment authorizes additional sale and leaseback transactions of Public Service Company of New Mexico's ownership share in Palo Verde Unit 1 until August 31, 1986.

Date of Issuance: June 2, 1986.

Effective Date: June 2, 1986.

Amendment No.: 6.

Facility Operating License No.: NPF-41: Amendment revised the license.

Dates of Initial Notice in **Federal Register:** March 10, 1986 (51 FR 8259).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 2, 1986.

No significant hazards consideration comments were received: No.

Local Public Document Room Location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of application for amendment: February 28, 1986.

Brief description of amendment: The amendment changes the pressure-temperature limit curves on Technical Specification Figures 3.6.1 and 3.6.2 to more accurately reflect the neutron exposure of the reactor pressure vessel during operation of the Pilgrim Station. The change consists of relabeling the curves from 6.68 effective full power years (EFPY) to 8.0 EFPY and from 8.0 EFPY to 10.0 EFPY.

Date of issuance: May 28, 1986.

Effective date: May 28, 1986.

Amendment No.: 94.

Facility Operating License No. DPR-35. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1986 (51 FR 12224).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 28, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth, Massachusetts

Date of a lication for amendment: February 28, 1986.

Brief description of amendment: The amendment deletes Technical Specification Section 6.15 relative to environmental qualification of safety-related electrical equipment. This Technical Specification was rendered obsolete by Rule 10 CFR 50.49, which was adopted by the Commission on January 21, 1983, and amended on November 19, 1984.

Date of issuance: May 28, 1986.

Effective date: 30 days after date of issuance.

Amendment No.: 95.

Facility Operating License No. DPR-35. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1986 (51 FR 15393).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 28, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Commonwealth Edison Company, Docket No. 50-454, Byron Station, Unit No. 1 Ogle County, Illinois

Date of Application for Amendment: March 11, 1986, as supplemented.

Brief Description of Amendment: The amendment approves changes to the Technical Specifications that replace the minimum differential pressure for the Residual Heat Removal (RHR) pumps with the RHR pump Minimum Acceptable Performance Curve.

Date of Issuance: June 6, 1986.

Effective Date: June 6, 1986

Amendment No.: 3.

Facility Operating License No. NPF-37: Amendment revised the Technical Specifications.

Date of Initial Notice in **Federal Register:** April 9, 1986 (51 FR 12226).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 6, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois.

Commonwealth Edison Company, Docket No. 50-249, Dresden Nuclear Power Station, Unit No. 3, Grundy County, Illinois

Date of application for amendment: March 31, 1986.

Brief description of amendment: The amendment revises the high flow isolation setpoint for the Dresden Unit 3 Isolation Condenser Return Line because of a change in instrumentation and clarifies the Limiting Condition for Operation Bases page 3/4.2-31, second paragraph, relative to the use of the new instrumentation and setpoint.

Date of issuance: May 27, 1986.

Effective date: May 27, 1986.

Amendment No.: 86.

Facility Operating License No. DPR-25. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1986 (51 FR 15395).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 27, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

GPU Nuclear Corporation, Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: January 30, 1986 (TSCR 133).

Brief description of amendment: This amendment authorizes changes to Section 3.5 of the Appendix A Technical Specifications (TS) pertaining to the limiting conditions for operation (LCO) when one of the two trains of the Standby Gas Treatment System (SBGTS) is declared inoperable. The changes are to the power operation and the refueling reactor operation modes in TS 3.5.B.3.a.1 and 3.5.B.3.b.1, respectively. The change for both reactor operation modes will lessen the requirement on when the other SBGTS must be demonstrated operable. The change is from within 2 hours in the previous TS to within 2 hours unless significant painting, fire, or chemical release has taken place in the building within 12 hours and then within 1 hour of the end of the 12-hour period.

Date of issuance: May 28, 1986.

Effective date: May 28, 1986.

Amendment No.: 103.

Provisional Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 12, 1986 (51 FR 8593).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 28, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, 101 Washington Street, Toms River, New Jersey 08753.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: June 5, 1981, as revised April 5, 1983, July 10, 1984, and October 2, 1985.

Brief description of amendment: The amendment removes the current reactor vessel material surveillance requirements from the Technical Specifications for TMI-1. The reactor vessel material surveillance requirements of 10 CFR Part 50, Appendix H, will be satisfied through compliance with B&W Topical Report BAW-1543, Rev. 2A.

Date of issuance: May 27, 1986.

Effective date: May 27, 1986.

Amendment No. 118.

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 20, 1985 (50 FR 47863).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 27, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Louisiana Power and Light Company, et al. Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Dates of Application for Amendment: December 2, 1985; April 3, 1986.

Brief Description of Amendment: The amendment revises the Technical Specifications by deleting the CPC Type I and Type II addressable constants; incorporating the results of the Waterford 3 COLSS out-of-service analysis; revising the requirements for low temperature overpressure protection to allow hydrostatic tests in Mode 4 and allowing the measurement of moderator temperature coefficient to be taken at any power level greater then 15% prior to reaching 40 EFPD core burnup rather than within 7 EFPD of reaching 40 EFPD core burnup.

Date of Issuance: May 30, 1986.

Effective Date: May 30, 1986.

Amendment No.: 5.

Facility Operating License No. NPF-38: Amendment revised the Technical Specifications.

Date of Initial Notices in **Federal Register**: March 12, 1986 (51 FR 8596), March 26, 1986 (51 FR 10463-10466).

The Commission's related evaluation is contained in a Safety Evaluation dated May 30, 1986.

No significant hazards consideration comments were received: No.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, New Orleans, Louisiana 70122.

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: April 23, 1985 as supplemented October 7, 1985.

Brief description of amendment: This amendment adds additional manual containment isolation valves and blowdown and body vent valves on instrument lines to the list of manual containment isolation valves that may be repositioned under administrative control without taking specific compensatory measures. This will permit flow testing of post accident hydrogen purge and analysis systems, as well as obtaining containment atmospheric samples of analysis.

Date of issuance: May 27, 1986.

Effective Date: May 27, 1986.

Amendment No.: 89.

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 15, 1986 (51 FR 1868 at 1877).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 27, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wiscasset Public Library, High Street, Wiscasset, Maine.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 10, 1985 as modified by letter dated January 13, 1986.

Brief description of amendment: The amendment changes the Technical Specifications to: (1) Correct an error in the BASES which defines limiting control rod pattern, (2) reflect organizational changes, (3) revise the BASES for the turbine stop valve scram, (4) revise instrumentation tables to accurately indicate the nomenclature used in the utility's equipment database for those instruments, (5) restore previously deleted instruments to an instrument table, (6) change titles, text and BASES relating to "Jet Pump Flow Mismatch" to refer to "Recirculation Pump Flow Mismatch", (7) revise tables which list testable penetrations and containment isolation valves to include additional, existing, penetrations and valves, and (8) revise the "Reactor Water Level Indication Correlation" figure.

Date of issuance: May 20, 1986.

Effective date: May 20, 1986.

Amendment No.: 100.

Facility Operating License No. DPR-62. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 12, 1986 (51 FR 8597).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of amendment request: December 31, 1985.

Brief description of amendment: The amendment modifies Technical Specification 3.1.1(f), by eliminating the reference to the "AEC", and by eliminating the reference to Section 6.9.2 reportability requirements pertaining to reactivity anomalies.

Date of issuance: June 3, 1986.

Effective date: June 3, 1986.

Amendment No.: 84.

Facility Operating License No. DPR-63. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1986 (51 FR 15402).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: March 7, 1986

Brief description of amendment: The amendment revises Technical Specifications to permit operation for Cycle 12. The changes include administrative changes relating to the previously approved ARTS (Average Power Range Monitor/Rod Block Monitor/Technical Specification) Improvement Program and Operation in the expanded power-flow domain. In addition, Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) limits are revised to accommodate a new fuel type (GE-7 barrier fuel) and extended exposure for some existing fuel.

Date of issuance: May 27, 1986.

Effective date: May 27, 1986.

Amendment No.: 44.

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1986 (51 FR 15405).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 27, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Environmental Conservation Library, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of application for amendment: January 26, 1983.

Brief description of amendment: The amendment transfered the recirculation heat removal system surveillance requirements from the containment test part of the TS to a new section of the TS entitled "Recirculation Heat Removal System Integrity Testing." The amendment also deleted containment related surveillance requirements that were in effect in early plant life and are no longer required or performed.

Date of issuance: June 3, 1986.

Effective date: June 3, 1986.

Amendment No.: 97.

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 22, 1983 (48 FR 52804 at 52818).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 3, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: November 1, 1985, as revised January 28, 1986.

Brief description of amendment: The amendment would allow operation to continue for 72 hours for diagnosis and repair, for the case where one or more control rod assemblies are electrically inoperable but still trippable.

Date of issuance: May 29, 1986.

Effective date: May 29, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Multnomah County Library, 801 SW., 10th Avenue, Portland, Oregon

Southern California Edison Company et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: June 8, 1984 as modified on December 17, 1985 and supplemented on April 1, 1986.

Brief description of amendment: The amendment modifies the existing fire protection Technical Specifications to specify that when certain fire protection equipment is inoperable and specified compensatory measures have been instituted, reactor shutdown is not required and changing of operational modes is allowed.

Date of issuance: May 30, 1986.

Effective date: May 30, 1986.

Amendment No.: 93.

Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications.

Dates of initial notice in **Federal Register:** July 24, 1984 (49 FR 29922) and April 23, 1986 (51 FR 15408).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Amendment No.: 115

Facility Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1986 (51 FR 12237).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 29, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Multnomah County Library, 801 SW., 10th Avenue, Portland, Oregon.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: April 11, 1986.

Brief description of amendment: The amendment removes the maximum total fuel rod weight limit of 1,760 grams of uranium from Section 5.3.1 of the Technical Specifications.

Date of issuance: June 9, 1986.

Effective date: June 9, 1986.

Amendment No.: 116.

Facility Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 7, 1986 (51 FR 16933).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 9, 1986.

Southern California Edison Company et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: March 28, 1986.

Brief description of amendment: The amendment incorporates revised Technical Specifications for augmented high energy piping inservice inspection.

Date of issuance: May 30, 1986.

Effective date: May 30, 1986.

Amendment No. 94.

Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1986 (51 FR 15411).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19559, Irvine, California 92713.

Southern California Edison Company, et al. Docket Nos. 30-361 and 30-362 San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Dates of Applicant of Amendments: October 9, 1985.

Brief Description of Amendments: The amendments change the technical specifications to accommodate Cycle 3 operation.

Date of Issuance: May 16, 1986.

Effective Date: May 16, 1986, to be fully implemented within 30 days of issuance.

Amendment Nos.: 47 and 36.

Facility Operating License Nos. NPF-10 and NPF-15: Amendments revised the Technical Specifications.

Date of Initial Notice in **Federal Register:** December 18, 1985 (50 FR 51629). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 16, 1986.

No significant hazards consideration comments were received: No.

Local Public Document Location: General Library, University of California at Irvine, Irvine, California 92713.

Southern California Edison Company, et al. Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County California

Dates of Applicant of Amendments: October 9, 1985.

Brief Description of Amendments: The amendments change the technical specifications to allow the use of the refueling machine auxiliary hoist in conjunction with a specially designed four or five finger lift tool for movement of control element assemblies.

Date of Issuance: May 29, 1986.

Effective Date: May 29, 1986, to be implemented within 30 days of issuance.

Amendment Nos.: 48 and 37.

Facility Operating License Nos. NPF-10 and NPF-15: Amendments revised the Technical Specifications.

Date of Initial Notice in **Federal Register:** March 12, 1986 (51 FR 86017).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 29, 1986.

No significant hazards consideration comments were received: No.

Local Public Document Room Location: General Library, University of California at Irvine, Irvine, California 92713.

Virginia Electric and Power Company, et al., Docket No. 50-338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of application for amendment: May 17, 1985, as superseded November 15, 1985.

Brief description of amendment: This amendment would correct errors presently specified in the NA-1 TS for seismic instrument range and testing requirements, and delete the functional test requirements for the Auxiliary Building Mat, Reactor Heat Removal Pipe Support and Component Cooling Heat Exchanger Support Response Recorder. In addition, the amendment would modify the scope of the semi-annual channel functional test for the Containment Mat Triaxial Recorder.

Date of issuance: May 27, 1986.

Effective date: May 27, 1986.

Amendment No.: 80.

Facility Operating License No. NPF-4: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1986 (51 FR 15413).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 27, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Yankee Atomic Electric Company, Docket No. 50-29, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: September 30, 1985.

Brief description of amendment: The proposed change modifies the Technical Specifications to increase the required setpoint for the low main steam line pressure isolation trip.

Date of issuance: May 28, 1986.

Effective date: May 28, 1986.

Amendment No. 94.

Facility Operating License No. DPR-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 4, 1985 (50 FR 49796).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 28, 1986.

No significant hazards consideration comments received: No.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION

During the period since publication of the last bi-weekly notice, individual notices of issuance of amendments have been issued for the facilities as listed below. These notices were previously published as separate individual notices. They are repeated here because this bi-weekly notice lists all amendments that have been issued for which the Commission has made a final determination that an amendment involves no significant hazards consideration.

In this case, a prior Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing was issued, a hearing was requested, and the amendment was issued before any hearing because the Commission made a final determination that the amendment involves no significant hazards consideration.

Details are contained in the individual notice as cited.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: October 30, 1985.

Brief description of amendments: The amendments change the combined Technical Specifications for both Units (1) to increase the fuel storage capacity in each of the two spent fuel pools from the current 270 fuel assemblies to 1324 assemblies by installing high density fuel racks, (2) to specify the combination of initial enrichment and cumulative burnup for fuel assemblies stored in the pool, (3) to require a boron concentration of 2000 ppm in the pool, and (4) to limit the movement of a spent fuel cask in the fuel handling building.

Date of issuance: May 30, 1986.

Effective date: May 30, 1986.

Amendment Nos.: 8 and 6.

Facility Operating Licenses Nos. DPR-80 and DPR-82: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** Individual January 13, 1986 (51 FR 1451) and Monthly May 21, 1986 (51 FR 18699).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 30, 1986 and Environmental Assessment dated May 28, 1986. Significant hazards consideration comments have been received.

Sources: Mothers for Peace; Sierra Club, Santa Lucia Chapter; Consumers Organized for Defense of Environmental Safety.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, a press release seeking public comment as to the proposed no significant hazards consideration determination was used, and the State was consulted by telephone. In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant, a shorter public comment period (less than 30 days) has been offered and the State consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By July 18, 1986, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to *(Project Director):* petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: April 24, 1986.

Brief description of amendment: This amendment permits revision of the design of the reactor coolant pump supports in accordance with the recent modifications to General Design Criterion 4 and the supplementary information contained in the notice of such modification.

Date of issuance: May 23, 1986.

Effective date: May 23, 1986.

Amendment No.: 89.

Facility Operating License No. DPR-72. Amendment revised the license. Public comments requested as to proposed no significant hazards consideration:

Yes, published in the **Federal Register** on May 7, 1986 (51 FR 16942). Comments received: No.

The Commission's related evaluation is contained in a Safety Evaluation dated May 23, 1986.

Attorney for licensee: R.W. Neiser, Senior Vice President and General Counsel, Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733.

Local Public Document Room location: Crystal River Public Library, 668 NW., First Avenue, Crystal River, Florida 32629.

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: May 30, 1986.

Brief description of amendment: The amendment modifies the 40% steam generator plugging limit to permit operation with a limited number of tubes with indications of tube wall cracks greater than 40% during Cycle 7 operation, up to June 30, 1986.

Date of Issuance: May 30, 1986.

Effective Date: May 30, 1986.

Amendment No.: 73.

Facility Operating License No. DPR-67: Amendment revised the Technical Specifications.

Public Comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation is contained in a Safety Evaluation dated May 30, 1986.

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holzinger, 1615 L Street, NW., Washington, DC 20036.

Local Public Document Room location: Indian River Junior College Library, 3209 Virgina Avenue, Ft. Pierce, Florida 33450.

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1 West Feliciana Parish, Louisiana

Date of Application for amendment: May 15, 1986.

Brief description of amendment: This amendment authorized increasing the trip set point and allowable value for the isolation actuation prescribed for the Main Steam Line Turbine Shield Wall in Item. 2.h.3 of Table 3.3.2-2 of the Technical Specifications from 120°F and 106°F to 108°F and 111.3°F, respectively.

Date of Issuance: May 30, 1986.

Effective Date: May 16, 1986.

Amendment No.: 1.

Facility Operating License No. NPF-47: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. However, by telephone call with A. Plettinger, an interested citizen of Baton Rouge, LA, on May 16, 1986, she raised the question of degree of scrutiny which GSU had exercised in their earlier certification of the River Bend Technical Specifications. Furthermore, Ms. Plettinger stated that the NRC should check GSU's calculations on anticipated temperatures not just rely on GSU's assurances.

The Commission's related evaluation of the amendment, consultation with the State of Louisiana, and final no significant hazards considerations determination are contained in a Safety Evaluation dated May 30, 1986.

Attorney for licensee: Troy B. Conner, Jr., Esq., Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803.

NRC Project Director: Walter R. Butler.

Dated at Bethesda, Maryland this 11th day of June, 1986.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Acting Director, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-13664 Filed 6-17-86; 8:45 am]

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federal register

Wednesday
June 18, 1986

Part IV

Office of Management and Budget

Cumulative Report on Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

June 1, 1986.

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report givs the status as of June 1, 1986, of 83 rescission proposals and 66 deferrals contained in the six special messages of FY 1986. These messages were transmitted to the Congress on October 1 and November 25, 1985, February 5, March 12, March 20, and April 25, 1986.

Rescissions (Table A and Attachment A)

As of June 1, 1986, there were rescission proposals totaling $127.6 million pending before the Congress.

Deferrals (Table B and Attachment B)

As of June 1, 1986, $10,721.3 million in 1986 budget authority was being deferred from obligation and $25.4 million of 1986 outlays was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1986.

Information from Special Messages

The special message containing information on the deferrals covered by this cumulative report is printed in the **Federal Register** listed below:

Vol. 50, FR p. 41100, Tuesday, October 8, 1985
Vol. 50, FR p. 49498, Monday, December 2, 1985
Vol. 51, FR p. 5830, Tuesday, February 18, 1986
Vol. 51, FR p. 9154, Monday, March 17, 1986
Vol. 51, FR p. 10526, Wednesday, March 26, 1986
Vol. 51, FR p. 16274, Thursday, May 1, 1986

James C. Miller III,
Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1986 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	$10,140.0
Accepted by the Congress	0
Rejected by the Congress	10,012.4 a/
Pending before the Congress	$127.6

****

TABLE B

STATUS OF 1986 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$24,720.7
Routine Executive releases through June 1, 1986 (OMB/Agency releases of $13,865.0 million and cumulative adjustments of $114.6 million)	-13,750.4
Overturned by the Congress	-223.6
Currently before the Congress	$10,746.7 b/

a/ Rescission proposals transmitted with the FY 1987 Budget and subsequent special messages were released immediately following expiration of the 45-day clock on rescissions under the Impoundment Control Act. However, the proposals continue to be subject to Congressional action.

b/ This amount includes $25.4 million in outlays for a Department of the Treasury deferral (D86-30B).

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1986

As of June 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
FUNDS APPROPRIATED TO THE PRESIDENT								
Multilateral Assistance								
International organizations and programs.	R86-1			2-5-86				
	R86-1A	39,760		3-20-86		39,760	4-16-86	
DEPARTMENT OF AGRICULTURE								
Agricultural Stabilization and Conservation Service								
Rural clean water program................	R86-2	6,000		2-5-86		6,000	4-16-86	
Agricultural conservation program........	R86-3	140,839		2-5-86		140,839	4-16-86	
Water bank program......................	R86-4	8,371		2-5-86		8,371	4-16-86	
Dairy indemnity program..................	R86-5	95		2-5-86		95	4-16-86	
Rural Electrification Administration								
Reimbursement to the Rural electrification and telephone revolving fund for interest subsidies and losses..	R86-6	100,000		2-5-86		100,000	4-16-86	
Purchase of Rural Telephone Bank capital stock..................................	R86-7	28,710		2-5-86		28,710	4-16-86	
Farmers Home Administration								
Rural development loan fund.............	R86-10	13,674		2-5-86		13,674	4-16-86	
Soil Conservation Service								
Watershed and flood prevention operations	R86-11	60,401		2-5-86		60,401	4-16-86	
Great plains conservation program........	R86-12	6,606		2-5-86		6,606	4-16-86	
Food and Nutrition Service								
Food donations program..................	R86-13	5,183		2-5-86		5,183	4-16-86	
DEPARTMENT OF COMMERCE								
Economic Development Administration								
Economic development assistance programs.	R86-14	101,309		2-5-86		101,309	4-16-86	
International Trade Administration								
Operations and administration............	R86-15	19,290		2-5-86		19,290	4-16-86	
National Oceanic and Atmospheric Administration								
Operations, research, and facilities.....	R86-16	63,323		2-5-86		63,323	4-16-86	
National Telecommunications and Information Administration								
Public telecommunications facilities, planning and construction...............	R86-17	21,820		2-5-86		21,820	4-16-86	
DEPARTMENT OF DEFENSE - MILITARY								
Procurement								
Procurement of weapons and tracked combat vehicles, Army........................	R86-81		34,400	4-25-86				
Shipbuilding and conversion, Navy........	R86-82		40,100	4-25-86				
Other procurement, Air Force.............	R86-83		40,000	4-25-86				
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Compensatory education for the disadvantaged...........................	R86-18	7,177		2-5-86		7,177	4-16-86	
Special programs.........................	R86-19	37,782		2-5-86		37,782	4-16-86	
Office of Bilingual Education and Minority Languages Affairs								
Immigrant education......................	R86-20	28,710		2-5-86		28,710	4-16-86	
Office of Special Education and Rehabilitative Services								
Education for the handicapped............	R86-21	44,364		2-5-86		44,364	4-16-86	
Rehabilitation services and handicapped research................................	R86-22	75,439		2-5-86		75,439	4-16-86	
Payments to institutions for the handicapped.............................	R86-23	446		2-5-86		446	4-16-86	
Office of Vocational and Adult Education								
Vocational and adult education...........	R86-24	210,337		2-5-86		210,337	4-16-86	
Office of Postsecondary Education								
Student financial assistance.............	R86-25	456,347		2-5-86		456,347	4-16-86	
Higher education.........................	R86-26	180,882		2-5-86		180,882	4-16-86	
Special Institutions								
Howard University........................	R86-27	5,699		2-5-86		5,699	4-16-86	

Attachment A - Status of Rescissions - Fiscal Year 1986

As of June 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
Office of Educational Research and Improvement								
Libraries	R86-28	33,017		2-5-86		33,017	4-16-86	
DEPARTMENT OF ENERGY								
Energy Programs								
Energy supply, research and development activities	R86-8	38,489		3-12-86		38,489	5-9-86	
Fossil energy research and development	R86-80	13,072		3-12-86		13,072	5-9-86	
	R86-80A		13,130	4-8-86		8,011	5-19-86	
Energy conservation	R86-77	9,816		3-12-86		9,816	5-9-86	
	R86-77A	5,344		3-20-86		5,344	5-9-86	
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Health Resources and Services Administration								
Health resources and services	R86-9	211,455		2-5-86		211,455	4-17-86	
Indian health	R86-29	24,262		2-5-86		24,262	4-16-86	
Indian health facilities	R96-30	38,642		2-5-86		38,642	4-16-86	
Centers for Disease Control								
Disease control, research, and training	R86-31	34,096		2-5-86		34,096	4-17-86	
National Institutes of Health								
National Cancer Institute	R86-32	6,800		2-5-86		6,800	4-18-86	
National Heart, Lung and Blood Institute	R86-33	11,469		2-5-86		11,469	4-18-86	
National Institute of Diabetes and Digestive and Kidney Diseases	R86-34	7,980		2-5-86		7,980	4-18-86	
National Institute of Neurological and Communicative Disorders and Strokes	R86-35	9,554		2-5-86		9,554	4-18-86	
National Institute of Allergy and Infectious Disease	R86-36	1,513		2-5-86		1,513	4-18-86	
National Institute of General Medical Sciences	R86-37	7,358		2-5-86		7,358	4-18-86	
National Institute of Child Health and Human Development	R86-38	1,150		2-5-86		1,150	4-18-86	
National Eye Institute	R86-39	5,224		2-5-86		5,224	4-18-86	
National Institute on Aging	R86-40	2,679		2-5-86		2,679	4-18-86	
Office of the Director	R86-41	23,055		2-5-86		23,055	4-18-86	
Alcohol, Drug Abuse, and Mental Health Administration								
Alcohol, drug abuse, and mental health	R86-42	39,718		2-5-86		39,718	4-18-86	
Health Care Financing Administration								
Program management	R86-43	912		2-5-86		912	4-16-86	
Social Security Administration								
Refugee and entrant assistance	R86-44	87,551		2-5-86		87,551	4-16-86	
Human Development Services								
Human development services	R86-45	29,980		2-5-86		29,980	4-16-86	
Family social services	R86-46	6,157		2-5-86		6,157	4-16-86	
Work incentives	R86-47	45,884		2-5-86		45,884	4-16-86	
Community services block grant	R86-48	182,139		2-5-86		182,139	4-16-86	
Community development credit union revolving fund	R86-49	2,529		2-5-86		2,529	4-16-86	
Departmental Management								
General Departmental management	R86-50	19,619		2-5-86		19,619	4-16-86	
Policy research	R86-51	220		2-5-86		220	4-16-86	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Subsidized housing programs	R86-52	4,416,151		2-5-86		4,416,151	4-16-86	
Congregate services program	R86-53	2,555		2-5-86		2,555	4-16-86	
Housing counseling assistance	R86-54	3,313		2-5-86		3,313	4-16-86	
Community Planning and Development								
Urban development action grants	R86-55	220,062		2-5-86		220,062	4-16-86	
DEPARTMENT OF THE INTERIOR								
Bureau of Land Management								
Land acquisition	R86-56	3,000		2-5-86		3,000	4-16-86	
United States Fish and Wildlife Service								
Land acquisition	R86-57	4,951		2-5-86		4,951	4-16-86	
National Park Service								
Construction	R86-58	13,613		2-5-86		13,613	4-16-86	
Land acquisition	R86-59	83,917		2-5-86		83,917	4-16-86	
Historic preservation fund	R86-60	18,523		2-5-86		18,523	4-16-86	

Attachment A - Status of Rescissions - Fiscal Year 1986

As of June 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congressional Action
DEPARTMENT OF JUSTICE								
Federal Prison System								
National Institute of Corrections........	R86-61	3,315		2-5-86		3,315	4-16-86	
Office of Justice Programs								
Justice assistance......................	R86-62	134,666		2-5-86		134,666	4-16-86	
DEPARTMENT OF LABOR								
Employment and Training Administration								
Training and employment services.........	R86-63	416,037		2-5-86		416,037	4-16-86	
DEPARTMENT OF TRANSPORTATION								
Federal Railroad Administration								
Rail service assistance..................	R86-64	14,355		2-5-86		14,355	4-16-86	
Northeast corridor improvement program...	R86-65	11,962		2-5-86		11,962	4-16-86	
Railroad rehabilitation and improvement financing funds..........................	R86-66	32,059		2-5-86		32,059	4-16-86	
Urban Mass Transportation Administration								
Discretionary grants.....................	R86-67	521,275		2-5-86		521,275	4-16-86	
DEPARTMENT OF THE TREASURY								
Office of Revenue Sharing								
Payments to State and local government fiscal assistance trust fund............	R86-68	759,975		2-5-86		759,975	4-16-86	
Federal Law Enforcement Training Center								
Salaries and expenses....................	R86-69	4,976		2-5-86		4,976	4-16-86	
United States Customs Service								
Salaries and expenses,...................	R86-70	4,169		2-5-86		4,169	4-16-86	
Operation and maintenance, air interdiction program....................	R86-71	19,275		2-5-86		19,275	4-16-86	
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION								
Research and development.................	R86-72	26,796		2-5-86		26,796	4-16-86	
OFFICE OF PERSONNEL MANAGEMENT								
Government payment for annuitants, employees health benefits...............	R86-73	600,000		2-5-86		600,000	4-16-86	
OTHER INDEPENDENT AGENCIES								
Appalachian Regional Commission								
Appalachian regional development programs	R86-74	81,000		2-5-86		81,000	4-16-86	
Corporation for Public Broadcasting								
Public broadcasting fund.................	R86-75	44,000		2-5-86		44,000	4-16-86	
National Endowment for the Humanities								
Grants and administration................	R86-76	1,903		2-5-86		1,903	4-16-86	
State Justice Institute								
Salaries and expenses....................	R86-78	7,656		2-5-86		7,656	4-16-86	
United States Railway Association								
Administrative expenses..................	R86-79	640		2-5-86		640	4-16-86	
Total, rescissions.......................		10,012,392	127,630			10,020,403		

Notes. - The amount of the rescission proposal for Subsidized housing programs (R86-52) for the "Rental rehabilitation grants program" was inadvertently shown in the Third Special Message as $71,755,000 instead of $71,775,000. This report reflects the correct amount.

The following rescission proposal has been adjusted downward to reflect the impact of sequestration: R86-54..... $3,312,500

On April 8, 1986, the General Accounting Office reclassified a portion of Deferral No. 86-6A as a rescission. This is shown above as Rescission No. 86-80A.

Attachment B - Status of Deferrals - Fiscal Year 1986

As of June 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-86
FUNDS APPROPRIATED TO THE PRESIDENT									
Appalachian Regional Development Programs									
Appalachian regional development programs..	D86-1	10,000		10-1-85					10,000
International Security Assistance									
Foreign military sales credit..............	D86-32	4,590,000		2-5-86	2,453,162				2,136,838
Economic support fund......................	D86-24	1,222,216		11-25-85					
	D86-24A		1,936,060	2-5-86	2,230,319			40,491	968,448
Military assistance program................	D86-33	661,350		2-5-86	618,146				43,204
International military education and training..................................	D86-34	27,245		2-5-86	27,245				0
Agency for International Development									
International disaster assistance..........	D86-59	64,607		3-12-86	38,023				26,585
Multilateral Development Banks									
Contribution to the special facility for sub-saharan Africa.........................	D86-35	75,000		2-5-86	75,000				0
DEPARTMENT OF AGRICULTURE									
Farmers Home Administration									
Rural housing insurance fund...............	D86-60	700,000		3-12-86					700,000
Forest Service									
Expenses, brush disposal...................	D86-2	77,913		10-1-85					
	D86-2A		30,893	3-12-86	7,300				101,506
Timber salvage sales.......................	D86-3	22,854		10-1-85	151				22,702
Cooperative work...........................	D86-61	442,336		3-12-86					442,336
DEPARTMENT OF COMMERCE									
Economic Development Administration									
Economic development assistance programs.................................	D86-36	40,000		2-5-86					40,000
National Oceanic and Atmospheric Administration									
Promote and develop fishery products and research pertaining to American fisheries	D86-26	32,333		11-25-85	32,333				0
Fisheries loan fund........................	D86-25	4,959		11-25-85					
	D86-25A		338	2-5-86					2,297
Patent and Trademark Office									
Salaries and expenses......................	D86-65	1,977		3-20-86					1,977
DEPARTMENT OF DEFENSE - MILITARY									
Military Construction									
Military construction, Defense.............	D86-4	353,079		10-1-85					
	D86-4A		1,488,579	2-5-86	1,881,631			42,323	2,350
Family Housing									
Family housing, Defense....................	D86-27	11,800		11-25-85					
	D86-27A		210,042	2-5-86	83,042				138,800
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation......................	D86-5	1,168		10-1-85					
	D86-5A		88	2-5-86	124			106	1,238
DEPARTMENT OF ENERGY									
Energy Programs									
Energy supply, research and development activities................................	D86-38	65,763		2-5-86	40,634				25,129
Uranium supply and enrichment activities...	D86-58	584,158		2-5-86					584,158
Fossil energy research and development.....	D86-6	9,247		10-1-85					
	D86-6A		55,565	2-5-86	37,855			1,521	28,478
Fossil energy construction.................	D86-7	7,038		10-1-85	4,964				2,074
Naval petroleum and oil shale reserves.....	D86-8	155,668		10-1-85					
	D86-8A		10,798	2-5-86	130,005				36,461
Energy conservation........................	D86-9	9,880		10-1-85					
	D86-9A		26,902	3-12-86	18,480			3,080	21,382
Strategic petroleum reserve................	D86-37	197,941		2-5-86	156,759				41,182

Attachment B - Status of Deferrals - Fiscal Year 1986

As of June 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-86
SPR petroleum account	D86-10	536,958		10-1-85					
	D86-10A		40,576	2-5-86					577,534
Alternative fuels production	D86-11	1,149		10-1-85					
	D86-11A		750	2-5-86	1,899				0
Power Marketing Administration									
Alaska Power Administration, Operation and maintenance	D86-62	400		3-12-86					400
Southeastern Power Administration, Operation and maintenance	D86-12	25,344		10-1-85	23,936			681	2,089
Southwestern Power Administration, Operation and maintenance	D86-13	5,000		10-1-85					
	D86-13A		8,243	2-5-86					13,243
Western Area Power Administration, Construction, rehabilitation, operation and maintenance	D86-14	27,095		10-1-85					
	D86-14A		16,371	3-12-86					43,466
Departmental Administration									
Departmental administration	D86-15	8,501		10-1-85	8,501				0
	D86-63	393		3-12-86					393
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Office of Assistant Secretary for Health									
Scientific activities overseas (special foreign currency program)	D86-16	3,000		10-1-85					3,000
Health Care Financing Administration									
Program management	D86-57	8,489		2-5-86	8,489				0
Social Security Administration									
Limitation on administrative expenses (construction)	D86-28	6,489		11-25-85					
	D86-28A		157	2-5-86					6,647
Limitation on administrative expenses (excludes disability determination services)	D86-39	30,000		2-5-86	30,000				0
Limitation on administrative expenses (information technology systems)	D86-40	114,641		2-5-86					114,641
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT									
Housing Programs									
Annual contributions for assisted housing -									
Budget authority	D86-41	7,032,443		2-5-86	4,731,637				2,300,805
Contract authority	D86-42	641		2-5-86	641				0
Rental housing development grants	D86-43	77,400		2-5-86	77,400				0
Congregate services program	D86-44	2,670		2-5-86	2,670				0
Housing for the elderly or handicapped fund	D86-45	599,801		2-5-86	599,801				0
Nonprofit sponsor assistance	D86-46	1,000		2-5-86	543				457
Community Planning and Development									
Rental rehabilitation grants program	D86-47	77,000		2-5-86	77,000				0
Community development grants	D86-48	500,000		2-5-86					500,000
Urban development action grants	D86-49	251,000		2-5-86	251,000				0
Rehabilitation loan fund	D86-50	135,535		2-5-86	4,402				131,133
DEPARTMENT OF THE INTERIOR									
Bureau of Land Management									
Payments for proceeds, sale of Mineral Leasing Act of 1920, Section 40(d)	D86-66	49		3-20-86					49
National Park Service									
Land acquisition and State assistance	D86-64	1,893		3-12-86					1,893
DEPARTMENT OF JUSTICE									
Bureau of Prisons									
Buildings and facilities	D86-17	20,000		10-1-85					
	D86-17A		10,730	2-5-86					30,730
Office of Justice Programs									
Crime victims fund	D86-18	100,000		10-1-85					
	D86-18A		3,396	2-5-86	4,300				99,096

Attachment B - Status of Deferrals - Fiscal Year 1986

As of June 1, 1986 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change	Date of Message	Cumulative OMB/Agency Releases	Congressionally Required Releases	Congressional Action	Cumulative Adjustments	Amount Deferred as of 6-1-86
DEPARTMENT OF LABOR									
Employment and Training Administration State unemployment insurance and employment service operation............	D86-51	37,000		2-5-86	33,089				3,911
DEPARTMENT OF STATE									
Bureau of Refugee Programs United States emergency refugee and migration assistance fund, executive......	D86-19	18,082		10-1-85					18,082
Other Assistance for implementation of a Contadora agreement........................	D86-20	2,000		10-1-85					2,000
DEPARTMENT OF TRANSPORTATION									
Federal Railroad Administration Conrail labor protection..................	D86-52	4,565		2-5-86					4,565
Urban Mass Transportation Administration Discretionary grants........................	D86-21	223,600		10-1-85		223,600	P.L. 99-190		0
Federal Aviation Administration Facilities and equipment (Airport and airway trust fund)........................	D86-29 D86-29A	686,438	681,723	11-25-85 2-5-86	28,011				1,340,151
Maritime Administration Operations and training..................	D86-53 D86-53A	9,350	888	2-5-86 3-20-86	8,500				1,738
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing Local government fiscal assistance trust fund.....................................	D86-30 D86-30A D86-30B	7,743	97,483 19,774	11-25-85 2-5-86 3-12-86	125,712			26,124	25,412
Local government fiscal assistance trust fund.....................................	D86-31 D86-31A	54,349	25,651	11-25-85 3-12-86	5,347			244	74,897
OTHER INDEPENDENT AGENCIES									
Commission on the Ukraine Famine Salaries and expenses......................	D86-54	233		2-5-86					233
Pennsylvania Avenue Development Corporation Land acquisition and development fund......	D86-22	10,947		10-1-85					10,947
Railroad Retirement Board Milwaukee railroad restructuring, administration..............................	D86-23	243		10-1-85	43				200
Dual benefits payments account.............	D86-55	2,201		2-5-86	2,009				192
United States Information Agency Acquisition and construction of radio facilities................................	D86-56	66,545		2-5-86	4,880				61,666
TOTAL, DEFERRALS............................		20,055,719	4,665,008		13,864,983	223,600		114,570	10,746,714

Note: All of the above amounts represent budget authority except the Local Government Fiscal Assistance Trust Fund (D86-30B) of outlays only.

Some of the amounts shown above as "Cumulative OMB/Agency Releases" were sequestered pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985.

On April 8, 1986, the General Accounting Office reclassified a portion of Deferral No. 86-6A as a rescission. This is shown on Attachment A as Rescission No. 86-80A.

[FR Doc. 86-13714 Filed 6-17-86; 8:45 am]

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federal register

Wednesday,
June 18, 1986

Part V

Environmental Protection Agency

40 CFR Part 194

Radiation Protection Criteria for Cleanup of Land and Facilities Contaminated With Residual Radioactive Materials; Advance Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[OAR-FRL-2989-3]

Radiation Protection Criteria for Cleanup of Land and Facilities Contaminated With Residual Radioactive Materials

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: There are thousands of sites in the United States where radioactive materials have been used. Most of these sites will eventually be decommissioned. The U.S. Environmental Protection Agency (EPA) is developing public health and environmental radiation protection criteria for cleanup of the residual radioactivity on land or facilities so that such sites may be used without needing any restrictions based on residual radioactivity.

This Notice requests comments and information related to developing radiation protection criteria for residual radioactivity at decommissioned sites. These criteria would apply to licensees of the Nuclear Regulatory Commission or its Agreement States, to sites owned or used by the Department of Energy, the Department of Defense, the former Atomic Energy Commission, and the former Manhattan Engineering District; and to sites where naturally occurring or accelerator-produced radioactive materials have been used.

We will announce additional opportunities for public participation in the development of these criteria; we are considering workshops during the early stages and hearings after publication of proposed criteria.

DATE: Responses received by September 16, 1986, will be of maximum value.

ADDRESS: Responses should be submitted to Docket No. A-83-41, which is located at the EPA, Central Docket Section (A-130), West Tower Lobby, 401 M Street, SW., Washington, DC 20460. Docket A-83-41 will contain the records of the development of these criteria. The docket will be available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Dr. Stanley Lichtman, Guides and Criteria Branch (ANR-460), Office of Radiation Programs, U.S. Environmental Protection Agency, Washington, DC 20460; telephone number 202-475-9620.

SUPPLEMENTARY INFORMATION: The EPA is developing public health and environmental radiation protection criteria for cleanup of contaminated land and facilities so that such sites may be used without needing any restrictions because of residual radioactivity. Most sites that may eventually require cleanup criteria may be grouped into three main categories: (1) Licensees of the Nuclear Regulatory Commission (NRC) or its Agreement States,[1] (2) Department of Energy (DOE) and Department of Defense (DOD) sites, and (3) other sites where naturally-occurring or accelerator-produced radioactive materials have been used.

The NRC and its Agreement States have licensed over 22,000 facilities for production or handling of radioactive materials. More than 95 percent of these facilities are licensed to use sealed radionuclide sources or small quantities of radionuclides in research or medicine that result in little or no contamination of land or facilities. Of more concern are approximately 300 facilities with larger inventories of radioactive materials, such as nuclear power plants, other components of the nuclear fuel cycle, and research reactors.

The DOE controls about 25 large complexes, including national laboratories and nuclear weapons research and testing sites. There are several hundred facilities in the DOE Surplus Facilities Management Program scheduled for decommissioning over the next 20 years. They include reactors, waste burial grounds, fuel reprocessing facilities, radiochemical laboratories, and waste treatment plants. The DOE also has responsibility for certain privately-owned sites that were contaminated when they were used for the former Atomic Energy Commission and the Manhattan Engineering District, 25 of which are now in the Formerly Utilized Sites Remedial Action Program (FUSRAP). Many FUSRAP sites involved research with, processing of, and storage of uranium and thorium ores, and, therefore, are contaminated primarily with naturally-occurring radionuclides. The Department of Defense sites vary widely in function and size. They include hospitals, laboratories, proving grounds, bombing and gunnery practice ranges, missile launch sites, weapons manufacturing and storage facilities, and reactors. These sites may contain small enclosed radiation sources, such as radium and tritium instruments; larger sources, such as research reactors; and dispersed sources, such as laboratory waste storage areas and test ranges contaminated with plutonium and fission products.

The third category consists of sites neither under license by NRC or Agreement States nor controlled by DOE or DOD. Included in this category are about 1,000 particle accelerator sites that generally contain only small amounts of short-lived residual radioactivity after shutdown. Other sites contain long-lived naturally-occurring radionuclides varying from small packaged radiation sources to large areas of mostly low-level dispersed contamination, including tailings from rare earth ore processing, depleted uranium from armor piercing shell tests, and residues from university or commercial research activities. The EPA has separate programs, however, for buildings affected by naturally-occurring radioactive materials that people have not altered, such as radon from *in situ* rocks and soils.

As these sites and facilities are converted to other uses, public health and environmental radiation protection criteria are needed to determine appropriate requirements under which there will be no further need for regulatory control based on residual radioactivity. Uniform Federal public health and environmental protection residual radioactivity criteria are needed because the many sites and facilities to be decommissioned are administered by different Federal agencies, States, and private entities. These criteria will be useful to the owners, operators, and regulators of radiation facilities because a uniform set of criteria will simplify and reduce the cost of planning and evaluating cleanup operations. The General Accounting Office, Federal agencies, States, and environmental and industrial organizations have stressed the urgency of developing such criteria.

This program will not address sites already covered by Pub. L. 92-314, which established a remedial action program for contaminated buildings in Grand Junction, Colorado, and Pub. L. 95-604, the Uranium Mill Tailings Radiation Control Act of 1978. Radioactive waste disposal sites that are not intended for unrestricted public access are also excluded. Note, however, that EPA has disposal standards for radioactive wastes in various rulemaking stages: final standards for uranium mill tailings (48 FR 590, January 5, 1983, and 48 FR 45926,

[1] As section 274 of the Atomic Energy Act provides, 27 States currently license nuclear materials under agreements with the Nuclear Regulatory Commission.

October 7, 1983); final standards for spent fuel and high-level and transuranic radioactive waste (50 FR 38066, September 19, 1985); an advance notice of proposed rulemaking for low-level radioactive waste (48 FR 39563, August 31, 1983). Management and disposal of naturally radioactive mineral mining and processing wastes, such as phosphate and gypsum piles, and uranium mining wastes, which are being studied under EPA's Resource Conservation and Recovery Act program, are also not addressed here.

EPA administers two broad types of authority for providing radiation protection criteria. The first is the authority of the Administrator, under Executive Order 10831 and the Atomic Energy Act of 1954, as amended (AEA), to recommend Federal guidance to the President for use by Federal agencies. Federal guidance, which may consist of general principles, specific policies, or numerical criteria, guides Federal agencies in developing and implementing their own regulations and procedures. Although such guidance does not directly apply to materials regulated exclusively by the States, States generally have voluntarily followed previous Federal guidance.

Under the second type of authority, EPA may directly establish environmental radiation standards under several authorities. For example, EPA may issue generally applicable environmental standards under the AEA, which include enforceable numerical standards that may apply to any radioactive materials regulated under the AEA.[2] However, certain types of naturally-occurring and accelerator-produced radionuclides are not encompassed by the AEA. EPA may use other authorities for such radionuclides, such as the Resource Conservation and Recovery Act, the Toxic Substances Control Act, and the Clean Air Act.

To ensure that the criteria are founded on a broad base of practical experience and satisfy both existing and anticipated needs, EPA will consult knowledgeable and interested parties during the development of these criteria. To this end, EPA is consulting with other interested Federal agencies. In addition, public workshops and hearings will be conducted to encourage public participation. As an initial step, we request written opinions and information related to developing these radiation protection criteria for residual radioactivity. In particular, we need detailed information and thoughtful views in the following areas:

1. *Basis for the criteria:* What relative importance should be assigned to various factors in determining criteria for unrestricted public access, now and in the future, to sites that contain residual radioactive materials? Among the factors we plan to consider are magnitudes of current and future individual risks, cumulative effects on populations now and in the future in relation to the half-life and environmental mobility of the residual contamination, and the technical and economic practicality of implementation of cleanup. Should other factors be considered?

2. *Form of the criteria:* (a) Contamination of sites where radioactive materials have been used may exhibit widely varying characteristics. The materials may be well contained or widely dispersed, manmade or natural, low or high in radioactivity, short- or long-lived, and in a variety of chemical forms. Different criteria could be devised for different types of contamination, or some general criteria might be developed that can be applied differently to different circumstances. EPA needs information for determining whether different forms of radiation protection criteria are necessary and appropriate for different types of contamination. (b) Cleanup costs for previously closed or abandoned sites may be much higher than for operating sites. Similarly, costs may be lower for future sites, because of better planning for efficient decommissioning. Should EPA consider whether such cost differences might justify different criteria for previously closed or future sites than for presently operating sites?

3. *Guidance versus standards:* Standards are generally more specific than guidance. Guidance may be numerical, narrative, or both; it may address quantitative radiation protection requirements as well as procedural considerations. Implementing agencies have greater discretion in applying guidance than standards. Perhaps broad guidance should be formulated initially as a basis for more specific subsequent standards. We request information to help EPA decide whether guidance, standards, or a combination, is the most appropriate form for criteria.

4. *Assessment needs:* EPA needs to evaluate the effects of alternative criteria. Therefore, we solicit information on the health and environmental benefits, costs, and technical feasibility of achieving various levels of residual radioactivity at sites that are to be made available for unrestricted public use. Because DOE- and NRC-licensed sites are relatively well documented, such information is particularly needed for old sites or those that have not been regulated for radioactivity.

5. *Institutional controls:* For some sites it may be possible to reduce occupational radiation exposure and cleanup costs by deferring cleanup until radioactivity levels decline by radioactive decay. In the interim, the use of sites must be restricted by institutional controls. In the recent actions for radioactive wastes cited above, EPA has expressed its preference to not rely primarily on institutional controls for long-term protection from radiation hazards. We request information and comments on the potential effectiveness of various institutional controls to help us decide whether EPA needs to consider a time limit on relying on such controls in decommissioning to assure adequate protection of public health and the environment.

6. *Recycling equipment and materials:* In addition to the fixed entities of lands and buildings, a facility contains equipment and materials that can be decontaminated and recycled into the public domain. There can be significant economic values in these removable items, and there is a need for criteria that specify the conditions under which recycling is acceptable from a public health standpoint. Estimating effects from recycled materials is difficult, because there are few data supporting the assumptions regarding the materials' ultimate uses and exposure pathways. We are planning to develop criteria for land and buildings first, and to address reusable equipment and materials thereafter. We request information and comments to help EPA analyze this problem.

[2] EPA's authority to issue generally applicable radiation standards under the Atomic Energy Act is intended to protect public health and the environment, and generally does not extend on-site while a facility is under license. This restriction, however, does not bar EPA from setting standards for the past-license period when previously licensed sites are to be made available to the general public without restrictions based on residual radioactivity.

Responses to these and other issues related to the development radiation protection criteria for residual radioactivity should be sent to the location given above under the heading "ADDRESS."

List of Subjects in 40 CFR Part 194:

Intergovernmental relations, Radiation Protection, Decontamination, Decommissioning, Residual radioactivity.

Authority: 42 U.S.C. 2201/AEA 274; 42 U.S.C. 2021/AEA 274.]

Dated: June 11, 1986.

Lee M. Thomas,

Administrator.

[FR Doc. 86-13742 Filed 6-17-86; 8:45 am]

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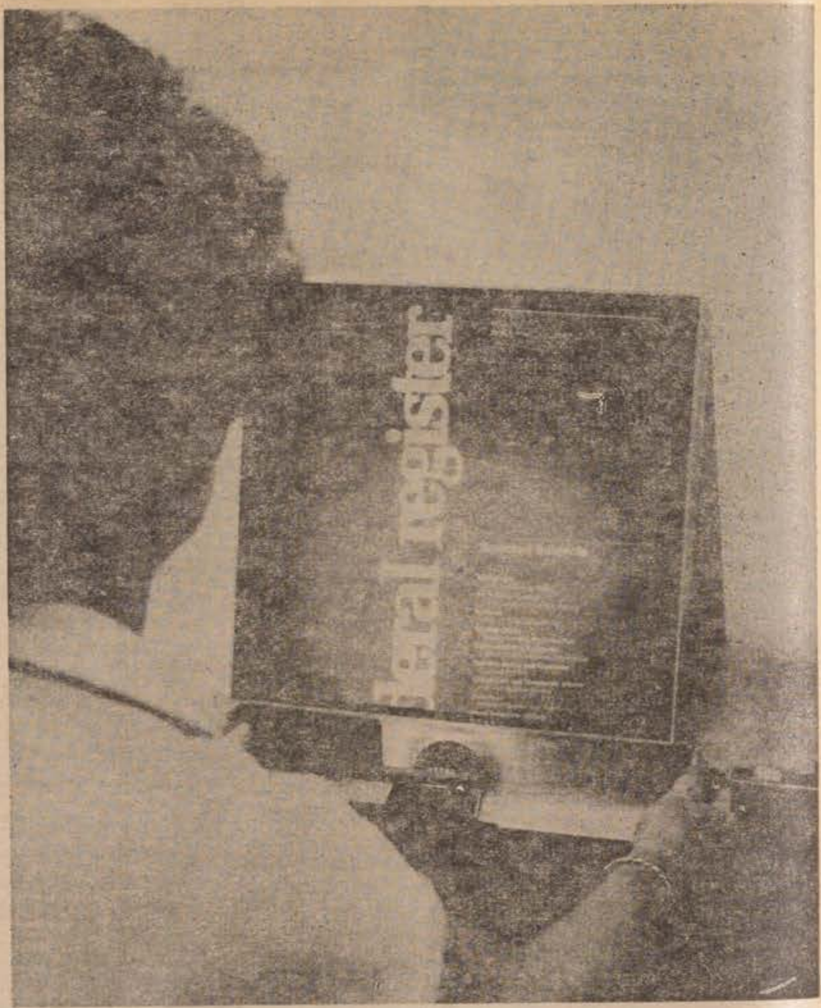

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