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Thursday
December 4, 1986

Briefings on How To Use the Federal Register—
For information on briefings in New York, NY, and Pittsburgh, PA, see announcement on the inside cover of this issue.

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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.

NEW YORK, NY

WHEN: December 5 at 10:00 a.m.,

WHERE: Room 305A, 26 Federal Plaza, New York, NY

RESERVATIONS: Arlene Shapiro or Stephen Colon, New York Federal Information Center, 212-264-4810.

PITTSBURGH, PA

WHEN: December 8 at 1:30 p.m.,

WHERE: Room 2212, William S. Moorehead Federal Building, 1000 Liberty Avenue, Pittsburgh, PA

RESERVATIONS: Kenneth Jones or Lydia Shaw
Pittsburgh: 412-644-INFO
Philadelphia: 215-597-1707, 1709

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Presidential Documents

Title 3—

The President

Executive Order 12576 of December 2, 1986

Victims of Terrorism Compensation

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 (Public Law 99–399) ("the Act"), and in order to provide for the implementation of that Title with respect to individuals who have been held hostage in Iran and other former hostages, it is hereby ordered as follows:

Section 1. The functions vested in the President by Section 803 of the Act (5 U.S.C. 5569) are delegated to the Secretary of State for the purpose of paying compensation to individuals who were held in captive status commencing on or before January 21, 1981.

Sec. 2. The functions vested in the President by Section 806 of the Act (37 U.S.C. 559) are delegated to the Secretary of Defense for the purpose of paying compensation to individuals who were held in captive status commencing on or before January 21, 1981.

Sec. 3. The Secretary of State and the Secretary of Defense shall consult with each other and with the heads of other appropriate Executive departments and agencies in carrying out these functions.

Ronald Reagan

THE WHITE HOUSE,
December 2, 1986.

[FR Doc. 86–27433
Filed 12–3–86; 10:11 am]
Billing code 3195–01–M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 800

Fees for Official Inspection, Official Weighing, and Supervision of Official Services

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is increasing its fees by 17 to 42 percent for official inspection and weighing services performed under the United States Grain Standards Act (USGSA), as amended. This increase is intended to cover, as nearly as practicable, the FGIS operating costs, including related supervisory and administrative costs. In addition, FGIS is establishing a fee to cover the cost incurred for the supervision of official Class Y ship weighing services performed by agencies for shipments to domestic markets only.

EFFECTIVE DATE: January 5, 1987.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Information Resources Staff, RM, USDA, FGIS, Room 1661 South Building, 1400 Independence Avenue SW., Washington, DC 20250, telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule is issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

Mr. W. Kirk Miller, Administrator, FGIS, has determined that this final rule does not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most users of the official inspection and weighing services and those entities that perform those services do not meet the requirements for small entities. FGIS is required by statute to make services available and to recover the estimated costs of providing such services, as nearly as practicable.

Final Action

In the July 21, 1986, **Federal Register** (51 FR 26162) FGIS proposed increases in the fees for official inspection and weighing services performed under the United States Grain Standard Act (USGSA). Eight comments were received regarding the proposed increase in FGIS fees for official inspection and weighing services. The commenters represented various segments of the grain industry including a state wheat commission; a national farm bureau federation as well as a state farm bureau; associations representing grain exporters, grain and feed interests, and grain elevators and processors; a regional grain merchandiser; and an exporter of grain.

The majority of the comments received were opposed to the proposed fee increases. In addition, while recognizing that FGIS has to cover its costs from revenues generated by fees, two other commenters expressed the view that FGIS carefully review its operating and administrative costs in proposing fee increases. One commenter supported the proposed increase in FGIS fees.

The commenters opposed to the FGIS fee increases generally stated that:

(1) There should be no increase in fees; (2) an increase in fees would further exacerbate the problems encountered by U.S. grain exporters in competing in the world grain market by making U.S. grain less competitive and would adversely affect producers; (3) the fee increases would further decrease FGIS revenues instead of increasing FGIS revenues due to decreasing grain exports; and (4) FGIS should carefully review its operating costs and reduce fixed overhead costs. In addition, various suggestions were made including decreasing FGIS fees, abandoning user fees entirely or not completely funding all FGIS activities through user fees, and changing from an hourly fee to a unit fee for submitted samples.

Based upon all information available including comments received and analysis of recent FGIS program costs and revenue, FGIS has determined that it will increase fees for inspection and weighing services as proposed. FGIS has reviewed its recent costs and revenues for original inspection; official weighing; reinspection, appeal inspection, board appeal inspection and review of weighing; and Canadian inspection services. For these programs, costs exceed revenues. When the proposal was published, the 1-year period March 1, 1985 through February 28, 1986, included the most current 1-year figures available. These figures were used to project the FGIS budget for fiscal year 1987 revenue levels. During this period, FGIS costs exceeded revenues for these programs by $3,092,000. The most recent figures for fiscal year 1986 covering the period from October 1, 1985 through September 30, 1986, indicate that the programs continue to operate at losses totalling approximately $2,686,000. The fee increases will cover FGIS operating costs in addition to gradually replenishing applicable operating reserves to 3-month levels.

FGIS recognizes that the level of fees may affect demand for service. Nonetheless, the USGSA, as amended (7 U.S.C. 71 *et seq.*), requires that FGIS charge and collect reasonable fees that cover the estimated cost to the Service for performing official inspection, weighing, reinspection, and appeal inspection services, including related administrative and supervisory costs. FGIS continually monitors its cost, revenue, and operating reserve levels to assure that there are sufficient resources for the Service's operations. FGIS has continued to reduce staffing levels, furlough employees and take other cost-savings measures in an effort to provide cost-effective services without endangering its ability to respond to the grain industry's need for quality service.

FGIS operating costs include personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment. While exports and the demand for the services FGIS provides

may fluctuate, certain FGIS costs remain constant in order to provide quality service on demand.

The fee increase is approximately 17 percent for original inspection and official weighing, contract basis, and 27 percent for noncontract; 30 percent for reinspection, appeal inspection, board appeal inspection and review of weighing; and 31 percent and 42 percent for contract and noncontract, repectively, for inspection services performed in Canada.

The Act requires that delegated States and designated official agencies pay fair and reasonable fees to cover the estimated cost to FGIS to supervise those agencies. The fees for FGIS supervision of official inspection and weighing services performed by delegated states and designated official agencies were last revised and made effective on October 1, 1985, (50 FR 38503) to permit a 40 percent reduction of previously established fees and to establish fees to recover supervision cost incurred for those agencies performing supervision of official Class Y weighing services. The FGIS supervision of inspection and weighing programs continue to operate as projected at losses to reduce the applicable operating reserves to 3-month levels. Therefore, no change to these fees are being made at this time.

However, the final rule made effective on October 1, 1985, which, in part, established fees for supervision of official Class Y weighing services did not include a fee for supervision of official Class Y ship weighing services. At that time, FGIS did not have sufficient information available to determine if there would be a sufficient number of applicant requests for Class Y weighing of grains loaded on ships destined for domestic markets to provide for such a service. The information now available to FGIS indicates a need to establish a fee to recover cost for supervision of official Class Y ship weighing services for grains loaded on ships destined for domestic markets. Therefore, FGIS is establishing a fee of $12.30 per ship for the supervision of official Class Y ship weighing services for grain shipped to domestic markets only, and adding a conforming footnote 7, as appropriate.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Export, Grain.

Accordingly, 7 CFR Part 800 of the regulations is amended as follows:

PART 800—GENERAL REGULATIONS

Fees

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. In § 800.71 (a), Schedule A, Schedule B, Table 2 in Schedule C, and the footnotes at the end of Table 2 are revised to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

SCHEDULE A.—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES, PERFORMED IN THE UNITED STATES [1]

Inspection and weighing service (bulk or sacked grain)	Regular workday (Monday to Saturday)	Nonregular workday (Sunday and Holiday)
(1) Original inspection and official weighing:		
(i) Contract (per hour per service representative)	$29.20	$39.80
(ii) Noncontract (per hour per service representative)	38.80	52.80
(2) Reinspection, appeal inspection, Board appeal inspection, and review of weighing services: [2] [3]		
(i) Grading service:		
(A) Grade and factors (per sample)	56.60	73.60
(B) Protein test (per sample)	14.15	18.40
(C) Factor determination (per factor)	28.30	36.80
(ii) Sampling services (per hour per service representative)	56.60	73.60
(iii) Review of weighing service (per hour per service representative	56.60	73.60
(3) Extra copies of certificates (per copy)	3.00	3.00

[1] Official inspection and weighing services include, but are not limited to grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment, demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

[2] Fees for reinspection and appeal inspection services performed at locations where FGIS is providing original inspection service shall be assessed at the applicable contract or noncontract hourly rate as the original inspection. However, if additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

[3] If at the request of the Service a file sample is located and forwarded by an agency for an official appeal, the agency may, upon request, be reimbursed at the rate of $2.50 per sample by the service.

SCHEDULE B.—FEES FOR OFFICIAL INSPECTION, WEIGHING, AND APPEAL INSPECTION SERVICES PERFORMED IN CANADA [1]

Inspection and weighing service (bulk or sacked grain)	Regular workday (Monday to Saturday)	Nonregular workday (Sunday and Holiday)
(1) Original inspection and official weighing services: [2] [3]		
(i) Contract services (per hour per service representative)	$47.80	$58.40
(ii) Noncontract service (per hour per service representative)	63.80	76.60
(2) Extra copies of certificates (per copy)	3.00	3.00

[1] Official inspection and weighing services include, but are not limited to grading, weighing, sampling, stowage examination, equipment testing, scale testing and certification, test weight reverification, evaluation of inspection and weighing equipment, demonstrating official inspection and weighing functions, furnishing standard illustrations, and certifying inspection and weighing results.

[2] Fees for reinspection and appeal inspection services shall be assessed at the applicable contract or noncontract hourly rate as the original inspection. However, if additional personnel are required to perform the reinspection or appeal inspection service, the applicant will be assessed the noncontract original inspection hourly fee.

[3] Board appeal inspections are based on file samples. See § 800.71, Schedule A for Board Appeal fees.

SCHEDULE C.—FEES FOR FGIS SUPERVISION OF OFFICIAL INSPECTION AND WEIGHING SERVICES PERFORMED BY DELEGATED STATES AND/OR DESIGNATED OFFICIAL AGENCIES IN THE UNITED STATES [1]

* * * * *

Table 2

Official services (bulk or sacked grain)	Official weighing services	
	(class X)	(class Y)
Official weighing services:		
(i) Truck or trailer (per carrier)	$0.30	$0.20
(ii) Boxcar or hopper car (per carrier)	.95	.25
(iii) Barge (per carrier)	6.15	1.55
(iv) Ship (per carrier) [3] [7]	49.20	12.30
(v) All other lots (per lot or part lot) [4]	.30	.20

[1] The fees include the cost of supervision functions performed by the Service for official inspection and weighing services performed by delegated States and/or designated agencies.

[2] A fee shall be assessed for each carrier or sample inspected if a combined lot certificate is issued or a uniform loading plan is used to determine grade.

[3] A fee shall be assessed per ship regardless of the number of lots or sublots loaded at a specific service point. A fee shall not be assessed for divided-lot certificates.

[4] Inspection services for all other lots include, but are not limited to, sampling service, condition examinations, and examination of grain in bins and containers. For weighing services, all other lots include, but are not limited to, seavans and inhouse bin transfers.

[5] Fees shall be assessed for a maximum of two factors. If more than two factors are determined, fees are assessed at rates in Table 1 (1)(i) or (3)(i) above, as applicable, based on carrier or type sample represented.

[6] Official criteria includes, but is not limited to, protein and oil analyses. A fee shall be assessed for each sample tested.

[7] A Class Y ship fee shall be assessed for shipments destined for domestic markets only.

* * * * *

Dated: November 18, 1986.

W. Kirk Miller,

Administrator.

[FR Doc. 86-27234 Filed 12-3-86; 8:45 am]

BILLING CODE 3410-EN-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 370, 372, and 399

[Docket No. 60608-6108]

Statutory Deadlines for Responses to Requests

AGENCY: Export Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule implements section 10(l) (1) and (2) of the Export Administration Act of 1979, as amended, by providing the procedures for exporters to follow when submitting commodity classification requests and information requests regarding the applicability of license requirements to export transactions. Export Administration (EA) will respond to properly submitted commodity classification Requests within ten (10) working days of their receipt by EA, and to properly submitted information requests within thirty (30) days of their receipt by EA.

EFFECTIVE DATE: This rule is effective February 2, 1987.

FOR FURTHER INFORMATION CONTACT: John Black or Patricia Muldonian, Export Administration, Department of Commerce, Washington, DC 20230 Telephone: (202) 377-2440.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291 and, it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. App. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, Washington, DC 20230, Telephone (202) 377-3856.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 603(a) and 604(a)) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This information collection requirement is pending approval by the Office of Management and Budget. Comments from the public or the collection of information contained in this rule should be addressed to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530, Attention: Desk Officer for the Department of Commerce, International Trade Administration.

List of Subjects in 15 CFR Parts 370, 372, and 399

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368-399) are amended as follows:

PARTS 370 AND 372—[AMENDED]

1. The authority citation for 15 CFR Parts 370 and 372 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 399—[AMENDED]

2. The authority citation for 15 CFR Part 399 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. App. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223, 50 U.S.C. 1701 *et seq.*, E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 31925, September 8, 1986).

3. Section 370.11 is amended by adding a new paragraph (d) as follows:

§ 370.11 Information to exporters.

* * * * *

(d) *Inquiry regarding applicability of regulations to transactions.* An exporter submitting a written request concerning the applicability of export license requirements to a proposed export transaction or series of transactions, shall provide complete technical specifications and CCL classifications for all the equipment involved and a description of all technical data in the transaction. The request shall also include all available information on the parties to the transaction and proposed end use. The requester must send the inquiry to Export Administration, P.O. Box 273, Washington, DC 20044, clearly marked "Section 370.11(d)" at the top of the first page and on the lower left-hand

corner of the envelope. Export Administration will respond to properly submitted request within 30 days after receipt of the request.

4. Section 372.6(c)(2) is revised to read as follows:

§ 372.6 Substantiation of facts on application.

* * * * *

(c) * * *

(2) Inquiry regarding prospects of obtaining license or other authorization. Export Administration gives a formal licensing decision only through the issuance of a license or other appropriate document. Such decisions are based upon the actual submission of a formal application or other formal request setting forth all the facts relevant to the export transaction and supported by all required documentation. Exporters having questions about the applicability of the regulations to a transaction should follow the procedure described in § 370.11(d).

* * * * *

5. Section 399.1(f)(1) is revised to read as follows:

§ 399.1 The Commodity Control List and how to use it.

* * * * *

(f) *How to use the CCL*—(1) *Identifying the proper CCL entry.* First, the exporter *must* attempt to identify which ECCN covers the commodity proposed for export. The general characteristics of the commodity will usually guide the exporter to the appropriate Commodity Group. Once the appropriate Commodity Group is identified, the particular characteristics and function of the equipment should be matched to a specific ECCN. The index to the CCL may also help to match a general description to a specific ECCN entry. All items subject to Commerce licensing jurisdiction are included on the CCL, either in a specific commodity listing or in an "other, n.e.s." entry at the end of each Commodity Group. Export Administration will respond to properly submitted requests for verification of the proper ECCN within ten working days after receipt of the request. To insure that the request will be acted upon expeditiously, it will be necessary for the requester to do the following:

(i) The requester must submit a recommended classification for the commodity(ies) and explain the reasons for this classification. This explanation must contain an analysis of the classified commodity(ies) in terms of the technical control parameters specified in the appropriate ECCN. If the requester cannot determine the appropriate classification, then the requester must explain the reasons for failing to recommend an appropriate classification. This explanation should include an identification of ambiguities or deficiencies in the regulations that precluded making a classification;

(ii) The requester must attach descriptive literature, brochures, technical papers or specifications that provide sufficient technical detail to enable EA personnel to verify or correct the commodity classification;

(iii) The request must be mailed to the following address: Export Administration, P.O. Box 273, Washington, DC 20044; and

(iv) Request(s) must be clearly marked at the top of the first page and on the lower left-hand corner of the envelope "Commodity Classification Request".

Any request that omits essential information, or is otherwise incomplete, will be returned to the requester specifying the reasons for the return.

* * * * *

Dated: December 1, 1986.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 86-27247 Filed 12-3-86; 8:45 am]

BILLING CODE 3510-DT-M

RAILROAD RETIREMENT BOARD

20 CFR Part 360

Employee Responsibilities and Conduct; Conflict of Interests

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board hereby amends the regulation on Employee Responsibilities and Conduct to include the requirements for financial disclosure and the restrictions on post-employment activity established by the Ethics In Government Act of 1978 and the implementing regulations issued by the Office of Personnel Management (OPM). This revised regulation is intended to implement the requirements of the Act and OPM regulations. The regulation designates the agency's ethics official. The employees subject to post-employment restrictions who are required to file reports are identified, and the procedures and the applicable time limits are specified. The agency's administrative enforcement proceedings are specified. In addition, Internal Revenue Service requirements regarding unauthorized disclosure of tax information have been included.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Leonard Harris, Chief, Employee/Management Relations, Bureau of Personnel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4569 (FTS 387-4569).

SUPPLEMENTARY INFORMATION: The Ethics in Government Act and regulations issued by the Office of Personnel Management require that Federal agencies adopt regulations to carry out the requirements of that Act and the regulations. The regulations contained in this Part are designed to implement the Act and regulations.

Subpart A of Part 360 concerns the requirement of the Ethics in Government Act that certain employees must file a yearly financial disclosure statement. This Subpart defines the group of employees to whom the requirement applies, establishes the procedures to be followed in filing the statements, sets out the information required to be in the statements, and states the penalty that may be imposed for failure to file the required statement. This Subpart also prescribes ethics agreements made by reporting individuals to resolve potential or actual conflicts of interest.

Subpart B of Part 360 primarily concerns the requirements of 5 CFR Part 735, which sets forth standards of conduct and responsibility for employees. This Subpart prescribes the filing of statements of employment and financial interests by certain employees, delegates responsibility for administering these regulations and reviewing the statements, and provides for disciplinary and remedial action for violations. This Subpart also sets forth the prohibition against unlawful disclosure of tax information under the Internal Revenue Code and the penalty for violations.

Subpart C of Part 360 concerns the requirements of the Ethics in Government Act that employees avoid post-employment conflicts of interest. This Subpart sets forth the post-employment restrictions, designates the employees to whom the restrictions apply, specifies the responsibilities of the Board Members and other officials, and provides for administrative enforcement proceedings in cases of possible violations.

This regulation concerns agency personnel matters and, accordingly, is not a rule within the meaning of Executive Order 12291. In addition, any requirement for the collection of information imposed by Part 360 applies only to Federal employees and, therefore, such collection does not constitute a "collection of information"

within the meaning of the Paperwork Reduction Act of 1980.

This regulation has been approved by the Office of Personnel Management and the Office of Government Ethics.

List of Subjects in 20 CFR Part 360

Conflict of interests, Government employees.

1. Title 20, Chapter II, Subchapter F, Part 360, is revised to read as follows:

SUBCHAPTER F—INTERNAL ADMINISTRATION, POLICY AND PROCEDURES

PART 360—EMPLOYEE RESPONSIBILITIES AND CONDUCT

Subpart A—Executive Personnel Financial Disclosure Requirements

Sec.

Subpart B—Employee Standards of Conduct

Subpart C—Post-Employment Conflict of Interest

Subpart A—Executive Personnel Financial Disclosure Requirements

Authority: 5 U.S.C. App. 201–212; 5 CFR Part 738.

§ 360.1 Purpose.

Under the Ethics in Government Act certain Federal employees are required to file financial disclosure statements. This Subpart is intended to implement the requirements of this Act. The employees required to file reports are identified and the procedures and applicable time limits are specified.

§ 360.2 Policy.

In accordance with the Ethics in Government Act, executives of the Railroad Retirement Board in positions identified herein are required to disclose their personal financial interests and thereby demonstrate that they are able to carry out their duties without compromising the public trust. Statements of income, assets and liabilities must be reported. A systematic review of the financial holdings of both current and prospective officers and employees will serve to deter conflicts of interest and to identify potential conflicts of interest in the case of newcomers to Board service.

§ 360.3 Designation of agency ethics official.

(a) The Board's designated agency ethics official (DAEO) shall be the Board's General Counsel. This individual is responsible for coordinating and managing the Board's ethics program in accordance with the provisions of 5 CFR 738.203. This responsibility includes maintaining liaison with the Office of Government Ethics; reviewing financial disclosure reports; initiation and maintenance of ethics education and training programs; and monitoring administrative actions and sanctions.

(b) The Board's alternate agency ethics official shall be the Deputy General Counsel. This individual will serve in an acting capacity in the absence of the primary designated agency ethics official. The alternate agency ethics official shall also serve as the deputy ethics official.

(c) The deputy ethics official shall work under the supervision of the designated agency ethics official in carrying out delegated functions.

§ 360.4 Who must file.

Reports of personal financial interest are to be filed by each Board employee whose position is classified at GS–16 or above of the General Schedule prescribed by 5 U.S.C. 5332; or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than the minimum rate of basic pay fixed for GS–16; and each employee in any other position determined by the Director of the Office of Government Ethics to be of equal classification. Also required to file reports of personal financial interest are the assistants to the Board Members occupying excepted positions and the Board's designated ethics officials.

§ 360.5 Requirements for filing.

(a) *Requirements for incumbent.* An incumbent reporting individual who, during any calendar year, performs the duties of his or her position for a period in excess of 60 days shall file a report of personal financial interest on or before May 15 of the succeeding year.

(b) *Requirement for new entrant.* A new entrant to a position requiring reporting shall file a report of personal financial interest within 30 days of assuming the position. This report is not required if the individual left another position for which a report had been filed within the 30 days prior to assuming the new position or if the individual has already filed a report as a nominee for the new position.

(c) *Nominees for Board Member positions.* Nominees for Board Member positions shall file a report of personal financial interest within five days of the transmittal of their nomination by the President to the Senate.

(d) *Report to be filed on termination of employment from covered position.* On or before the thirtieth day after termination of employment from a covered position, a reporting individual shall file a report of financial interest for the period from the end of the calendar year with respect to which a report was last filed to the date on which the individual left such position. In a case in which the individual assumes employment in another covered position within 30 days of such termination, no report shall be required.

(e) *Reports to be filed with the DAEO.*

(1) A reporting individual shall file the required report with the Board's DAEO. The DAEO shall note on any report or supplemental report the date it is received. The DAEO may, for good cause shown, grant to any employee or class of employees an extension of up to 45 days to file the required report. The agency shall transmit to the Director, Office of Government Ethics, copies of the reports required to be filed by the designated agency ethics officials and by the three Board Members or nominees to those positions.

(2) Prior to transmitting a copy of the reports of the three Board Members or nominees for Board Member positions to the Director, the reports shall be reviewed by the Board's DAEO in accordance with § 360.5(f). Prior to transmitting a copy of the report of the

DAEO or his/her alternate to the Director, the Board Members shall review the report in accordance with § 360.5(f).

(f) All reports filed with the DAEO or the Board Members, as the case may be, shall be reviewed by them within 60 days after the date of filing. Reports shall be reviewed for completeness and compliance with the Ethics in Government Act and other applicable law or regulation. If the reviewing official(s) finds that additional information is required he or she shall request this information, indicating a date by which this information must be submitted. If the reviewing official(s) determine that remedial action is necessary to bring the report in compliance with the Ethics in Government Act or other applicable law or regulation, he or she, after personal consultation with the individual who filed the report, shall specify what remedial action should be taken. If the reporting individual does not comply with a request for remedial action, then the reviewing official(s) shall notify the Director of the Office of Government Ethics and refer the matter for appropriate action to the Board Members in the case in which the DAEO is the reviewing official. Where the DAEO is reviewing a report of a Board Member, then the referral shall be to the President.

§ 360.6 Contents of report.

Reports by incumbents, new entrants, nominees, and termination reports filed under § 360.5(a)–(d) of this Part shall be made on the form prescribed by the Office of Government Ethics. These reports shall be made in accordance with the instructions issued by the Office of Government Ethics and shall include a full and complete statement of the information required on the form.

§ 360.7 Failure to file.

(a) *Civil penalties.* The Board Members or the Director, Office of Government Ethics, as the case may be, shall refer to the Attorney General the name of any individual he or she has reasonable cause to believe has willfully failed to file a report or has willfully falsified or willfully failed to file required information. The Attorney General may bring a civil action in any appropriate United States district court against any individual who knowingly and willfully falsifies or who knowingly or willfully fails to file or report any information required under this Subpart. The court may assess against the individual a civil penalty in any amount, not to exceed $5,000.

(b) Personnel action or other penalties. The Board Members may take any appropriate personnel or other action in accordance with applicable law or regulation against any individual failing to file a report or falsifying or failing to file required information. This action includes adverse action under 5 CFR Part 752.

§ 360.8 Misuse of reports.

The Attorney General may bring a civil action against any person who obtains or uses a report filed under this Part for any purpose prohibited by section 205(c)(1) of the Ethics in Government Act and this section. Financial disclosure reports may not be used for any unlawful purpose, for any commercial purpose, for determining or establishing the credit rating of any individual, or for use directly or indirectly in solicitation of money for any political, charitable, or other purpose. The court may assess a penalty in any amount, not to exceed $5,000, in addition to any other remedy available under statutory or common law.

§ 360.9 Public access to reports.

(a) *Disclosure to public.* The Board's DAEO shall make each report filed under this Part available to the public, together with a copy of the official position description of the position held by the reporting individual involved, if available. Within 15 days after any report is actually received by the Board, any person who makes a written application will be permitted to inspect the report or will be furnished a copy of the report. The written application must state: The person's name, occupation and address; the name and address of any other person or organization on whose behalf the inspection or copy is requested; and that the person is aware of the prohibitions on the obtaining or use of the report, as set forth in § 360.8. A report shall be made available to the public for a period of six years after receipt of the report.

(b) *Charges assessed for reproduction.* The fee for copies of the report shall be $.10 per copy per page. Any or all fees may be waived or reduced by the DAEO whenever he or she determines that it is in the public interest to do so. Generally, the fee will be waived except in cases where an amount of $30.00 or more is involved.

§ 360.10 Ethics agreements.

This section applies to ethics agreements made by reporting individuals to resolve potential or actual conflicts of interest. The term "ethics agreement" includes any undertaking to carry out one or more of the following actions:

(a) Recusal or disqualification from one or more particular matters or categories of official action;

(b) Divestiture of a financial interest or interests;

(c) Resignation from a non-federal business or other entity;

(d) Participation in one or more particular matters or categories of official action upon the issuance of an 18 U.S.C. 208(b)(1) waiver; or

(e) Establishment of a blind trust under the Ethics in Government Act.

The ethics agreement shall specify that the individual must complete the action which he or she has undertaken within a period not to exceed 3 months from the date of the agreement, except in cases of unusual hardship. Reporting individuals making ethics agreements must submit evidence of action taken to carry out an ethics agreement. Records of ethics agreements and actions to carry them out shall be maintained with the individual's financial disclosure report at the Board and, where applicable, at the Office of Government Ethics.

Subpart B—Employee Standards of Conduct

Authority: E.O. 11222, 3 CFR, 1964–1965 Comp., p. 306; 18 U.S C. 201, note; 5 CFR Part 735.

§ 360.11 Purpose.

The proper performance of the Board's business and the maintenance of citizens' confidence requires the avoidance of misconduct and conflicts of interest on the part of Board employees and requires high standards of honesty, integrity, impartiality and conduct. This Subpart sets forth Board regulations prescribing standards of conduct and responsibility and governing statements reporting employment and financial interests for Board employees and special Government employees.

§ 360.12 Standards of ethical conduct for Board employees.

(a) A Board employee shall avoid any action, whether or not specifically prohibited by this Part, which might result in, or create the appearance of:

(1) Using public office for private gain;

(2) Giving preferential treatment to any person;

(3) Impeding Government efficiency or economy;

(4) Losing complete independence or impartiality;

(5) Making a Government decision outside official channels; or

(6) Affecting adversely the confidence of the public in the integrity of the Government.

(b) *Gifts, entertainment, and favors.*

(1) Except as provided in paragraph (b)(2) of this section, a Board employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(i) Has, or is seeking to obtain, contractual or other business or financial relations with the Board;

(ii) Conducts operations or activities that are regulated by the Board; or

(iii) Has interest that may be substantially affected by a Board employee's performance or nonperformance of his or her official duty.

(2) The prohibitions contained in paragraph (b)(1) of this section shall not apply in the following situations:

(i) Where the action on the part of the Board employee involves a family or other close personal relationship when the circumstances make it clear that it is the special relationship rather than the business of the persons concerned which is the motivating factor;

(ii) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting where an employee may properly be in attendance;

(iii) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(iv) Acceptance of unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars and other items of nominal intrinsic value.

(3) A Board employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness, or retirement.

(4) A Board employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in section 7342 of title 5 United States Code.

(5) Paragraph (b) of this section shall not preclude a Board employee from receipt of bona fide reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this Part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment or other personal benefits, nor does it allow a Board employee to be reimbursed by a person when reimbursement is proscribed by Decision B–128527 of the Comptroller General dated March 7, 1967 (46 Comp. Gen. 689).

(c) *Outside employment.*

(1) A Board employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his Government employment. Incompatible activities include but are not limited to:

(i) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances in which acceptance may result in, or create the appearance of, conflicts of interest; or

(ii) Outside employment which tends to impair his or her mental or physical capacity to perform his or her Government duties and responsibilities in an acceptable manner.

(2) A Board employee shall not receive any salary or anything of monetary value from a private source as compensation for services to the Government (18 U.S.C. 209). Board employees are encouraged to engage in teaching, lecturing, and writing that is not prohibited by law, the Executive Order, OPM or Board regulations. However, an employee shall not, either for or without compensation, engage in teaching, lecturing, or writing, including teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the OPM or Board of Examiners for the Foreign Service, that depends on information obtained as a result of his Board employment, except when that information has been made available on request, or when the Board gives written authorization for use of non-public information on the basis that the use is in the public interest. This section does not preclude a Board employee from:

(i) Participation in the activities of national or state political parties not proscribed by law;

(ii) Participation in the affairs of or acceptance of an award for meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, non-profit educational and recreational, public service, or civic organization; or

(iii) Outside employment not prohibited by these regulations.

(d) *Financial interests.* A Board employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Board duties and responsibilities; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through his Board employment.

This paragraph does not preclude a Board employee from having a financial interest or engaging in financial transaction to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, the Executive Order, OPM or Board regulations.

(e) *Use of Government property.* A Board employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities. An employee has a positive duty to protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to him or her.

(f) *Misuse of information.* For the purpose of furthering a private interest, a Board employee shall not, except as provided in § 360.12(c)(2) directly use, or allow the use of, official information obtained through or in connection with his Government employment which has not been made available to the general public.

(g) *Indebtedness.* A Board employee shall pay each just financial obligation in a proper and timely manner. A "just financial obligation" means one acknowledged by the employee or reduced to judgement by a court, or one imposed by law such as Federal, state or local taxes, and "in a proper and timely manner" means in a manner which the Board determines does not, under the circumstances, reflect adversely on the Government or the Board as the employee's employer. In the event of dispute between an employee and an alleged creditor, the Board shall not be required to determine the validity or amount of the disputed debt.

(h) *Gambling, betting and lotteries.* A Board employee shall not participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip or ticket. However, this section does not

preclude solicitation activities approved by the Board.

(i) *General conduct prejudicial to the Government.* A Board employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

(j) *Disclosure and maintenance of personal information.*

(1) No employee of the Board who, by virtue of his or her employment and position, has access to personally identifiable agency records shall disclose any information about an individual to a person or agency not entitled to receive such information. An employee who discloses such material may be guilty of a misdemeanor and subject to a fine not to exceed $5,000.

(2) Any officer or employee of the Board who willfully maintains a system of records without meeting the notice requirement of the Privacy Act (published in the **Federal Register**) is guilty of a misdemeanor and can be fined up to $5,000.

(3) Any employee who knowingly and willfully requests or obtains under false pretenses any Board record concerning an individual is guilty of a misdemeanor and can be fined up to $5,000 (5 U.S.C. 552a).

(k) *Testimony.* An employee of the Board shall not testify as an expert witness on behalf of any party in any proceeding to which the United States is also a party and where such party takes a position which is contrary to that of the United States except:

(1) That the employee may testify from personal knowledge as to the occurrences which are relevant to the issues in the proceeding including those in which the employee participated, utilizing his or her expertise, or

(2) In any proceeding where it is determined that another expert in the field cannot practically be obtained; that it is impracticable for the facts or opinions on the same subject to be obtained by other means, and that the employee's testimony is required in the interest of justice.

(l) *Participation on behalf of a friend, relative, or coworker.* An employee of the Board shall not participate in the technical development, adjudication, or review of a matter which may result in entitlement to any benefit paid by the Board for themselves, their relatives, friends, or coworkers. When this situation arises, employees shall disqualify themselves and refer the matter to their supervisor. The matter may not be referred to a subordinate employee. When immediate disqualification and referral are not practicable, the employee shall submit the action for review by the supervisor as soon thereafter as possible.

(m) *Miscellaneous statutory provisions.* Each Board employee shall acquaint himself or herself with each statute that relates to his or her ethical and other conduct as an employee of the Board and of the Government. The following is a list of statutes relating to ethical and other conduct:

(1) House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12, the "Code of Ethics for Government Service".

(2) Chapter 11 of Title 18, United States Code, relating to bribery, graft, and conflicts of interest, as appropriate to the employees concerned.

(3) The prohibition against lobbying with appropriated funds (18 U.S.C. 1913).

(4) The prohibitions against disloyalty and striking (5 U.S.C. 7311; 18 U.S.C. 1918).

(5) The prohibition against the employment of a member of a Communist organization (50 U.S.C. 784).

(6) The prohibitions against:

(i) The disclosure of classified information (18 U.S.C. 798; 50 U.S.C. 783); and

(ii) The disclosure of confidential information (18 U.S.C. 1905).

(7) The provision relating to the habitual use of intoxicants to excess (5 U.S.C. 7352).

(8) The prohibition against the misuse of a Government vehicle (31 U.S.C. 638a(c)).

(9) The prohibition against the misuse of the franking privilege (18 U.S.C. 1719).

(10) The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

(11) The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001).

(12) The prohibition against mutilating or destroying a public record (18 U.S.C. 2071).

(13) The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508).

(14) The prohibitions against:

(i) Embezzlement of Government money or property (18 U.S.C. 641);

(ii) Failing to account for public money (18 U.S.C. 643); and

(iii) Embezzlement of the money or property of another person in the possession of an employee by reason of his employment (18 U.S.C. 654).

(15) The prohibition against unauthorized use of documents relating to claims from or by the Government (18 U.S.C. 285).

(16) The prohibitions against political activities in Subchapter III, Chapter 73, Title 5, United States Code and 18 U.S.C. 602, 603, 607, and 608.

(17) The prohibition against an employee acting as the agent of a foreign principal registered under the Foreign Agents Registration Act (18 U.S.C. 219).

(18) The prohibition against unauthorized disclosure of any tax return or tax return information contained in section 6103 of the Internal Revenue Code.

§ 360.13 Ethical conduct for special Government employees. [Reserved]

§ 360.14 Delegation of responsibilities.

(a) The Executive Director shall be responsible for administration of the Board's regulations on Employee Responsibilities and Conduct.

(b) The DAEO is designated Counselor for the Board. The Director of Personnel is designated Deputy Counselor for the departmental service and each Regional Director is designated Deputy Counselor for his or her region.

§ 360.15 Statements of employment and financial interests.

(a) *Form and content of statements.* The statements of employment and financial interests required under this Subpart for use by employees and special Government employees of the Board shall generally contain the information required by the formats prescribed by OPM in the Federal Personnel Manual. The Board shall not require information in the statement of employment and financial interests beyond that included in OPM's formats without the approval of OPM.

(b) *Employees who must submit statements.* Employees in the following named positions shall submit statements of employment and financial interests:

(1) Director of Supply and Service;

(2) Procurement Officer.

(c) *Statements to be submitted to the Ethics Official.* Each statement of employment and financial interests required by this regulation shall be submitted to the DAEO, 844 Rush Street, Chicago, Illinois 60611. Statements submitted under this Subpart are confidential and are not available for public inspection.

(d) *Review of complaint under grievance procedure.* An employee who feels that his or her position has been improperly included in § 360.14(a) as one requiring the submission of a statement of employment and financial interests may obtain a review of his complaint under the Board's grievance procedure.

(e) *Statement submission date.* A Board employee required to submit a statement of employment and financial interests shall submit that statement to the DAEO not later than:

(1) Ninety days after the effective date of these regulations if employed on or before that effective date; or

(2) Thirty days after his or her entrance on duty, but not earlier than ninety days after the effective date, if appointed after that effective date.

§ 360.16 Supplementary statements.

Changes in or additions to the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year, except when OPM authorizes a different date on a showing by the Board of the necessity therefor. If no changes or additions occur, a negative report is required. Notwithstanding the filing of this annual report, each employee shall at all times avoid acquiring a financial interest that could result, or taking an action that would result, in a violation of the conflict of interests provisions of section 208 of Title 18, United States Code, or § 360.11 of these regulations.

§ 360.17 Interest of employee's relatives.

The interest of a spouse, minor child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this paragraph, "member of an employee's immediate household" means those blood relations who are residents of the employee's household.

§ 360.18 Information not known by employees.

If any information required to be included on a statement of employment and financial interests or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in his or her behalf.

§ 360.19 Information not required.

The Board does not require an employee to submit on a statement of employment and financial interests or supplementary statement any information relating to the employee's connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For reporting purposes, educational and other institutions doing research and development or related work involving grants of money from or contracts with the Board or Government are deemed "business enterprises" and are required to be reported in an employee's statement of employment and financial interests.

§ 360.20 Confidentiality of employee's statements.

The Board shall hold each statement of employment and financial interests, and each supplementary statement, in confidence and they shall be retained in limited access files of the DAEO. Information will not be disclosed from a statement except as the Board or OPM may determine for good cause shown.

§ 360.21 Effect of employee's statements on other requirements.

Statements of employment and financial interests and supplementary statements required of employees are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit the employee or any other person to participate in a matter in which the employee's or the other person's participation is prohibited by law, order, or regulation.

§ 360.22 Statements of special Government employees.

A special Government employee of the Board is an officer or employee of the Board who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days, temporary duties either on a full-time or intermittent basis. Special Government employees who are not consultants or experts are not required to submit statements of employment and financial interests.

§ 360.23 Review of statements.

Each statement of employment and financial interests submitted under § 360.15 shall be reviewed by the DAEO of the Board. When this review indicates a conflict between the interests of an employee or special Government employee of the Board and the performance of his or her services for the Government, the DAEO shall have the indicated conflict brought to the attention of the employee or special Government employee, grant the employee or special Government employee an opportunity to explain the indicated conflict, and attempt to resolve the indicated conflict. If the indicated conflict cannot be resolved, the DAEO shall forward a written report on the indicated conflict to the Board Members.

§ 360.24 Disciplinary and remedial action.

An employee or special Government employee of the Board who violates any of the regulations adopted by § 360.12 may be disciplined. The disciplinary action may be in addition to any penalty prescribed by law for the violation. In addition to or in lieu of disciplinary action, remedial action to end conflicts or the appearance of conflicts of interest may include but is not limited to:

(a) Changes in assigned duties;

(b) Divestment by the employee or special Government employee of his or her conflicting interest; and

(c) Disqualification for a particular assignment.

§ 360.25 Unauthorized disclosure of tax information.

(a) *Penalties which may be imposed for unlawful disclosure.* It is unlawful for any officer or employee of the Board, or former officer or employee of the Board, to disclose to any person, except as authorized under the Internal Revenue Code, any tax return or tax return information as defined in section 6103(b) of the Internal Revenue Code. Under section 7213(a) of the Internal Revenue Code, any unlawful disclosure of any tax return or tax return information shall be a felony punishable upon conviction by a fine in any amount not exceeding $5,000 or imprisonment of not more than 5 years, or both, together with the costs of prosecution. In addition to any other punishment, if the offense is committed by an officer or employee of the Board, that person shall be dismissed from office or discharged from employment upon conviction.

(b) *Civil action for damages.* Whenever any current or former Board employee knowingly, or by reason of negligence, discloses a tax return or tax return information with respect to a taxpayer in violation of the provisions of the Internal Revenue Code, such taxpayer may bring a civil action for damages against such current or former employee under section 7217 of the Internal Revenue Code, and the district courts of the United States shall have jurisdiction of any such action. Upon a finding of liability on the part of the Board employee, he or she shall be liable to the taxpayer in an amount equal to the sum of:

(1) Actual damages sustained by the taxpayer and, in the case of willful disclosure or a disclosure which is the result of gross negligence, punitive damages, but in no case shall a taxpayer entitled to recovery receive less than the

sum of $1,000 with respect to each instance of such unauthorized disclosure; and

(2) The costs of the action.

(c) An action to enforce any liability created by unauthorized disclosure may be brought within two years from the date on which the cause of action arises or at any time within two years after discovery by the taxpayer of the unauthorized disclosure.

Subpart C—Post-Employment Conflict of Interest

Authority: 18 U.S.C. 207; 5 CFR Part 737.

§ 360.26 Purpose.

The purpose of this Subpart is to issue regulations which give content to the restrictions on post-employment activity established by Title V of the Ethics in Government Act of 1978 (18 U.S.C. 207) for administrative enforcement with respect to former officers and employees of the Board; to serve as a guide in exercising administrative enforcement with respect to former officers and employees of the Board; to serve as a guide in exercising the administrative enforcement authority reflected in 18 U.S.C. 207(j); to set forth the procedures to be employed in making certain determinations and designations pursuant to the Act; and to provide guidance to individuals who must conform to the law.

§ 360.27 Board responsibilities.

(a) The Board has primary responsibility, with regard to its former employees, for the administrative enforcement of post-employment restrictions. The Department of Justice may initiate criminal enforcement in cases involving aggravated circumstances.

(b) The Board's DAEO has the responsibility to provide assistance promptly to former Board employees who seek advice on specific problems regarding post-employment conflict of interest.

§ 360.28 Designation of Senior Employees.

(a) *Senior Employee defined.* A Senior Employee is a person employed by the Board:

(1) At a rate of pay specified or fixed according to Subchapter II, Chapter 53, Title 5, United States Code, generally known as "Executive Level"; or

(2) In a position in any pay system for which the basic rate of pay is equal to or greater than that for GS–17 as prescribed by 5 U.S.C. 5332, and who has significant decision-making or supervisory responsibilities, designated by the Director of the Office of Government Ethics pursuant to Office of Personnel Management designation procedures.

(b) *Annual reporting requirement.* The Board shall submit to the Director, Office of Government Ethics, by May 15 each year a report consisting of:

(1) A description of all positions classified at GS–17 or above in the General Schedule; those in any other pay system, the rate of pay for which is at least that of grade GS–17; and those in the Senior Executive Service;

(2) The Board's recommendation as to those positions that should not be designated, based on standards established in Office of Personnel Management regulations or any other reason; and

(3) The basis and reason for each such recommendation.

(c) *Report of similar positions which should or should not be designated.* The Board's DAEO shall submit to the Director, Office of Government Ethics, by June 30 each year, a list of such positions which involve significant decision-making authority or other duties substantially similar to those exercised by persons whose grade or position is referred to in paragraph (b) of this section together with a statement in each case as to whether and why the position should or should not be designated.

§ 360.29 Post-employment restrictions.

(a) No former Board employee, after terminating Government employment, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, or make any oral or written communication on behalf of any other person to the United States, in connection with any particular Government matter involving a specific party, in which matter such employee participated personally and substantially as a Board employee.

(b) No former Board employee, within two years after terminating employment by the United States, shall knowingly act as agent or attorney for, or otherwise represent any other person in any formal or informal appearance before, or with the intent to influence, or make any oral or written communication on behalf of any other person to the United States, in connection with any particular Government matter involving a specific party if such matter was actually pending under the employee's responsibility as an officer or employee of the Board within a period of one year prior to termination of such responsibility.

(c) No former Senior Employee, within two years after terminating Government employment, shall knowingly represent or aid, counsel, advise, consult, or assist in representing any other person in any formal or informal appearance, before the United States, in connection with any particular Government matter involving a specific party, in which matter he or she participated personally and substantially.

(d) For a period of one year after terminating Board employment, no former Senior Employee (other than a special Government employee who serves for fewer than 60 days in a calendar year) shall knowingly act as an agent or attorney for, or otherwise represent, anyone in any formal or informal appearance before, or with the intent to influence, or make any written or oral communication on behalf of anyone to the Board or any of its officers or employees, in connection with any particular Government matter, whether or not involving a specific party, which is pending before the Board, or in which it has a direct and substantial interest.

(e) The making of communications solely for the purpose of furnishing scientific or technological information pursuant to agency procedures is exempt from the prohibitions and restrictions set forth above. Also, a former Board employee may be exempted from the restrictions on post-employment practices if the Board Members in consultation with the Director, Office of Government Ethics, execute a certification published in the **Federal Register** that such former Government employee has outstanding qualifications in the scientific, technological, or other technical discipline; is acting with respect to a particular matter which requires such qualifications; and that the national interest would be served by such former Government employee's participation.

(f) A former Board employee may testify before any court, board, commission, or legislative body with respect to matters of fact within the personal knowledge of the former Board employee. This provision does not, however, allow a former Board employee, otherwise prohibited under the above prohibitions and restrictions, to testify on behalf of another as an expert witness except:

(1) To the extent that the former employee may testify from personal knowledge as to the occurrences which are relevant to the issues in the proceeding including those in which the former Board employee participated, utilizing his or her expertise, or

(2) In any proceeding where it is determined that another expert in the field cannot practically be obtained; that it is impracticable for the facts or opinions on the same subject to be obtained by other means, and that the former Board employee's testimony is required in the interest of justice.

§ 360.30 Administrative enforcement proceedings.

(a) *Delegation of authority.* The Board Members may delegate their authority under this Subpart.

(b) *Notification of possible violation.* On receipt of information regarding a possible violation of section 207 of Title 18, United States Code, and after determining that such information appears substantiated, the Board Members shall expeditiously provide such information, along with any comments or agency regulations to the Director, Office of Government Ethics, and to the Criminal Division, Department of Justice. The Board should coordinate any investigation on administrative action with the Department of Justice to avoid prejudicing criminal proceedings, unless the Department of Justice communicates to the Board that it does not intend to initiate criminal prosecution.

(c) *Notice of disciplinary proceeding and right to hearing.* Whenever the Board has determined after appropriate review that there is reasonable cause to believe that a former Board employee has violated any of the regulations regarding post-employment conflict of interest, it may initiate an administrative disciplinary proceeding by providing the former Board employee with adequate notice of an intention to institute a proceeding and an opportunity for a hearing. The notice to the former Board employee shall include:

(1) A statement of allegations, and the basis thereof, sufficiently detailed to enable the former Board employee to prepare an adequate defense;

(2) Notification of the right to a hearing; and

(3) An explanation of the method by which a hearing may be requested.

(d) *Presiding official.* The presiding officials at the hearing shall be the Board Members or a qualified individual to whom the Board Members have delegated authority to make an initial decision.

(e) *Time, date and place.* The hearing shall be conducted at a reasonable time, date, and place. In setting a hearing date the presiding official shall give due regard to the former Board employee's need for:

(1) Adequate time to prepare a defense properly; and

(2) An expeditious resolution of allegations that may be damaging to his or her reputation.

(f) *Hearing rights.* At a hearing the former employee shall, at a minimum, have the following rights:

(1) To represent oneself or to be represented by counsel,

(2) To introduce and examine witnesses and to submit physical evidence,

(3) To confront and cross-examine adverse witnesses,

(4) To present oral argument, and

(5) To receive a transcript or recording of the proceedings, on request.

(g) *Burden of proof.* In this hearing, the Board has the burden of proof and must establish substantial evidence of a violation.

(h) *Hearing decision.* The presiding official shall make a determination exclusively on matters of record in the proceeding, and shall set forth in the decision all findings of fact and conclusions of law relevant to the matters at issue. Within 15 days of the date of an initial decision, either party may appeal the decision to the Board Members. The Board Members shall base their decision on such appeal solely on the record of the proceedings or those portions thereof cited by the parties to limit the issues. If the Board Members modify or reverse the initial decision, they shall specify such findings of fact and conclusions of law as are different from those of the presiding official.

(i) *Penalty for violation.* The Board Members may take appropriate action under 5 CFR 737.27 in the case of any individual who was found in violation of the regulations on post-employment conflict of interest after a final administrative decision or who failed to request a hearing after receiving adequate notice, by:

(1) Prohibiting the individual from making, on behalf of any other person except the United States, any formal or informal appearance before, or, with the intent to influence, any oral or written communication to, such department or agency on any matter of business for a period not to exceed five years, which may be accomplished by directing agency employees to refuse to participate in any such appearance or to accept any such communication; or

(2) Taking other appropriate disciplinary action.

(j) *Judicial review.* Any person found to have violated the regulations on post-employment conflict of interest may seek judicial review of the administrative determination.

By Authority of the Board.

Dated: November 21, 1986.

For the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 86-27217 Filed 12-3-86; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 86F-0085]

Indirect Food Additives; Paper and Paperboard Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of *N*-methyl-2-pyrrolidone as a solvent for slimicides intended for use in the manufacture of paper and paperboard that contact food. This action responds to a petition filed by GAF Corp.

DATES: Effective December 4, 1986; objections by January 5, 1987.

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

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of March 27, 1986 (51 FR 10571), FDA announced that a petition (FAP 5B3896) had been filed by GAF Corp., 1361 Alps Rd., Wayne, NJ 07470, proposing that § 176.300 *Slimicides* (21 CFR 176.300) be amended to provide for the safe use of *N*-methylpyrrolidone as a solvent for slimicides intended for use in the manufacture of paper and paperboard that contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use is safe, and that the regulations should be amended as set forth below. In regulating this additive, FDA is denominating it as "*N*-methyl-2-pyrrolidone" because this name is more descriptive than that contained in the notice of filing.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR Part 25), an action of this type would require an abbreviated environmental assessment under 21 CFR 25.31a(b)(1).

Any person who will be adversely affected by this regulation may at any time on or before January 5, 1987, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. In § 176.300(d) by alphabetically inserting a new item to read as follows:

§ 176.300 Slimicides.

* * * * *

(d) * * *

* * * * *

N-methyl-2-pyrrolidone (CAS Reg. No. 872–50–4).

* * * * *

Dated: November 20, 1986.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 86–27215 Filed 12–3–86; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 905

[Docket No. R–86–1122; FR–1808]

Indian Preference

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule establishes comprehensive new requirements governing the methods to be used in providing Indian preference in contracting, employment, and training in the HUD-assisted Indian housing program. It will provide additional guidance to the affected public, to Indian Housing Authorities, and to HUD administrators concerning departmental policy and the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)).

EFFECTIVE DATE: March 15, 1987.

FOR FURTHER INFORMATION CONTACT: John V. Meyers, Office of Indian Housing, Room 4232, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, (202) 755–1015. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 7, 1986, HUD published a proposed rule which would (1) consolidate the methods of providing Indian preference in contracting and subcontracting, rather than having one system for contracts and another for subcontracts; (2) provide for varying levels of price differential on invitation-for-bid (IFB) contracts, according to the size of the contract in question (to be used when the bid solicitation is not limited to Indian enterprises and organizations); (3) provide a choice of contracting methods that can be used, at the IHA's discretion (IFB or RFP (Request for Proposal) method); (4) increase competition in the award of contracts, including contracts where the bidding is restricted to Indian organizations and enterprises; and (5) provide a procedure for reviewing complaints concerning the implementation of the methods of Indian preference specified in the rule or concerning alternate methods approved by HUD.

The Department received 24 public comments on the rule. Seven of the comments came from Indian-owned architectural and engineering firms; three from lawyers who represented Indian tribes or Indian organizations; three from Indian Housing Authorities (IHAs); five from Indian tribes; four from tribal employment rights organizations; one from an association of IHAs; and one from an Indian contractors' association. Most of the commenters favored the proposed rule; however, commenters representing Indian-owned architectural and engineering firms, and some of the other commenters strongly suggested that the Request for Proposal method of selecting contractors be altered to exclude non-Indian firms from participating. These and other major public comments are summarized below, followed in each instance by the Department's response.

Section 905.106 Preferences, opportunities, and nondiscrimination in employment and contracting.

One of the goals of HUD's revised rules on Indian preference is to give more tangible meaning to the statutory direction contained in section 7(b) of the Indian Self-Determination and Education Act to the effect that preference will be given to Indians (in training, employment and contracting

opportunities) "to the greatest extent feasible."

A commenter stated that the term "greatest extent feasible" is confusing. The courts have construed "greatest extent feasible" to mean "every possible effort"; however, the proposed rule does not make "every possible effort" to provide for Indian preference but, in fact, makes every possible effort to destroy Indian preference in HUD.

Although a definition of "greatest extent feasible" has not been included in the rule, the Department has set forth several methods for implementing and achieving what it believes to be the statutorily intended degree of preference. A one-time, all-purpose definition of such a term is, we believe, unavailing if not impossible. This rulemaking strives to describe, in the context of a particular activity (e.g., bidding on government-assisted contracts), what level of preference must be afforded to meet the broad statutory language.

Section 905.204(a) Indian preference (General).

A number of comments addressed various aspects of the proposed rule's general discussion of the elements of preference policy addressed to Indians, as expressed in the preamble and in § 905.204.

1. A definition of "tribal governing body" is needed in the proposed § 905.204(a)(1)(i). In Alaska, certain nonprofit Native associations which do not qualify as Indian tribes under the Alaska Native Claims Settlement Act, were given the power pursuant to Alaskan statutes to start Indian housing authorities (IHAs). Since these Native associations do not possess the sovereign powers of Indian tribes, their control over Native housing authorities in Alaska is limited by statute.

Also, the proposed § 905.204(a)(1)(i) stated that when a tribal governing body enacts an approved alternate method of providing Indian preference within its jurisdiction, the IHA under that jurisdiction shall implement the alternate method in lieu of the method specified in this section. If Native associations in Alaska qualify as "tribal governing bodies" under the proposed rule, which is unclear because there is no definition, then the IHAs will be placed in very different situations.

The Department has determined that a definition of "tribal governing body" would be helpful in clarifying which tribal entities are eligible to submit alternative methods of preference. For the purposes of this rule, the term "tribal governing body" shall mean:

The governing body of a tribe as defined in § 905.106(a)(1) of this Part which exercises powers of self-government and is Federally recognized.

This definition resolves the concern that village corporations without powers of self-government may otherwise submit alternative methods of Indian Preference. In addition, the term "local governing body" at § 905.204(f)(4) of the proposed rule has been deleted and replaced with a reference to "tribal governing body", for consistency.

2. A commenter stated that Indian preference has nothing to do with cost containment.

HUD's proposed rule made a reference to "cost containment" in discussing HUD decision making regarding the formulation of these preference policies—particularly in reference to dollar preferences added under the rule to Indian bidders.

The statute requires preference "to the greatest extent feasible." The Department believes that several factors must be considered in determining the feasibility of an offered form of preference including, but not limited to, economic considerations (such as cost containment). If economic considerations could not be taken into account in association with a process like bidding on government-assisted contracts, the result would be that HUD or other agencies providing financial assistance to Indians would have no effective means of controlling spending—a result we do not believe the Indian preference legislation could possibly have intended.

3. A commenter stated that since the majority of the tribes have established tribal employment rights offices which enforce Indian preference requirements, IHA's should be required to include these requirements in the bid specifications.

It is a contractual responsibility of an IHA that receives Federal housing funds to implement and enforce the Indian preference requirements applicable to the development or operation of projects subject to Part 905. If local Indian preference requirements exist and they do not conflict with the requirements in this Part, IHAs are encouraged to reference or cite those requirements for the benefit of bidders or to advise the bidders to contact the tribal governing body for any other applicable preference requirements.

This rule leaves latitude to a tribe to carry out (and to require the IHA to carry out) local preference policies that are consistent with the requirements of the regulations.

4. Three commenters suggested that Indian tribes should be allowed to give preference to their members.

Preference for tribal members alone, in HUD's view, unreasonably restricts competition and economic opportunity for all Indians within the same geographic area. However, tribal members may receive a degree of preference through the application of a local preference for all *residents*, without violating this rule.

5. Since little or no new Indian housing is being funded by HUD, there is no reason to revise 24 CFR Part 905, according to a commenter.

Provision of Indian preference is a statutory requirement. It affects all funded activities related to the Indian Housing Program. The requirement is not affected by whether there is funding for new units in any one year.

6. The present 24 CFR Part 905 provides for Indian preference so long as higher cost or greater risk of nonperformance does not result. The final rule should contain a similar provision.

The Department, generally, agrees with the commenter. Since cost is already a factor in evaluating alternate methods submitted by a tribal government, the rule at § 905.204(a)(1)(i) has been revised also to consider as a factor any assessment of greater risk of non-performance.

7. RFPs should be awarded on an "Indian-only" basis because (1) the RFP competition, unlike IFB competition, is not based on price but on quality; (2) there is no evidence that the Indian architectural and engineering firms are not providing services to the IHAs; and (3) the point system under the proposed RFP method would be susceptible to abuse by the IHAs. Open competition with a point system should be permitted only when an IHA has persuaded the HUD field office that there will be insufficient competition if bidding is limited to Indian-owned firms.

The Department has considered comments favoring preference on an "Indian-only" basis and has also considered comments emphasizing self-determination. As a result, the rule provides various options for providing Indian preference to the greatest extent feasible, yet allows for flexibility in permitting self-determination in how a preference is to be provided. The point system set out for RFPs provides for IHA discretion and although the system might conceivably be abused, the rule attempts to provide safeguards against abuse, as well as providing for a complaint processing mechanism.

Section 905.204(b) Eligibility.

Comments on proposed § 905.204(b) focused on contract awards during the pendency of complaints, and on procedural issues associated with determinations of eligibility of individuals and contracts for Indian status:

1. A commenter suggested that the award of a contract or the filling of a position for employment or training should be withheld pending the resolution of a complaint filed by an unsuccessful bidder or applicant.

Normally, the award of a contract or the filling of a position for employment or training should not be held up because of questions or problems that arise during the application procedures. However, a contract award may be withheld, or an employment or training position not filled pending resolution of a complaint, if the IHA determines that a serious violation of HUD Indian preference rules or a tribe's alternate method may have occurred.

2. A commenter proposed that, for an applicant seeking a job or training, the proposed regulation put all the burden on the local authority—and not on the Tribal government, "where it should rightly be."

The burden of determining eligibility for Indian preference under Part 905 ultimately rests with the IHA. It is not the responsibility of the tribe. On the other hand, the responsibility for providing sufficient evidence of eligibility for preference to the IHA is upon the individual or entity seeking the preference.

3. To eliminate "fronts," a revision to the rule was proposed by a commenter to: (1) Require that proof of Indian eligibility be submitted no less that 15 days before bid opening and (2) include language to the effect that in any Indian or non-Indian jointly owned corporation or joint venture in which the non-Indian party is larger and more experienced than the Indian party, the burden should fall on the entity to demonstrate that the Indian party is in fact the actual majority owner and is in fact in control of the entity. If the entity fails to meet this burden, it must be disqualified.

The final rule has been revised to allow an IHA to state in its solicitation that bidders must submit evidence of eligibility within a specified time period before the scheduled bid opening. The time period may differ for the evaluation of applicants for eligibility, depending upon the type of solicitation and the number of anticipated bidders and the complexity of the review.

Section 905.204(c) Indian preference in the award of contracts and subcontracts.

1. A commenter suggested that the proposed rule be revised by adding language (a) allowing an Indian subcontractor to match the lowest bid submitted by a non-Indian firm and (b) requiring the IHA to demand validation of any subcontract amount which is artificially low and appears designed to circumvent the Indian subcontract preference requirements.

The Department does not support allowing an Indian subcontractor to match the lowest bid submitted by a non-Indian firm. Among other reasons, the Indian subcontractor may not be capable of completing the work at the lower bid, and non-Indian bidders would be discouraged from bidding on any such projects, given the "second bite" that the commenter's suggested procedure would provide to rival Indian contractors. The suggested procedure might also encourage Indian contractors to make bad faith, higher-than-necessary "first round" bids, on the theory that they have nothing to lose.

On the commenter's second point, HUD believes validation of "artificially low" bids is not necessary, since the contractor is obligated to complete the work at the contract price.

2. A commenter urged that an important consideration in the selection of an Indian-owned architectural and engineering firm should be the extent that the firm and its consultant firms provide employment and training for Indian people. A structured point system and a consistent presentation format for the consideration of this employment and training should be established by HUD, to be used by IHAs in evaluating of Indian-owned architectural and engineering candidates.

Section 905.204(e)(2)(ii) of the final rule provides for the award of points by the IHA in evaluating proposals from Indian-owned and non-Indian-owned architectural and engineering firms (among other RFP contractors) based on their plans to employ and train Indians.

3. The point system under the RFP provides no protection against abuse, according to several commenters. The IHA could first decide which firm it wants and then distribute the points in whatever way is necessary to ensure that the chosen non-Indian firm wins.

The rule attempts to curb potential abuse in the award of contracts. RFPs are subject to HUD field office review before publication, and the award of a contract by an IHA is also subject to HUD approval. However, in cases where abuse is evident, bidders may file under the complaint procedures. The Department does not believe it is practicable to provide all-purpose bidding procedures. The purpose of the rule is to set out a mechanism under which the Indian preference statute can be carried out, not to preempt tribal and IHA autonomy.

4. A commenter stated that a bidding process that allows any Indian contractor to charge more than a non-Indian contractor is wrong.

HUD disagrees with the commenter. Providing preference through a price differential is acceptable under section 7(b) of the Indian Self-Determination and Education Assistance Act. The controlling factor is that any bid must meet HUD cost-control standards developed under the United States Housing Act of 1937 and other controlling authorities.

5. According to a commenter, the mathematical formula (24 CFR 905.204(c)) to be used by an IHA in the award of contracts and subcontracts under the Invitation for Bid (IFB) method would be unworkable because it was too complicated for some IHAs, tribes and contractors.

The Department does not believe that the percentage differential method is too complicated to implement. In fact, when applied to a single contract on which bids are advertised, management of the § 905.204(c) formula is quite simple and direct.

6. According to a commenter, the § 905.204(c) requirement that two or more bids or proposals must be received in a closed contracting procedure would be unworkable because (1) there is no requirement for two bids in customary bidding procedures and practices; (2) most contractors will not participate in such a procedure if they believe their bid or proposal will be defeated because it was the only one submitted.

The Department believes that a policy of requiring two or more bids is a fair procedure in a normal bidding process and that such a policy encourages competition. One bid is not desirable but in some cases is realistic. For that reason, the final rule permits—subject to HUD field office approval—acceptance of one bid in unusual situations when a job cannot attract two or more bids.

7. A commenter argued that the Request for Proposal sections of the proposed rule would violate the ruling in *Alaska Chapter, Associate General Contractors of America* v. *Pierce* (694 F 2nd 1162), which stated that non-Indian firms have no grounds for receiving equal protection in applying for Federal contracts which benefit Indians.

The Department does not agree that the RFP section of the proposed rule violates the ruling in the *Alaska Chapter* case. To the contrary, this section contains a preference for Indian contractors which is similar to the preference upheld by the court in the *Alaska Chapter* case on the basis that it does not violate the equal protection clause.

Section 905.204(d) Preference by an IHA in contracting, employment, and training.

1. A commenter stated that § 905.204(d) is unacceptable because it permits an IHA to waive Indian preference in contracting simply by documenting its findings and putting those findings in a file. A waiver should require the prior approval of the HUD field office and the tribe.

The section, as proposed, did not authorize an IHA to "waive" Indian preference; however, it did give an IHA discretion to determine that providing preference is not feasible. The HUD Headquarters Office of Indian Housing will track IHA implementation of the Indian preference requirements (*i.e.*, number of contracts, subcontracts and proposals awarded to Indian owned firms, the number of Indians hired by contractors, subcontractors and IHAs) through computer system analysis, and with monitoring visits as feasible.

Section 905.204(e) Preference by contractors and subcontractors in employment and training of Indians.

1. A commenter recommended that the definition of "core crew" be revised as follows: "A member of a contractor's or subcontractor's crew who is a regular, permanent (40 hour a week) employee and is in a supervisory or other key position such that the employee would face serious financial loss if that position were filled by a person who had not previously worked for the contractor or subcontractor."

The Department does not support a more restrictive definition of "core crew" than that proposed. The definition of "core crew" set out in the proposed rule is retained.

Section 905.204(f) Other preference requirements.

1. Several commenters questioned the proposed rule's impact on the independent authority of Indian tribal governments to make their own preference requirements.

This rule governs the provision of Indian preference in Indian housing projects developed by IHAs under Part 905. It is the intent of the rule to ensure that preference requirements—whether provided under the methods outlined in this rule or under a tribal method permitted by HUD to be adopted for use by a particular IHA—satisfy the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act. It is not the intent or desire of the Department to rule upon, confirm, or endorse the authority of a tribal government to create laws under its powers of self-government.

2. The requirement that HUD Indian preference regulations shall apply whenever more than half of the financial assistance for the development or operation of a project is from HUD may, as a practical matter, mean that the non-HUD funding is lost, according to a commenter. Adoption of a waiver provision where such a result appeared likely may permit individual projects to be saved.

In response to this concern, the final rule has been revised to state that if both HUD funds and non-Federal funds are used for a project, the work related to the funds shall be separated so that HUD Indian preference regulations are limited to work financed by HUD. If the funds cannot be separated, then HUD's Indian preference regulations will apply to the total project. However, such situations shall be reviewed on a case-by-case basis to determine the best method for providing preference to the greatest extent possible.

Section 905.204(g) Complaint procedure.

1. Several commenters stated that there should be a specific time period within which a complainant must file his or her complaint with the Indian Field Office of HUD.

This section has been revised to state that a complainant has six months from the date of the alleged adverse action of the IHA (e.g., denial of contract or proposal; denial of employment or training position) to file a complaint with the appropriate Indian Field Office of HUD.

Other Matters

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2577-0076.

This final rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. The number of small entities impacted by the rule is not expected to be substantial. Approximately one hundred general construction contracts, large and small, are executed under the Department's Indian housing program each year.

This rule was listed as Sequence Number 964 in the Department's Semiannual Agenda of Regulations published on October 27, 1986 (51 FR 38424, 38468) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 905

Grant programs: Housing and community development, Loan programs: Housing and community development, Low and moderate income housing, Public housing, Homeownership.

Accordingly, the Department amends 24 CFR Part 905 as follows:

PART 905—[AMENDED]

1. The authority citation for 24 CFR Part 905 is revised to read as set forth below, and any authority citation following any section in Part 905 is removed.

Authority: Secs. 3, 4, 5, 6, 9, 11, 12, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, and 1437n); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of

Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In 24 CFR 905.106, paragraph (a) is revised to read as follows:

§ 905.106 Preferences, opportunities, and nondiscrimination in employment and contracting.

(a) *Indian Self-Determination and Education Assistance (preference for Indians).* HUD has determined that Projects under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). The language of this paragraph (a) must be included in all contracts executed by the IHA and in all subcontracts arising out of contracts executed by the IHA. Section 7(b) requires that any contract or subcontract entered into for the benefit of Indians shall require that, to the greatest extent feasible—

(1) Preferences and opportunities for training and employment in connection with the administration of such contracts or subcontracts be given to "Indians". That Act defines "Indians" to mean persons who are members of an Indian tribe, and defines "Indian tribe" to mean any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(2) Preference in the award of contracts, or subcontracts in connection with the administration of contracts be given to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452). The Indian Financing Act of 1974 defines: "economic enterprise" to mean any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that the Indian ownership must constitute not less than 51 percent of the enterprise; "Indian organization" to mean the governing body of any Indian tribe or entity established or recognized by such governing body; "Indian" to mean any person who is a member of any tribe, band, group, pueblo, or community which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs and any "Native" as defined in the Alaska Native Claims Settlement Act; and Indian "tribe" to mean any Indian tribe, band, group, pueblo, or community including Native villages and Native groups (including corporations organized by Kenai, Jeneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, which is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs.

* * * * *

3. Section 905.204 is revised to read as follows:

§ 905.204 Indian preference.

(a) *General.* (1)(i) This section outlines specific methods an IHA must follow to provide, to the greatest extent feasible, preference to Indian organizations and Indian-owned economic enterprises in contracting and subcontracting, and to Indians in employment and training. If, however, a tribal governing body enacts an alternate method of providing Indian preference within its jurisdiction and the Assistant Secretary for Public and Indian Housing approves the alternate method as meeting the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act for use in the HUD-assisted Indian housing program, the IHA under that jurisdiction must implement the alternate method in lieu of the methods specified in this section. (For purposes of this section, "tribal governing body" means the governing body of an Indian tribe, as defined in § 905.106(a)(1) which exercises powers of self-government and is Federally recognized.) Alternate methods that provide for local tribal preference will not be approved. HUD will, however, consider for approval alternate methods that provide for local resident Indian preference, so long as application of the local preference does not exclude Indian organizations, enterprises, or individuals who are not residing within the Indian governing body's jurisdiction. HUD's review of alternate methods of providing preference will include the extent to which the proposed method minimizes the risk of nonperformance, promotes competition, assures cost containment, reduces administrative burdens and furthers local priorities and objectives while providing effective Indian preference.

(ii) This section also contains, in paragraph (g), review procedures for complaints alleging the inadequate or inappropriate provision of Indian preference. (These complaint procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this section, including alternate methods enacted and approved in the manner described in paragraph (a)(1)(i) of this section.)

(iii) The amendments to § 905.106(a) and § 905.204 published on (insert date of publication) shall only apply to bids and proposals which are advertised after March 15, 1987.

(b) *Eligibility.* (1) An applicant seeking to qualify for preference in contracting and subcontracting shall submit proof of Indian ownership to the IHA or contractor. Proof of Indian ownership shall include, but shall not be limited to:

(i) Certification by a tribe or other evidence that the applicant is an Indian and therefore eligible to receive preference. IHAs shall accept the certification of a tribe that an individual is a member.

(ii) Evidence such as stock ownership, structure, management, control, financing and salary or profit sharing arrangements of the enterprise.

(2) An applicant seeking to qualify for preference in employment and training shall submit, to the IHA or contractor, certification by a tribe or other evidence that the applicant is an Indian and therefore eligible to receive preference. IHAs and contractors shall accept the certification of a tribe that an individual is a member.

(3) An applicant seeking a contract or a subcontract shall submit evidence sufficient to demonstrate to the satisfaction of the IHA or the contractor, as appropriate, that the applicant has the technical, administrative, and financial capability to perform contract work of the size and type involved, and within the time provided, under the proposed contract (*see* also § 905.211). An applicant seeking employment and training shall submit evidence sufficient to demonstrate to the satisfaction of the IHA or the contractor, as appropriate, that the applicant possesses the qualifications required for employment or training.

(4) An IHA may state in its solicitation that bidders must submit evidence of eligibility within a specified time period before a scheduled bid opening.

(5) If an IHA or contractor determines that an applicant is ineligible for Indian preference, the IHA or contractor shall so notify the applicant in writing before the award of the contract or before filling the position or providing the training sought by the applicant.

(c) *Indian preference in the award of contracts and subcontracts.* (1) Preference in the award of contracts and subcontracts that are let under an Invitation for Bids (IFB) process (e.g., conventional bid construction contracts, material supply contracts) shall be provided as follows:

(i) The IFB may be restricted to qualified Indian-owned enterprises and Indian organizations. The IFB should, however, not be so restricted unless the IHA has a reasonable expectation that the required minimum number of qualified Indian-owned enterprises or organizations are likely to submit responsive bids. If two or more (or at the IHA's option, a number greater than two specified in the IFB) qualified Indian enterprises or organizations submit responsive bids, award shall be made to the qualified enterprise or organization with the lowest responsive bid. If fewer than the minimum required number of qualified Indian enterprises or organizations submit responsive bids, the IHA shall reject all bids, and shall readvertise the IFB in accordance with paragraph (c)(1)(ii) of this section. In unusual circumstances and subject to HUD approval, the IHA may accept one bid, e.g., the IHA determines that the single bid received is of an unusually favorable price, or the IHA determines that delays caused by readvertising would subject the project to higher construction costs.

(ii) If the IHA prefers not to restrict the IFB as described in paragraph (c)(1)(i), above, or if an insufficient number of qualified Indian enterprises or organizations submit responsive bids in response to an IFB under paragraph (c)(1)(i), the IHA or contractor shall advertise for bids inviting responses from non-Indian as well as Indian owned economic enterprises and Indian organizations. Award shall be made to the qualified Indian enterprise or organization with the lowest responsive bid if that bid is within budgetary limits established for the specific project or activity for which bids are being taken and no more than "X" higher than the total bid price of the lowest responsive bid from any qualified bidder. "X" is determined as follows:

	X=lesser of—
When the lowest responsive bid is less than $100,000.	10% of that bid, or $9,000.
When the lowest responsive bid is:	
At least $100,000, but less than $200,000.	9% of that bid, or $16,000.
At least $200,000, but less than $300,000.	8% of that bid, or $21,000.
At least $300,000, but less than $400,000.	7% of that bid, or $24,000.
At least $400,000, but less than $500,000.	6% of that bid, or $25,000.
At least $500,000, but less than $1 million.	5% of that bid, or $40,000.
At least $1 million, but less than $2 million.	4% of that bid, or $60,000.
At least $2 million, but less than $4 million.	3% of that bid, or $80,000.
At least $4 million, but less than $7 million.	2% of that bid, or $105,000.
$7 million or more	1% of the lowest responsive bid, with no dollar limit.

If no responsive bid by a qualified Indian enterprise or organization is within the stated range of the total bid price of the lowest responsive bid from any qualified enterprise, award shall be made to the bidder with the lowest bid.

(2) Preference in the award of contracts and subcontracts that are let under a Request for Proposals (RFP) process (e.g., for turnkey proposal construction contracts, professional service contracts) shall be provided as follows:

(i) The RFP may be restricted to qualified Indian-owned economic enterprises and Indian organizations. The RFP should, however, not be so restricted unless the IHA has a reasonable expectation that the required minimum number of qualified Indian-owned economic enterprises or Indian organizations are likely to submit responsive proposals. If two (or, at the IHA's option, a number greater than two specified in the RFP) qualified Indian-owned economic enterprises or Indian organizations submit responsive proposals, award shall be made to the qualified Indian-owned economic enterprise or Indian organization with the best proposal. If fewer than the minimum required number of qualified Indian-owned economic enterprises or Indian organizations submit responsive proposals, the IHA shall reject all proposals and shall readvertise the RFP in accordance with paragraph (c)(2)(ii) of this section. The IHA shall develop the particulars concerning the RFP, including a rating system that provides for the assignment of points for the relative merits of submitted proposals. The RFP shall identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract, and shall state the relative importance the IHA places on each evaluation factor and subfactor.

(ii) If the IHA prefers not to restrict the RFP solicitation as described in paragraph (c)(2)(i), above, or if an insufficient number of qualified Indian enterprises or organizations satisfactorily respond under that procedure, the IHA shall develop the particulars concerning the RFP, including a rating system that provides for the assignment of points for the relative merits of submitted proposals. The RFP shall identify all factors, including price or cost, and any significant subfactors that will be considered in awarding the contract, and shall state the relative importance an IHA places on each evaluation factor and subfactor. Notification that Indian preference is applicable to this procurement shall be included in the RFP solicitation.

(A) An IHA shall set aside a minimum of 15% of the total number of available rating points for the provision of Indian preference in the award of contracts and subcontracts. The percentage or number of points set aside for preference and the method for allocating these points shall be specified in the RFP.

(B) IHAs may require that contractors solicit subcontractors by using an RFP based on a point system, and that contractors set aside a minimum of 15% of the available rating points for the provision of Indian preference in subcontracting. The RFP shall explain the criteria to be used by the contractor in evaluating proposals submitted by subcontractors.

(3) Provisions applicable to all contracts.

(i) In all cases, the IHA shall include in the IFB or RFP a description of the contract and subcontract bidding procedures which are to be employed, including the actual language of paragraph (c)(1)(i), (c)(1)(ii), (c)(2)(i) or (c)(2)(ii) of this section, as appropriate. A finding by an IHA either that a subcontract was awarded without using the procedure required by the IHA, or that the contractor falsely represented that subcontracts would be awarded to Indian enterprises or organizations, shall be grounds for termination of the contract between the IHA and its contractor, or for other penalties as appropriate. These grounds for termination of the contract or for the imposition of other penalties shall be set out in the IFB or RFP and shall be included in each contract and subcontract.

() Each IFB and RFP shall state whether the IHA maintains lists of Indian-owned economic enterprises and Indian organizations by speciality (e.g., plumbing, electrical, foundations), which are available to developers, contractors, and subcontractors to assist them in meeting their responsibility to provide preference in connection with the administration of contracts and subcontracts.

(i) The IHA shall require a statement from all prospective contractors or developers describing how they will provide Indian preference in the award of subcontracts. Each IHA shall describe in its IFB or RFP what provisions each prospective developer or contractor must include in its statement and the

factors that will be used by the IHA in judging the statement's adequacy. Any bid or proposal that fails to include the required statement shall be rejected as nonresponsive. An IHA may require that a comparable statement be provided by subcontractors to their contractors, and may require a contractor to reject any bid or proposal by a subcontractor that fails to include the statement, as specified by the IHA in the IFB or RFP.

(iv) Each contractor or subcontractor shall submit a certification (supported by credible evidence) to the IHA in any instance where the contractor or subcontractor believes it is infeasible to provide Indian preference in subcontracting. The IHA may examine the evidence submitted and may accept or reject the certification.

(4) The Indian preference requirements contained in this subsection shall be subject to additional preference provisions in § 905.204(f).

(d) *Preference by an IHA in contracting, employment and training.* (1) To the greatest extent feasible, IHAs shall, in the conduct of their own operations, adhere to the requirements regarding preference in contracting. Where the provision of preference is determined by an IHA to be infeasible, an IHA shall document in writing the basis for its findings and shall maintain for three years the documentation in its files for HUD review and provide HUD with a copy of the determination within 20 days of its issuance.

(2) To the greatest extent feasible, preference shall be given to qualified Indians for employment or training for IHA staff positions. Each IHA shall document the method and justification used in selecting individuals for employment or training. A finding by HUD that an IHA has not provided preference to the greatest extent feasible to Indians in selecting individuals for employment or training shall be grounds for HUD to invoke its remedies under this Part or under the ACC, which remedies include, but are not limited to, the denial of future projects.

(3) The Indian preference requirements contained in this subsection shall be subject to additional preference provisions in § 905.204(f).

(e) *Preference by contractors and subcontractors in employment and training of Indians.*

(1) IFB Contracts.

(i) For contracts let under an IFB, the IFB shall state that each contractor and subcontractor must include in its bid response a statement detailing its employment and training opportunities and its plans to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. The IFB shall explain the criteria to be used by the IHA or the contractor in evaluating contractor or subcontractor statements.

(ii) Any bid that fails to include the required statement, or that includes a statement that does not meet minimum standards required by the IHA or contractor (as appropriate) shall be rejected as nonresponsive.

(iii) Failure to comply with the submitted statement shall be a ground for cancellation of the contract or for the assessment of penalties or other remedies. The IFB and the contract shall describe the actions that may be taken by an IHA for noncompliance with the undertakings set out in the contractor's or subcontractor's statement.

(iv) A finding by HUD that an IHA has entered into a contract that failed to include an acceptable statement on preference in employment and training shall be grounds for HUD to invoke its remedies under this part or under the ACC, which remedies include, but are not limited to, the denial of future projects.

(2) RFP Contracts.

(i) For contracts let under an RFP, the RFP shall state that each contractor and subcontractor must include in its proposal response a statement detailing its employment and training opportunities and its plan to provide preference to Indians in implementing the contract; and the number or percentage of Indians anticipated to be employed and trained. The RFP shall explain the criteria to be used by the IHA or the contractor in evaluating contractor or subcontractor statements.

(ii) For contracts awarded under paragraph (c)(2)(i) of this section where a point system is not used to evaluate the relative merits of proposals), any proposal that fails to include the required statement, or that includes a statement that does not meet minimum standards required by the IHA or contractor (as appropriate), shall be rejected as nonresponsive. For contracts awarded under paragraph (c)(2)(ii) of this section e a point system is used to evaluate the relative merits of proposals) ten percent of the total points available during evaluation of the proposal shall be awarded on the basis of the content of the statement. (These points are in addition to and separate from any points awarded for the provision of Indian preference in contracting or subcontracting in accordance with paragraphs (c)(2)(ii) (A) and (B) of this section.) Proposals that fail to include a statement shall be rejected as nonresponsive.

(iii) Failure to comply with the submitted statement shall be a ground for cancellation of the contract or for the assessment of penalties or other remedies. The RFP and the contract shall describe the actions that may be taken by an IHA for noncompliance with the undertakings set out in the contractor's or subcontractor's statement.

(iv) A finding by HUD that an IHA has entered into a contract that failed to include an approved statement in implementing preference in employment and training opportunities shall be grounds for HUD to invoke its remedies under this part or under the ACC, which remedies include, but are not limited to, the denial of future projects.

(3) Provisions on employment or training applicable to all contracts. The IHA shall require contractors and subcontractors to provide preference to the greatest extent feasible by hiring qualified Indians in all positions other than core crew positions, except where the contractor adequately advertises a position and no Indian either qualifies or accepts the terms of employment. The IHA shall indicate what it considers to be adequate advertisement in the IFB or RFP (as appropriate) and in the contract. A core crew employee is an individual who is a bona fide employee of the contractor or subcontractor at the time the bid or proposal is submitted; or an individual who was not employed by the contractor or subcontractor at the time the bid or proposal was submitted, but who is regularly employed by the contractor or subcontractor in a supervisory or other key skilled position when work is available. Each contractor shall submit a list of all core crew employees with its bid or proposal.

(4) The Indian preference requirements contained in this subsection shall be subject to additional preference provisions in § 905.204 (f).

(f) *Other preference provisions applicable to §§ 905.204 (c), (d), and (e).* (1) When both HUD and non-Federal funds are used for a project, the work to be accomplished with the funds should be separately identified, and HUD's Indian preference regulations must be applied to the work financed by HUD. If the funds cannot be separated, HUD's Indian preference regulations will apply to the total project.

(2) Each IHA shall be responsible for monitoring Indian preference implementation in subcontracting, employment, and training by its contractors and subcontractors. Should incidents of noncompliance be found to exist, the IHA shall take appropriate remedial action. A finding by HUD that the IHA has not provided adequate monitoring or enforcement of Indian

preference may result in a determination by HUD that the IHA is in breach of the ACC or that the IHA lacks administrative capability. Such a finding may constitute grounds for HUD to invoke its remedies under this part or under the ACC, which remedies shall include, but are not limited to, the denial of future projects.

(3) Preference in contracting, subcontracting, employment, and training applies not only on-site, on the reservation, or within the IHA's jurisdiction, but also to contracts with firms that operate outside these areas (e.g., employment in modular or manufactured housing construction facilities).

(4) Each IHA should include in the IFB or RFP any applicable local preference requirements properly imposed by the tribal governing body, or should advise bidders to contact the tribal governing body to determine any applicable preference requirements.

(g) *Review procedures for complaints alleging inadequate or inappropriate provision of preference.* (1) Each complaint (including complaints against an IHA) shall be in writing, signed, and filed with the IHA.

(2) A complaint must be filed with the IHA no later than 20 days from the date of the action (or omission) upon which the complaint is based.

(3) Upon receipt of a complaint, the IHA shall promptly stamp the date and time of receipt upon the complaint, acknowledge its receipt in writing to the complainant within five (5) days, and shall investigate, and within 15 days shall either meet, or communicate by mail or telephone, with the complaining party in an effort to resolve the matter. In all cases, but especially where the complaint indicates that expeditious action is required to preserve the rights of the complaining party, the IHA shall endeavor to resolve the matter as expeditiously as possible. If noncompliance with Indian preference requirements is found to exist, the IHA shall take appropriate steps to remedy the noncompliance and to amend its procedures so as to be in compliance. If the matter is not resolved to the satisfaction of the complaining party, or if the IHA has failed to communicate with the complaining party in an effort to resolve the complaint within 15 days following the IHA's receipt of a complaint, the complaining party may file a written complaint with the appropriate Indian Field Office of HUD. In any event, complaints filed with HUD must be received within six months after the alleged adverse action by the IHA, contractor or subcontractor. The address of the Indian Field Office and the name of the appropriate Indian program officer shall be included in the initial communication from the IHA acknowledging receipt of the complaint.

(4) Upon receipt of a written complaint, the HUD Indian Field Office will request that the IHA provide a written report setting forth all relevant facts, including, but not limited to, the date the complaint was filed with the IHA; the name of the complainant; the nature of the complaint, including the manner in which Indian preference was or was not provided; and actions taken by the IHA in addressing or resolving the complaint. The IHA shall provide copies of its report and all relevant documents concerning the complaint to HUD within ten days after receipt of the HUD request.

(5) Upon receipt of the IHA's report, the HUD Indian Field Office will determine whether the actions taken by the IHA comply with the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act, and with Indian preference requirements under this part. Notification of the Field Office's determination shall be provided to the IHA and to the complaining party, orally or in writing, no later than 30 days following HUD's receipt of the complaint. If the notice is oral, it shall be promptly confirmed in writing. If the complaining party's alleged injury will occur during this 30-day period, the HUD Indian Field Office will make a good faith effort to make its determination before the occurrence of such injury (e.g., contract award).

(6) Where the HUD Indian Field Office determines on the basis of the facts provided by the IHA and on the basis of other available information that there has been noncompliance with Indian preference requirements, the Field Office shall instruct the IHA to take appropriate steps to remedy the noncompliance and to amend its procedures so as to be in compliance.

(7) The decision of the HUD Indian Field Office may be appealed to the Assistant Secretary for Public and Indian Housing. The decision of the Assistant Secretary for Public and Indian Housing shall constitute final agency action for purposes of the Administrative Procedure Act.

(Approved by the Office of Management and Budget under control number 2577–0076)

Dated: November 20, 1986.

J. Michael Dorsey,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 86–27198 Filed 12–3–86; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 553

U.S. Army Military District of Washington; Arlington National Cemetery Visitors Rules

AGENCY: Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: This change amends the Visitors' Rules for Arlington National Cemetery. The change allows the Secretary of the Army to bar violators of the rules from conducting memorial services and ceremonies within the Cemetery for two years.

EFFECTIVE DATE: January 2, 1987.

FOR FURTHER INFORMATION CONTACT: Harriet Antiporowich, Arlington National Cemetery, Arlington, VA 22211–5003, (202) 695–3191.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on page 29115 of the **Federal Register** of August 14, 1986. Interested parties were given the opportunity to comment. No comments have been received.

The sanctions placed on individuals or organizations who violate the Arlington National Cemetery Visitors' Rules are changed by this proposed rule.

Presently the Code of Federal Regulations provide that any person who violates the provisions of paragraphs (d), (e), (f), (g), (h), or (i) of 32 CFR 553.22 be subject to the penalties set out in Title 40 United States Code section 318c.

The proposed change would also allow the Secretary of the Army to bar violators from conducting memorial services or ceremonies at Arlington National Cemetery for two years from the date of such violation. Use of this administrative sanction would not require prosecution of the violator as a prerequisite.

Executive Order 12291

This rule does not constitute a "major" rule as defined by Executive Order 12291.

Regulatory Flexibility Act

This rule does not have "significant" economic impact on a substantial number of small "entities" as defined by the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

Paperwork Reduction Act

There are no collection of information requirements contained in this rule that require approval by the Office of

Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 32 CFR Part 553

Army National Cemeteries.

PART 553—ARMY NATIONAL CEMETERIES

Accordingly Title 32 CFR Part 553 is amended as follows:

1. The authority citation for Part 553 continues to read as follows:

Authority: 24 U.S.C. Chapter 7.

2. Section 553.22(b) is revised to read as follows:

§ 553.22 Visitors' rules for the Arlington National Cemetery.

* * * * *

(b) *Scope.* Pursuant to Title 40 United States Code, sections 318a and 486, and based upon delegations of authority from the Administrator, General Services Administration, the Secretary of Defense, and the Secretary of the Army, this section applies to all Federal property within the charge and control of the Superintendent, Arlington National Cemetery, and to all persons entering in or on such property. At the discretion of the Secretary of the Army, any person or organization that violates any of the provisions of paragraphs (d), (e), (f), (g), and (h); or (i) of this section may be barred from conducting memorial services and ceremonies within the Cemetery for two years from the date of such violation. Any such person shall also be subject to the penalties set out in Title 40, United States Code section 318c.

* * * * *

Dated: November 25, 1986.

John O. Roach, II,

Army Liaison Officer with the Federal Register.

[FR Doc. 86-27014 Filed 12-3-86; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 162

[CGD 86-053]

Restricted Areas in Vicinity of Maritime Administration Reserve Fleets

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations governing the navigation and use of waters around the National Defense Reserve Fleets (NDRF) by deleting the reserve fleets near Bay Minette, Alabama and Olympia, Washington and changing reference from Department of Commerce to the Department of Transportation to reflect the transfer of the administration and enforcement of the regulations. This rule is necessary to inform the public and interested parties that reserve fleet vessels no longer occupy the two anchorage areas and the areas are no longer restricted.

EFFECTIVE DATE: January 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Powers, Navigation Systems Safety Division, Office of Navigation, (202) 267-0415.

SUPPLEMENTARY INFORMATION: The regulations governing enforcement of restricted areas (33 CFR 162.270) around National Defense Reserve Fleets (NDRF) transferred enforcement of these restricted areas to the Coast Guard from the U.S. Army Corps of Engineers by a Memorandum of Understanding signed on May 5, 1977. Two NDRFs near Bay Minnette, Alabama and Olympia, Washington, are no longer in service. This final rule amends the regulations by deleting reference to these NRDFs. This final rule also changes reference to the "Department of Commerce" to the "Department of Transportation" to reflect the present location of the agency administering NDRFs.

This final rule was not preceded by a notice of proposed rulemaking. Deleting the NDRFs near Bay Minette, Alabama and Olympia, Washington from the listing of restricted reserve fleets merely informs vessel operators that reserve fleet vessels no longer occupy the two anchorage areas and the areas are no longer restricted. Therefore, the Coast Guard has determined that, for the good cause stated above, notice and public procedure are unnecessary under 5 U.S.C. 553(b)(3)(B).

Drafting Information

The principal persons involved in drafting this final rule are Mr. Michael J. Powers, Project Manager, and LT Sandra Sylvester, Project Counsel, Office of Chief Counsel.

Regulatory Evaluation

These regulatory changes are considered to be non-major under Executive Order 12291 and nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; Feb. 26, 1979). The economic impact of this amendment has been found to be so minimal that further evaluation is unnecessary. No information is available regarding savings associated with deleting these two NDRFs from the regulations because no commercial vessels transit the fleeting areas. Both areas are in locations outside of buoyed channels used by waterborne commerce. The areas have not been dredged to a depth that would support safe vessel movements or marked with navigation aids. It is expected waterborne commerce will continue to use the buoyed channels for navigation. Since the economic impact is expected to be minimal, the Coast Guard certifies this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 162

Navigation (water), Vessels.

PART 162—INLAND WATERWAYS NAVIGATION REGULATIONS

In consideration of the foregoing, Part 162 of Title 33 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 162 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

2. Section 162.270 paragraph (a) is revised to read as follows:

§ 162.270 Restricted areas in vicinity of Maritime Administration Reserve Fleets.

(a) The regulations in this section shall govern the use and navigation of waters in the vicinity of the following National Defense Reserve Fleets of the Maritime Administration, Department of Transportation:

(1) James River Reserve Fleet, Fort Eustis, Virginia.

(2) Beaumont Reserve Fleet, Neches River near Beaumont, Texas.

(3) Suisun Bay Reserve Fleet near Benicia, California.

* * * * *

Dated: November 18, 1986.

A. B. Smith,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation.

[FR Doc. 86-27298 Filed 12-3-86; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-4-FRL-3120-9; KY-015]

Approval and Promulgation of Implementation Plans, Kentucky; Removal of Conditions on Approval of Part D TSP SIP

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today removes seven of the nine conditions attached to its December 24, 1980 (45 FR 84999), approval of the State Implementation Plan (SIP) revisions which Kentucky developed for total suspended particulate (TSP) nonattainment areas pursuant to Part D of Title I of the Clean Air Act. Two of the conditions still need to be satisfied in order for Kentucky to have a fully approved Part D TSP SIP. This action was proposed on October 16, 1985 (50 FR 41912). EPA is not at this time approving the definition of "volatile organic compounds" described on page 41916 of the proposal notice; this has no relation to the Part D TSP SIP.

EFFECTIVE DATE: January 5, 1987.

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

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365

Library, Office of the Federal Register, 1100 L Street NW., Room 8301, Washington, DC

Division of Air Pollution Control, Kentucky Department for Environmental Protection, 18 Reilly Road, Bldg. 2, Fort Boone Plaza, Frankfort, Kentucky 40601

FOR FURTHER INFORMATION CONTACT: Melvin Russell, EPA Region IV, Air Programs Branch, at the address listed above, telephone 404/881-3286 (FTS 257-3286).

SUPPLEMENTARY INFORMATION:

Background

On June 15, 1979, the Kentucky Department for Natural Resources and Environmental Protection adopted SIP revisions designed to comply with Part D of Title I of the Clean Air Act (CAA) as amended in 1977. The State submitted its Part D SIP revisions to EPA on the same date. EPA proposed conditional approval of the TSP portion of Kentucky's Part D revisions on November 15, 1979 (44 FR 65781). Extensive comments were received in response to the November 15, 1979 notice. After reviewing the comments along with the material submitted by Kentucky, EPA presented its position in a second proposal, published on September 18, 1980 (45 FR 62163). On December 24, 1980 (45 FR 84999), EPA gave conditional approval to Kentucky's Part D TSP SIP. The conditions to be met were clearly stated in that notice and in a proposal notice published on October 16, 1985 (50 FR 41912). In the latter notice, EPA proposed to remove seven of the nine conditions on the basis of submittals made by the State and to defer action on the remaining two conditions. No comments were received in response to the proposal. Accordingly, EPA today removes the seven conditions as proposed. For a full discussion of these seven conditions, the reader may consult the notices just mentioned and a technical support document available at the EPA addresses listed above. It should be noted that in adopting regulations for By-Product Coke Manufacturing in order to satisfy Condition viii, the emission limitation adopted in Regulation 401 KAR 61:140 section 3(3) for coke oven doors limits the percentage of leaking coke oven doors to no more than ten (10) percent of the total oven doors on operating ovens in a battery. While 401 KAR 61:140 section 3(3) does not specifically specify that the number of leaking doors allowed is based on a percentage of the doors on operating ovens, that is clearly specified in Appendix C to 401 KAR 61:140 section 5(5)(b) which contains the applicable test methods and procedures for 401 KAR 61:140 section 3(3). A brief discussion of the two remaining conditions is given below.

In revising regulation 401 KAR 50:010, Definitions and Abbreviations, to meet the conditions of approval, Kentucky added a definition of "volatile organic compounds" which EPA proposed to approve in the notice of October 16, 1985. The agency has decided that this definition is not adequate for purposes of new source review and the prevention of significant deterioration of air quality, purposes which it must by default serve in the Kentucky regulations. Accordingly, EPA is deferring action on this definition, pending resolution of this issue.

Today's action also approves the State's definition of "secondary emissions" as found in 401 KAR 50:010. The definition specifies that certain vessel emissions are not secondary emissions. The Kentucky regulations do not exempt any vessel emissions from new source review applicability determinations. EPA interprets these provisions to mean that all dockside vessel emissions, including tailpipe/smokestack emissions, will be considered primary emissions for marine terminal applicability determinations. This is consistent with *NRDC vs. EPA, 725 F. 2d 761 (CA DC 1984)*. This interpretation should ensure that in the near term, no changes will be necessary to make the State regulations comply with evolving EPA policies and rulemaking with respect to vessel emissions.

Remaining Conditions

The first of these, found at 40 CFR 52.935(a)(1)(i), was that Kentucky submit a revision to regulation 401 KAR 50:055, section 2(3), specifying a method other than Method 9 of Appendix A to 40 CFR Part 60 for determining opacity for sources with intermittent emissions. Kentucky did not correct this deficiency by revising the regulation specified, but revised a number of regulations for the iron and steel industry to incorporate test procedures for intermittent emission sources. EPA is approving these revisions today. The State attempted to correct the deficiency for other types of sources, but this attempt was not adequate, as explained in the latest proposal notice. EPA is now working with Kentucky to correct this deficiency for the remaining source types.

The second condition, 40 CFR 52.935(a)(1)(v), involved a revision to regulation 401 KAR 61:020, section 3, Standard for Particulate Matter, to provide a specific requirement of reasonable available control technology (RACT) applicable to sources of process fugitive emissions. As indicated in the proposal notice of October 16, 1985 (50 FR 41914), the State revised the regulation in question, but the revision was not adequate to correct the deficiency. As with the first condition, EPA is working with the State to develop a revision to remedy the existing deficiency.

Kentucky has asked EPA to defer action on these two conditions to allow time for proper regulation development. EPA finds this request reasonable since disapproval would not produce any environmental benefits between this time and the time when the corrections are submitted.

Final Action

EPA is deferring action on the submittals which Kentucky has made to remedy the two above conditions on the approval of the Part D TSP SIP, except for the changes made in connection with the first regarding regulations for the iron and steel industry. EPA is removing the other seven conditions. EPA is also approving additional regulation changes described in the proposal notice of October 16, 1985 (50 FR 41912) which Kentucky has made except for the definition of "volatile organic compounds" added to regulation 401 KAR 50:010.

In summary, today's approval affects the following Kentucky regulations:

(1) 401 KAR 50:010, Definitions and Abbreviations;

(2) 401 KAR 50:055, General Compliance Requirements;

(3) 401 KAR 61:005, General Provisions;

(4) 401 KAR 61:015, Existing Indirect Heat Exchangers;

(5) 401 KAR 61:075, Steel Plants and Foundries Using Existing Electric Arc Furnaces;

(6) 401 KAR 61:080, Steel Plants Using Existing Basic Oxygen Process Furnaces;

(7) 401 KAR 61:140, Existing By-Product Coke Manufacturing Plants; and

(8) 401 KAR 61:170, Existing Blast Furnace Casthouses.

This approval action is effective on January 5, 1987.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 2, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).) Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

The Director of the Federal Register approved the incorporation by reference of the State Implementation Plan for the Commonwealth of Kentucky on July 1, 1982.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Hydrocarbons, Incorporation by reference.

Dated: November 7, 1986.

Lee M. Thomas,

Administrator.

PART 52—[AMENDED]

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

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

Authority: 42 U.S.C. 7401–7642.

Subpart S—Kentucky

2. Section 52.920 is amended by adding paragraph (c)(45) to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

(45) Corrections in the Part D TSP SIP and other revisions submitted on December 9, 1982, and May 1, 1984, by the Kentucky Department for Environmental Protection.

(i) Incorporation by reference.

(A) Revisions in regulations 401 KAR—

50:010, Definitions and Abbreviations;

50:055, General Compliance Requirements;

61:005, General Provisions;

61:015, Existing Indirect Heat Exchangers;

61:075, Steel Plants and Foundries Using Existing Electric Arc Furnaces;

61:080, Steel Plants Using Existing Basic Oxygen Process Furnaces;

61:140, Existing By-Product Coke Manufacturing Plants; and

61:170, Existing Blast Furnace Casthouses.

The changes in these regulations were effective September 22, 1982 (50:055), December 1, 1982 (50:010, 61:005, 61:015, 61:075, and 61:140), and April 1, 1984 (61:080 and 61:170). No action is taken on the definition of "volatile organic compounds" in 401 KAR 50:010.

(ii) Other material—none.

§ 52.935 [Amended]

3. Section 52.935, Control strategy: Particulate matter, is amended by removing paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(iv), (a)(1)(vi), (a)(1)(vii), (a)(1)(viii), and (a)(1)(ix) and by redesignating paragraph (a)(1)(v) as (a)(1)(ii).

[FR Doc. 86–27025 Filed 12–03–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 18

[General Docket 85–303; FCC 86–493]

Technical Standards for Medical Ultrasonic Diagnostic and Monitoring Equipment

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rule.

SUMMARY: The Commission exempts non-consumer medical ultrasonic diagnostic and monitoring equipment from certain administrative and technical requirements of Part 18 of the Rules. This action is intended to have a beneficial economic impact on manufacturers by relieving them from having to comply with the technical standards and most administrative regulations of Part 18 of the Rules without increasing the interference potential to authorized telecommunication services.

EFFECTIVE DATE: December 22, 1986.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Liliane Volcy, Technical Standards Branch, Office of Engineering & Technology, tel: (202) 653–7316.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, General Docket 85–303, adopted October 28, 1986, released November 12, 1986.

The full text of Commission decisions is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Summary of Report and Order

1. By this *Report and Order*, the Commission exempts non-consumer medical ultrasonic diagnostic and monitoring equipment from certain administrative and technical requirements of Part 18 of the Rules. This action is taken in response to a public meeting held by the Commission on August 21, 1984, during which manufacturers of medical ultrasonic diagnostic and monitoring devices requested that such equipment be exempted from the technical and administrative requirements of Part 18 of the Rules. The Commission believes that the use of medical ultrasonic diagnostic and monitoring equipment will not cause harmful interference to authorized telecommunication services under normal operating conditions when limited to areas such as hospitals, clinics, etc.

2. Non-consumer medical ultrasonic diagnostic and monitoring equipment is to be subject only to the general provisions of Part 18 governing good engineering practices, non-interference requirements, prohibited operating frequencies, etc. This exemption for non-consumer devices will be revisited, however, if their use is extended to residential locations.

Final Regulatory Flexibility Analysis

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, this proceeding will have a beneficial economic impact on small entities because it relieves manufacturers of medical ultrasonic diagnostic and monitoring equipment from having to

comply with the technical and administrative requirements of Part 18 of the Rules.

Ordering Clauses

4. Accordingly, it is ordered, that, under the authority contained in sections 4(i), 302, and 303 of the Communications Act, Part 18 of the Rules is amended, as shown below, effective December 22, 1986. It is further ordered, that this proceeding is terminated.

List of Subjects in 47 CFR Part 18

Medical devices, Scientific equipment.

PART 18—INDUSTRIAL, SCIENTIFIC, AND MEDICAL EQUIPMENT

Part 18 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 18 is revised to read as follows:

Authority: 47 U.S.C. 4, 301, 302, 303, 304, 307.

2. A new § 18.121 is added to Part 18 to read as follows:

§ 18.121 Exemptions.

Non-consumer ultrasonic ISM equipment, as defined under § 18.107, that is used for medical diagnostic and monitoring applications, is subject only to the provisions of § 18.105, §§ 18.109 through 18.119, and § 18.303 of this Part.

William J. Tricarico,

Secretary.

[FR Doc. 86-27213 Filed 12-3-86; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 51, No. 233
Thursday, December 4, 1986

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9073]

Ford Motor Company et al; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Notice of 30 day public comment period on Request by Ford Motor Company and Ford Motor Credit Company to reopen and vacate or modify the order issued in Docket No. 9073.

SUMMARY: Ford Motor Company and Ford Motor Credit Company have requested the Federal Trade Commission to vacate or modify in material respects a 1979 consent order issued in Docket No. 9073 with the companies concerning the repossession accounting practices of Ford and Lincoln/Mercury dealers using repurchase financing.

DATE: Deadline for filing comments in this matter is December 30, 1986.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. Requests for copies of the request should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Thomas D. Massie, Attorney, Enforcement Divison, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580; (202) 376–2891.

SUPPLEMENTARY INFORMATION: The order settled FTC charges that a number of Ford and Lincoln/Mercury dealers failed to account for surpluses to defaulting customers generated by the resale of repossessed motor vehicles and that Ford Credit failed to disclose material facts concerning redemption. The order requires Ford to make a repossession accounting procedure a part of the Ford Manual of Dealer Accounting Procedure; that Ford train dealers in the use of the repossession accounting procedure; that Ford conduct audits of its dealers repossession accounting practices; that Ford Credit amend its financing plans for Ford and Lincoln/Mercury dealers to require dealers to honor redemption rights; that Ford Credit notify defaulting customers of redemption rights, of their rights to surpluses, if any, and liability for deficiencies, and the name and address of the dealer to whom the repossessed vehicle has been returned. The request to vacate or modify was filed on November 12, 1986.

List of Subjects in 16 CFR Part 13

Motor vehicles.

Emily H. Rock,

Secretary.

[FR Doc. 86–27252 Filed 12–3–86; 8:45 am]

BILLING CODE 6750–01–M

16 CFR Part 453

Trade Regulation Rule; Funeral Industry Practices; Denial of Texas Petition for Statewide Exemption

AGENCY: Federal Trade Commission.

ACTION: Denial of Petition for statewide exemption from the Commission's Funeral Industry Practices Rule.

SUMMARY: After careful consideration of the Petition, the attachments and public comment the Commission has determined that: The state law does not afford an overall level of protection to consumers which is as great as, or greater than, the protection afforded by the Funeral Rule; and accordingly, the Petition is denied.

DATE: This action is effective December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Raouf M. Abdullah, (202) 376–3475, or Robert Easton, (202) 376–2863, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

On September 24, 1982, the Commission promulgated the Trade Regulation Rule Concerning Funeral Industry Practices ("Funeral Rule" or "Rule").[1] The Rule, which became fully effective on April 30, 1984,[2] essentially requires funeral providers to: (1) Disclose price and other information in person and over the telephone; (2) make truthful representations regarding legal and other requirements; (3) permit consumers to select and purchase only those goods and services they desire; (4) obtain express permission before embalming the deceased for a fee; and (5) refrain from misrepresenting the protective and preservative value of funeral goods and services.

Section 453.9 of the Funeral Rule permits states to apply for exemption from the Rule. If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which the Funeral Rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by the Funeral Rule;

then the Commission's Rule will not be in effect in that state to the extent specified by the Commission in its determination for as long as the state administers and enforces effectively the state requirement.[3]

On February 21, 1984, the Texas State Board of Morticians [4] (the "Board") filed a petition (the "Petition") for statewide exemption pursuant to § 453.9 of the Funeral Rule.[5] The Board supplemented

[1] 47 FR 42260 (Sept. 24, 1982), 16 CFR Part 453.

[2] The Funeral Rule had two effective dates. Those portions of the Funeral Rule that prohibit certain oral or written representations became effective on January 1, 1984. 48 FR 45537 (Oct. 6, 1983). The remainder of the Rule—the portions that imposed affirmative obligations on funeral providers—became effective April 30, 1984. 49 FR 559 (Jan. 5, 1984).

[3] The purpose of § 453.9 of the Funeral Rule is to encourage federal-state cooperation by permitting appropriate state agencies to enforce their own state laws that are equal to or more stringent than the Funeral Rule. Statement of Basis and Purpose ("SBP"), 47 FR 42260, 42287 (Sept. 24, 1982).

[4] The petition was filed by the Texas State Board of Morticians which, according to the Texas attorney general, is the state agency primarily charged with regulation of the funeral industry.

[5] The Texas Petition has been placed on the public record and is identified as Document XXIII–2 in FTC File No. 215–46.

the Petition by filings dated: July 11, 1984,[6] August 22, 1984,[7] October 5, 1984,[8] December 14, 1984,[9] December 21, 1984,[10] and February 28, 1985.[11]

The Statement of Basis and Purpose for Rule states that petitions for exemptions will be handled on a case-by-case basis pursuant to § 1.16 of the Commission's Rules of Practice.[12]

The Commission requested public comment on the Petition from November 6, 1985, to January 27, 1986.[13] Comments were received from the Consumer Protection Division of the Office of Attorney General of Texas, Consumers Union ("CU"), Mr. T. Grady Baskin (a former member of the Board), five memorial societies—Austin Memorial and Burial Information Society ("AMBIS"), San Antonio Memorial Society ("SAMS"), Dallas Area Memorial Society ("DAMS"), Houston Area Memorial Society ("HAMS"), Continental Association of Funeral and Memorial Societies ("CAFMS"), a consumer group, Gray Panthers of Austin ("GPA"), and two individual consumers.[14]

[6] This document contains proposed rules and regulations recommended to the Board by its legal counsel. It is identified in FTC File No. 215–46 as Document No. XXIII–3.

[7] This document contains a statement from the attorney general's office concerning the powers of the Board to regulate the funeral industry in Texas. It is identified in FTC File No. 215–46 as Document No. XXIII–4.

[8] This document contains recently adopted rules and regulations promulgated by the Board. It is identified in FTC File No. 215–46 as Document XXIII–5.

[9] This document contains a summary of recent enforcement activity by the Board. It is identified in FTC File No. 215–46 as Document XXIII–6.

[10] This document contains a summary of recent enforcement activity by the Board. It is identified in FTC File No. 215–46 as Document XXIII–7.

[11] This submission contains a letter from the Board's executive director in which he explains how and when the Board amended its rules and regulations. In addition, it contains copies of the *Texas Register* in which the above amendments were published. This submission is identified in FTC File No. 215–46 as Document XXIII–13.

[12] SBP at 42287. Because Section 1.16 of the Commission's Rules of Practice, 16 CFR 1.16, does not apply solely to petitions for statewide exemption from trade regulation rules, staff published exemption guidelines to assist states desiring to petition for an exemption. 50 FR 12521 (March 29, 1985).

[13] The Commission published an analysis of the Texas Petition in the **Federal Register** on November 6, 1985, 50 FR 46271, seeking public comment for sixty days, until January 6, 1986. To allow the submission of additional information, the Commission extended the period to January 27, 1986, 51 FR 978 (Jan. 9, 1986).

[14] The comments have been placed on the Commission's public record, in FTC File No. 215–46, and are identified as Documents XXIV–24—XXIV–37.

II. Summary of Conclusions

A. Level of Protection

The Commission has carefully analyzed the petition, supplemental filings, and the comments received during the comment period. The Commission has concluded that the law meets the threshold transaction requirement of § 453.9(a). However, the Commission has concluded that the Texas law fails to provide an overall level of protection to consumers as great as or greater than the Funeral Rule, as required by § 453.9(b). Because this criterion for exemption has not been satisfied, the Commission has not addressed whether the state law is being administered and enforced effectively.[15]

Below the Commission discusses several aspects of Texas law that differ from the Funeral Rule in important respects and which, taken together, illustrate its conclusion that state law provides less protection than the Furneral Rule.

1. Definition of "Prospective" Customer

The state law uses the term "prospective customer" and defines this term as "a consumer who enters a funeral establishment and inquires about the price of any funeral service or merchandise."[16] Thus, under the state law consumers who ask about the availability of funeral arrangements, but not price, may not be considered a customer entitled to price disclosure. Under the Funeral Rule, however, price does not have to be inquired about specifically in order to trigger the required price disclosures.

The Commission concludes that the state law provides less protection than the Funeral Rule to a potentially significant class of consumers. In addition, the Funeral Rule's coverage is not limited to individual consumers but includes entities that the rulemaking record suggested might benefit from the Funeral Rule's protections, such as memorial associations. The state law definition of prospective customer does not clearly include such entities.

2. The Absence of a Definition of "Services of Funeral Director and Staff"

Section 453.1(o) of the Funeral Rule defines "services of funeral director and staff" as "the services, not included in prices of other categories in § 453.2(b)(4) which may be furnished by a funeral provider in arranging and supervising a funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices." This definition expressly requires that funeral providers not include separately intemized goods and services, such as embalming, in the non-declinable item captioned "services of funeral director and staff." The state law lacks a definition of this item, although the state law expressly permits funeral providers to make the services of funeral director and staff non-declinable.[17]

The Commission concludes that because the state law lacks a definition of "services of funeral director and staff" comparable to the Funeral Rule, it does not prevent all tying arrangements that are prohibited under the Funeral Rule. This result frustrates one of the most important objectives of the Funeral Rule by effectively denying consumer choice in the selection of funeral goods and services.[18]

3. The Timing of Providing Price Lists

The Funeral Rule has specific provisions regulating when funeral providers must provide consumers with price disclosures for the goods and services they offer for sale.[19] Specifically, § 453.2(b)(2) of the Funeral Rule requires funeral providers to offer the casket price list to consumers upon beginning discussion of the prices or offerings of caskets, but in any event, before showing the caskets. Section 453.2(b)(3) of the Funeral Rule requires funeral providers to offer the outer burial container price list to consumers upon beginning discussion of the prices or offerings of outer burial containers, but in any event, before showing the outer burial containers. Section 453.2(b)(4) of the Rule requires funeral providers to offer the general price list to all persons (for their retention) who inquire in person about funeral arrangements or about the prices of funeral goods and services. Section

[15] Several commenters alleged inadequate staffing and questioned whether the petitioner demonstrated effective administration and enforcement of state law. The Commission would, of course, have to find that the state administers and enforces its laws effectively before an exemption petition could be granted.

[16] Tex. Rev. Civ. Stat. Ann. 4582b § I.V.

[17] 22 TAC section 203.11(h)(2)(A)(i).

[18] SBP at 42282 (discussing the unfairness of tying arrangements). Codified in the Rule at 16 CFR 453.4(b)(1).

[19] *See* SBP at 42280–61. During its investigation of funeral industry practices, the Commission determined that to facilitate informed consumer choice, consumers need access to sufficient information concerning: prices of funeral goods and services; their right to choose only items wanted; and legal or other requirements. Accordingly, the Funeral Rule requires funeral providers to offer consumers the general price list upon beginning discussion either of funeral arrangements or the selection of any funeral goods or services. *Id.*

453.2(b)(5) of the Funeral Rule requires funeral providers to give persons who select either funeral goods or funeral services (or both) a document which combines in one place the prices of the individual items the person is considering for purchase, as well as their total price. The Rule requires funeral providers to give consumers this document directly at the conclusion of the conference at which the items are selected.

The state law does not mandate when any of the required lists shall be given to consumers. Thus, the disclosure of this information could occur at a later time than under the Commission's Rule.[20]

The Commission concludes that the absence of a timing component in state law for providing lists results in less protection than the Funeral Rule provides.

B. Texas Law Includes Provisions Not in Funeral Rule

The state law has requirements that are not included in the Funeral Rule. The state law requires funeral establishments to: (1) Display their three least expensive caskets in the same general manner as their other caskets are displayed; (2) disclose that their three least expensive caskets are available in different colors and arrange to obtain caskets in these colors upon the customer's request, if the caskets can be obtained within twelve hours; (3) not suggest that a customer's concern for price reflects a lack of concern for the deceased; (4) not take custody of or refuse to promptly release deceased remains without proper authority from persons capable of giving it;[21] (5) display at least five adult caskets; (6) design display rooms in such a manner that consumers are able to make a private inspection and selection of merchandise; and (7) explain to consumers that a contractual agreement for the sale of funeral goods and services may not be entered into before the presentation of the retail price list.[22] Another feature in state law not addressed by the Funeral Rule is the requirement that the Board prepare and disseminate information of consumer interest which explains various aspects of making funeral arrangements and the consumer complaint process. Accordingly, the Board has published such a consumer information brochure.[23] Finally, the state law requires funeral licensees to retain on file retail price lists and written memoranda for two years, rather than the one year requirement imposed by the Funeral Rule.[24]

The Commission concludes that the unique features of Texas state law do offer tangible benefits to consumers. However, on balance, the different protections under state law do not compensate for the essential protections contained in the Funeral Rule that are absent from the state law.

III. Decision To Deny Petition

After a careful consideration of the Petition, attachments and public comment, as set forth and discussed above, the Commission concludes that: The state law does not afford an overall level of protection to consumers which is as great as, or greater than, the protection afforded by the Funeral Rule.

In view of the foregoing analysis and conclusion, the Commission determines that the Petition is Denied.

List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-27251 Filed 12-3-86; 8:45 am]

BILLING CODE 6750-01-M

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16 CFR Part 703

Rule on Informal Dispute Settlement Procedures

AGENCY: Federal Trade Commission.

ACTION: Notice of advisory committee meetings.

SUMMARY: This notice announces the dates, times, and location of future meetings of the Rule 703 Advisory Committee. It also revises the starting times for the previously-announced December and January meetings. Fifteen days' notice of advisory committee meetings is required under the Federal Advisory Committee Act.

DATES: The Rule 703 Advisory Committee is scheduled to meet on the following dates, beginning at 9:30 a.m.:

December 11, 1986
January 8, 1987
February 19, 1987
March 4, 1987
April 8, 1987
May 6, 1987

All of these meetings will be open to the public. The December and January meetings were previously scheduled to begin at 8:30 a.m.

ADDRESS: All meetings will be held at the Conservation Foundation, 1255 23rd Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT:

Chairpersons:

John A.S. McGlennon, ERM-McGlennon Associates, 283 Franklin Street, Boston, MA 02110, (617) 357-4443

Gail Bingham, Conservation Foundation, 1255 23rd Street, NW., Washington, DC 20037, (202) 293-4800

FTC Staff:

David W. Koch, Division of Marketing Practices, Federal Trade Commission, Washington, DC, 20580, (202) 326-3100

SUPPLEMENTARY INFORMATION: On August 20, 1986, the Commission published a notice (51 FR 29666) announcing the formation of an advisory committee to develop proposed revisions to the Rule on Informal Dispute Settlement Procedures ("Rule 703"), 16 CFR Part 703. The Federal Advisory Committee Act, 5 U.S.C. App. I 1-15, and its implementing regulations require that advisory committee meetings be open to the public and that they be announced in the **Federal Register** at least fifteen days in advance. Accordingly, the Commission is publishing this notice of future meetings of the Rule 703 Advisory Committee. The dates, times, and location of the scheduled meetings appear above.

With the possible exception of an additional date in May, the meetings announced above constitute the full remaining schedule of the Rule 703 Advisory Committee. In its August 1986 notice establishing the committee, the Commission stated that the committee would have eight months after its organizational meeting to complete negotiations. Thus, no meetings will be scheduled beyond May 1987.

The remaining meetings will principally be devoted to discussion of progress reports and recommendations from subcommittees that were formed at the committee's October 22, 1986 meeting. Each subcommittee has been delegated a number of particular issues for detailed discussion. (Lists of the individuals participating on each subcommittee and the issues within each subcommittee's purview are available from the chairpersons or the FTC staff.) The subcommittees are to develop consensus recommendations on each issue and report back to the full committee. Subcommittee

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[20] For example, the price lists could be provided to consumers at the conclusion of the discussion of the arrangements without violating state law. At that point in the transaction the consumer may have already made a selection without the benefit of price information.

[21] *See* SBP at 42289-90 (discussing the Commission's consideration of requirements 1-4).

[22] For state law provisions *see* Tex. Rev. Civ. Stat. Ann. art. 4582b sections 3 & 4.

[23] *Supra* note 5, Petition, at Criterion Five.

[24] Tex. Rev. Civ. Stat. art. 4582b section 3.H.(25).

recommendations must be approved by consensus of the full committee.

Because of the inherently fluid nature of the negotiation process, it is not possible for the committee to develop more specific agendas for the announced meetings at this time. The public is encouraged, however, to contact the chairpersons or FTC staff as each meeting approaches for further information on the specific matters likely to be brought up.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 86-27253 Filed 12-3-86; 8:45 am]

BILLING CODE 6750-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 80

[PR Docket No. 86-424; FCC 86-47 9 RM-5166]

Maritime Service; Proposed Amendment To Allow the Voluntary Use of 406.025 MHz Emergency Position Indicating Radiobeacons by Ships

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The proposed rule would allow the voluntary use of 406.025 MHz emergency radiobeacons by ships for distress situations. This action was initiated by a petition for rulemaking filed by the National Oceanic and Atmospheric Administration. The effect of the proposed rule is to permit ships to voluntarily carry emergency position indicating radiobeacons which are monitored by satellites participating in the COSPAS/SARSAT system.

DATES: Comments must be received on or before February 27, 1987, and reply comments must be received on or before March 30, 1987.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William P. Berges or Robert H. McNamara, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted October 24, 1986, and released November 12, 1986. The full text of this Commission decision including the proposed rule change is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision including the proposed rule change may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rulemaking

1. In response to a petition for rulemaking (RM-5166) filed by the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA) the FCC proposes to amend the rules in the maritime services to allow ships to use emergency radiobeacons operating on 406.025 MHz on a voluntary basis. Authorization to use the frequency 406.025 MHz would give ships access to the COSPAS/SARSAT satellite system which monitors wide areas on a global basis for distress signals and alerts search and rescue units to provide assistance.

2. This is a non-restricted notice and comment rule making proceeding. See § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

3. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the proposed rule if promulgated will not have a significant economic impact on a substantial number of small entities because this action only provides for the use of 406.025 MHz emergency radiobeacons on a voluntary basis by ships.

4. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

5. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before February 27, 1987, and reply comments on or before March 30, 1987. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

6. This Notice of Proposed Rule Making is issued under the authority of 47 U.S.C. 154(l) and 303 (g) and (r).

7. A copy of the Notice of Proposed Rule Making will be served on the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 2

Frequency allocations, Treaties.

47 CFR Part 80

Marine safety, Ship stations.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86-27214 Filed 12-03-86; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 68

[CC Docket No. 86-423; FCC 86-468]

Common Carrier Services; Digital Transmission

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission has adopted a notice of proposed rulemaking seeking comment on whether § 68.318(b) of the rules, 47 CFR 68.318(b), should be amended to eliminate the present requirement that telephone companies provide electrical current to power certain functions in customer provided terminal equipment used in 1.544 Mbps digital transmission services.

DATES: Comments are due on or before January 5, 1987, and reply comments on or before January 20, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patrick Donovan, Domestic Facilities Division, Common Carrier Bureau, (202) 634-1832.

Petition for Modification of § 68.318(b) of the Commission's Rules

[CC Docket No. 86-423]

This is a summary of the Commission's Notice of Proposed Rulemaking adopted October 23, 1986, amd released November 26, 1986. CC Docket No. 86-423, seeking comment on whether to amend § 68.318(b) of the Commission's rules.

The full text of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of Commission Decision

Part 68 of the Commission's rules 47 CFR Part 68, provide the technical and procedural standards under which customer-provided telephone equipment, systems, and protective apparatus may be directly connected to the nationwide telephone network. Compliance with those standards assures equipment manufacturers and consumers that their equipment is connectible to the network, and assures tetephone companies that connection will not cause harm to the network.

The FCC has adopted a notice of proposed rulemaking seeking comment on whether the requirement in § 68.318(b) of the rules that telephone carriers provide line power on 1.544 Mbps transmission services should be eliminated. This requirement was initially adopted to ensure that keep-alive and minimum pulse density circuitry in network channel terminating equipment (NCTE) connected to 1.544 Mbps digital services would continue to operate in the event of loss of power at the customer's premises. Keep alive and minimum pulse density functions were intended to prevent oscillation of line repeaters in the transmission path and attendant interference to other transmission services. In a petition for rulemaking filed by several Bell Operating Companies (BOCs), it was contended that modernization of the telephone network minimized line oscillation as a serious potential network harm.

The Commission has additionally requested comment on whether the present requirement in § 68.318(b) that NCTE as a precondition of Part 68 registration contain keep alive and minimum pulse density functions should be eliminated. The Commission reasoned that insofar as line oscillation was no longer a substantial potential network harm, the keep alive and minimum pulse density functions intended to prevent such oscillation may no longer be necessary.

Ordering Clauses

21. Accordingly, it is ordered, pursuant to sections 1, 4, 201–205, 215, 220, 313, 309(e)–(h) and 412 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 215, 218, 220, 313, 309(e)–(h), and 412, and 5 U.S.C. 553, that notice is given of proposed rule changes to Part 68, 47 U.S.C., Part 68, as discussed above.

22. Interested parties may file comments on or before January 5, 1987 and reply comments on or before January 20, 1987.

List of Subjects in 47 CFR Part 68

Communications common carriers, Communications equipment, Telephone.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–27209 Filed 12–3–86; 8:45 am]

BILLING CODE 6712-01-M

Notices

Federal Register
Vol. 51, No. 233
Thursday, December 4, 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.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Big Creek (Delta County) Watershed, Texas; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U. S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Big Creek (Delta County) Watershed, Delta County, Texas.

FOR FURTHER INFORMATION CONTACT: Coy A. Garrett, State Conservationist, Soil Conservation Service, 101 South Main Street, Temple, Texas, 76501–7682, telephone (817) 774–1214.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Coy A. Garrett, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include financial assistance and accelerated technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Coy A. Garrett.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program, No. 10.904, Watershed Protection and Flood Prevention Program. Executive Order 12372 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Dated: October 27, 1986.

Coy A. Garrett,

State Conservationist.

[FR Doc. 86–27231 Filed 12–3–86; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration
Title: Application for Designation as a Sea Grant College or Regional Consortia
Form Number: Agency—N/A; OMB—0648–0147
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 1 respondent; 20 reporting hours
Needs and Uses: Public Law 94–961 provides for designation of eligible institutions as Sea Grant Colleges or Consortia if certain criteria are met. Applicants desiring such a designation must provide an outline of their capabilities and the reasons why they wish to be designated. The information is used for designation decisions.
Affected Public: Non-profit institutions
Frequency: One-time only
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox, 395–3785

Agency: National Oceanic and Atmospheric Administration
Title: Yellowfin and Fisheries Certificates of Origin
Form Number: Agency—SF 369–1, SF 370–1; OMB—0648–0040
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 40 respondents; 1,965 reporting hours
Needs and Uses: The Marine Mammal Act requires the Secretary to ban the importation of commercial fish from nations using commercial fishing technology which results in a kill of marine mammals in excess of U.S. standards. The information collection supplies data to determine the origin of imported fish.
Affected Public: Businesses or other for-profit institutions; small businesses or organizations; individuals
Frequency: On occasion
Respondent's Obligation: Mandatory
OMB Desk Officer: Sheri Fox, 395–3785.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collections should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

Dated: November 26, 1986.

Linda Engelmeier,

Acting Departmental Clearance Officer, Information Management Division Management, Office of Information Resources Management.

[FR Doc. 86–27244 Filed 12–3–86; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of the Census

Service Annual Survey; Notice of Consideration

The Bureau of the Census hereby gives notice that we plan to conduct in 1987 the Service Annual Survey. This annual survey will be conducted under authority of Title 13, United States Code, sections 182, 224, and 225, and will collect data on receipts/revenues for 1986 for selected service industries,

including hotels and motels; personal, business, automotive, and repair services; motion pictures and amusement services; and health, legal, and other professional services.

The survey coverage this year will be expanded to include: rooming and boarding houses; organization hotels and lodging houses, on a membership basis; hospitals; job training and vocational rehabilitation services; child day care services; residential care; and noncommercial educational, scientific, and research organizations.

This survey is a continuing and timely source of service receipts. Such a survey, if conducted, shall begin not earlier than December 31, 1986.

Information and recommendations received by the Bureau of the Census indicate that the data have significant application to the information needs of the public, the service industries, and governmental agencies, and that the data are not publicly available from nongovernmental or other governmental sources on a continuing basis.

The Bureau of the Census needs reports only from a selected sample of service firms in the United States, with probability of selection based on receipts size. The sample will provide, with measurable probability, statistics on the subject specified above.

Copies of the proposed forms and a description of the collection methods are available upon request to the Director, Bureau of the Census, Washington, DC 20233.

Any suggestions or recommendations concerning this proposed survey will receive consideration if submitted in writing to the Director, Bureau of the Census, on or before January 5, 1987. For additional information, you may phone Michael S. McKay, Chief, Organization and Management Systems Division, Bureau of the Census, on (301) 763-7452.

Dated: November 26, 1986.

John G. Keane,

Director, Bureau of the Census.

[FR Doc. 86-27232 Filed 12-03-86; 8:45 am]

BILLING CODE 3510-07-M

International Trade Administration

[A-583-401]

Bicycle Tires and Tubes From Taiwan; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On October 9, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on bicycle tires and tubes from Taiwan. The review covers two manufacturers and/or exporters of this merchandise to the United States and the period June 1, 1983 through May 31, 1985.

We gave interested parties an opportunity to comment on the preliminary results. We received a comment from one manufacturer. Based on our analysis of the comment received, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Edward Haley or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5289/5255.

SUPPLEMENTARY INFORMATION:

Background

On October 9, 1986, the Department of Commerce ("the Department") published in the Federal Register (51 FR 36257) the preliminary results of its administrative review of the antidumping duty order on bicycle tires and tubes from Taiwan (49 FR 24157, June 12, 1984). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of pneumatic bicycle tires and tubes of rubber or plastic, whether sold together as units or separately, currently classifiable under items 772.4800 and 772.5700 of the Tariff Schedules of the United States Annotated.

The review covers two manufacturers and/or exporters of Taiwanese bicycle tires and tubes to the United States and the period June 1, 1983 through May 31, 1985.

Analysis of Comment Received

We gave interested parties the opportunity to comment on the preliminary results. Li Hsin Rubber Industrial Co., Ltd., a respondent, submitted a written comment.

Comment: Subsequent to publication of the preliminary results of review Li Hsin submitted data which it claims will enable the Department to use that firm's previously-submitted computer tape in making calculations for the review period. Li Hsin wants the Department to use this data instead of using that firm's last rate as the best information available.

Department's Position: The statute and the regulations provide for the use of the best information otherwise available when, as here, a party does not supply the Department with adequate information in a timely manner. Li Hsin was provided the opportunity to correct its deficient response, and it did not do so within the time allowed. Therefore, the Department will not consider the information submitted by Li Hsin subsequent to publication of the preliminary results.

Final Results of the Review

Based on our analysis of the comment received, the final results of our review are the same as those presented in our preliminary results of review, and we determine that the following margins exist:

Manufacturer/exporter	Period	Margin (percent)
Kenda Rubber Industrial Co., Ltd.	6/1/84-5/31/85	0.02
Li Hsin Rubber Industrial Co., Ltd.	6/1/83-5/31/85	3.65

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided in section 751(a)(1) of the Tariff Act, the Department will instruct the Customs Service to collect a cash deposit of estimated antidumping duties for Li Hsin based upon the above margin. Since the margin for Kenda is less than 0.50 percent and therefore *de minimis* for cash deposit purposes, the Department waives the deposit requirement for that firm. For future shipments from the remaining manufacturers and/or exporters not covered in this review, a cash deposit shall be required at the rates published in the antidumping duty order (49 FR 24157, June 12, 1984) for each of those firms. For any entries from a new exporter not covered by this review, whose first shipments occurred after May 31, 1985 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements and waivers are effective for all of Taiwanese bicycle tires and tubes entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of

the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: November 28, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-27285 Filed 12-3-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-037]

Drycleaning Machinery From West Germany; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 15, 1986, the Department of Commerce publishing the preliminary results of its administrative review of the antidumping finding on drycleaning machinery from West Germany. The review covers two manufacturers and/or exporters of this merchandise to the United States and the period November 1, 1984 through October 31, 1985.

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Boewe Reinigungstechnik GmbH. Based on our analysis of the comments received, we have changed the margin from that presented in the preliminary results for Boewe.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or Robert J. Marenick, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 377-3601/5255.

SUPPLEMENTARY INFORMATION:

Background

On September 15, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 32676) the preliminary results of its administrative review of the antidumping finding on drycleaning machinery from West Germany (37 FR 23715, November 2, 1972). Boewe and Multimatic Inc. requested in accordance with § 353.53a(a) of the Commerce Regualtions that we conduct an administrative review. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of drycleaning machinery, currently classifiable under item 670.4100 of the Tariff Schedules of the United States Annotated.

The review covers two manufacturers and/or exporters of this merchandise to the United States and the period November 1, 1984 through October 31, 1985.

Analysis of Comments Received

We gave interested parties the opportunity to comment on the preliminary results as provided by § 353.53a(c) of the Commerce Regulations. One manufacturer, Boewe, submitted comments.

Comment 1 Boewe contends that it erred when it submitted the general and administrative expenses for certain models of machinery for which we used constructed value as foreign market value. It contends that the figures reported under special direct sales expenses contained several items that should not have been included in general and administrative expenses for computation of the constructed value for those models where constructed value was appropriate. Boewe concludes that the only actual costs originally included in this expense category, which should be included and are not included elsewhere, are those relating to guarantee The expenses it contends were erroneously included are miscellaneous competitive discounts, sales office expenses, sales agents' income, service agents' income for installation, and home market packing. Also, in its recalculation of special direct selling expenses, Boewe offset this expense account by the shipping department profit center income which was generated as a result of billing customers for freight and packing.

Department's position: We agree that the amounts included for miscellaneous competitive discounts, sales agents' income, service agents' income for installation, and home market packing should not be included in the general and administrative expenses for calculation of the constructed value. These amounts were duplicated elsewhere and were used as adjustments, where appropriate, in arriving at the foreign market value.

We disagree that sales office expenses should be excluded. Further, we do not consider the profit center income generated by the shipping department to be an appropriate reduction to this expense account.

We have modified our calculations accordingly.

Comment 2. Boewe stated that the Department added ten percent for profit for those models where constructed value was used for foreign market value. They stated that the statutory amount should be eight percent.

Department's position. We agree and have modified our calculations accordingly.

Comment 3. Boewe requested that we check the margin on a particular machine to see if we made a clerical error. They stated that it appeared that we had compared the U.S. price to the foreign market value for a "direct" sale rather than a sale through an independent agent.

Department's position. We checked our calculations for that machine and found that no error was made.

Final Results of Review

As a result of the comments received, we have revised our preliminary results for Boewe and we determine that the following weighted-average margins exist for the period November 1, 1984 through October 31, 1985:

Manufacturer/exporter	Margin (percent)
Boewe Reinigungstechnik Gmbh	0.24
Seco Maschinenbau	0

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for in section 751(a)(1) of the Tariff Act, no cash deposit of estimated antidumping shall be required on entries of this merchandise from these firms, or on future entries of this merchandise from a new exporter not covered in this or prior administrative reviews, whose first shipments occurred after October 31, 1985, and who is unrelated to any reviewed firm or any previously reviewed firm. Since the margin for Boewe is less than 0.5 percent and, therefore, *de minimis*, for cash deposit purposes, the Department waives the estimated antidumping duty cash deposit requirement for that firm. This waiver is effective for all shipments of West German drycleaning machinery entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: November 28, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 86-27286 Filed 12-3-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-014]

Hot-Rolled Carbon Steel Plate in Coil From Brazil; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On September 23, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on hot-rolled carbon steel plate in coil from Brazil that was in effect prior to October 1, 1984. The review covers three manufacturers and/or exporters of this merchandise to the United States and the period June 10, 1983 through September 30, 1984.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1986, the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 33793) the preliminary results of its administrative review of the antidumping duty order on hot-rolled carbon steel plate in coil from Brazil (49 FR 10692, March 22, 1984) that was in effect prior to October 1, 1984. We began this review under our old regulations. After the promulgation of our new regulations, two exporters and an importer requested in accordance with §353.53a(a) of the Commerce Regulations that we complete the administrative review. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of hot-rolled carbon steel plate in coil, whether or not corrugated or crimped and not pickled; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 8 inches in width and over 0.1875 inch in thickness.

This merchandise is currently classifiable under item 607.6610 of the Tariff Schedules of the United States Annotated.

The review covers three manufacturers and/or exporters of Brazilian hot-rolled carbon steel plate in coil to the United States and the period June 10, 1983 through September 30, 1984. COSIPA made no shipments during the period.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We recieved no comments or requests for a hearing. Based on our analysis, the final results of our review are unchanged from those we presented in the preliminary results. We determine that the following margins exist for the period June 10, 1983 through September 30, 1984:

Manufacturer/exporter	Margin (percent)
CSN	52.57
USIMINAS	50.55

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

On August 21, 1985, the Department published in the **Federal Register** (50 FR 33815) a notice of the final results of its changed circumstances administrative review and its revocation of the order, effective October 1, 1984. This administrative review does not affect the revocation of the antidumping duty order. Therefore, we will instruct the Customs Service to continue to liquidate all entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: November 28, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-27207 Filed 12-3-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-025]

Hot-Rolled Carbon Steel Sheet From Brazil; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY:

On September 23, 1986, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on hot-rolled carbon steel sheet from Brazil that was in effect prior to October 1, 1984. The review covers two manufacturers and/or exporters of this merchandise to the United States and the period of April 26, 1984 through September 30, 1984.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are unchanged from those presented in the preliminary results.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Michael Rill or Maureen Flannery, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On September 23, 1986, the Department of Commerce ("the Department") published in the Federal Register (51 FR 33794) the preliminary results of its administrative review of the antidumping duty order on hot-rolled carbon steel sheet from Brazil (49 FR 35536, September 10, 1984) that was in effect prior to October 1, 1984. We began this review under our old regulations. After the promulgation of our new regulations, an importer, Hansa World

Cargo Service, Inc., requested in accordance with section 353.53a(a) of the Commerce Regulations that we complete the administrative review. We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of hot-rolled carbon steel sheet. Hot-rolled carbon steel sheet is a flat-rolled carbon steel product, whether or not corrugated or crimped; not cold-rolled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; and 0.1875 inch or more in thickness, over 8 inches in width and pickled, as currently classifiable under item 607.8320 of the Tariff Schedules of the United States Annotated ("TSUSA"), or under 0.1875 inch in thickness and over 12 inches in width, whether or not pickled, whether or not in coils, as currently classifiable under item 607.6710, 607.6720, 607.6730, 607.6740, or 607.8342 of the TSUSA. This description of hot-rolled carbon steel sheet includes some products classified as "plate" in the TSUSA.

The review covers two manufacturers and/or exporters of Brazilian hot-rolled carbon steel sheet to the United States and the period April 26, 1984 through September 30, 1984.

Final Results of the Review

We invited interested parties to comment on the preliminary results. We received no comments or requests for a hearing. Based on our analysis, the final results of our review are unchanged from those we presented in the preliminary results. We determine that the following margins exist for the period April 26, 1984 through September 30, 1984:

Manufacturer/exporter	Margin (percent)
COSIPA	18.03
USIMINAS	18.15

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

On August 21, 1985, the Department published in the **Federal Register** (50 FR 33814) a notice of the final results of its changed circumstances administrative review and its revocation of the order, effective October 1, 1984. This administrative review does not affect the revocation of the antidumping duty order. Therefore, we will instruct the Customs Service to continue to liquidate all entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53a).

Dated: November 28, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-27288 Filed 12-3-86; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-028]

Roller Chain, Other Than Bicycle From Japan; Final Results of Antidumping Duty Administrative Review

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

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 1, 1983, the Department of Commerce published the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on roller chain, other than bicycle, from Japan. The review covered Tsubakimoto Chain Co. and the period December 1, 1979 through March 31, 1981.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke in part. At the request of the petitioner, the Department held a public hearing on November 9, 1983. Based on our analysis of the comments received, we are reducing the weighted average margin for Tsubakimoto Chain Co.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Richard P. Bruno or J. Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone: (202) 377-5255.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 1983, the Department of Commerce ("the Department") published in the Federal Register (48 FR 39673) the preliminary results of its administrative review and tentative determination to revoke in part the antidumping finding on roller chain, other than bicycle, from Japan (38 FR 9926, April 12, 1973). We began the current review of the finding under our old regulations. After the promulgation of our new regulations, both petitioner and respondent requested in accordance with § 353.52a of the Commerce Regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review on July 9, 1986 (51 FR 24883). We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of roller chain, other than bicycle, currently classifiable under various provisions of the Tariff Schedules of the United States Annotated from item numbers 652.1400 through 652.3800. The review covers Tsubakimoto Chain Co. and the period December 1, 1979 through March 31, 1981.

Analysis of Comments Received

We gave interested parties the opportunity to comment on the preliminary results and tentative determination to revoke in part. At the request of the petitioner, American Chain Association (ACA), we held a public hearing on November 9, 1983.

Comment 1

ACA argues that the review period was insufficient to serve as the basis for a tentative revocation in that the published margin was derived from comparisons of home market sales during the 12 month period of December 1979 through November 1980 with U.S. sales from April 1980 through March 1981. This 12 month period combined with the previous 8 month period does not meet the two year minimum period required for tentative revocation.

Even if two years were covered, it would be insufficient in the circumstances of this case to establish that sales at less than fair value have ceased with no likelihood of resumption.

Department's Position

This review covers shipments to the United States from December 1979 through March 1981. The previous review covered shipments from April 1979 through November 1979. Therefore, a full two year period was reviewed prior to publication of preliminary results. In addition, the periods from April 1, 1981 through September 1, 1983 and from April 1, 1985 through March 31, 1986 will be reviewed prior to final revocation, if granted. This is a more

than adequate review period on which to base a revocation.

The Department does not consider this case exceptional. Two years of *de minimis* margins are adequate for considering revocation. The written agreement provided by Tsubakimoto as required by section 353.54(e) of the Commerce Regulations satisfies the Department.

Comment 2

ACA states that substantial margins on 25-3R chain were disregarded because the chain was exported in February 1977. In addition, sales of other items may have gone unreported. The Department should scrutinize all sales in the United States during the period of review regardless of the date of export.

Department's Position

Since it is impossible to identify a specific piece of roller chain from the date it leaves the factory in Japan to the date it is sold in the United States, Tsubakimoto provides the Department with the usual length of time between date of export and date of sale in the United States. A four month lag period is calculated by Tsubakimoto. Therefore, as an example, all exports shipped in March are assumed to be sold in July.

Certain sales reported by Tsubakimoto's U.S. subsidiary, UST, Inc., were of merchandise exported and entered into the country in 1977. These items were considered in a previous review and accounted for in C.I.E. master list supplement number 171, dated May 1, 1979, which covered exports for the period October 1, 1975 through March 31, 1978. The dumping duties, if any, are already collected on the 1977 shipments reported by Tsubakimoto.

In regard to any unreported sales, it is the Department's policy to instruct Customs to assess the "new shipper" rate on any items not specifically shown on its master lists.

Comment 3

ACA contends that the margin published for Tsubakimoto was not weighted. It was an unweighted average of average margins for each of the four channels of sale.

Department's Position

The Department has recalculated margins based on total sales value of all exporter's sales prices and performed other corrections which resulted in a weighted average margin of 0.07 percent.

Comment 4

ACA states that the regulations require that the information on which a final determination is based shall be verified. At the time of the publication of preliminary results no verification had been performed for UST data.

Department's Position

In accordance with the Department's policy, we have verified the UST data for the period April 1, 1980 through September 1, 1983, the date of our tentative determination to revoke.

Comment 5

According to ACA, Tsubakimoto has improperly treated samples in the home market as sales at 100 percent discount, thus reducing the average home market selling price.

Department's Position

There were very few samples distributed by Tsubakimoto. Eliminating sample sales completely from home market sales or including them as sales with no discount would have an insignificant effect on the margin calculations.

Comment 6

ACA disagrees with the sales award deduction allowed Tsubakimoto because the verification report found the award did not relate to specific sales.

Department's Position

We allowed the adjustment for sales award because it was quantifiable and directly related to the sales under consideration. Sales award liability was incurred by virtue of sales of roller chain during the period covered. Thus, the payment of a sales award to a distributor who achieved a targeted sales amount and the amount of those payments were directly dependent on the sale or non-sale of such roller chain. Additionally, the actual total sales award used to arrive at per-unit figures was verified by the Department. The verifier confirms that the sales award is directly related to sales of roller chain as a product group. The per-unit figures do not represent approximations or estimates but reasonable allocations of actual costs.

Comment 7

ACA contends that the Department should not use home market prices to related purchasers because the regulation provides that home market prices to related persons ordinarily are not used unless the sales are shown to be at arms length. Tsubakimoto did not provide specific information that would allow comparisons of the discounts to related and unrelated distributors.

Department's Position

Tsubakimoto sells to related and unrelated distributors at the same price and on the same terms. Terms and prices to both related and unrelated distributors were verified. Thus, using sales to both classes of distributors is valid.

Comment 8

ACA contends that discounts were very likely given on less than 20 percent of home market sales for many chain models. If 80 percent or more of sales in the home market are at the same price, the sales at discount should not be considered.

Department's Position

We analyzed the complete home market sales listing and determined that there is no predominant price for any item as defined by § 353.20(b) of the Commerce Regulations. The Department used weighted average home market price as the starting price for foreign market value as provided for in § 353.20(a). In the absence of a predominant price, weighted average home market price is the preferred basis for foreign market value where significant numbers of sales exist.

Comment 9

ACA is concerned that no explanation for termination of the inquiry into sales below cost of production was given.

Department's Position

During the course of two verifications the Department found no evidence of sales below cost of production for those models used for comparisons. It verified cost of production data for two different periods and is satisfied that the issue need not be pursued.

Comment 10

ACA disagrees with allocation of freight cost by value. The deduction from foreign market value for inland freight charges was based on the allocation of each of three factories' costs "using the percentage of sales (in yen) of the subject merchandise of that factory's total sales (in yen)." It seems that inland freight charges are more likely to be a function of weight than of value (or at least a function both of weight and value) and that the weight of output for various products would be known or derivable. If the other merchandise produced in these factories had a significantly higher ratio of weight to value than the subject merchandise,

the allocation method would overstate the inland freight cost of the subject merchandise and result in an excessive downward adjustment to home market selling price.

Further, it is implied that home market inland freight is five times as costly as inland freight for merchandise destined to the United States. The location of factories in relation to ports should be ascertained and compared for home market and U.S. sales.

Department's Position

Information was not available that would have permitted the Department to allocate inland freight charges on the basis of weight or volume. Tsubakimoto's inland freight costs for the three factories producing the subject merchandise came directly from company accounting records and are the costs specifically used by the company in determining profits for each item. Sales of the subject merchandise represent most of the output of these three factories. The Department used the freight cost allocation based on the percentage of sales value of the subject merchandise in relation to total sales of all products manufactured, calculated for each factory, as the best information available. In regard to the location of factories in relation to ports, the proximity of the factories to the port of exportation justifies the lower inland freight charge for merchandise destined for the United States.

Comment 11

ACA contends that the credit cost adjustment to foreign market value was not substantiated. An adjustment for excess of home market credit costs over U.S. credit costs was allowed. A difference of 60 days of credit costs is claimed. It appears that UST bears a further credit expense prior to final sale. This expense should be deducted from the exporter's sales price. If not, Tsubakimoto's credit adjustment claim is invalid. In the absence of verification of UST's response and analysis of this question, it is impossible to know whether credit costs have been properly treated.

Department's Position

We agree with the petition that a deduction should be made from exporter's sales price for certain expenses incurred by UST on sales in the United States. For the period prior to final sale, the Department is including in U.S. indirect selling expenses an additional amount for imputed interest from the date of export payment to the date of sale in the United States to the first unrelated purchaser. This amount is for inventory carrying cost incurred in the United States. The cost for the period from the date of export to the date of export payment is incurred by Tsubakimoto. This later cost, however, should be deducted from exporter's sales price instead of being treated as an adjustment to home market credit cost, as Tsubakimoto claimed.

For the period after final sale, the Department is including in U.S. direct selling expenses an amount for credit expense incurred by UST on its sales in the United States.

Comment 12

ACA is not satisfied with the revocation application agreement signed by Tsubakimoto. The application included statements not mentioned in 19 CFR 353.54(e) (1983), such as "massive imports of roller chain, other than bicycle, from Japan by Tsubakimoto Chain Co., Ltd. over a relatively short period" and absence of negative injury determination by ITC.

Department's Position

The agreement signed by Tsubakimoto conforms with that requested by the Department and we are satisfied that resumption of dumping is unlikely.

Comment 13

ACA claims that updating results through the date of the tentative revocation is no substitute for a complete and thorough review of the period upon which we based tentative revocation. Deficiencies in the original review cannot be cured by updating; they undermine a basic prerequisite for consideration of revocation.

Department's Position

The Department has performed thorough reviews on Tsubakimoto resulting in zero or *de minimis* margins for the periods April 1, 1979 through November 30, 1979 and December 1, 1979 through March 31, 1981. These reviews and results fulfill the requirements of § 353.54 of the Commerce Regulations. Further, the Department will review the data from April 1, 1981 through September 1, 1983 and from April 1, 1985 through March 31, 1986 to determine whether final revocation may be granted.

Comment 14

Tsubakimoto disagrees with the initial *de minimis* average margin calculated. The correct margin should be a weighted average margin. Calculating a weighted average margin using total margins and total sales value of all exporter's sales prices results in a smaller *de minimis* margin than originally calculated.

Department's Position

We agree. The Department has performed this calculation and other corrections which resulted in a weighted average margin of 0.07 percent.

Comment 15

In regard to the deleted sales of merchandise shipped in 1977, Tsubakimoto argues that section 751(a)(2) (A) and (B) of the Trade Agreements Act of 1979, 19 U.S.C. 1675, states that each annual administrative review of an antidumping determination is to determine the amount of antidumping duty for entries subject to the order or finding. Where there are no imports of merchandise during the period, there can be no imposition of dumping duties. Thus, deleting sales made of merchandise exported in 1977 is correct.

Department's Position

As discussed in the Department's response to Comment 2, merchandise entered into the country in 1977 was considered in a previous review and accounted for in published master lists.

Comment 16

Tsubakimoto believes that there is ample basis for revocation. Preliminary results of the current review covered December 1979 through March 1981. The previous review covered April 1979 through November 1979. Section 353.54(b) of the Commerce Regulations states that ordinarily an application for revocation will be considered only if there have been no sales at less than fair value for at least two years. Prior to final publication of revocation, the Department will have reviewed five years and five months of data which will resolve beyond any reasonable doubt that there have been no more than *de minimis* sales at less than fair value.

Department's Position

The Department agrees that an adequate period on which to base a tentative revocation has been reviewed. It has also received from Tsubakimoto the written agreement required by § 353.54(e) of the Department regulations. A final determination on revocation will be made after review of the period from April 1, 1985 through March 31, 1986.

Comment 17

Tsubakimoto claims that the Department erred in that the calculation for the period from December 1979

through March 1981 did not include all home market selling prices for December 1979 through March 1980 but rather sales prices for April 1980 through March 1981. Had the calculation included actual home market sales prices for the period indicated an even smaller margin would have resulted. Nevertheless, the use of the foreign market values from the earlier period would not materially change the final results.

Department's Position

We agree that we erroneously excluded some home market sales during the December 1979 through March 1980 period and the effect of including these sales would have been to lower the margin. However, because the finding is already *de minimis* and because including the sales would not result in significant differences, no changes will be made to the results of the administrative review.

Comment 18

Tsubakimoto states that net selling prices as ascertained by Tsubakimoto's audited accounts were used as starting price in the Department's calculations of foreign market value. These prices included adjustments for certain discounts and sample sales which are based on actual sales practices by Tsubakimoto. They have been verified by the Department. Because of the very great differences between exporter's sales prices and foreign market values any changes in foreign market values by disallowing the discounts and sample sales would not materially affect the margin.

Department's Position

As discussed in the Department's response to Comment 5, including sample sales as sales at no discount would have an insignificant effect on the margin calculations. In regard to certain discounts, they have been allowed since each of the two discounts is quantifiable and directly related to specific sales, and has been verified by the Department.

Comment 19

Tsubakimoto claims that the sales award adjustment is a proper deduction. It relates directly to sales of the merchandise under consideration.

Department's Position

As discussed in the Department's response to Comment 6, the allowance for sales award is quantifiable and directly related to the sales under consideration. The payment of sales award is directly dependent on the sale or non-sale of roller chain and the amount of payment is a reasonable allocation of actual costs.

Comment 20

Tsubakimoto claims that the verification of its data was more than sufficient. Verification included sales to both related and unrelated distributors and turned up no anomalies. The verification in question did review and verify cost of production. The Department separately reviewed allegations of sales at less than cost of production and determined that Tsubakimoto is not selling at less than cost.

Inland freight costs listed by Tsubakimoto come directly from company accounting records and are the costs specifically used by the company in determining profit for each item. The data on shipping costs are kept in conformance with generally accepted accounting principles.

ACA's objection to the credit adjustment is that it may distort the amount by one week's worth of credit. This amount would have no effect on the calculation.

Department's Position

Except for credit costs, as noted in Comment 11, the Department found no contradiction between the results of the verification and the information contained in the response and is satisfied with the preliminary results as amended.

Comment 21

Tsubakimoto contends that the lack of verification of UST is not a basis for rejecting the preliminary results of review and tentative revocation in part. Verification of UST prior to publication of final revocation satisfies the requirements of section 776 of the Act, as amended.

Department's Position

The Department's policy is to verify company responses, when revocation is requested, prior to publication of final revocation. All verifications will be performed prior to final revocation, if granted.

Comment 22

The agreement signed by Tsubakimoto pursuant to 19 CFR 353.54(e) is in the format provided by the Department and is valid. Tsubakimoto is willing to sign any other form of agreement which the Department may determine it requires, if necessary.

Department's Position

As discussed in response to Comment 12 the Department is satisfied with the signed agreement.

Final Results of the Review

Based on our analysis of comments received, we have made certain corrections to credit costs, to indirect and direct selling expenses in the United States, and to the exchange rates used and have recalculated the margin using a weighted average. This resulted in a reduction in the margin from 0.14 percent to 0.07 percent for the period December 1, 1979 through March 31, 1981.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions directly to the Customs Service.

The Department will waive the cash deposit requirement as provided for by section 751(a)(1) of the Tariff Act for Tsubakimoto Chain Co. since the margin for this firm is less than 0.5 percent and therefore, *de minimis* for cash deposit purposes.

The Department will examine shipments of this merchandise manufactured and exported by Tsubakimoto Chain Co. from April 1, 1981 through September 1, 1983, the date of our tentative determination to revoke with regard to this firm, and from April 1, 1985 through March 31, 1986, in future administrative reviews.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 353.53a of the Commerce Regulations (19 CFR 353.53a).

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

November 28, 1986.

[FR Doc. 86-27289 Filed 12-3-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-565-001]

Canned Tuna From the Philippines; Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On October 9, 1986, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on canned tuna from the Philippines. The review covers the period January 1, 1984 through December 31, 1984 and 19 programs.

We gave interested parties an opportunity to comment on the preliminary results. After reviewing all of the comments received, we have determined the total bounty or grant for the period of review to be 0.43 percent *ad valorem*, a rate the Department considers to be *de minimis*.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Lorenza Olivas, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On July 25, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 50914) the final results of its last administrative review of the countervailing duty order on canned tuna from the Philippines. On October 31, 1985, the Government of the Philippines, a group of importers, the Tuna Group of the Association of Food Industries, and a group of exporters, the Tuna Canners Association of the Philippines, requested in accordance with § 355.10 of the Commerce Regulations that we complete the administrative review of this order. We published the initiation of the administrative review on November 12, 1985 (50 FR 46689) and the preliminary results on October 9, 1986 (51 FR 36260). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Philippine tuna, packed and preserved in any manner, not in oil, in airtight containers. Such merchandise is currently classifiable under items 112.3020, 112.3040, and 112.3400 of the Tariff Schedules of the Unites States Annotated ("TSUSA").

The review covers the period January 1, 1984 through December 31, 1984 and 19 programs: (1) Export packing credits; (2) an income tax deduction for labor and raw materials; (3) equity investment by insurance companies; (4) foreign equity investment; (5) preferential access to foreign exchange; (6) an exemption from import taxes; (7) an income tax deduction for overseas offices; (8) an income tax deduction for new brand names; (9) an income tax deduction for export traders; (10) an income tax deduction for financial assistance; (11) government bank loans; (12) private bank loans; (13) employee equity investment; (14) a tax credit for net local content; (15) a tax credit for net local value; (16) preferential loan guarantees; (17) government equity investment; (18) various financial services by the Export Credit Insurance and Guarantee Corporation; and (19) various financial and marketing assistance by the Institute for Export Development.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the respondents: The Government of the Philippines, a group of importers, the Tuna Group of the Association of Food Industries, and a group of exporters, the Tuna Canners Association of the Philippines.

Comment 1: The respondents contend that the Department overstated the benefit from Export Packing Credits ("EPC's") obtained by Mar Fishing Company by allocating the loan benefits over only exports of tuna to the United States. Since the EPC's reported by Mar are based on exports of all products to all markets, the denominator should be the company's total sales of all products.

Department's position: We agree and have corrected our calculations. *See* also, our position to Comment 2.

Comment 2: The respondents argue that the Department overstated the benefit of EPC's by using an annual weighted average interest rate benchmark for 1984 instead of the quarterly weighted average interest rates prevailing at the time that each EPC was granted.

Since there was a rapid increase in interest rates between the first and fourth quarters of 1984, use of quarterly rates would more accurately reflect the economic conditions at the time that particular EPC's were granted. A greater volume of EPC's were granted in the first and second quarters of 1984 than in the last two quarters.

Department's position: We agree and have corrected our calculations. By making this adjustment and that noted in Comment 1, we determine the benefit from the EPC program to be 0.38 percent *ad valorem*.

Comment 3. The respondents contend that the Department should calculate the amount of "negative benefit" from EPC's granted at rates above the benchmark and subtract that amount from the total benefit derived from EPC's granted at rates below the benchmark.

Department's position: We disagree. Section 771(6) of the Tariff Act limits deductions from the gross subsidy to application fees, export taxes, and government-mandated deferred receipt of benefits.

Final Results of Review

After consideration of all of the comments received, we determine the total bounty or grant during the period of review to be 0.43 percent *ad valorem*. The Department considers any rate less than 0.50 percent *ad valorem* to be *de minimis*.

The Department will instruct the Customs Service not to assess countervailing duties for shipments of this merchandise exported on or after January 1, 1984 and on or before December 31, 1984. The Department will instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: November 28, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86–27290 Filed 12–03–86; 8:45 am]

BILLING CODE 3510-DS-M

[C–469–009]

Carbon Steel Wire Rod From Spain; Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On October 14, 1986, the Department of Commerce published the preliminary results of its administrative

review of the countervailing duty order on carbon steel wire rod from Spain. The review covers the period February 24, 1984 through September 30, 1984 and seven programs.

We gave interested parties an opportunity to comment on the preliminary results. After reviewing the comment received, we determine the net subsidy for the period of review to be 7.6 percent *ad valorem* for Forjas Alavesas, S.A., and 24.04 percent *ad valorem* for all other firms.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1984, the Department of Commerce ("the Department") published in the **Federal Register** (49 FR 18089) a countervailing duty order on carbon steel wire rod from Spain. We began this review under our old regulations. On October 1, 1985, after the promulgation of our new regulations, a Spanish exporter, Forjas Alavesas, S.A., requested in accordance with § 355.10 of the Commerce Regulations that we complete the administrative review of this order. We published the new initiation on November 27, 1985 (50 FR 48825) and the preliminary results on October 14, 1986 (51 FR 36579). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Spanish carbon steel wire rod, which includes coiled, semi-finished, hot-rolled carbon steel wire rod products of approximately round solid cross-section, not under 0.20 inch nor over 0.74 inch in diameter, not tempered, not treated, and not partly manufactured, and valued over 4 cents per pound. Such merchandise is currently classifiable under item 607.17 of the Tariff Schedules of the United States.

The review covers the period February 24, 1984 through September 30, 1984 and seven programs: (1) A rebate of indirect taxes upon exportation under the DFE; (2) operating capital loans; (3) long-term loans; (4) capital grants for pollution control, energy conservation and economic development; (5) short-term Privileged Circuit Exporter Credit programs other than operating capital loans; (6) research and development programs; and (7) accelerated depreciation and reduction in taxes.

Analysis of Comment Period

We invited interested parties to comment on the preliminary results. We received a written comment from Forjas Alavesas, S.A., a Spanish exporter.

Comment: Forjas contends that the Department erred in finding certain capital grants, provided by the Basque regional government for energy conservation and pollution control, to be countervailable subsidies. Programs that are administered by regional or provincial governments and that are not limited to a specific enterprise or industry, or group of enterprises or industries within the region or province, are generally available and, therefore, not countervailable. Forjas cites the Department's preliminary determination in *Certain Softwood Lumber Products From Canada* (51 FR 37453, October 22, 1986), in which the Department found certain programs of the provinces of Quebec, British Columbia, and Alberta not to be countervailable because the programs were generally available in each province. The Department also determined in *Certain Steel Products From the Netherlands* (47 FR 39372, September 7, 1982) that energy research and conservation grants to Dutch steel producers were not countervailable in part because the grants were generally available.

Forjas distinguishes the present case from the preliminary determination in *Porcelain-on-Steel Cooking Ware from Spain* (51 FR 34480, September 29, 1986) and the final determination in *Oil Country Tubular Goods from Spain* (49 FR 47060, November 30, 1984), in which the Department found certain capital grants to be countervailable. In those cases, the Department was not provided with any laws or regulations describing the programs. In this case, the Department has the laws stating that the energy conservation and pollution control projects are available to all industries within the region. Thus, the Department was incorrect in stating that it was unable to determine whether these grants were provided to more than a specific industry or group of industries in the Basque region.

Department's Position: We agree that programs provided by a regional or provincial government are not countervailable if they are not limited to certain enterprises or industries within the region or province. However, because the Government of Spain and the Basque regional government provided no evidence that these grant programs are not limited to specific enterprises or industries, we must consider them to be countervailable. Although Forjas submitted the regulations concerning the energy conservation and anti-pollution grants, the regulations do not state that the grants are not specifically provided. The regulations simply list the eligibility requirements. Further, neither the Spanish government nor the Basque regional government provided any information on other types of firms in other industrial sectors that have received these grants. Absent such information, we must consider these grants to be countervailable.

Final Results of Review

After consideration of the comment received, we determine the net subsidy during the period of review to be 7.76 percent *ad valorem* for Forjas Alavesas, S.A., and 24.04 percent *ad valorem* for all other firms. Because we consider these rates to be significantly different, as provided in section 706(a)(2) of the Tariff Act, we are granting a company-specific rate to Forjas Alavesas.

Section 707 of the Tariff Act provides that the difference between the deposit of an estimated countervailing duty and the final assessed duty shall be disregarded to the extent that the estimated duty is lower than the final duty, and refunded to the extent that the estimated duty is higher than the final duty, for merchandise entered, or withdrawn from warehouse, for consumption before the date of publication of affirmative determination of injury by the International Trade Commission, in this case, July 5, 1984 (49 FR 27640).

The Department therefore will instruct the Customs Service to assess countervailing duties of 7.76 percent of the f.o.b. invoice price on all shipments of this merchandise from Forjas Alavesas, S.A., entered, or withdrawn from warehouse, for consumption on or after February 24, 1984, and exported on or before September 30, 1984. The Department will instruct the Customs Service to assess countervailing duties of 12.59 percent of the f.o.b. invoice price on all shipments of this merchandise from all other firms entered, or withdrawn from warehouse, for consumption on or after February 24, 1984, and before July 5, 1984, and 24.04 percent of the f.o.b. invoice price on all shipments of this merchandise from all firms other than Forjas Alavesas, S.A., entered, or withdrawn from warehouse, for consumption on or after July 5, 1984 and exported on or before September 30, 1984.

Because we revoked this order effective October 1, 1984, we will not

instruct the Customs Service to collect a cash deposit of estimated countervailing duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: November 28, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-27291 Filed 12-3-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-423-603]

Initiation of Countervailing Duty Investigation: Industrial Phosphoric Acid From Belgium

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Belgium of industrial phosphoric acid, as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of this action, so that it may determine whether imports of the subject merchandise from Belgium materially injure, or threaten material injury to, a U.S. industry. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Tariff Act of 1930, as amended (the Act). If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 22, 1986, and we will make ours on or before January 29, 1987.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Gary Taverman 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) 377-0161 or 377-2438.

SUPPLEMENTAL INFORMATION:

The Petition

On November 5, 1986, we received a petition filed in proper form on behalf of the U.S. industry producing industrial phosphoric acid from FMC Corporation and Monsanto Company. 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 Belgium of industrial phosphoric acid receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act). In addition, the petition alleges that such imports materially injure, or threaten material injury to, a U.S. industry. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act.

Since Belgium 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 Belgium materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioners supporting the allegations. We have examined the petition on industrial phosphoric acid and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Belgium of industrial phosphoric acid as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before January 29, 1987.

Scope of Investigation

The product covered by this investigation is "industrial phosphoric acid" which is provided for in item 416.30 of the *Tariff Schedules of the United States, (TSUS).*

Allegations of Subsidies

The petition lists a number of practices by the Government of Belgium which allegedly confer subsidies on manufacturers, producers, or exporters in Belgium of industrial phosphoric acid. We are initiating an investigation on the following programs:

- *Programs Created by the 1970 Economic Expansion Law (EEL)*

—Capital Grants and Interest Rate Reductions
—Loan Guarantees
—Accelerated Depreciation
—Exemption from Real Property Tax
—Exemption from Capital Registration Tax
—Employment Premiums
—Contractual Aid
—Exemption from Capital Gains Tax

- *Preferential Loans*
- *Employment-Based Benefits*
- *Operating Subsidies*
- *Investment in Prayon by the Regional Investment Company of Wallonia (SRIW)*
- *1985 Equity Infusions by SRIW*

We are not initiating an investigation on the following program:

- *Investment in Prayon by the Office Cherifien des Phosphates of Morocco (OCPM).*

According to the petition, one of Prayon's major investors in its 1982 reorganization was the OCPM, an agency of the Government of Morocco. Petitioners contend that the fact that the OCPM is an agency of the Moroccan government does not preclude it from bestowing a countervailable subsidy on Prayon. Petitioners further assert that there is no statutory requirement that the government responsible for a countervailable investment be the central government of the country in which the imported merchandise is produced.

Section 303 of the Act states that whenever any country

> "* * * shall pay or bestow, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article or merchandise manufactured or produced *in such country* * * *, then upon the importation of such article or merchandise into the United States there shall be levied and paid, in all such cases, in addition to any duties otherwise imposed, a duty equal to the net amount of such bounty or grant however the same be paid or bestowed. (emphasis added)

While this investigation is under section 701, rather than section 303, the definition of subsidy in section 771(5) of the Act is defined to have the same meaning as "bounty or grant" under section 303. Since one country can not subsidize another under section 303, a similar limitation is applicable to investigations under section 701. Based on the statutory language, therefore, we do not consider any investment by the Government of Morocco in Prayon to constitute a countervailable subsidy within the meaning of the Act.

Allegation of Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of industrial phosphoric acid from Belgium.

They claim that the product concerned benefits from subsidies that are inconsistent with the GATT Subsidies Code, and that imports have been massive over a relatively short period. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will also allow the ITC access to all privileged and proprietary information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the express written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 22, 1986, whether there is a reasonable indication that imports of industrial phosphoric acid from Belgium materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

November 25, 1986.

[FR Doc. 86-27292 Filed 12-3-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-605]

Initiation of Countervailing Duty Investigation: Industrial Phosphoric Acid From Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of a petition filed in proper form with the U.S. Department of Commerce, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Israel of industrial phosphoric acid as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the countervailing duty law. We are notifying the U.S. International Trade Commission (ITC) of of this action, so that it may determine whether imports of the subject merchandise from Israel materially injure, or threaten material injury to, a U.S. industry. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Tariff Act of 1930, as amended (the Act). If this investigation proceeds normally, the ITC will make its preliminary determination on or before December 22, 1986, and we will make ours on or before January 29, 1987.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Barbara Tillman or Gary Taverman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-2438 or 377-0161.

SUPPLEMENTARY INFORMATION:

The Petition

On November 5, 1986, we received a petition in proper form filed on behalf of the U.S. industry producing industrial phosphoric acid from the FMC Corporation and the Monsanto Company. In compliance with the filing requirements of section 355.26 of the Commerce Regulations (19 CFR 355.26), the petition alleges that manufacturers, producers, or exporters in Israel of industrial phosphoric acid receive subsidies within the meaning of section 701 of the Act. In addition, the petition alleges that such imports materially injure, or threaten material injury to, the U.S. industry producing a like product. The petition also alleges that "critical circumstances" exist within the meaning of section 703(e)(1) of the Act.

Since Israel 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 Israel materially injure, or threaten material injury to, a U.S. industry.

Initiation of Investigation

Under section 702(c) of the Act, we must determine, within 20 days after a petition is filed, whether the petition sets forth the allegations necessary for the initiation of a countervailing duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations. We have examined the petition on industrial phosphoric acid and have found that it meets the requirements of section 702(b) of the Act. Therefore, we are initiating a countervailing duty investigation to determine whether manufacturers, producers, or exporters in Israel of industrial phosphoric acid as described in the "Scope of Investigation" section of this notice, receive benefits which constitute subsidies within the meaning of the Act. If our investigation proceeds normally, we will make our preliminary determination on or before January 29, 1987.

Scope of Investigation

The product covered by this investigation is "industrial phosphoric acid," as provided for in item 416.30 of the *Tariff Schedules of the United States (TSUS).*

Allegations of Subsidies

The petition lists a number of practices by the Government of Israel which allegedly confer subsidies on manufacturers, producers, or exporters in Israel of industrial phosphoric acid. We are initiating an investigation on the following alleged programs:

- *Benefits Under the Encouragement of Capital Investment Law 5719-1959:*

—Investment Grants
—Accelerated Depreciation
—Direct Reduction of Corporate Tax
—Tax Exemptions

- *Direct Export Subsidies From the Bank of Israel*

—Export Production Fund ("EPF")
—Export Shipment Fund ("ESF")
—Imports-for-Exports Fund ("IEF")

- *Export Promotion Fund*
- *Exchange Rate Risk Insurance*
- *Eligible Foreign Investment Company*
- *Benefits Provided Under the Encouragement of Industry Law of 1969 (the "1969 Tax Law")*

—Preferential Accelerated Depreciation
—Further Reduction of Tax Rates

- *Subsidies for Research and Development Activities*
- *Long-Term Development Loans*

Allegation of Critical Circumstances

Petitioners allege that critical circumstances exist with respect to imports of industrial phosphoric acid from Israel. They claim that the products concerned benefit from export subsidies that are inconsistent with the GATT Subsidies Code, and that imports have been massive over a relatively short period. We will determine whether critical circumstances exist with respect to these imports in our preliminary and final determinations.

Notification of ITC

Section 702(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonconfidential information. We will also allow the ITC access to all privileged and confidential information in our files, provided it confirms that it will not disclose such information either publicly or under an administrative protective order without the express written consent of the Deputy Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by December 22, 1986, whether there is a reasonable indication that imports of industrial phosphoric acid from Israel materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will terminate; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 702(c)(2) of the Act.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

November 25, 1986.

[FR Doc. 86-27293 Filed 12-3-86; 8:45 am]

BILLING CODE 3510-DS-M

[C-401-056]

Viscose Rayon Staple Fiber From Sweden; Final Results of Countervailing Duty Administrative Review

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

ACTION: Notice of final results or countervailing duty administrative review.

SUMMARY: On August 14, 1986, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden. The review covers the period October 1, 1982 through September 30, 1983 and five programs.

We gave interested parties an opportunity to comment on the preliminary results. After reviewing all of the comments received, we have determined the net subsidy for the period of review to be 7.26 percent *ad valorem*.

EFFECTIVE DATE: December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Cynthia Gozigian or Paul McGarr, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 50911) the final results of its last administrative review of the countervailing duty order on viscose rayon staple fiber from Sweden (44 FR 23319, May 15, 1979). We began this review under our old regulations. On September 24, 1985, after the promulgation of our new regulations, the petitioners, Avtex Fibers, Inc. ("Avtex") and Courtaulds North America, Inc. ("Courtaulds"), requested in accordance with § 355.10 of the Commerce Regulations that we complete the administrative review of this order. We published the new initiation on November 27, 1985 (50 FR 48825) and the preliminary results on August 14, 1986 (51 FR 29145). We have now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of Swedish regular viscose rayon staple fiber and high-wet modulus ("modal") viscose rayon staple fiber. Such merchandise is currently classifiable under items 309.4320 and 309.4325 of the Tariff Schedules of the United States Annotated ("TSUSA").

The review covers the period October 1, 1982 through September 30, 1983 and five programs: (1) Loans/grants for plant creation; (2) elderly employment compensation; (3) a grant for manpower reduction and a conditional loan; (4) an energy savings loan grant; and (5) deferral of interest payments.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received written comments from the petitioners, Avtex and Courtaulds, and from the respondent, Svenska Rayon, AB ("Svenska").

Comment 1: Avtex and Courtaulds cite the analysis in *Cabot* v. *United States* to argue that the energy savings loan/grant to Svenska is not a "generalized" benefit (*e.g.*, infrastructure or education) provided by the Swedish government to all citizens, but rather a specific benefit directed at Svenska's rayon staple fiber production. Therefore, even if such benefits were generally available, the particular type of loan/grant received directly by Svenska constitutes a specific, quantifiable benefit and is, as a matter of law, a countervailable subsidy. Conversely, Svenska contends that the specificity test, as applied by the Department in this case, is both consistent with, and mandated by, the language of the Tariff Act.

Department's position: We did not use the concept of a "generalized" benefit in analyzing this program. We based our analysis on our standard specificity test. In doing so, we found no evidence that this program was targeted to a specific enterprise or industry, group of enterprises or industries, or to companies located in specific regions. We do not consider a domestic program that does not restrict participation to specific industries or locations and that in fact is used by a wide variety of industries in various locations to be specifically provided.

Comment 2: Avtex and Courtaulds claim that because the names of the recipients and the nature of the energy savings loan/grant are classified for national security purposes, the program cannot be found to be generally available.

Department's position: We disagree. Whether the names of participants in this program are publicly available or classified is not dispositive. The Swedish government classified the details of this program (*e.g.*, the names of specific recipients) for purposes of national economic defense, a prerogative of any government. The purpose of the program is to reduce dependence on foreign sources of energy. Based on our examination of the facts concerning the operation of this program (*see* our response to comment 1), our position is unchanged from the preliminary results.

Final Results of Review

After consideration of all of the comments received, we determine the net subsidy during the period of review to be 7.26 percent *ad valorem*.

Because of an affirmative injury finding by the International Trade Commission ("the ITC") under section 104(b) of the Tariff Act, the Department has already instructed the Customs Service to liquidate entries of this merchandise entered on or before March 15, 1983, the date the ITC notified us of its determination. The Department will instruct the Customs Service to assess countervailing duties of 7.26 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for

consumption after March 15, 1983 and exported on or before September 30, 1983.

The Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 7.26 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: November 28, 1986.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administration.

[FR Doc. 86-27294 Filed 12-3-86; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; Oceanic Research and Communication Alliance (P386)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:
   a. Name: Oceanic Research and Communication Alliance
   b. Address: 3101 Washington Street, San Francisco, California 94115
2. Type of Permit: Scientific Research
3. Name and Number of Marine Mammals: Atlantic bottlenose dolphins (*Tursiops truncatus*)
4. Type of Activity: The animals will be readapted and released to the wild.
5. Location of Activity: Florida and Georgia
6. Period of Activity: 5 years

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific resons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: November 28, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-27303 Filed 12-3-86; 8:45]

BILLING CODE 3510-22-M

Receipt of Applications for General Permits to Incidentally Take Marine Mammals

Notice is hereby given that the following applications have been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. exclusive economic zone during 1987 as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the regulations thereunder.

1. Japan Deep Sea Trawlers Association, Tokyo, Japan has applied for a Category 1: "Towed or Dragged Gear" general permit to take up to 100 pinnipeds in the Bering Sea, Gulf of Alaska and up to 10 pinnipeds and 10 cetaceans in the North Atlantic Ocean.

2. Hokuten Trawlers Association, Tokyo, Japan has applied for a Category 1: "Towed or Dragged Gear" general permit to take up to 35 pinnipeds in the Bering Sea.

3. North Pacific Longline Gillnet Association, Tokyo, Japan has applied for a Category 5: "Other Gear" general permit to take an unspecified number of cetaceans and pinnipeds by harassment in the Bering Sea and Gulf of Alaska.

Under three (3) general permits issued to these associations for 1985 a total of 85 pinnipeds were observed taken in the Bering Sea and Gulf of Alaska.

4. Embassy of the Polish People's Republic, New York, New York has applied for a Category 1: "Towed or Dragged Gear" general permit to take up to 160 pinnipeds and up to 55 cetaceans in the North Pacific Ocean.

Under a general permit issued to the Applicant for 1985 one (1) pinniped was reported taken in the North Pacific Ocean.

5. Embassy of the Republic of Korea, 2320 Massachusetts Avenue, NW., Washington, DC 20008 has applied for a Category 1: "Towed or Dragged Gear" general permit to take 200 pinnipeds and 50 cetaceans in the North Pacific Ocean.

Under a general permit issued to the Applicant for 1985 twenty-five (25) pinnipeds and two (2) cetaceans were reported taken in the North Pacific Ocean.

The applications are available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC.

Dated: November 28, 1986.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 86-27302 Filed 12-3-86; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Activities for Conversion to Contract

ACTION: Notice.

The Air Force recently determined that the Weather Maintenance function at the following locations will be examined for conversion to contract: Ft Benning, GA; Ft Campbell, KY; Ft Hood, TX; Ft Knox, KY; Ft Leonard Wood, MO; Ft Ord, CA; Ft Polk, LA; Ft Riley, KS; Ft

Rucker, AL; Ft Sill, OK; and Hunter AAF, GA.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Webster, HQ AFCC/XPMQA, Scott AFB, IL, telephone (618) 256-5255.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 86-27226 Filed 12-03-86; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers; Department of the Army

Intent To Prepare a Supplemental Draft Environmental Impact Statement for Maintenance Dredging of the Federal Navigation Channel in the Clinton River, Macomb County, MI

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

ACTION: Notice of Intent to Prepare a Supplemental Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The construction of a 30-acre confined disposal facility (CDF) on State of Michigan property adjacent to the Selfridge Air National Guard (ANG) Base, located on the north side of the Clinton River about three miles upstream from the river mouth is proposed. This clay lined facility would contain sediments dredged from the Clinton River Federal Navigation Channel. An offloading/transfer facility would be constructed on about 2.5 acres of property leased from Selfridge ANG. A steel sheet pile wall and a steel supported concrete platform would be constructed along the river edge to allow a dredge scow to be unloaded directly into trucks for transfer to the CDF. The preceding information was not covered in the 1976 Final Environmental Impact Statement, so this necessitates the preparation of the Supplemental DEIS.

Alternatives

In addition to the proposed upland site, alternatives to be considered are: (1) Confinement of polluted sediments and open water disposal of unpolluted sediments; (2) open water disposal of all sediments; (3) deep water disposal; (4) alternative sites (island site, expansion of pier site, marsh site, sewage treatment lagoons); (5) pretreatment; and (6) no action.

Scoping Process

a. Public Involvement. The Council on Environmental Quality Regulations for implementing the Procedural Provisions of the National Environmental Policy Act do not require scoping for supplemental EISs. However, a coordination meeting was held in February 1986 with the Michigan Department of Natural Resources and the U.S. Environmental Protection Agency.

b. Significant Issues. The CDF would be clay lined and capped. Dredging would be accomplished by a mechanical dredge type. An offloading/transfer facility would be constructed to provide a location for receiving the sediment and transferring it to trucks for transporting to the CDF. These facilities will be addressed in the document and cover the anticipated beneficial impacts, adverse impacts, and remedial measures.

Environmental Review and Consultation Requirements

The proposed project will be reviewed and evaluated under the following acts: Fish and Wildlife Act of 1956; Fish and Wildlife Coordination Act of 1958; National Historic Preservation Act of 1966; National Environmental Policy Act of 1969; Coastal Zone Management Act of 1972; Endangered Species Act of 1973; Preservation of Historical Archaeological Data Act of 1974; Water Resources Development Act of 1976; Clean Air Act; Clean Water Act; Executive Order 11988 on Flood Plain Management; Executive Order 11990 on Wetlands Protection; as well as the various Congressional Acts authorizing construction and maintenance of Federal projects.

Estimated Date of the Supplemental DEIS Review

It is anticipated that the Supplemental DEIS will be available to the public in December 1986.

Address

If you would like further information on the proposed project and Supplemental DEIS, please notify:

Mr. Les E. Weigum, U.S. Army Engineer District, Detroit, Chief, Environmental Analysis Branch, P.O. Box 1027, Detroit, Michigan 48321. Commercial Telephone Number: 313-226-6752. FTS Telephone Number: 226-6752.

Dated: November 26, 1986.

C. Argiroff,

Chief, Planning Division.

[FR Doc. 86-27227 Filed 12-3-86; 8:45 am]

BILLING CODE 3710-GA-M

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management; Fees for Federal Interim Storage, Calendar Year 1987

AGENCY: Department of Energy.

ACTION: Notice of Fees for Federal Interim Storage of Spent Nuclear Fuel from Civilian Nuclear Power Plants in the United States for Calendar Year 1987.

SUMMARY: This notice updates the fees to be levied against users of Federal Interim Storage (FIS) services for spent nuclear fuel as required by section 136(a)(2) of the Nuclear Waste Policy Act of 1982, Pub. L. 97-425, 42 U.S.C. 10101 et seq. (Act). The fees previously established for Calendar Year 1986 are hereby rescinded on the effective date of this notice. The fees, shown in Table 1, have been updated to ensure full recovery of all costs incurred by the Department of Energy (Department) in providing these services. These fees are for calendar year 1987 and replace those in effect for calendar year 1986.

EFFECTIVE DATE: The updated fees will be effective on January 1, 1987, and will remain effective for a period of twelve months from the effective date.

FOR FURTHER INFORMATION CONTACT: Dwight E. Shelor, Office of Storage and Transportation Systems (RW-32), Office of Civilian Radioactive Waste Management, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 252-9433.

SUPPLEMENTARY INFORMATION: The updated fees shown below in Table 1 were developed by the Department to comply with the requirement of section 136 of the Act which requires each user to pay its pro rata share of costs in order to ensure complete recovery of costs incurred by the Department in supplying FIS services.

TABLE 1.—FEES FOR FIS SERVICES FURNISHED BY THE DEPARTMENT OF ENERGY, DOLLARS PER KGU (a, b)

Spent fuel committed to FIS (MTU)	Initial fee	Final fee	Total fee
100	360	290	650
300	190	125	315
800	135	75	210
1,500	125	60	185
1,900	120	60	180

(a) The cost of transportation of spent fuel is not included in the above fees. Each user's actual transportation costs will be billed directly after delivery of the fuel is completed.
(b) KGU—the weight of uranium contained in fresh fuel assemblies at the time of insertion into the reactor. One MTU is 1000 KGU.

The Department reexamined alternative methods for structuring fees for FIS services, as reported in 1986 Federal

Interim Storage Fee Study: A Technical and Economic Analysis, (PNL-6031) September 1986. Based on this reexamination, the Department again concluded that the combined interests of the Department and the users would be best served, and costs would be most appropriately recovered, by a two-part fee payment consisting of an Initial Payment upon execution of a contract for FIS services followed by a Final Payment upon delivery of the spent fuel to the Department. In addition, each user will be invoiced by the Department for the actual costs of transportation of its spent fuel from the reactor site to the FIS facility.

The Initial Payment shall be made within 30 days after execution of the contract for FIS service; it is an advance payment covering the pro rata share of the preoperational costs including:

(1) The capital construction costs of the transfer facilities and storage area required to accommodate the initial storage service commitments, including design and construction costs;

(2) Costs of procuring storage modules;

(3) Development costs;

(4) Government administrative costs, including storage fund management;

(5) Impact aid payments made in accordance with section 136(e) of the Act; and

(6) Interest paid on any funds borrowed from the Treasury Department to conduct preliminary work.

The effective Initial Fee will be determined by the quantity of spent fuel committed to FIS by the first contract executed, or group of contracts executed simultaneously, by the Department in accordance with section 135(b) of the Act. Table 1 exhibits the appropriate fees for discrete quantities of contracted fuel, from 100 MTU to 1900 MTU. If the quantity of fuel covered by the first contracts is less than 100 MTU, the Initial Fee will be the Initial Fee shown in Table 1 for 100 MTU storage capacity. If the quantity of fuel covered by the first contracts exceeds 100 MTU and is not one of the discrete quantities shown, the Initial Fee will be recalculated by the Department for the exact quantity of spent fuel committed to storage under these first contracts. The Initial Fee so determined by the first contracts will then be charged to all subsequent contactors of FIS services until the Fee Schedule is next revised.

To ensure that the payments are equitable among the users of FIS services, the Department will annually update both the Initial and Final Fees to reflect changes in the estimated costs for providing FIS services as the amount of fuel under contract increases or as additional FIS facilities are activated. After all preoperational activities have been completed, the Department will determine the total costs incurred in connection with the preoperational activities (i.e., design, safety reviews, construction, storage module procurement, and associated activities) and will determine the difference between the Initial Payments made by each user and the subsequently revised Initial Payments that take into account the increased quantities of spent fuel being committed to FIS. The Department will then credit or debit the Final Payment of each user with the difference between the amounts paid as Initial Payments and its then pro rata share of the revised total preoperational costs (net of its pro rata share of interest earned on advance payments made).

The Final Payment shall be billed to the user within 60 days after delivery of the spent fuel to the Department and shall be payable within 60 days thereafter. It will be calculated to cover the sum of the following:

(1) Any under- or over-estimation in the costs used to calculate the Initial Payment of the fee, as described above;

(2) The total estimated cost of operation and decommissioning of the FIS facilities (including Government administrative costs, storage fund management and impact aid).

In addition, the Department will bill each individual user for the actual costs the Department incurs in the transportation of that user's spent fuel to the FIS facilities including, but not limited to, cask lease, freight charges, and security. Billing and payment for transportation will be on the same schedule as the Final Payment.

In addition to the Initial Payment and the Final Payment described above, the Department will make a final adjustment for each user after the decommissioning of the FIS facilities, or March 31, 2002, whichever is earlier. This adjustment will be based on a determination of the total costs incurred in design, construction, operation and decommissioning of the FIS system through December 31, 2001. The Department will make final adjustments to the extent that there is a difference between the total amounts paid by each user in Initial and Final Payments and the user's pro rata share of these total costs (net of its pro rata share of interest earned on advanced payments made). This adjustment may be either a payment to the Department or a refund to the user.

Any payments not made on a timely basis will be subject to interest charged at the quarterly Treasury rate plus 6%.

In order to include the time value of money in the fee update calculation, the revenue/expenditure projections are based on the following assumptions concerning the schedule of constructing and operating FIS facilities. These assumptions reflect the changes in spent fuel storage requirements which occurred during 1986:

Assumption 1: Design and construction of FIS facilities would commence in 1987 and be completed so that storage operations could commence in mid 1990;

Assumption 2: The FIS facility would receive spent fuel during the three-year period between mid-1990 and mid-1993. It would ship spent fuel to a Monitored Retrievable Storage facility or waste repository during the three-year period commencing at the beginning of 1998 and terminating at the end of 2000. One-thid of the storage capacity of the FIS facility would be received each year during the receiving period, and one-third would be shipped each year during the shipping period;

Assumption 3: Decontamination and decommissioning of FIS facilities would be conducted in the year 2001.

In accordance with the constraints imposed by the Act, the Department plans to expend no funds in connection with the FIS program other than the minimal expenses for planning until clear evidence of a need exists. At that time, the Department will commence the design of the FIS facilities on the basis of the contractual commitments that then exist for FIS services. These facilities will have the capacity for only that amount of spent fuel which is committed to storage under the then-existing contracts.

The Department has again assumed that canistered consolidated spent fuel rods would be acceptable for storage at the FIS facilities. However, consolidation would not be a criterion for acceptance, nor would the disassembly and consolidation of spent fuel be included in the capabilities of the FIS facilities. Until the cost effects of storing consolidated fuel has been accurately determined, the Department will collect the same fee for storage of canistered consolidated spent fuel rods

as for intact fuel assemblies. At that time, any difference in operational costs which may result from receipt and handling of consolidated fuel rods will be included in the annual recalculation of the fee, and a separate fee for consolidated fuel will be published. If the revised initial fees are lower than any previously collected for consolidated fuel, a credit will be assigned to the Final Payment for that consolidated fuel. Any savings in transportation costs that result from shipping consolidated rods would be realized immediately.

Further information as to the Department's FIS services and charges is available in the cited report, PNL-6031.

Issued in Washington, DC, on November 25, 1986.

Ben C. Rusche,

Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 86-27256 Filed 12-3-86; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

[Dockets No. OFU 017, 081, 019, 020 and 021]

Acceptance of Application for Rescission of Prohibition Orders Submitted by Kansas Power and Light Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of acceptance.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) [1] hereby gives notice that acting under the authority granted to it in section 2(f) of the Energy Supply and Environmental Coordination Act of 1964 (ESECA), as amended by (15 U.S.C. 792(f) and implemented by 10 CFR 303.130(b), it has accepted and is considering a request by The Kansas Power and Light Company (KPL) to rescind the Prohibition Orders issued on June 30, 1975, to the following powerplants:

Owner	Docket No.	Generating Station	Unit No.	Location
Kansas Power and Light Company	OFU-017	Lawrence	3	Lawrence, KS.
	OFU-018	Lawrence	4	Lawrence, KS.
	OFU-019	Lawrence	5	Lawrence, KS.
	OFU-020	Tecumseh	9	Tecumseh, KS.
	OFU-021	Tecumseh	10	Tecumseh, KS.

ERA is taking this action in accordance with the provisions of 10 CFR Part 303, Subpart j ("Modification on Rescission of Prohibition Orders and Construction Orders") of the ESECA regulations. Detailed information of the proceeding is provided in the **SUPPLEMENTARY INFORMATION** section below.

The public file containing a copy of this Notice of Acceptance and Availability of Certification and other documents and supporting materials on this proceeding is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

DATES: Comments on DOE's intention to consider the requested rescission of the above listed Prohibition Orders is invited. Written comments are due on or before January 20, 1987. A request for public hearing must also be made within this 45-day public comment period. In making its decision regarding the requested rescission action, DOE will consider all relevant information submitted or otherwise available to it.

Any information considered to be confidential by the person furnishing it must be so identified at the time of submission in accordance with 10 CFR 303.9(f). DOE reserves the right to determine the confidential status of the information and to treat it in accordance with that determination.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing should be submitted to the Department of Energy, Economic Regulatory Administration, Office of Fuels Programs, Case Control Unit, Room GA-093, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket Nos. OFU 017, 018, 019, 020 and 021 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-093, Washington, DC 20585, Telephone (202) 252-4523

Steven E. Ferguson, Esq. Office of General Counsel, Department of Energy, 1000 Independence Avenue, SW., Room GA-113, Washington, DC 20585, Telephone (202) 252-6947

SUPPLEMENTARY INFORMATION: The Prohibition Order to Lawrence Generating Station units, 3, 4 and 5 was made effective by the issuance of a Notice of Effectiveness (NOE) on August 5, 1977, by FEA to KPL with the Prohibition Order becoming effective on December 31, 1977, and continuing through December 31, 1978, unless subsequently amended.

The Powerplant and Industrial Fuel Use Act of 1978 (FUA) amended section 2(f)2 of ESECA by removing the time limits on DOE's authority to issue Prohibition Orders. By letter dated December 21, 1978, DOE issued an amended NOE, which eliminated the Prohibition Order termination of December 31, 1978. In effect this extended the prohibition against burning petroleum products or natural gas as the primary energy sources for Lawrence units 3, 4 and 5 indefinitely.

The Prohibition Order to KPL's Tecumseh Generating Station units 9 and 10 was made effective by the issuance of an NOE to KPL on August 4, 1977, with the Prohibition Order becoming effective on December 31, 1977, and continuing through December 31, 1978, unless subsequently amended. By letter dated December 21, 1978, an amended NOE was issued to Tecumseh units 9 and 10. The amended NOE susperseded the NOE issued to the facility on August 4, 1977. This extended the prohibition against burning petroleum products or natural gas as the primary energy sources in Tecumseh units 9 and 10 indefinitely.

On April 15, 1986, KPL submitted an application for Rescission of Prohibition Orders to ERA regarding the above enumerated generating station units. KPL informed ERA that its Lawrence units 3 and 4 and Tecumseh units 9 and 10 will operate at annual capacity factors below 40 percent throughout their remaining useful life. Lawrence unit 5 will operate at an annual capacity factor below 45 percent throughout its remaining useful life. These units are expected to be used only for peaking or intermediate duty. KPL committed itself to operating these units at or below the

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration (FEA) to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*).

capacity factors discussed above for their remaining useful life, while using natural gas as a primary fuel. The Company stated that its supplier, Northwest Central Pipeline Corporation, generally had natural gas available for use by KPL as boiler fuel.

Rescission of the Prohibition Orders would allow KPL to realize fuel, generating capacity and maintenance cost savings which would benefit their customers. The Company estimates that it could save as much as six million dollars in 1987, in fuel costs if it were able to switch completely to natural gas. A total of 50 megawatts of capacity would be regained by the five units if they burned 100 percent natural gas compared with coal. Installation of new generating facilities could be postponed due to the increased capacity permitted by natural gas. As much as six million dollars could be saved in this manner per year. The use of natural gas in the Lawrence and Tecumseh generating station units would also reduce operating and maintenance expenses. KPL estimates that such saving would amount to $1,900,000 in 1987.

Issued in Washington, DC, on November 24, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-27258 Filed 12-3-86; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 86-51-NG]

Kerr-McGee Chemical Corp.; Order Granting Authorization to Import Natural Gas

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of order granting authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting authorization to Kerr-McGee Chemical Corporation (Kerr-McGee) to import Canadian natural gas from KM Gas Company, an affiliate. The order issued in ERA Docket No. 86-51-NG authorizes Kerr-McGee to import up to 18,000 Mcf of Canadian natural gas per day for use in the operation of its chemical manufacturing plants located near Trona and Argus, California.

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, 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 Federal holidays.

Issued in Washington, DC, November 25, 1986.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 86-27257 Filed 12-3-86; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP87-69-000 et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP87-69-000]

November 26, 1986.

Take notice that on November 13, 1986, K N Energy, Inc. (Applicant), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP87-69-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate retail sale taps for the delivery of gas to four end-users under the certificate issued in Docket Nos. CP83-140-000, CP83-140-001, and CP83-140-002 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate four sales taps, one each in Clay and Cheyene Counties, Nebraska, and Thomas and Greeley Counties, Kansas, to serve four retail customers. Applicant estimates total annual sales of 2,420 Mcf and peak day sales of 136 Mcf.

Applicant states that the proposed sales taps are not prohibited by any of its existing tariffs and that the additional taps will have no significant impact on K N's peak day and annual deliveries.

Comment date: January 12, 1986, in accordance with Standard Paragraph G at the end of this notice.

2. Gaylord Container Limited GC Acquisitions Corporation

[Docket No. CP87-86-000]

November 21, 1986.

Take notice that on November 18, 1986 Gaylord Container Limited (Gaylord), One Bush Street, San Francisco, California 94104, and GC Acquisition Corporation, (GC), 200 East Randolph Drive, Suite 6812, Chicago, Illinois 60601, hereinafter referred to as Applicants, filed in Docket No. CP87-86-000 an application pursuant to section 7(b) and 7(c) of the Natural Gas Act for authorization permitting and approving Gaylord to abandon, by transfer to GC, certain interstate transmission and appurtenant facilities and the related transmission services; and a certificate of public convenience and necessity authorizing GC to acquire, and operate the transmission and appurtenant facilities to be abandoned by Gaylord and the continuation by GC of the transmission services to be abandoned by Gaylord, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicants state that GC is acquiring the interstate transmission facilities of Gaylord in connection with the acquisition by GC of substantially all of the assets of Gaylord's container business including the Bogalusa paper mill.

Applicants further state the Bogalusa pipeline is a special purpose pipeline constructed and operated to deliver natural gas from producing areas in Mississippi and Louisiana to the Bogalusa paper mill located in Louisiana. Applicants indicate that the acquisition of the interstate pipeline facilities and the Bogalusa mill by GC will result in no change in the gas supply dedicated for use in the plant, the transmission service or the end-use of the gas. No new facilities or services are proposed or required by the transfer of the facilities.

Comment date: December 10, 1986, in accordance with Standard Paragraph F at the end of this notice.

3. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP87-71-000]

November 26, 1986.

Take notice that on November 14, 1986, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Applicant), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP87-71-000 an application pursuant to section 7(c) of the Natural Gas Act so as to authorize an interruptible transportation service for Riverside Pipeline Company (Riverside), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to render a natural gas transportation service for Riverside pursuant to the terms of a gas transportation agreement dated September 25, 1986. It is stated that Applicant has agreed to accept and receive daily on an interruptible basis, up to 2,000 dt equivalent of natural gas

per day which Riverside would make available at points of receipt located in Saturday Island Field and Southeast Pass, Plaquemines Parish, Louisiana.

It is indicated that Applicant would transport and deliver thermally equivalent quantities, less quantities for Applicant's system fuel and use requirements and gas lost and unaccounted for, to:

(1) Monterey Pipeline, St. Mary Parish, Louisiana (Patterson);

(2) Columbia Gas Transmission in Acadia Parish, Louisiana (Egan);

(3) Bridgeline at Mobil Oil Company's Golden Meadow Plant, LaFourche Parish, Louisiana (Golden Meadow);

(4) United Gas Pipe Line Company (United) in Terrebonne Parish, Louisiana (Lirette);

(5) United in Jefferson Davis Parish, (Iowa/Woodlawn);

(6) United in Ouachita Parish, Louisiana (West Monroe);

(7) United in Plaquemines Parish, Louisiana (Bastian Bay);

(8) Southern Natural Gas Company at the Placid Oil Company at Patterson Gas Plant (SNG-Patterson); and

(9) Southern Natural Gas Company in Plaquemines Parish, Louisiana (Lake Washington).

Applicant states that it would charge Riverside for the transportation service a quantity charge equal to the applicable rate as stated below, plus a Gas Research Institute surcharge (GRI) of 1.32 cents where applicable. Applicant further states that the rates for the transportation service would be as follows:

Point of Receipt and Point of Delivery	Rate per dt equivalent of gas (cents)	GRI per dt equivalent of gas (cents)
Saturday Island:		
Patterson	8.08	1.32
Egan	11.22	
Golden Meadow	4.88	1.32
Lirette	6.29	
Iowa/Woodlawn	12.87	
West Monroe	19.59	
Bastian Bay	6.10	
SNG-Patterson	8.08	
Lake Washington	3.82	
Southeast Pass:		
Patterson	10.33	1.32
Egan	13.47	
Golden Meadow	7.14	1.32
Lirette	8.55	
Iowa/Woodlawn	15.13	
West Monroe	21.84	
Bastian Bay	5.32	
SNG-Patterson	10.33	
Lake Washington	6.29	

Applicant states that no new facilities would be constructed to implement this transportation service.

Comment date: December 15, 1986, in accordance with Standard Paragraph F at the end of this notice.

4. K N Energy, Inc.

[Docket No. CP87-88-000]

November 28, 1986.

Take notice that on November 19, 1986, K N Energy, Inc. (K N), P.O. Box 15265 Lakewood, Colorado 80215, filed in Docket No. CP87-88-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act for permission and approval to abandon meter stations and appurtenant facilities for service to certain direct sales customers under K N's authorization issued March 16, 1983, in Docket No. CP83-140-000, *et al.*, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N proposes to abandon by removal the meter stations and appurtenant facilities which were installed to deliver natural gas to the following direct sales customers:

Name and location	Docket No.
Platte Valley Products, Inc. (Darr, NE)	G-1180
Platte Valley Products, Inc. (Kearney, NE)	G-1180
Shofstall, Inc. (Kearney, NE)	G-8562
Quest Oil (Padroni, CO)	CP69-201
Consolidated Blenders, Inc. (Shelton, NE)	CP62-249
City of Oberlin (Oberlin, KS)	CP70-228

It is stated that deliveries to these customers have ceased and that each customer (1) has notified K N that the facilities at the respective delivery points are no longer needed and (2) has consented to the abandonment of these facilities by K N.

Comment date: January 12, 1986, in accordance with standard Paragraph G at the end of this notice.

5. Pacific Gas Transmission Company

[Docket No. CP87-67-000]

November 28, 1986.

Take notice that on November 13, 1986, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105-1570, filed in Docket No. CP87-67-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the interruptible transportation of natural gas in interstate commerce; and (2) pregranted abandonment authorization upon termination of the transportation agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the transportation would be accomplished by means of a delivery to PGT at Kingsgate, British Columbia, of up to 70,000 Mcf of natural gas per day for the account of Amoco Energy Trading Corporation (Amoco) and the redelivery of such natural gas to Amoco at a point of interconnection between the pipeline systems of PGT and Pacific Gas and Electric Company at Malin, Oregon. PGT states that the interruptible transportation service would be accomplished through the utilization of existing capacity available on PGT's system. It is also stated that the term of the agreement would be for a primary term of ninety days, not to exceed one year.

PGT further requests pregranted abandonment authorization to terminate service upon termination of the transportation agreement.

Comment date: December 19, 1986, in accordance with Standard Paragraph F at the end of this notice.

6. Pacific Gas Transmission Company

[Docket No. CP87-74-000]

November 28, 1986.

Take notice that on November 14, 1986, Pacific Gas Transmission Company (PGT), 160 Spear Street, San Francisco, California 94105-1570, filed in Docket No. CP87-74-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (1) the interruptible tansportation of natural gas in interstate commerce; and (2) pregranted abandonment authorization upon termination of the transportation agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the transportation would be accomplished by means of a delivery to PGT at Kingsgate, British Columbia, of up to 100,000 Mcf of natural gas per day for the account of Santa Fe Gas Marketing (Santa Fe), and the redelivery of up to 50,000 Mcf of natural gas per day, at a point of interconnection between the pipeline systems of PGT and Northwest Pipeline Corporation at Stanfield, Oregon, and up to 50,000 Mcf of natural gas per day to Pacific Gas and Electric Company at Malin, Oregon. PGT states that the interruptible transportation service would be accomplished through the utilization of existing capacity available on PGT's system. It is also stated that the term of the agreement would be for a primary term of ninety days, not to exceed one year.

PGT further requests pregranted abandonment authorization to terminate service upon termination of the transportation agreement.

It is stated that the initial transport charge would be $.0754 per Mcf of gas for 277.37 miles to Stanfield and $.1666

per Mcf of gas for 612.46 miles to Malin. There would be a deduction for fuel, line loss and unaccounted for charge of 4.2 percent of the gas received and a GRI charge of 1.35 cents per Mcf of gas delivered by PGT.

Comment date: December 19, 1986, in accordance with Standard Paragraph F at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP87-63-000]

November 28, 1986.

Take notice that on November 10, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-63-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas of Gulf States Paper Corporation (GSP) and Mount Vernon Mills, Inc. (MVM), all as more fully set forth in the application which is on file with the Commission and open to public inspection. Southern has agreed to transport for GSP on an interruptible basis up to 9 million Btu equivalent of natural gas per day purchased by GSP from SNG Trading Inc. (SNG Trading) and up to 1 million Btu equivalent of natural gas per day that MVM has arranged to purchase from SNG Trading. Southern requests that the Commission issue limited-term certificates for terms expiring one year from the date of the Commission's order issuing the requested authorization.

It is stated that GSP and MVM would cause gas to be delivered to Southern for transportation at the various existing points on Southern's contiguous pipeline system specified in Exhibit A to the respective transportation agreements. Southern indicates that it would redeliver to GSP at the Gulf States Paper Corporation Meter Station, Marengo County, Alabama, and to MVM at the Mount Vernon Mills Meter Station, Tallapoosa County, Alabama, an equivalent quantity of gas less 3.25 percent of such amount which would be deemded to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less GSP and MVM's pro-rata share of any gas delivered for their respective accounts which would be lost or vented for any reason.

Southern states that GSP and MVM have agreed to pay Southern each month a transportation rate of 64.9¢ for each MMBtu of gas redelivered by Southern and that Southern would collect from GSP and MVM the GRI surcharge of 1.35¢ per Mcf of natural gas.

Comment date: December 19, 1986, in accordance with Standard Paragraph F at the end of this notice.

8. Southern Natural Gas Company

[Docket No. CP87-72-000]

November 28, 1986.

Take notice that on November 13, 1986, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-72-000 an application pursuant to section 7(c) of the Natural Gas Act, for a limited-term certificate of public convenience and necessity authorizing Southern to transport gas on behalf of the City of Wrens, Georgia (Wrens), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Southern proposes to transport natural gas for Wrens in accordance with the terms and conditions of a transportation agreement between Wrens and Southern dated September 5, 1986. Southern states it has agreed to transport on an interruptible basis up to 5 billion Btu equivalent of natural gas per day purchased by Wrens from SNG Trading Inc., subject to the receipt of all necessary governmental authorizations. Southern requests that the Commission issue a limited-term certificate for a term expiring one year from the date of the Commission's order issuing the requested authorization.

Southern states that the transportation agreement provides for Wrens to cause natural gas to be delivered to Southern for transportation at various existing points on Southern's contiguous pipeline system in the Breton Sound, East Cameron, Main Pass, and South Pass Areas, offshore Louisiana, and Ouachita, Plaquemines, Terrebonne, St. Mary, and St. Martin Parishes, Louisiana, and Tuscaloosa County, Alabama. Southern states it would redeliver to Wrens at the City of Wrens Meter Station, Jefferson County, Georgia, an equivalent quantity of gas less 3.25 percent of such amount which shall be deemed to have been used as compressor fuel and company-use gas (including system unaccounted-for gas losses); less any and all shrinkage, fuel or loss resulting from or consumed in the processing of gas; and less Wrens's pro-rata share of any gas delivered for Wrens's account which is lost or vented for any reason.

Southern states that Wrens has agreed to pay Southern each month the following transportation rate:

(a) Where the aggregate of the volumes transported and redelivered by Southern on any day to Wrens under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Wrens do not exceed the daily contract demand of Wrens, the transportation rate shall be 48.2¢ per MMBtu equivalent; and

(b) Where the aggregate of the volumes transported and redelivered by Southern on any day to Wrens under any and all transportation agreements with Southern, when added to the volumes of gas delivered under Southern's OCD Rate Schedule on such day to Wrens exceed the dairy contract demand of Wrens, the transportation rate for the excess volumes shall be 77.6¢ per MMBtu equivalent redelivered by Southern.

Additionally, Southern states it would collect from Wrens the GRI surcharge of 1.35 cents per Mcf of gas or any such other GRI funding unit or surcharge as hereafter prescribed.

Southern states that the transportation arrangement would enable Wrens to diversify its natural gas supply sources and to obtain gas at competitive prices. Southern additionally states it would obtain take-or-pay relief for all volumes transported pursuant to the agreement.

Comment date: December 19, 1986, in accordance with Standard Paragraph F at the end of this notice.

9. Transcontinental Gas Pipe Line Corporation; Columbia Gulf Transmission Company

[Docket No. CP85-750-003]

November 28, 1986.

Take notice that on November 17, 1986, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, and Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001 (Petitioners), filed in Docket No. CP85-750-003 a petition to further amend the Commission's order issued January 2, 1986, in Docket No. CP85-750-000, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize Petitioners to add two additional sources of natural gas, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Pursuant to the order of January 2, 1986, as amended, Petitioners state that Transco receives for the account of Columbia Gulf at the point where natural gas enters Transco's system at

the South Lake Arthur Field, Vermilion Parish, Louisiana, and Columbia Gulf receives for the account of Transco where gas enters Columbia Gulf's system in the South Lake Arthur Field, up to 25,000 Mcf of natural gas per day. Any imbalances which may occur in the quantities of gas received at the receipt points are eliminated by the owing party delivering gas owed to specified existing points of interconnection between Transco and Columbia Gulf, and any other mutually agreeable points, it is stated. Petitioners further state that by agreement dated May 27, 1986, they have further amended the exchange agreement between them dated December 31, 1981, as previously amended October 3, 1983, and July 14, 1984, by adding two additional sources of gas in the South Lake Arthur Field which would be attached to Columbia Gulf's system, and from which Transco and Columbia's affiliate Columbia Gas Transmission Corporation [Columbia Gas], would each purchase gas. Petitioners indicate that the sources and percentages of purchase are:

1. Dwyer Price Estate, *et al.*, No. 1 Well:
   Transco, 49.9 percent
   Columbia Gas, 51.1 percent
2. State Lease 77112 No. 6 Well:
   Transco, 30.0 percent
   Columbia Gas, 70.0 percent

It is stated that the minor facilities necessary to connect these sources to Columbia Gulf's system are being installed under Petitioners' respective blanket certificates and section 157.208 of the Commission's Regulations, and would be owned in the same percentages as shown above for gas purchases [Columbia Gulf's percentage being that shown for Columbia Gas'].

Transco states that by filing the subject petition, it is not electing non-discriminatory access as such term is described and defined in sections 284.8(b) and 284.9(b) of the Regulations (promulgated in Order No. 436, Docket No. RM85-1-000).

Comment date: December 19, 1986, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Trunkline Gas Company

[Docket No. CP87-65-000]

November 28, 1986.

Take notice that on November 12, 1986, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP87-65-000 an application pursuant to section 7(c) of the Natural Gas Act for an order permitting and approving abandonment of a certificate of public convenience and necessity which authorized the transportation of natural gas on behalf of Sugar Bowl Gas Corporation [Sugar Bowl], whose successor in interest is Acadian Gas Pipeline System [Acadian], all as more fully set forth in the application which is on file with the Commission and open for public inspection.

On September 26, 1984, by Commission Order in Docket No. CP84-340-000, Trunkline was authorized to receive, transport and redeliver natural gas on behalf of Acadian pursuant to, and in accordance with, a transportation agreement between Trunkline and Acadian, dated December 14, 1983, it is stated. Trunkline receives a volume of natural gas of up to 500 Mcf per day on a interruptible basis on Acadian's behalf at a point of interconnection between the facilities of Trunkline and Acadian located in Beauregard Parish, Louisiana, and transports such gas to a point of interconnection between the facilities of Trunkline and Acadian located in St. Mary Parish, Louisiana, it is stated. It is further stated that Trunkline provides service to Acadian pursuant to Rate Schedule T-86 of its FERC Gas Tariff Original Volume No. 2.

Trunkline indicates that Trunkline and Acadian entered into a letter agreement dated July 23, 1986, which provides for the termination of the transportation agreement as of April 6, 1986.

Trunkline requests authority to abandon the transportation service provided by Trunkline for Acadian authorized under Docket No. CP84-340-000. Upon such authorization Trunkline will cancel Rate Schedule T-86, it is stated.

Comment date: December 19, 1986, in accordance with Standard Paragraph F at the end of this notice.

11. Trunkline Gas Company

[Docket No. CP87-76-000]

November 28, 1986.

Take notice that on November 14, 1986, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP87-76-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas on behalf of Shell Offshore, Inc. [Shell], and pregranted abandonment, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Pursuant to a transportation agreement between Trunkline and Shell dated August 12, 1986, Trunkline states that it has ageed to transport up to 150,000 Mcf of natural gas per day on an interruptible basis on behalf of Shell. It is indicated that Trunkline would receive volumes for Shell's account from various existing jurisdictional points of receipt in Texas and Louisiana. These points, it is indicated, are identified as (1) the interconnection between Natural Gas Pipe Line Company of America (NGPL) and Trunkline in Montgomery County, Texas, (2) the interconnection of Transcontinental Gas Pipe Line Corporation (Transco) and Trunkline near Ragley in Beauregard Parish, Louisiana, and (3) the interconnection of Transco and Trunkline near Katy in Waller County, Texas. It is stated that Transco, NGPL, and Columbia Gulf Transmission Company (Columbia Gulf) would perform related transportation services. Trunkline proposes to redeliver the gas for Shell's account at an existing point of interconnection with Columbia Gulf located in St. Mary Parish, Louisiana.

Trunkline proposes to render the transportation service for a limited term ending the earlier of August 11, 1988, or 30 days following the date Trunkline accepts on Order No. 436 blanket certificate. For the transportation service, Trunkline proposes to charge Shell a rate of 10.66 cents per Mcf which is equivalent to Trunkline's currently effective rate under Rate Schedule PT for on-system transmission in its field zone.

Comment date: December 19, 1986, in accordance with Standard Paragraph F at the end of this notice.

12. United Gas Pipe Line Company

[Docket No. CP87-34-000]

November 28, 1986.

Take notice that on October 23, 1986, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77001, filed in Docket No. CP87-34-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the interruptible transportation of up to 100,000 Mcf of natural gas per day for Pastrans Corporation (Pastrans) and the construction, ownership and operation of a tap and meter station, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

It is stated that pursuant to a gas transportation agreement dated July 30, 1986, Applicant proposes to transport up to 100,000 Mcf of natural gas per day from the proposed interconnection of the facilities of Applicant and Pastrans and redeliver volumes at the following points for the account of Pastrans:

1. The existing facilities connecting Applicant and Columbia Gulf Transmission Company (Columbia) near Barron, Rapides Parish, Louisiana.

2. The existing facilities connecting Sea Robin Pipeline Company and Columbia near Erath, Vermilion Parish, Louisiana.

3. The existing facilities connecting Applicant and Transcontinental Gas Pipe Line Corporation (Transco) near Cameron Meadows, Cameron Parish, Louisiana.

4. The existing facilities connecting Applicant and Transco near McComb, Walthall County, Mississippi.

5. The existing facilities between Applicant and Texas Gas Transmission Corporation near Lonewa, Ouachita Parish, Louisiana.

6. The existing facilities between Applicant and Tennessee Gas Transmission Company near Vinton, Calcasieu Parish, Louisiana.

7. The existing facilities between Applicant and Trunkline Gas Company near Olla, LaSalle Parish, Louisiana.

8. The existing facilities between Applicant and Southern Natural Gas Company (Southern) in Block 72, Main pass area, offshore Louisiana.

9. The existing facilities between Applicant and Southern near Perryville, Ouchita Parish, Louisiana.

10. The existing facilities between Applicant and Transco in Pike County, Mississippi.

11. Other mutually agreeable points of interconnection agreed to in writing by the parties from time to time.

Applicant further requests authority to construct, own and operate a 12-inch dual meter station in Marion County, Mississippi which would serve as a point of interconnection and delivery point between Applicant and Pastrans. The cost of the proposed facilities is estimated to be $220,080.

It is stated that the Applicant would charge Pastrans its Type I mileage based rate which excludes a charge for company used gas. Applicant asserts that such rate is currently 11.72 cents per Mcf.

Comment date: December 19, 1986, in accordance with Standard Paragraph F at the end of this notice.

13. United Gas Pipe Line Company

[Docket No. CP87-78-000]

November 28, 1986.

Take notice that on November 14, 1986, United Gas Pipe Line Company (Applicant), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP87-78-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a portion of pipeline and appurtenant facilities located in Morehouse Parish, Louisiana, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant proposes to abandon approximately 1.71 miles of 8-inch pipeline and appurtenant facilities of its USCARCO-Bastrop Line, located in Morehouse Parish, Louisiana. It is stated that the portion of the line proposed to be abandoned was installed in 1936, and certificated in Docket No. G-232, Applicant's "grandfather clause" certificate. Applicant alleges that the pipeline is in a deteriorated condition, and is no longer in use. Applicant further alleges that service to customers in the area would not be affected by the proposed abandonment.

Comment date: December 19, 1986, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) 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 filing 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 the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27262 Filed 12-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8896-001 et al.]

Blue Creek Hydro Company et al., Surrender of Preliminary Permits

December 1, 1986.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

1. Blue Creek Hydro Company

[Project No. 8896-001]

Take notice that Blue Creek Hydro Company, permittee for the proposed Lower Blue Creek Hydroelectric Project No. 8896, has requested that its preliminary permit be terminated. The preliminary permit was issued on June 19, 1985, and would have expired on May 31, 1987. The project would have been located on Blue Creek in Calaveras County, California.

The permittee filed the request on October 17, 1986.

2. Madera-Chowchilla Power Authority

[Project No. 8986-002]

Take notice that the Madera-Chowchilla Power Authority, permittee for the Hidden Dam Hydroelectric Project No. 8986, located on the Fresno River in Madera County, California, has requested that its preliminary permit be terminated. The preliminary permit was issued on September 3, 1985, and would have expired on August 31, 1988. The

permittee states that analysis of the Hidden Dam Hydroelectric Project indicated that it was not economically feasible for development.

The permittee filed the request on October 14, 1986.

3. Madera-Chowchilla Power Authority

[Project No. 8987-002]

Take notice that the Madera-Chowchilla Power Authority, permittee for the Buchanan Dam Hydroelectric Project No. 8987, located on the Chowchilla River in Madera County, California, has requested that its preliminary permit be terminated. The preliminary permit was issued on September 3, 1985, and would have expired on August 31, 1988. The permittee states that analysis of the Buchanan Dam Hydroelectric Project indicated that it was not economically feasible for development.

The permittee filed the request on October 14, 1986.

4. Town of Summersville, West Virginia

[Project No. 3493-009]

Take notice that the town of Summersville, West Virginia, Permittee for the Summersville Project No. 3493, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 3493 was issued August 12, 1986, and would have expired July 31, 1989. The project would have been located at the U.S. Army Corps of Engineers' Summersville Dam on the Gauley River in Nicholas County, West Virginia.

The permittee filed the request on October 30, 1986.

5. City of Tuscaloosa, Alabama

[Project No. 9884-001]

Take notice that the City of Tuscaloosa, Alabama, Permittee for the Lake Tuscaloosa Project No. 9884, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9884 was issued on June 19, 1986, and would have expired on May 31, 1989. The project would have been located on the North River near Tuscaloosa, Tuscaloosa County, Alabama.

The permittee filed the request on November 3, 1986.

Standard Paragraphs.

1. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27263 Filed 12-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-130-000]

Grace Petroleum Corp.; Application for Blanket Certificate of Public Convenience and Necessity, Blanket Abandonment and Pre-Granted Abandonment, and Request for Expedited Consideration

December 1, 1986.

Take notice that on November 21, 1986, Grace Petroleum Corporation ("Grace"), filed an application pursuant to sections 4 and 7 of the Natural Gas Act ("NGA"), Parts 154 and 157, and § 2.77(a)(1) of the Commission's regulations, seeking the following authorizations: (i) A permanent blanket abandonment for certificated sales of any category of jurisdictional gas produced from various interests attributable to Grace and its joint interest owners and released by their interstate purchasers, and (ii) a permanent blanket certificate of public convenience and necessity with pre-granted abandonment authorizing the sale and pre-granted abandonment of sales of any NGA gas produced from various interests owned by Grace and its joint interest owners, and released by their interstate purchasers. The authorizations requested will enable Grace to sell the released gas to third-party purchasers, as fully described in the application which is on file with the Commission and open for public inspection.

Grace states that it has received notices from several of its purchasers of gas subject to the Commission's NGA jurisdiction that they will eliminate their purchases of such gas from Grace. Grace anticipates that it will receive similar notices in the future. Grace states that it requires the blanket authorizations requested in its application to avoid the need and expense of applying for such authorities each time a purchaser eliminates its purchases of NGA gas from Grace.

Specifically, Grace requests permanent blanket authorization, effective on or before January 1, 1987:

(i) To make sales for resale in interstate commerce, without supply or market limitation, of any released gas subject to the Commission's NGA jurisdiction that is produced from various interests owned by Grace;

(ii) To make sales for resale in interstate commerce, without supply or market limitations, of any released NGA gas produced from various interests attributed to other owners having interest in the same wells as Grace, to the extent that such joint interest owners agree to the same;

(iii) To abandon sales for resale of any NGA gas previously certificated by the Commission, to the extent that said gas is released by interstate purchasers for resale to third parties; and

(iv) To abandon (pre-granted abandonment) any sale for resale to third-party purchasers authorized pursuant to Grace's small purchaser's certificate or any blanket certificate issue herein.

Sales proposed to be made by Grace on behalf of itself and its joint interest owners will not involve a dedication of reserves but will be based on periodic nominations, either by purchasers or by Grace. The sales volumes, prices, purchasers, delivery points, transporter, and supply sources will vary. Grace proposes to sell and deliver to various third-party purchasers all or a portion of the gas Grace determines is available for sale at terms acceptable to Grace for a particular time. Grace will not be obligated to sell gas pursuant to any nomination or proposed nomination unless and until the exact volumes, terms and conditions, and prices are agreed to by Grace and a purchaser. The actual contract between Grace and the third-party purchaser may be for all or any portion of the quantity which was set out in the nomination or proposed nomination. If necessary, Grace is willing to submit to the Commission quarterly reports as the Commission specified in Pennzoil Producing Co., 34 FERC (CCH) ¶61,318 (1985). Grace seeks expedited consideration of its application.

Any person desiring to be heard or to make any protest with reference to said application should, on or before December 17, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to

intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27271 Filed 12-3-86; 8:45 am]

BILLING CODE 6717-01-M

Availability of Environmental Assessment and Finding of No Significant Impact

November 28, 1986

Connecticut River Basin (Vermont, New Hampshire, Massachusetts, and Connecticut)

[Docket No. EL85-19-112]

	Project No.
Main Stream Hydro Corp	7045-001
Holyoke Gas and Elec. Department	7758-000
Warren H. Taylor	7932-000
Robert W. Shaw	7962-001
James River Paper Co	8045-001
Glen Hydro, Inc	8405-002
Sandell Development Corp	8789-000
Richard Balagur	9085-000
Riverside Dam, Inc	9277-000
Brookside Hydroelectric Corp	9732-000
Glen Hydro, Inc	10025-000
Lower Falls Hydro Co	10080-000
O'Connell Management Co., Inc	7860-001
Wyoming Valley Hydro Partners, Ltd	7960-000
Windsor Locks Canal Co., Inc	8404-000
Towns of Londonderry, et al	8433-000
K.L. Parkhurst Corp	10084-000

In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Regulations of the Council for Environmental Quality, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for major and minor license filed for 17 proposed hydroelectric projects within the Connecticut River Basin as of November 1, 1986.

An Environmental Assessment (EA), prepared on the potential cumulative impacts associated with hydropower developments in the Connecticut River Basin, identifies Atlantic salmon as the target resource that could be affected by the proposed hydropower projects. Based on an independent analysis presented in the EA, the Commission's staff concludes that 12 of the 17 proposed projects would have no potential to contribute to cumulative adverse impacts to Atlantic salmon and should be excluded from further consideration of cumulative impacts. The 12 projects should be analyzed in separate project specific NEPA documents. The EA also concludes that the remaining five proposed projects (Bethlehem, FERC No. 7860; Wyoming Valley Dam, FERC No. 7960; Windsor Locks, FERC No. 8404; Ball Mountain, FERC No. 8433, and Eaton's Mill, FERC No. 10084) have the potential to contribute to cumulative adverse impacts to Atlantic salmon and should be analyzed further.

On the basis of the record, and of the Commission's staff's independent environmental analysis, exclusion of the 12 projects from further cumulative analysis would not constitute a major federal action significantly affecting the quality of the human environment. The license applications for these 12 projects will require the preparation of appropriate NEPA documents prior to any Commission action. Copies of the EA are available for review in the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27261 Filed 12-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-20-000, 001]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

November 25, 1986.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas") on November 21, 1986, tendered for filing Revised Tenth Revised Sheet No. 211 to its FERC Gas Tariff, Second Revised Volume No. 1.

Algonquin Gas states that such tariff sheet is being filed to reflect in its rates under Rate Schedule STB an increase in Texas Eastern Transmission Corporation's ("Texas Eastern") underlying Rate Schedule SS-II Firm Demand charge, as set forth in Texas Eastern's November 14, 1986 filing.

Algonquin Gas requests that the Commission accept Revised Tenth Revised Sheet No. 211 to be effective November 15, 1986 to coincide with the proposed effective date of Texas Eastern's rate change.

Algonquin Gas notes that a copy of this filing is being served upon each affected party and interested states commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27266 Filed 12-03-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC87-5-000]

Bangor Hydro-Electric Co. et al; Filing

November 28, 1986.

In the matter of Bangor Hydro-Electric Co., Central Maine Power Co., Central Vermont Public Service Co., Fitchburg Gas and Electric Light Co., Maine Public Service Co.

Take notice that on November 25, 1986, the above-named companies (Sellers) filed an application requesting Commission authorization for the sale of their undivided percentage interest in certain transmission facilities pursuant to section 203 of the Federal Power Act.

The Sellers are in the process of conveying to EUA Power Corporation (EUAPower) their respective ownership shares in the Seabrook nuclear generating project. According to the applicants, the vast majority of Sellers' interest in Seabrook consists of generating facilities that do not require Commission authorization prior to being conveyed. Sellers' application seeks authority to sell only certain Seabrook transmission-related facilities.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are

on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27267 Filed 12-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-5236-007 etc.]

Cabot Corporation et al.; Applications for Abandonment of Service

December 1, 1986.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 17, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and Date Filed	Applicant	Purchaser and Location	Price per Mcf	Pressure Base
G-5236-007, D, Nov. 12, 1986	Cabot Corporation, P.O. Box 4544, Houston, Texas 77210-4544.	Columbia Gas Transmission Corporation (Cabot) Bradley Station, Wyoming County, and (Columbia) McDowell County, W. Va.	(1)	
CI61-1102-003, D, Nov. 13, 1986.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	ANR Pipeline Company, Woodward Field, Major County, Oklahoma.	(2)	
CI87-118-000 (CI70-729), B, Nov. 18, 1986.	....do	Transcontinental Gas Pipe Line Corp., Egan Field, Acadia Parish, Louisiana.	(3)	
CI87-119-000 (G-6048), B, Nov. 18, 1986.	....do	....do	(3)	
CI87-109-000 (CI66-821), B, Nov. 14, 1986.	Tenneco Oil Company, P.O. Box 2511, Houston, Texas 77001.	Natural Gas Pipeline Company of America, South Taloga Field, Dewey County, Oklahoma.	(4)	
CI87-110-000 (CI79-361), B, Nov. 14, 1986.	....do	ARKLA Resources Company, Cameron Field, LeFlore County, Oklahoma.	(5)	
CI87-111-000 (CI75-589), B, Nov. 14, 1986.	....do	ARKLA Resources Company, North Keota Field, Haskell County, Oklahoma.	(5)	
CI87-117-000 (CI67-79), B, Nov. 17, 1986.	....do	Panhandle Eastern Pipe Line Company, South Peek Field, Ellis County, Oklahoma.	(5)	
CI87-136-000 (CI84-356-000), B, Nov. 24, 1986.	....do	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., South Timbalier 59, Offshore Louisiana.	(6)	
CI87-113-000 (G-14852), B, Nov. 17, 1986.	ARCO Oil Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Northern Natural Gas Company, Division of Enron Corp., Buckhorn Field, Schleicher County, Texas.	(7)	
CI87-138-000 (CI78-1039), B, Nov. 24, 1986.	....do	El Paso Natural Gas Company, Olivia Spencer Gas Unit #1, Schleicher County, Texas.	(7)	
CI81-388-001, D, Nov. 11, 1986.	Conoco Inc., P.O. Box 2197, Houston, Texas 77252.	Sea Robin Pipeline Company, South Marsh Island Area, Offshore Louisiana.	(8)	
CI87-123-000, B, Nov. 20, 1986.	Texaco Inc., P.O. Box 52332, Houston, Texas 77052.	Phillips Petroleum Company, Eunice Plant and Skaggs Drinkard Field, Lea County, New Mexico.	(9)	
CI87-120-000 (G-13327), B, Nov. 19, 1986.	Patricia Leigh Gas Co., P.O. Box 1618, Logan, W. Va. 25601.	Consolidated Gas Transmission Corporation, Triadelphia District, Logan County, West Virginia.	(10)	
CI87-114-000, B, Nov. 17, 1986.	Vi-Roi Oil Company, 101 South 15th, Duncan, Okla. 73533.	Lone Star Gas Company, a Division of ENSERCH Corp., Cruce Field, Stephens County, Oklahoma.	(11)	

[1] Corporate reorganization—transportation to continue by Cranberry Pipeline Corporation.
[2] Property sold to Foran Oil Company.
[3] Property sold to Indrex, Inc.
[4] Depletion of economical recoverable reserves from all reservoirs on the (Nettie A. Boggess) lease and well has been plugged.
[5] Assignment of all dedicated leases; Tenneco no longer has an interest in the acreage.
[6] Never produced.
[7] Acreage was assigned to Bill J. Graham Oil and Gas Company, effective 8-21-86.
[8] OCS Lease No. 2879 expired on 1-24-85.
[9] The terms of Applicant's contracts with Phillips will expire 1-1-87. Applicant intends to enter into a percentage-of-proceeds type arrangement to provide for processing of the gas at Texaco Producing Inc.'s (TPI) Eunice Plant. After processing, 60% of the residue gas would continue to be sold to El Paso by TPI but under TPI's Gas Rate Schedule No. 390, Certificate No. CI73-771 and 40% of the residue gas would be

sold to Northern Natural Gas Company by TPI but under TPI's Gas Rule Schedule No. 389, Certificate No. CI72-762, both at TPI's Eunice, New Mexico Plant.

[10] Well has produced no gas since March, 1983. Meter shut in since January, 1985.

[11] Uneconomical.

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. 86-27268 Filed 12-3-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. G-2748-000 etc.]

CSX Oil & Gas Corp. (Formerly Texas Gas Exploration Corp.; Corporate Name Change)

December 1, 1986.

Take notice that on November 17, 1986, CSX Oil & Gas Corporation (formerly Texas Gas Exploration Corporation) (hereinafter referred to as Applicant), of P.O. Box 4326, Houston, Texas 77210-4326, filed an application pursuant to section 7(c) of the Natural Gas Act and Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an amendment to the certificates of public convenience and necessity previously issued to Texas Gas Exploration Corporation, shown on the attached Appendix A, to authorize CSX Oil & Gas Corporation to continue the sales previously made by Texas Gas Exploration Corporation, which is on file with the Commission and open to public inspection.

Effective October 1, 1986, the corporate name of Texas Gas Exploration Corporation was changed to CSX Oil & Gas Corporation by Article of Amendment to the Articles of Incorporation.

Any person desiring to be heard or to make any protest with reference to said application should, on or before December 17, 1986, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

APPENDIX A.—CSX OIL AND GAS CORPORATION (FORMERLY TEXAS GAS EXPLORATION CORPORATION)

Docket No.	Rate schedule No. and field name	Purchaser name
G-2748	1—Sligo (old)	Texas Gas Transmission Corp.
CI61-1427	7—Calhoun	Do.
CI62-204	8—Sligo (Parcel 3)	Do.
CI68-1438	22—West Cameron Blk. 225/229.	Natural Gas Pipeline Co.
CI69-782	27—Eugene Island Blk. 272/292.	Texas Gas Transmission Corp.
CI70-322	28—Vermilion Blk. 255-A&B.	Consolidated Gas Supply Corp.
CI72-419	29—Eugene Island Blk. 287/307.	Texas Gas Transmission Corp.
CI72-674	30—Garden City	United Gas Pipe Line Co.
CI72-664	31—Lake Sand	Texas Gas Transmission Corp.
CI72-680	32—Garden City	Columbia Gas Transmission Corp.
CI73-259	33—Vermilion Blk. 267-C.	Texas Gas Transmission Corp.
CI73-260	34—Eugene Island Blk. 314-F.	Do.
CI75-35	35—Vermilion Blk. 255-B&D.	Consolidated Gas Supply Corp.
CI76-176	41—Ship Shoal Blk. 271-A.	Texas Gas Transmission Corp.
CI76-180	42—Ship Shoal Blk. 247-C.	Do.
CI77-161	43—Eugene Island Blk. 315-G.	Do.
CI77-287	45—Eugene Island Blk. 314-G.	Do.
CI78-385	46—High Island Blk. 334-A.	Do.
CI78-386	47—High Island Blk. 334-B.	Do.
CI78-489	48—Vermilion Blk. 267-F.	Do.
CI77-101	49—Mallard Bay	Do.
CI78-576	50—South Marsh Island 142/143-A.	Consolidated Gas Supply Corp.
CI78-652	51—Vermilion Blk. 313-A.	Do.
CI78-1221	52—Bridle	Northwest Pipeline Corp.
CI79-88	53—West Cameron Blk. 237-A.	Texas Gas Transmission Corp
CI79-91	54—Ship Shoal Blk. 271-B.	Do.
CI79-336	55—Eugene Island Blk. 99-B.	Do.
CI79-354	56—Ship Shoal Blk. 296.	Do.
CI79-624	57—Vermilion Blk. 313-B.	Consolidated Gas Supply Corp.
CI79-640	58—High Island Blk. 572/573-B&C.	Texas Gas Transmission Corp.
CI80-148	59—Ship Shoal Blk. 271-A&B.	Columbia Gas Transmission Corp.
CI81-45	60—Ship Shoal Blk. 247-F.	Do.
CI81-69	61—High Island Blk. 572/573-A.	Texas Gas Transmission Corp.
CI81-91	62—Ship Shoal Blk. 248-D.	Do.
CI81-92	63—Ship Shoal Blk. 247-F.	Do.
CI81-176	64—South Marsh Island 142/143-B.	Consolidated Gas Supply Corp.
CI82-2-001	65—Vermilion Blk. 268-(C-11).	Columbia Gas Transmission Corp.
CI83-306	66—East Cameron Blk. 220-A&B.	Texas Gas Transmission Corp.
CI83-402	67—High Island Blk. 595-D.	Do.
CI85-233	68—Eugene Island Blk. 314-F.	Columbia Gas Transmission Corp.

[FR Doc. 86-27269 Filed 12-3-86; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP87-68-000]

El Paso Natural Gas Co.; Request Under Blanket Authorization

December 1, 1986.

Take notice that on November 13, 1986, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP87-68-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization: (1) To install and operate a sales meter station, to be located in Santa Cruz County, Arizona, in order to permit the delivery of natural gas to Citizens Utilities Company (Citizens) for direct sale to Citizens' Valencia Power Plant in Santa Cruz County, Arizona; and (2) to reassign, among existing delivery points, authorized contract quantities of natural gas currently delivered to Citizens for resale to consumers in Santa Cruz County, Arizona, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that El Paso is currently selling gas to Citizens, on a direct sale basis, pursuant to a Gas Sales Agreement dated April 1, 1983, as amended, between the parties. It is stated additionally that El Paso sells and delivers natural gas to Citizens for

distribution and resale to consumers situated in various communities and areas in the State of Arizona, pursuant to a Service Agreement dated August 17, 1981, (Service Agreement) between El Paso and Citizens.

It is further stated that El Paso has received a written request form Citizens wherein Citizens has requested that El Paso provide additional direct sale natural gas service to Citizens for use at Citizens' new Valencia Power Plant located near Nogales, Arizona, and reassign, among existing delivery points situated in Santa Cruz County, Arizona, authorized contract quantities of gas. It is said that El Paso is advised by Citizens that the requested quantities of natural gas, to be provided by El Paso for the additional direct sale service, would be utilized by Citizens as fuel for three new gas turbine generators at Citizens' Vacencia Power Plant in order to meet projected electric peak shaving requirements of residential and commercial customers primarily during the summer months. With respect to the requested reassignment among existing delivery points of the authorized contract quantities of natural gas in Santa Cruz County, Arizona, it is said that Citizens has advised El Paso that such reassignment of volumes would allow Citizens to better meet the present and anticipated load distribution in its service area in Santa Cruz County, Arizona. Additionally, it is said that reassignment of said volumes among existing delivery points would more accurately reflect the actual delivery conditions at each delivery point.

It is stated that in order to accommodate Citizens' request for additional direct sale of natural gas service, El Paso proposes to install a sales meter station consisting of two 4½-inch O.D. standard orifice-type meters, with appurtenances, at a point on El Paso's existing combination 6⅝-inch O.D. and 8⅝-inch O.D. line extending from the California Line to Twin Buttes and Nogales in Santa Cruz County, Arizona. It is further stated that the volumes of natural gas to be sold to Citizens at the proposed sales meter station would be delivered at a pressure of not less than 300 psig. Citizens has projected that the estimated annual and maximum peak day delivery requirements for use at Citizens' Valencia Power Plant during the first full year of service is 205,980 Mcf of gas per year and 5,800 Mcf of gas per day, respectively.

In accommodating Citizens' request for reassignment of natural gas, El Paso proposes to reassign among existing delivery points the authorized contract quantities of natural gas delivered to Citizens for resale by El Paso in Santa Cruz County, Arizona. It is said that no new or additional facilities would be required by El Paso to effectuate the proposed reassignment of contract quantities at any of the existing delivery points. In addition, it is said that the proposed reassignment of authorized contract quantities of natural gas among existing delivery points will not represent any increase in aggregate quantities delivered under the existing Service Agreement and will not alter Citizens' classification as a Category C Customer under El Paso's Permanent Allocation Plan.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27270 Filed 12-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-110-000]

Montaup Electric Co.; Filing of Unit Sales Contract

November 28, 1986.

Take notice that on November 17, 1986 Montaup Electric Company ("Montaup" or "the Company") tendered for filing a contract between Montaup Electric Company and the Massachusetts Municipal Wholesale Electric Company for the sale of capacity and energy from Montaup's 50% Share of Canal Unit No. 2.

This agreement is for a six-month period beginning May 1, 1986. MMWEC's entitlement percentage is 4.110% (24MW) and the capacity charge rate is $4.78 per kw/month. Attachment A to the filing describes this rate, which was approved by FERC under Docket No. ER85-736-000, Supplement 2 to Rate Schedule FERC No. 60, Town of Braintree.

Through an oversight filing of this contract was not made in the required 60-day notice period. In order to permit Montaup and MMWEC to achieve mutual benefits from this system agreement, Montaup requests waiver of the 60-day notice requirement to permit this rate schedule to become effective on May 1, 1986. The waiver, if granted, will have no effect upon purchases under any other rate schedule.

Montaup served copies of its filing on Massachusetts Municipal Wholesale Electric Company and Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27272 Filed 12-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-20-000]

Pacific Gas Transmission Co.; Change in GRI Adjustment Charge

November 25, 1986.

Take notice that on November 17, 1986, Pacific Gas Transmission Company (PGT) tendered for filing Third Revised Sheet No. 12 to its FERC Gas Tariff, First Revised Volume No. 1. According to § 381.103(b)(2)(iii) of the Commission's regulations (18 CFR 381.103(b)(2)(iii)), the date of filing is the date on which the Commission receives the appropriate filing fee, which in the instant case was not until November 20, 1986. An effective date of January 1, 1987 is proposed, in accordance with the Commission's Opinion No. 252 in Docket No. RP86-117-000.

PGT states that this filing is made under its filed Gas Research Institute (GRI) Charge Adjustment Provision and pursuant to the Commission's Opinion No. 252 issued September 29, 1986 in Docket No. RP86-117-000. That Opinion authorizes members of the GRI to collect

a general R&D funding unit of 1.52 cents per Mcf of Program Funding Services for payment to GRI. PGT further states that the change in rates will affect only charges for natural gas service rendered to Pacific Gas and Electric Company under Rate Schedule PL–1.

PGT states that copies of this filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or 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 December 3, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–27273 Filed 12–3–86; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1388–001]

Southern California Edison Co.; Issuance of Annual License

November 28, 1986.

On December 1, 1981, the Southern California Edison Company, licensee for the Lee Vining Creek Project No. 1388, filed an application for a new license pursuant to the Federal Power Act and the Commission's regulations thereunder. Project No. 1388 is located on Lee Vining Creek in Mono County, California.

The license for project No. 1388 was issued for a period ending November 30, 1986. In order to authorize the continued operation and maintenance of project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to the Southern California Edison Company.

Take notice that an annual license is issued to the Southern California Edison Company for a period effective December 1, 1986, to November 30, 1987, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 1388, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before November 30, 1987, an annual license will be issued each year thereafter, effective December 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–27274 Filed 12–3–86; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1389–001]

Southern California Edison Co.; Issuance of Annual License

November 28, 1986.

On December 1, 1981, the Southern California Edison Company, licensee for the Rush Creek Project No. 1389, filed an application for a new license pursuant to the Federal Power Act and the Commission's regulations thereunder. Project No. 1389 is located on Lee Vining Creek in Mono County, California.

The license for project No. 1389 was issued for a period ending November 30, 1986. In order to authorize the continued operation and maintenance of project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to the Southern California Edison Company.

Take notice that an annual license is issued to the Southern California Edison Company for a period effective December 1, 1986, to November 30, 1987, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 1389, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before November 30, 1987, an annual license will be issued each year thereafter, effective December 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–27275 Filed 12–3–86; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1390–001]

Southern California Edison Co.; Issuance of Annual License

November 28, 1986.

On December 1, 1981, the Southern California Edison Company, licensee for the Mill Creek Project No. 1390, filed an application for a new license pursuant to the Federal Power Act and the Commission's regulations thereunder. Project No. 1390 is located on Mill Creek in Mono County, California.

The license for project No. 1390 was issued for a period ending November 30, 1986. In order to authorize the continued operation and maintenance of project pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to the Southern California Edison Company.

Take notice that an annual license is issued to the Southern California Edison Company for a period effective December 1, 1986, to November 30, 1987, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 1390, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before November 30, 1987, an annual license will be issued each year thereafter, effective December 1 of each year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86–27276 Filed 12–3–86; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 1394–004]

Southern California Edison Co.; Issuance of Annual License

November 28, 1986.

On December 1, 1981 and March 31, 1986, the Southern California Edison Company, licensee for the Bishop Creek Project No. 1394, filed an application for a new license pursuant to the Federal Power Act and the Commission's regulations thereunder. Project No. 1394 is located on Bishop, Birch, and McGee Creeks in Inyo County, California.

The license for Project No. 1394 was issued for a period ending November 30, 1986. In order to authorize the continued operation and maintenance of project

pending Commission action on the licensee's application, it is appropriate and in the public interest to issue an annual license to the Southern California Edison Company.

Take notice that an annual license is issued to the Southern California Edison Company for a period effective December 1, 1986, to November 30, 1987, or until federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of Project No. 1394, subject to the terms and conditions of the original license.

Take further notice that if federal takeover or issuance of a new license does not take place on or before November 30, 1987, an annual license will be issued each year thereafter, effective December 1 of ech year, until such time as federal takeover takes place or a new license is issued, without further notice being given by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27277 Filed 12-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-95-000]

Upper Peninsula Power Co.; Filing

November 28, 1986.

Take notice that on November 10, 1986, Upper Peninsula Power Company (the Company) tendered for filing an amendment to Energy Interchange Rate in 1978 Basic Agreement (Rate Schedule FERC No. 22), a coordination agreement to which Cliffs Electric Company (Service Co.), the Company, and Upper Peninsula Generating Company are parties. The Company states that Service Co. is the only party which will be selling power pursuant to this rate schedule amendment.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 10, 1986. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27278 Filed 12-3-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF85-204-002, etc.]

Frackville Energy Company, Inc., et al.; Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, Etc.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. Frackville Energy Company, Inc.

[Docket No. QF85-204-002]

November 24, 1986.

On October 31, 1986, Frackville Energy Company, Inc. (Applicant), c/o Gary Bachman, 1050 Thomas Jefferson Street, NW., Seventh Floor, Washington, D.C. 20007 submitted for filling an application for recertification 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 was originally certified as a qualifying 34 megawatt cogeneration facility on August 8, 1985, (Docket No. QF85-204-001, 32 FERC ¶ 62,275 (1985)). The application for recertification requests that the qualifying net electric power production capacity of the facility be increased from 34 megawatts to 42 megawatts and the ownership be changed from Fluidized Energy Frackville Associates to *Frackville Energy Company, Inc.*, a subsidiary company of the Henley Group, Inc.

2. Hazleton Associates Fluidized Energy, Inc.

[Docket No. QF85-520-001]

November 26, 1986.

On October 22, 1986, Hazleton Associates Fluidized Energy, Inc. (Applicant), c/o Ebasco, Services, Inc., Two World Trade Center, 93 North, New York, New York 10048, submitted for filing an application for certification of a facility as a qualifying cogeneration production 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 the site of the Hazleton Shaft Colliery in Hazleton, Pennsylvania. The facility will consist of a fluidized-bed steam generator and an extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used to provide high temperature hot water for various institutions in the Hazleton area. The primary energy source for the facility will be anthracite culm and silt. The net electric power production capacity of the facility will be 80 MW. Installation of the facility is expected to begin in January 1987.

3. Montenay Power NY Corp.

[Docket No. QF87-69-000]

November 26, 1986.

On November 4, 1986, Montenay Power NY Corp. (Applicant), of 1 World Trade Center, Suite 8419, New York, New York, 10048 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Long Beach New York. The electric power production capacity will be 4.5 megawatts. The primary energy source will be municipal solid waste. Fossil fuel will comprise a maximum of one percent (1%) of the total fuel used by facility and will only be used during start-ups. Installation will begin in December 1987.

4. Metro Key West, Inc.

[Docket No. QF87-67-000]

November 26, 1986.

On November 4, 1986, Metro Key West, Inc. (Applicant), of 5701 West Junior College Road, P.O. Box 5708, Key West, Florida 33045-5708 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Key West, Florida. The electric power production capacity will be 2.715 megawatts. The primary energy source will be municipal solid waste. Fossil fuel will comprise a maximum of one percent (1%) of the total fuel used by the facility and will only be used during start-ups. Installation of the facility will begin on December 1, 1986.

5. Independent Energy Operations, Inc. (G. Fox Store)

[Docket No. QF87-68-000]

November 26, 1986.

On November 4, 1986, Independent Energy Operations, Inc. (Applicant), of 255 Main Street, Hartford, Connecticut 06106 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 in Hartford, Connecticut. The facility will consist of one combustion turbine generator and one waste heat recovery steam generator. Steam recovered from the facility will be used for space and district heating and cooling. The net electric power production capacity will be 4.1 megawatts. The primary energy source will be natural gas. Construction on the facility is expected to begin early in 1987.

6. Champion International Corporation

[Docket No. QF87-83-000]

November 26, 1986.

On November 12, 1986, Champion International Corporation (Applicant), of One Champion Plaza, Stamford, Connecticut 06921 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 Bucksport cogeneration facility will be located at Champion's Paper Plant in Bucksport, Maine. The facility will consist of four steam generators, one back-pressure steam turbine-generator and one extraction/condensing steam turbine-generator. Steam recovered from the facility will be used for thermal process associated with paper mill. The maximum net electric power production capacity of the facility will be 84 MW. The primary energy source will be oil, coal and biomass. Installation of portion of the facility commenced in 1965, the entire facility is scheduled to be completed in 1988.

7. Bio-Gen, Inc.

[Docket No. QF87-79-000]

November 26, 1986.

On November 10, 1986, Bio-Gen, Inc. (Applicant), c/o William R. Breetz, P.C., 241 Main Street, Hartford, Connecticut 06106 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Torrington, Connecticut. The net electric power production capacity will be 10 metawatts. The primary energy source will be wood waste. Natural gas or oil will be used for start-ups and stand-by fuel. However, such uses is not expected to exceed five percent (5%) of the annual total energy input.

8. Campbell Cogenerator

[Docket No. QF87-78-000]

November 28, 1986.

On November 10, 1986, Campbell Cogenerator (Applicant), c/o General Electric Company, of One River Road, Schenectady, New York, 12345, 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 on or adjacent to the Campbell Soup Company, Camden, New Jersey. The facility will consist of a combustion turbine generator, a heat recovery steam generator, and an extraction/condensing steam turbine generator. The primary energy source will be natural gas. The net electric power production capacity of the facility will be 48,660 kW. Thermal energy recovered from the facility will be utilized at the Campbell Soup Company for process uses and space heating. Construction of the facility is estimated to begin in late 1987.

Decker Energy International, Inc.

[Docket No. QF87-86-000]

November 28, 1986.

On November 17, 1986, Decker Energy International, Inc. (Applicant), of 1099 West Morse Boulevard, Winter Park, Florida 32790, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located approximately 2.5 miles south of the town of Central City, in Shade Township, Pennsylvania. The facility will consist of one or more fluidized-bed combustion boilers and a stream turbine generator. Applicant states that the primary energy source will be waste in the form or bituminous coal refuse. The net electric power production capacity of the facility will be 80 MW.

10. Northeastern Power Company; McAdoo, Schuylkill County, PA

[Docket No. QF85-678-002]

November 28, 1986.

On November 14, 1986, Northeastern Power Company (Applicant), of 1101 Market Street, Suite 2300, Philadelphia, Pennsylvania 19107, submitted for filing an application for recertification 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 was originally certified as a qualifying 45 megawatt cogeneration facility on June 12, 1986 (Docket No. QF84-678-001, 35 FERC ¶ 62,468 (1986)). The application for recertification requests that the qualifying net electric power production capacity of the facility be increased from 45 megawatts to 50 megawatts. All other details and descriptions of the facility described in the original application remain the same.

11. StarMark Energy Systems, Inc.

[Docket No. QF87-64-000]

November 28, 1986.

On November 4, 1986, StarMark Energy Systems, Inc. (Applicant), of 813 Ridgelake Boulevard, Suite 400, Memphis, Tennessee, 38119 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed bottoming-cycle cogeneration facility will be located at National Fuel's Nash Road Regulator Station in the Town of Weatfield, New York. The facility will consist of two turbo-expanders and three gas-fired heaters. The maximum electric power production capacity of the facility will be 1500 kW. The primary energy source will be natural gas. The installation of the facility is scheduled to commence by September 1987.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of

Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27264 Filed 12-03-86; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF86-372-002]

Ultrapower-Malaga Fresno; Application for Commission Recertification of Qualifying Status of a Small Power Production Facility

December 1, 1986.

On October 15, 1986, Ultrapower-Malaga Fresno (Applicant), a partnership organized under the laws of California, submitted for filing an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

Recertificaiton is requested in order to reflect a change in ownership from Ultrapower Incorporated (former Applicant). All other information leading to the Commission March 11, 1986, Order granting qualifying status, in Docket No. QF86-372-001, remains unchanged.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 86-27265 Filed 12-3-86; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders, Week of October 6 Through October 10, 1986

During the week of October 6 through October 10, 1986, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Barnhill Bolt Company, 10/6/86, KFA-0052

Barnhill Bolt Company filed an Appeal from a denial by the Director of the Classification and Technical Information Division of the Albuquerque Operations Office of the Department of Energy of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the documents were properly withheld under FOIA Exemption 4 since they contained confidential commercial information. Important issues considered were the confidentiality of unit price information and the scope of the FOIA.

Remedial Order

Vessels Gas Processing Company/Vessels Processing, Ltd.; Halliburton Company, 10/7/86, HRO-0111, HRR-0089

Vessels Gas Processing Company (VGPC)/Vessels Gas Processing, Ltd. (VGPL) (collectively "Vessels") and Halliburton Company (Halliburton) filed Statements of Objections to a Proposed Remedial Order (PRO) that was issued jointly to Vessels and Halliburton by the Economic Regulatory Administration on June 24, 1983. In the PRO, the ERA alleged that during the period September 1973 through December 1977, Vessels and Halliburton sold natural gas liquids (NGLs) and natural gas liquid products (NGLPs) at prices exceeding maximum allowable selling prices as determined under 10 CFR Part 212, Subparts E and K. In considering the firms' respective Statements of Objections, the DOE rejected Vessels' claims that: (i) The regulations underlying the PRO are procedurally and substantively invalid, (ii) the ERA improperly treated VGPC and VGPL as part of the same firm, (iii) the firm was entitled to certain adjusted prices permitted for "new gas plants," (iv) a depropanized NGL sold by the firm was an NGLP under the regulations rather than an NGL, and (v) the ERA improperly determined the firms' allowable increased product and non-product costs as a matter of law. The DOE further rejected Halliburton's principal contention that it and Vessels should not be held jointly and severally liable for the overcharge amount. The DOE granted, however, certain reductions of the overcharge amount that had been conceded by ERA or substantiated by Vessels. Accordingly, a final Remedial Order was issued jointly to Vessels and Halliburton. In the Decision and Order the DOE also denied a Motion for Reconsideration filed by Vessels concerning an interlocutory discovery order issued in the proceeding.

Implementation of Special Refund Procedures

Leathers Oil Company, Marlen L. Knutson Distributors, Inc., 10/7/86; HEF-0113; HEF-0110

The DOE issued a Decision and Order implementing a plan for the distribution of $35,971 received as a result of two separate consent orders with Leathers Oil Co. and Marlen L. Knutson Distributors, Inc. executed on October 15, 1981 and October 19, 1981, respectively. The DOE determined that the Leathers and Knutson settlement funds should be distributed to both identified and as yet unidentified customers who purchased petroleum products from the consent order firms during the consent order periods. The specific information requested in refund applications is provided in the Decision.

Refund Applications

Apache Corporation/Cities Service Oil and Gas Corporation, 10/8/86, RF55-1

Cities Service Oil & Gas Corporation (Cities) filed an Application for Refund, seeking a portion of funds remitted by Apache Corporation, pursuant to a consent order that Apache entered into with the DOE. Cities purchased 11,949,623 gallons of natural gas liquid products from Apache during the consent order period. The DOE found that the prices Apache charged Cities during 1973 and 1974 were significantly higher than average market prices. In later years, however, Apache's prices were below the market prices. As a result, Cities incurred a competitive injury during some months of the consent order period. The DOE granted Cities a refund based upon the gallons that the firm purchased at above market prices, which equals $236,676.17 in principal and $140,386.83 in accrued interest.

Good Hope Refineries/Bray Terminals, Inc., 10/8/86, RF189-4

The DOE issued a Decision and Order concerning the Application for Refund from the Good Hope Refineries escrow account filed by Bray Terminals, Inc. under the procedures outlined in Good Hope Refineries, 13 DOE ¶ 85,105 (1985). Bray Terminals, Inc., a reseller of motor gasoline, was listed in the Appendix to the Implementation Order as being eligible for 0.1592% of the Good Hope consent order monies. This entitled it to a refund below the $5,000 small claims threshold level. As no further proof of injury was required beyond proof of volumes purchased, the DOE determined in its Decision that Bray Terminals, Inc. be granted a refund of $3,999, representing $2,468 in principal and $1,531 in interest.

Greater Richmond Transit Company, 10/10/86, RF272-1

The Department of Energy issued a Decision and Order approving the first crude oil refund application submitted pursuant to Subpart V under the DOE's Statement of Modified Restitutionary Policy. The Decision approved Greater Richmond Transit Company for a refund from monies remitted by two crude oil producers: Mountain Fuel Supply Company and J.N. Abel, Inc. Greater Richmond's refund will be based on the gallons of diesel fuel, motor oil, heating oil, and gasoline which it purchased between August 1973 and January 1981.

Gulf Oil Corporation/Knight Oil Co., et al., 10/6/86, RF40-1001 et al.

The DOE issued a Decision and Order concerning the Applications for Refund filed by Knight Oil Company and 53 other consignees of Gulf motor gasoline, on the basis of the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984). Each applicant demonstrated that overall gasoline consumption in the state in which it was located had increased during the consent order period, while its own total sales volume of gasoline during that period was less than the state increase. The DOE therefore determined that each applicant was injured by Gulf's allegedly uncompetitive prices. Each applicant's refund was calculated by multiplying the number of gallons of gasoline Gulf consigned to it during the consent order period, its percent loss of potential sales, and the Gulf volumetric refund amount of $.00122. The total of the refunds granted in this case is $58,542 principal and $12,435 interest.

Marathon Petroleum Company/Agler & Cassady Marathon Service, et al., 10/10/86, RF250-908 et al.

The DOE issued a Decision and Order concerning 36 Applications for Refund filed by resellers who purchased products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $26,072 in principal and $1,301 in interest.

Marathon Petroleum Company/Ball Tire & Gas, Inc., 10/6/86, RF250-1188; RF250-1189

The DOE issued a Decision and Order concerning two Applications for Refund filed by Ball Tire Gas, Inc., a reseller that purchased motor gasoline and middle distillates covered by a consent order into which the agency entered with Marathon Petroleum Company. Ball demonstrated that it purchased 42,401,611 gallons of covered product from Marathon during the consent order period. However, Ball did not attempt to show that it fully absorbed the alleged overcharges, electing instead to receive 35 percent of its allocable share of the consent order funds. Under the 35 percent presumption, the refund approved in this Decision is $6,233 in principal and $312 in interest

Marathon Petroleum Company/Fratesi Grocery & Service Station, Fratesi Brothers, 10/9/86, RF250-1201; RF250-1202

The DOE issued a Decision and Order concerning two Applications for Refund filed by Fratesi Grocery & Service Station and Fratesi Brothers (Fratesi) in the Marathon Petroleum Company special refund proceeding. Fratesi demonstrated that it purchased 527,917 gallons of motor gasoline for resale at its service station and 34,955 gallons of middle distillates for end-use on its farm. Together, these volumes totaled 562,872 gallons of covered product which Fratesi purchased from Marathon during the consent order period. Under the end-user and small claims presumptions established in *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986), the refund approved in this Decision is $236 in principal and $12 in interest.

Marathon Petroleum Company/Grosskopf Oil, Inc., 10/6/86, RF250-382; RF250-383

The DOE issued a Decision and Order concerning an Application for Refund filed by Grosskopf Oil, Inc., a purchaser and reseller of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Grosskopf's purchase volume made it eligible for a volumetric refund exceeding $5,000. Under the procedures established for Marathon applicants, Grosskopf elected to receive a refund of 35% of its volumetric amount, rather than attempt to demonstrate that it absorbed the alleged Marathon overcharges. Accordingly, the DOE granted Grosskopf a refund of $6,741 in principal and $337 in interest.

Marathon Petroleum Company/Major Oil Products, Inc., 10/9/86, RF250-1199

The DOE issued a Decision and Order concerning the Application for Refund filed by Major Oil Products, Inc., a purchaser and reseller of motor gasoline covered by a consent order into which the agency entered with Marathon Petroleum Company. Major demonstrated that it purchased 102,988,567 gallons of covered product from Marathon during the consent order period. However, Major did not attempt to show that it fully absorbed the alleged overcharges, electing instead to accept the 35 percent presumption of injury established in *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986). Under the 35 percent presumption, the refund approved in this Decision is $15,139 in principal and $757 in interest.

Marathon Petroleum Company/Speed & Briscoe Auto/Truck Stop, Inc., 10/7/86, RF250-830

Speed Briscoe Auto/Truck Stop, Inc. (Briscoe) filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered with Marathon Petroleum Company (Marathon). The firm claimed a refund on the basis of its purchases of diesel fuel from Marathon during the period August 1, 1979 through November 30, 1979. Since that product was decontrolled effective July 1, 1976, the firm was not eligible for a refund and the request for refund was denied.

Marathon Petroleum Company/Webster Service Stations, Inc., 10/6/86, RF250-1269

The DOE issued a Decision and Order concerning the Application for Refund filed by Webster Service Stations, Inc., a purchaser and reseller of motor gasoline covered by a consent order into which the agency entered with Marathon Petroleum Company. Webster demonstrated that it purchased 136,321,065 gallons of covered product from Marathon during the consent order period. However, Webster did not attempt to show that it fully absorbed the alleged overcharges, electing instead to accept the 35 percent presumption of injury established in *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 (1986). Under the 35 percent presumption, the refund approved in this Decision is $20,039 in principal and $1,002 in interest.

Moore Terminal and Barge Company, Ltd./Dixie Oil of Tennessee, Inc., 10/6/86, RF181-1

The DOE issued a Decision and Order concerning an Application for Refund filed by Dixie Oil of Tennessee, Inc. (Dixie), a spot purchaser of Moore Terminal and Barge Company, Ltd. (MTB) No. 2-D diesel fuel. Dixie applied for a refund based on the procedures outlined in *Moore Terminal and Barge Company, Ltd.*, 12 DOE ¶ 85,199 (1985), governing the disbursement of settlement funds received from MTB pursuant to an August 29, 1977 Consent Order (modified on February 6, 1981). According to those procedures, resellers who were spot purchasers are not eligible to receive refunds unless they rebut the presumption that they were not injured. The DOE found that Dixie had not rebutted that presumption. Specifically, the firm did not show that (i) the purchases were necessary to maintain supplies to base period customers; and (ii) it was forced by market conditions to resell the product at a loss that was not subsequently recouped. Since Dixie did not make these showings, its Application for Refund was denied.

Pride Refining Inc./Gulf States Oil & Refining Co., 10/8/86, RF235-16

The DOE issued a Decision and Order concerning an Application for Refund filed by Gulf States Oil & Refining Co. in the Pride Refining, Inc. special refund proceeding. Gulf States is a reseller whose purchases of Pride product were sporadic and occurred in only eight months of the consent order period. Consequently, the DOE determined that the firm was a spot purchaser. According to the procedures outlined in *Pride Refining, Inc.*, 13 DOE ¶ 85,367 (1986), resellers who were spot purchasers are presumed not to have been injured by Pride's alleged overcharges. In order to receive a refund, a spot purchaser must rebut this presumption of non-injury. Because Gulf States was unable to do so, its Application for Refund was denied.

Pride Refining, Inc./Odessa L.P.G. Transport, Inc., 10/10/86, RF235-17

The DOE issued a Decision and Order concerning an Application for Refund filed by Odessa L.P.G. Transport, Inc., in the Pride

Refining, Inc. special refund proceeding. The applicant was a purchaser and reseller of Pride products that made one spot purchase of butane and regular purchases of motor gasoline, No. 2 oil, and diesel fuel during the consent order period. The DOE determined that Odessa had not overcome the spot purchaser presumption with respect to its purchase of butane, but was entitled to a refund based upon its purchases of motor gasoline, No. 2 oil, and diesel fuel. The refund granted totals $64, representing $50 in principal and $14 in interest.

Stinnes Interoil, Inc./Gulf States Oil & Refining Company, 10/7/86, RF125-1

The DOE issued a Decision and Order concerning an Application for Refund filed by Gulf States Oil & Refining Company (Gulf States), a purchaser of motor gasoline covered by a consent order the DOE entered into with Stinnes Interoil, Inc. (Stinnes). Based on the principles established for evaluating refund applications in the Stinnes special refund proceeding, the DOE concluded that the applicant was injured. Therefore, the DOE granted Gulf States a refund of $17,671.78, representing its full volumetric share of $11,617.32 and $6,054.46 in accrued interest.

Texas Oil and Gas Corporation/Bruin Corporation, 10/6/86, RR42-1

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed on behalf of Bruin Corporation. The Applicant requested that the DOE reconsider a Decision that denied Bruin a refund for purchases of petroleum products covered by a consent order that the DOE entered into with Texas Oil and Gas Corporation. *Texas Oil and Gas Corp./Bruin Corp.*, 14 DOE ¶ 85,166 (1986). In considering Bruin's Motion, the DOE found that Bruin had not successfully rebutted the presumption that firms making spot purchases of product did not suffer injury. Therefore, the DOE determined that Bruin's Motion for Reconsideration be denied.

U.S.A. Petroleum/Lyman Oil Co., Inc., 10/8/86, RF252-9

The DOE issued a Decision and Order concerning the Application for Refund from the U.S.A. Petroleum escrow account filed by Lyman Oil Co., Inc. under the procedures outlined in *U.S.A. Petroleum*, 14 DOE ¶ 85,122 (1986). Lyman was a reseller of motor gasoline and was supplied by Houston Oil Co., a subsidiary of U.S.A. Petroleum. During the consent order period, Lyman's purchases of covered product entitled it to a refund of less than the $5,000 small claims threshold amount. Consequently, no proof of injury was required beyond proof of volumes purchased. In its Decision, the DOE has determined that Lyman Oil Co., Inc. be granted a refund of $3,569, representing $2,880 in principal and $689 in interest.

Witco Chemical Company/McKormick & Sons Oil Co., 10/6/86, RF115-6

The DOE issued a Decision and Order concerning an Application for Refund filed by McKormick & Sons Oil Co., a purchaser of products covered by a consent order that the agency entered into with Witco Chemical Company. The applicant demonstrated the volume of its Witco purchases, and did not request a refund greater than the $5,000 small claims threshold amount. The sum of the refund approved in this Decision is $57 in prinicipal and $38 in interest.

Dismissals

The following submissions were dismissed:

Name and Case No.

A & W Artesian Well Co.—RF225-4577
Aireco, Inc.—RF225-4606
Allis-Chalmers—RF225-4601
American Decal & Mfg. Co.—RF225-4610
Anzon AO., Inc.—RF225-4441
B & V Mobil Service—RF225-8888
Brown & Sharpe Mfg. Co.—RF225-4169
Canal Barge Co., Inc.—RF225-5076
Centralab, Inc.—RF225-5022, RF225-5023
City of Celina—RF225-5009 thru RF225-5011
City of Delaware—RF225-5081
City of Pratt—RF225-4476, RF225-4477
City of While Plains—RF225-4578
Colonial Cake Co., Inc.—RF242-4
Coneys Marine Corp.—RF225-1231
Continental Machines, Inc.—RF225-4585
Dayton Screw Machine Products Inc.—RF225-5099
Doerr Electric—RF225-4607
Dynapac—RF225-5073
Dynex/Rivett Inc.—RF225-5060
Ernest Hosepian—RF225-8881
Essex Group, Inc.—RF225-4602
Exit 10 Truck Repair & Equipment Company—RF225-3336
Favorite Foods, Inc.—RF225-5071
General Portland, Inc.—RF225-5028, RF225-5029
George A. Hormel Co.—RF225-4428
Goldworthy Engineering, Inc.—RF225-4015, RF225-4016
Goodal Rubber Co.—RF225-4583
Gurley Refining Co.—RF225-7658
Havana Materials Co.—RF242-11
Henry Heide, Inc.—RF225-5030, RF225-5031
Hershey Entertainment & Resort Co.—RF225-4613
Hillview Sand & Gravel Corp.—RF225-4643, RF225-4644
J. Soehner Corp.—RF225-5062
John L. Loeb—RF225-4605
Johnston Petroleum—RF225-3017
Justo B. Gonzalez—RF225-5235, RF225-5236, RF225-5237
Kalmibes Management Inc.—RF225-5074
KCS Industries Inc.—RF225-4600
Koller Craft Plastics Products—RF225-4579
Main Street Mobil—RF225-220
Monomoy Fuel, Inc.—RF225-7572
Motor Specialty Inc.—RF225-4170
Murby's Service Station, Inc.—RF225-8515
National Mine Service Co.—RF225-4591
Northland Aluminum Products, Inc.—RF225-4588
Oscar Mayer Foods Corp.—RF225-5068
Pennsylvania Dept. of Corrections—RF225-4567
Pennwalt Corp.—RF225-221
Pennwalt Corp.—RF225-5072
Precision Spindle Service Co., Inc.—RF225-4608
Princeton University—RF225-5075
RCA Consumer Electronics—RF225-5052, RF225-5053
Rheem Manufacturing Co.—RF225-4585
Rippel Architectural Metals, Inc.—RF225-4580
Robert A. Ford—RF225-5536
Samaritan Health Service—RF225-5079
Schlage Lock Co.—RF225-4611
Schoenfelder Agency, Inc.—RF225-5069
Solo Enterprise Corp.—RF225-4609
Sparling Instruments Co., Inc.—RF225-4575
Storm Printing—RF225-4977, RF225-4978
USAir, Inc.—RF242-1
Walker Midstream Fuel & Service—RF225-5135
Washington University—RF225-4604
Wilson Sporting Goods Co.—RF225-4599

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

November 20, 1986.

[FR Doc. 86-27259 Filed 12-3-86; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders, Week of October 13 Through October 17, 1986

During the week of October 13 through October 17, 1986, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Implementation of Special Refund Procedures

Lockheed Air Terminal, Inc., 10/14/86, HEF-0117

The DOE issued a Decision and Order implementing a plan for the distribution of $353,339 received as a result of a consent order with Lockheed Air Terminal, Inc. (Lockheed) executed on May 11, 1981. The DOE determined that the Lockheed settlement fund should be distributed to both identified and as yet unidentified customers who purchased aviation fuel from Lockheed during the consent order period, January 1, 1974 through December 31, 1975. The specific information requested in refund applications is provided in the Decision.

Luke Brothers, Inc., HEF-0120; McClure's Service Station, HEF-0128; Lucia Lodge Arco, HEF-0119; Earl's Broadmoor Texaco Service, 10/14/86, HEF-0566

The DOE issued a Decision and Order implementing a plan for the distribution of $37,698.98, plus accrued interest, received as a result of consent orders it entered into with

the following parties: Luke Brothers, Inc., McClure's Service Station, Lucia Lodge Arco and Earl's Broadmoor Texaco. The DOE determined that the settlement funds should be distributed to individuals and firms that purchased propane from Luke Brothers or motor gasoline from the service stations and, in turn, were injured as a result of their purchases during the respective consent order periods. The Decision states that in order to obtain a refund, claimants—all of which were end users of the covered products—need only document their purchases in order to demonstrate their injury. The Decision sets forth the specific information to be provided in refund applications.

Petroleum Heat and Power Company, Inc., 10/14/86, HEF-0150

The DOE issued a Decision and Order implementing a plan for the distribution of $437,920 received pursuant to a Consent Order entered into by Petroleum Heat and Power Co., Inc. (PH&P) and the DOE on November 13, 1980. The DOE determined that the consent order fund should be distributed to customers that purchased PH&P No. 2 heating oil during the period November 1, 1973 through June 30, 1974, provided that they have not already received direct refunds from the firm. The specific information to be included in Applications for Refund is set forth in the Decision.

Refund Applications

A. Tarricone, Inc./Consolidated Edison Company of New York, Inc., 10/15/86, RF155-2

Consolidated Edison Company of New York, Inc. (Con Edison), an ultimate consumer that used No. 2 heating oil to produce electricity sold to its customers, filed an Application for Refund in the Tarricone special refund proceeding based upon the principles and procedures set forth in *Seminole Refining, Inc.* In considering the application, the DOE determined that of the purchase volumes specified in the refund application, 10,961,404 gallons of residual oil purchased from Tarricone were not eligible for a refund since the consent order concerned only the alleged overcharges associated with the sales of No. 2 heating oil by the consent order firm. Con Edison was found to be entitled to a refund of $41,762.82 in principal and $32,657.22 in accrued interest based upon the total volume of No. 2 heating oil purchased from Tarricone.

Aminoil U.S.A., Inc., Central Propane Service, 10/16/86, RF139-50

Central Propane Service filed an Application for Refund in which the firm sought a portion of the fund obtained by the DOE through a consent order entered into with Aminoil U.S.A., Inc. Using pricing and sales data submitted by Central, the DOE calculated "approximated banks" for Central, which indicated that the firm had substantial unrecouped increased product costs throughout the regulatory period. The DOE found that Central paid above-market average costs for most of the natural gas liquid products (NGLPs) that it purchased from Aminoil and, using the three step competitive disadvantage methodology, the DOE determined that Central should receive a refund of $91,950, representing $55,308 in principal and $36,642 in accrued interest.

Fort Wayne Public Transportation Company, RF272-4; Utah Transit Authority, 10/15/86, RF272-7

The Department of Energy issued a Decision and Order approving Subpart V crude oil overcharge refunds for two public transit companies. The refunds are from monies remitted by two crude oil producers, the Mountain Fuel Supply Company and J.N. Abel, Inc. The refunds will be based on the gallons of refined products which each transit company consumed between August 1973 and January 1981.

Gulf Oil Corporation/Consumers Service Company, et al., 10/15/86, RF40-3363 et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund filed by retailers of Gulf Oil Corporation petroleum products. Each firm applied for a refund based on the procedures outlined in *Gulf Oil Corp.*, 12 DOE ¶ 85,048 (1984), governing the disbursement of settlement funds received from Gulf pursuant to a 1978 consent order. In accordance with those procedures, each applicant demonstrated that it would not have been required to pass through to its customers a cost reduction equal to the amount of the refund claimed. After examining the applications and supporting documentation submitted by the applicants, the DOE concluded that they should receive a total refund of $40,494, representing $33,157 in principal and $7,337 in accrued interest.

Marathon Petroleum Company/Bill's Marathon, et al., 10/14/86, RF250-1305 et al.

The DOE issued a Decision and Order concerning four Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $34,966 in principal and $1,741 in interest.

Marathon Petroleum Company/Decatur Oil Company, et al., 10/14/86, RF250-1152 et al.

The DOE issued a Decision and Order concerning 19 Applications for Refund filed by purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and none requested a refund greater than the $5,000 small claims refund amount. The sum of the refunds approved in this Decision is $24,310 in principal and $1,214 in interest.

Marathon Petroleum Company/Wavaho Oil Company, Inc., Champion Oil Products, Inc., 10/15/86, RF250-528, RF250-529, RF250-720, RF250-721

The DOE issued a Decision and Order concerning Applications for Refund filed by Wavaho Oil Co., Inc. and Champion Oil Products, purchasers of products covered by a consent order that the agency entered into with Marathon Petroleum Company. Each applicant demonstrated the volume of its Marathon purchases, and neither attempted to make a demonstration that it was injured by the Marathon overcharges. Accordingly, the firms were granted 35 percent of their allocable shares. The sum of the refunds approved in this Decision is $16,012 in principal and $801 in interest.

Mobil Oil Corporation/A & I Fuel Corp., et al., 10/15/86, RF225-6168 et al.

The DOE issued a Decision granting 53 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $17,837, representing $14,936 in principal and $2,901 in interest.

Mobil Oil Corporation/Admiral Fuel Oil, et al., 10/14/86, RF225-1301 et al.

The DOE issued a Decision granting 42 Applications for Refund from the Mobil Oil Corporation escrow account filed by retailers and resellers of Mobil refined petroleum products. Each applicant elected to apply for a refund based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). The DOE granted refunds totalling $28,994, representing $24,280 in principal and $4,714 in interest.

Sigmor Corporation/Arguindegui Oil Company, et al., 10/15/86, RF242-2 et al.

The Department of Energy issued a Decision and Order granting refunds to seven applicants from the Sigmor Corporation deposit fund escrow account. The applicants were resellers/retailers of Sigmor petroleum products, and each claims a refund below the $5,000 presumption of injury threshold. The refunds granted these firms totalled $6,836, representing $5,420 in principal and $1,416 in interest.

Standard Oil Company (Indiana)/State of Nebraska, 10/15/86, RQ251-328; RM21-44

The DOE issued a Decision and Order approving the second-stage refund application and the Motion for Modification submitted by the State of Nebraska for use of $108,741 from the consent order fund in *Standard Oil Co., (Indiana)*, 11 DOE ¶ 85,185 (1983) (*Amoco I*) and $39,000 from the consent order fund in *Standard Oil Co. (Indiana)*, 14 DOE ¶ 85,161 (1986) (*Amoco II*). Nebraska plans to use these funds for four energy conservation projects: motor fuel quality testing, energy marketing, energy education in Nebraska communities, and weatherization education. The DOE determined that the state's plan satisfied the criteria for second-stage restitutionary programs.

Dismissals

Company Name and Case Number

American Breeders Service Division—RF225-7073, RF225-7074

American Can Company—RF225–4564
American Magnetics Corporation—RF225–4647, RF225–4648
Anderson & Vreeland—RF225–3721
Angelus Sanitary Can Machine Company—RF225–4892, RF225–4893
Arlington Independent School District—RF225–3630
Astroline Corporation—RF220–391
Balco Metals, Inc.—RF225–4670, RF225–4671
Barry Controls—RF225–4558
California Institute of Technology—RF225–4526, RF225–4527, RF225–4528
Capital Marine Supply Inc./Chotin Transportation, Inc.—RF225–5131, RF225–5132
Carroll Company—RF225–4625
City of Baldwin City—RF225–4860
Economics Laboratory, Inc.—RF225–4561
Fairchild Republic Company—RF225–4330
Fran Beckman—RF247–2
Hormel Fine Frozen Foods—RF225–4205
Indiana Briquetting Corporation—RF225–4559
Interstate Electric Company, Inc.—RF225–5130
Kelsey-Hayes—RF225–4154
Ladish-Pacific—RF225–3837, RF225–3838
Malnove Inc.—RF225–4592
Maricopa Medical Center—RF225–4573
Modern Plating Company—RF225–4507, RF225–4508
Nixon Gear & Machine Corporation—RF225–4419
Pacific Gamble Robinson Company—RF225–4027, RF225–4028
Paper Service Mills, Inc.—RF225–5147
Parkway Manufacturing, Inc.—RF225–3638
Pennzoil Company—KRD–0310
Pierson-Hollowell Company, Inc.—RF225–4019, RF225–4020
Progress Pattern Division—RF225–4902
Radio Steel & Manufacturing Company—RF225–4590
Round Mountain Gold Corporation—RF225–4570
Rowland Tompkins Corporation—RF225–4795, RF225–4796
Saline County—RF225–4899
Sargent Pipe Company, Inc.—RF225–4323
Stratoflex, Inc.—RF225–4566
Superior Plating Company—RF225–4905
Village of Lawrence—RF225–3884, RF225–3885
Vita-Pakt Citrus Products Company—RF225–4793, RF225–4794
Ward Paper Company—RF225–2531, RF225–2532
Wescal Wire & Chain—RF225–3346
West Seneca Developmental Center—RF225–4535, RF225–4536
Whirlpool Corporation—KEE–0036, KEE–0037
Zimbrick, Inc.—RF225–4571

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,
Director, Office of Hearings and Appeals.
November 20, 1986.

[FR Doc. 86–27260 Filed 12–3–86; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS–42091; FRL–3123–4]

Acrylate and Methacrylate Esters; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The first of a series of public meetings which EPA expects to conduct to identify and discuss issues related to the acrylate category will be held on February 3, 1987. All chemicals containing one or more acrylate and/or methacrylate ester groups are considered category members. The focus of the first meeting will be the identification and discussion of health risks that may be presented by the chemicals in the acrylate category.

DATES: A meeting will be held on February 3, 1987, at EPA headquarters, 401 M St. SW., Washington, DC from 9:00 a.m. to 5:30 p.m.

ADDRESS: Submit written comments, identified by the document control number [OPTS–42091], in triplicate to: TSCA Public Information Office (TS–793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Room NE–G004, 401 M Street SW., Washington, DC 20460.

The public record supporting this action is available for inspection in Room NE–G004 at the above address from 8 a.m. to 4 p.m, Monday through Friday except legal holidays.

FOR FURTHER INFORMATION CONTACT: Andrea Blaschka, Existing Chemical Assessment Division (TS–778), Office of Toxic Substances, Environmental Protection Agency, Room NE–100, 401 M Street SW., Washington, DC 20460, Phone: (202) 475–8156.

SUPPLEMENTARY INFORMATION: Industry has identified issues pertaining to the acrylate category of chemicals as a result of submitting Premanufacturing Notices (PMNs) and responding to Significant New Use Rules (SNURs). To assure that EPA has the best available data and scientific understanding of the health risk issues for the acrylate category EPA will hold a public meeting on February 3, 1987. The focus of this initial meeting will be to identify and explore the health risk issues potentially associated with acrylates. An effective format for the analysis of individual topics and the compilation of suggestions for the development of information to resolve these issues will be discussed. Subsequent meetings will most likely be necessary in order to examine these issues adequately.

EPA considers these meetings a preliminary step before deciding whether to initiate negotiations for a section 4 consent order for acrylate testing. The consent order negotiation process is described in 51 FR 23706. In the event that negotiations are intiated a separate **Federal Register** notice will be issued inviting interested parties to participate. In addition to public meetings and workshops on potential health hazards and risk, the Agency intends to hold public meetings, at a later date, on the interrelationship of section 5(e) consent orders, SNURs, the acrylate database and risk management issues.

Certain topics and issues have been identified as a preliminary Agenda for the February 3, 1987 meeting. EPA requests comments on these items and solicits information related to these topics. Also, EPA invites interested parties to submit additional issues for inclusion in the meeting Agenda. The following items are now planned for the meeting Agenda

1. For purposes of PMN review, EPA currently considers all chemical substances having one or more acrylate or methacrylate functional groups as potential oncogens and potential neurotoxicants. EPA invites the submission of data and public comments on the appropriate classification and subclassification of the acrylates for structure-activity analysis, toxicological evaluations, and regulatory purposes.

2. Positive and negative results have been obtained from oncogenicity studies on category members. The Agency invites the submission of data and public comments on the appropriateness and relevance of individual studies, the study design, and the number of bioassays necessary to adequately characterize the oncogenic potential of the category. EPA also invites proposals for other possible approaches for assessing the oncogenicity of this category.

3. Important for the assessment of acrylates exposures is an understanding of the absorption, distribution, metabolism and excretion of these chemicals. Information on this topic is limited. The Agency invites the submission of data and comments.

4. Limited neurotoxicity-related data on the acrylates suggest that acrylates may have neurotoxic potential. EPA invites the submission of data and public comment on the potential of acrylates to produce neurotoxicity.

5. Acrylates are used in a wide variety of processes and applications with varying potential for exposure. The Agency invites the submission of data and public comments on uses and types of exposures which may be encountered in consumer products or in the workplace.

In order to ensure that EPA facilities are adequate for this meeting, EPA requests that interested parties identify themselves and indicate their desire to participate or to observe. Please submit in writing a notification of attendance, additions to the Agenda, comments and information by January 5, 1987. Respondants will be notified of the meeting's location.

A docket [OPTS–42091] has been opened for this activity. Additional information on acrylates may be found in dockets prepared for other OTS activities: Proposed Listing SNUR (50535); Generic Acrylate SNUR (50543); other (50522, 50524, 50536, 50549, 50548 and 50547).

Authority: 15 U.S.C. 2603.

Dated: November 24, 1986.

Joseph J. Merenda,

Director, Existing Chemical Assessment Division.

[FR Doc. 86–27242 Filed 12–3–86; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

November 26, 1986.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For futher information on these submissions contact Jerry Cowden, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0237
Title: Section 90.356, Supplemental information to be furnished by applicants for facilities under this subpart
Action: Extension
Respondents: Applicants proposing to provide trunked systems of communication to eligibles on a commercial basis
Estimated Annual Burden: 2,000 Responses; 1,500 Hours

OMB Number: 3060–0238
Title: Section 90.382, Supplemental reports required of licensees authorized under this subpart
Action: Extension
Respondents: Licensees operating trunked systems
Estimated Annual Burden: 12,048 Responses; 1,000 Hours

OMB Number: 3060–0276
Title: Section 80.110, Inspection and maintenance of tower markings and associated control equipment
Action: Extension
Respondents: Licensees of radio stations
Estimated Annual Burden: 1,320 Responses; 660 Hours

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–27210 Filed 12–3–86; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

November 25, 1986.

The following information collection requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0062
Title: Application for Authorization To Construct New or Make Changes in an Instructional Television Fixed and/or Response Station(s), or To Assign or Transfer Such Station(s)
Form No.: FCC 330 (Formerly FCC 330–L and FCC 330–P).

A revised application form FCC 330 has been approved for use through 11/30/89. The current editions of the 330–L and 330–P will remain in use until the revised forms are available. At that time, a Public Notice will be issued containing information on availability and implementation.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–27211 Filed 12–3–86; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Approved by Office of Management and Budget; Correction

November 25, 1986.

On November 7, 1986, the Commission published a notice at 51 FR 40511 announcing OMB approval of the information collection requirements in Part 42, Preservation of Records of Communication Common Carriers (OMB Number 3060–0166). The last sentence of the notice stated erroneously that the requirement has been approved for use through September 30, 1986. The requirement has been approved for use through September 30, 1989.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 86–27212 Filed 12–03–86; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing; Gingrich Broadcasting Co., Ltd.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city and state	File No.	MM Docket No.
A. Gingrich Broadcasting Company, Ltd., Port Huron, MI.	BPH–830207AD	86–438
B. Port Huron Family Radio, Inc., Port Huron, MI.	BPH–830325AE	
C. Nereida Rivera and Brenda S. Whitley d/b/a Port City Radio, Ltd., Port Huron, MI.	BPH–830713AD	
D. L & K Broadcasting, Ltd., Port Huron, MI.	BPH–830714AC	
E. Enterform, Inc., Port Huron, MI.	BPH–830714AD	
F. Thomas J. Sommerville et al., d/b/a Port Huron FM Broadcasting Company, Port Huron, MI.	BPH–830714AW	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Site Availability, D
2. City Coverage—FM, A, B, C
3. Comparative, All
4. Ultimate, All

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 86–27208 Filed 12–3–86; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following persons have filed applications for licenses as ocean freight forwarders with the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and 46 CFR Part 510.

Persons knowing of any reason why any of the following persons should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

All Freight International, Inc., 1221 South 188th Street, Seattle, WA 98148
Officers: Li-Ching (Linda) H. Lorentz, President; Henry Leong, Vice President

Techion Industries, Inc., 20501 Pennsylvania Avenue, Riverview, MI 48192
Officer: Joseph A. Angolia, President

Universal Freight Forwarders, Inc., 902 N.W. 106 Avenue Circle, Miami, FL 33172
Officer: Roberto C. Lopez, President

F.R. Futuro, Inc., 7574 N.W. 70th Street, Miami, FL 33166
Officer: Francisco Rodriquez, President

Trans Am-Asia Corporation dba Import & Export, 3030 West 6th Street, Suite 211, Los Angeles, CA 90020

James F. Montenegro dba Philippine Shippers, 4330 Callan Blvd., Daly City, CA 94015

Rose Moving & Storage Co., Inc., 10421 Ford Road, Dearborn, MI 48126
Officers: Velma Rose, President; Richard Rose, Vice President; Lola Schorkhuber, Secretary

Capital Shipping Corp., 55 Edward Hart Drive, Jersey City, NJ 07305
Officer: Chang Do Park, President

A.H. Carter & Associates, 1741—1st Avenue South, Suite 201, Seattle, WA 98134
Officers: Alan Harley Carter, President; Joseph John Putich, Jr., Vice President

Jon Stuart Korn and Theresa Garde, a partnership dba Marinus Transportation Services, 37839 Essanay Place, Fremont, CA 94536.

Dated: November 28, 1986.

Joseph C. Polking,

Secretary.

[FR Doc. 86–27206 Filed 12–3–86; 8:45 am]

BILLING CODE 6730-01-M

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 1294
Name: U.S. Express, Inc.
Address: P.O. Box 1000, JFK Airport, New York, NY 11430
Date Revoked: October 16, 1986
Reason: Requested revocation voluntarily

License Number: 351
Name: Pegasus Air Transport Company and Houston Freight Forwarding
Address: P.O. Box 6, Butler, MD 21033
Date Revoked: October 18, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2028
Name: Andrews Forwarders, Inc.
Address: P.O. Box 79, Norfolk, NE
Date Revoked: October 28, 1986
Reason: Surrendered license voluntarily

License Number: 1105
Name: A.F. Burstrom & Son, Inc.
Address: 1250 Rankin Road, Suite D, Troy, MI 48084
Date Revoked: October 22, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2230
Name: Kenneth A. Anderson, Jr.
Address: 69 Long Wharf, Boston, MA 02110
Date Revoked: October 23, 1986
Reason: Failed to maintain a valid surety bond

License: 1957
Name: Universal Freight Forwarders, Ltd.
Address: 207½ First Ave. So., Seattle, WA 98104
Date Revoked: October 29, 1986
Reason: Failed to maintain a valid surety bond

License Number: 2422
Name: Evelina H. Nunga dba R.E.N. International Services
Address: 1949 W. Washington Blvd., Los Angeles, CA 90018
Date Revoked: October 31, 1986
Reason: Surrendered license voluntarily

License Number: 2686
Name: Consolidated Freightways Export-Import Services, Inc.
Address: 300 Fourth Street, San Francisco, CA 94107
Date Revoked: November 1, 1986
Reason: Surrendered license voluntarily

License Number: 2728
Name: Spatzer International, Inc.
Address: 11 John St., New York, NY 10038
Date Revoked: November 1, 1986
Reason: Failed to maintain a valid surety bond.

Robert G. Drew,

Director, Bureau of Tariffs.

[FR Doc. 86–27207 Filed 12–3–86; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

Proposed Information Collection Submitted to OMB for Clearance: Correction

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Corrected notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) a notice was published in the **Federal Register** on Tuesday, November 25, 1986 (51 CFR 42630) advising that a proposed information collection from the public had been submitted to the Office of Management and Budget for clearance. Because of an inadvertent error, the date for the submission of comments to the Federal Mediation and Conciliation Service was omitted. Accordingly, the following information is furnished in order to correct the omission.

DATE: Comments on the proposed information collection should be submitted not later than 10 working days from the date of publication of this corrected notice.

ADDRESS: Ted M. Chaskelson, Attorney-Advisor, Legal Services Office, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427.

FOR FURTHER INFORMATION CONTACT: Ted M. Chaskelson, (202) 653-5305.

Dated: December 2, 1986.

Dan W. Funkhouser,

Director of Administrative Services.

[FR Doc. 86-27331 Filed 12-3-86; 8:45 am]

BILLING CODE 6372-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-010-07-4351-12]

Emergency Closure of Public Lands to Snowmobile Travel; Craig District, Kremmling Resource Area; Colorado

SUMMARY: The purpose of this emergency closure is to protect wintering populations of big game animals from undue harrassment by snowmobiles. Effective December 1, 1986, all public lands under administration of the Kremmling Resource Area, Bureau of Land Management in:

Sixth Principal Meridian, Colorado

T. 1 N., R. 80 W.,
Secs. 1, 2, 3, 4, 5, 6, 7, 8, 10, 11.
T. 2 N., R. 80 W.,
Sec. 6 south of Grand County Road 25, Section 7, Section 8 south of Grand County Road 25,
Road 25, Section 9 south of Grand County Road 25, Section 15 west of Grand County Road 25, Sections 17, 18, 19, 20, 21, 22, 28, 29, 30, 31, 32, 33.
T. 2 N., R. 81 W.,
Sec. 1 east of U.S. Highway 40, Section 13, Section 23 east of U.S. Highway 40, Sections 24, 25.
T. 1 N., R. 81 W.,
Sec. 1 east of U.S. Highway 40.

The authority for this closure is 43 CFR 8341.2. The closure will remain in effect until April 30, 1987.

FURTHER INFORMATION: Additional information concerning this closure is available in the Kremmling Resource Area office at 1116 Park Avenue, P.O. Box 68, Kremmling, CO 80459.

Dated: November 26, 1986.

David Atkins,

Area Manager, Kremmling Resource Area.

[FR Doc. 86-27219 Filed 12-3-86; 8:45 am]

BILLING CODE 4310-JB-M

[WY-060-07-4212-11; B-039106]

Recreation and Public Purpose Act Conveyance of Public Lands in Weston County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose Act Conveyance; Public Lands, Weston County, Wyoming.

SUMMARY: The Bureau of Land Management has determined that the land described below is suitable for conveyance under Recreation and Public Purpose (R&PP) Act as amended (43 U.S.C. 869 et. seq.)

Sixth Principal Meridian

T. 47 N., R. 60 W.,
Sec. 3: Lots 6 and 7.
Containing 64.70 acres more or less.

This action is a motion by the Bureau to make available lands identified by the Weston County Government as needed for a permanent addition to their recreation lands. The Newcastle Resource Area Management Framework Plan (MFP) has as one of its objectives to provide land for local governments for public purpose needs. The subject lands have been leased to the county under the R&PP Act since 1946, as recreation lands. The sale of these lands to Weston County for recreation or public purpose use would be in the public interest.

Sale of the lands will be subject to the following reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official land records at the time of patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove minerals.

4. Any other reservations that the authorized Officer determines appropriate to ensure public access and proper management of Federal lands and interests therein, including ditches and canals.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for sale under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed sale or classification of the lands to the District Manager, Casper District Office, 951 North Poplar, Casper, Wyoming 82601. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

If, after 18 months following the effective date of the classification, the proposed sale has been cancelled, the segregative effect of the classification shall automatically expire and the lands classified shall return to their former status without further action by the Authorized Officer.

Dated: November 26, 1986.

James W. Monroe,

District Manager.

[FR Doc. 86-27222 Filed 12-3-86; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination; Amoco Production Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Amoco Production Company has submitted a DOCO describing the activities it proposes to conduct on Lease OCS-G 1085, Block 75, West Delta Area, offshore Louisiana. Proposed plans for the above area provided for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Fourchon City, Louisiana.

DATE: The subject DOCD was deemed submitted on November 25, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gilf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Mineral's Management Service is considering approval of the DOCD and that it is available for public review

Revised rules governing pratices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 26, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-27137 Filed 12-3-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination; Cities Service Oil and Gas Corp.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operation Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Cities Service Oil and Gas Corporation has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1959, Block 258, Eugene Island Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Berwick, Louisiana.

DATE: The subject DOCD was deemed submitted on November 25, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Pkwy., Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTATCT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 26, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-27228 Filed 12-3-86; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination; Conoco Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposed to conduct on Lease OCS-G 7917, Block 306, Ewing Bank Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Grand Isle, Louisiana.

DATE: The subject DOCD was deemed submitted on November 21, 1986.

ADDRESSES: A copy of the subject DOCD is available for public review at the Office of the Regional Director, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Wholesalers Parkway, Room 114, New Orleans, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: November 24, 1986.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 86-27235 Filed 12-3-86; 8:45 am]

BILLING CODE 4310-MR-M

Availability of Outer Continental Shelf Official Protraction Diagrams

1. Notice is hereby given that, effective with this publication, the following OCS Official Protraction Diagrams, last approved or revised on the dates indicated, are on file and available, for information only, in the Gulf of Mexico OCS Regional Office, New Orleans, Louisiana. In accordance with Title 43, Code of Federal Regulations, these Protraction Diagrams are the basic record for the description of mineral and oil and gas lease offers in the geographic areas they represent.

Description	Revision	Latest revision date [1]
Lund, NG 16-4	Official Map Named	Aug. 22, 1986.
Henderson, NG 16-5.	Official Map Named	Aug. 22, 1986.

[1] Changes in CFR notations are not considered as revisions.

2. Copies of these Protraction Diagrams may be purchased for $2.00 each from Public Records, Minerals Management Service, Gulf of Mexico OCS Regional office, 1201 Wholesalers Parkway, New Orleans, Louisiana 70123-2394, (504) 736-2519.

Dated: November 28, 1986.

J. Rogers Pearcy,

Regional Director, Minerals Management Service, Gulf of Mexico OCS Region.

[FR Doc. 86-27223 Filed 12-3-86; 8:45 am]

BILLING CODE 4310-MR-M

NUCLEAR REGULATORY COMMISSION

Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: Data Report on Spouse.

3. The form number if applicable: NRC Form 354.

4. How often the collection is required: As needed.

5. Who will be required or asked to report: NRC, NRC contractor, and NRC licensee access authorization applicants, who have an alien spouse or marry an alien after completing NRC's Personnel Security Questionnaire; NRC contractor and licensee employees who marry an alien after having been granted an NRC access authorization.

6. An estimate of the number of responses: 88.

7. An estimate of the total number of hours needed to complete the requirement or request: 22.

8. An indication of whether section 3504 (h), Pub. L. 96–511 applies: Not Applicable.

9. Abstract:

The NRC Form 354 is used whenever an applicant for NRC access authorization or employment clearance is married to an alien or marries an alien after completing a Personnel Security Questionnaire, and whenever an NRC contractor or licensee employee marries an alien after obtaining an NRC access authorization. Information entered on this form is used as a basis for an investigation to determine one's initial or continuing eligibility for an NRC access authorization or for an NRC employment clearance.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer Jefferson B. Hill, (202) 395–7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492–8585.

Dated at Bethesda, Maryland, this 1st day of December 1986.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 86–27279 Filed 12–3–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–16055 License No. 34–19089–01 EA 86–155]

Advanced Medical Systems, Inc., Hearing

Advanced Medical Systems, Inc. ("AMS"), One Factory Row, Geneva, Ohio 44041, is the holder of Byproduct Material License No. 34–19089–01 issued by the Nuclear Regulatory Commission ("NRC" or "Commission") pursuant to 10 CFR Part 30. The license, originally issued on November 2, 1979, was renewed on June 25, 1986 with an expiration date of October 31, 1986. A timely renewal application was submitted.

On October 10, 1986, the Director, Office of Inspection and Enforcement, pursuant to the authority in sections 81, 161b, 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 30, served on AMS an Order Suspending License And Order To Show Cause (Effective Immediately) ("Order"). The Order alleged that the NRC had confirmed allegations that unqualified and unauthorized AMS employees had been directed to perform certain service and maintenance on teletherapy equipment at medical facilities and that one hospital had indicated its belief that a licensee employee was unqualified to perform the maintenance on its teletherapy equipment. The Order also noted that the NRC was currently evaluating the licensee's July 31, 1985 response to NRC's June 28, 1985 Notice of Violation and Proposed Imposition of Civil Penalties based on earlier alleged violations The Order immediately suspended AMS's license and afforded an opportunity to request a hearing.

By letter dated October 29, 1986 AMS submitted its Answer to the Order denying the allegations and requesting a hearing.

Pursuant to the Atomic Energy Act of 1954, as amended, and the regulations in Title 10, Code of Federal Regulations, Part 2, notice is hereby given that a hearing will be held before an Administrative Law Judge to be appointed by the Chief Administrative Judge, Atomic Safety and Licensing Board Panel. The Administrative Law Judge will set the time and place for the hearing and shall hold prehearing conferences as necessary.

The issue before the Administrative Law Judge to be considered and decided will be: whether, on the basis of the matters set forth in the Order, the Order should be sustained.

Pursuant to 10 CFR 2.705, an answer to this Notice may be filed by the licensee within 20 days after service of this Notice of Hearing.

Required papers shall be filed by mail or telegram addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Docketing and Service Branch, or by delivery to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC.

Pending further order of the Administrative Law Judge, parties are required to file, pursuant to the provisions of 10 CFR 2.708, an original and two (2) copies of each document with the Commission.

Pursuant to 10 CFR 2.785, the Commission authorizes an Atomic Safety and Licensing Appeal Board to exercise the authority and perform the review functions which would othewise be exercised and performed by the Commission. The Appeal Board will be designated pursuant to 10 CFR 2.787, and notice as to membership will be published in the **Federal Register.**

Dated at Washington, DC this 26th day of November, 1986.

[FR Doc. 86–27297 Filed 12–3–86; 8:45 am]

BILLING CODE 7590–01–M

Advisory Panel for Decontamination of Three Mile Island, Unit 2; Renewal

The United States Nuclear Regulatory Commission (NRC) announces the renewal of the Advisory Panel for Decontamination of Three Mile Island, Unit 2. It has been determined that renewal of the charter for this advisory committee is in the public interest in order for NRC to continue to receive public input and enhance public understanding of the major activities required to decontaminate and safely clean up the damage at Three Mile Island Nuclear Power Station Unit 2. The charter which continues the Panel through November 28, 1988, has been filed with the appropriate Congressional Committees and the Library of Congress.

For further information contact: Michael Masnik, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, 301–492–7743.

Dated: November 28, 1986.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 86–27296 Filed 12–3–86; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–334]

Duquesne Light Co. et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of Appendix R to 10 CFR 50 to Duquesne Light Company, Ohio Edison Company and Pennsylvania Power Company (the licensees), for the Beaver Valley Power

Station, Unit No. 1, located in Shippingport, Pennsylvania.

Environmental Assessment

Identification of Proposed Action: The exemption would allow deviations from the requirements of section III.G of Appendix R (Fire Protection) to 10 CFR 50 for: (1) Charging pump cubicles, to the extent that 20 feet of separation between the pumps are not available and automatic fire suppression systems are not installed, (2) control room, to the extent that redundant trains of safe shutdown cables are not separated by more than 20 feet and automatic fire suppression systems are not available, and (3) main steam valve room, to the extent that redundant trains of equipment are not separated by 3-hour fire-rated barriers.

The requested exemption is responsive to Duquesne Light Company's application dated Janaury 14, 1985, and supplemented by letters dated October 16, 1985, and October 28, 1986.

The need for the proposed action: The proposed Exemption is needed because special circumstances are present in that literal application of the regulation is not necessary to achieve the underlying purposes of the regulation; features comparable with the requirements of the regulation are available. If the Exemption is not granted, additional costs would be incurred by the licensee with no increase in the degree of safety.

Environmental impacts of the proposed action: The proposed Exemption will provide assurance of fire protection that is equivalent to that required by Appendix R such that there is no increase in the risk of firest at the facility. The probability of accidents has not been increased and the post-accident radiological releases will not be greater than previously determined, nor does the proposed Exemption otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with this proposed Exemption.

With regard to potential non-radiological impacts, the proposed Exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed Exemption.

Alternative use of resources: This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Beaver Valley Power Station, Unit No. 1.

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

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. The Commission has, therefore, determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application for the exemption dated January 14, 1985, as supplemented by letters dated October 16, 1985, and October 28, 1986, which are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., and at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Dated at Bethesda, Maryland this 20th day of November, 1986.

For the Nuclear Regulatory Commission.

Lester S. Rubenstein,

Director, PWR Project Directorate No. 2, Division of PWR Licensing-A, Office of Nuclear Reactor Regulation.

[FR Doc. 86-27280 Filed 12-3-86; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Privacy Act of 1974; Systems of Records

AGENCY: Postal Service.

ACTION: Notice of new system of records.

SUMMARY: This document provides notice that the Postal Service is establishing a new Privacy Act system of records, USPS 220.010, Marketing Data Base—Customer Records. This system will contain market information about business customers for Postal Service account representatives and their managers to use in carrying out their day-to-day responsibilities. Ready availability of this information will help the Postal Service to better serve its volume users. The information in this system pertains primarily to officers or employees of corporations, other business firms, and organizations that are not intended to be covered by the Privacy Act. However, there is the remote possibility that the system will contain some commercial information that might be construed to pertain to individuals who are protected by the Act. In addition, profile data on Postal Service marketing representatives, related to the servicing of accounts they represent, may be collected for use in the management process. For these reasons, the Postal Service considers it prudent, as a precautionary measure, to establish this group of records as a Privacy Act system.

DATE: Any interested party may submit written comments regarding these proposals. Comments must be received on or before January 3, 1987.

ADDRESS: Comments may be mailed to the Records Officer, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260-5010, or delivered to Room 8121 at the above address between 8:15 a.m. and 4:45 p.m. Comments received may also be inspected during the above hours in Room 8121.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff (202) 268-5158.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing to establish a new system of records, USPS 220.010, Marketing Data Base—Customer Records, pursuant to the Privacy Act. The system will contain market information about postal customers obtained from commercial data bases, statements of mailing and other forms completed by those customers, supplemented with information obtained from account representatives' personal knowledge. Postal employees will use the information to sell postal products and services, assure proper account management, conduct research, plan new products and services, and otherwise make financial and operational decisions about the condition of the Postal Service. The Postal Service does not expect use of this system to have any effect on individual privacy rights. The marketing data base will contain information only about volume users of postal services and about account representatives or other postal employees who are responsible for servicing the accounts of those customers. However, to the extent that any information within this group of records may be construed as being personal in nature, it will be maintained as a Privacy Act system of records.

A new system report, as required by 5 U.S.C. 552a(o) of the Privacy Act, is being submitted 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.

Accordingly, it is proposed that the following new system of records be adopted:

USPS 220.010

SYSTEM NAME:

Marketing Data Base—Customer Records.

SYSTEM LOCATION:

Marketing Department, USPS Headquarters; Marketing and Communications, Regions; Marketing/Customer Service, Divisions and MSCs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers or employees of corporations, other business firms, and organizations that are volume users of postal services; USPS account representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Organization names, addresses, and telephone numbers; size of firm; Standard Industrial Classification Code; officers of the organization or other contact persons; purchase records for USPS services; information on service or equipment needs; USPS account representatives and other postal employees serving the organization and calls made on the organization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Purpose—To provide market information about business customers for USPS employees to use to sell postal products and services, assure account management, conduct research, plan new products and services, and otherwise make financial and operational decisions about the condition of the USPS. Specifically, this includes:

1. Assisting account representatives and other marketing and postal personnel in contacting and servicing customers and selling postal services.
2. Developing and conducting market research.
3. Targeting promotion campaigns, newsletters.
4. Testing new products and services.

Use—

1. Disclosure may be made from the record of a company, where pertinent, in any legal proceeding to which the Postal Service is a party before a court or administrative body.
2. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.
3. To refer, where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature to the appropriate agency whether Federal, State, or local charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape or disks.

RETRIEVABILITY:

Records are indexed by organization name, organization identification number, services purchased, ZIP Code area, sales territory, USPS account representative, and Division/MSC.

SAFEGUARDS:

Computer records are subject to computer security procedures, including password access.

RETENTION AND DISPOSAL:

Records are maintained for three years after final entry and then deleted from the data base.

SYSTEM MANAGER(S) AND ADDRESS:

APMG, Marketing Department, Headquarters.

NOTIFICATION PROCEDURE:

Customers wishing to know whether information about them is maintained in this system of records should address inquiries to the Division Field Director of Marketing and Communications for their geographic area.

RECORD ACCESS PROCEDURE:

See Notification above.

CONTESTING RECORD PROCEDURE:

See Notification above.

RECORD SOURCE CATEGORIES:

Information is obtained from USPS business customers, statements of mailing and other USPS forms completed by the customer, commercial data bases, and account representatives' personal knowledge.

Paul J. Kemp,

Supervisory Attorney, Legislative Division.

[FR Doc. 86-27246 Filed 12-3-86; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-15439; File No. 812-5498]

Association of Publicly Traded Investment Funds; Notice of Application for an Amended Order

November 26, 1986.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: Association of Publicly Traded Investment Funds ("APTIF").

Relevant 1940 Act Sections: Exemption requested under sections 6(c), 17(d) and 23(c)(3) and Rule 17d-1 from sections 17(d), 18(d) and 23(a), (b) and (c) and the Rules thereunder.

Summary of Application: Applicant seeks an order amending a prior order (Investment Company Act Release No. 14594, June 21, 1985, the "1985 Order"), to permit its internally-managed, closed-end investment company members to provide retirement benefits to their employees pursuant to profit-sharing retirement plans qualified under section 401(a) of the Internal Revenue Code.

Filing Date: An amended application was filed on November 18, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on December 22, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. APTIF, 201 N. Charles Street, Baltimore, Maryland 21201.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Esq. at (202) 272-3046, or H.R. Hallock, Jr., Esq., (202) 272-3030 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or

the SEC's commercial copier (800) 231–3282 (in Maryland (301) 253–4300).

Applicant's Representations

1. APTIF is an association of 15 investment companies with over $1 billion in assets under management. All of APTIF's members are registered with the Commission under the 1940 Act as closed-end investment companies and are engaged in the business of managing portfolios consisting of marketable securities. Six of APTIF's members are internally-managed companies ("funds"). The internally-managed companies employ their own personnel and advisory staffs either directly or through wholly-owned subsidiaries.

2. The 1985 Order permits APTIF's internally-managed members and their wholly-owned subsidiaries ("members") to offer their employees incentive compensation in the form of stock options and stock appreciation rights ("stock incentive plans"). The 1985 Order does not permit APTIF's members to have both profit-sharing retirement plans qualified under section 401(a) of the Internal Revenue Code ("Section 401(a) plans") and stock incentive plans. However, APTIF members have existing Section 401(a) plans. Accordingly, an amendment to the 1985 Order is necessary for the members to have both types of plans at the same time.

3. Profit-sharing retirement plans that are qualified under section 401(a) have the same fundamental objectives as pension plans and must meet all of the general qualification requirements that apply to qualified pension plans, except the requirement that benefits be definitely determinable. Like traditional pension plans, Section 401(a) plans are intended to provide a source of retirement income for employees and are subject to numerous restrictions. Such plans may not discriminate in favor of stockholders, officers, and highly compensated employees as to coverage, benefits, contributions, or otherwise; they are subject to restrictions and penalties on early withdrawal of the employees' interests in the plans; and they cannot be used to distribute large sums of money to employees. The maximum annual contribution for any employee under a Section 401 plan is $30,000.

4. The stock incentive plans authorized by the 1985 Order are not a substitute for the retirement plans contemplated by section 401(a). Stock incentive plans are a means of attracting and retaining highly-qualified employees, and are therefore made available only to key employees. In contrast to Section 401(a) plans, the stock incentive plans do not establish a source of income for an employee's retirement years and are not available to all employees.

5. The relief requested is necessary and appropriate in the public interest, is consistent with the protection of investors and the purposes of the 1940 Act, and will not result in any disadvantage to the funds or their shareholders. It is in the public interest for investment companies, like other corporations, to be able to provide private retirement plans for their employees and section 401(a) plans are, by law, subject to numerous conditions and limitations that effectively prevent them from being used to the detriment of the funds and their shareholders. Further, APTIF's members will remain subject to the terms and conditions governing the adoption of stock incentive plans that are set forth in amendment No. 4 to the application for the 1985 Order. These conditions, together with the statutory restrictions on section 401(a) plans, will insure that the funds and their shareholders are not adversely affected by the combination of section 401(a) retirement and stock incentive plans.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–27282 Filed 12–3–86; 8:45 am]

BILLING CODE 8010–01–M

[Release No IC–15442; File No. 812–6230]

JODE Limited Partnership; Notice of Application

November 26, 1986.

Notice is hereby given that JODE, Inc. ("General Partner"), a corporation wholly owned by Kutak Rock & Campbell, a Nebraska law partnership ("Kutak"), on behalf of the JODE Limited Partnership ("Partnership" together with the General Partner "Applicants"), The Omaha Building, 1650 Farnam Street, Omaha, Nebrasks 68102, filed an application on October 21, 1985 and an amendment thereto on November 24, 1986, for an order of the Commission pursuant to section 6(b) and 6(e) of the Investment Company Act of 1940 ("Act") exempting the Partnership from all of the provisions of the Act and the rules and regulations thereunder except: (1) Sections 9, 17, (with certain exceptions), 30 (with certain exceptions), 36 and 37 of the Act and the rules and regulations thereunder; (2) all sections of the Act and rules and regulations thereunder necessary to implement the above sections of the Act; and (3) all administrative and jurisdictional sections of the Act, and the rules and regulations thereunder necessary to enforce compliance with the terms of the order as granted. Applicants also request an order pursuant to section 45(a) of the Act granting confidential treatment to all filings made under Section 30 of the Act or in lieu thereof. All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the applicable provisions thereof.

According to the application, the Partnership was formed by Kutak as a Nebraska limited partnership. In addition, the Board of Directors of the General Partner, which will at all times own one percent of the Partnership, consists entirely of partners of Kutak. Applicants represent that the remaining 99 percent of the Partnership will be owned by the Kutak partners and possibly a very limited number of senior management personnel of Kutak. Admission of any senior management personnel into the Partnership will require nomination by the General Partner and the consent of two-thirds of the limited partners. In addition, they must occupy positions within Kutak such that as a result of their educational and vocational backgrounds they are deemed to possess equivalent amounts of training and equivalent professional status to a Kutak partner and must earn an annual salary of at least $75,000. Participation in the Partnership as limited partners will be mandatory for all Kutak partners, each of whom earned in excess of $75,000 in 1985 and is expected to earn in excess of $75,000 in 1986. Applicants represent that all limited partners are and will be experienced and sophisticated in the practice of business and/or law, with degrees in business and/or law or other graduate degrees, and that all limited partners will be equipped by experience and education to understand and evaluate the structure, management and plan of the Partnership as compared to other investment opportunities and to understand that the Partnership interests will be offered without registration under the Act and the Securities Act of 1933 and the protections offered thereby. Applicants state that the limited partnership interests will be sold under a claim of exemption from the Securities Act of 1933 under section 4(2) of that Act.

Applicants state that the Partnership will consist of two funds: (1) the Institutional Fund, a significant portion

of which will be invested in equity securities of closely held or public companies and (2) the Vested Fund, the assets of which will be held primarily in liquid investments ("Funds"). The original distribution of limited partnership interests to the limited partners will be accomplished by the transfer of assets from Kutak to the Partnership and will represent the value being transfered in exchange for each limited partner's interests in the Partnership. Each initial limited partner will receive an interest in each Fund based on his/her partnership interest in Kutak. As new partners are admitted to Kutak, and as any partner's partnership interest in Kutak is increased, such limited partners will be required to make a capital contribution to the Institutional Fund. New limited partners may, but will not be required to, make a capital contribution to the Vested Fund. The interest that a limited partner will purchase in the Partnerhsip will be based on the number of points that such limited partner owns in Kutak, or, in the case of senior management personnel, as provided in the limited partnership agreement of the Partnership ("Partnership Agreement").

Applicants state they anticipate that, except as necessary to provide for the payment of taxes, no distribution will be made out of either the Institutional Fund or the Vested Fund until the year ending December 31, 1989. Thereafter, distributions will be made out of the current earnings and capital gains of the Institutional Fund in an amount necessary to pay income taxes thereon. Each limited partner's share of the remaining current earnings will be transfered and credited to such limited partner's Vested Fund capital account and the remaining capital gains will be returned and reinvested in the Institutional Fund. Distributions with respect to current earnings and capital gains of the Vested Fund will be made as necessary to pay income taxes thereon and all remaining current income and capital gains will be distributed to the limited partners' Vested Fund capital accounts in proportion to their share of the Vested Fund as of the beginning of the fiscal period in which such current earnings and/or capital gains were realized. Upon the death, or separation by reason of disability, retirement or termination of a partner in Kutak, the Partnership will redeem such limited partner's interest in the Institutional Fund at a value based upon an adjusted book value of the Institutional Fund valued as of the first day of the fiscal year of the Partnership immediately following the date in which the event giving rise to the redemption occurred. Depending upon the reasons for such limited partners' departure from Kutak, the distribution of such partner's share of the Institutional Fund will occur over a tow-, three- or five-year period. The Partnership will issue a promissory note for the balance of a limited partner's share not received upon redemption, which will bear interest at the minimum rate required to avoid the imputation of interest under the Internal Revenue Code, with such interest being paid at the same time principal payments are made. Any limited partner may redeem his or her interest in the Vested Fund, in whole or in part, at fair market value with the redemption being effective as of the last day of the fiscal year of the Partnership in which the notice thereof was received and with distribution to be made 90 days thereafter. Limited partnership interests cannot be assigned.

Applicants represent that the General Partner will be responsible for the day-to-day management of the Partnership, including its investment decisions. No compensation will be paid to the General Partner, or its officers or directors, other than out-of-pocket expenses incurred in managing the operations of the Partnership (including legal and accounting fees and fees of independent consultants). No sales load will be charged. Each limited partner will be able to examine the books and records of the Partnership at any reasonable time and will receive all information required to permit the limited partners to prepare their federal income tax returns, annual financial statements of the Partnership, including a balance sheet, statements of income, partners' equity and changes in financial position, a cash flow statement and a narrative report describing the results and status of the Partnership. Applicants also represent that the General Partner will ensure that any limited partner requesting additional information concerning any investment made by the Partnership will be able to discuss such matters with a member of either Kutak's corporate finance or municipal finance department. Applicants assert that because all of the Partnerhsip's securities will be owned by partners or senior management personnel of Kutak, the Partnership will be an employees' securities company within the meaning of section 2(a)(13) of the Act.

Sections 17(a) and 17(d). Applicants seek exemptions to allow the Partnership, to the extent permitted by the Partnership Agreement, to purchase from or sell to Kutak or any individual limited partner or any corporation in which Kutak or any individual limited partner has an ownership interest ("Affiliated Corporations"), securities or interests in properties owned by the Partnership, Kutak, any individual limited partner or any Affiliated Corporation; to purchase or sell interests in a company or other investment vehicle in which Kutak or any individual limited partner or any Affiliated Corporation already owns five percent or more of the voting securities or otherwise controls such vehicle; and to engage in transactions in which Kutak, any individual limited partner or any Affiliated Corporation also participates. Applicants state that the foregoing transactions will be subject to the provisions of the Partnership Agreement, which provide that: (1) without the consent of two-thirds of the limited partners, the Partnership may not invest in or continue to hold as an investment, or effect any joint transaction in, any interest in a corporation, limited partnership or other type of entity in which Kutak, any limited partner or any Affiliated Corporation shall have an interest (other than through the Partnership) unless such investment is in securities traded on a regional or national securities market, including the national over-the-counter market, and the Partnership's investment in such securities is not related to Kutak's, any limited partner's or any Affiliated Corporation's interest, and (2) with the exception of loans in an aggregate outstanding amount not exceeding $250,000 from the Partnership to Kutak, the Partnership will not purchase any investment from or sell any investment to Kutak, any individual limited partner, or any Affiliated Corporation without the consent of two-thirds of the limited partners.

Applicants state that the above transactions will only be effected upon a determination by the Board of Directors of the General Partner that the terms of the transactions are reasonable and fair to the Partnership and the limited partners and do not involve overreaching of the Partnership or the limited partners on the part of any person concerned. In addition, Applicants state that prior to making any joint investment with Kutak, any limited partner or any Affiliated Corporation, the General Partner will undertake to obtain a commitment from Kutak, any limited partner or any Affiliated Corporation, as the case may be, that such party will not dispose of its investment in such joint investment without giving sufficient, but not less than one day's notice, to the General

Partner so that the Partnership has the opportunity to dispose of its investment in the joint investment prior to or concurrently with such party and on the same terms as such party.

The Applicants agree that the officers and directors of the General Partner will be subject to Section 36 of the Act and will comply with the requirements of sections 57(f)(3) and 57(h) of the Act with respect to all transactions for which approval would have been required under section 17(a) or 17(d) of the Act were the Partnership not granted an exemption therefrom. In addition, Applicants state that the minutes of meetings of the Board of Directors of the General Partner in which such matters are considered, including the procedures adopted by the General Partner in connection with its evaluation of investments, will be available for inspection by the limited partners. Applicants have also requested limited exemptions from sections 17(f), 17(g) and 17(j) of the Act and rules 17f–2, 17g–1 and 17j–1 thereunder.

Sections 30(a), (b) and (d). Applicants seek exemptions to exempt the Partnership from the requirements of filing quarterly and annual reports with the Commission, and to permit the Partnership to report only annually to the limited partners in the manner provided by the Partnership Agreement. Applicants submit that in view of the community of interest among the parties concerned with the Partnership and the fact that interests in the Partnership are not available to the public, but rather to a specific group of individuals, the protection afforded by sections 30(a) and (b) is not relevant to the Partnership or its operations. Applicants have agreed to file with the Commission a copy of the financial statements and narrative report required to be provided annually to the limited partners pursuant to the Partnership Agreement. Applicants request that such filings and any other filings under section 30 which may be made by the Partnership be afforded confidential treatment under section 45(a) of the Act. Such confidential treatment is requested on the basis that there will be no public trading in partnership interests of the Partnership, and the limited partners, who are the only persons with a lelgitimate interest in the information which might be provided pursuant to section 30, will have such information sent directly to them.

Section 30(f). Applicants assert that because there will be no public trading market in the partnership interests of the Partnership and because transfers of such interests are prohibited except with the approval of the General Partner and two-thirds of the limited partners, the protections to be provided by section 16(b) are not required.

Applicants believe that the above exemptions are necessary given the nature of the Partnership as an employees' securities company and its intended manner of operation. Moreover, since the Partnership will be managed for the benefit of Kutak partners by the executive officers and directors of the General Partner who are themselves Kutak partners, a substantial community of interest exists between the officers and directors of the General Partner and the other Kutak partners which obviates the need for the protections provided by the above sections of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than December 22, 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 Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by 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.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–27283 Filed 12–3–86; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15437; (812–6446)]

Sears Equity Investment Trust et al.; Notice of Application

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption and Confidential Treatment under the Investment Company Act of 1940 ("1940 Act").

Applicants: Sears Equity Investment Trust, Utility Stock Series 1 and all subsequent Series of the Utility Stock Trust and similar Series of the Sears Equity Investment Trust, unit investment trusts registered or to be registered under 1940 Act (collectively, "Trusts"), and their sponsor, Dean Witter Reynolds Inc. ("Sponsor").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 14(a) and 19(b), and Rule 19b–1. Order requested pursuant to section 45(a) granting confidential treatment.

Summary of Application: Applicants seek an order, (1) exempting the Trusts from the minimum net worth requirements, (2) enabling the Trusts to distribute capital gain dividends more than once every twelve months, and (3) granting confidential treatment to the Sponsor's profit and loss statements filed in connection with the Trusts' registration statements.

Filing Date: The application was filed on August 4, 1986, and amended on November 6, 1986.

Hearing or Notification of Hearing: If no hearing is ordered, the requested order will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on December 22, 1986. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, N.W., Washington D.C. 20549. Applicants, c/o Dean Witter Reynolds Inc., 130 Liberty Street, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Thomas C. Mira, Staff Attorney (202) 272–3033 or Brion R. Thompson, Special Counsel (202) 272–3016 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representations

1. Each Trust will be governed by a trust agreement ("Agreement") to be entered into prior to such Trust's registration. Under such Agreement, the Sponsor will deposit more than $100,000 aggregate value of debt securities, common stock, preferred stock or other equity interests or any combination of or

contracts to purchase such securities ("Securities") with the trustee with the trustee of each Trust ("Trustee"). Simultaneously with such deposit the Trustee will deliver to the Sponsor registered certificates for units representing the entire ownership of the respective Trust ("Units"). In turn, the Units will be offered for sale by the Sponsor to the public at the public offering price described in the applicable prospectus.

2. Each Trust will consist of Securities, additional Securities, if any, deposited into or acquired by a Trust subsequent to the initial deposit of Securities, such securities as may to be held in exchange or substitution for any of the Securities upon certain refundings, accrued and undistributed income and undistributed cash. Certain of the Securities may from time to time be sold under the limited circumstances set forth in the Agreement or may be exchanged. The proceeds from such dispositions will be distributed to Unitholders.

3. The Sponsor will offer Units of a Trust following the deposit of Securities with the Trustee, the declaration of effectiveness of the Trust's registration statement under the Securities Act of 1933 ("1933 Act") and clearance under applicable blue sky laws. Although the Sponsor undertakes no obligation to do so, the Sponsor presently intends to maintain a market for Units and to continuously offer to purchase such Units at prices based on the most recent evaluation by the Trustee, which is the same as the redemption price at the time of evaluation for such Units.

4. Because more than $100,000 aggregate value of Securities will be deposited into each Trust prior to a public offering, Applicants contend that all Trusts will be in compliance with section 14(a) of the 1940 Act. Applicants recognize, however, that by withdrawing certificates representing the entire beneficial ownership of a Trust the Sponsor may be deemed to be reducing each Trust's net worth below the requirements of section 14(a). To avoid any uncertainty, Applicants request an exemption to the extend that section 14(a) may be interpreted to require that the Sponsor take $100,000 worth of Units either for its own account or under an investment letter.

5. In connection with the requested exemption from section 14(a) of the 1940 Act, the Sponsor agrees to distribute to each investor his or her pro rata share of the net worth of a Trust and to refund on demand and without deduction the sales load to purchasers of Units, if, within 90 days after the Trust's 1933 Act registration becomes effective, the net worth of such Trust shall be reduced to less than $100,000 or, if the Trust is terminated. The Sponsor further agrees to instruct the Trustee of each Trust that if, as a result of redemptions by the Sponsor of unsold Units, the net worth of a Trust will be less than 40 percent of the principal amount of Securities initially deposited in such Trust, the Trustee shall terminate the Trust in the manner provided in the Agreement. Following such termination, the Sponsor will distribute to Unitholders any Securities or other assets deposited with the Trustee on a pro rata basis and will also refund any sales load on demand and without any deduction to purchasers of Units.

6. With respect to the requested exemption from section 19(b) of the 1940 Act and Rule 19b–1 thereunder, Applicants acknowledge that Rule 19b–1 was designed to ensure that registered investment companies do not make distributions of realized capital gains to shareholders in a manner that would indicate that they are part of regular dividends from investment income. Applicants submit that such danger does not exist because the Trusts and their Sponsor have substantially no control over events, othe than the selection of the portfolio. In addition, principal distributions are clearly indicated in accompanying reports to Unitholders as a return of principal and are relatively small in comparison to normal dividend distributions. Hence, Applicants assert that the dangers underlying the rationale of section 19(b) and Rule 19b–1 are not present in the proposed operations.

7. The Trust may receive amounts constituting capital gains as a result of the sale of Securities to cover Units tendered for redemption at any time during the year or from the sale of Securities in certain limited events outlined in the Agreement. In order to strictly comply with the requirements of Rule 19b–1, the Trustee would be forced to hold all such amounts until the end of its taxable year in order to avoid making a prohibited capital gain distribution, which would clearly be to the detriment of the Unitholders. Accordingly, Applicants assert that permitting the Trusts to make capital gains distributions more often than once every twelve months would be consistent with the purposes and policies of the Act and would be in the Unitholders' best interests.

8. Regarding the order sought pursuant to section 45(a) of the 1940 Act granting confidential treatment to the Sponsor's profit and loss statements filed in connection with the Trusts' registration statements, it is submitted that public disclosure of such profit and loss statements is neither necessary nor appropriate in the public or for the protection of investors. Investors in the Trusts are not offered an opportunity to acquire any interest in the Sponsor. Apart from the Sponsor's obligation to direct the disposition of Securities under certain conditions specified in the Agreement, the Sponsor will function solely as an underwriter of the Trusts. Applicants assert that there is no legitimate interest on the part of investors in the public disclosure of the profit and loss statements of the underwriters from whom the Units are purchased.

9. To the extent that the Sponsor's solvency may be deemed relevant to the proposed operations of a Trust, the Sponsor's statements of financial condition are filed with the Commission and various stock exchanges and are readily available to the public. Further, the relevant prospectuses will disclose the Sponsor's right to terminate the maintenance of a secondary market for Units. Should such termination occur, the Unitholders would still be able to redeem their Units upon presentation to the Trustee and receive the redemption value of the Units computed on the underlying Trust assets. Thus, Applicants contend that the Sponsor's financial operations will not enhance or diminish the prospect for an orderly payment on the underlying Securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Dated: November 26, 1986.

Jonathan G. Katz,

Secretary.

[FR Doc. 86–27284 Filed 12–3–86; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 985]

Determination Under Subsection 2(b)(1)(B) of the Export-Import Act of 1945, as Amended; Syria

Pursuant to Subsection 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended, and in accordance with the authority delegated to the Secretary of State by Executive Order 12166 of October 19, 1979, I determine that it is in the national interest and would clearly and importantly advance United States policy in the area of international terrorism for the Export-Import Bank of the United States to deny guarantees, insurance, extensions of credit and

participations in the extension of credit in support of the purchase or lease of any product or service by any purchaser or lessee in Syria.

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

George P. Shultz,

Secretary of State.

November 14, 1986

[FR Doc. 86-27225 Filed 12-3-86; 8:45 am]

BILLING CODE 4710-07-M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524.

Type of Request: Regular Submission

Title of Information Collection: Commercial and Industrial Technical and Design Assistance Followup

Frequency of Use: On occasion

Type of Affected Public: State or local governments, business or other for-profit, Federal agencies or employees, non-profit institutions and small businesses or organizations.

Small Businesses or Organizations Affected: Yes

Federal Budget Functional Category Code: 271

Estimated Number of Annual Responses: 280

Estimated Total Annual Burden Hours: 87

Need For and Use of Information: This information collection is needed to determine the effectiveness of TVA's technical and design assistance for renewable energy projects in the commercial and industrial sector. It is a followup with those organizations that have received technical and design assistance from TVA. The information will be used to determine actions taken toward implementing TVA's recommendations, and attitudes toward the technical and design assistance program.

Dated: November 28, 1986.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 86-27218 Filed 12-3-86; 8:45 am]

BILLING CODE 8120-01-M

Information Collection Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management and Budget.

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Attention: Desk Officer for Tennessee Valley Authority, 395-7313.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2524.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Title of Information Collection: TVA's procurement Format including Invitation to Bid, Request for Proposals, Requests for Quotations, and other related procurement documents.

Frequency of Use: On occasion.

Type of Affected Public: Businesses or other for-profit and small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 999.

Estimated Number of Annual Responses: 174,000.

Estimated Total Annual Burden Hours: 162,342.

Need For and Use of Information: TVA must procure equipment, materials, and services to fulfill its statutory obligations. This activity must be conducted in compliance with a variety of applicable laws, regulations, and Executive Orders. Vendors or purchasers who voluntarily seek to contract with TVA are affected.

Dated: November 26, 1986.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 86-27224 Filed 12-3-86; 8:45 am]

BILLING CODE 8120-01-M

DEPARTMENT OF THE TREASURY

[Suppl. to Dept. Circ.—Public Debt Series—No. 38-86]

Treasury Notes; Series H-1992

Washington, DC, November 26, 1986.

The Secretary announced on November 25, 1986, that the interest rate on the notes designated Series H-1992, described in Department Circular—Public Debt Series—No. 38-86 dated November 19, 1986, will be 6⅝ percent. Interest on the notes will be payable at the rate of 6⅝ percent per annum.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 86-27216 Filed 12-03-86; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Artistic Ambassador Advisory Committee Meeting

The Artistic Ambassador Advisory Committee will be holding its fourth session on December 10 and 11, 1986.

Committee members will be observing and judging the performance of twenty-four candidates from the field of classical violin and piano (violin and piano duos) selecting up to three duos to perform overseas under the sponsorship of the United States Information Agency.

Successful candidates will occasionally live with host families overseas and be involved with local musical communities.

Time: December 10–10:30 a.m. to 12:15 p.m. (lunch break) and 2:00 p.m. to 5:45 p.m.

December 11–8:30 a.m. to 12:15 p.m. (lunch break) and 2:00 p.m. to 3:45 p.m.

Place: Coolidge Auditorium, Library of Congress, 10 First Street, SE., Washington, DC 20540

Agenda: Six duos will perform the first day, and six duos the second day. Each duo will be given forty-five minutes, and there will be a fifteen minute break after every performance.

Seating: Seating of the public will be limited to the first 500 people, the capacity of the auditorium.

Final selections of candidates will be decided during discussions following the final day's performances. This session will be closed to the public in accordance with 5 U.S.C. 552(c)(9)(B). Public disclosure of discussions would inhibit candid deliberations and advise and therefore is likely to frustrate the implementation of future Agency actions.

For further information contact Mr. Jack Murphy on (202) 485–7383.

Dated: November 25, 1986.

Marvin L. Stone,

Acting Director.

[FR Doc. 86–27300 Filed 12–3–86; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 51, No. 233
Thursday, December 4, 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).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, December 9, 1986, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: .

Compliance matters pursuant to 2 U.S.C. 437g
Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.
Matters concerning participation is civil actions or proceedings or arbitration
Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Thursday, December 11, 1986, 10:00 A.M.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of dates of future meetings.
Correction and approval of minutes.
Routine administrative matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-376-3155.

Marjorie W. Emmons,
Secretary of the Commission.
[FR Doc. 86-27347 Filed 12-2-86; 8:45 am]
BILLING CODE 6715-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

December 1, 1986.

TIME AND DATE: 2:00 p.m., Thursday, December 4, 1986.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Closed (Pursuant to 5 U.S.C. 552(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:.

1. Secretary of Labor on behalf of Yale Hennessee v. Alamo Cement Company, Docket No. CENT 86-151-DM. (Issues include consideration of petition for review of the judge's temporary reinstatement order.)

It was determined by a unanimous vote of Commissioners that this meeting be closed and no earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653-5629.

Jean H. Ellen,
Agenda Clerk.
[FR Doc. 86-27333 Filed 12-2-86; 12:33 pm]
BILLING CODE 6735-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Thurs., December 18, 1986 at 10:30 a.m.—Proposed Decisions on claims under the Ethiopian Claims Program and Final Decisions on objections filed to Proposed Decisions on claims under the Ethiopian Claims Program.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meeting are held at the Foreign Claims Settlement Commission, 1111—20th Street, NW., Washington, DC. Request for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111—20th Street, NW., Room 400, Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, DC, on December 1, 1986.

Judith H. Lock,
Administrative Officer.
[FR Doc. 86-27352 Filed 12-2-86; 2:40 pm]
BILLING CODE 4410-01-M

LEGAL SERVICES CORPORATION (BOARD OF DIRECTORS)

TIME AND DATE: The meeting will commence at 9:30 p.m., Sunday, December 14, 1986, and continue until all official business is completed.

PLACE: Capitol Holiday Inn, Mars Room, 550 C Street, SW., Washington, DC 20024.

STATUS OF MEETING: Closed. The meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under The Government in the Sunshine Act [5 U.S.C. 552b (c) (2), (6), (7), (9)(B), and (10)] and 45 CFR 1622.5(a), (e), (f), (g), and (h).

MATTERS TO BE CONSIDERED:

1. Personal and Personnel Matters
2. Litigation and Investigatory Matters

CONTACT PERSON FOR MORE INFORMATION: Timothy H. Baker, Executive Office, (202 863-1839.

DATE ISSUED: December 2, 1986.

Timothy H. Baker,
Secretary.
[FR Doc. 86-27363 Filed 12-2-86; 3:19 pm]
BILLING CODE 6820-35-M

LEGAL SERVICES CORPORATION

(Operations and Regulations Committee Meeting)

TIME AND DATE: The meeting will commence at 9:00 a.m., Monday, December 15, 1986, and continue until all official business is completed.

PLACE: Capitol Holiday Inn, Columbia Room, 550 C Street, SW., Washington, DC 20024.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —February 20, 1986
   —March 12, 1986
   —April 10, 1986
3. 45 CFR 1612—The Lobbying Regulation
   —Report from the General Counsel
   —Report from the Office of Monitoring
   —Audit and Compliance
   —Recommendations to the Board
   —Public Comment

CONTACT PERSON FOR MORE INFORMATION: Timothy H. Baker, Executive Office, (202) 863-1839.

DATE ISSUED: December 2, 1986.

Timothy H. Baker,
Secretary.
[FR Doc. 86-27364 Filed 12-2-86; 3:19 pm]
BILLING CODE 6820-35-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Tuesday, December 9, 1986.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of November, 1986.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

DATE OF NOTICE: November 20, 1986.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 86-27351 Filed 12-2-86; 2:30 pm]

BILLING CODE 7550-01-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (51 FR 41724 November 18, 1986 & 51 FR 42043 November 20, 1986)

STATUS: Closed meetings.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATES PREVIOUSLY ANNOUNCED: Thursday, November 13, 1986/Friday, November 14, 1986.

CHANGE IN THE MEETINGS: Additional meeting/additional items

A closed meeting was held on Friday, November 21, 1986, at 10:30 a.m. to consider the following item.

Investigative matters.

The following items will be considered at a closed meeting scheduled for Tuesday, November 25, 1986, following the 10:00 a.m. open meeting.

Consideration and amici participation.

Chairman Shad and Commissioners Peters, Grundfest and Fleischman determined that Commission business required the above changes.

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: David Mahaffey at (202) 272-2091.

Jonathan G. Katz,

Secretary.

[FR Doc. 86-27334 Filed 12-2-86; 12:37 am]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 51, No. 233
Thursday, December 4, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency-prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Parts 203 and 252

Federal Acquisition Regulation Supplement Concerning Fraud, Waste and Abuse Awareness Programs

Correction

In proposed rule document 86–26301 beginning on page 42113 in the issue of Friday, November 21, 1986, make the following correction:

On page 42113, in the first column, in the sixth line from the bottom of the "**SUMMARY**" section, the date should read "January 20, 1987".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Central and Field Organization

Correction

In notice document 86–26031 appearing on page 41639 in the issue of Wednesday, November 19, 1986, make the following correction:

In the second column, in the "**FOR FURTHER INFORMATION CONTACT**" section, the telephone number should read "703-435-6179".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 48]

Federal Motor Vehicles Safety Standards; Occupant Crash Protection

Correction

In proposed rule document 86–26480 beginning on page 42598 in the issue of Tuesday, November 25, 1986, the "Notice" number in the heading should have appeared as set forth above.

BILLING CODE 1505-01-D

Federal Register

Thursday
December 4, 1986

Part II

Department of Commerce

National Telecommunications and Information Administration

15 CFR Part 2301

Public Telecommunications Facilities Program; Proposed Revision of Rules

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

15 CFR Part 2301

[Docket No. 60843—6143]

Public Telecommunications Facilities Program; Proposed Revision of Rules

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Telecommunications and Information Administration (NTIA) is announcing proposed revision of its rules which govern the Public Telecommunications Facilities Program (PTFP). The revision is intended to streamline the PTFP application process and reduce burdens on applicants and potential applicants.

NTIA intends to issue Final Rules after it has received and evaluated public comments. Organizations desiring to file comments with NTIA should develop their comments according to the rules, policies and priorities set out herein.

DATES: Comments on the rules, policies and priorities set out below must be filed not later than January 5, 1987. These rules will become effective at the time they are published as Final Rules.

ADDRESS: Persons interested in commenting on these proposed revisions of the rules must send three copies of any comments to: Office of the Chief Counsel, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4717, Washington, DC 20230, Attention: John Fernandez.

FOR FURTHER INFORMATION CONTACT: Burnham S. Morse, (202) 377–1835.

SUPPLEMENTARY INFORMATION: NTIA has administered the Public Telecommunications Facilities Program (PTFP) under an Interim Revision of Rules since September 1984. 49 FR 36600 (September 18, 1984). The purpose of this revision of the rules is to reduce the burden of application preparation and to clarify the requirements of the application process for the non-commercial broadcasters and others who apply for PTFP grants. A number of previous application requirements have been simplified or deleted. The organization of the rules has been revised to make it easier for applicants to understand the requirements of the program.

Deletions From Prior Rules

Two previous requirements have been deleted from the rules:

1. Applicants will no longer be required to publish a public notice about the PTFP application in a local paper. PTFP applicants whose projects are likely to be of concern to the community (such as activations of new stations, or major changes in existing ones) are required to apply to the Federal Communications Commission (FCC) in order to undertake those projects. Since the FCC requires their applicants to publish a public notice, the PTFP believes it is not necessary for the applicant to publish a second notice. Any PTFP applicants not requiring FCC authorizations are applicants seeking to replace equipment. These internal station replacements are not intended to change the nature of the service, but to maintain the existing service. Therefore, the PTFP believes it can save its applicants time and the cost of preparing and publishing a public notice. In addition, the PTFP has always published a list of all applications accepted for filing in the **Federal Register.** The program will continue to publish the list and will publish the address to which comments could be sent. This will constitute a minimum form of public notice for all applications accepted by the PTFP.

2. Copies of site leases will not be filed with initial applications, and will only be required if a grant offer is made. Site leases may be required of applicants whose applications are under serious consideration for award of a grant, but this change should reduce some burden at the time applications are first prepared.

Simplification of Application Requirements

The major areas which have been modified or simplified are:

1. Eligibility documentation will be required only from applicants who have not received a grant within the past ten years.

2. State and local government entities will be required to provide only a reference to the statutory or other authority under which they operate, rather than supplying copies of the statute or charter.

3. The requirement to supply an inventory of all equipment owned by the applicant has been reduced to a requirement to supply only an inventory of equipment which corresponds to the type of equipment requested in the current application or which would be closely associated with the proposed project.

4. The previous requirement of an exhibit describing the applicant's evaluation of alternative technologies is reduced to a requirement that a discussion of alternatives be presented within the project narrative statement.

5. The various assurances of compliance with Federal laws and regulations previously listed in the rules will be provided on the application form, so that all applicants can testify to their compliance by including the printed assurances in the signed application package.

Additions to the Rules

The following two items have been added to the rules under the requirements of the Department of Commerce Departmental Administrative Order (DAO 203–26) regarding grant administration:

1. Organizations with outstanding debts to any agency of the Department of Commerce will not be able to receive PTFP funds until the debt is paid or arrangements to repay, which are satisfactory to the Department, are made, even if some other sub-unit of the organization is responsible for the debt and the debt is to a program other than the PTFP.

2. Name Checks (Form CD–346) and Credit Checks of all non-profit organizations under serious consideration for a grant are now required.

In order to encourage noncommercial telecommunications entities specifically to reduce their reliance on Federal PTFP funding in future years, the proposed rules ask each applicant to indicate "the means by which the applicant plans to acquire the necessary funds to help replace any equipment acquired under the proposed project." (§ 2301.5(d)(2)(6)) The proposed rules also state that an applicant will be given a preference if it "documents specifically a procedure to minimize the need for PTFP funding to replace any equipment acquired under the proposed project." (§ 2301.13(b))

Editing and Reorganization of the Rules

There has been considerable editing of the rules for clarification. The sections dealing with application procedures, acceptance for filing and determinations of ineligibility, the appeal process, and public comments have been edited to clarify those procedures and eliminate confusing or repetitious language.

NTIA has statutory authority to give PTFP grants for replacement of equipment at only public broadcast stations. Every year, a number of non-broadcast entities apply for replacement

equipment and must be declared ineligible for PTFP funding. The rules have been edited to clarify the eligibility of only broadcast stations for improvement funds.

These revised rules delete the list of ineligible equipment and the information regarding the administration of grants after they are awarded. The list of ineligible equipment will be kept up to date, and will be provided as part of the application kit. Information about grant administration requirements will now be included separately in all application packages and information kits. The applicable OMB Circulars, Commerce Department requirements and procedures, and other forms of law or regulation which govern the administration of PTFP grants will be fully documented for each applicant, but will no longer be part of the rules.

Revisions of PTFP Priorities

The Appendix to the rules, "Priorities," contains information for applicants on the types of projects funded and the ranking given various classes of projects in the grant review process. The highest priority of the program will continue to be a provision of public telecommunications services to unserved areas. The wording of Priorities II, IV and V has been edited to clarify their applicability only to existing broadcast stations.

What was formerly "Other Cases" will now be called "Special Applications," and will continue to describe innovative projects or projects not falling clearly into one of the other priorities. Projects in the "Special Applications" category may be funded ahead of all other priorities if the circumstances warrant. It is expected that "Special Application" grants will be given frequently during a normal PTFP grant cycle.

Policy on Matching Percentages for Replacement Projects

NTIA wishes to encourage applicants for PTFP funds to rely on local funding for replacement of equipment. Additions to the rules, as noted above, have been instituted as part of this policy. As another method to encourage a greater local/Federal partnership, NTIA is announcing a policy to give preference to applicants from stations reporting substantial non-Federal revenues who request 50% or less PTFP funding of projects proposing replacement of existing station facilities. Applicants from small community-licensed stations, or those who can show that a station licensed to a large institution cannot obtain direct or in-kind support from the larger institution, will not be subject to this preference. From any station, a showing of extraordinary need or emergency situation will be taken into consideration as justification for grants of up to 75% of the project cost.

The PTFP's rules have long stated that one of the funding criteria for construction applications is, "the extent to which non-Federal funds will be used to meet the total cost of the project." This policy statement is intended, therefore, to clarify NTIA's use of that criterion with respect to replacement applications from stations with substantial operational budgets. It is consistent with NTIA's previously stated position that replacement of existing equipment is an operational expense which should be handled at the local level.

It should be noted that NTIA intends to exercise this preference for 50% or greater local funding only with respect to projects for the replacement of equipment at existing stations. NTIA recognizes that organizations proposing to activate new stations or otherwise extend public telecommunications into unserved areas often face substantial expenses which are ineligible for funding by the PTFP or for use as the local match for a PTFP grant. For example, those activating new stations often must construct new buildings or renovate existing space to house studios and offices. Such expenses cannot be counted as part of the PTFP project, but are directly related to the expansion of public telecommunications services. Therefore, where such ineligible expenses are extensive, NTIA will consider funding Priority 1A and 1B grants at ratios up to 75% Federal funding and 25% local match. Planning grants will continue to be eligible for up to 100% funding, and matching percentages for non-broadcast projects will be considered on a case-by-case basis.

Public Comment Period and Other Information

The PTFP Rules described above relate to a Federal grant-in-aid program; thus, under section 553(a)(2) of the Administrative Procedures Act (5 U.S.C. 553(a)(2)), they may be issued and made effective immediately without notice of proposed rulemaking, opportunity for comment, or 30-day deferral of effectiveness after publication. However, NTIA believes the public interest will be best served by accepting comments by the deadline specified above under the heading **DATES** and by issuing Final Rules based on evaluation of those comments.

Under Executive Order (E.O.) 12291, the Department must determine whether a regulation is a "major" rule within the meaning of section 1 of E.O. 12291 and therefore subject to the requirement that a Regulatory Impact Analysis be performed. This regulation is not a major rule because it is not "likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries . . .; or (3) significant adverse effects on competition, employment, investment, productivity or innovation. . . ." Therefore, preparation of a Regulatory Impact Analysis is not required.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to these rules, because, as explained above, the rules were not required to be promulgated as proposed rules before issuance as final rules by section 553 of the Administrative Procedures Act (5 U.S.C. 553) or by any other law. Neither an initial nor final Regulatory Flexibility Analysis was prepared.

This rule contains a collection of information which is subject to the requirements of the Paperwork Reduction Act. A request to collect this information has been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. Comments on the collection of information requirements should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NTIA, Washington, DC 20503.

List of Subjects in 15 CFR Part 2301

Administrative procedure, Grant programs—communications, telecommunications.

Dated: November 28, 1986.

Alfred C. Sikes,

Administrator.

For the reasons set out above, it is proposed to revise 15 CFR Part 2301 to read as follows:

PART 2301—PUBLIC TELECOMMUNICATIONS FACILITIES PROGRAM

Subpart A—Definitions, Program Purposes and Special Consideration

Sec.

Subpart B—Eligibility and Application Procedures

Sec.

Authority: Public Telecommunications Financing Act of 1978, Pub. L. 95–567, 92 Stat. 2405, codified at 47 U.S.C. 390–394, 397–399b; as amended by the Public Broadcasting Amendments Act of 1981, Pub. L. 97–35, 95 Stat. 725, as amended by the Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99–272, secs. 5001, 100 Stat. 82, 117 (1986).

Subpart A—Definitions, Program Purposes and Special Consideration

§ 2301.1 Definitions.

"Act" means Part IV of Title III of the Communications Act of 1934, 47 U.S.C. 390–394 and 397–399b, as amended.

"Administrator" means the Assistant Secretary for Communications and Information of the United States Department of Commerce.

"Agency" means the National Telecommunications and Information Administration of the United States Department of Commerce.

"Broadcast" means the distribution of electronic signals to the public at large using television (VHF or UHF) or radio (AM or FM) technologies.

"Construction" (as applied to public telecommunications facilities) means acquisition (including acquisition by lease), installation, and improvement of public telecommunications facilities and preparatory steps incidental to any such acquisition, installation or improvement.

"FCC" means the Federal Communications Commission.

"Federal interest period" means the period of time during which the Federal Government retains a reversionary interest in all facilities constructed with Federal grant funds. This period begins with the purchase of the facilities and continues for ten (10) years after the official completion date of the project.

"Nonbroadcast" means the distribution of electronic signals by a means other than broadcast technologies. Examples of nonbroadcast are ITFS, SCA, teletext, and cable.

"Noncommercial educational broadcast station" or a "public broadcast station" means a television or radio broadcast station which is eligible to be licensed by the FCC as a noncommercial educational radio or television broadcast station and which is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, public agency or nonprofit private foundation, corporation, institution, or association, or owned (controlled) and operated by a municipality and transmits only noncommercial educational, cultural or instructional programs.

"Noncommercial telecommunications entity" means any enterprise which is owned (controlled) and operated by a state, a political or special purpose subdivision of a state, a public agency, or a nonprofit private foundation, corporation, institution, or association; and which has been organized primarily for the purpose of disseminating audio or video noncommercial educational and cultural programs to the public by means other than a primary television or radio broadcast station, including, but not limited to, coaxial cable, optical fiber, broadcast translators, cassettes, discs, satellite, microwave or laser transmission.

"Non-Federal financial support" means the total value of cash and the fair market value of property and services received—

(a) As gifts, grants, bequests, donations, or other contributions for the construction or operation of noncommercial educational broadcast stations, or for the production, acquisition, distribution, or dissemination of educational, cultural or instructional television or radio programs, and related activities, from any source other than (1) the United States or any agency or instrumentality of the United States; or (2) any public broadcasting entity; or

(b) As gifts, grants, donations, contributions, or payments from any State, or any educational institution, for the construction or operation of noncommercial educational broadcast stations or for the production, acquisition, distribution, or dissemination of educational, cultural or instructional television or radio programs, or payments in exchange for services or materials with respect to the provision of educational, cultural or instructional television or radio programs.

"Nonprofit" (as applied to any foundation, corporation, institution or association) means a foundation, corporation, institution, or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Operational cost" means those approved costs incurred in the operation of an entity or station such as overhead labor, material, contracted services (such as building or equipment maintenance), and including capital outlay and debt service.

"Preoperational expenses" means all nonconstruction costs incurred by new public telecommunications entities before the date on which they began providing service to the public, and all nonconstruction costs associated with the expansion of existing stations before the date on which such expanded capacity is activated, except that such expenses shall not include any portion of the salaries of any personnel employed by an operating public telecommunications entity.

"PTFP" means the Public Telecommunications Facilities Program, which is administered by the Agency.

"PTFP Director" means the Agency employee who recommends final action on public telecommunications facilities applications and grants to the Administrator.

"Public telecommunications facilities" means apparatus necessary for production, interconnection, captioning broadcast, or other distribution of programming, including but not limited to studio equipment, cameras, microphones, audio and video storage or processors and switchers, terminal equipment, towers, antennas, transmitters, remote control equipment, transmission line translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, optical fiber communications equipment and other means of transmitting, emitting, storing, and receiving images and sounds or information, except that such term does not include the buildings to house such apparatus (other than small equipment shelters which are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities).

"Public telecommunications services" means noncommercial educational and cultural radio and television programs, and related noncommercial instructional or informational material that may be transmitted by means of electronic communications. It does not include essentially sectarian programming.

"Sectarian" means that which has the purpose or function of advancing or propagating a religious belief.

"State" includes each of the fifty states, the District of Columbia, the

Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

"System of public telecommunications entities" means any combination of public telecommunications entities acting cooperatively to produce, acquire or distribute programs, or to undertake related activities.

§ 2301.2 Program purposes.

(a) The Agency's determination to fund an application and the amount of the grant awarded shall be governed by whether the application will, in the following order of priority, result in:

(1) The establishment of new public telecommunications facilities to extend services to areas not currently receiving such services;

(2) The expansion of the service areas of existing public telecommunications entities; or,

(3) The improvement of the capabilities of existing licensed public broadcasting stations to provide public telecommunications services.

(b) Notwithstanding paragraph (a) of this section, the Agency may award a grant to an applicant which is otherwise eligible for funding, but whose proposal does not specifically meet any of the purposes enumerated above. Such grant, however, must fulfill the overall objectives of the Act.

§ 2301.3 Special Consideration.

In accordance with section 392(f) of the Act, the Agency will give special consideration to applications which foster ownership or control of, operation of, and participation in public telecommunications entities by minorities and women. The Agency interprets "ownership" and "owned" as meaning control of an entity through the possession or exercise of the normal incidents of ownership, such as participation on the governing board or holding corporate offices. The Agency will accord special consideration only where women and/or minorities hold more than fifty (50) percent control of the applicant. The Agency will consider the composition of the applicant's governing body, management levels, or policy-making positions.

Subpart B—Eligibility and Application Procedures

§ 2301.4 Eligible organizations and projects.

(a) *Eligible applicants (Construction Grants).* In order to apply for and receive a PTFP Construction Grant, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or,

(5) A state or local government or agency or a political or special purpose subdivision of a state.

(b) *Eligible applicants (Planning Grants).* In order to apply for and receive a PTFP Planning Grant, an applicant must be:

(1) Any of the organizations described in paragraph (a) of this section; or,

(2) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious.

(c) *Eligible projects.* An applicant which is eligible under paragraph (a) or (b) of this section may file an application with the Agency for a planning or construction grant to achieve the following:

(1) The provision of new public telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

(2) The expansion of the service areas of existing public telecommunications entities;

(3) The establishment of new public telecommunications entities serving areas currently receiving public telecommunications services; or,

(4) The improvement of the capabilities of existing licensed public broadcast stations to provide public telecommunications services.

(d) An applicant with outstanding accounts receivable with any agency of the Department of Commerce will not receive a PTFP grant until the debt is paid or arrangements to repay, which are satisfactory to the Department, are made. This includes debts incurred by sub-units of an organization other than the sub-unit which is applying to the PTFP, and includes debts owed to any agency of the Department of Commerce, not just the Agency.

(e) An applicant whose proposal requires an authorization from the FCC must be eligible to receive such authorization.

(f) *Preliminary determination of eligibility.* In order to obtain a preliminary determination of applicant or proposal eligibility, a prospective applicant must send a letter requesting such determination to the Agency.

(1) The request letter should be addressed to: PTFP Director, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, DC 20230.

(2) In the request letter the prospective applicant must:

(i) Describe the proposed project;

(ii) Include a copy of the organization's articles of incorporation and by-laws, or other similar documentation, which specifies the nature and powers of the prospective applicant (unless the prospective applicant has received a PTFP grant within the last ten (10) years, in which case only a copy of the most recent Annual Report or Quarterly Progress Report and any changes in the articles of incorporation and by-laws since the last grant must be provided); and,

(iii) If the prospective applicant is a nonprofit foundation, corporation, institution, or association which has not received a PTFP grant within the previous ten (10) years, provide a copy of a letter from the Internal Revenue Service granting the prospective applicant tax exempt status under section 501(c)(3) of the Internal Revenue Code, or other legal documentation of nonprofit status.

(3) A favorable preliminary determination of eligibility does not guarantee that the Agency will accept a future application for filing or award a subsequent grant.

(4) A prospective applicant may appeal an unfavorable preliminary determination of eligibility to the Administrator under § 2301.10.

§ 2301.5 Application procedures.

(a) *Address.* The following address should be used for all communications with the Agency: Public Telecommunications Facilities Program, NTIA/DOC, 14th and Constitution Avenue, NW., Room 4625, Washington, DC 20230.

(b) Application materials may be obtained from the address listed in paragraph (a).

(c) *Closing date.* The Administrator shall select and publish in the **Federal Register** a date by which applications for funding in a current fiscal year are to be filed.

(d) *New applications.* (1) All applications, whether mailed or hand delivered, must be received by the Agency at the address listed in paragraph (a) at or before 5:00 p.m. by the closing date.

(2) A complete application must include an original and one copy of the Agency application form with the signature of an officer of the applicant, who is legally authorized to sign for the applicant, and all the information required by the Agency application materials, which shall include:

(i) A brief narrative statement (of not more than four (4) pages) describing the proposed project with particular attention to satisfying the funding criteria listed in §§ 2301.13 and 2301.14 of these Rules;

(ii) If the applicant has not received a PTFP grant within the past ten (10) years, a copy of the applicant's articles of incorporation, by-laws, board of directors, and other similar documentation specifying the nature and powers of the applicant, except that state or local government entities need only provide a reference to the statutory or other authority under which they operate;

(iii) If the applicant is a nonprofit foundation, corporation, institution or association which has not received a PTFP grant within the previous ten (10) years, a copy of a letter from the Internal Revenue Service granting the applicant tax exempt status under section 501(c)(3) of the Internal Revenue Code, or other legal documentation of nonprofit status.

(iv) If the applicant received a PTFP grant within the previous ten (10) years, then it must reference the number of the previous grant, provide a copy of the most recent Annual Report or Quarterly Progress Report submitted to the PTFP, and submit a copy of any changes in the applicant's Articles of Incorporation or By-Laws which have taken effect since the last grant was awarded;

(v) If the applicant applied for a preliminary determination of eligibility and received a positive determination, it may submit a copy of the official notification from the PTFP in lieu of the eligibility requirements of this section;

(vi) Documentation that the applicant will have, when needed, the funds to match any grant the Agency may provide;

(vii) Documentation that the applicant will have the funds necessary to operate and maintain those facilities once constructed.

(viii) Documentation of the amount of Federal and non-Federal financial support received by the applicant organization during each of the preceding three fiscal years or for the length of time the organization has been in existence if less than three years, and documentation of the means by which the applicant plans to acquire the necessary funds to help replace any equipment acquired under the proposed project;

(ix) An opinion letter from the applicant's attorney stating that the applicant will have fee simple title or a long-term lease (*e.g.*, a ten-year lease) or an option to obtain the same to any real or personal property necessary for the installation of major fixed equipment (such as a broadcast transmitter or tower);

(x) An inventory of all equipment (if any) currently owned by the applicant which corresponds to the type of equipment requested in the current application or which would be closely associated with the proposed project. The inventory should include manufacturers' names, model numbers, production years, and the dates of acquisition;

(xi) Within the narrative or as an optional exhibit no longer than two pages, a five-year plan outlining the applicant's projected facilities requirements and the projected costs of such requirements;

(xii) If special consideration is requested under § 2301.3, information detailing the basis for the request on the exhibit form provided by the Agency;

(xiii) Copies of letters transmitting a copy of the application to each of the entities required under § 2301.7;

(xiv) Significant documentation supporting the applicant's request for equipment, including as necessary the proper FCC authorization(s) cited in §§ 2301.8 and 2301.9, and if applicable, documentation indicating high incidence of repair or periods of inoperability;

(xv) Evidence that the applicant has participated (or, in the case of a planning grant, will participate) in comprehensive planning for the proposed project, including community involvement, an evaluation of alternate technologies and coordination with state telecommunications agencies, if any;

(xvi) Assurance that during the period in which the applicant possesses or uses the Federally funded facilities (whether or not this period extends beyond the Federal interest period), the applicant will not use or allow the use of the Federally funded equipment for essentially sectarian purposes;

(xvii) A detailed explanation of any complaints of discrimination currently pending or decided against the applicant before any court or governmental agency; and,

(xviii) A copy of any Environmental Impact Statement or other environmental assessment document prepared in conjunction with the proposed project as may be required by any Federal, state, or local law or regulation.

(ixx) Assurance of compliance with all applicable Federal laws, rules or regulations relating to the project, as described on the application form provided by the Agency.

(e) *Deferred applicant.* (1) An applicant may reactivate an application deferred by the Agency during the prior year under § 2301.15, if the applicant has not substantially changed the stated purpose of the application.

(2) To reactivate a deferred application, the applicant must file the information described below, whether mailed or hand delivered, at or before 5:00 P.M. by the closing date.

(3) To file a complete reactivation request, the applicant must submit an original and one copy of the following:

(i) Sections I, II, and IV of Part I of the approved Agency application form with the original signature of an officer of the applicant, who is legally authorized to sign for the applicant, with a notation of the file number of the earlier application;

(ii) A brief narrative statement (not more than four (4) pages) describing the project proposed in the current application;

(iii) An update of availability of operating funds and the necessary non-Federal share of the project;

(iv) A revised listing of current eligible project costs, if necessary;

(v) A revised inventory as described in paragraph (d)(x) of this section. Applicants having previously submitted an inventory need only submit updated information;

(vi) A revised five-year plan as described in paragraph (d)(xi) of this section outlining the applicant's projected facilities requirements and the projected costs of such requirements;

(vii) If special consideration is requested under § 2301.3, current information detailing the basis for the request on the exhibit form provided by the Agency;

(viii) Copies of letters transmitting a copy of the current application to each of the entities required under § 2301.7;

(ix) An updated explanation of any complaints of discrimination currently pending or decided against the applicant before any court or governmental agency; and,

(x) Assurance of compliance with all applicable Federal laws, rules or regulations relating to the project, as described on the application form provided by the Agency.

(f) Deferred applications which are resubmitted under paragraph (e) of this section and contain substantial changes will be considered as new applications and must comply with the requirements of § 2301.5(d). All deferred applications may be subject to a second determination of eligibility.

(g) Additional information. (1) The Agency may request from the applicant any additional information which the Agency deems necessary or pertinent.

(2) Potential grant recipients may be subject to the following Department of Commerce Pre-Award Administrative Requirements and Policies:

(i) Name Check forms (Form CD–346) may be used to ascertain background information on key individuals associated with potential grantees. The Name Check requests information to determine if any key individuals in the organization have been convicted of, or are under indictment or have been charged with criminal offenses such as fraud, theft, perjury, or other matters pertinent to management honesty or financial integrity;

(ii) Potential grantee organizations may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

(3) Applicants must promptly provide any additional information which the Agency requests as being necessary or pertinent.

§ 2301.6 Amendments to applications.

(a) An applicant which has filed a timely and complete application or a request seeking reactivation of a deferred application may submit minor changes to its application or submit additional information at any time up to 45 calendar days after the closing date.

(b) To make minor changes to its application, an applicant must submit an original and one copy of the following to the address listed in § 2301.5(a):

(1) A letter describing in detail the information or documentation which the applicant is changing or adding to its application;

(2) Any new material or altered material; and,

(3) A certification that it has filed a copy of the change(s) on each of the entities required under § 2301.7.

(c) Applicants may not submit substantial amendments to their applications after the closing date. Such amendments change the applicant or substantially alter the nature or scope of the proposed project.

§ 2301.7 Service of applications.

(a) On or before the closing date all new or deferred applicants must serve a copy of the application on the following agencies:

(1) In the case of an application for a construction grant for which FCC authorization is necessary, the Secretary, Federal Communications Commission, 1919 M Street NW., Washington, DC 20554;

(2) The state or local agency(-ies), if any, having jurisdiction over the development of broadcast and/or nonbroadcast telecommunications in the state(s) and the community(-ies) to be served by the proposed project; and,

(3) The state office established to review applications under Executive Order 12372 as amended by Executive Order 12416, if the state has established such an office and wishes to review these applications.

(b) Those amending applications under § 2301.6 must serve a copy of the amendment on all relevant agencies as listed in paragraph (a) of this section.

§ 2301.8 Federal Communications Commission authorization

(a) Each applicant whose project requires FCC authorization must file an application for that authorization on or before the closing date. Recommended submission date for applications to the FCC is at least 60 days prior to the closing date. The applicant should clearly identify itself as a PTFP applicant.

(b) Any FCC authorization required for the project must be in the name of the applicant for the PTFP grant.

(c) If the project is to be associated with an existing station, FCC operating authority for that station must be current and valid.

(d) For any project requiring new authorization(s) from the FCC, the applicant must file a copy of each FCC application and any amendments with the Agency.

(e) If the applicant fails to file the required FCC application(s) by the closing date, or if the FCC returns, dismisses, or denies an application required for the project or any part thereof, or for the operation of the station with which the project is associated, the Agency may return the application.

(f) No grant will be awarded until confirmation has been received from the FCC that any necessary authorization will be issued.

§ 2301.9 Acceptance for filing.

After the closing date, the Agency will examine each application for timeliness, completeness, eligibility, and FCC authorization.

(a) The Agency will publish a notice in the **Federal Register** listing all applications accepted for filing. Acceptance of an application for filing does not preclude subsequent return or disapproval of the application, nor does it assure that the application will be funded. Publication merely operates to qualify the application to compete for funding with other applications accepted for filing.

(b) The notice of acceptance for filing will also include a request for comments on the applications from any interested party. The procedural requirements of § 2301.11 will be set forth in the notice.

(c) Incomplete applications will be returned by the Agency.

(d) Any application, substantial amendment to an application, or request to reactivate a deferred application which is filed after the closing date will be returned by the Agency.

(e) When the Agency finds that either the applicant or the project is ineligible under the Act and/or these Rules, it will return the application and inform the applicant of the denial of eligibility.

(f) If the Agency finds that a proposed project requires authorization from the FCC and that the applicant did not tender its application for such authorization, the Agency will return the application.

§ 2301.10 Appeals.

(a) Within 15 calendar days after the date on which the Agency sends a written notice to an applicant denying the eligibility of the applicant or the proposed project, or notifying an applicant that its application is incomplete, the applicant may file a written notice of appeal with the Administrator at the address listed in § 2301.5(a). Applicants may not appeal the return of applications filed after the closing date.

(b) The notice of appeal must show that the denial of eligibility or determination of incompleteness is factually or legally incorrect. If the applicant relies on any written documents or other materials to dispute the Agency's action, the applicant should list and attach a copy of each item or indicate that the Agency has a copy of the item in its possession.

(c) Upon receipt of the notice of appeal, the Administrator will review the appeal in consultation with the Chief Counsel and the PTFP Director and will render a written decision within 30 calendar days.

(d) If the Administrator sustains the denial of eligibility or the determination of incompleteness, the Agency will return the application to the applicant.

(e) All decisions of the Administrator made under paragraph (c) of this section are final.

§ 2301.11 Public comments.

(a) Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. Such comments must contain a certification that a copy of the comments has been delivered to the applicant. Comments must be sent to the address listed in § 2301.5(a).

(b) The Agency will incorporate all comments from the public and any replies from the applicant in the applicant's official file.

§ 2301.12 Coordination with interested agencies and organizations.

In acting on applications and carrying out other responsibilities under the Act, the Agency shall consult with:

(a) The FCC, with respect to functions which are of interest to, or affect other functions of the FCC;

(b) The Corporation for Public Broadcasting, public broadcasting agencies, organizations, other agencies, and institutions administering programs which may be coordinated effectively with Federal assistance provided under the Act; and,

(c) The state office established to review applications under Executive Order 12372 as amended by Executive Order 12416, if the state has established such an office and wishes to review these applications.

§ 2301.13 Funding criteria for construction applications.

In determining whether to approve or defer a construction grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the project meets the program purposes set forth in § 2301.2 as well as the specific program priorities set forth in the Appendix of these Rules;

(b) Whether or not the applicant documents specifically a procedure to minimize the need for PTFP funding to replace any equipment acquired under the proposed project;

(c) The adequacy and continuity of financial resources for long-term operational support;

(d) The extent to which non-Federal funds will be used to meet the total cost of the project;

(e) The extent to which the applicant has:

(1) Assessed specific educational, informational, and cultural needs of the community(-ies) to be served, and the extent to which the proposed service will not duplicate service already available;

(2) Evaluated alternative technologies and the bases upon which the technology was selected;

(3) Provided significant documentation of its equipment requirements, and the urgency of acquisition or replacement;

(4) Provided documentation of an increasing pattern of substantial non-Federal financial support;

(5) Provided other evidence of community support, such as letters from elected or appointed policy-making officials, and from agencies for whom the applicant produces or will produce programs or other materials;

(f) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities available to, operated by, and owned or controlled by minorities and women;

(g) The extent to which various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds;

(h) The extent to which the eligible equipment requested meets current broadcast industry performance standards;

(i) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(j) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(k) The extent to which the project implements local, statewide or regional public telecommunications systems plans, if any; and,

(l) The readiness of the FCC to grant any necessary authorization.

§ 2301.14 Funding criteria for planning applications.

In determining whether to approve or defer a planning grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(b) The qualifications of the proposed project planner;

(c) The extent to which the project's proposed procedural design assures that the applicant would adequately:

(1) Obtain financial, human and support resources necessary to conduct the plan;

(2) Coordinate with other telecommunications entities at the local, state, regional and national levels;

(3) Evaluate alternative technologies and existing services; and

(4) Receive participation by the public to be served (and by minorities and women in particular) in the project planning;

(d) Any pre-planning studies conducted by the applicant showing the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary, for the project); and,

(e) The feasibility of the proposed procedure and timetable for achieving the expected results.

§ 2301.15 Action on all applications.

(a) After consideration of an application which the Agency has accepted for filing, any comments filed by interested parties and replies thereto, and any other relevant information, the Agency will take one of the following actions:

(1) Select the application for funding, in whole or in part;

(2) Defer the application for subsequent consideration; or,

(3) Return the application as ineligible pursuant to § 2301.9 with a notice of the grounds and reasons.

(b) Upon the approval or deferral, in whole or in part, of an application, the Agency will inform:

(1) The applicant;

(2) Each state educational television, radio, or telecommunications agency, if any, in any state any part of which lies within the service area of the applicant's facility;

(3) The FCC; and,

(4) The Corporation for Public Broadcasting and, as appropriate, other public telecommunications entities.

(c) If the Agency decides to fund an application, the award documents will include grant terms and conditions and whatever other provisions are required by Federal law or regulations, or which may be deemed necessary or desirable for the achievement of program purposes.

(d) An applicant or an objecting party may not appeal to the Administrator the Agency's determination to fund or not fund a particular application to the Administrator.

(e) Information about grant terms and conditions or other applicable laws and regulations is available from PTFP at the address listed in § 2301.5(a).

Subpart C—Federal Financial Participation

§ 2301.16 Amount of the Federal grant.

(a) Construction grants. (1) A Federal grant for the construction of a public telecommunications facility shall be in an amount determined by the Agency

and set forth in the award document. Such amount may not exceed seventy-five (75) percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

(2) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by the relevant Federal statute.

(3) After the filing of its application, the applicant may, at its own risk, obligate non-Federal matching funds for the acquisition of proposed equipment. Should the applicant exceed the non-Federal share as established in the final award agreement, the Federal share of the total project cost will be reduced by a corresponding amount.

(4) Funds supplied to an applicant by the Corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear compelling showing of need.

(b) *Planning grants.* A Federal grant for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the award document and the attachments thereto. The Agency may provide up to one hundred (100) percent of the funds necessary for the planning of a public telecommunications construction project.

(c) Project costs do not include the value of eligible apparatus owned or acquired by the applicant prior to the closing date.

§ 2301.17 Items and costs ineligible for Federal funding.

The following items and costs are ineligible for funding under the Act:

(a) *Equipment and supplies.* Each year, the Agency will review its list of ineligible equipment and supplies. A copy of the currently applicable list of ineligible equipment will be provided with every application package for PTFP grants.

(b) *Other expenses ineligible for funding.* (1) Buildings and modifications to buildings to house eligible equipment and fences surrounding them are not themselves eligible for funding under this program, except that small equipment shelters which are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities are eligible for funding;

(2) Land and land improvements;

(3) Salaries of personnel employed by an operating public telecommunications entity and other operational costs (except for planning projects under section 392(c) of the Act);

(4) Moving costs required by relocations;

(5) Such other expenses as the Agency may determine prior to the award of a grant.

§ 2301.18 Waiver.

For good cause shown, the Administrator may waive the regulations adopted pursuant to section 392(e) of the Act.

Appendix to Part 2301—Priorities

Priority I—*Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area.* Within this category, NTIA establishes two subcategories:

A. *Projects which include local origination capacity.* This subcategory includes the planning or construction of new facilities which can provide a full range of radio and/or television programs including material that is locally produced. Eligible projects include new radio or television broadcast stations, new cable systems, or first public telecommunications service to existing cable systems, provided that such projects include local origination capacity.

B. *Projects which do not include local origination capacity.* This subcategory includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks and repeater transmitters which will result in providing public telecommunications services to previously unserved areas.

Priority I and its subcategories only apply to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas which are presently unserved, *i.e.*, areas which do not receive any public telecommunications services whatsoever. (It should be noted that television and radio are considered separately for the purposes of determining coverage.)

Under Priority IB, NTIA will consider an area served when it receives a public television signal from a distant source through a cable system which has a penetration rate of fifty (50) percent. (An applicant proposing to plan or construct a facility to serve a geographical area which is presently unserved, should indicate the number of persons who would receive a first public telecommunications signal as a result of the proposed project.)

Priority II—*Replacement of Basic Equipment of Existing Essential Broadcast Stations.* Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment in existing broadcast stations which provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area.

In order to show that the replacement of equipment is necessary, applicants must provide documentation indicating excessive downtime, or a high incidence of repair (*i.e.*, copies of repair records, or letters documenting non-availability of parts.) Additionally, applicants must show that the station is the only public telecommunications station providing a signal to a geographical area or the only station with local origination capacity in a geographical area.

The distinction between Priority II and Priority IV is that Priority II is for the replacement of basic equipment for essential stations. Where an applicant seeks to "improve" basic equipment in its station (*i.e.*, where the equipment is not "worn out"), or where the applicant is not an essential station, NTIA would consider the applicant's project under Priority IV.

Priority III—*Establishment of a First Local Origination Capacity in a Geographical Area.* Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services from distant sources through translators, repeaters or cable systems.

Applicants seeking funds to bring the first local origination capacity to an area already receiving some public telecommunications services may do so, either by establishing a new (and additional) public telecommunications facility, or by adding local origination capacity to an existing facility. (A source of a public telecommunications signal is distant when the geographical area to which the source is brought is beyond the grade B contour of the origination facility.)

Priority IV—*Replacement and Improvement of Basic Equipment for Existing Broadcast Stations.* Projects eligible for consideration under this category include the replacement of obsolete or worn out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards (*e.g.*, improvements to signal quality, and significant improvements in equipment flexibility or reliability). As under Priority II, applicants seeking to replace or improve basic equipment under Priority IV should show that the replacement of the equipment is necessary by including in their applications data indicating excessive downtime, or a high incidence of repair (such as documented in repair records).

Priority V—*Augmentation of Existing Broadcast Stations.* Projects in this category would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. *Projects to equip auxiliary studios at remote locations, or to provide mobile origination facilities.* An applicant must demonstrate that significant expansion in public participation in programming will result. This subcategory includes mobile units, neighborhood production studios or facilities in other locations within a station's service area which would make participation in local programming accessible to additional segments of the population.

B. *Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution.* This subcategory would provide equipment for the production

of programming for regional or national use. Need beyond existing capacity must be justified.

Special Applications. NTIA possesses the discretionary authority to award grants to eligible applicants whose proposals are so unique or innovative that they do not clearly fall within the listed priorities. Innovative projects submitted under this category must address demonstrated and substantial community needs (*e.g.*, service to identifiable ethnic or linguistic minority audiences, services to the blind or deaf, instructional services or electronic text).

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Part III

Environmental Protection Agency

Emissions Trading Policy Statement; General Principles for Creation, Banking and Use of Emission Reduction Credits; Final Policy Statement and Accompanying Technical Issues Document

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3085-8]

Emissions Trading Policy Statement; General Principles for Creation, Banking and Use of Emission Reduction Credits

AGENCY: Environmental Protection Agency.

ACTION: Final policy statement and accompanying technical issues document.

SUMMARY: This Policy Statement replaces the original bubble policy (44 FR 71779, December 11, 1979) and makes final revisions in an Interim Emissions Trading Policy which was published April 7, 1982 (47 FR 15076) and on which further comments were requested August 31, 1983 (48 FR 39580).

The policy describes emissions trading and sets out general principles EPA will use to evaluate emissions trades under the Clean Air Act and applicable federal regulations. Emissions trading includes bubbles, netting, and offsets, as well as banking (storage) of emission reduction credits (ERCs) for future use. These alternatives do not alter overall air quality requirements; they give states and industry more flexibility to meet those requirements. EPA endorses emissions trading and encourages its sound use by states and industry to help meet the goals of the Clean Air Act more quickly and inexpensively.

However, EPA also recognizes that without strict accounting practices and other safeguards, emissions trades may cause potential environmental harm. Accordingly, this policy provides more explicit guidance on baselines and related tests for environmental equivalence and environmental progress. It includes numerous tightenings and clarifications meant to assure the future environmental integrity of bubbles and other trading transactions.

Among other general steps, the policy states that the lower of actual or allowable emissions must usually be used as the baseline for emissions trades. Divergences from this baseline will be allowed only where the state or applicant shows that any potential increase in actual emissions will not jeopardize National Ambient Air Quality Standards (NAAQS), PSD increments or visibility protection.

General showings to this effect may be made only by establishing that allowable values were clearly incorporated in or assumed by an approved demonstration of attainment or maintenance. Specific showings to this effect may be made only in narrow circumstances described in the accompanying Technical Issues Document.

Other general matters addressed and significantly clarified by this policy include requirements for air quality modeling and approvable state generic bubble rules, additional enforcement safeguards, and additional safeguards related to bubbles involving pollutants listed, regulated or proposed to be regulated under Section 112 of the Act.

This policy also sets forth new, tighter requirements for bubbles in primary nonattainment areas which require but lack approved demonstrations that national ambient standards for healthy air will be attained. In addition to requiring lowest-of-actual-SIP allowable-or-RACT-allowable emissions baselines in these areas, use of past shutdowns, curtailments or other reductions which occurred before application for credit is essentially eliminated, and a further reduction of at least 20 percent beyond the baseline is required. Broadly speaking, sources may secure bubble credit in these areas only if claimed reductions meet these baseline and further reduction requirements; were reasonably, objectively elicited by the opportunity to trade; and are accompanied by state assurances that the trade is consistent with the state's efforts to attain the ambient air quality standard. EPA will approve bubbles which meet these requirements because they are consistent with the attainment needs of these areas and will yield a net air quality benefit. Such bubbles can produce economic savings and environmental improvement at the same time.

The policy announced today does not constitute final action of the Agency within the meaning of section 307(b) of the Clean Air Act, and therefore is not judicially reviewable. Rather, it establishes general guidance on approvable voluntary trades. EPA will implement this guidance in later rulemaking actions that will be judicially reviewable. Applicants for emissions trades remain free, following publication of today's notice, to advance the appropriateness of different trading requirements in the context of rulemaking actions on their individual trades.

EFFECTIVE DATE: This Policy Statement is effective December 4, 1986.

FOR FURTHER INFORMATION CONTACT: Inquiries regarding the general implementation of this policy may be directed to: Barry Gilbert, Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, NC 27711, (919) 541-5516.

Inquiries regarding specific applications to use this policy may be directed to the appropriate EPA Regional Office (see Appendix A of the Technical Issues Document)

Inquiries regarding the development and basis of this policy may be directed to: Barry Elman, Regulatory Reform Staff (PM-223), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-2727

SUPPLEMENTARY INFORMATION: Under Executive Order 12291, EPA must judge whether this action is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action is not major because it establishes policies, as opposed to regulations, and can substantially reduce the costs of complying with the Clean Air Act

This Policy Statement was submitted to the Office of Management and Budget for review. Any comments from OMB to EPA are available for public inspection in Docket G-81-2. Pursuant to U.S.C. 605(b), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities. As a policy designed to allow firms flexibility to meet previously established regulatory requirements, it will impose no burdens on either small or large entities.

The contents of today's preamble are indicated in the following outline. The outline is followed by the preamble itself, and then by the Policy Statement and accompanying Technical Issues Document.

Table of Contents: Preamble

PREAMBLE—EMISSIONS TRADING POLICY STATEMENT

I. Introduction

Today's policy makes final the Agency's prior guidance on general principles for creating, storing (banking) and using emission reduction credits in trading actions under the Clean Air Act. This preamble responds to written comments EPA received on major issues raised by its proposed emissions trading policy statement (47 FR 15076, April 7, 1982) and subsequent request for further comment (48 FY 39580, August 31, 1983). It also explains the Agency's principal decisions on these issues.

Today's notice is the primary source of EPA guidance on existing-source bubbles, state generic bubble rules, and emission reduction banking. It replaces the original bubble policy (44 FR 71779, December 11, 1979) as well as the proposed emissions trading policy statement, which was effective April 7, 1982 as interim guidance. The notice addresses how emission reduction credits (ERCs)—the currency of trading—may be used for bubbles, as well as for netting or offsets. Netting and offsets are part of emissions trading, but are governed by EPA and state regulations for new source review.[1]

Nothing in today's notice alters EPA new source review requirements or exempts owners or operators of stationary sources from compliance with applicable preconstruction permit regulations in accord with 40 CFR 51.18, 51.24, 51.307, 52.21, 52.24, 52.27 and 52.28. Interested parties should, however, be aware that bubble trades are not subject to preconstruction review or regulations where these trades do not involve construction, reconstruction, or modification or a source within the meaning of those terms in the regulations listed above.

The policy announced today does not constitute final action of the Agency within the meaning of section 307(b) of the Clean Air Act, and therefore is not judicially reviewable. Rather, it establishes general guidance for reviewing and approving voluntarily submitted trades. EPA will implement this guidance in later rulemaking actions that will be judicially reviewable. Applicants for emissions trades remain free, following publication of today's notice, to advance the appropriateness of different trading requirements in the context of rulemaking actions on their individual trades.

Under today's notice, EPA continues to authorize use of bubbles, banks, and generic bubble rules in all areas of the country, and provides for the fair and prompt processing of bubble applications which have been pending before EPA under the 1982 policy. However, based on experience under the 1982 policy, and in order to ensure the environmental integrity of future emissions trades, today's notice significantly tightens requirements applicable to certain trading actions, particularly existing-source bubbles in primary nonattainment areas which require but lack demonstrations of attainment. It also clarifies approval criteria in ways which should make review and approval of environmentally-sound trades more rapid and predictable. Among other safeguards or safeguarding clarifications, it requires that:

- Bubbles may no longer result in any increase in applicable net baseline emissions in any area, whether attainment or nonattainment, except under stringent conditions which assure that ambient equivalence will nevertheless be achieved;[2]
- Baselines for sources participating in a bubble in any area must take into account all three factors relevant to total emissions (i.e., emission rate, capacity utilization, and hours of operation) in order to provide an accurate accounting of emissions before and after the trade;

[1] See, e.g., 40 CFR 51.18, 51.24, 51.307, 52.21, 52.24, 52.27 and 52.38.

On November 7, 1986, EPA restructured CFR Part 51 and renumbered many of that Part's sections (51 FR 40656). Because most readers will be more familiar with prior designations, today's notice contains citations based on the organization of Part 51 as it existed before this restructuring. Interested parties may use Appendix F of today's Technical Issues Document to convert today's Part 51 citations to the corresponding new ones.

[2] This change constitutes a significantly more stringent definition of what may be considered a bubble under the Emissions Trading Policy. Specific ambient tests which must be met to qualify for an exception from this restriction can be found in the Technical Issues Document, Section I.B.1.c Actions which may no longer be treated as bubbles under today's notice must be processed under general EPA criteria applicable to SIP revisions.

- Bubbles in primary nonattainment areas needing but lacking approved demonstrations of attainment must use the lowest-of-actual-SIP-allowable-or-RACT-allowable emissions baseline, as described below, for each source involved in the trade;
- Bubbles in primary nonattainment areas needing but lacking approved demonstrations must contribute to progress toward attainment by providing a 20% net reduction in emissions remaining after application of the baseline above to all sources involved in the trade or, if the bubble is being processed under a state generic rule, the greater of a 20% net reduction or the percent reduction which would be required from all controllable stationary sources in that area (e.g., taking into account expected mobile source reductions and disregarding area-source contributions) in order to achieve attainment;
- Bubbles in attainment areas and nonattainment areas with approved demonstrations must use the lower of actual or allowable values for each of the three baseline components, unless allowable values higher than corresponding actual values are clearly used or reflected in the demonstration or otherwise shown not to jeopardize ambient standards, PSD increments or visibility;
- In all areas, emission reductions must be made state-enforceable in order to qualify as ERCs and be deposited in an EPA-approvable bank;
- In all areas, bubbles must meet more stringent tests for ambient equivalence, including additional ambient significance levels, more protective air quality modeling requirements, and more conservative definitions of *de minimis* trades;
- In all areas, the total of any incidental emissions of hazardous or potentially hazardous air pollutants associated with a criteria pollutant in a bubble trade must remain equal or be decreased, whether such hazardous pollutants have been regulated, proposed for regulation, listed, or the subject of a notice-of-intent-to-list under Clean Air Act 112;
- States must provide assurances to EPA that bubbles submitted for EPA approval in primary nonattainment areas needing but lacking approved demonstrations are consistent with the state's SIP-planning and attainment objectives. For generic rules, the state must make certain assurances in conjunction with its submittal of the generic rule to EPA, and certain additional assurances with the state's proposed and final approval of each individual bubble under that rule;
- Bubbles in such primary nonattainment areas may not use credit from reductions made before application to bank or trade such credit;
- Where sources in such areas seek to bank credits in the future, "application to bank," for purposes of evaluating credits for use in bubbles, means the time of filing an application to make the proposed credits state-enforceable through or concurrent with use of a formal or informal banking mechanism;
- Bubbles must not impede compliance or enforcement (e.g., the policy states that compliance extensions may no longer be granted under generic rules in any nonattainment area, and that bubble applications do not *per se* suspend underlying SIP limits or defer source obligations to achieve those limits);
- Generic rules in all areas will be subject to increased EPA oversight, including EPA participation in the state's public notice and comment process prior to state approval of individual bubbles, subsequent reviews of individual generic approvals, and reviews of the general implementation of the rules themselves, in order to assure that approved rules are being properly implemented; and
- EPA or state notices of proposed and final bubble approvals, in all areas, must clearly indicate any changes in actual as well as allowable emissions at all sources involved in the bubble, so the ambient effects of these trades may be known.

These and other changes announced today will generally be applied to all SIP revision bubbles and state generic bubble rules that have not been approved by EPA as of this date.[3]

On June 25, 1984 the Supreme Court unanimously ruled that EPA may allow states to use a single, plantwide definition of "stationary source" for new source review (NSR) purposes in nonattainment areas as well as attainment areas, provided use of that definition would not interfere with attainment and maintenance of national ambient air quality standards (NAAQS).[4] Under the "plantwide" definition, increases and decreases occurring anywhere on plant property from emission units within the same two-digit SIC code are generally eligible for netting,[5] and may be used to balance each other without triggering preconstruction permit requirements for major new sources or modifications, so long as actual plantwide emissions would not significantly increase.

States and sources considering the use of netting should, however, be aware that applicable New Source Performance Standards (NSPS), preconstruction review requirements under 40 CFR 51.18 (a)–(h) and (i), NESHAPS, and SIP limits continue to apply to such modifications. EPA is currently developing guidance for states that wish to adopt a plant-wide definition of "source" for nonattainment areas into their new source review regulations.[6]

Pending or future litigation or rulemaking, particularly final resolution of the settlement agreement arising from the industry challenge to ERA's 1980 promulgation of revised NSR rules (*Chemical Manufacturers Association* v. *EPA*, No. 79–1112, D.C. Cir., February 1982), may alter aspects of this policy, especially regarding certain transactions under EPA new source review regulations. See 48 FR 28742 (August 25, 1983) (proposed revisions). However, unless and until EPA finally revises the relevant regulations, the current requirements remain in effect.

II. Major Issues

A. Baselines

The baseline for a given source is that level of emissions below which any additional reductions may be counted (credited) for use in trades. Questions relating to appropriate bubble baselines for particular emitting sources or types of sources in nonattainment areas generated the principal issues resolved by today's notice. EPA's resolutions strengthen SIP integrity and states' ability to make progress toward attainment by (a) identifying more

[3] See, however, discussion of "pending bubbles" in Section I.G. of today's Policy Statement and Section I.A.1.b.(4) of today's Technical Issues Document.

[4] *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council*, 104 S. Ct. 2778, 14 ELR 20507, overruling *Natural Resources Defense Council, Inc.* v. *Gorsuch*, 685 F.2d 718, 12 ELR 20942 (D.C. Cir. 1982).

[5] SIC Code means codes described in the Standard Industrial Classification Manual, 1972, amended 1977 (U.S. Government Printing Office stock numbers 4101–0066 and 003–005–00176–0, respectively).

[6] Many states currently employ the so-called "dual definition" of "statutory source," under which both the plant and each emitting piece of equipment within it are "stationary sources." Under this definition, when any individual piece of equipment is large enough in terms of potential emissions to be defined as a "major stationary source," only increases and decreases in actual emissions from that individual unit are eligible to "net."

While the plantwide definition provides greater opportunity for netting in general, netting is also allowed under the dual definition. Indeed, where no individual piece of emitting equipment is a "major stationary source," the "dual definition" allows the same opportunity to "net" as the "plantwide" definition.

precisely the three factors which must be addressed in calculating baseline emissions; (b) reaffirming that for bubbles in nonattainment areas with demonstrations of attainment that have been approved and not subsequently found by EPA to be substantially inadequate to attain ambient standards, the baseline must be consistent with assumptions used to develop the area's demonstration or must otherwise be shown by appropriate ambient dispersion modeling to protect air quality standards; and (c) specifying a number of special "progress" requirements for bubbles in primary nonattainment areas needing but lacking approved demonstrations of attainment, including stringent new baseline requirements, a ban on the use of reductions produced before application to bank or trade, and a mandatory extra reduction of at least 20% beyond applicable baseline emissions. Together with tightened criteria for modeled demonstrations of ambient equivalence, a well as other new requirements for bubbles, banks, and generic rules, these resolutions will ass ıre continued environmental progress through trades.

1. Determining Baselines—General Guidance

A source's baseline emissions are calculated by multiplying three factors: the source's *emission rate* (usually expressed as emissions per quantity of production or throughput); its *hours of operations* or hourly usage over some representative time period; and its *capacity utilization* (e.g., the units of production per hour of use).[7] All three factors must be addressed, since a source's emissions for a given period may vary widely despite a constant emission rate, depending, for example, on whether it is operated at low capacity for a small number of hours or utilized near full capacity for a large number of hours. The product of this baseline calculation is generally expressed in pounds of emissions per day or tons of emissions per year (TPY), or both.

Today's policy clarifies EPA's original intent regarding appropriate methods for determining these three baseline factors. In general, in nonattainment areas with approved demonstrations, a source's baseline emissions for bubble purposes must be calculated using the lower of it actual emission rate or allowable emission limit, plus the lower of its actual or allowable capacity utilization and hours of operation. That is, baseline emissions in these areas must generally be calculated using lower of actual or allowable values for all three baseline factors.[8]

Actual values for these factors are based on some representative historical time period (generally the average of the two years preceding the source's application to bank or trade).

However, where the state or applicant shows that the SIP, a source-specific preconstruction permit, or an equivalent document clearly assumes or specifies allowable values which are higher than corresponding actual values for one or more baseline factors, and that document post-dates the baseline inventory year for a SIP's attainment demonstration, these values may replace actual values for calculating the bubble baseline. Where only one value (typically the emission rate) is specified, the other two baseline factors must generally be based on actual levels.[9]

Such showings must be based on either data from the SIP or data used in SIP preparation.[10] Applicants may alternatively perform appropriate modeling to demonstrate that use of allowable values which are higher than actual values will not delay or jeopardize attainment and maintenance of ambient standards, protection of PSD increments, or visibility. Upon either type of showing, these allowable values may be used.[11]

This approach is required because control of existing sources through approved SIP measures is the Clean Air Act's principal mechanism for timely attainment, and because many approved demonstrations either do not contain stated assumptions regarding all three baseline factors, or were based on combinations of actual and allowable values for these factors. It recognizes that bubble baselines must accurately reflect the SIP assumptions for all three baseline factors in order to maintain SIP integrity.

Under this approach, determination of bubble baselines consistent with approved demonstrations is a sequential, tiered process. That process was implicit in both EPA's 1982 policy and its 1983 request for further comment, as well as actual practice in bubble actions under those notices. EPA is making it explicit in response to concerns that "paper trades" might undermine attainment demonstrations because approved SIPs do not always state all assumptions on which their demonstrations rely. By requiring that unstated or ambiguous values for all baseline factors *be resolved in favor of lower actual values,* today's notice provides additional assurance that bubbles in nonattainment areas with approved demonstrations will not threaten ambient standards, PSD increments, or visability protection.

2. Comments on Baselines in Nonattainment Areas With Approved Demonstrations of Attainment

Comments on baselines in these areas indicated wide disagreement over where EPA require states to set this baseline level. The 1982 policy noted that "In nonattainment areas with approved demonstrations of attainment, the baseline must be consistent with assumptions used to develop the area's SIP." That policy generally required that where approved SIP demonstrations relied on *actual* emission levels at particular sources, those actual levels would have to be reflected in bubble baselines. Where SIP demonstrations were based on *allowable* emissions, the 1982 policy authorized baselines reflecting such allowable levels, despite the fact that some sources' actual emissions are currently or historically lower than their "allowables." [12]

[7] For detailed discussion of baseline emissions and baseline factors, see Technical Issues Document, Appendix B.

[8] Netting and offset transactions are governed by EPA's regulations at 40 CFR 51.18, 51.24, 51.307, 52.21, 52.24, 52.27 and 52.28. Accordingly, this discussion of baseline applies only to bubbles.

[9] See Section I.A.1 and Appendix B of today's Technical Issues Document for further details on baseline calculation.

[10] This could include documentation such as the demonstration calculations themselves, accompanying materials, or affidavits from those who constructed the demonstration.

[11] Use of such higher allowable values which must be justified by modeling because they are not shown to be clearly reflected in or assumed by the demonstration or an equivalent document, would require such bubbles in nonattainment areas with approved demonstrations to be processed as SIP revisions, since Level III modeling would be required for their justification under today's modeling screen. In addition, the SIP's reasonable further progress (RFP) calculations would generally have to be revised.

The principal difference between use of such higher allowable values in these nonattainment areas and in attainment areas is that in attainment areas, ambient evaluations more limited than Level III modeling may justify use of such allowable values. However, for bubbles processed as case-by-case SIP revisions in attainment areas, the Region retains discretion to require additional technical support, where limited air quality dispersion modeling is proposed to justify use of such allowable baseline values. See Section I.A.1.a. of today's Technical Issues Document.

All bubbles in attainment areas relying on allowable values not used or reflected in an approved demonstration must be evaluated for ambient impact based on a comparison of before-trade actual emissions and post-trade allowable emissions (i.e., the "worst case"), in order to assure that any potential increase in actual emissions are identified and that their effects are consistent with applicable Clean Air Act requirements. See today's Technical Issues Document, Section I.A.1.a.

[12] See n. 13 below.

The great majority of commenters supported this SIP foundation for trading baselines, noting that SIPs are the cornerstone of the Act's approach to air quality management. These commenters also asserted that regardless of sources' actual emissions, measuring reductions from allowable levels assumed in a valid SIP demonstration was entirely appropriate for use in trading, since the area would still attain ambient standards in a timely manner. See, e.g., 48 FR 39582 (August 31, 1983).

However, other commenters asserted this approach was either "too loose" or "too tight." The first group stated that credit should only be granted for reductions below current actual emissions, provided actual emissions met applicable SIP limits.[13] They advanced various reasons for this position, including assertions that reliance on past reductions, while consistent with approved plans for attainment, might not comport with "broader" clean air goals. Some felt that SIPs were insufficently precise to serve as a basis for trading.

A second group of comments went in the opposite direction, asserting that baselines should always be maximum allowable source emissions, regardless of assumptions used in SIP development. These commenters noted that emission *rates* (e.g., emissions per volume of throughput or unit of production) specified in SIP emission limits are generally the only enforceable limits applicable to existing sources. Since existing sources can legally emit up to annual levels equivalent to maximum output and round-the-clock operations so long as they meet these SIP emission-rate limitations, these commenters reasoned, companies should receive credit for agreeing to binding limits on output or hours of operations which forgo such production flexibility.

Today's notice responds in two principal ways to these concerns. First, it clarifies the components of baselines, how these are to be determined, and who bears the burden of demonstrating that a proposed baseline is consistent with a particular SIP. Several comments indicated that confusion related to the determination of baselines may have generated unnecessary concern over use of allowables baselines under approved SIPs. Second, it reiterates and further supports EPA's position that *where SIP demonstrations are approved as adequate*, the Clean Air Act simply requires trading to be consistent with assumptions used to develop the area's SIP.

3. EPA's Resolutions on Baselines in Nonattainment Areas With Approved Demonstrations of Attainment

Where a state has demonstrated it will attain an ambient standard, and EPA has approved the demonstration and not subsequently found it substantially inadequate to assure attainment, bubbles relying on baseline levels used or reflected in that demonstration amount to routine SIP revisions. The state then has discretion to maintain its demonstration through any alternative combination of emission reductions, so long as these are adequate for attainment and maintenance of the ambient standards. Since EPA cannot require states to do more than demonstrate timely attainment and maintain ambient standards, EPA will approve such trades as long as they are enforceable and do not undermine the demonstration. See, e.g., *Train* v. *NRDC*, 421 U.S. 60, 79–80 (1975); *Union Electric Co.* v. *EPA*, 427 U.S. 246 (1976). This means that credits must not be doubled-counted, that they must be calculated from a baseline consistent with the approved demonstration, and that tests of air quality equivalence to the original SIP emission limits must be met.

In short, under the Clean Air Act an approved attainment demonstration creates a legal and logical boundary. The state has met its statutory responsibility and can substitute reductions not relied on in the SIP for those assumed by the SIP, so long as air quality impacts are equivalent. This holds true for all types of emission reductions—whether derived from process changes, extra pollution control equipment, improved operating or maintenance procedures, or other actions—as long as the substitute reductions have not been relied on in the approved SIP.[14]

EPA accordingly reaffirms the general principle that states may grant sources credit for reductions below levels assumed by approved demonstrations. This generally means that where actual values for emission rate, capacity utilization and hours of operation form the basis for an approved demonstration, sources proposing a bubble must use the lower of actual or allowable values for those factors in calculating baseline emissions, and that where an approved demonstration was based on allowable values which are higher than corresponding actual values for any of these baseline factors, those allowable values may be used for such factors in calculating the baseline.

B. Baseline and Other Requirements for Bubbles in Primary Nonattainment Areas Which Require But Lack Approved Demonstrations of Attainment

EPA's 1982 policy proposed two baseline mechanisms for bubbles in primary nonattainment areas needing but lacking approved demonstrations of attainment. These areas needed additional emission reductions to attain national ambient health standards, but had not yet fully determined what amount of reductions would be necessary for attainment or which sources would be required to produce them. Nevertheless, that policy said, states could allow existing sources in these areas to trade on an interim basis, either (1) by using baselines reflecting Reasonably Available Control Technology (RACT) provisions which EPA had already approved, or (2) where EPA had not yet approved general state RACT provisions, by using "negotiated RACT" baselines agreed to between the source, the state and EPA.[15] Both the 1982 policy and subsequent notices advanced detailed programmatic and environmental rationales for this approach, including the fact that RACT was the Act's most stringent general requirement for existing sources in nonattainment areas; that appropriately determined RACT baselines were consistent with current attainment needs; and that trades using such baselines could produce faster interim progress by providing incentives for sources voluntarily to define RACT, disclose better emissions or ambient data, or take other steps to do more than the minimum required. See, e.g., 47 FR 15076, 15080–81; 48 FR 39582–83, 39585.

Many commenters on the 1982 policy approved this "negotiated RACT"

[13] The 1982 policy assumed, but did not specify, the components of "actual" emissions, such as capacity usage or number of hours of operation of a particular source. It also assumed, but did not expressly require, that actual emission levels must be reduced to compliance levels before further reductions were eligible for credit.

[14] It also holds true where the Agency may suspect, but has not formally indicated, that a previously approved SIP demonstration is no longer adequate to assure timely attainment. For reasons of policy continuity, regulatory predictability and fair notice, until EPA makes a formal finding of SIP inadequacy, the approved demonstration controls. See Clean Air Act section 110(a)(2)(H), 110(c)(1); 48 FR 39582 (August 31, 1983).

[15] The 1982 policy also authorized limited use of higher actual (rather than RACT-allowable) baselines in certain nonattainment "extension" areas which did not then have complete approved SIPs. See 47 FR 15077, 15080 (April 7, 1982). Expiration of the July 1982 statutory deadline for submitting such SIPs vitiated this third baseline option. See, e.g., 48 FR at 39580 and n.2, 39582 and n.7, 39584–85 (August 31, 1983).

approach, finding it innovative and acceptable. However, two groups of commenters again asserted that it was either "too restrictive" or "insufficiently constrained." The first group maintained that for reasons of administrative efficiency, bubbles should be based either on existing SIP reduction requirements or on actual emissions, without the need to negotiate new source-specific RACT baselines. Since trading sources in these areas would eventually be subject to RACT requirements in any case, they reasoned, no new interim baseline should be required. In partial support of this position some alluded to the one instance in which Congress has explicitly addressed such baseline issues—its 1977 declaration that in nonattainment areas without adequate demonstrations, existing SIP limits would for the next several years be the baseline for offset transactions, which were then the only types of emissions trades.[16]

The second group asserted that no bubbles should be allowed in such areas, since regulators could not know which reductions were surplus until demonstrations were completed and approved.

In August 1983, "in light of formal comments on the [1982] Policy, the *NRDC* v. *Gorsuch* decision [since reversed] . . . and the need to further articulate the Policy's approach in this area," EPA requested further comment on certain issues relating to credit from plant shutdowns or production curtailments for use in existing-source bubbles, particularly bubbles in primary nonattainment areas requiring but lacking demonstrations. 48 FR 39580. While most comments on the 1982 policy supported continued use of such credits without further restrictions, some commenters had special concerns about shutdowns in these areas. These commenters stated that shutdowns can hasten attainment, and suggested that granting credit for shutdowns that 'might have happened anyway' might not be consistent with the Act's requirement for attainment "as expeditiously as practicable."

In the August 1983 notice EPA addressed these concerns in detail, noting that:

> . . . Unlike surplus reductions from additional pollution control or less-polluting process changes, shutdowns produce a total reduction of emissions, 100% of which might benefit air quality if credit were not allowed. Granting full or partial credit for their use in existing-source bubbles might reduce that benefit . . . at least where the source would have shut down anyway. This reasoning [reflecting a desire to avoid granting credit for reductions that may not be "surplus" because they would have occurred in any event] underlies some commenters' suggestions that credit be allowed only if credit were a sole or principal reason for the shutdown . . .
>
> Unfortunately the issue is not this simple. So long as it has not been double-counted and a proper RACT baseline is applied, the shutdown does contribute to air quality progress, since much less than 100% credit will be granted. Moreover, the opportunity for credit may improve air quality by encouraging early shutdown of high-polluting facilities that might otherwise be kept running, either because replacement is too expensive or to preserve credit for further plant expansion.
>
> In addition, these commenters' suggestion of a test based on subjective motive appears administratively unworkable. EPA and states would find it exceedingly difficult to evaluate or rebut source evidence that a shutdown was motivated by credit and that the shutdown facility would otherwise have operated [, e.g.,] for twenty or forty years. Thus this approach would likely result in either *de facto* approval of all such credits (undermining the reason for the test), or a burden of proof so stringent that none would be approved (penalizing sources whose shutdowns were elicited by trading). More straightforward approaches might either ban shutdown bubbles until a demonstration of attainment, or acknowledge their uncertain nature by applying a margin of safety—e.g., a requirement that such bubbles produce substantial air quality improvement—sufficient to compensate for any uncertainties and protect the integrity of current or future SIPs. 48 FR at 39583–84 (footnotes omitted.)

EPA then suggested seven specific alternatives to the 1982 policy for bubbles in these areas, including: a prohibition on bubble credit from shutdowns; a requirement of substantial air quality benefit from bubbles proposing to use shutdown credit; or a requirement of substantial air quality benefit from all bubbles, with no special restrictions on shutdown credit. In partial support of this last proposed alternative, EPA indicated the administrative benefits of avoiding special definition or treatment of "shutdowns" and "curtailments," and stated that:

> . . . Requiring substantial progress from each bubble . . . could accelerate momentum toward attainment, directly improve air quality through each trade, and provide an objective margin of safety against uncertainties associated with some individual shutdowns, while leaving to the state the task of final SIP development. It would also maintain the incentive within the [1982] Policy for industry to shut down high-polluting, economically-marginal sources . . . . The more each existing-source bubble contributes directly to accelerated air quality progress, the stronger the justification for use of surplus reductions for such bubbles in the absence of a demonstration. Moreover, requiring all bubbles to produce a substantial air quality improvement, beyond RACT baselines and RACT equivalence, could provide a margin of safety sufficient to make special treatment of shutdowns unnecessary . . . 48 FR at 39585–86 (footnotes omitted).

Thus, while the issue explicitly raised by the August 1983 notice was use of bubble credit from shutdowns in primary nonattainment areas which lack approved demonstrations, the underlying issue was use of *any* type of bubble credit in these areas. Since emission reductions have the same effect on air quality whether produced by less-polluting process changes, more efficient operation of installed control equipment, additional pollution controls, or shutdowns or production curtailments, the fundamental question was whether *all* such reductions or none of them should be prohibited or subject to special requirements when used for bubbles in these areas. That question reflected a further choice. Should EPA defer bubbles in these areas until a compete demonstration was finally approved? Or should EPA authorize continued use of bubbles, in order to secure interim emission reductions?

Comments responding to the August 1983 notice were essentially the same as earlier ones. A large majority of industries and state pollution control agencies commenting at that time supported continued opportunity for bubbles (including those using credit from shutdowns) in nonattainment areas with or without approved demonstrations. Virtually all industries and states commenting with respect to areas that *have* approved demonstrations supported continued use of the 1982 policy, without change.[17] Of 13 state agencies commenting with respect to areas that *do not have* approved demonstrations, ten urged that shutdown credits be retained for these

[16] See, e.g., Clean Air Act Amendments of 1977, section 129, codified at 42 U.S.C. 7502 note; 3 *Legislative History of the Clean Air Act Amendments of 1977*, pp. 537, 713; 44 FR 2174–75 (January 16, 1979). This Congressional mandate was largely superseded by eventual state adoption of supervening SIP limits. Under current EPA regulations such SIP allowable emission rates may ordinarily be used to compute the baseline for offsets only where an approved SIP demonstration used inventoried allowable emissions in its demonstration of reasonable further progress. See Clean Air Act 173(1)(A), 42 U.S.C. 7503(1)(A).

[17] E.g., Allegheny County (PA) Health Department, Bureau of Air Pollution Control; Air Pollution Control District of Jefferson County (Louisville), KY. Cf. Dayton (OH) Regional Air Pollution Control Agency. See also, e.g., comments of Chevron USA.

areas as well.[18] However, many comments also supported or acknowledged the appropriateness of a requirement for a net air quality benefit—in the range of 20% extra reductions in emissions remaining beyond a baseline reflecting RACT emission limits—from each bubble, so long as that requirement was objective and easily administered.[19] To the extent they addressed this issue, these comments generally opposed efforts to test bubbles by examining the subjective motives underlying reductions.[20] Two state of local agencies asked that bubbles be prohibited in these areas until complete demonstrations were approved by EPA.

Several commenting environmental groups asserted that EPA should not permit any bubbles in nonattainment areas lacking adequate demonstrations. One argued that EPA cannot determine that emission reductions are "surplus," and therefore creditable, in these areas because to do so would violate the statutory requirement to attain standards "as expeditiously as practicable." Moreover, this group claimed, using RACT as a baseline would not solve this problem because RACT limits are minimum measures, not a substitute for a SIP providing timely attainment. This group also asserted that crediting shutdowns would conflict with states' duty to meet air quality standards "as expeditiously as practicable" because, by "resurrecting" emissions that have already ceased, it would accomplish less emission reduction than is practicable within a given period of time. Another group asserted that allowing shutdown credits in these areas would strain efforts to progress toward attainment. One environmental group went a step further and urged that opportunity for bubbles be restricted solely to attainment areas which have already met national air quality standards.[21]

At the same time, comments filed on Federal Register proposals to approve individual bubbles as SIP revisions under the 1982 policy[22] raised related issues. Several of these proposed bubbles were also located in primary nonattainment areas which required but lacked approved demonstrations. The issue raised related to bubbles of two types: (1) Those which relied on reductions from shutdowns that occurred long before any application to bank or trade; and (2) those which relied on extra reductions produced by routine installation of required control equipment, long before application to bank or trade. Both types of bubbles raised the larger question of whether SIP integrity and environmental progress might better be assured in primary nonattainment areas which require but lack approved demonstrations of attainment by allowing no bubble credit, or allowing bubble credit only for reductions beyond actual emission levels already achieved *as of the time sources applied to bank or trade.*

The final policy strikes what EPA believes to be a reasonable, environmentally-sound balance between all these views, and establishes numerous tightening clarifications and new requirements to implement that balance. These changes and the rationales supporting them are set forth below.

1. EPA's Resolutions Regarding Baseline and Other Requirements

In primary nonattainment areas which require but do not, at the time of a bubble application, have EPA-approved demonstrations that ambient health standards will be attained, bubbles will generally be approved if they do not rely on reductions which occurred before application for credit; if they meet other criteria for baselines, ambient equivalence, and consistency with future planning efforts; and if they produce at least a 20% net reduction in emissions remaining after appropriate baselines have been applied. These objective tests both respond to previous comments on certain individual bubble applications, and go substantially beyond alternatives discussed in EPA's August 1983 notice. At the same time they assure greater predictability and ambient progress, without imposing so heavy a burden on voluntary bubble transactions that the environmental benefits of such trades are forgone. They reflect the general principle that because such properly-structured bubbles provide continuing incentives for sources to deliberately overshoot regulatory marks (rather than plan merely to meet them), bubble trades in these areas can produce interim progress beyond current SIP requirements, and should be approved.

a. *Specific "Progress" Requirements.* Applications for existing-source bubbles in primary nonattainment areas which require but lack approved demonstrations of attainment will be deemed to produce a net air quality benefit and will be processed for approval if they:

(i) Use "lowest-of-actual-SIP-allowable-or-RACT-allowable" emissions baselines. Such baselines must be calculated using

- Either the actual emission rate, the SIP or other federally enforceable emission limit, or a RACT emission limit, whichever is lowest, for each source involved in the trade. This baseline factor shall be determined as of the time of the source's application to bank or trade, whichever is earlier.
- The lower of actual or allowable capacity utilitization and hours of operation for each source involved in the trade. These baseline factors shall generally be based on the two years of operation preceding the application to bank or trade, unless another two year period is shown to be more representative of normal source operations;

(ii) Meet the general *ambient* equivalence tests outlined in today's policy (see Section I.B.1.b of the Technical Issues Document) using the baselines described above and, for the post-bubble case, emission levels that reflect overall *emissions* equivalence; and

(iii) Produce a substantial net reduction in actual emissions—i.e., a reduction of at least 20% in the emissions remaining after application of the stringent new baselines described above. (A reduction of greater than 20% may be required for bubbles approved under generic rules in some of these nonattainment areas. See discussion in Section III.A.1.(d) of this Preamble, below.)

With respect to sources which seek to bank emission reductions after publication of today's notice, "application to bank," for purpose of evaluating credit for use in bubbles, means the time of filing of an

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[18] E.g., Memphis Health Department; Colorado Dept. of Health, Air Pollution Control Division. Cf. comments of Illinois EPA.

Many industrial commenters also asserted the importance of continuing to allow shutdown credits in these nonattainment areas. See, e.g., Chevron USA; Champlin Petroleum.

[19] E.g., Bay Area (CA) Air Quality Management District. See also Southern California Gas Co.

[20] E.g., Massachusetts Department of Environmental Quality Engineering; South Coast (CA) Air Quality Management District.

[21] In oral or written submissions to the Administrator made in early 1986 while final decisions on today's policy were still pending, representatives of seven states and the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officers (STAPPA/ALAPCO) similarly urged that bubbles no longer be authorized in primary nonattainment areas until a complete attainment demonstration was submitted or approved. This position was generally echoed by a coalition of environmental groups. Since this position and related underlying issues had been raised and articulated at length by earlier comments, it is addressed as part of the Agency's final response below.

[22] Cf., e.g., Union Carbide Corp. (Texas City), 47 FR 21533 (May 19, 1982); B.F. Goodrich (Avon Lake), 49 FR 4796 (February 8, 1984).

application to make such reductions state-enforceable through or concurrent with use of a formal or informal banking mechanism. However, in order to avoid needless disruption and inequitable retroactivity, this definition does not apply to reductions which sources have previously applied to bank. See Section I.A.1.b.(1) of the Technical Issues Document.

b. *Additional "Progress" Requirement: State Assurances.* In concluding that properly-structured bubbles as defined above can produce valuable interim progress in primary nonattainment areas which require but lack approved demonstrations, EPA also considered whether other showings might be necessary to assure that individual bubbles do produce such progress. The Agency has concluded that few such showings, whether bubble-related or otherwise, are practicable or workable. It did, however, conclude that certain representations meant to assure each bubble's consistency with SIP planning goals, by requiring states to take a meaningful look at such consistency in each bubble approval, would help assure that progress is achieved.

Under circumstances detailed in the final Policy and Technical Issues Document, today's notice therefore requires the appropriate state authority to provide the following written assurances to accompany each bubble which is approved (either directly by EPA as a case-by-case SIP revision, or by states under an EPA-approved generic rule) in these areas:

1. The resulting emission limits are consistent with EPA requirements for ambient air quality progress, as specified in today's notice.

2. The bubble emission limits will be included in any new SIP and associated control strategy demonstration.

3. The bubble will not constrain the state or local agency's ability to obtain any traditional emission reductions needed to expeditiously attain and maintain ambient air quality standards.

4. The state or local agency is making reasonable efforts to develop a complete approval SIP and intends to adhere to the schedule for such development (including dates for completion of emissions inventory and subsequent increments of progress) stated in the letter accompanying the bubble approval or in previous such letters.

5. The baseline used to calculate the bubble emission limits is consistent with the baseline requirements in the Emissions Trading Policy Statement and Technical Issues Document.

Such assurances need not be verified by, e.g., detailed quantifications, comparison with year-by-year progress projections, or showings that all reductions needed for area-wide progress or attainment have been identified and targeted for regulation. They are, however, expected to be based upon meaningful review by the state and to be consistent with the documentation supporting the bubble. EPA will not second-guess such state representations, provided they are a substantial test applied by the state to each bubble and the state has explained how the proposed bubble is consistent with the area's projected attainment strategy. Nor will EPA examine, or expect states to examine in making such representations, any specific source's subjective motivation in making claimed reductions. The combined effect of these requirements will be (a) to deny bubble credit for reductions which occurred before application for credit, in recognition of the fact that reductions produced before any application to bank or trade are unlikely to have been elicited in any way whatsoever by the opportunity to trade; (b) to help assure that only actual reductions in current emissions are relied upon to satisfy pending control requirements in these areas; (c) to more systematically encourage efforts by sources to produce and permanently maintain these additional reductions, by granting them predictable bubble credit where specified baseline and other tests have been applied; and (d) to assure that these bubbles will not interfere with these areas' attainment efforts. Any other approach would enmesh EPA and state agencies in lengthy, resource-intensive, and uncertain efforts to determine subjective company motives for making particular claimed reductions—efforts which appear unlikely to provide greater environmental protection than the criteria articulated here. Cf. e.g., 48 FR at 39584 and n. 15, 39585–86.

2. Basic Rationale

EPA believes that Congress would clearly have intended the Agency to approve bubbles that, despite the lack of a complete attainment demonstration for the affected areas, nevertheless produce progress toward attainment in those areas. Section 172(b) of the Clean Air Act does require states to formulate complete control strategies to attain the standards in these areas as expeditiously as practicable and, in the case of primary standards, by certain fixed dates. It also requires these areas to demonstrate reasonable further progress toward attainment in the interim. However, SIPs and attainment demonstrations are composed of dozens, if not hundreds, of regulations and commitments adopted at the state or local level, following proceedings that often are time-consuming and overlap in sequence. If EPA were to wait until every such provision were adopted and submitted by the state before acting on any of them, substantial environmental benefits that would otherwise accrue from having each available requirement promptly incorporated in a binding manner into the SIP and made federally enforceable would be forgone. Such an "all or nothing" approach would produce less expeditious progress toward attainment than a combination of (a) EPA approvals of state provisions submitted sequentially and (b) appropriate use of sanctions authorized by the statute to effect the adoption and submittal of remaining necessary provisions. Given the strong emphases in the statute as enacted, it is doubtful that Congress would have intended the former, less progressive approach.[23]

For these reasons, EPA has decided to approve in these areas bubbles which individually produce progress, both beyond preexisting plan requirements and in the air itself, and which do not interfere with these areas' efforts to construct complete strategies that provide for attainment as expeditiously as practicable.

Today's notice accordingly disallows use in bubbles of reductions made prior to any application to bank or trade, but allows appropriate use of reductions made after such application. Where a source voluntarily proposes to make creditable reductions as part of and following a banking or trading application, the stringent lowest-of-actual-SIP-allowable-or-RACT-allowable baselines must be applied if a bubble is involved, and that bubble must meet appropriate ambient tests, using emission levels that produce overall equivalence to the emissions baseline. The "net 20%" discount in remaining emissions then applies to all sources in the bubble, and provides an additional safety margin to assure ambient progress from bubbles in these areas.[24] Finally, the state assurances

[23] See, e.g., *Chevron USA* v. *NRDC*, supra n. 4.

[24] This "net 20%" requirement is also supported by evidence indicating that for most extension area SIPs addressing ozone pollution—the most widespread remaining nonattainment health problem—a net 85% reduction (81% RACT + 20% of remaining VOC emissions) appears sufficient to produce ambient attainment, if those areas could secure such reductions from all controllable stationary sources of VOC emissions which remain after implementation of stringent controls already in place. See, e.g., "O_3 Attainment Status of 33 Areas Under Different Degrees of Stationary Source

Continued

will indicate whether approval of the bubble is likely to remove rather than enhance any important opportunities to construct complete attainment strategies.

EPA believes that bubbles meeting the special progress requirements described above will produce both progress beyond preexisting plan requirements and progress in the air. First, with respect to *preexisting plan requirements*, each bubble would achieve a net tightening of at least 20 percent. Trades that result in a permanent 20 percent reduction beyond actual emission levels (which are *already* below what the plan allows), would produce even greater progress beyond preexisting requirements. Moreover, state assurances that must accompany each bubble will help ensure that approval does not represent a step backward in the process of developing a plan providing for timely attainment.

Each such bubble would also produce net progress in the *air*, since each increment of required control forgone as a result of the trade would be more than compensated by a greater reduction which was not required, and which may reasonably be presumed to have been elicited by the trading opportunity. Neither EPA nor anyone else can prove that all reductions which occur after filing of an application for credit were elicited in whole or in part by the trading opportunity. Decisions in the real world, whether corporate or otherwise, always arise from multiple motives which are not easily disentangled, any strand of which may have "tipped" the balance toward or precipitated a particular action. However, the Agency has concluded that this presumption is reasonable. First, it is plausible that such reductions were elicited at least in part by that opportunity, especially where, as here, sources must affirmatively decide to surrender something of value and constrain purely private decisionmaking (e.g., enforceably commit to change production processes) in order to create a cognizable reduction. Second, this presumption is the sole practical alternative to the administratively difficult and uncertain approach of attempting to determine the intent and motives of source owners making these reductions.

EPA has also concluded that bubbles meeting these new requirements will not interfere with the statutory mandate that states attain standards as expeditiously as practicable. Each such bubble would produce progress in the air that, for the reasons just described, would likely not have been achieved absent the trading opportunity.[25]

3. *Additional Considerations Regarding the Benefits of Bubbles*

Individual bubbles *approved* under today's special progress requirements for primary nonattainment areas which lack demonstrations will produce progress in the SIP and in the air. Moreover, the mere *existence* of the opportunity to trade has independent progressive effects.

As some commenters suggested, lack of such demonstrations usually results from one of two general causes: Either the state does not know where or how to obtain sufficient further emission reductions, or it has identified sources of such reductions but is unable to implement new regulatory requirements because of their cost. Moreover, regulated firms may often be reluctant to disclose information that may be used to require further retrofits against them. Even where such information is obtained, it may not be sufficiently precise to allow EPA and the state to resolve remaining ambient problems. While a vigorous regulatory response remains critical in these areas, that response is likely to be hampered by the very information barriers that discouraged a demonstration of attainment in the first place. See, e.g., 48 FR 39582 (August 31, 1983).

Bubbles can help break such deadlocks over the feasibility of obtaining further reductions, by providing an incentive for plant managers to find economical ways to go beyond current regulatory requirements. The opportunity to trade may also encourage sources to come forward in order to establish the quantifiable and enforceable emission limits on which credit must be based.

Bubbles may achieve substantial reductions even without special "progress" requirements, since sources not otherwise subject to or not yet meeting RACT requirements with future effective dates in such nonattainment areas must first reduce emissions to RACT-allowable levels before they can begin to accrue credit.[26] Where modeled showings of ambient equivalence are required, bubbles may also help identify and correct remaining nonattainment problems. In addition, bubbles may help produce (a) faster compliance with RACT limits already defined in partially-approved SIPs, (b) faster RACT definitions for sources not subject to currently approved portions of SIPs, (c) incentives for plant managers to disclose uncontrolled or uninventoried sources, and (d) incentives for such managers to control emissions earlier than required. Perhaps most important, because of their potential to elicit better information on sources, emissions, control performance and ambient effects, bubbles may enhance states' ability to secure future reductions, if and when such reductions are required. For example, EPA experience has documented cases in which bubble or similar trading applications have improved federal and state air quality management capabilities by improving data on emissions, ambient impacts, and unregulated or uninventoried sources.[27]

Control" (Feb. 1984)]; Letter, Richard A. Liroff, The Conservation Foundation, to Hon. Lee M. Thomas, March 12, 1986 ["The trial calculation... indicates the staff's attentiveness to the limited control possibilities available, and appears to support their conclusion about the contribution RACT plus 20 percent can make to attainment."].

[25] The Agency has determined that these conclusions also apply where the post-application reduction on which the applicant relies for credit happens to be a shutdown or production curtailment. Because multiple motives similarly affect, and can determinatively "tip," decisions to close a facility or restrict its productive capacity, shutdowns that occur after the source owner applies for credit, no less than other types of post-application reductions, may be presumed reasonably elicited by the opportunity to trade. This is particularly true because the source operator, whatever its antecedent motives, must make a deliberate decision to forgo an item of substantial value—either by surrendering its operating permit or by accepting binding production limits—in order to create credit. Since it would be administratively difficult, if not impossible, to prove or disprove that opportunity to trade was the driving force or a subjective motive behind the shutdown, such a presumption is amply justified.

[26] See, e.g., 47 FR 15077, 15080; 48 FR 39580 and n. 2, 39582 and n. 7.

RACT levels are generally at least 80% or more below uncontrolled emission levels, depending on the pollutant. Where pre-trade actual emissions are higher than RACT baseline levels this requirement directly accelerates air quality progress, since no credit can be secured for the difference.

[27] Trade applications submitted over the last several years have, among other things, helped establish and verify emissions factors for nontraditional sources, as well as provide detailed emissions profiles of such sources (see, e.g., application of Shenango Iron and Steel Co., approved 46 FR 62894 (December 29, 1981)); have provided current emissions data not otherwise available to EPA through the Agency's National Emissions Data System (50 FR 25093, June 17, 1985); and have disclosed the existence of sources (or in at least one case an entire plant) that had been wholly missed in development of the state's emissions inventory. Other applications have identified and reduced previously unsuspected threats to PSD increments; helped correct substantial discrepancies between inventoried and actual emissions, or between SIP emission limits and attainment demonstrations; and helped improve enforcement procedures in certain state programs. In addition to such case-specific examples, opportunity to trade appears to reduce traditional reasons for sources to underestimate their emissions, resulting in better inventory and planning data. For example, Massachusetts requires firms to provide data on their two years of highest emissions since the design year of the SIP, in order to establish a daily emissions cap under the state's VOC bubble rule. This requirement has produced baseline data for previously unquantified emission years for some sources.

Through all these mechanisms, bubbles can achieve substantial emission reductions and air quality planning benefits, even without special "progress" requirements.

Nowithstanding these independent progressive effects, EPA believes that it may approve bubbles in these nonattainment areas only if they meet the specific progress requirements described above and do not interfere with the affected areas' efforts to develop and implement complete attainment strategies. Such bubbles can help adjust existing inadequate regulations on a source-specific basis, help make progress toward a full approved demonstration, and help improve air quality, without "freezing" inadequate SIP requirements that are currently in place.

Accordingly, EPA has decided to approve "progress" bubbles which are consistent with the attainment needs of these areas, which produce a net air quality benefit, and which may therefore secure faster interim progress toward attainment and more rapid development of complete attainment plans.

III. Additional Policy Changes and Clarifications

Today's notice makes numerous additional changes in response to comments on and following the 1982 policy. The most important of these changes or clarifications are discussed below.

A. Generic Bubble Rules

Today's notice recognizes the special position of EPA-approved state generic bubble rules. Such rules may provide clearer approval criteria and may result in more rapid bubble approvals with reduced expenditure of EPA and state resources, by eliminating the need for case-by-case Federal rulemaking on each bubble as an individual SIP revision.

Today's policy affirms that states may continue to use generic rules to approve bubbles within the scope of such rules in all areas of the country, including primary nonattainment areas needing but lacking approved demonstrations of attainment. It also establishes specific procedures to ensure opportunity for public comment on individual generic actions and for regular EPA oversight of state administration of all such rules. Finally, it spells out additional "progress" requirements that new generic rules must satisfy to be approvable for primary nonattainment areas needing but lacking demonstrations of attainment.

State generic bubble rules approved by EPA as SIP revisions have independent force of law and further Congress' intent that "the prevention and control of air pollution at its source [remains] the primary responsibility of States and local governments." Clean Air Act, § 101(a)(3). EPA has approved or proposed to approve 10 such rules for 9 different states, and at least 12 others are being developed. Few approved rules currently apply to primary nonattainment areas which require but lack approved demonstrations. However, today's notice requires that all generic rules meet certain additional procedural requirements in order to assure effective EPA oversight of their administration and to identify any deficiencies in individual approvals or state implementation procedures before substantial numbers of state-approved bubbles may be put at risk. To the extent these requirements require modification of existing generic rules, they may apply to rules affecting any area, not just primary nonattainment areas which need but lack demonstrations.

Today's policy is meant to assure these rules' smooth continued operation, both now and through any future transition periods, without undermining the considerable investment states have already made in generic approaches. At the same time, the policy is designed to assure that actions under generic rules will meet the policy's substantive and procedural objectives.

Basically, *bubbles approved by states under existing EPA-approved generic rules before the effective date of this policy* will not be affected or revisited due to today's changes. Because EPA-approved generic rules possess independent validity and may only be changed upon completion of specific procedures for altering such SIP provisions (see, e.g., Clean Air Act sections 110(a)(2)(H), 110(i)), states may also *continue to approve bubbles in accord with such rules*, unless and until those rules are finally changed in response to an EPA notice requesting and establishing a specific timetable for their modification. However, in order to provide maximum assurance of SIP integrity and minimize any need for future SIP corrections, EPA expects states to assure so far as feasible that generic bubbles they approve are consistent with applicable terms of today's policy as well as their generic rules. *New or pending generic rules* must all meet the terms of today's notice.

All existing generic rules which require modification to conform to this policy must, as requested by EPA, be promptly revised. EPA will review such rules to determine their consistency with today's requirements, and will publish **Federal Register** notices identifying generic rules requiring modification. These notices will identify specific deficiencies and means for correcting them, and set forth a schedule for both submittal and EPA review of revised rules. Where states fail to resolve identified deficiencies in such rules within the prescribed period, EPA may either rescind its previous approval of the rule, or issue a notice of SIP deficiency under section 110(a)(2)(H) of the Act.

1. Substantive "Progress" Requirements

Generic bubble rules applicable to *primary nonattainment areas which need but lack approved demonstrations* must provide that all generic bubbles in these areas:

(a) Use lowest-of-actual-SIP-allowable-or-RACT-allowable emissions baselines, as described above, for all sources involved in the trade;

(b) Grant credit only for those reductions occurring after an application to bank or trade credit (whichever is earlier) has been made;

(c) Incorporate replicable procedures which assure that all trades preapproved by EPA as meeting the rule will also satisfy applicable ambient equivalence tests (see Technical Issues Document, Section II.B.2.); and

(d) Produce an overall emission reduction at least equal to a net 20% reduction in emissions remaining after application of the above baselines, or at least equal (in percentage terms) to the overall emission reduction (in percentage terms) needed to attain in the area (i.e., at least equal to the source-by-source emission reductions that would be required for a full demonstration of attainment, taking into account "uncontrollable" stationary [e.g., area] sources and expected emission reductions from mobile sources), whichever is larger.[28] This last

[28] For example, assume air quality analysis indicates the area must decrease its base-year emissions by 45% to attain the relevant NAAQS. Further assume:

	TPY
(a) For the base year:	
Uncontrollable stationary source emissions (e.g., residential combustion sources)	2,500
Controllable stationary source emissions	3,500
Mobile source emissions	4,000
Total	10,000
Target emissions for attainment 10,000×(1.0-0.45)	5,500
(b) For the projected attainment year (before additional controls):	
Uncontrollable stationary source emissions (2,500×1.1)	2,750
Controllable stationary source emissions (3,500×1.2)	4,200
Mobile source emissions	2,500
Total	9,450

determination must be submitted with the rule, and must use the same type and quality of analysis required for an EPA-approvable SIP. In no event may the overall emission reduction required of generic bubbles in such areas be less than 20% of the emissions remaining after application of the baselines specified above; and

(e) provide assurances, in conjunction with the state's submittal of the generic rule to EPA, that the state (i) is making reasonable efforts to develop a complete approvable SIP that will achieve the percent emission reduction from controllable sources described in the previous paragraph and (ii) intends to adhere to the schedule for development of such a SIP (including dates for completion of emissions inventory and subsequent increments of progress), as stated in the letter accompanying the submittal or in previous letters. EPA believes that the numerical determination and progress requirement discussed in the previous paragraph is the functional equivalent of the additional assurances described earlier in this notice (see Section II.B.1.b above) for bubbles needing case-by-case EPA approval, since bubbles meeting this requirement will produce attainment-level reductions. For that reason, EPA does not believe that it must require the state to make those additional assurances when it submits the generic rule. However, to assure that generic approvals continue to complement and do not interfere with attainment planning, EPA will require the state to include all of those assurances in or with its notices of proposed and final approval of each bubble issued under the rule in such a nonattainment area.

Generic rules meeting these requirements will assure that each state-approved bubble produces reductions at least equal to those which would be required under an approved demonstration of attainment. Their availability can also encourage states and sources to take significant further steps towards such demonstrations. Since reductions sufficient for timely attainment are all EPA can require for approval of State Implementation Plans under section 110 and Part D of the Clean Air Act, *Train* v. *NRDC, supra*, further Agency scrutiny of individual bubble reductions is not required.

2. Procedural Requirements

Today's notice includes tightened requirements designed to assure, with minimal burdens on states, that EPA's responsibility to monitor the implementation of all generic rules incorporated in SIPs (see section 110(a)(2)(A)(H)) is more efficiently and effectively carried out. EPA will fulfill this responsibility by (a) examining and commenting on, together with any other public commenter under applicable state law, the information provided for individual trades subject to proposed action under generic rules, (b) conducting reviews of individual trades approved under such rules; and (c) periodically auditing implementation of the rule itself as part of its National Air Audit System investigations of state air pollution control programs, including indepth file audits of actions under such generic rules. These activities will cover state actions of disapproval as well as approval, and will examine whether rules are being interpreted or applied within the scope of their approval by EPA.

To be considered valid by EPA, a trade approved under a generic rule must (1) be one of a class of trades authorized by the rule, (2) be approved by the state after the rule has been approved by EPA, and (3) meet all the provisions of the EPA-approved rule. State approvals which do not meet these requirements are not considered part of the SIP and do not replace prior valid SIP limits, which remain enforceable and may make such trades the subject of remedial action after due notice by EPA to the state and source.

In addition to requiring that generic rules or other state provisions assure meaningful notice *to EPA* by the first day of the public comment period on *proposed* generic actions, and immediately upon *final* generic actions, today's policy also requires that state generic rules or other state provisions provide *the general public* adequate notice and opportunity to comment, including opportunity for judicial review sufficient to make comment effective. Existing state generic rules, statutes or regulations will generally satisfy this requirement. However, some jurisdictions, for example, deny judicial review to commenters who do not possess a direct financial stake in individual permits. Such jurisdictions will have to modify their generic rule, or other provisions, to meet this requirement.

B. Bubbles Involving Hazardous or Toxic Air Pollutants

EPA reaffirms and extends its 1982 determination that bubbles in any area must not increase emissions of hazardous or toxic air pollutants. Bubbles cannot be used to meet or avoid National Emission Standards for Hazardous Air Pollutants (NESHAPs) *that have been finally promulgated* under Section 112 of the Act. Where NESHAPs *have been proposed but not promulgated* for emitting sources which are the subject of a bubble application, the proposed NESHAP will generally serve as the baseline for determining creditable bubble reductions, and the trade must produce reductions at least as great as those which the proposed NESHAP would produce, if promulgated. Moreover, no source emitting a pollutant subject to such a proposed NESHAP may exceed emissions allowed under the proposed NESHAP as a result of the trade. Where a bubble involves a pollutant which is *listed* under Section 112, but no NESHAP has yet been proposed for the relevant source category, or a pollutant for which EPA has issued a Notice-of-Intent-to-List, there must be no net increase in actual emissions of the noticed or listed pollutant.[29] In general,

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Therefore the reductions needed from controllable stationary sources are 9,450 − 5,500 = 3,950 tons/yr.

And the percent emission reduction required from controllable stationary sources to attain is

$$\frac{(3950)}{(4200)} \times 100 = 94\%$$

Thus the net overall reduction required from each generic bubble would be 94% (i.e., the reductions produced by applicable baselines [e.g., application of a RACT emission rate] plus whatever percent reduction in emissions remaining after this RACT limit is sufficient to yield the 94% total).

States that wish to avoid case-be-case SIP revisions for sources for which RACT has not yet been defined in an approved SIP provison may incorporate "presumptive RACT" values (e.g., 80% reduction for VOC) in their generic rules. Sources would than have the option of accepting these RACT values for generic bubble purposes, or negotiating different RACT values through the case-by-case SIP revison process. However, where a source involved in a trade is one for which EPA has issued a CTG, but the state has not yet adopted the CTG-specified emission rate as RACT and no RACT has yet been specified by the state for that source, the presumptive or negotiated RACT values for the trade must be at least as restrictive as the CTG-specified emission rate for that source.

[29] In some limited circumstances additional pollutants may be treated as listed pollutants. See Technical Issues Document, Section I.B.1.d.

all bubbles involving emissions of pollutants described above must use lower-of-actual-or-NESHAPs-allowable emissions baselines, and must take place within a single plant or contiguous plants.[30]

Commenters who addressed this issue divided into two general groups. One group asserted that hazardous/toxic restrictions should extend beyond pollutants currently regulated, proposed to be regulated, or listed under Section 112. These comments generally maintained that restrictions should also apply to all pollutants the Agency is "actively considering" for listing. A second group asserted that neither volatile organic compound (VOC) nor particulate emissions should be traded unless there is clear evidence that specific substances present in such VOC or particulate emissions are "relatively innocuous."

EPA has determined that for reasons of policy and administrative practicality these suggestions, while laudable in intent, should not be adopted. Bubbles are alternative means of compliance which should generally be treated no differently than other compliance strategies, provided basic SIP requirments of consistency with ambient needs, PSD increments, and interim progress are met. EPA's statutory authority to further restrict trades on the basis of hazardous substances which may be present in a particular criteria pollutant stream (e.g., VOCs) and which may be subject to a listing, notice-of-intent-to-list or proposed NESHAP, but are not as yet regulated under § 112, is limited. Generalized attempts to exercise such authority based on the presence of substances on which the Agency has taken no formal action whatever would be still more tenuous. Moreover, the inherent ambiguity of such terms as "actively considering" or "relatively innocuous" militates against such tests. States remain free to adopt further restrictions consistent with local laws and needs. However, with respect to national requirements EPA has concluded that clear decision points based on actions pursuant to the deliberative process and record evidence underlying section 112 determinations are to be preferred.

Interested parties should be aware, however, that under today's policy the Administrator reserves discretion to consider on a case-by-case basis whether bubble proposals involve pollutants which, while not regulated, listed or otherwise noticed under section 112, are regulated as toxic under other federal health-based statutes, and to require further analysis before approving such proposals.

One commenter expressed concern over the 1982 policy's use of the term "reasonably close" to indicate the distance which may be covered by bubbles involving pollutants listed or proposed to be regulated under section 112. EPA agrees this term is ambiguous, and with the exception of bubbles which affirmatively *decrease* such pollutants below the lower-of-actual-or-NESHAPs-allowable baseline, has substituted the more protective and certain requirement that such trades occur within a single plant or contiguous plants. In order to assure that such trades do not produce adverse health or environemental effects, today's notice also requires that they rely only on reductions below current actual or section 112 allowable emissions as of the trading application, whichever is lower, in pollutant streams containing a substance which has been noticed, listed, or proposed to be regulated under section 112.

Several of these provisions—notably the proposed NESHAPs baseline and source-specific proposed-NESHAPs emissions cap, the inclusion of pollutants subject to Notices-of-Intent-to-List, and the general limitation to contiguous plants and lower-of-actuals-or-§ 112-allowables baselines—represent substantial tightenings over the 1982 policy.

C. Banking Emission Reduction Credits (ERCs)

EPA-approvable emission reduction banks may allow sources to store ERCs for their own future use or use by others. Today's notice reiterates that states are by no means required to adopt banking procedures, but notes that banks may help states and communities realize important planning and environmental benefits.[31] Banks may encourage firms to create inexpensive extra reductions at earlier, optimal times (e.g., when replacing outworn control equipment or deciding how to meet new requirements) and disclose such information to state agencies. They may help create a central pool of identifiable, readily-available reductions which can ease plant modernizations or expansions, new source siting, or existing-source compliance. Properly-structured banks may reduce incentives for sources to delay, conceal or hoard actual or potential reductions until an immediate use arises. Banks may also produce other, interim environmental benefits, since banked ERCs remain out of the air (although they must be treated for SIP planning purposes as "in the air") until used. In addition, banks can help state agencies manage their permit workloads more efficiently, because portions of new source or existing-source compliance transactions may be pre-permitted or reviewed in advance. Banks may also help states systematically assure that all unused surplus reductions are treated as "in the air" for SIP planning purposes, avoiding potential inconsistencies which might cause those reductions to be lost.

Comments indicated some confusion over whether, in addition to meeting other ERC requirements, reductions must be made federally enforceable to be formally credited for banking. The answer is no. However, in order to qualify as emission reduction credits and be deposited in EPA-approvable banks, emission reductions must be made enforceable *by the state*. Reductions must be made enforceable by the state by their time of deposit in order, e.g., to better ensure the integrity of the state's air quality planning process by preventing sources from banking reductions of emissions which their permits do not preclude them from continuing to emit. This requirement will also prevent undue reliance by parties or potential parties on emission reductions which have not actually occurred.[32] However, because these

[30] The one exception involves bubbles in which surplus reductions in the emissions of pollutants subject to regulation, proposed regulation, listing, or Notice-of-Intent-to-List as hazardous emissions compensate for increases in non-hazardous emissions. (E.g., where a source decreases benzene emissions below the baseline specified above, in exchange for corresponding increases elsewhere in a non-hazardous VOC.) As long as such a trade would not result in an increase in either actual or allowable emissions of a pollutant subject to the special restrictions discussed above at any source, it would not differ in nature of requirements from a trade involving only non-hazardous emissions.

[31] See e.g., 47 FR 15083–84 (April 7, 1982).

[32] In primary nonattainment areas which need but lack approved demonstrations, emission reductions made prior to application to bank or trade (whichever is earlier) will not be credited for use in bubbles (see Section I.A.1.c.(1) of today's Technical Issues Document). Following publication of today's notice, the "date of application to bank" will be the date the source submits an application to the state to make a reduction state-enforceable through or concurrent with use of a formal bank or informal banking mechanism (see section I.A.1.b.(1) of today's Technical Issues Document).

In other areas, although emission reductions cannot qualify as ERCs or be deposited in EPA-approvable banks until they are made enforceable by the state, emission reductions banked through other formal or informal banking mechanisms which do not make reductions state-enforceable by the time of deposit will still be eligible for use in future trades, so long as those reductions are made federally enforceable at time of use and all applicable requirements of the regulatory program under which they will be used are met.

Continued

actions merely create extra reductions in actual or allowable emissions which cannot by themselves produce any adverse effects on air quality, they need not be made *federally* enforceable until used.[33] Where states wish to make banked emission reductions *federally* enforceable at the time they are banked, several mechanisms may be available for doing so without case-by-case SIP revisions. States with EPA-approved PSD, NSR, visibility and preconstruction review programs can issue permits to credit reductions from emission units currently subject to these preconstruction permits.[34] States with EPA-approved generic rules may also be able to use those rules' procedures to make reductions at existing sources federally enforceable. Since only reductions in applicable emission limits are involved at the banking stage, modeling should not be required. Moreover, these reductions should automatically meet the requirement that changes in emission limits under generic rules not jeopardize ambient standards or PSD increments.

Since some trades have special requirements, banks do not guarantee the validity of particular banked ERCs for all potential uses or for all time. For example, because only actual reductions occurring at the same major stationary source are eligible for netting, banked reductions created at other stationary sources cannot be used for netting transactions. However, banked credits resulting from reductions at other stationary sources may be used as offsets or in bubbles, so long as this notice's other requirements for appropriate use of credits are observed and applicable offset requirements are satisfied.

Because of differing regulatory requirements, the amount of credit actually derived from particular emission reductions may also differ from one regulatory program to another. For example, in primary nonattainment areas needing but lacking approved demonstrations, the amount of credit available from a given reduction for bubble purposes may be less than that available from the same reduction for netting or offset purposes, since special progress requirements apply to bubbles in these areas.

Because the *use* of credits will change (rather than merely reduce) emission levels if approved, such proposals should be carefully evaluated to assure they meet all of today's criteria for appropriate use. For similar reasons proposals to *use* banked credits will usually require additional approval procedures (e.g., additional modeling for certain TSP or SO_2 trades), whether such proposals are evaluated as case-by-case SIP revisions, under EPA-approved generic rules, or under EPA-approved new source review programs.

One commenter asked how banked ERCs would be treated if a nonattainment area is being redesignated to attainment. Redesignation will have no effect on the banked ERCs, so long as state planning considered those ERCs to be *in the air* (i.e., in the inventory) at the site of their creation. Because local recessions or shifts in industrial patterns can temporarily affect air quality without regard to the adequacy of state emission-control efforts, EPA guidance requires that redesignation not be based solely on monitored air quality. In addition to considering factors such as the state of the particular economy and its effect on emissions, EPA may consider the number, type, and state inventory treatment of banked credits. Such procedures will help assure that reliably banked reductions are not reduced or otherwise adversely affected by shifts in an area's designated attainment status.

Some commenters asserted it is overly cautious to require that *all* banked emissions be considered as "in the air." One commenter asked that state planning be required to include as "in the air" only a *portion* of banked emissions analogous to a "reserve requirement." This comment drew parallels with financial banking to assume that, given withdrawals and deposits, a certain "float" quantity of ERCs would always remain in the bank and out of the air. EPA recognizes that reductions placed in banks may tend to keep the air cleaner through a relatively constant level of deposits. However, EPA cannot allow states to consider less than their full amount of banked deposits as "in the air." To do so could jeopardize air quality planning and attainment.[35]

D. OBERS Projections and Double-Counting

In its August 1983 notice EPA asked for further comment on whether some SIPs' translation of general economic growth projections provided by OBERS (Department of Commerce) directly into projected emissions growth, left "no straightforward way to disaggregate the projections into shutdowns and new plant openings." Whether such SIP demonstrations were fully or only partly approved, the notice continued, such use of OBERS might make it impossible to distinguish which shutdowns were already relied on in the demonstration. Therefore, it might be "difficult or impossible for states whose SIPs rest on OBERS projections to grant credit from shutdowns for use in existing source bubble trades, consistent with the Clean Air Act." 48 FR 39581.

Most industry and several state commenters asserted that where OBERS data were used to project needed SIP reductions, use of shutdown credits in bubbles was not a problem, since OBERS figures substantially overestimate the total amount of emission reduction needed to attain. For example, one industry commenter noted that "emissions growth will not be directly proportional to economic growth because of the installation of new environmentally efficient technologies. Therefore, SIPs which used "OBERS" projections already have

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Since states may have to revise their regulations or permit procedures in order to implement this new state-enforceability requirement, full implementation will not be expected until one year after publication of today's notice. However, all credits not made enforceable when banked during this interim period, together with all credits deposited prior to today's notice, should be made state-enforceable within eighteen months from the date of this policy.

[33] Cf. 47 FR 15076, 15081 at col. 2.

[34] Some jurisdictions may also use general state preconstruction review programs that have received EPA approval to credit reductions at existing sources if such reductions are covered under the program, since requirements under these programs are federally enforceable.

[35] In order not to defeat banking's purpose of encouraging the earliest possible disclosure and production of potential extra emission reductions, use of banked credits for bubble purposes *in primary nonattainment areas which lack approved demonstrations* will continue to be allowed, provided these credits meet all baseline and other applicable requirements of today's notice for these areas. This generally includes the lowest-of-actual-SIP-allowable-or-RACT-allowable emissions baseline, applied as of the date of written application to the state to bank such reductions through a formal bank or informal banking mechanism for use in future trades. It also includes that 20% net reduction requirement and state assurances specified above, at the time such credits are approved for use in bubbles. Banked credits resulting from *plant shutdown or production curtailments* may be used for bubbles in these areas on the same terms as use of other banked credits, provided their use is subject to stringent qualitative review to assure legal, technical and programmatic consistency with SIP planning goals (e.g., avoidance of "shifting demand"). See today's Policy at n. 24 and Section I.A.1.c(3) of the Technical Issues Document. (Banked credits resulting from certain shutdowns or production curtailments may, however, be subject to special restrictions for offset purposes. See today's Technical Issues Document at n. 14).

The special restrictions discussed above do not apply under today's notice to use of banked credit for bubble purposes in other areas.

an inherent growth potential built into them, and allowing ERCs for shutdowns in these areas will not jeopardize a state's ability to demonstrate attainment." A local agency agreed that "demonstrations . . . based on such emission projections would overestimate attainment because some growth will occur from [wholly] new sources, new sources replacing existing sources, or modified existing sources, [all of] which would be subject to . . . New Source Review rules, rather than the less stringent [SIP] requirements assumed in the emission projections."

Several state commenters also stressed that while use of OBERS projections is not widespread, the underlying question is whether the area's SIP process incorporates conditions sufficient to prevent double-counting of shutdown credits. One local agency recommended that shutdown credits be prohibited where the source involved is within an industrial category projected to go through an economic downturn, asserting that in such cases the SIP implicitly relies on the expected shutdowns. An environmental group went a step further, and urged that all shutdown credits for bubbles in areas using OBERS projections be completely prohibited.

EPA has concluded that the requirements of the 1982 policy are sufficient to prevent double-counting of shutdown credits, and should be retained without further special restrictions. First, use of OBERS or any other projection is relevant only where an area has an approved attainment demonstration. Today's notice generally disallows bubble credit for pre-application reductions (including reductions from shutdowns or curtailments) in primary nonattainment areas which require but lack such demonstrations. Thus today's notice largely moots any issue of double-counting for past shutdowns, in the areas for which this issue has been raised with the greatest concern. Second, use of OBERS projections in areas with approved demonstrations does not appear nearly so common as was assumed in EPA's 1983 request for further comment. Even where such projections were used in approved demonstrations, they generally overestimate the amount of emissions forecast to exist in the year of projected attainment. They therefore tend to assume substantially less overall reductions from source turnover than will actually occur.[36]

Finally, even if such projections did not overestimate emissions, under today's notice the state must show that use in bubbles of any reductions created by shutdowns is consistent with its attainment demonstration and that those reductions were not already assumed in its SIP. For example, the state must show that it did not implicitly or explicitly rely on a "turnover rate" from the difference in emissions between existing sources and better-controlled new sources for part of the reductions required in its SIP from that industrial category. Alternatively, it must show that if a "turnover rate" was assumed, the shutdown credits used in an individual trade result from reductions in excess of that turnover rate. Where a state regulated the sources in a standard industrial classification (SIC) without explicitly relying on turnovers, then bubble credit for a shutdown within that SCI category would not in general be double-counted.[37]

These requirements should fully protect states and sources against adverse environmental or SIP effects.

E. Improved Modeling and de Minimis Requirements

Bubble applicants must show that their proposed trades are at least equivalent in ambient effect to the SIP (or other) emission limits the bubble would replace. For some criteria pollutants (e.g., VOC or NO_x) this test may generally be met by showing equal reductions in emissions.[38] For other pollutants (e.g., SO_2, TSP or CO) it was traditionally met, prior to the 1982 policy, through ambient dispersion modeling.

The 1982 policy made available several alternatives to the use of full-scale dispersion modeling where such modeling was not needed to protect air quality. These alternatives could, in appropriate, carefully-limited circumstances, be used to demonstrate ambient equivalence for bubbles involving particulate matter or other pollutants whose ambient effects were not linearly related to emissions. They included *de minimis* levels and the use of other screening criteria to identify circumstances in which full-scale modeling was unnecessary, either for bubbles processed as SIP revisions or those approved under generic rules.

Today's notice both tightens some of these screening criteria and expands the circumstances in which such criteria can be used.

Today's notice also specifies certain conditions and types of case-by-case SIP-revision bubbles for which EPA Regional Offices may require additional technical support, beyond basic modeling requirements, deemed necessary to protect NAAQS, PSD increments or visibility where allowable values used to calculate baseline emissions are not clearly used or reflected in an approved demonstration, or may not reasonably be assumed consistent with the need to protect PSD increments or visibility. See Technical Issues Document, Section I.A.1.a.

1. De Minimis Levels

Under the 1982 policy, trades in which net baseline emissions did not increase and in which the sum of emission increases, looking only at the increasing sources, totaled less than 100 tons per year (TPY) after applicable control requirements, could be exempted from SIP revisions under an approved generic rule. The rationale for this approach was that EPA regulations implementing the Clean Air Act already allow some exemptions from NSR requirements for new sources which are not defined as "major"—i.e., which do not have potential emissions greater than 100 TPY. See e.g., CAA section 302(j) and 40 CFR 52.21(b)(1) and 51.18(j)(1)(v). Thus trades which merely shift lesser amounts of emissions, and which are

[36] This is so because OBERS-based SIP projections assume that units of production (and hence emissions) in particular SIC Codes will keep pace with projected trends in earnings and/or employment in those SIC codes, without regard to changing distributions between new and existing sources. See, e.g., *1980 OBERS: BEA Regional Projections, Volume 1: Methodology, Concepts and State Data*, p. (xi), U.S. Department of Commerce (July 1981).

[37] Such credits must of course meet all other requirements of today's notice, including application of appropriate baselines and other criteria defining surplus reductions, before they may be used in a bubble trade.

States which expressly relied on OBERS projections may also show that no double-counting occurred by demonstrating that they did not implicitly rely on any turnover credits. This showing should not be difficult to make because OBERS assume that emissions will evenly increase at each plant and production line, proportionate to growth in earnings and employment potential for that SIC code. Cf. n. 36 above. This assumption neither anticipates nor relies on the fact that any shutdown will occur.

The one exception to these general principles could occur where a SIP relied on OBERS projections for an SIC category predicted to undergo a *quantified* future economic downturn, without taking explicit affirmative steps to preclude reliance on that downturn. In these circumstances the state would either have to show that a proposed shutdown credit from a source within that SIC category was not double-counted (e.g., by showing that more shutdown reductions than projected for the SIC category had already occurred), or deny credit.

[38] Interested parties should, however, be aware that ambient equivalence considerations which apply to SO_2, TSP and CO, as described below, also apply to NO_x trades involving visibility impacts from elevated plumes. See Section I.B.1.b. of today's Technical Issues document.

accompanied by compensating decreases, should not be subject to more stringent requirements. As the 1982 notice put it, "Such trades will have at most a *de minimis* impact on local air quality because only minor quantities of emissions are involved . . . the Federal resources required to evaluate these trades could best be used to evaluate actions that have a potential impact on air quality." 47 FR at 15085.[39]

One commenter asserted that this 100 TPY limitation was unnecessary, since the trades to which it applied were already required to produce no net increase in emissions. However, four state and environmental commenters urged that *de minimis* levels for such trades be the same as those triggering federally-mandated review of emissions increases in PSD areas. These comments primarily noted that EPA had already defined more relevant "cutoff" levels in its regulations for PSD, for NSR preconstruction permits in nonattainment areas, and in visibility permit regulations, and that emission shifts of 100 TPY from one source to another might still be too large to go unexamined for certain types of emissions and situations.

In order to ensure prosecution of ambient air quality, today's notice adopts more protective *de minimis* levels—derived from those for PSD; NSR permits in nonattainment areas; and the visibility permit regulations—of 100 TPY for CO, 40 TPY for SO_2, 25 TPY for particulate matter, and 0.6 TPY for lead. Because of this action, state ambient evaluation of *de minimis* trades will no longer be required for generic bubble rules to be approvable by EPA.[40] Trades involving sources of substantial size may still be implemented as *de minimis* under today's provisions, as long as the quality of ERCs traded by these sources is below the levels specified above.

2. Modeling Requirements[41]

Numerous comments were received on the 1982 policy's three-level approach to demonstrating ambient equivalence. The vast majority sought added clarification, stating, for example, that the 1982 policy did "not adequately delineate the level of modeling necessary in each instance." Today's notice tightens and clarifies the conditions under which ambient equivalence may be demonstrated with less than full-scale modeling.

a. Level I Criteria. Under the 1982 document no modeling was generally required of SO_2, TSP, or similar trades where applicable net baseline emissions did not increase, sources were located in the same immediate vicinity (generally within 250 meters of each other), and the taller stack was the one which increased its emissions. These conditions were believed sufficient to assure that local ambient concentrations of the relevant criteria pollutants would not increase as a result of the trade.

EPA has added two criteria to those specified in 1982, in order to provide additional assurance that trades approved under Level I will have no adverse ambient effect. First, there must be no complex (e.g., mountainous) terrain within 50 kilometers of the trading sources or within the trade's area of significant impact, whichever is less. (For simplified methods of determining "area of significant impact," see today's Technical Issues Document, Appendix E). Second, stacks with increasing baseline emissions must be sufficiently tall to avoid downwash.

Some industry commenters objected to the 250-meter limitation, advocating use of either trade ratios for sources beyond that distance, or an 800-meter limit extrapolated from unrelated EPA regulations.[42] EPA has retained the 250-meter limit as substantially more consistent with the modeling screen's original intent of simplifying modeling requirements for trades which could not jeopardize ambient equivalence.[43]

b. Level II Criteria. Trades of SO_2, TSP, CO, Pb and NO_x (for visibility purposes) may also be approved through limited Level II modeling of the ambient effects *solely of sources involved in the trade*, where applicable net baseline emissions do not increase and designated ambient significance levels are not exceeded.

Today's notice confirms, clarifies, and in certain cases extends various 1983 improvements made to increase certainty and better assure that such Level II trades result in ambient equivalence. In particular, "significant ambient impact" may no longer be measured solely by changes at the "receptor of maximum predicted impact" before and after the trade. Instead such changes must be measured at every affected receptor for every averaging period relevant to the particular pollutant, throughout the year. Under this approach no Level II trades will be approved without further scrutiny, involving full or limited Level III modeling, if they result in a significant net ambient effect at any modeling point for any such averaging period during a modeled year.

Today's notice also specifies Level II significance levels for all averaging periods consistent with all current national ambient air quality standards, not just the 24-hour averaging periods for SO_2 and PM or the 8-hour averaging period for CO.[44] Refined models such as MPTER and ISC must generally be used to measure changes resulting from the trade at each receptor, using the most recent full year of meteorological data.[45]

These modeling requirements assure that bubbles which pass applicable Level II tests and meet all other requirements of today's policy will result in air quality equal to or better

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[39] The 1982 document did, however, note that such "[generic] trades are still subject to ambient tests [at the *state* level, and] . . . should accordingly be evaluated by the state under the modeling screen . . . or an equivalent approach." 47 FR 15085 at n.7.

[40] This should not be construed to imply that *new* sources and modifications need not meet all applicable requirements, including those specified under 40 CFR 51.18 or parallel EPA-approved state rules.

[41] The following discussion summarizes both interim improvements made in the 1982 modeling screen (see Technical Issues Document, Appendix C) and EPA's responses to major comments on modeling issues.

[42] See e.g., 47 FR 5864, 5865 (February 8, 1982).

[43] Trade ratios may already be used under general provisions inviting states to design other equivalent approaches which adequately address ambient concerns. See., e.g., 47 FR at 15077 and n.2, 15078. However, to be approved by EPA such ratios would generally have to be defined through area-wide advance modeling of all sources, as well as those likely to trade.

Several comments also objected to the requirement that Level I trades not increase emissions from the source with the lower effective plume height. These comments noted that under various conditions similar stacks could so vary in effective plume height that neither would consistently be "higher" or "lower." One also suggested this limitation might encourage use of tall stacks to cure local exceedances.

Today's notice retains this Level I requirement unchanged. That two sources may be virtually indistinguishable in effective stack height should not delay approval of Level I trades, since the limitation's purpose—preventing potentially significant increases in ground-level ambient concentrations due to shifts of emissions from "higher" to "lower" stacks—will still be satisfied. Moreover, since such trades cannot increase net baseline emissions, this limitation merely ensures they will not create *new* ambient violations. Because other EPA regulations address the use of excessively tall stacks to cure *existing* ambient violations, no further restriction in this Level I requirement appears required.

[44] For further discussion of these significance levels and the increased assurance of environmental equivalence they provide in conjunction with today's more sophisticated Level II modeling approach, see Fleckenstein, "Modeling Criteria: The Key to Major Reforms for Emissions Trades," APCA Paper 84-65.2 (San Francisco, California, June 28, 1984).

[45] Under some limited conditions, conservative screening models may be substituted for these refined models, and in these cases a full year of meteorological data may not be necessary. See Technical Issues Document, Section I.B.1.b.(3).

than that produced by pre-trade emission limits, and may be approved. Because refined models have now been approved by EPA and their parameters may be specified with greater certainty and confidence, these requirements also provide a firmer basis for approving state generic rules incorporating Level II.[46]

c. *Level III Criteria.* Trades which are not *de minimis* and do not satisfy Level I or Level II above must generally be evaluated by full-scale ambient dispersion modeling. Two air pollution control agencies recommended fixed trading ratios in lieu of such modeling, asserting this would reduce cost and uncertainty while continuing to meet the goals of the Clean Air Act. EPA recognizes the legitimacy of these concerns but has concluded that trades which do not satisfy Level I or II raise the kinds of air quality issues which appropriately require full-scale modeling, unless such trading ratios have been justified by similar area-wide modeling conducted in advance of the trade.

Today's notice does, however, modify Level III to provide states and sources more flexibility in this regard. Where a trade meets all other criteria of Level II, but Level II modeling has shown significant potential increases at particular receptors, modeling analyses under Level III may under appropriate circumstances be limited to a receptor area smaller than the trade's entire area of impact, so long as it includes emissions from all sources which contribute to ambient concentrations in that limited geographic area. Because of the unique nature of each situation, the appropriate limited geographic area must be determined in accord with EPA guidelines on modeling and case-by-case evaluation. This "limited Level III" approach may conserve significant resources, while allowing states and sources to focus on specific geographic areas of concern.[47]

F. Enforcement Issues

Several commenters noted that while sources should, as provided in the 1982 policy, be allowed to use bubbles to come into compliance, bubble applications might also be used to delay compliance or enforcement without compensating environmental benefits. Some of these commenters alluded to language in the 1982 notice which, while not authorizing or intended to authorize such results, could have been interpreted to allow them. Such unacceptable delay might, for example, arise where a source facing an imminent compliance deadline suddenly advances a bubble application and asserts that more time is needed to develop and evaluate that application before compliance with original SIP limits should be required.

Both bubbles and generic rules can be important means of allowing environmentally-sound compliance. Generic rules may be more expeditious than case-by-case SIP revision bubbles. They may also preserve the very opportunity to bubble when the time needed to process a case-by-case SIP revision might extend beyond the source's original SIP compliance date. At the same time, bubble applications should not become a shield against enforcement actions for sources which have failed to take necessary steps to meet required control obligations on time. Bubbles are simply alternative means of complying at less cost. They should be treated neither more nor less stringently than other, more traditional methods of compliance. Bubbles offer innovative ways to meet emission reduction obligations. They should not become devices to avoid such obligations.

Today's notice substantially clarifies and tightens the 1982 policy to better implement these principles. Among other steps, compliance extensions will no longer be granted under generic rules in any nonattainment area, and may be granted generically in attainment areas only where EPA has approved the time-extension portion of the rule as consistent with relevant Clean Air Act requirements, including expeditious attainment and maintenance of ambient standards. Cf. 47 FR at 15078 col. 2. This will generally mean that requests for time extensions as part of bubble applications must be separately reviewed as individual SIP revisions, subject to criteria EPA normally applies to such requests.

Today's notice also re-emphasizes that as a matter of law and sound policy, sources seeking bubbles remain subject to enforcement of existing (pre-trade) SIP limits until the bubble is finally approved. Sources which possess approved bubbles with future effective dates remain subject to similar enforcement of pre-trade limits until either those limits or the new ones are met, and may wish to take steps identified in the notice, including accelerated compliance with bubble limits, to minimize that possibility. See Technical Issues Document, section I.B.2.a.

Under today's notice, EPA will not specifically select such sources for enforcement action. Nor will EPA withhold or defer enforcement simply because a source is seeking alternative emission limits through a bubble. In exercising its inherent enforcement discretion, EPA will apply the same considerations to noncompliant sources which seek to comply through bubbles, as to those which do not.[48]

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[46] Interested parties should, however, be aware that because of replicability concerns related to application of any approach requiring use of case-specific ambient dispersion modeling, such Level II generic rules may be more difficult to draft and implement than rules incorporating only *de minimis* and Level I approaches for SO_2, TSP, CO or Pb. During and after issuance of the 1982 interim policy EPA staff drafted and informally circulated, at the request of state and local air agency directors, model generic rules which provided more detail to help interested states acceptably address these concerns. The Agency plans to update and recirculate those model rules as quickly as possible after publication of today's notice. EPA encourages parties wishing to develop generic rules to use these new models and work closely with relevant Regional staff, so that potential problems may be promptly identified and resolved.

[47] Today's notice also requires bubble trades in certain primary nonattainment areas needing but lacking approved demonstrations to produce a "net air quality benefit," which shall consist at minimum of a 20% reduction in emissions remaining after application of the lower-of-actual-SIP-allowable-or-RACT-allowable emissions baselines to all sources involved in the bubble. See, e.g., Section II. B above. This requirement does not entail any modeling different than or in addition to the modeling approaches discussed above. It is merely intended to ensure that where appropriate levels of modeling indicate that prescribed baseline values are not sufficient to produce ambient equivalence, additional reductions which assure such equivalence, prior to the 20% net discount in baseline emissions, will be required.

[48] States and sources should, however, be aware that under current EPA guidance, such discretion is most likely to be exercised where a SIP-revision bubble has been formally proposed for approval at the state level and EPA staff have concluded that it appears approvable under current EPA policy. In these circumstances initiation of action to enforce pre-trade limits that would soon be replaced by a valid bubble reconfiguration would likely consume limited EPA enforcement resources to little environmental end.

EMISSIONS TRADING POLICY STATEMENT

I. Introduction: Basic Elements of Emissions Trading

This statement details EPA policy on emissions trading. It sets out conditions EPA considers necessary for emissions trades to satisfy the Clean Air Act. It also clarifies and otherwise makes final the Interim Policy proposed on April 7, 1982 (47 FR 15076). It is accompanied by a Technical Issues Document which elaborates and provides greater detail on principles set forth below. Finally, it addresses new issues, and incorporates certain additional safeguards as a result of past trading experience, to better assure the environmental integrity of future trades.

A. What is Emissions Trading?

Emissions trading consists of bubbles, netting, emission offsets, and emission reduction banking. These steps involve creation of surplus emission reductions at certain stacks, vents or similar sources of emissions and use of these emission reductions to meet or redefine pollution control requirements applicable to other emission sources. Such emissions trades can provide more flexibility to meet environmental requirements, and may therefore be used to reduce control costs and encourage faster compliance. Moreover, by developing "generic" trading rules (see Section III below) states[1] may be able to expedite bubble approvals by eliminating the need for case-by-case SIP revisions[2] and by providing more predictable approval criteria.

B. The Bubble

EPA's bubble lets *existing* plants (or groups of plants) increase emissions at one or more emission sources in exchange for compensating extra decreases in emissions at other emission sources. Approved bubbles give plant managers the ability to implement less costly ways of meeting air quality requirements. To be approvable, each bubble must produce results which are equivalent to or better than the baseline emission levels in terms of ambient impact and enforceability. Thus, bubbles should jeopardize neither ambient standards nor applicable PSD increments and visibility requirements. Under EPA's bubble, emission reductions from existing sources can not be used to meet technology-based requirements applicable to new or modified stationary sources.

This Policy Statement replaces EPA's original bubble policy (December 11, 1979; 44 FR 71779) and Interim Emissions Trading Policy (47 FR 15076). It tightens general bubble principles as well as requirements for bubbles in primary nonattainment areas which require but lack demonstrations of attainment, and requires bubbles in these areas to produce progress towards attainment, beyond equivalence to stringent emission limits. By specifying EPA's requirements for bubbles in all areas, this Policy Statement should make the development, review and approval of environmentally-sound bubbles more rapid and predictable.

C. Netting

Netting may exempt "modifications" of existing major sources from certain preconstruction permit requirements under New Source Review (NSR), so long as there is no net emissions increase within the major source or any such increase falls below significance levels.[3] By "netting out," the modification is not considered "major" and is therefore not subject to associated preconstruction permit requirements for major modifications under 40 CFR 51.18, 51.24, 52.21, 52.24, 52.27, or 52.28. The modification must nevertheless meet applicable new source performance standards (NSPS), national emissions standards for hazardous air pollutants (NESHAPs), preconstruction applicability review requirements under 40 CFR 51.18(a)-(h) and (l), and SIP requirements.

Netting's scope is determined by the definition of "source" for review of major modifications. In general, PSD areas use a single, plantwide definition, allowing actual emission reductions anywhere in a contiguous plant to compensate for potential emission increases at individual emitting units within the plant. Nonattainment areas can choose either this single, plantwide definition or a dual definition, so long as the definition selected does not interfere with attainment and maintenance of NAAQS and is consistent with progress towards attainment. Under the plantwide definition, significant net actual increases at the plant as a whole will trigger new source review. Under the dual definition, significant increases at either the plant as a whole or individual emitting units will trigger new source review.

In addition to these federal definitions for major new sources and modifications, state preconstruction permits for major or minor new sources and modifications may be required under 40 CFR 51.18(a), and some states preclude netting.

D. Emission Offsets

In *nonattainment* areas, major new stationary sources and major modifications are subject to a presconstruction permit requirement that they secure sufficient surplus emission reductions to more than "offset" their emissions. This requirement is designed to allow industrial growth in nonattainment areas without interfering with attainment and maintenance of ambient air quality standards. It is currently implemented through SIP regulations adopted by states to meet the requirements of 40 CFR 51.18(j).

In *attainment* areas, some new sources and modifications might not otherwise be able to be constructed because their emissions would result in

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[1] "States" includes any entity properly delegated authority to administer relevant parts of a State Implementation Plan (SIP) under the Clean Air Act.

[2] "Case-by-case SIP revision" means case-by-case approval by EPA as a SIP revision. This is the traditional mechanism by which bubbles and other SIP changes have been approved by EPA.

[3] See, e.g., 40 CFR 51.18(j)(1)(x), 51.24(b)(23), 52.21(b)(23). See also today's Technical Issues Document, n. 47 and accompanying text.

On November 7, 1986, EPA restructured CFR Part 51 and renumbered many of that Part's sections (51 FR 40656). Because most readers will be more familiar with prior designations, today's notice contains citations based on the organization of Part 51 as it existed before this restructuring. Interested parties may use Appendix F of today's Technical issues Document to convert today's Part 51 citations to the corresponding new ones.

an exceedance of the applicable PSD increment or ambient air quality standard, would significantly contribute to a violation of an ambient air quality standard in a designated primary nonattainment area, or would significantly contribute to visibility impairment in a Federal Class I area. These sources may use emissions offsets to allow desired growth while protecting that increment, standard, or visibility.

E. Emission Reduction Banking

Firms may store qualified emission reduction credits (ERCs) in EPA-approvable banks for later use in bubble, offset or netting transactions. Depending on the bank's rules, banked ERCs may also be sold or transferred to other firms which seek to meet certain regulatory requirements by use of emissions trades.

EPA's revised Offset Ruling (40 CFR Part 51, Appendix S) allows states to establish banking rules as part of their SIPs. This Policy Statement and accompanying Technical Issues Document detail the necessary components of a complete state banking rule approvable under the Clean Air Act. While many areas also allow banking of emission reductions for various purposes through various formal or informal banking mechanisms, banks which do not meet today's criteria (e.g., by not making banked emission reductions enforceable by the state by the time the reductions are actually banked, or by not assuring that deposits are taken explicitly into account for SIP planning purposes) cannot qualify emission reductions as ERCs, and may offer substantially less protection in the event of future SIP corrections or changes in ambient attainment status.

F. Generic Trading Rules

Generic rules adopted as part of the SIP can authorize states to approve certain types of individual transactions without the need for case-by-case SIP revisions or associated federal review prior to approval. The first state generic bubble rule was approved by EPA April 6, 1981 (46 FR 20551). For the current scope of permissible rules, see Section III below.

G. Effect of This Policy Statement

Emissions trading is largely voluntary: no source is required to trade, and no state is required by EPA to approve a particular trade or to adopt a generic rule. Trading merely offers states and stationary sources alternative ways to meet regulatory requirements. For example, states are free to adopt generic rules or continue to implement trades as individual SIP revisions. They may adopt rules which incorporate all or any combination of the above trading approaches.[4]

This Policy Statement is accompanied by a Technical Issues Document for use by states and industry in further understanding emissions trading. The Document offers elaboration and important detail on requirements and available options under the Clean Air Act.

This notice reflects the current Clean Air Act and existing EPA regulations. A policy statement cannot legally alter such requirements. However, this notice establishes EPA policy in areas not governed by applicable regulations and sets out general principles which may help states and industry apply those regulations in individual cases. Federal or state rulemaking in response to, e.g., future litigation or changes in ambient standards, attainment status, or SIP validity, may affect states or firms that plan to engage or have engaged in emissions trading activities.

Nothing in today's notice alters EPA new source review requirements or exempts owners or operators of stationary sources from compliance with applicable preconstruction permit regulations in accord with 40 CFR 51.18, 51.24, 51.307, 52.21, 52.24, 52.27, and 52.28. Interested parties should, however, be aware that bubble trades are not subject to preconstruction review or regulations where these trades do not involve construction, reconstruction, or modification of a source.

EPA intends to apply changes made by today's policy prospectively (e.g., not to actions which have already been approved as case-by-case SIP revisions or under generic rules). If, however, ambient violations are discovered in an area where EPA has approved a trade, or if other violations of Clean Air Act requirements are discovered in that area, sources involved in the trade should be aware that they are potentially subject to requirements for additional emission reductions, just as are all other sources in the area.

This policy requires that substantial additional reductions (at least 20%) in emissions remaining beyond applicable baselines be produced by future bubbles in primary nonattainment areas which require but lack approved demonstrations of attainment. However, applications for bubbles in such areas which are still pending at EPA without formal action under the 1982 policy, or which were previously submitted to EPA Regions under the 1982 policy but not accepted for evaluation, will be reexamined and processed for approval if they meet the requirements of the 1982 policy and contribute to progress towards attainment. "Progress towards attainment" means some extra reduction beyond equivalence to a lowest-of-actual-SIP-allowable-or-RACT-allowable emissions baseline, with this baseline applied as of the time applicants originally sought credit. Pending bubbles in attainment areas and nonattainment areas with approved demonstrations of attainment will be processed for approval if they meet the requirements of the 1982 policy and show that ambient standards, PSD increments and visibility will not be jeopardized.

For further discussion on pending bubbles see Section I.A.1.b.(4) of the Technical Issues Document.[5]

II. Requirements for Creating, Using, or Banking Emission Reduction Credits[6]

A. Creating Emission Reduction Credits

Emission reduction credits (ERC's) are the common currency of all trading activity. ERCs may be created by reductions from either stationary, area, or mobile sources. To assure that emissions trades do not contravene relevant requirements of the Clean Air Act, only reductions which are *surplus, enforceable, permanent,* and *quantifiable* can qualify as ERCs and be banked or used in an emissions trade.

[4] Some requirements *underlying* emissions trading are not voluntary. For example, construction of a major new source or major modification in a nonattainment area requires sufficient existing-source reductions to constitute "reasonable progress toward attainment" despite the new emissions (40 CFR 51.18(j); Part 51, Appendix S). However, where the area has an established "growth margin" of extra reductions in a SIP which is currently approved by EPA, the state may provide the offsets from that growth margin rather than require them from the source, so long as it reduces the margin accordingly. See Clean Air Act section 173(1)(A) and (B)

[5] EPA encourages states or sources which submitted bubbles that were returned without evaluation by EPA to resubmit them under these criteria, provided they can document (a) formal, timely submittal of an application to EPA in accord with normal EPA procedures and (b) that the application was returned without evaluation, rather than rejected for failure to meet the terms of the 1982 policy. Bubble applications which were accepted for evaluation but rejected for failure to meet the 1982 policy will be treated as new applications under today's notice.

[6] Because this Policy Statement and accompanying Technical Issues Document reflect general Clean Air Act principles, states, individual sources, or commenters on specific rulemaking actions are free to show that a general principle does not apply to particular circumstances or could be satisfied using approaches other than those described. States, sources and commenters have this option under current law, and nothing in this Policy Statement or the Technical Issues Document restricts their opportunity to make such showings.

1. *Surplus.* At minimum, only emission reductions not required by current regulations in the SIP, not already relied on for SIP planning purposes, and not used by the source to meet any other regulatory requirement, can be considered surplus. To determine the quantity of emission reductions that are surplus, the state must first establish an appropriate emissions baseline from which surplus reductions can be calculated. Baseline emissions for any source are the product of three factors—emission rate, capacity utilization, and hours of operation.[7]

In attainment areas, the lower of actual or allowable values must generally be used for each of these baseline factors. However, allowable values for one or more of these factors, when higher than actual values, may be used in calculating the baseline emissions, provided those values are shown to be used or reflected in an approved demonstration.[8] The burden of meeting this test by written evidence rests with the state or applicant which seeks to use an allowable value.

When allowable values for one or more baseline factors are not used or reflected in an approved demonstration, such values may still be used in calculating baseline emissions. However, in such cases applicants must perform appropriate modeling to demonstrate that allowable values which are higher than actual values will not delay or jeopardize attainment and maintenance of ambient standards.[9]

In attainment areas where the PSD baseline has been triggered, credit may be granted consistent with the PSD baseline concentration as specified in 40 CFR 51.24(b)(13) and 52.21(b)(13). This will generally require use of actual values for each of the baseline factors. *However,* states may use allowable values if they show through appropriate modeling [10] that attainment and maintenance of neither the ambient standards nor applicable PSD increments will be jeopardized, and quantify the amount of increment consumed.

In nonattainment areas with approved demonstrations of attainment, the baseline must be consistent with assumptions used to develop the area's demonstration. This generally means that actual values must be used for each baseline factor where actual values were used for such demonstrations, and that higher allowable values for these factors may be used where allowable values were used for such demonstrations.[11] The burden of showing that an allowable value was used or reflected in the approved demonstration rests with the state or applicant which seeks to use an allowable value. In the absence of written evidence to that effect, full Level III modeling would be required to make use of an allowable value in baseline calculations.[12]

In primary nonattainment areas which need but lack approved demonstrations of attainment, states must show that bubbles meet special "progress" requirements designed to produce a net air quality benefit. This must be demonstrated by (1) using the lowest-of-actual-SIP-allowable-or-RACT-allowable emissions baseline for each source involved in the trade; [13] (2) meeting the ambient equivalence tests outlined in sections II.B.2 of this Policy and I.B.1.b. of the Technical Issues Document; and then (3) producing a substantial net reduction in actual emissions (i.e., a reduction of at least 20% in the emissions remaining after application of the baseline specified above). The state must also provide assurances that the bubble is consistent with ambient progress and future air quality planning goals.[14]

2. *Enforceable.* To assure that Clean Air Act requirements are met, each transaction which revises any emission limit upward must be approved by the state and be federally enforceable. Means of making emission limits federally enforceable include SIP revisions (see section IV below), EPA-approved generic bubble rules (see Section III below), and new source preconstruction permits issued by states under EPA-approved SIP regulations pursuant to provisions of 40 CFR 51.18, 51.24, or 51.307, as well as construction permits issued by EPA or delegated states under 52.21.[15] Bubbles should be incorporated in an enforceable compliance instrument which requires recordkeeping based on the averaging period over which the bubble is operating, so it may easily be determined over any single averaging period that bubble limits are being met.

3. *Permanent.* Only permanent reductions in emissions can qualify for credit. Permanence may generally be assured by requiring federally enforceable changes in source permits or applicable state regulations to reflect a reduced level of allowable emissions.

4. *Quantifiable.* Emission reductions must be quantifiable both in terms of *estimating* the amount of the reduction and *characterizing* that reduction for future use. Quantification may be based on emission factors, stack tests, monitored values, operating rates and averaging times, process or production inputs, modeling, or other reasonable measurement practices. The same method of calculating emissions should generally be used to quantify emission levels both before and after the reduction.

B. Using Emission Reduction Credits

ERCs may be used by sources in bubble, offset or netting transactions. The general principles below will assure

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[7] For further discussion of these factors as they relate to baseline calculations, see Appendix B of the Technical Issues Document.

[8] This statement does not apply to netting, where "contemporaneous" actual emissions are always the baseline. See, e.g., 40 CFR 51.24(b)(3).

Bubbles in areas with demonstrations based only on qualitative judgments (e.g., the "example region" approach or no technical support) ordinarily may not rely, without appropriate modeling, on allowable values in calculating baseline emissions. However, bubbles in areas with demonstrations based on rollback or dispersion modeling may use allowable values that are reflected in the demonstration. In certain circumstances an allowable baseline value specified in a preconstruction permit may be deemed equivalent to one used or reflected in an approved demonstration. See Technical Issues Document, n. 7.

For further definition of "actual" and "allowable" see today's Technical Issues Document, Section I.A.1.a. and Appendix B.

[9] This demonstration would require a Level II modeling analysis, in accord with the modeling screen discussed below, using actual emissions for the pre-bubble case, unless, for *bubbles processed as case-by-case SIP revisions,* the Region determines that additional technical support is needed to protect applicable standards or increments. For discussion of Level II modeling, see Technical Issues Document, section I.B.1.b.(3). For further discussion of additional technical support which Regions may require in these circumstances, see Technical Issues Document, Section I.A.1.a. For a discussion of parallel modeling requirements for use of such higher allowable values in attainment areas under *generic rules,* see Technical Issues Document, n.31.

[10] See n.9 above.

[11] For netting, "contemporaneous" actual emissions are always the baseline. See, e.g., 40 CFR 51.18(j)(1)(vi).

[12] For further discussion of Level III modeling, see Technical Issues Document, section I.B.1.b(4).

[13] For purposes of today's notice, the "lowest-of-actual-SIP-allowable-or-RACT-allowable" emissions baseline means the product of (1) the lowest of the actual emission rate, the SIP or other federally enforceable emission limit, or a RACT emission limit, and (2) the lower of actual or allowable capacity utilization and hours of operation. For further discussion of this baseline, see Appendix B of today's Technical Issues Document.

[14] The specific assurances may be found in the Technical Issues Document at I.A.1.b.(3). EPA will not second-guess such state assurances, provided they are: (1) A substantial test applied by the state to each bubble, and (2) the state has explained how the proposed bubble is consistent with the area's projected attainment strategy. This authority has not been delegated with EPA. See Clean Air Act section 301(a)(1), 42 U.S.C. 7601(a)(1).

[15] EPA is also considering generic steps which would make state operating permits federally enforceable. Prior to use, *banked* credits need not be made federally enforceable. See Section II.C. below.

that all uses of ERCs are consistent with ambient attainment and maintenance considerations under the Clean Air Act. They are further articulated in the accompanying Technical Issues Document.

1. *Emissions trades must involve the same criteria pollutant.* An emission reduction may only be traded against an increase in the same criteria pollutant. For example, only reductions of SO_2 can be substituted for increases of SO_2.

2. *All uses of ERCs must satisfy applicable ambient tests.* The Clean Air Act requires that all areas throughout the country attain and maintain national ambient air quality standards and meet applicable ambient requirements relating to PSD increments and Class I protection, including visibility. The ambient effect of a trade depends on the dispersion characteristics of the pollutant involved. With the exception of visibility for NO_x, dispersion considerations will generally not affect trades involving VOC or NO_x, whose impacts occur across broad geographic areas. For these pollutants "pound for pound" trades may be treated as equal in ambient effect where all sources involved in the trade are located in the same control strategy demonstration area, or where the state otherwise shows such sources to be sufficiently close that a "pound for pound" trade can be justified. However, dispersion characteristics are important for bubble and offset trades of SO_2, particulates, CO, or lead, whose ambient impact may vary with where the emission increases and decreases occur. To assure ambient equivalence, such trades of these pollutants must satisfy ambient tests under the modeling screen discussed in the Technical Issues Document or under a similar, equally effective approach.[16]

3. *Bubbles must not increase hazardous pollutants.* Bubbles may not be used to meet applicable requirements of National Emissions Standards for Hazardous Air Pollutants (NESHAPs) promulgated under section 112 of the Clean Air Act, to increase emissions at any source beyond the levels applicable NESHAPs prescribe, or to create any net increase in baseline emissions of a pollutant regulated under section 112. The applicable baseline for regulated sources is the lower of actual or NESHAPs-allowable emissions of the hazardous pollutant.

Where a NESHAP has been *proposed* but not yet promulgated for a source category which emits a pollutant listed under section 112, the proposal will serve as an interim guideline for evaluating the effects of any proposed emissions trade involving a source that would be subject to the proposed standard. In general, such trades will be approvable with respect to the emissions component of the trade subject to the proposal, so long as they result in emission limits at each source emitting the relevant pollutant which are equivalent to or lower than those the proposed NESHAP would have required if already promulgated.[17]

Where a pollutant has been *listed* under section 112 or where EPA has published a Notice-of-Intent-to-List, but no regulations for the source category involved in the trade have yet been proposed or promulgated, the trade will generally be acceptable with respect to the emissions component of the trade subject to notice or listing, if there is no net increase in actual emissions of that pollutant as a result of the trade.[18]

Any trade involving sources or source categories subject to the preceding subparagraphs must take place within a single plant or contiguous plants, and must credit only reductions below current actual or NESHAPs—allowable emissions, whichever is lower. But cf. generally n. 6 above and today's Technical Issues Document, section I.B.1.d.

Trades which do not meet the special restrictions discussed in this section may also be approved where surplus reductions in the pollutants addressed above compensate for increases in non-hazardous emissions of the same criteria pollutant (e.g., benzene, a hazardous VOC, is reduced to create credits for an increase in non-hazardous VOC emissions.) As long as such a trade would not result in an increase in either actual or allowable emissions of a pollutant subject to the preceding paragraphs at any source, it would not differ in nature or requirements from a trade involving only nonhazardous VOC emissions.

4. *ERCs from existing sources cannot be used to meet technology-based requirements applicable to new sources.* Under Clean Air Act section 111 and EPA implementing regulations, new affected facilities must satisfy technology-based New Source Performance Standards (NSPS), regardless of the attainment status of the area in which they are located. Under sections 165 and 173 and EPA implementing regulations, new or modified major stationary sources must also satisfy technology-based control obligations associated with pre-construction permits. These requirements prohibit use of credits from existing sources to meet or avoid applicable NSPS, and bar use of such credits to meet applicable new source review requirements for best available control technology (BACT) in PSD areas, or lowest achievable emission rate control technology (LAER) in nonattainment areas.[19]

5. *States may approve bubbles in primary nonattainment areas which require but lack approved demonstrations of attainment,* provided such trades meet requirements designed to produce a net air quality benefit and the state provides certain assurances. See section II.A.1. above and the Technical Issues Document, section I.A.1.b. Bubbles which meet these objective requirements will be processed for approval by EPA.

6. *Sources need not be subject to binding compliance schedules based on current SIP requirements* before they can apply for a bubble which would supersede those requirements. Sources that are *already* subject to binding compliance schedules should be aware, however, that such schedules remain fully enforceable until a bubble affecting the schedule has been approved by EPA or under a state generic rule and the

[16] For similar reasons, bubbles of these pollutants must involve sources which are in the same or adjacent control strategy demonstration areas within the same general air basin.

See section II.A.1. above and Technical Issues Document, Section I.A.1.a regarding additional technical support required for certain trades in attainment areas.

While bubbles in primary nonattainment areas which need but lack approved demonstrations of attainment must produce a net air quality benefit, this does not entail additional ambient tests. Such bubbles must first meet the general tests under the modeling screen showing ambient equivalence for bubbles, prior to producing the required additional reductions. They must then produce additional reductions of at least 20% beyond the applicable baseline emissions used to demonstrate ambient equivalence. Since these additional reductions will necessarily reduce ambient concentrations below equivalence at some receptors, while continuing to meet the tests for ambient equivalence at all others, a net air quality benefit should occur and no additional ambient showings, beyond those generally required for all bubbles, are required.

[17] The allowable emission rate for a source subject to a proposed NESHAP is the limit stipulated in the proposal.

[18] Where EPA has issued a "Notice-of-Intent-Not-to-Regulate" one or more source categories for a listed pollutant, emissions of that pollutant from the unregulated source category will nevertheless be treated the same as emissions of any other listed pollutant. Under limited circumstances, similar treatment will be given to pollutants for which a "Notice-of-Intent-Not-to-List" has been published. See the Technical Issues Document, section I.B.1.d.

[19] But cf. sections I.C. and I.D. above.

Today's notice does not address whether or under what circumstances facilities subject to NSPS, BACT or LAER may surpass applicable permit limits reflecting such requirements in order to create credits for existing-source trades.

schedule has been modified accordingly. Sources subject to compliance schedules in administrative orders or judicial decrees must obtain prior approval from EPA or the relevant court, as appropriate, to be relieved from the schedule contained in the order or decree. Sources that are subject to SIP requirements remain responsible for meeting those requirements unless and until a bubble has become effective under Federal law. See section II.B.12 below.

7. States may extend certain compliance schedules. States may no longer grant compliance extensions under new or revised generic rules in *nonattainment areas*, whether or not such areas have demonstrations.[20] However, states may continue to grant compliance date extensions under generic rules in *attainment areas*, provided EPA has approved the extension provisions of the generic rule as being adequate to comply with the Clean Air Act, including requirements for attainment and maintenance of ambient air quality standards.

States that wish to give sources in nonattainment areas, and sources in attainment areas for which there is no applicable generic SIP provision, more time to implement bubbles by granting compliance extensions, must receive EPA approval of the extensions through case-by-case SIP revisions. Requests for such compliance date extensions, whether in attainment or nonattainment areas, may be submitted to EPA together with bubbles, as part of a single SIP revision package. EPA will separately evaluate the time extension portion of these SIP revision packages in accord with the Agency's normal criteria for review of time extensions, including consistency with the Act's requirements for expeditiousness, reasonable further progress, and attainment and maintenance. Sources should be aware that disapproval of such time extension requests may result in disapproval of the entire package (i.e., both post-trade limits and the time extension) or only part of it, depending on whether the state views these components of the proposed SIP revision as separable.

8. States may approve bubbles involving open dust sources of particulate emissions, based on modeling demonstrations. Open dust trades may be approved through individual SIP revisions based on acceptable modeling and/or monitoring demonstrations, provided sources agree to post-approval monitoring to determine if predicted air quality results have been realized and make an enforceable commitment to achieve necessary additional reductions if predicted results do not materialize.

9. Trade involving lead. Unlike other criteria pollutants, EPA does not designate nonattainment areas for lead. However, the Regional Administrator will review lead trades, as all other trades, to assure that they do not interfere with attainment and maintenance of NAAQS.

10. Trades involving ERCs from mobile source measures. ERCs from mobile source measures may be used to meet SIP requirements applicable to existing stationary sources, so long as such reductions are surplus, permanent, quantifiable, and enforceable. Reductions from certain types of mobile-source measures (e.g., mechanical conversion of existing vehicle fleets to cleaner fuels such as methanol) may satisfy these criteria more readily than those from other transport-related measures. However, due to possible difficulties in determining whether specific mobile-source reductions fully meet these criteria, all such trades must be implemented as case-by-case SIP revisions.

11. Interstate trades. Trades involving sources located in neighboring states may be approved, provided they meet all other requirements of today's notice. However, in order to avoid complex SIP accounting issues, where state trading requirements differ EPA will require that such trades meet the substantive requirements of the more stringent state. In general, EPA will deem ERCs created in one state to contribute to progress in the state where used to the extent of that use, provided that applicable ambient tests (section II.B.2 above) are met. Interstate trades must be implemented through case-by-case SIP revisions.

12. Bubbles must not impede enforcement. In general, bubbles are a form of SIP revision which should be treated neither more nor less stringently than other SIP revisions. Bubbles should not become a shield against enforcement actions for sources which have failed to take necessary steps to meet required control obligations on time.

Sources seeking trades should note that they remain subject to enforcement of existing (pre-trade) SIP limits until the bubble is approved. EPA will use the same principles and procedures for deciding whether to initiate enforcement actions in these circumstances as the Agency applies to any other source which is subject to a proposed or final SIP revision.

Under established EPA policy, regulated sources must be subject to an applicable, enforceable emission limit at all times. Accordingly, sources which have approved bubbles with emission limits effective at a future date, and which are not in compliance with their pre-trade limits prior to that effective date, may be subject to enforcement action, which could include penalties based on a failure to meet the pre-trade limits. Sources in these situations may wish to minimize the chance that capital expenditures may be required to meet pre-trade limits, either by (a) agreeing to post-trade compliance dates which are substantially similar to their pre-trade compliance dates, or (b) accelerating their compliance with post-trade limits.

In accord with the general principle that bubbles should be treated neither more nor less stringently than other SIP actions, implementation of this Policy Statement will be neutral with respect to EPA enforcement of pre-trade emission limits. This means that EPA will not specifically select for enforcement action noncompliant sources seeking to use a bubble either to come into compliance or to restructure traditional compliance. However, it also means that EPA will not withhold or defer enforcement simply because a source is seeking alternative emission limits through a bubble. In exercising its enforcement discretion, EPA will apply the same considerations to noncompliant sources which seek to comply through bubbles as to those which do not.

C. Banking Emission Reduction Credits

Only emission reductions that are surplus, permanent, quantifiable, and enforceable can qualify as ERCs and be deposited in EPA-approvable banks.[21] Such banks offer sources legal recognition that qualifying reductions meet these ERC requirements. However,

[20] Existing generic rules applicable to these areas must be revised to comport with this principle where they contain such generic extension provisions. EPA will publish Federal Register notices identifying any generic rules which require formal modification. Failure to resolve deficiencies identified in such a notice within the prescribed time period may result in EPA rescinding approval of the existing generic rule or issuing a notice of SIP deficiency. EPA expects states to ensure in the interim, so far as feasible, that compliance date extensions under existing generic rules are not granted to sources located in nonattainment areas. See section III below and section II.E.4. of the Technical Issues Document.

[21] Under today's notice emission reductions must be made enforceable *by the state* in order to qualify as ERCs and be deposited in EPA-approvable banks. However, because mere deposit of a reduction cannot result in emissions increases elsewhere, banked reductions need not be made federally enforceable until used.

the fact that an ERC has been banked does not relieve it from the need to meet all criteria of the specific regulatory program under which it is to be used.[22] Because some trades have special limitations (e.g., only reductions occurring at the same major stationary source can be used for netting), banks do not guarantee the validity or specific amount of particular banked ERCs for all potential uses or for all time. To provide maximun protection for the environment and sources and to avoid potential legal problems, state banking rules may specify the types of sources eligible to bank ERCs and any additional conditions placed on certifying, holding or using banked ERCs.

State banking rules may establish ownership rights. However, any such rights must be consistent with Clean Air Act requirements, including the requirement that SIPs provide for expenditious attainment and maintenance of ambient air quality standards and protect PSD increments and visibility. To be approvable by EPA, such banking rules must also treat banked reductions as current actual emissions "in the air" at the source of their creation, in order to protect the integrity of future air quality planning. Failure to track the ambient effects of such banked reductions (e.g. by not including them in a new or updated inventory used for SIP planning purposes, or by relying on those reductions to secure attainment redesignations) would ordinarily preclude their use as ERCs, due to double-counting. Nevertheless, states have considerable latitude in meeting these requirements, and may guarantee banked ERCs against full or partial reduction in quantity, so long as that guarantee does not undermine attainment redesignations or interfere with progress and attainment should ambient standards change or additional emission reductions be required. The Technical Issues Document, section I.C.9, outlines ways such guarantees may be made effective consistent with these requirements.

In many states, banking could be an extension of ongoing preconstruction permit activities. The state or its designee could accept and evaluate requests to certify an ERC, maintain a publicly-available ERC registry or similar instrument describing the quantity and types of banked credits, and track transfers and withdrawals of ERCs.

Because banked reductions do not increase emissions at any source, they need not be made federally enforceable until used. For administrative or other reasons states may, however, choose to make them federally enforceable upon deposit. How the state makes a reduction federally enforceable for banking will depend on the type of source at which the reduction occurs. In some states, reductions associated with other modifications at a source can be included in federally-enforceable preconstruction permits issued under rules approved pursuant to 40 CFR 51.18, 51.24 or 51.307. States with EPA-approved generic rules can use their rules' procedures to make reductions occurring at existing sources federally enforceable. See Section III below. Since these transactions involve only reductions, air quality modeling is generally not required to assure that new emission limits do not interfere with attainment and maintenance of ambient standards, protection of applicable PSD increments, or impairment of visibility in mandatory federal class I areas. Such reductions will automatically meet the generic rule's test of whether a particular limit is within EPA's preapproved array of acceptable emission limits.[23]

States without EPA-approved generic rules can adopt rules limited to banking transactions, or can use the standard SIP revision process to make reductions federally enforceable at existing sources. General state preconstruction permit or review programs that have received EPA approval may also be used for this purpose, since permits issued through such programs are federally enforceable. See 40 CFR 51.18; 51.24; 51.307.[24]

III. State Generic Trading Rules

Use of emission reduction credits under state regulations approved by EPA as generic for identified classes of trades will not require individual SIP revisions for those trades. The Technical Issues Document explains acceptable generic procedures which states may adopt to reduce the need for individual SIP revisions.

Emissions trades can be approved without case-by-case SIP revisions if evaluated by the state under EPA-approved procedures which assure that no trade which meets their terms will interfere with timely attainment and maintenance of ambient standards, protection of applicable PSD increments, or visibility provisions. State generic rules are approvable only if their procedures are sufficiently replicable in operation to meet this test. By approving the generic rule, EPA approves in advance an array of SIP-compatible emission limits, and no further case-by-case Federal review or approval is required for individual trades which meet the terms of the rule.

In order to ensure that generic rules are properly implemented, EPA intends to (a) examine and comment on, together with any other public commenter, the information which must be provided for individual trades proposed by states under a generic rule, (b) conduct reviews of individual bubbles approved under a generic rule, and (c) periodically audit the general implementation of generic rules, as part of its National Air Audit System reviews of state air programs.[25]

Any trade under a generic rule will involve emission increases at some sources and extra emission decreases at others. For trades to be approvable under a generic rule, the sum of these increases and decreases (beyond

[22] States may, however, expand opportunities for use of banked credits beyond those of current SIP programs (e.g., extend the "contemporaneous" period for netting), by submitting revised regulations addressing the banking and use of such credits, for approval as SIP revisions.

[23] Modeling will be necessary when a banked ERC is later evaluated for use in a trade, to the extent modeling is generally required for that particular type of emissions trade.

[24] In *primary nonattainment areas which need but lack approved demonstrations*, use for bubble purposes of banked credits produced by shutdowns or curtailments will continue to be allowed on the same terms as use of other banked credits, provided their use is subject to stringent qualitative review to assure technical, legal and programmatic consistency with SIP planning goals (e.g., avoidance of doublecounting or "shifting demand"). However, sources which seek to use banked credits from shutdowns or curtailments for bubble purposes after publication of today's notice must show that a written application was submitted to make the shutdown/curtailment state-enforceable through or concurrent with use of a formal bank or informal banking mechanism, prior to the time the shutdown/curtailment occurred. For sources which banked or sought to bank credits from shutdowns or curtailments in these nonattainment areas prior to publication of today's notice, written evidence must be provided showing either that an application to deposit the credits in a formal bank was submitted to the state prior to the time the shutdown/curtailment occurred, or that the state acknowledged, before or at the time the shutdown/curtailment occurred, both the existence of that shutdown/curtailment, and the source's intent to use the resulting credits in a future trade. For additional detail on banking and use of credits resulting from shutdowns or curtailments in these or other areas, see Technical Issues Document, Sections I.A.I.c.(3) and I.C.

[25] See, e.g., National Air Audit System Guidelines for FY 1984, Office of Air Quality Planning and Standards, EPA-450/2-83-007 (November 1983). State-approved generic trades that do not meet the terms of the relevant generic rule do not alter underlying SIP requirements, which remain fully enforceable. Generic rules found to be generally deficient in substance or implementation could ultimately result in notices of SIP deficiency or in rulemaking to rescind EPA's approval of the rule. For more detail on EPA oversight of generic rules, see Technical Issues Document, Section II.E.

applicable net baseline emissions) must be zero or less. Subject to this requirement, states may adopt generic rules which exempt from individual SIP revisions: (1) *De minimis* trades where total increases in emissions from all increasing sources (which must be balanced by equal or greater emissions decreases from other sources) are less than 25 tons per year (TPY) of particulates, 40 TPY of SO_2, 100 TPY of CO, or 0.6 TPY of lead, after applicable control requirements; (2) large classes of trades involving VOC or NO_x emissions;[26] (3) trades between certain types of SO_2 sources, between certain types of CO sources, between certain types of stationary lead sources, or between certain types of particulate sources, for which it can reasonably be assumed that "pound for pound" trades will produce ambient effects equivalent to those which approved air quality models would predict; and (4) other SO_2, CO, Pb or particulate trades which do not increase baseline emissions and for which carefully defined modeling predicts no significant increase in ambient concentrations.

States and sources should, however, be aware that because of replicability problems inherent in modeling, generic rules which rely on preapproved procedures for modeled demonstrations of ambient equivalence may be difficult to draft or implement, and many trades may not be approvable under such rules. For these reasons generic rules covering only the first three classes of trades above will often prove easiest to secure. EPA encourages states to work closely with EPA Regional Offices to formulate and adopt approvable rules or develop alternative approaches that equally assure attainment and maintenance of ambient standards and protection of PSD increments and visibility. See Section II of the Technical Issues Document, which details criteria under which such generic rules may be approved.

To the extent general state procedures for rulemaking or permit changes do not assure reasonable public notice of proposed and final limits or effective opportunity for comment on proposed trades, states must incorporate such provisions in their generic rules.

In primary nonattainment areas which need but lack approved demonstrations, new generic rules must require, and existing generic rules must, as requested by EPA, be revised to require bubbles to use lowest-of-actual-SIP-allowable-or-RACT-allowable emissions baselines, and produce a net air quality benefit (as described below). New or revised generic rules in these nonattainment areas must be accompanied by certain assurances of consistency with air quality planning goals as well as a commitment to make certain additional assurances when the state approves individual bubbles under the rule. Bubbles approved under existing generic bubble rules before the effective date of this policy will not be affected by these requirements. Because EPA-approved state regulations have independent legal force, future bubbles submitted under existing generic rules may also be approved by states in accord with those rules, until such rules are modified to meet the criteria below.[27]

Existing generic rules in these areas must be modified to assure that bubbles produce an overall emission reduction at least equal (in percentage terms) to the overall emission reduction from controllable sources (in percentage terms) needed to attain in the area. Criteria for modifying generic rules are set forth in Section II.D. of the Technical Issues Document, including a requirement for a reduction equal to the greater of either the percentage reduction required for attainment, or a 20% reduction in emissions remaining after application of appropriate baselines. New and pending applications for generic bubble rules which meet these criteria will be processed for approval.

EPA will publish **Federal Register** notices identifying any generic rules applicable to these areas which require formal modification in order to meet the progress requirements above or other requirements of EPA's current Emissions Trading Policy. These notices will identify specific deficiences and means for correcting them, and will specify a schedule for submittal and review or modified rules. Failure to resolve deficiencies identified in these notices within the prescribed time period may result in EPA rescinding its previous approval or issuing a notice of SIP deficiency.[28]

IV. Bubbles Which Require Case-By-Case SIP Revisions

States and sources must use the case-by-case SIP revision process to implement bubbles which are not covered by a generic rule. Because the case-by-case SIP revision process can take account of many more individual variations, numerous trades which could not be accomplished through generic rules or similar means may still be approvable as case-by-case SIP revisions.

EPA will take action on generic rules and individual trades submitted as SIP revisions as quickly as circumstances permit after a state has adopted a SIP revision and submitted the action to EPA. EPA encourages "parallel processing" of such SIP revisions, with EPA and the state conducting concurrent review so that both agencies can propose and take final action at roughly the same time. EPA will also publish noncontroversial SIP revisions as immediate final actions, converting them to proposals only if requests to submit adverse comments are received within 30 days (see 46 FR 44477, September 4, 1981). In all bubble actions EPA will clearly identify (or require states to identify, as appropriate) both pre- and post-trade actual and allowable emissions for each source involved in the trade, so that the ambient effects of each bubble may be known.

V. Conclusion

This Policy Statement sets out basic principles for approving individual trades and generic trading rules. It tightens many requirements in order to better ensure SIP integrity and environmental progress, while offering ample opportunities for use of approvable, environmentally-sound trades. EPA encourages states and sources to use these principles as a framework and refer to the accompanying Technical Issues Document for further discussion and examples. EPA also encourages states to develop other approaches which satisfy these principles while meeting their specific needs.

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[26] Where visibility impairment due to elevated NO_x emissions is a concern, generic trades involving NO_x must ordinarily be subject to ambient requirements similar to those applicable to generic trades involving TSP, SO_2, CO or Pb.

[27] In the interim, EPA expects states to ensure, so far as feasible, that future bubbles approved under existing generic rules are consistent with this policy as well as the terms of their EPA-approved rules. States should be aware that without this or similar precautions, continued approval of bubbles under existing generic rules containing identified deficiencies may create or accentuate plan deficiencies that may have to be corrected at a later date or compensated for by other means. See section II.E.4. of the Technical Issues Document.

[28] Such notices may also be issued for existing generic rules in attainment areas and nonattainment areas with approved demonstrations, if these generic rules are found to require procedural revision in order to make them consistent with the current Emissions Trading Policy. See Technical Issues Document, section II.E.4.

EPA recognizes the additional timing burden which may be imposed on bubble applicants in areas where new generic rules cannot be or have not been developed to meet the specific air quality benefit requirements described above, and will attempt, so far as feasible, to ameliorate that burden in implementing this policy. See, e.g., n.6 and section II–B–12. above and related Preamble discussion, at n.48 and accompanying text.

As a policy statement, this notice does not establish conclusively how EPA will resolve issues in individual cases. EPA will accept public comment on specific SIP changes submitted under it, and will review individually each generic rule and those emissions trades submitted as SIP revisions to determine their acceptability under the Clean Air Act. Interested parties will have full opportunity to scrutinize application of these principles in specific cases, and to seek subsequent judicial review of such cases after EPA has taken final action on particular trades or generic rules.

Dated: November 18, 1986.

Lee M. Thomas,

Administrator.

Emissions, Trading: Technical Issues Document

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EMISSIONS TRADING: TECHNICAL ISSUES DOCUMENT

This Document offers more detail on technical issues for firms and pollution control agencies seeking to implement individual emissions trades or generic trading rules that meet the principles in EPA's final Emissions Trading Policy Statement. It describes both the legal requirements for emissions trades under the Clean Air Act, and a range of legal options which states [1] and sources may consider. States and firms may pursue other approaches consistent with those discussed here.

Section I of this Document explains general principles governing all emissions trading. Section II explains principles governing state generic rules. Section III discusses special considerations for emissions trades which must be implemented as case-by-case SIP revisions.

Because these sections reflect general Clean Air Act principles, states, individual sources or public commenters remain free to show that a general principle does not apply to particular circumstances or can be satisfied using another approach. States, sources and commenters have this option under current law, and nothing in the Policy Statement or this Document restricts their opportunity to make such showings.

Nothing in today's notice alters EPA new source review requirements or exempts owners or operators of stationary sources from compliance with applicable preconstruction permit regulations in accordance with 40 CFR 51.18, 51.24, 51.307, 52.21, 52.24, 52.27, and 52.28. Interested parties should, however, be aware that bubble trades are not subject to preconstruction review or regulations where these trades do not involve construction, reconstruction or modification of a source within the meaning of those terms in the regulations listed above.

[1] "States" includes any entity properly delegated authority to administer relevant parts of a State Implementation Plan (SIP) under the Clean Air Act.

I. Elements Of Emissions Trading

The basic elements of any emissions trade are the *creation* of an emission reduction credit (ERC), its *use* in a trade and its possible *storage* in a bank prior to use.

A. Creating Emission Reduction Credits

States may grant credit only for those emission reductions that are surplus, enforceable, permanent, and quantifiable. Otherwise use of ERCs might degrade air quality, threaten the viability of the area's SIP, and make more stringent control requirements necessary.

1. All Reductions Must Be Surplus

At minimum, only emission reductions not required by current regulations in the SIP, not already relied on for SIP planning purposes, and not used by the source to meet any other regulatory requirement can be considered surplus and substituted for required reductions as part of an emissions trade.

The first step in qualifying a reduction as "surplus" is to establish a level of baseline emissions. This baseline represents the level of required emissions beyond which reductions must occur for a source to be eligible for credit. Three baseline factors—emission rate, capacity utilization, and hours of operation—must be used to compute and compare pre-trade and post-trade emission levels.[2]

The baseline for each source must be established both on an annual basis and for all other averaging periods consistent with the relevant NAAQS and PSD increments. This approach is necessary to protect the ambient standards and PSD increments on a short term as well as an annual basis. The baseline will generally be determined by the attainment status of the area,[3] by the way the state developed its SIP, and by whether the area is subject to PSD requirements.

a. Use of Actual or Allowable Emissions as the Baseline: Attainment Areas and Nonattainment Areas With Approved Demonstrations of Attainment (including rural ozone nonattainment areas). In attainment areas, baseline emissions must generally be calculated using the lower of actual or allowable values [4] for all three baseline factors. However, allowable values corresponding to one or more of these factors, when higher than corresponding actual values, may be used in calculating baseline emissions, provided those values are shown to be used or reflected in an approved demonstration.[5] The burden of meeting this test rests with the state or applicant. Where the State or applicant cannot show by written evidence [6] that the demonstration assumed an allowable value for a given baseline factor, appropriate modeling would be required in order to use an allowable value for that factor in calculating baseline emissions for the source.[7] This will require a Level II modeling analysis as specified in the modeling screen described below, using actual emissions for the pre-trade case, unless the appropriate EPA Regional Office ("the Region") determines that additional technical support is necessary to protect the NAAQS, PSD increments or visibility. Additional technical support may be necessary because crediting the difference between actual and allowable values for even one of these factors may produce a post-trade increase in actual emissions sufficient to jeopardize applicable standards, increments or visibility.

Additional technical support is not necessarily limited to determining the impact of the increases from the trade. The Region may require such additional technical support, up to and including full Level III modeling, as is necessary to assure that applicable NAAQS, PSD increments and visibility requirements will be protected. It may require the determination of background concentrations to which the impacts of possible emissions increases that would otherwise fall below Level II significance values must be added. Background concentrations should be determined in a manner consistent with EPA's *Guidelines on Air Quality Models.*

In attainment areas where the PSD baseline has been triggered, the trading baseline for a source must generally be computed using actual values for all three baseline factors (i.e., only reductions below a source's actual emissions can be considered surplus). Because 40 CFR 51.24 and 52.21 specify that increses in actual emissions occurring after the PSD baseline date consume PSD increment, any trades based on allowable emissions which would potentially increase actual emissions must perform at least a Level II modeling analysis using actual emissions for the pre-trade case, and provide additional technical support if deemed necessary by the Region, to demonstrate that they protect the relevant increment ceiling, NAAQS, and visibility.

In nonattainment areas with approved demonstrations, baseline emissions for a source may be calculated using either allowable values or actual values for the three baseline factors, depending on the assumptions used in developing the area's demonstration.[8]

Some states relied on allowable values for certain sources in developing their SO_2 and TSP attainment plans. In these nonattainment areas, sources may use allowable values in calculating baseline emissions, to the extent the state used or assumed those allowable values as the basis for its demonstration. The burden of showing that an allowable value was used or reflected in an approved demonstration rests with the state or applicant which seeks to use an allowable value.[9]

Other nonattainment areas either used inventories based on actual emissions, or relied on measured (and therefore "actual") ambient air quality values, as the primary basis for determining SIP emission limits needed

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[2] For further discussion of these factors as they relate to the calculation of baseline emissions, see Appendix B.

[3] Unclassified areas are treated as attainment areas for permitting and emissions trading purposes. Unlike other criteria pollutants, EPA does not designate nonattainment areas for lead. However, the Regional Administrator will review lead trades, as all other trades, to assure that they do not interfere with attainment and maintenance of the NAAQS.

[4] For the definition of "actual" and "allowable" values, and further discussion on calculation of baseline emissions, see Appendix B.

[5] This statement does not apply to netting, where "contemporaneous" actual emissions are always the baseline. See, e.g., 40 CFR 51.24(b)(3).

Bubbles in areas with demonstrations based solely on qualitative judgements (e.g., the "example region" approach or no technical support) ordinarily may not rely, without appropriate modeling, on allowable values in calculating baseline emissions. However, bubbles in areas with demonstrations based on rollbacks or dispersion modeling may use allowable values that are reflected in the demonstration.

[6] For example, the demonstration calculations themselves, accompanying materials, or affidavits from those who constructed the demonstration.

[7] In certain circumstances an allowable baseline value specified in a preconstruction permit will be deemed equivalent to one used or reflected in an approved demonstration. For example, a source in an *attainment* area where a PSD baseline has been triggered may use allowable values consistent with its preconstruction permit, if that source's emissions are not reflected in the PSD ambient baseline concentration. (However, if modeling using allowable emissions predicts a PSD increment violation, then additional analyses must be done to assure that the PSD increment is protected.) A source in a *nonattainment* area may use allowable values consistent with its preconstruction permit to calculate its baseline, provided that permit post-dates the nonattainment designation, SIP call, design year, or baeline inventory year, whichever is applicable.

[8] This statement does not apply to netting, where "contemporaneous" actual emissions are always the baseline. See, e.g., 40 CFR 51.18(j)(1)(vi). See also Appendix B for detailed discussion of "actual" and "allowable" emissions.

[9] See n. 6 and 7 above.

to demonstrate attainment. In some areas, SIP demonstrations were based merely on qualitative judgments (e.g., "example region" approaches). Baseline emissions for sources in all these other areas must generally be calculated using the lower of actual or allowable values for each baseline factor. However, states may approve, on a case-by-case basis, use of allowable values in calculating baseline emissions, where they explicitly demonstrate that such use comports with reasonable further progress and will neither create a new ambient violation nor delay the planned removal of an existing violation. Such demonstrations require full Level III modeling and must be submitted to EPA as case-by-case SIP revisions.

EPA deems designated *Rural Ozone Nonattainment Areas* to possess acceptable demonstrations of attainment provided they have an approved new source review rule and require RACT controls for all major VOC sources for which EPA has issued Control Technique Guidance (CTG) documents. (See, e.g., 43 FR 21673 (May 19, 1978)). Because these areas' nonattainment is generally caused by emissions from sources in a nearby urban area, control of emissions from that area is expected to bring the rural area into attainment. Put differently, EPA does not require rural areas to cure problems due to transport from pollution-generating areas which rural areas cannot control. However, EPA believes that further clarifications are required for bubbles in these areas.

Sources involved in such bubbles must use RACT emission limits in calculating baseline emissions, if subject to Group I or II CTGs under the EPA approved SIP for these areas. Sources subject to other SIP emission limits must use those limits in calculating baseline emissions. Other baseline factors must also be consistent with the applicable SIP requirements, and will generally be actual historical values. Where a source is not regulated by the EPA-approved SIP its baseline will be actual emissions in the year EPA approved the Part D plan for the affected rural area. In those approvals, EPA presumed that controls for sources in the upwind urban areas, as well as RACT on GTC sources in the rural area, would bring about attainment in the rural area, and that non-CTG sources in the area, unless regulated by the SIP, could continue to emit at actual, non-RACT levels without interfering with attainment in those areas. See also 43 FR 21673 (May 19, 1978).

b. Special Progress Requirements for Bubbles In Primary Nonattainment Areas Which Need But Lack Approved Demonstrations of Attainment. EPA will approve bubbles which are consistent with the attainment needs of these areas, which produce a net air quality benefit, and which therefore secure interim progress towards attainment.[10]

(1) *Objective Tests For All Applications.* Bubble applications in primary nonattainment areas which require but lack approved demonstrations of attainment will be deemed to produce a net air quality benefit and will be processed for approval if they:

(a) Use lowest-of-actual-SIP-allowable or RACT-allowable emissions baselines. Such baselines are calculated using either:

(i) The actual emission rate, the SIP or other federally enforceable emission limit, or the applicable RACT emission limit, [11] whichever is lower, to compute the baseline for each source involved in the trade. This baseline factor shall be determined as of the date of the source's application to bank or trade, whichever is earlier.

(ii) The lower of actual or allowable capacity utilization and hours of operation to compute the baseline for each source involved in the trade. Actual values shall generally be based on the two years of operation preceding the application to bank or trade, unless another two year period is shown to be more representative of actual operations. Sources which shut down prior to the application to bank or trade have zero emissions, and therefore no credit is available.

For sources which banked or sought to bank credit in these nonattainment areas prior to publication of today's notice, the "date of application to bank" is the date of written application to the states to bank credit through a formal bank or informal banking mechanism for use in future trades. For sources which seek to bank credit in these areas following publication of today's notice, the date of application to bank will be the date of written application to the state to *make a reduction state-enforceable* through or concurrent with use of a formal bank or informal banking mechanism.

(b) Using baseline emissions defined above, meet applicable *de minimis*, Level I, Level II or Level III modeling tests for ambient equivalence, as appropriate.

(c) Produce a substantial net reduction in actual emissions (i.e., a reduction of at least 20% in the emissions remaining after application of the baselines specified above).

(d) Are accompanied by the assurances of consistency with ambient progress and air quality planning goals specified in section I.A.1.b.(3) below.

(2) *Where These Special Progress Requirements Will Apply.* The following primary nonattainment areas need but lack approved demonstrations, and bubbles within them are therefore subject to the special progress requirements in section I.A.1.b.(1) above:

(a) Areas that are designated primary non-attainment areas under section 107 for the pollutant involved in the trade and which failed to submit a 1979 Part D attainment demonstration or which submitted one that has not yet received full EPA approval. This includes primary total suspended particulate (TSP) nonattainment areas which submitted a SIP that did not include an actual demonstration of attainment but still received EPA approval (i.e., a "RACT plus studies" SIP).

(b) Extension nonattainment areas which failed to submit a 1982 SIP demonstration, or which submitted one that has not yet received EPA approval. Also included are those ozone nonattainment areas that are unable to demonstrate attainment by 1987, unless a demonstration of attainment for the area is subsequently approved by EPA.

(c) Areas that have received either: (1) A section 110(a)(2)(H) notice of deficiency based on failure to attain or maintain the National Ambient Air Quality Standards (NAAQS), in the form of a SIP call or a new section 107 or 171(2) nonattainment designation; or (2) a notice of failure to implement an approved SIP.

(d) Areas which received notice from EPA that they have failed to meet conditions in their EPA-approved SIPs, including commitments to adopt particular regulations by specified dates. The one exception would occur where the only portion of the SIP (including the attainment demonstration) lacking full approval is the inspection/maintenance provision for mobile sources. In these circumstances, stationary-source bubbles will be treated as if the area had a fully approved SIP.

(e) Any area that does not have an EPA-approved or EPA-promulgated plan for lead.

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[10] While not all of today's new requirements for bubbles in these areas are strictly "baseline" matters, all basic requirements for these bubbles are set out here for simplicity. New requirements also apply to generic bubble rules in these areas. See Section II.D below.

[11] Where an emission limit for a source involved in the trade has not previously been approved by EPA as RACT, a baseline reflecting a negotiated RACT emission rate must be agreed upon by the source, state and EPA for the source in question.

(3) *State Assurances.* EPA will not approve a bubble in primary nonattainment areas needing but lacking approved demonstrations unless the state provides assurances that the proposed trade will be consistent with its efforts to attain the ambient standard. The state must make the following representations to the EPA Regional Office in or with the letter formally submitting the bubble as a revision to the SIP:

(a) The resulting emission limits are consistent with EPA requirements for ambient air quality progress, as specified in Section I.A.1.b.(1) above.

(b) The bubble emission limits will be included in any new SIP and associated control strategy demonstration.

(c) The bubble will not constrain the state or local agency's ability to obtain any additional emission reductions needed to expeditiously attain and maintain ambient air quality standards.

(d) The state or local agency is making reasonable efforts to develop a complete approvable SIP and intends to adhere to the schedule for such development (including dates for completion of emissions inventory and subsequent increments of progress) stated in or with the letter formally submitting the bubble or previous such letters.

(e) The baseline used to calculate the bubble emission limits is consistent with the baseline requirements in section I.A.1.b.(1) above.

These state assurances must be made in writing by the appropriate state or local authority (e.g., State Air Director, Air Pollution Control Board, or Legislative Committee). EPA will not second-guess such state representations, provided: (1) They are a substantial test applied by the state to each bubble, and (2) the state has explained how the proposed bubble is consistent with the area's projected attainment strategy. Nor will EPA examine, or expect states to examine in making such representations, any specific source's subjective motivation in making claimed reductions.

(4) *Treatment of Pending Bubble Applications.* "Pending bubbles" means those which are currently pending at EPA Regions or Headquarters, as well as any bubble applications which were formally submitted to EPA Regions under the 1982 policy but returned without action because final bubble criteria had not yet been issued. In primary nonattainment areas needing but lacking demonstrations, these bubbles should contribute to progress towards attainment. "Progress towards attainment" means some extra reduction beyond equivalence, with the lowest-of-actual-SIP-allowable-or-RACT-allowable emissions baseline applied as of the time applicants originally sought credit. In other areas these bubbles must show that applicable standards, increments, and visibility requirements will not be jeopardized. Pending bubbles which meet these tests and all other applicable requirements of the 1982 policy will be processed for approval.

Pending bubbles may undergo limited modification by the states or sources which submitted them in order to meet the new requirements outlined above (e.g., it may be necessary to recalculate the applicable baseline emissions of certain bubbles in nonattainment areas needing but lacking demonstrations and to reconfigure those bubbles in response to the reduced credit which may be allowed under the new more stringent requirements). However, pending bubbles which prior to final EPA approval are changed to the extent that they no longer reasonably resemble the original proposal qualifying for pending bubble status (e.g., those which are substantially expanded in scope or changed to involve primarily different sources of emission reduction credit) will be considered new bubbles subject to all of the requirements of today's notice.

Bubble applications which were submitted to EPA Regions by states, but which were withdrawn (or rejected) as inadequate under the 1982 policy, are not "pending." These bubbles, if reformulated and resubmitted, must meet all requirements of today's notice applicable to new bubble applications.

(c.) *No Double-Counting of Reductions.* At minimum, to be considered surplus an emission reduction cannot already have been claimed as part of a demonstration or updated emission inventory by any state air quality plan or have been used by the source to meet any other regulatory requirement. Double-counting of reductions—granting credit for the same emission reduction, e.g., once to the state as part of its nonattainment SIP demonstration or PSD baseline, and a second time to a source for use in an emissions trade, must be addressed in the following situations.

(1) *Crediting Pre-Existing Emission Reductions.* In *nonattainment areas* credit generally cannot be granted for emission reductions made before monitoring data is or was collected for use in current SIP planning. Because monitored ambient levels *already* reflect these emission decreases, such decreases may have been assumed in calculating the further reductions needed to attain ambient standards. States must clearly show that the existence of these reductions has been accounted for in their calculations in order to gain credit for these reductions.

States should also clearly identify the inventory baseline date before which reductions will not qualify for credit. The earliest acceptable baseline date would normally be the year of the most recent emissions inventory used in planning Part D SIP revisions under the Clean Air Act Amendments of 1977.[12] Where emissions inventories or other data are updated for tracking RFP and correction of Part D SIPs, the new inventories must treat banked emissions reductions as current actual emissions "in the air" at the source where created, so that corrected SIPs do not inadvertently rely on these prior reductions and cause them to be lost for use. If inventories do not treat these banked emissions as "in the air," or if they are otherwise relied upon for SIP planning purposes, such reductions can no longer be credited for trading.[13]

In primary nonattainment areas which need but lack approved demonstrations of attainment, emission reductions achieved prior to application to bank or trade (whichever is earlier) will not be credited for use in bubbles. See section I.A.1.b.(1) above. Regardless of whether they meet other baseline tests, such reductions were not reasonably elicited by the opportunity to trade in a practical, objective sense determined by timing, and cannot be used to meet existing-source SIP requirements absent a demonstration.[14]

In attainment areas, reductions at *major stationary sources* which commenced construction after January 1, 1975 may be able to qualify for credit whether such reductions occurred before or after the PSD baseline triggering date. See 40 CFR 51.24(b)(13)(ii) (45 FR 52719–20; August 7, 1980). Other emission reductions (e.g., at minor sources) cannot qualify for credit where the PSD baseline date *is or has been triggered* and such reductions occurred prior to the trigger date, unless these reductions are not assumed in the PSD baselines. Since banked emission

[12] For baselines and base year dates in rural ozone nonattainment areas, see section I.A.1.a. above.

[13] In order to help avoid such results, states may wish to make sources responsible to report banked emission reductions when responding to the states' inventory reporting requirements.

[14] In all nonattainment areas, emission reductions achieved by shutting down or permanently curtailing an existing source prior to application for a new source permit cannot generally be used as *offsets.* See 40 CFR 51.18(j)(3)(ii)(c). EPA proposed on August 25, 1983 to remove this restriction. See 48 FR 38742, 38751. However, it remains in effect unless and until EPA takes final action on that proposal.

reduction credits must be considered to be "in the air" for all planning purposes, if the baseline date is triggered before banked credits are actually used, such banked credits will be considered as part of the baseline and will not consume increment when used in an emissions trade.

In attainment areas where the PSD baseline has not been triggered as of the date EPA or the permitting authority takes relevant final action on the trading transaction, reductions below current SIP or permit limits generally may be used without special restrictions in bubble or banking transactions, provided they are otherwise creditable and there is assurance that NAAOS will not be violated due to any potential increase in actual emissions.[15]

(2) *Crediting Reductions From Shutdowns.* Shutdowns are generally treated for purposes of emissions trading like any other type of emissions reduction.[16] For example, the same limitations on pre-existing reductions (section I.A.1.c.(1), above) apply to shutdowns where they apply to any other type of emissions reduction. However, under current federal New Source Review requirements for major sources, shutdowns that occur prior to application for a new source permit can be used as offsets only for equipment replacing on-site productive capacity which was shut down.[17]

Shutdowns are of general concern with respect to double-counting where a state may have relied directly or indirectly on shutdowns in a SIP demonstration of attainment. (Where a primary nonattainment area needs but lacks an approved demonstration of attainment, the progress requirements of subsection I.A.1.b. above apply to bubbles involving shutdowns as well as to bubbles involving other types of emission reductions. These requirements generally bar use of reductions from shutdowns which occurred before application to bank or trade.)

In general, a state may credit reductions from shutdowns if the SIP has not already assumed credit for these reductions in its attainment strategy. So long as reductions from shutdowns have not already been counted in developing an area's attainment strategy, they are a potential source of surplus reductions.

Some SIPs assumed a set quantity of reductions from the overall difference in emissions due to new plant openings and existing plant shutdowns. These SIPs incorporated into their attainment strategy a net "turnover" reduction in emissions because new sources are generally cleaner than those that shut down. Double-counting would occur if a specific source received credit for reductions from such a shutdown, since that reduction was already assumed in the SIP's demonstration of attainment.

These states have at least two options for granting sources credit for shutdowns without this kind of double-counting. First, they may reexamine any "turnover" reductions relied on in their SIP and decide not to take credit for these reductions. This approach would require EPA approval of a revised demonstration of attainment or a SIP revision showing consistency with the existing demonstration. Such an action can be processed by EPA concurrently with a bubble or generic rule. Alternatively, these states may allow credit only after the total quantity of shutdown reductions relied on in the SIP has occurred.

In all cases where net turnover reductions have been quantified and relied on as part of attainment demonstrations, states which seek to grant shutdown credit for use in trading must be prepared to show clearly and unequivocally on the basis of SIP documents or tracking that the credit has not been double-counted or otherwise relied on for SIP planning purposes.

(3) *Use of Banked Credits From Shutdowns or Other Actions for Bubble Purposes.*[18] In primary nonattainment areas which need but lack approved demonstrations, ERCs intended for bubble purposes may generally be banked and used with the same lowest-of-actual-SIP-allowable-or-RACT-allowable baseline used for other bubble transactions.[19] This baseline should be applied as of the time banked credit is or was initially sought, with the 20% reduction applied to both sources in the trade if these credits are later used for bubbles. The lowest-of-actual-SIP-allowable-or-RACT-allowable baseline plus the 20% discount will also apply to the source using that credit in a bubble, as of the time of such subsequent bubble application.

Banked credits produced by *shutdowns and curtailments* may be used for bubbles in these areas on the same terms as use of other banked credits, provided their use is subject to stringent qualitative review to assure technical, legal, and programmatic consistency with SIP planning goals (e.g., avoidance of double-counting and "shifting demand"). This review will not examine any source's motivation in shutting down a facility or curtailing production. However, the source must show that a written application was submitted to make the shutdown/curtailment state-enforceable through or concurrent with use of a formal bank or informal banking mechanism, prior to the time the shutdown/curtailment occurred. Submittal of such an application to make proposed reductions from a shutdown or curtailment state-enforceable will constitute the relevant definition of "application to bank" for timing purposes related to the evaluation of bubble credits in these nonattainment areas (see section I.A.1.b(1) above).[20] The shutdown/curtailment must be made *federally* enforcement when it is used in a bubble.

Use for bubble purposes of *nonbanked* credits resulting from current shutdowns or curtailments will be allowed in these areas if the lowest-of-actual-SIP-allowable-or-RACT-allowable baseline plus the 20% additional reduction are applied to determine the amount of credit.

No special baseline or additional reduction requirements will apply to these credits in other areas.

d. Multiple Use of ERCs. Once surplus reductions are credited, states must prohibit their multiple use. The same pound of reduction must not be simultaneously banked by two different entities or used to satisfy two different regulatory requirements at the same time. To prevent these results, states must adopt an ERC registry or equivalent means of accounting for the creation, banking, transfer, or use of ERCs. See Section I.C.6 below. States must also ensure that past reductions used in bubble, netting or offset transactions are not later credited in newly-established banks.

[15] However, reductions at sources other than major stationary sources on which construction commenced before January 1, 1975 may not be used to balance increases at such pre-1975 major sources.

[16] For use of banked shutdown credits for bubbles in primary nonattainment areas needing but lacking approved demonstrations, see section I.A.1.c(3) below.

[17] See n. 14 above.

[18] ERCs used for *netting* and *offset* purposes (including those derived from banks) must comply with relevant NSR and PSD requirements.

[19] For further discussion related to the use of banked credits in these nonattainment areas, see section I.C.9. below.

[20] For sources which banked or sought to bank credits from shutdowns or curtailments in these nonattainment areas *prior to publication of today's notice*, written evidence must be provided showing either that an application to deposit the credits in a formal bank was submitted to the state prior to the time the shutdown/curtailment occurred, or that the state acknowledged, before or at the time the shutdown/curtailment occurred, both the existence of that shutdown/curtailment, and the source's intent to use the resulting credits in a future trade.

e. Reductions from Uninventoried Sources. Sources not included in an area's SIP emission inventory may apply for emission reduction credit. Such applications may enhance state air quality planning capabilities. Where such sources are already subject to SIP emission limits, those emission limits must be used as the basis for determining emission reduction credit, unless a more stringent baseline would normally be required (see sections I.A.1.a. and I.A.1.b. above).[21]

In *attainment areas* states may grant bubble credit to sources regardless of whether they have been included in an inventory, based on use of actual values for each of the three baseline factors, so long as those sources are not subject to lower allowable values for those factors. Allowable values, when higher than actual values, may alternatively be used in calculating the baseline, provided sources show that any resulting potential increase in actual emissions does not jeopardize applicable ambient standards, PSD increments, or visibility. (See 40 CFR 51.24 and 52.21 for specific requirements concerning PSD increments and visibility.)

In *nonattainment areas with approved demonstrations of attainment,* whether sources not on the inventory can create bubble credit will turn on how the approved demonstration of attainment was designed. Some states first monitored ambient values to determine required reductions for the SIP, then required a proportionate reduction in emissions from certain general source categories (i.e., a "rollback") in order to attain. States may grant credit for reductions from uninventoried sources in these areas in at least two ways.

(1) They could require the average of percentage reductions imposed on all inventoried sources, and grant credit only for reductions in excess of that amount. In this case, baseline emissions should be based on the percentage reduction in actual emissions for the year in which the baseline data for the rollback was gathered. Where such sources are already subject to lower SIP emisssion limits, those limits must be used to determine credit.

(2) They could require the source to use a RACT emission rate and the lower of actual or allowable capacity utilization and hours of operation to calculate the baseline, and grant credit only for reductions below that baseline. This RACT baseline would have to result in a reduction at least as great as the percentage reduction assumed in the rollback. As discussed above, where sources are already subject to lower SIP emission limits, those limits must be used as the basis for determining credit.

Other areas developed SIP demonstrations based on dispersion models rather than area-wide proportionate reductions. To the extent these SIPs demonstrated ambient attainment through reductions required from specific inventoried sources, incorporated emissions from uninventoried sources in the background or area source totals, and projected attainment by modeling the effects of those reductions, reductions from sources not on the inventory can be credited using the lower of actual or allowable values for each of the baseline factors.

In *primary nonattainment areas which need but lack an approved demonstration of attainment,* the progress requirements of Section I.A.1.b. above apply to bubbles which seek to use credit from uninventoried sources. These include a lowest-of-actual-SIP-allowable-or-RACT-allowable emissions baseline. Where a RACT emission limit has not already been adopted for an uninventoried source, such a limit must be agreed upon between the source, the state and EPA before the baseline can be determined.

States which grant credit from uninventoried sources not subject to permits, offset requirements, or enforceable production constraints should address the possibility that reductions from one such source may be followed by equal or greater increases from similar nearby sources due to shifting demand. These states must clearly demonstrate that ERCs from the uninventoried source are surplus and permanent. Interested parties should be aware that some uninventoried sources may not readily meet these tests. For example, reductions resulting from shutdown of a dry cleaner will generally not be creditable, unless the state subjects such sources to offset requirements or other measures addressing this problem. However, reductions due to improved control at such a dry cleaner would generally be creditable, since shifting demand is not implicated.

Baselines for Open Dust Trades. Fugitive dust regulations generally consist of generic work practices and operating procedures. The specifics of a fugitive dust program are generally contained in an operating permit or fugitive dust program. It is generally not possible to identify the appropriate emissions baseline from a general state open dust regulation. Therefore, for any open dust trade a negotiated RACT baseline must generally be agreed upon between the source, state and USEPA for the open dust source in question.

2. Alternative Emission Limits Must Be Enforceable

Each bubble, netting, offset or banking transaction must be approved by the state and must be federally enforceable at the time an ERC is used. Reviewing authorities may be able to use existing procedures (including preconstruction permits issued by states pursuant to 40 CFR 51.18, 51.24, 51.307 or 52.21) or EPA-approved generic rules to make reductions federally enforceable. The former possibility exists because permits issued under a federally-approved new source review program are federally enforceable. However, many preconstruction permit programs have been federally approved strictly for sources subject to NSR, and therefore may not be capable of use for transactions that do not trigger NSR requirements, or that involve sources not already subject to preconstruction permits.

With respect to the latter possibility, any enforceable compliance instrument imposing emission limits within the scope of an EPA-approved generic rule is deemed federally enforceable as part of the SIP.

Emission limits established by a trade must be incorporated in a compliance instrument which is legally binding and practicably enforceable by EPA.

Trades involving individual SIP revisions automatically satisfy this requirement. For trades under generic rules a compliance instrument culd take the form of an agreement between the source and state, a preconstruction permit (if one is applicable), a consent decree, a state operating permit, or any other compliance instrument judicially enforceable by the state. To assure state enforceability, the generic rule should state that sources subject to these instruments are required to meet the emission limits contained therein. Such instruments would then automatically become federally enforceable via an EPA-approved generic rule, provided they are issued as, or part of, the compliance instrument specifically required by the generic rule.

Compliance instruments must ensure that enforcement personnel do not have

[21] Where a given source was not subject to mandatory RACT regulation due to the fact that it was not included in the inventory (e.g., where no RACT regulation for a source category was adopted because the state, unaware of the source, issued a declaration that no source existed in that source category, or where an uninventoried, non-CTG source of greater than 100 TPY emissions is located in an ozone extension area), a baseline reflecting a negotiated RACT emission rate must be agreed upon between the source, the state and EPA for the uninventoried source in question.

to test simultaneously every emission source involved in a trade. This generally requires source-specific emission limits. However, states may use pre-specified combinations of source-specific emission limits which are enforceable. States may also use an overall limit that applies to a group of emission sources which can be evaluated simultaneously, where there is a reliable and enforceable method of determining compliance (e.g., through production records, input factors, or other indirect means, or through use of a continuous emissions monitor.) See, e.g., 45 FR 80824, December 8, 1980.

The compliance instrument should also specify applicable restrictions on hours of operation, production rates or input rates; enforceable test methods for determining compliance; and necessary recordkeeping or reporting requirements. To be enforceable, these limits must state the minimum time period over which they will be averaged (e.g., lbs/hour, lbs/MBtu averaged over 24 hours, production rate/day).[22] Unless such enforceable restrictions are or have been placed on capacity utilization and hours of operation, or on overall emissions, maximum values for capacity utilization and hours of operation must generally be used in calculating post-trade emission limits and in ambient modeling of the post-trade case.

3. All Reductions Must Be Permanent

All emission increases in a trade must be compensated by emission reductions that are permanent (i.e., assured for the life of the corresponding increase, whether unlimited or limitied in duration).[23] This requirement may generally be met by enforceable permit limitations confirming the amount and duration of the decrease. If reductions with a limited life are used, the life of the trade must be limited accordingly, so that the trade will automatically terminate with expiration of those reductions. The date of termination may be specified in the notice of approval. Alternatively, source(s) may agree to provide formal written notification to EPA and the state before such reductions may be discontinued and the trade terminated.

Permanence may present special but resolvable "shifting demand" problems for reductions from small sources not subject to permits, offset requirements, or enforceable production constraints. States which grant credit from these source categories must address the possibility that reductions from one source may result in equal or greater increases from similar nearby sources.[24]

In order to use, in a bubble trade, emission reduction credits derived from reductions in operations beyond those consistent with the baseline (e.g., a reduction from 3 to 2 workshifts), a source must have its preconstruction permit or other federally enforceable compliance instrument altered to reflect the curtailment in production records reflecting such curtailment (see section I.A.2 above).[25] Future increases in production beyond the permit amount may trigger new source review or require approval of a new emissions trading application which includes compensating emission reductions. As with other types of noncompliance, any source which exceeds permitted production limits would be subject to potential noncompliance penalties.

4. All Reductions Must be Quantifiable

Before an emission reduction can be credited it must be quantified. This generally means the state must establish a reliable basis for calculating the amount and rate of the reduction and describing its characteristics.

a. Calculating the Reduction. To quantify the amount of emission reductions eligible as ERCs, emissions must be calculated both before and after the reduction (i.e., assuming the post-reduction limits). Although many different methods of calculation are available (e.g., emission factors, stack tests, monitored values, production or process inputs), the same method and averaging time should generally be used to quantify emissions both before and after the reduction.[26]

b. Describing the Reduction. If an ERC will be used at the time of creation, only characteristics necessary to evaluate that proposed use need be described. Where the ERC will be banked and its eventual use is not yet known, a more detailed description should be provided in order to facilitate its later evaluation for a particular use.

B. Using Emission Reduction Credits

This section explains the substantive and procedural principles applicable to use of ERCs, primarily for existing-source bubbles. Many of these principles also apply to use of ERCs in netting or offset transactions. However, those transactions are governed by EPA's New Source Review regulations (40 CFR Parts 51 and 52) or state rules reflecting them.

1. *Substantive Principles for Using ERCs*

a. Emissions Trades Must Involve the Same Pollutant. The Clean Air Act requires states to develop separate plans to attain and maintain the national ambient air quality standard for each criteria pollutant. Thus, all individual bubble, netting or offset transactions must involve the same pollutant. Only reductions of particulates can substitute for increases of particulates, reductions of SO_2 for increases in SO_2, etc.

b. All Uses of ERCs Must Satisfy Ambient Tests. Because the Clean Air Act requires that all areas throughout the country attain and maintain ambient standards, protect applicable PSD increments, and protect visibility in mandatory Federal Class I (PSD) areas, bubbles must generally be equivalent in ambient effects to the baseline emission levels which they replace.[27] In *nonattainment areas*, use of ERCs cannot create a new violation of an ambient standard or delay the planned removal of an existing violation. In *attainment* areas, use of ERCs cannot violate an increment or ambient standard. Use of ERCs in either type or area cannot adversely affect visibility in any mandatory Federal Class I area.

The ambient effect of a trade generally depends on the dispersion characteristics of the pollutant involved.

VOC or NO_x Trades. Trades involving VOC or NO_x need consider only emissions. Since the ambient impact of these pollutants is areawide rather than localized, one pound of increased emissions will be balanced in ambient

[22] Many state permits or permit procedures may need revisions to assure that they provide adequate compliance information. However, such revisions need only occur on a case-by-case basis as individual trades are approved.

[23] Permits or other compliance instruments for limited-duration trades must clearly state such limits.

[24] States can address such potentially "shifting demand" among such sources as dry cleaners, paint shops and gas stations by, for example (1) prohibiting creation of ERCs due to shutdown or curtailment of such small sources; (2) limiting ERCs from small sources to categories determined not to be subject to shifting demand; or (3) requiring offsets for increases in emissions from such small sources. Cf. section I.A.1.e. above.

[25] Under EPA's NSR regulations, prior curtailments are subject to the same restrictions for offset purposes as prior shutdowns. See n. 14 above.

[26] In general, states may not approve VOC trades in ozone nonattainment areas where such trades would incorporate averaging times longer than one day. However, where VOC sources show that daily VOC emissions cannot be determined or application of RACT is not technically or economically feasible on a daily basis, longer averaging times may be permitted. See Appendix D.

[27] In primary nonattainment areas needing but lacking an approved demonstration of attainment, bubbles must achieve a net air quality benefit. See Section I.A.1.b. above.

effect by one pound of decreased emissions within the same broad geographic area, and the precise location of those increases and decreases ordinarily does not matter. For VOC and NO_x such "pound-for-pound" trades may therefore be treated as equal in ambient effect where all sources involved in the trade are located in the same control strategy demonstration area or the state otherwise shows such source to be sufficiently close that a "pound-for-pound" trade can be justified.[28]

Particulate Matter, SO_2, CO or Lead Trades. Ambient considerations are critical for trades involving emissions of sulfur dioxide, particulates, carbon monoxide, or lead, whose air quality impacts may vary with where the emission increases and decreases occur. For example, one hundred pounds of ERCs for such a pollutant created at one source may balance the ambient impact of a 100-pound increase at a source nearby, but may only balance the effect of an 80-pound increase at a source further away. In addition to distance between sources, plume parameters, pollutant characteristics, meteorology, and topography will also affect the ambient impact of such trades.[29]

This Document authorizes the use of four alternative methods of determining ambient equivalence, with the degree of required modeling linked to the likely ambient impact of the proposed trade. The following sections describe use of these alternatives to evaluate for approval many bubble or offset trades without full scale ambient dispersion modeling.[30] Use of these alternatives under generic rules is discussed in section II below.

(1) *De Minimis.* In general no modeling is needed to determine the ambient equivalence of trades in which applicable net baseline emissions do not increase [31] and in which the sum of the emissions increases, looking only at the increasing sources, totals less than 25 tons per year (TPY) for particulate matter, 40 TPY for sulfur dioxide, 100 TPY for carbon monoxide, 40 TPY for NO_x (where visibility impacts are of concern), or 0.6 TPY for lead, after applicable control requirements. Such trades will have at most a *de minimis* impacts on local air quality because no net increase in emissions will be produced and the amount of emissions being shifted is less than designated significance levels in associated EPA regulations (see, e.g., 40 CFR 51.18(j)(1)(x) and 51.24(b)(23)(i)).[32]

(2) *Level I.* In general no modeling to determine ambient equivalence is needed if:

(a) The trade does not result in an increase in applicable net baseline emissions; [33]

(b) The relevant sources are located in the same immediate vicinity (within 250 meters of each other);

(c) No increase in baseline emissions occurs at the source with the lower effective plume height as determined under EPA's *Guidelines on Air Quality Modeling;*

(d) No complex terrain [34] is within the area of significant impact of the trade [35] or 50 kilometers, whichever is less; [36]

(e) Stacks with increasing baseline emissions are sufficiently tall to avoid possible downwash situations, as determined by the formula described at 50 FR 27892 (July 8, 1985) (to be codified at 40 CFR Part 51); and

(f) The trade does not involve open dust sources.

For such Level I trades it can reasonably be assumed that "pound-for-pound" trades will produce ambient effects equivalent to those which EPA-approved air quality models would predict. Therefore modeling to determine ambient equivalence is not required.

Trades between fugitive process sources and stack sources (i.e., process-for-process or process-for-stack) can acceptably be evaluated and approved under Level I as long as the maximum distance between any emitting sources in the trade is less than 250 meters and all other Level I criteria are met.

(3) *Level II.* Bubble trades which are neither *de minimis* nor Level I may nevertheless be evaluated for approval based on modeling to determine ambient equivalence limited solely to the impacts of the specific emission sources involved in the trade, if there is no increase in applicable net baseline emissions,[37] if the potential change in emissions before and after the trade will not cause a significant increase in pollutant concentrations at any receptor for any averaging time specified in an applicable ambient air quality

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[28] The discussion in this paragraph does not apply to NO_x trades involving visibility impacts of elevated plumes.

[29] The ambient equivalence considerations elaborated in this and following paragraphs also apply to NO_x trades involving visibility impacts of elevated plumes. See n. 28 above.

[30] Modeling is generally not required for new source netting, whose purpose is to avoid expending resources where adverse emission or ambient impacts from changes at a source are extremely unlikely. See, e.g., 45 FR 52677–78 (August 7, 1980).

[31] Interested parties should, however, be aware that in some circumstances modeling may be required to justify using certain emissions baselines, prior to the trade. Where a bubble in a *nonattainment* area seeks to employ allowable values greater than corresponding actual values in the calculation of baseline emissions, and where such allowable values are not shown to be used or reflected in an approved demonstration, a full Level III modeling analysis will be required. Where a bubble in an *attainment* area seeks to employ allowable values greater than corresponding actual values in the calculation of baseline emissions, and where such allowable values are not shown to be used or reflected in an approved demonstration, a Level II modeling analysis (see below) using actual emissions for the pre-bubble case will be required unless, for bubbles processed as case-by-case-SIP revisions, the Region determines that additional technical support is necessary to protect applicable standards or increments. Where allowable values are used to calculate baseline emissions for such a case-by-case-SIP revision bubble in an attainment area where the PSD baseline has been triggered, the Region will require the technical support necessary to protect PSD increments.

Where allowable values higher than actual values are not shown to be used or reflected in an approved demonstration, states that wish to authorize their use in attainment areas *under generic bubble rules* must either state, or develop replicable procedures addressing, background values and how they will be evaluated in conjunction with the actual changes in ambient concentration predicted by the Level II analysis. These steps must be sufficient to protect standards and increments and must be approved by EPA as part of a generic rule.

For further discussion regarding calculation of baseline emissions and related modeling requirements, see Section I.A.1. above and Appendix B below.

[32] This paragraph should not be construed to imply that *new* sources and modifications need not meet all applicable requirements, including those specified under 40 CFR 51.18 or parallel EPA-approved state rules.

[33] See n. 31 above.

[34] Complex terrain is broadly defined by EPA as terrain greater in height than the physical stack height of a source. For bubble purposes, this definition is applicable only to sources with increasing baseline emissions.

[35] For guidance on determining "area of significant impact," see Appendix E below. The graph in Appendix E, or EPA-approved alternative approaches, may be incorporated in generic rules to make this aspect of Level I analysis replicable and operational. See Section II below.

[36] Generally, trades involving complex terrain as defined above may not be exempt from modeling under a Level I analysis. However, EPA will consider on a case-by-case basis additional criteria for determining whether a particular trade involving complex terrain, but otherwise meeting the requirements specified above, does not present a problem of potential plume impaction and may be approved under a Level I analysis. These additional criteria would include such factors as source height and emission rates, distance between stacks and elevated features, rate of topographical rise, and other considerations which may be appropriate for the particular geographic area. States are encouraged to work with EPA to determine where and how such additional criteria can be developed and applied to individual trades.

[37] See n. 31 above.

standard,[38] and if such an analysis does not predict any increase in ambient concentrations in a mandatory Federal Class I area.[39] The change in concentration from the before-trade case to the after-trade case must in general be modeled using refined models such as MPTER and ISC for each appropriate averaging time for the relevant national ambient air quality standards for each receptor, using the most recent full year of meteorological data.[40]

(4) *Level III.* Full dispersion modeling considering all sources affecting the trade's area of impact is required to determine ambient equivalence if applicable net baseline emissions will increase as a result of the trade,[41] or if the trade cannot meet criteria for approval under *de minimis*, Level I or Level II.

However, a geographically limited Level III analysis may be used in some cases where a Level II analysis predicts one or more exceedances of the Level II significance values. While this analysis will be limited in terms of geographic scope, it must otherwise meet the modeling requirements for a full Level III analysis, including consideration of all sources affecting the limited geographical area. In many situations this approach may permit the receptor area to be smaller than the trade's entire area of impact. Because of the unique nature of each situation, the appropriate limited geographic area must be determined in accord with EPA guidelines on modeling, and through case-by-case evaluation.

Bubble trades are approvable under either type of Level III analysis if they do not cause a new violation of NAAQS or PSD increments, significantly contribute to or delay the planned removal of an existing violation, or adversely affect visibility in mandatory Federal Class I areas.[42]

This three-tiered modeling approach is both reasonable and conservative. It will assure that the ambient impact of trades is at least equivalent in effect to original SIP emission limits, while conserving government resources and shortening approval times for many individual trades.

c. Bubbles Should Not Increase Applicable Net Baseline Emissions. Ordinarily, bubbles may not result in an increase in applicable net baseline emissions. Such a bubble would require a case-by-case SIP revision, and may only be approved based upon a combined Level III and Level II modeling analysis (i.e., an analysis sufficient to show that all applicable requirements of a full Level III analysis (as described above) are met, and that the bubble would not result in any exceedance of significance values specified for a Level II analysis at any receptor for any averaging time specified in an applicable ambient air quality standard.[43]

Where such a bubble is proposed in a *nonattainment area*, the state must demonstrate that the trade is consistent with the progress demonstration under an approved demonstration of attainment, revise its EPA-approved progress demonstration as part of the proposed SIP revision, or otherwise show (e.g., by modeling and any necessary compensating emission reductions) that the proposed trade comports with the EPA-approved emissions and ambient progress demonstration.

d. Bubbles Should Not Increase Emissions of Hazardous or Toxic Air Pollutants. Under the Clean Air Act all sources must meet applicable section 112 (NESHAPs) requirements for control of hazardous air pollutants. Sources may neither use a bubble to meet these requirements, nor increase emissions beyond the levels they prescribe. Where a source wishes to generate or use emission reduction credit for a criteria pollutant, and where a NESHAPs pollutant is part of the criteria pollutant stream, the emissions baseline for emissions of the hazardous pollutant from that source would be the lower-of-actual-or-NESHAPs-allowable emissions of that pollutant, applied as of the time of application for credit. Where EPA has *proposed* to regulate a source category for emissions of a pollutant under section 112, but has not yet promulgated a NESHAP for that source category, the proposal will serve as the interim guideline for evaluating the potential effects of any proposed emissions trade involving sources to which the proposed standard would apply. The emissions baseline for such a pollutant emitted by a source subject to the proposed NESHAP would be lower-of-actual-or-proposed-NESHAPs-allowable emissions for that pollutant.

In general, such trading proposals will be approved so long as they (1) result in emission limits for *each source* emitting the relevant pollutant which are equivalent to or less than those that the approved NESHAP requires or the proposed NESHAP would require if promulgated, (2) rely only on reductions below actual or allowable levels (whichever is less) of that pollutant, and (3) take place within a single plant or contiguous plants.

Where a pollutant has been *listed* under section 112 or EPA has published a Notice-of-Intent-to-List, but no NESHAP has been promulgated or proposed for a source which emits that

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[38] In determining "significant" impact for Level II *bubble* trades, states may use the following significance values to identify trades whose potential ambient impact need not be further evaluated before approval:

10 $\mu g/m^3$ for any 24-hour period for particulate matter;

5 $\mu g/m^3$ for any annual period for particulate matter;

13 $\mu g/m^3$ for any 24-hour period for SO_2;

46 $\mu g/m^3$ for any 3-hour period for SO_2;

3 $\mu g/m^3$ for an annual period for SO_2;

575 $\mu g/m^3$ for any 8-hour period for CO;

2300 $\mu g/m^3$ for any 1-hour period for CO;

0.1 $\mu g/m^3$ for any 3-month period for Pb.

See 45 FR 52709 (August 7, 1980). For *offset* transactions, any required modeling must follow procedures consistent with EPA's new Source Review regulations in 40 CFR 51.18 or Part 51, Appendix S, or parallel EPA-approved state regulations. "Significant" impact under 40 CFR Part 51, Appendix S is defined as 1 $\mu g/m^3$ annual average for particulates, SO_2 or NO_2; 5 $\mu g/m^3$ 24-hour average for particulates and SO_2; 25 $\mu g/m^3$ 3-hour average for SO_2; and 0.5 mg/m^3 8-hour average and 2 mg/m^3 one-hour average for CO.

[39] However, a bubble ordinarily may not be approved under Level II where other evidence related to background—i.e., formally validated ambient air quality monitoring data or previously established background values—clearly indicates that the bubble would create a new violation of an ambient standard or PSD increment, or would delay the planned removal of an existing violation.

[40] Other techniques may be approved where sources show they equally well protect NAAQS, applicable PSD increments, and visibility. For example, in limited circumstances conservative screening models may be acceptable in lieu of MPTER and ISC. In such cases, use of a full year of meteorological data may not be necessary. Such screening models may be acceptable where: (a) The screening model shows that all the emissions from the stack(s) with increasing emissions would not produce exceedances of the Level II significance values described in n. 38 above, *or* (b) the stack parameters at the stack(s) with increasing emissions do not change *and* the screening model shows that the increase in emissions at the increasing stack(s) would not produce exceedances of these significance values.

[41] See discussion in I.B.1.c. below.

[42] Where a Level III modeling analysis submitted to support a voluntary trading application indicates an exceedance of an ambient requirement, EPA will review such applications on a common-sense case-by-case basis, seeking to encourage disclosure of such exceedances and avoid undue delay of decisions on the trade, while adequately ensuring protection of public health, the integrity of the SIP process (including the state's prerogatives in determining how to remedy nonattainment), and the prompt and effective remedy of any condition of nonattainment. In its review, the Agency will take into account such factors as the degree of exceedance, the contribution of the trading sources and the trade itself to the exceedance, and the degree to which such sources would be part of any solution remedying the exceedance.

[43] Where a proposed bubble increasing net baseline emissions cannot meet this test of ambient equivalence, it may not be approved as a bubble under the Emissions Trading Policy. However, sources may still submit such revised limits for approval under the general requirements applicable to SIP revisions.

pollutant, states may generally allow trades consisting of equivalent increases and decreases of actual emissions of that pollutant within a single plant or contiguous plants. Once the relevant NESHAP is promulgated, every source, regardless of any previously approved trade involving emissions of that pollutant, must meet the requirements of that promulgation.

Where EPA has decided that one or more source categories which emit a listed pollutant do not require regulation solely because of limited national exposure, emissions of that pollutant will continue to be treated the same as emissions of any other pollutant listed under section 112.

Where EPA has issued a formal Notice-of-Intent-Not-to-List a pollutant under section 112, that pollutant will ordinarily be treated as non-hazardous. *However*, where the decision not to list or not to regulate was based on limited national exposure, but the individual risk was sufficiently high that EPA committed in the announcement of its decision to support (through some formal mechanism such as a Memorandum of Understanding (MOU)) state-level efforts to develop regulations, the pollutant will be treated as listed for trading purposes in order to assure that such state efforts are not compromised. The model for the intended scope of this classification is EPA's acrylonitrile decision. (50 FR 24319; June 10, 1985).

If a substance is neither listed nor regulated as hazardous under section 112, nor meets any of the other conditions specified above, but has been formally listed or regulated as toxic under any comparable health-based federal statute, the Administrator may consider this fact in evaluating trades which may increase emissions of that substance. This authority has not been delegated within EPA by the Administrator. See Clean Air Act section 301(a)(1), 42 U.S.C. 7601(a)(1).[44]

Exception. Trades which involve the pollutants addressed in this section but do not meet the special restrictions discussed above, may also be approved where surplus reductions in those pollutants compensate for increases in non-hazardous emissions of the same criteria pollutant. For example, a source emitting benzene may trade with a source emitting a non-hazardous VOC without meeting these special restrictions, if the benzene emissions are reduced as a result of the trade (i.e., "traded down"). As long as such a trade would not result in an increase in either actual or allowable emissions of a pollutant subject to the preceding paragraphs at any source, it would not differ in nature or requirements from a trade involving only non-hazardous VOC emissions.

e. Existing-Source Credits Cannot Be Used to Meet Applicable Technology-Based Requirements for New Sources. Under Clean Air Act section 111 and EPA implementing regulations, new affected facilities must satisfy technology-based New Source Performance Standards (NSPS), regardless of the attainment status of the area in which they are located. Under sections 165 and 173 and EPA implementing regulations, new or modified major sources must also satisfy technology-based control requirements associated with preconstruction permits. These requirements prohibit use of credits from existing sources to meet or avoid applicable NSPS, and bar use of such credits to meet applicable new source review requirements for best available control technology (BACT) in PSD areas, or lowest achievable emission rate control technology (LAER) in nonattainment areas.[45]

However, modifications of existing major sources in PSD and nonattainment areas with an EPA-approved "plantwide" definition of source can use "contemporaneous" reductions in actual emissions from within the same source to "net out of" New Source Review.[46] Under such "netting," sourcewide increases in potential emissions that do not exceed designated levels of significance (see 40 CFR 51.18(j)(1)(x), 51.24(b)(23), and 52.21(b)(23)) will not be considered "major modifications" of the source under 40 CFR 51.18, 51.24, 51.22, 51.307, 52.26, or 52.27. Thus, while these source changes must still meet applicable NSPS, NESHAPs, preconstruction applicability review requirements under 40 CFR 51.18 (a)–(h) and (l), and SIP requirements, they are not subject to new source review requirements for major modification because they are not considered "major." [47]

f. Trades Involving Open Dust Emissions. Trades involving open dust sources of particulate emissions may be approved through case-by-case SIP revisions based on modeled demonstrations of ambient equivalence. Sources proposing such trades must commit, as part of the trade's approval, to (i) undertake a post-approval monitoring program to evaluate the impact of their control efforts, and (ii) make further enforceable reductions if post-trade monitoring indicates initial open dust controls do not produce the predicted air quality results.

g. Interstate Trades. EPA will approve trades which involve sources located in neighboring states where such trades meet the criteria below and all other approval criteria applicable under today's notice. Where state trading requirements differ, EPA will require that trades with increasing and decreasing sources in different states meet the substantive requirements of the more stringent state. In general, in order to avoid complex accounting problems, EPA will deem ERCs created in another state to contribute to progress in the state where used, to the extent of that use. Such trades must be accomplished through case-by-case SIP revisions.

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[44] Trades involving emission streams partially or wholly composed of any pollutants subject to special considerations under this section must meet two separate and distinct tests to be approved. First, such trades must be approvable under the criteria and principles which apply to all trades, as discussed throughout this policy (i.e., such trades must meet baseline and other requirements for the relevant criteria pollutant). Second, such trades must be approvable with respect to the hazardous pollutant fraction of the criteria pollutant emission stream. This means that there must be no net increase in emissions of the pollutants addressed in this section, as a result of such trades. Where a NESHAP has been promulgated or proposed, the baseline for determining whether such an increase has occurred is the lower-of-actual-or-NESHAPs-allowable emissions for the hazardous component of the trade, for the source which emits that component. The promulgated or proposed NESHAP limit not only is used to define the allowable emissions for that source, but serves as an absolute ceiling on the source as well. Where a NESHAP has not yet been promulgated or proposed, the baseline for determining whether such an increase has occurred is generally actual emissions for the hazardous pollutant component of the trade. But cf. today's Policy Statement at n. 6.

[45] Today's notice does not address whether or under what circumstances facilities subject to NSPS, BACT or LAER may surpass applicable permit limits reflecting such requirements in order to create credits for existing-source trades.

[46] "Contemporaneous" means a reasonable period for accumulating increases and decreases in emissions, as specified by the state. See 40 CFR 51.18(j)(1)(vi) and 51.24(b)(3)(b) (ii).

[47] Netting also applies under the narrower "dual definition" of "source" in certain circumstances. For example, firms may use reductions within the plant to compensate for increases at several emitting units which, while not individually significant, might otherwise add up to a significant increase plantwide.

Under current EPA regulations, if a nonattainment area is subject to a moratorium on new preconstruction permits for major sources or modifications and the area does not have an approved New Source Review program, then the area automatically uses a plantwide definition. See 40 CFR 52.24.

EPA's general expansion of opportunities for states to use the plantwide source definition for certain nonattainment areas (49 FR 50766, October 14, 1984) was affirmed by the U.S. Supreme Court on June 25, 1984. *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council*, 104 S. Ct. 2778, 14 ELR 20507, *overruling Natural Resources Defense Council, Inc.* v. *Gorsuch*, 685 F.2d 718, 12 ELR 20942 (D.C. Cir. 1982).

h. Trades Near PSD Class I Areas. EPA or a state operating under a generic rule must notify the Federal Land Manager if an emissions trade will take place within 100 kilometers of a PSD Class I area. Notification must occur early enough in the review process to allow at least 30 days for the submittal of comments before the trade will be approved by the reviewing authority.

Where a bubble within 50 kilometers of a PSD Class I area is submitted to EPA as a case-by-case SIP revision, the Region may call for additional technical support, beyond the applicable requirements of the modeling screen described in section I.B.1.b. above, if deemed necessary to protect air quality in the Class I area.

i. Effect on Trades of Subsequently-Discovered Clean Air Act Problems: Revisitation Considerations. If ambient violations are discovered in an area where EPA has approved a trade, or if other violations of Clean Air Act requirements are discovered in that area, sources in the trade should be aware that they are potentially subject to requirements for additional emission reductions, just as are all other sources in the area.[48]

[48] While sources involved in a trade, like all other sources, may be subject to requirements for additional emission reductions, neither previous trades approved by EPA or by states under EPA-approved generic rules, nor emission reduction credits used as part of a bubble, offset or netting action, should be terminated.

Such termination could occur, for example, where two sources in a given source category were subject to pre-bubble mass emission limits of 100 TPY each and post-bubble limits of 50 TPY and 150 TPY respectively. Assume the state imposes a new category-wide regulation which would normally limit those sources to 40 TPY each. In this case, the first source should be required to meet the new 40 TPY limit (i.e., it should be required to produce additional reductions of 10 TPY), while the second source should be subject to a new limit of 90 TPY (i.e., a level reflecting the continued existence of the 50 TPY emission reduction credit). Termination of the emission reduction credit would occur either by requiring the first source to produce additional emission reductions of 60 TPY (i.e., more than its current level of emissions), or the second source to meet the 40 TPY limit. Either of these results would undermine the purpose of today's notice by eliminating the predictability required for generation or use of ERC's. They could also penalize trading sources for taking environmentally beneficial measures sooner than required, since it would often be more difficult to achieve the new reductions than had earlier voluntary steps not been taken.

For these reasons, EPA urges states not to take such credit-terminating actions unless there is no other practical way to satisfy the requirements of the Clean Air Act.

Today's procedures for deposit and use of banked credits already address additional state emission reduction needs in the context of banking (see section I.C.9. below). States should, however, account for all previous trades and previously granted emission reduction credits in estimating emission reductions resulting from new control strategies, in order to avoid problems due to double-counting.

2. Procedural Steps for Using ERCs

Bubble trades may be implemented through individual SIP revisions or state generic rules. This section describes principles applicable to either procedure. General principles for generic rules are addressed in Section II below. Special considerations for trades which require individual SIP revisions are addressed in Section III.

a. Effect of Existing Compliance Schedules. EPA's 1979 bubble policy required that sources be subject to binding compliance schedules based on original SIP emission limits before being eligible to apply for bubbles. Because of the time required to process bubble applications as case-by-case SIP revisions, this requirement tended either (a) to discourage sources faced with tight milestones for the installation of conventional control equipment from pursuing bubble applications, where they had agreed in good faith to SIP compliance schedules before discovering bubble opportunities, or (b) to discourage sources from agreeing to any compliance schedule until they had fully examined bubble opportunities.

Today's policy allows an application to be filed though the applicant is not subject to compliance schedules based on original SIP emission limits, so long as that applicant agrees to emission limits established as part of a complete bubble application. Sources which are already subject to binding compliance schedules should, however, be aware that submittal or proposed approval of a bubble application does not suspend their obligation to comply with such schedules. Such schedules and existing SIP requirements remain applicable and enforceable until the bubble is finally approved and the schedule has been modified accordingly.

Sources seeking trades should note that they remain subject to enforcement of existing (pre-trade) SIP limits until the bubble is approved. EPA will use the same principles and procedures for deciding whether to initiate enforcements actions in these circumstances as the Agency applies to any other source which is subject to a proposed SIP revision.

Under established EPA policy, regulated sources must be subject to an applicable enforceable emission limit at all times. Accordingly, sources which have approved bubbles with emission limits effective at future date and which are not in compliance with their pre-trade limits, may be subject to enforcement action, which could include penalties based on a failure to meet the pre-trade limits. Sources in such situations may wish to minimize the chance that capital expenditures will be required to meet pre-trade limits, either by (a) agreeing to post-trade compliance dates which are substantially similar to their pretrade compliance dates, or (b) accelerating their compliance with post-trade limits.

In accord with the general principle that bubbles should be treated neither more nor less stringently than other SIP actions, implementation of today's policy will be neutral with respect to EPA enforcement of pre-trade emission limits. This means that EPA will not specifically target for enforcement action non-compliant sources seeking to use a bubble either to come into compliance or to restructure traditional compliance. However, it also means that EPA will not withhold or defer enforcement simply because a source is seeking alternative emission limits through a bubble. In exercising its enforcement discretion, EPA will apply the same considerations to noncompliant sources which seek to comply through bubbles as to those which do not.[49]

b. Extensions of Compliance Deadlines. States may modify or extend compliance schedules or deadlines for individual sources on a case-by-case basis in conjunction with bubble approvals. Such modifications or extensions must be consistent with the requirements of 40 CFR 51.15. Compliance schedules for sources in *nonattainment* areas cannot be extended beyond the statutory date for attainment, and applicable compliance milestones must be specified and met for each year of the revised or extended compliance schedule. Because an extension will usually require a revision of the state's progress demonstration, such approvals must ordinarily be submitted as SIP revisions.

[49] Parties contemplating bubbles involving the trade of emission reduction credits from one firm to another should be aware that when the credits being provided by the first firm are the result of emission limits with a future compliance date, the obligation to meet pre-trade limits remains with the second firm (which may face enforcement action, including cash penalties, for failure to comply with those pre-trade limits) until the time specified for the first firm to achieve the reductions necessary for compliance under the bubble. The first firm's failure to achieve required bubble reductions on schedule may thereafter result in enforcement action (including cash penalties) against that firm. *However*, this paragraph should be read in conjunction with the general principle articulated above that EPA implementation of today's policy will be neutral with respect to enforcement of pretrade limits.

In *nonattainment areas*, states which wish to give sources more time to implement bubbles by granting compliance extensions must receive EPA approval of the extension through case-by-case SIP revisions. EPA will evaluate the time extension portions of these SIP revision packages in accordance with the Agency's normal procedures for review of time extensions, including consistency with the Act's requirements of expeditiousness, reasonable further progress, and attainment and maintenance of ambient air quality standards. Sources should be aware that disapproval of the time extension portion may result in disapproval of the entire package (i.e., both post-trade limits and the time extension) or only part of it, depending on whether the state views these components of the proposed SIP revision as separable.

In *attainment areas*, states may continue to grant compliance extensions without case-by-case SIP revisions, as part of bubble approvals under a generic rule. Such generic compliance date extensions may be granted in these areas only if EPA has approved the extension provision of the generic rule as adequate to comply with the Clean Air Act, including requirements for attainment and maintenance of ambient air quality standards.

c. Pending Enforcement Actions. A bubble cannot be approved for an individual emission source which is presently the subject of a federal enforcement action or outstanding enforcement order unless EPA (and where necessary the appropriate court) approves the proposal and any compliance schedule it may contain. "Federal enforcement action or outstanding order" includes notices of violation, civil actions filed under Clean Air Act section 113(b), criminal actions filed under section 113(c), notices imposing noncompliance penalties issued under section 120, administrative orders issued under section 113(a), or citizen suits filed under section 304 in which EPA has intervened if the source is subject to an administrative or judicial order.

This requirement need not preclude bubble approvals under generic rules, provided the rule specifies an appropriate mechanism for securing and recording EPA or court approval.[50] Sources should, however, be aware that such approvals cannot be finally effective until approved by the appropriate agency or court, and that they remain subject to original emission limits until such approval.

C. Banking Emission Reduction Credits

Emission reductions that are surplus, permanent, quantifiable and enforceable can qualify as emission reduction credits (ERCs) and be deposited in EPA-approvable banks. States may establish such banks by adopting appropriate rules to govern whether and how sources may own and hold surplus emission reduction credits for future use in bubble, offset or netting transactions.[51] Such banking rules may encourage sources to take measures to reduce emissions in advance of specific need for ERCs, resulting in lower transaction costs for those seeking offsets, bubbles, or partners for these transactions. States should, however, be aware that because an area's air quality situation or the status of its SIP may change in the future, failure to account for banked credits in emission inventories used for planning purposes may result in loss of those ERCs not treated as "in the air" (e.g., not included in any future SIP inventory or accounted for in any redesignation of the area to attainment), due to double-counting. Banking rules may protect such reductions in whole or in part as long as such protection is consistent with the Act's mandate to attain and maintain ambient standards while protecting PSD increments and visibility.

EPA-approvable banks can accept and evaluate requests to certify an ERC, serve as a clearinghouse for credits on deposit, and account for transfers and withdrawals of ERCs.[52] Banks can also: Register ERCs to ensure they are considered as current actual emissions in future planning (thus providing the greatest technical measure of protection to those ERCs); notify prospective purchasers of the existence of ERCs; and account for transfers and withdrawals. These roles will generally be performed by the state as part of its normal permitting activities. *Use* of banked credits must meet all the criteria of the particular SIP regulatory program under which they are to be used.[53]

The following sections address both minimum requirements for state banking rules which are approvable by EPA, and issues states should consider. States may adopt other approaches which produce equivalent results.

1. *Banking Rules Must Designate an Administering Agency*

Banking rules must identify the entity responsible for specific functions. While the state will ordinarily be responsible for verifying and processing ERC requests, all or part of this responsibility may be delegated to other organizations. Such organization(s) must possess the resources and legal authority to implement delegated activities.

2. *Only ERCs May Be Banked*

Banked emission reduction credits must be surplus, permanent, quantifiable, and enforceable by the state by the time they are banked.[54] However, if a source commits to produce a specific reduction at a specific time in the future, a state may allow a conditional deposit to be made. Procedures for such conditional deposits must ensure that they do not

[50] See section II.B.3 below.

[51] States may incorporate EPA-approvable banking rules in the SIP by submitting them for approval as SIP revisions.

Emission reductions banked through a formal or informal banking mechanism prior to a state's adoption of EPA-approvable banking rules may qualify for deposit in the EPA-approvable bank so long as (1) the source shows that its reductions are surplus, permanent, quantifiable and enforceable; and (2) the state shows that these reductions have not already been assumed or otherwise double-counted in the SIP.

[52] States and sources should be aware that because of differing regulatory requirements, the amount of credit actually derived from particular emission reductions may differ from one regulatory program to another. For example, in primary nonattainment areas needing but lacking approved demonstrations, the amount of credit from a given reduction which is available for bubble purposes may be less than that available from the same reduction for offset or netting purposes, since special progress requirements apply to bubbles in these areas.

[53] States may, however, expand opportunities for use of banked credits beyond those of current SIP programs (e.g., extend the "contemporaneous" period for netting), by submitting revised regulations addressing the banking and use of such credits, for approval as SIP revisions.

[54] In primary nonattainment areas which need but lack approved demonstrations, emission reductions made prior to application to bank or trade (whichever is earlier) will not be credited for use in bubbles (see section I.A.1.c.(1) above). Following publication of today's notice, the "date of application to bank" will be the date the source submits an application to the state to make a reduction state-enforceable through or concurrent with use of a formal bank or informal banking mechanism (see section I.A.1.b.(1) above).

In other areas, although emission reductions cannot qualify as ERCs or be deposited in EPA-approvable banks until they are made enforceable by the state, emission reductions banked through other formal or informal banking mechanisms will still be eligible for use in future trades, so long as those reductions are made federally enforceable at their time of use and all applicable requirements of the regulatory program under which they will be used are met. Since states may have to revise their regulations or permit procedures in order to implement this new definition, full implementation will not be expected until one year after publication of today's notice. However, all credits not made enforceable when banked during this interim period should ultimately be made enforceable within eighteen months from today's notice. Emission reductions currently deposited in banks should also be made enforceable by the state within eighteen months from the date of this policy.

compromise the state's ability to secure through further regulation any future reductions which may be needed.[55] In all cases the reduction must be made federally enforceable by the time the emissions trade which relies upon it is finally approved.

3. *Possible Limitations on Use of ERCs for New Source Permitting*

Use of banked ERCs for new source permitting must be consistent with applicable regulations approved by EPA under 40 CFR Parts 51 and 52. For example, under 40 CFR 51.18(j)(3)(ii)(c) shutdowns that occur prior to applications for a new source permit may ordinarily be used only as offsets for replacement facilities, and then only if the permit application was filed within one year after the shutdown occurred or if the reduction occurred after August 7, 1977.[56]

4. *Sources Should Apply to Bank Surplus Reductions As Soon As They Decide To Make Them*

For administrative simplicity and accurate quantification, sources should apply to bank reductions as soon as possible after they decide to make them. The administering agency should formally note the source's intent to make a surplus reduction, as expressed in the application. The state must then verify whether and to what extent the reduction actually occurred, and must make the reduction enforceable by the time it is accepted for deposit.

5. Procedures for Banking Surplus Emission Reductions Should Be Defined

To speed approval of trades and provide greater certainty for potential ERC creators and users, state banking rules should clearly specify which proposed emission reductions can qualify to be credited and banked, the information required of sources to substantiate their claim for credit, and any required application forms. At minimum, such rules must require firms to maintain records (e.g., production records and records of previous emission tests) adequate to determine the pre- and post-reduction actual and allowable values for emission rate, capacity utilization, and hours of operation for the source generating the ERC.

6. Banking Rules May Establish Ownership Rights

To prevent two entities from claiming or attempting to use the same ERCs at the same time, state banking rules may specify who can own ERCs. For example, while the source creating the ERC will generally be its owner, the state could, as part of its rule, reserve ownership of certain classes of ERCs to itself or local governments. States considering the latter course should carefully weigh whether such reservations are likely to increase or diminish future reductions and air quality management capabilities.

7. Banking Rules Must Establish an ERC Registry or Its Equivalent

An ERC registry or equivalent instrument allows states to track ownership, use, and transfer of all banked ERCs. Banking rules may provide that no transfer of title to a banked ERC will take effect until the transaction is reflected in the registry. This tracking system can minimize potential disputes and provide a central list of certified ERCs which may be available to potential purchasers. It can also provide useful information for quickly evaluating any proposed use of a banked ERC.

Information which may help evaluate future proposed uses of a banked ERC should be recorded at the time of its creation and entered as part of its banking record. This information should include the location of the source creating the ERCs; whether the reduction is due to a shutdown or curtailment; the date the reduction occurred or will occur (to allow future determination of the timing of the reduction with respect to the application for credit or its contemporaneity for use in netting or, if a shutdown, as an offset); the source's stack parameters; the temperature and velocity of its plume; particle size; the existence of any hazardous pollutants; daily and seasonal emission rates; and other data which might reasonably be deemed necessary under the requirements described in sections I.A. and I.B. above to evaluate future use.

To perform these tracking and clearinghouse functions the ERC registry must be accessible to the public. Subject to confidentiality considerations, states should make copies of the ERC registry available at convenient locations and times, and may want to publish or otherwise issue a periodic summary of banked ERCs.

8. Possible Adjustments to ERCs Based on Enforcement Considerations

Banking rules should state what, if any, changes may occur to ERCs after they have been banked. Once an ERC has been used by another source to meet a permit or other regulatory requirement, any violation of the conditions under which that ERC was created should result in enforcement against the source producing that ERC and not the source using it. If a state attempted to enforce against the source using purchased ERCs, a complex set of third-party lawsuits would likely ensue.[57]

9. Possible Adjustments to ERCs Based on Ambient Attainment Considerations

To assure the validity of its demonstration(s) of progress or attainment, a state with a banking rule must assume that all banked emissions will ultimately be used. In evaluating their ability to attain national standards, such states must add to their emissions inventory or measured ambient values all unused banked reductions at the site at which they were created. This is especially important for areas requesting reclassification from nonattainment to attainment. Failure to account for banked reductions as "in the air" for SIP planning purposes would ordinarily eliminate their use as ERCs following a new SIP design or inventory year, due to double-counting.

Additional emission reductions may be required from sources because of their area's failure to attain ambient standards, because of an increment violation, because of existing visibility impairment, or because new RACT requirements are being imposed under a SIP schedule. The existence of banked ERCs must not interfere with states' ability to obtain these additional reductions, and a state's rules on treatment of banked ERCs must provide it the necessary flexibility to meet future requirements. However, state banking rules may address, within this criterion, how banked ERCs will be treated if

[55] States have several available options to provide such assurance. They may, for example, bar conditional deposits from source categories which are subject to pending regulation. Alternatively, they may allow unrestricted conditional deposits but write future regulations in terms of RACT-equivalent reductions (e.g., an 80% reduction in current actual emissions) rather than in terms of specific control strategies or emission levels. The latter approach can avoid possible claims by some sources that no further control is required, while strengthening the state's ability to encourage further voluntary reductions as well as mandate needed ones. See section I.C.9.b below. States may adopt whichever alternative satisfies these concerns in their particular situation.

[56] See n. 14 above.

[57] Moreover, conflicting private-party attempts to assess ultimate responsibility for required reductions could make the purchased ERCs unenforceable and result in restoration of the creating source's original (higher) emission limits, due to claims that surplus reductions were produced in reliance on government rules implying their reasonable merchantibility and use. For these reasons emission limits altered as a result of the creation and use of ERCs must remain final and enforceable against the creator of those ERCs, so far as EPA is concerned.

additional reductions are required to attain and maintain NAAQS, protect PSD increments, or improve visibility. Available options include:

a. ERCs Generated Prior to the Design or Baseline Year Could be Eliminated. The use of ERCs generated prior to the design or baseline year is unlikely to be consistent with the state's demonstration, unless the state included such ERCs as "in the air" for planning purposes at that time.

b. ERCs Could be Guaranteed Against Adjustment. The state would determine the necessary quantity of reductions from individual sources and source categories and require these reductions from actively emitting sources. Banked credits previously created by sources would be fully preserved. Emitting sources could then satisfy new requirements for reductions either by reducing emissions directly or by using or purchasing equivalent ERCs.

In implementing this option, it would be particularly important for states to adjust downward the estimated total reductions due to these new regulatory requirements, in order to reflect reductions previously achieved as a result of banking actions. Alternatively, states could phrase new control requirements in terms of equivalent reduction results (e.g., "RACT-equivalent" reductions in nonattainment areas) as well as specified control techniques or emission levels. Under this approach necessary additional control requirements would be expressly stated in terms of additional reduction responsibilities, to be met without regard to prior trades.[58]

c. Use or Deposit of ERCs Could be Temporarily Suspended. States may suspend either ERC use or future ERC deposits until the state has committed in its SIP to secure reductions sufficient to reestablish progress or cure an increment violation. Use of either type of moratorium would be consistent with air quality objectives while allowing sources to retain and eventually use their entire quantity of banked ERCs. However, these options may be undesirable because of uncertainty regarding the moratorium's start, duration, or potential interference with user planning. This may be especially true where a moratorium on use (rather than deposit) is imposed after ERCs have been banked.

d. Across-the-Board Discounting. Under this option, the state could discount all ERCs in the bank by the same factor. For example, if a 10% additional reduction is required from a particular category of sources for the SIP's new demonstration, the state would discount all currently banked ERCs from those types of sources by 10%. Although the quantity of ERCs held by a firm will be reduced, the overall supply of ERCs will decrease, while demand will increase. Indeed, other sources may seek to purchase banked ERCs from creating sources, in order to meet the 10% reductions required of them. Thus, the price per unit of remaining ERCs is likely in many cases to increase.

This option is relatively straightforward for VOC or NO_x. For SO_x or particulate matter more detailed, source-specific modeling would generally be required to allocate the discount necessary to demonstrate attainment.

States may adopt any of these methods of accommodating possible additional reductions. They may also adopt any equivalent method which achieves the same objectives.[59]

II. Trades Covered by State Generic Rules

This section explains how states may develop EPA-approvable generic rules under which classes of emissions trades may be exempt from the general requirement for subsequent EPA approval as case-by-case SIP revisions.

A. General Principles for Evaluating Generic Rules

A generic rule is approvable if it assures that emissions trades otherwise requiring case-by-case SIP revisions under sections 110(i) and 110 (a)(3) of the Clean Air Act will be evaluated under state procedures that are sufficiently replicable in operation to guarantee that emission limits produced under the rule will not interfere with timely ambient attainment and maintenance or jeopardize PSD increments or visibility. Replicability generally means a high likelihood that two decision-makers applying the rule to a given trade would reach the same conclusion. For one example of a generic rule incorporating a very simple formula that meets tests of replicability, see 46 FR 20551 (April 8, 1981). In relation to generic bubble rules, this means that specific modeling procedures or surrogates are prescribed and that states have appropriately defined their choice of models, model inputs, and modeling techniques in applying these procedures to specific trades. Thus these trades should not create new ambient violations of standards or increments, delay the planned removal of existing violations, or degrade visibility in Class I areas. By approving such generic rules, EPA approves in advance an array of acceptable SIP emission limits, and no further SIP revision is required for trades which meet the terms of the state's approved rule.

EPA will comment on trades proposed under generic rules, conduct reviews of trades approved under those rules, and audit the implementation of these rules as part of its routine audits of other state air programs. See Section E below.

B. Scope of Generic Rules

States may use a range of mechanisms to exempt bubble trades from individual SIP revisions. While several general mechanisms are explained below, states may submit other generic rules that satisfy these basic principles. See section II.D below for specific requirements for generic rules in primary nonattainment areas which need but lack approved demonstrations.

1. VOC or NO_x Trades

VOC or NO_x trades approved by states under a generic rule that assures no net increase in applicable baseline emissions may occur without case-by-case SIP revisions.

The ambient impacts of VOC and NO_x emissions are areawide rather than source-specific. All such emissions within a broad area are considered comparable, regardless of plume height, topography or related factors. Thus, the ambient impact of trades involving emissions of VOC or NO_x from different sources within such an area will by definition be equivalent to that of the sum of applicable baseline emission limits for the sources involved in the trade.

For VOC and NO_x such pound-for-pound trades may therefore be treated under generic rules as equal in ambient effect where all sources involved in the

[58] See footnote 55 above.

[59] The preceding discussion generally assumes the bank is located in an attainment area or nonattainment area with an approved demonstration. In primary nonattainment areas which need but lack approved demonstrations, use for bubble purposes of banked shutdown or other credits which meet relevant requirements of today's notice will similarly be allowed. See section I.A.1.c.(3) above. Bubbles in these areas will already be subject to special progress requirements. However, in order to accommodate possible additional reduction requirements in other areas in a manner consistent with banks, states may voluntarily adopt such an approach for bubbles prior to the issuance by EPA of any formal notice of SIP deficiency mandating such requirements. States may also choose (as some have already done) to specify greater than 1:1 trading ratios for bubbles, offsets or netting. While this approach would not adjust the total amount of credit available in a bank, it can substantially enhance SIP planning efforts and provide a net air quality benefit by reducing the amount of emissions that can ultimately be returned from the bank to the air.

trade are located in the same control strategy demonstration area, or where replicable procedures have been approved by EPA as part of the generic rule for determining when sources outside the demonstration area are sufficiently close that a pound-for-pound trade can be justified.[60]

In general, generic VOC trading rules must require that surface coating emissions be calculated on a solids-applied basis. The rule should also specify the maximum time period over which emissions may be averaged in an acceptable compliance demonstration. For VOC that averaging time should not exceed 24 hours unless the rule contains language approved by EPA that expressly allows a longer averaging period. See Appendix D below.

2. Particulate, SO_x, CO or Pb Trades

Classes of particulate, SO_2, CO and lead (Pb) trades may also be exempt from SIP revisions if they are approved under a state generic rule which assures that valid ERC uses cannot reasonably interfere with attainment and maintenance of air quality standards or jeopardize PSD increments or visibility.[61]

De Minimis Trades. Trades of particulates, SO_2 CO or lead (Pb) in which applicable net baseline emissions[62] do not increase and in which the sum of the emission increases, looking only at the increasing sources, totals less than 25 tons per year (TPY) for particulates, 40 TPY for sulfur dioxide, 100 TPY for carbon monoxide, or 0.6 TPY for lead (Pb), after applicable control requirements, may proceed without modeling and case-by-case SIP revisions.[63] Such trades will have at most a *de minimis* impact on local air quality because they will produce no net increase in emissions and the amount of emissions being shifted is not significant in ambient effect under associated EPA regulations. See 45 FR 52745 (August 7, 1980).[64]

Level I Trades. The ambient impact of particulate, SO_2, CO or Pb emissions depends on site-specific factors such as topography and plume height which are ordinarily evaluated by ambient dispersion modeling. However, if applicable baseline emissions do not increase, sources are located in the same immediate vicinity, and all other Level I requirements discussed in section I.B.1.b.(2) above are met, it can reasonably be assumed that "pound-for-pound" trades will produce ambient effects equivalent to those which currently approved air quality models would predict. As a result, trades meeting the criteria in section I.B.1.b.(2) above may be treated in the same manner as generic VOC and NO_x trades, and exempted from modeling and case-by-case SIP revisions.

EPA will normally approve generic rules that define "same immediate vicinity" as up to 250 meters between individual emission sources involved in a trade.

Level II Trades. Other particulate, SO_2, CO and Pb trades may also be exempted from case-by-case SIP revisions if they meet the Level II criteria in section I.B.1.b.(3) above and can routinely be modeled in a prescribed manner. The state's generic trading rule must specify the particular refined model that will be employed in a given situation, or criteria for selecting models in specified circumstances. To limit variability in modeling results the rule must also require at least a full year of meteorological data, identify the sites for that data, and specify procedures for selecting input data (e.g., wind speed, stability class, source emission rate) which are sufficiently defined to satisfy replicability concerns.[65] In some limited circumstances, a sufficiently conservative screening model could be specified as part of the generic rule. See section I.B.1.b(3) above.

Level III Trades. Because of the wide variability in data input and use inherent in full-scale dispersion modeling, Level III trades must be processed as individual SIP revisions. But cf. sections II.B.4 and III below.

3. Limits on Trades Exempt From SIP Revisions Under Generic Rules

Because some trades cannot readily be addressed in a replicable manner, the following may *not* in general be exempted under generic rules from the requirement for case-by-case SIP revisions:

a. Particulate, SO_2 CO or Pb trades requiring full-scale dispersion modeling under Level III (see section I.B.1.b.(4) above);

b. Particulate, SO_2, CO or Pb trades where complex terrain[66] is within the area of the source's significant impact or 50 km., whichever is less, unless the trade does not result in a modification of effective stack heights and the trade otherwise qualifies as *de minimis* or Level I. The area of significant impact can be determined as noted in footnote 21 above and in Appendix E;[67]

c. Open dust trades; and

d. Level II trades involving process fugitive particulate, SO_2, CO or Pb emissions not discharged through stacks.[68]

In addition to the above, in order to protect the integrity of various SIP processes, the following types of trades may *not*, in general, be exempted under generic rules from the requirement for case-by-case SIP revisions: (1) Trades involving ERCs from mobile source measures, (2) trades involving emission sources which are the subject of an enforcement action manifested by issuance of a notice of violation, an administrative order or section 120 action, or the filing of a judicial complaint, unless the rule specifies an

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[60] The discussion in this paragraph does not apply to certain NO_x trades involving visibility impaction due to elevated plumes.

[61] The ambient equivalence considerations elaborated in this and following paragraphs also apply to NO_x trades involving visibility impaction due to elevated plumes. See n. 60 above.

Unlike other critical pollutants, EPA does not designate nonattainment areas for lead. However, states must review lead trades, as all other trades, to assure that they do not interfere with attainment and maintenance of the NAAQS.

Generic state approvals of trades involving pollutants addressed in this subsection must be limited to sources which are located in the same or adjacent control strategy demonstration areas and the same general air basin.

[62] See n. 31 above.

[63] The *de minimis* level is 40 TPY for NO_x trades where visibility impaction due to elevated plumes is a consideration.

[64] This paragraph should not be construed to imply that *new* sources and modifications need not meet all applicable requirements, including those specified under 40 CFR 51.18 or parallel EPA-approved state rules.

[65] Because today's notice confirms the authority of states to use such EPA-approved refined models as MPTER, CRSTER or ISC to conduct the "daily, temporal, spatial analysis" of post-trade ambient impacts required under Level II, approval of generic rules incorporating Level II approaches should be less uncertain and burdensome than under the previous 1982 approach. See, e.g., Appendix C below.

[66] Complex terrain is broadly defined by EPA as terrain greater in height than the physical stack height of a source. For bubble purposes, this definition is applicable only to sources with an increase over baseline emissions.

[67] Generally, aside from the exception stated above, trades involving complex terrain as defined above may not be processed under generic rules. However, states may wish to develop and submit for EPA approval additional area-specific criteria for determining when trades involving complex terrain do not present problems of potential plume impaction, and therefore may be approved under generic rules as *de minimis*, Level I or Level II trades using a flat terrain model. These additional criteria would include such factors as source height and emission rate, distance between stack and elevated features, rate of topographical rise, and other considerations which may be appropriate for a particular geographic area. States are encouraged to work with EPA to determine whether, where and how much additional criteria can be developed and applied within their state. Unless EPA has formally approved such additional criteria for a given geographic area as part of a generic rule, states must apply the general restrictions stated above when processing trades in that area under the rule.

[68] See Appendix C.

appropriate mechanism for notifying EPA of the source's bubble application prior to formal state proposal and for securing and recording written EPA concurrence that the bubble meets all pertinent requirements of the generic rule, (3) interstate trades, (4) VOC trades with averaging times longer than 24 hours, unless a state generic rule expressly providing for longer averaging times has been approved by EPA, (5) trades involving work practice and equipment standards, unless a state generic rule containing a provision expressly providing for state evaluation of such trades in a replicable manner has been approved by EPA, and (6) trades involving negotiated RACT baselines. *However,* a state generic trading rule could specify "presumptive RACT" limits which acceptably define generic trading baselines where RACT has not otherwise been defined in the SIP. While RACT baselines different from this presumptive limit could still be used for specific trades, they would need to be approved as case-by-case SIP revisions. Where there is no RACT in the SIP, but EPA has issued a CTG for sources of the type involved in the trade, the CTG should be used as the presumptive RACT-component of the generic trading baseline.

To the extent necessary, EPA will issue notices requiring that existing generic rules be revised to reflect these restrictions. See section II.E.4. below.

4. Other Generic Mechanisms for Exempting Particulate, SO_2, CO or Pb Trades From Case-by-Case SIP Revisions

EPA will approve other generic techniques which are demonstrated to equally protect ambient standards, PSD increments, Class I areas, and visibility. For example, a state could approve a modeled formula for two or more specific emission sources which would satisfy ambient concerns while allowing firms to define specific permit limits at each covered emission source. Like other generic provisions, such a formula would have to be approved as part of the SIP. EPA encourages states to work with EPA Regional Offices where they seek to develop other generic mechanisms which meet the tests of replicability and ambient equivalence described above.

C. Enforcing Emission Limits Under Generic Rules

Alternative emission limits approved under generic rules are considered by EPA to be federally enforceable so long as the generic rule specifies the compliance instrument (permit limits, etc.) under which the conditions of the trade will be implemented and all substantive and procedural requirements of the approved rule are met. Generic rules must specify that such alternative limits become applicable requirements of the SIP under § 110 for purposes of sections 113, 120, and 304 of the Clean Air Act and are enforceable in the same manner as other SIP requirements. To assure that EPA and citizens know what emission limits apply, generic rules must also specify that, and in what manner, EPA will be informed of emission limits applicable before and after the trade. (For additional issues related to enforceability, see section I.A.2 above. For requirements related to opportunity for public comment, see section II.F. below).

D. Generic Bubble Rules in Primary Nonattainment Areas Which Lack Approved Demonstrations of Attainment

Generic rules will continue to operate in primary nonattainment areas which require but lack approved demonstrations of attainment, under the following conditions:

1. Bubbles approved under existing generic bubble rules prior to the effective date of today's policy will not be affected by today's requirements.

2. Bubbles submitted to states under existing generic rules may continue to be approved by states in accord with those rules, until such rules are finally changed, pursuant to specific formal EPA request, to meet the criteria listed below. Such rules must, however, as requested by EPA, be modified to meet the criteria below.[69]

3. Applications for new generic bubble rules applicable to these areas, and applications for generic rules now pending before EPA, will be approved provided they meet the criteria below and all other applicable requirements of today's policy.

Criteria for Approvable Generic Bubble Rules. New and revised generic bubble rules applicable to primary nonattainment areas which require but lack approved demonstrations of attainment must, for bubbles in those areas:

a. Use lowest-of-actual-SIP-allowable-or-RACT-allowable emissions baselines for all sources involved in the trade; [70]

b. Using baseline emissions defined above, meet applicable *de minimis* Level I or Level II modeling tests for ambient equivalence, as appropriate;

c. Produce an overall emission reduction from each bubble equal (in percentage terms) to the larger of a 20% reduction in emissions remaining after applicable baselines, or to the overall emission reduction from controllable stationary sources (in percentage terms) needed to attain in the area (i.e., at least equal to the source-by-source emission reductions that would be required for a full demonstration of attainment, taking into account "uncontrollable" area or other stationary sources and expected emission reductions from mobil sources).[71] This determination must be

[69] In the interim, EPA expects states to ensure, so far as feasible, that bubbles approved under existing generic rules are consistent with this policy as well as with the terms of their EPA-approved rules. States should be aware that without this or similar precautions, continued approval of bubbles under existing generic rules containing identified deficiencies may create or accentuate plan deficiencies which may have to be corrected at a later date or compensated for by other means. See section E.4. below.

[70] For detailed discussion of these baselines, see section I.A.1.b. above and Appendix B.

[71] For example, assume air quality analysis indicates the area must decrease its base-year emissions by 45% to attain the relevant NAAQS. Further assume

	TPY
(a) For the base year:	
Uncontrollable stationary source emissions (e.g., residential combustion sources)	2,500
Controllable stationary source emissions	3,500
Mobile source emissions	4,000
Total	10,000
Target emissions for attainment 10,000×(1.0-0.45)	5,500
(b) For the projected attainment year (before additional controls):	
Uncontrollable stationary source emissions (2,500×1.1)	2,750
Controllable stationary source emissions (3,500×1.2)	4,200
Mobile source emissions	2,500
Total	9,450

Therefore the reductions needed from controllable stationary sources are 9,450–5,500=3,950 TPY

And the percent emission reduction required from controllable stationary sources to attain is

$$\frac{(3950)}{(4200)} \times 100 = 94\%$$

Thus the net overall reduction required from each generic bubble would be 94% (i.e., the reductions produced by applicable baselines (e.g., application of a RACT emission rate) plus whatever percent reduction in emissions remaining after this RACT limit is sufficient to yield the 94% total).

States that wish to avoid SIP revisions for sources for which RACT has not yet been defined in an approved SIP provision may incorporate "presumptive RACT" limits (e.g., 80% reduction for VOC) in their generic rules. Sources would then have the option of accepting these RACT limits for generic bubble purposes, or negotiating different RACT limits through the SIP revisions process. However, where a source involved in a trade is one for which EPA has issued a CTG, but the state has not yet adopted the CTG-specified limit as RACT and no RACT has yet been specified by the state for that source, the presumptive or negotiated RACT limit for the trade must be at least as protective as the CTG for that source.

submitted with the rule, and must use the same type and quality of analysis as that required for an EPA-approvable SIP; and

d. Provide assurances, in conjunction with the State's submittal of the generic rule to EPA, that the state (i) is making reasonable efforts to develop a complete approvable SIP that will achieve the percent emission reduction from controllable sources described in the previous paragraph and (ii) intends to adhere to the schedule for development of such a SIP (including dates for completion of emissions inventory and subsequent increments of progress), as stated in the letter accompanying the submittal or in previous letters. In addition, to ensure that generic approvals continue to complement and do not interfere with attainment planning, EPA will require the state to include the specific assurances listed at section I.A.1.b.(3) above in or with its notices of proposed and final approval of each bubble issued under the generic rule in such a nonattainment area.[72]

E. EPA Oversight of Generic Rules

In order to ensure proper implementation of EPA-approved generic trading rules, EPA intends to (a) examine and comment on, together with any other public commenter, the information provided for individual trades proposed under a generic rule, (b) conduct reviews of individual trades approved under such a rule, and (c) periodically audit the implementation of the generic rule itself.

1. EPA Comment on Trades Proposed Under Generic Rules

When processing emissions trades under generic rules, states are required to provide EPA and the public with adequate notice and opportunity to comment. See sections II.F. and II.G. below. EPA will use state procedures for notice and comment to oversee the implementation of generic rules without delaying state processing of trading applications.

The information which a state must provide to EPA by the first day of the comment period (see section II.G. below) is generally sufficient for EPA to determine that a trading application is being processed properly. Where this information is not sufficient, EPA may request the application itself, and the state must provide it promptly.

Where EPA elects to provide any comments on the proposed approval, it will do so in writing, by the close of the comment period specified in the state's notice. EPA may also testify at any public hearing held pursuant to the approval of a trading application under a generic rule. Trading applicants and state officials are strongly advised to address EPA's comments, and where necessary to incorporate an appropriate response to those comments in the final approval document.[73]

2. Reviews of Individual Bubbles Approved Under Generic Rules

Reviews of Individual generic bubble approvals, apart from the regularly scheduled reviews associated with activities under EPA's National Air Audit System (see section II.E.3. below), may be conducted at any time by EPA in order to promptly address identified or suspected problems and to avoid patterns of improper approval or other adverse effects which might accumulate before the next biannual audit is conducted.

3. EPA Audits of the General Implementation of Generic Rules

Under the National Air Audit System, EPA conducts a program audit of each state agency responsible for implementing the SIP and delegated federal programs.[74] These audits are currently carried out on a biannual basis. As part of the National Air Audit System, EPA will conduct an in-depth file audit of a representative sample of generic trading approvals issued by the relevant state.

4. Deficient Generic Trades

As discussed above, generic rules can expedite the approval process for certain classes of emissions trades because they allow such trades to be approved by states without undergoing a subsequent federal rulemaking process. However, to be considered valid by EPA, a trade approved under a generic rule must:

(1) Be one of a class of trades which is within the scope of the generic rule,

(2) Be approved *after* the generic rule has been approved by EPA, and

(3) Meet all the provisions of the generic rule as approved by EPA.

If a state-approved emissions trade does not meet all these requirements it cannot be considered part of the SIP and by definition cannot replace prior valid emission limits in the SIP. See 46 FR 20554–55 (April 6, 1981). Should EPA determine, as a result of its oversight activities, that a state-approved trade is inconsistent with the above requirements, it will notifiy the state and source in writing and specify any necessary remedial measures. In such circumstances, EPA may take appropriate remedial action to assure attainment and maintenance, including direct enforcement of the original SIP limits.[75]

5. Deficient Generic Rules

Existing generic rules approved under previous EPA policy and guidance may require revision in order to make them consistent with today's final policy. In addition, a generic rule approved by EPA under the final policy may subsequently be found to be deficient in some respect. Because EPA-approved generic rules have independent force of law, they can only be amended upon completion of a formal SIP revision process.

In order to ensure that generic rules are consistent with the Agency's current Emissions Trading Policy, EPA will publish notices in the **Federal Register** which identify any generic rules requiring formal modification.[76] These notices will identify specific deficiencies and means for correcting them, and will set forth a schedule for submission and review of revised rules. These notices will alert affected states to the danger that continued processing of trades

[72] These four requirements must be included as a contingent provision in all future generic rules, with the contingency triggered to apply to bubbles in primary nonattainment areas which become subject to a SIP call questioning their approved demonstration, after the generic rule was approved.

[73] Lack of EPA comment during the comment period will not bar future appropriate EPA enforcement or rulemaking actions if the bubble is found to be inconsistent with the generic rule.

[74] See, e.g., National Air Audit Guidelines for FY 84, Office of Air Quality Planning and Standards, EPA–450/2–83–007 (November 1983).

[75] In some cases EPA may have approved state SIP provisions which meet the functional criteria for generic rules, without indicating whether or not those provisions were approved for generic operation. Today's notice does not address the effect of generic validity of such provisions.

[76] EPA's publication of such notices will not trigger special progress requirements for case-by-case SIP revision bubbles in areas other than primary nonattainment areas which require but lack demonstration. Primary nonattainment areas which require but lack demonstrations should already be subject to special progress requirements of case-by-case SIP revision bubbles.

under these rules may create or accentuate plan deficiencies which may have to be corrected at a later date or compensated by other means. Where states fail to remedy deficiencies identified in the notice within the prescribed period, EPA may either rescind its previous approval of the rule, or issue a notice of SIP deficiency under section 110(a)(2)(H) of the Act.

F. Public Comment

For emissions trades processed under generic rules, existing state statutes or regulations will generally provide for adequate public notice and opportunity to comment, including opportunity for judicial review sufficient to make comment effective. Under such statutes or regulations, after the state has reviewed a bubble application submitted pursuant to an approved generic rule, a newspaper or similar notice is typically published providing a comment period (usually thirty (30) days) on the proposed decision to approve or disapprove the application. This notice generally informs the public that the proposed approval document (license, order, permit, consent agreement, etc.), the application itself (with the exception of any portion entitled to confidentiality under state or federal law[77], and the technical analysis performed by the state in making its proposed determination, are available for review at specified times and locations. The notice also offers the opportunity for a public hearing.

Under today's policy, the state must also notify the relevant Federal Land Manager if an emissions trade will take place within 100 kilometers of a PSD Class I area. Notification must occur early enough in the review process to allow at least 30 days for the submittal of comments before the trade will be approved by the state.

Where adequate procedures for public notice and comment are not already provided in existing state statutes or regulations, such procedures must be provided as part of an EPA-approved generic rules. In all proposed and final generic bubble actions, states must clearly and publicly identify both the pre- and post-trade actual and allowable emissions of each source involved in the trade, so that the ambient effects of each bubble may be known.

To ensure adequate public awareness consistent with § 304 of the Clean Air Act, state generic rules or other existing state laws or regulations must also make publicly available any changes to emission limits which result from trades approved under a generic rule.

G. EPA Notification

In addition to the above requirements for public notice and comment, the generic rule or other state provisions must require that states, by the first day of the public comment period, provide the appropriate EPA Regional Office (see addresses in Appendix A) with a copy of the public notice, the proposed approval document, and the technical analyses performed in evaluating the trading application, together with any summary of those analyses which is available for public review.

State provisions must also require that immediately upon issuance of a final generic trading approval, the state will forward two copies of that document to the relevant EPA Regional Office, and will also submit to EPA any additional documentation which is included in comments or the post-comment record and supports that final state approval.

Any notices issued by EPA to correct notice and comment procedures which do not meet these requirements under current or future generic rules will not trigger special progress requirements or otherwise affect the operation of those rules. Because of the importance of adequate public and EPA notice, affected states should, however, correct deficient notice procedures to the extent practicable, in the interim period before formal rule revisions are submitted and approved.

H. Rulemaking on Generic Rules

EPA will process acceptable generic trading rules for approval as revisions to SIPs as expeditiously as possible. In the interim, states are encouraged to use parallel-processing SIP revision procedures (see 46 FR 44477; Sept. 4, 1981) wherever practical. Trades may not be generically approved by a state until EPA has published a notice of final approval of the generic trading rule in the **Federal Register.**

III. Trades Not Covered by State Generic Rules

In the absence of a generic rule, states and sources must use case-by-case SIP revisions to effect bubble or external offset trades. Individual trades may also fall outside the scope of an approved generic rule and still be implemented as case-by-case SIP revisions. The principles described in the Policy Statement and this Document will be used to evaluate these emission trades.

Because of the ability of the case-by-case SIP revision process to take account of greater individual variations, many trades which could not be accomplished under a generic rule may nevertheless be approved as case-by-case SIP revisions. Through this SIP revision process, states and sources may also demonstrate that a general principle discussed in Section I above does not apply to their particular circumstances, or that such a principle may be satisfied in other ways.

EPA will make reasonable efforts to take prompt action on SIP trading proposals after a state has ruled on an individual application and submitted it to the Agency. EPA encourages "parallel processing" of such proposals, with EPA and state officials conducting concurrent review so that both agencies can give public notice of proposed action at roughly the same time. EPA can then take final action after the state completes its proceedings, provided the state does not substantially alter the proposal after public notice. EPA will also publish noncontroversial SIP revisions as direct final actions, converting them to proposals only if requests to submit adverse comments are received within 30 days (see generally 46 FR 44477, September 4, 1981). In all bubble actions EPA will clearly identify (or require states to identify, as appropriate) both pre- and post-trade actual and allowable emissions for each source involved in the trade, so that the ambient effects of each bubble may be known.

Appendix A—Regional EPA Emissions Trading Coordinators

Region I. David Conroy (APS–2310), State Air Programs Branch, U.S. Environmental Protection Agency, Region I, John F. Kennedy Federal Building, Boston, Massachusetts 02203, (617) 565–3252; FTS 835–3252

Region II: Betty Martinovich, Air Branch, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10007, (212) 264–2517; FTS 264–2517

Region III: Cynthia Stahl, Air Programs Branch, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19101, (215) 597–9337; FTS 597–9337

Region IV: Melvin Russell, Air Programs Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, (404) 257–2864; FTS 257–2864

Region V: Joe Paisie, Air Compliance Branch, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 886–5777; FTS 886–5777

Region VI: Bill Riddle, Air Program Branch, U.S. Environmental Protections Agency, Region VI, First

[77] The specific pollutants emitted by the source, the amount of those pollutants, and their ambient air impact may not be deemed confidential.

International Building, 1201 Elm Street, Dallas, Texas 75270, (214) 767–9870; FTS 729–9870

Region VII: Charles Whitmore, Air Support Branch, U.S. Environmental Protection Agency, Region VII, 324 East 11th Street, Kansas City, Missouri 64106, (913) 236–2896; FTS 757–2896

Region VIII: Dale Wells, Air Programs Branch, U.S. Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Denver, Colorado 80296, (303) 293–1773; FTS 564–1773

Region IX: Nancy Harney, Air Management Division, U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 94105, (415) 974–7658; FTS 454–7658

Region X: David Bray, Air Programs Branch, U.S. Environmental Protection Agency, Region X, 1200 6th Avenue, Seattle, Washington 98101, (206) 442–4253; FTS 399–4253

Appendix B—Definitions of "Actual," "Allowable" and "Baseline" Emissions for Purposes of Emissions Trading

As used in this document with respect to bubbles, a source's "actual" emissions equal its average historical emissions, in tons per year, for the two-year period preceding the source's application to bank or trade emission reduction credit. Another time period may be deemed more representative of typical operations, but the applicant or state must show that actual emissions of such other period are consistent with air quality planning for the area. The definition of "actual emissions" for new source review purposes is somewhat different.[1] See 45 FR 52745 (August 7, 1980); 40 CFR 51.18(j)(1)(xii), 51.24(b)(21), 52.21(b)(21) and 52.24(f)(13).

A sources's "allowable" emissions in tons per year are calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable operating restrictions) and the most stringent of: (a) A standard applicable under 40 CFR Parts 60 or 61; (b) any applicable SIP emissions limitation, including those with a future compliance date; or (c) an emissions rate set in a federally enforceable permit condition. See 40 CFR 51.18 (j)(1)(xi), 51.24(b)(16), 51.21(b)(16) and 52.24(f)(11). The same definition of "allowable emissions" appears at each of these citations. See also 45 FR 52745 (August 7, 1980).

For bubbles, a source's "baseline" emissions are equal to the product of its (1) *emission rate* ("ER"), specified in terms of mass emission per unit of production or throughput (e.g., pounds SO_2 per million BTU or pounds of VOC per weight of solids applied); (2) *average hourly capacity utilization* ("CU") (e.g., millions of BTU per hour or weight of solids applied per hour); and (3) *number of hours of operation* ("H") during the relevant time period. I.e., baseline emissions = ER x CU x H. Net baseline emissions for a bubble are the sum of the baseline emissions of all sources involved in the trade.

In attainment areas and nonattainment areas with approved demonstrations of attainment, a source's baseline emissions for bubble purposes must generally be determined using the lower of "actual" or "allowable" values for each of the three baseline factors. Actual values for these factors are determined based on the source's average historical values for the factors for the two-year period preceding the source's application to bank or trade emission reduction credits. As discussed above, another time period may be deemed more representative of typical operations, but the emissions for that other period must be shown to be consistent with air quality planning for the area. A source's allowable values for the three baseline factors are determined based on its lowest federally enforceable limit for those factors (i.e., the lowest limit specified in an applicable SIP, PSD or other NSR permit issued under an EPA-approved program, compliance order, or consent decree), including those with a future compliance date.

The actual values for any of the three baseline factors, when higher than corresponding allowable values, may not be used by a source in calculating baseline emissions (i.e., reductions down to compliance levels cannot qualify for emission reduction credit). The allowable values for one or more of these factors, when higher than the corresponding actual values, may be used in calculating bubble baseline emissions for a source only in the following circumstances:

- Where, in a nonattainment or attainment area with an approved demonstration, the applicant shows that the demonstration assumes allowable value(s) for the factor(s) in question. Such a showing must be based on written evidence.
- Where, in an attainment area, the approved demonstration does not assume allowable value(s) for the baseline factor(s) in question, but the applicant performs satisfactory ambient tests to show that the use of such allowable value(s) will not jeopardize attainment and maintenance of NAAQS, PSD increments or visibility. For particulate matter or SO_2, this will require at least a Level II modeling analysis using actual emissions for the pre-trade case.[2] Where such an analysis is submitted to justify allowable values for a case-by-case SIP revision bubble, the Region may require additional technical support if deemed necessary to protect applicable standards or increments. See Section I.B.1.b above.
- Where, in a non-attainment area with an approved demonstration of attainment, the demonstration does not assume allowable value(s) for the baseline factor(s) in question, but the applicant demonstrates through a Level III modeling analysis that the use of such allowable value(s) will not jeopardize attainment and maintenance of NAAQS or PSD increments.
- Where, in an attainment area or a nonattainment area with an approved demonstration, a source has a new source preconstruction permit issued after the PSD baseline date or the base year of the attainment demonstration. In such cases, the applicant may use the value(s) of ER, CU and H upon which the new source permit was approved.

While the Emissions Trading Policy does permit sources to use allowable values for ER, CU and H in determining baseline emissions for bubbles under certain carefully prescribed conditions, the approach taken recognizes that SIP demonstrations are frequently based on a "hybrid" of allowable and actual values, and that bubble baselines in these areas must accurately reflect SIP assumptions for all three baseline factors, or be justified by appropriate modeling, to maintain SIP integrity.

In nonattainment areas needing but lacking approved demonstrations of attainment, sources involved in a bubble must use "lowest-of-actual-SIP-allowable-or-RACT-allowable" emissions baselines. The ER factor for such baselines is based on the actual emission rate, the SIP or other federally enforceable emission limit, or a RACT emission limit, whichever is lower, as of the time of the source's applicable to bank or trade, whichever is earlier. The CU and H factors for such baselines are based on the lower of actual or

[1] For instance, the calculation of actual emissions for netting purposes is as of the date of the event that brings about the reduction.

[2] Where the PSD baseline has been triggered, and such emissions data is available, the pre-bubble situation for sources which were in existence or commenced construction prior to the PSD baseline date should be modeled using emissions consistent with the PSD baseline concentration as defined in 40 CFR 51.24(b)(13) and 52.21(b)(13). However, emissions and associated parameters may be based on more recent values where past emissions data cannot readily be obtained. For related principles see section I.A.1.c.(1) above.

allowable values for those factors. Actual values for CU and H must be determined using the source's average historical values for the two year period preceding the source's application to bank or trade, unless another two year period is shown to be more representative of typical operations.

For sources which banked or sought to bank credit in these nonattainment areas prior to publication of today's notice, the "date of application to bank" is the date of written application to the state to bank credit through a formal bank or informal banking mechanism for use in future trades. For sources which seek to bank credit in these areas following publication of today's notice, the date of application to bank will be the date of written application to the state to *make a reduction state-enforceable* through or concurrent with use of a formal bank or informal banking mechanism.

Appendix C—Approvable Modeling Approaches

U.S. Environmental Protection Agency

Office of Air, Noise, and Radiation

February 17, 1983.

Memorandum

Subject: Emissions Trading Policy—Technical Clarifications

From: Sheldon Meyers, Director, Office of Air Quality Planning and Standards (ANR–443)

To: Director, Air and Waste Management Division, Regions II–IV, VI–VIII, X; Director, Air Management Division, Regions I, V, IX

The proposed emission trading policy was published on April 7, 1982, in the **Federal Register**. During the initial implementation of the proposal, numerous emissions trading issues have arisen including several ralating to the technical requirements of dispersion modeling and control strategy evaluations. To address these modeling issues, a special workshop was held to solicit recomendations from Regional meteorologists/modelers as well as the various Headquarters technical staff. The Standing Committee on Emissions Trading has also considered these issues and the recommendations of the workshop group.

This memo is intended to outline the results of these meetings and to provide interim guidance. It is effective immediately and will be incorporated into the final Agency policy when promulgated. The following revisions or clarifications on modeling for TSP, CO, and SO_2, are intended to supplement the criteria included in the April 7, 1982, emissions trading policy statement.

Level I Analysis

- To ensure air quality equivalence under Level I analysis (modeling is not required), trades cannot be approved where complex terrain (terrain greater than any stack with increasing emissions) is within the area of significant impact of the source or 50 kilometers, whichever is less.
- Stacks with increasing emissions must be at least good engineering practice (GEP) to prevent downwash.
- Fugitive process and stack sources can be traded under Level I (i.e., process for process, process for stack, and stack for stack) as long as the maximum distance between any emitting points is less than 250 meters. (This is true for trades under generic rules as well as for trades implemented by SIP revisions. The effective stack height requirement in the April policy remains.)
- Since trades involving open dust sources are very difficult to address in a replicable manner, they cannot currently be approved under generic Level I bubble regulations. (Reiteration of April 7, 1982 proposed policy.)

Level II Modeling Analysis

- In order to satisfy the basic requirement of the emissions trading policy that trades "must demonstrate ambient equivalence," the maximum change in air quality impact (delta) must be determined when performing a Level II anaylsis. Experience has shown that this requirement is not necessarily met where the April 7 policy says to analyze only the "impact at the receptor of maximum predicted impact after the trade." Therefore, to assure that no degradation of air quality greater than the significance levels would occur at any site, the method of finding the maximum deltas must be determined on both a spatially and temporally consistent basis. This menas that you look at each receptor point and determine the change in concentration from the before trade case to the after trade case sequentially for each time period within a full year of meteorological data (time period means the appropriate ambient standard averaging time: e.g., 3-hour, 24-hour, etc.). This appears the most reasonable method of determining ambient equivalence at this time.

Other techniques may be approved where they can be demonstrated to be equally protective of the standards and PSD increments. Also, a Level III analysis may be used to supplement those cases where Level II analysis shows a few receptors registering deltas greater than the significance values. This limited Level III anaysis would involve only the geographical area containing the high deltas and would include all contributing sources to that area.

- Use of refined models (e.g., MPTER, ISC) with at least one year of meteorological data is acceptable for a Level II analysis.
- To ensure replicability, only trades involving process fugitive emission sources vented through stacks can be approved in generic Level II rules unless the State rule specifically identifies actual facilities between which process fugitive trades would be permitted. In such cases, the State rule must specify the emission points and all associated and pertinent parameters needed to ensure replicability of modeling results.
- Since trades involving open dust sources are very difficult to address in a replicable manner, they cannot currently be approved under generic Level II bubble regulations. (Reiteration of April 7, 1982 proposed policy.)
- Trades involving complex terrain cannot be approved under Level II generic rules; however, approval of such trades through individual SIP reviews are possible under Level II. EPA's experience in processing bubbles for such sources has shown that they are exceedingly difficult to address in a replicable manner. They require a considerable number of judgments and negotiations among Agency personnel concerning the models, data bases, and proper source characterization.
- All national ambient air quality standards (NAAQS) averaging periods, not just the 24-hour, must be considered when performing the air quality equivalence analysis. This is necessary to assure trades approved under Level II will not have any adverse health and welfare impacts. Therefore, all Level II analyses must test the delta for each receptor site against the following significance levels: TSP—10 $\mu g/m^3$ (24-hour), 5 $\mu g/m^3$ (annual); SO_2—13 $\mu g/m^3$ (24-hour), 46 $\mu g/m^3$ (3-hour), 3 $\mu g/m^3$ (annual); CO—575 $\mu g/m^3$ (8-hour) 2300 $\mu g/m^3$ (1-hour).

Implementation of Changes

Implementation of these changes by the Regional Offices in their negotiations with States and individual sources should begin immediately. If there are any on-going bubble activities where the Regions or States and sources have reached firm agreements which do not comport with these changes, please alert Tom Helms (FTS 629–5526) of my staff. Consideration will be given to situations where the source or State has

already invested significant resources in a good-faith analysis based on prior methods of demonstrating ambient equivalence. If you have specific questions regarding implementation of these policy changes, please call Tom Helms.

cc: Chief, Air Branch, Regions I–X, Meteorologist, Regions I–X, Mike Levin, Joe Tikvart, Darryl Tyler

Appendix D—Approvable Averaging Times for VOC Trades

U.S. Environmental Protection Agency

Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711

January 20, 1984.

Memorandum

Subject: Averaging Times for Compliance With VOC Emission Limits—SIP Revision Policy

From: John R. O'Connor, Acting Director, Office of Air Quality Planning and Standards (MD–10)

To: Director, Air and Waste Management Division, Regions II–IV, VI–VIII, X, Director, Air Management Division, Regions I, V, IX.

The purpose of this memorandum is to clarify the Agency's policy regarding emission time averaging for existing sources of volatile organic compounds (VOC's). Numerous State implementation Plan (SIP) revisions, both broad regulations and source-specific changes, have been submitted which provide for compliance determinations by "time averaging" emissions of VOC for periods exceeding 24 hours. These requests and the following policy on this subject were discussed extensively at a recent meeting attended by those Regional Offices which have the most pending actions (Regions I, III, IV, V); the Office of Air Quality Planning and Standards; and the Office of General Counsel. This policy represents the consensus of the meeting attendees.

The objective of EPA's national VOC emissions control program is the timely attainment and maintenance of the national ambient air quality standard (NAAQS) for ozone. SIP revisions and other regulatory actions relating to VOC control must maintain the integrity of this basic objective. There should be assurances that VOC emission control is reasonably consistent with protecting this short-term ozone standard. Further, since SIP's and associated VOC control programs comtemplate the actual application of reasonably available control technology (RACT), regulatory actions that incorporate longer term averages to circumvent the installation of overall RACT level controls cannot be allowed.

Current Agency guidance specifies the use of a daily weighted average for VOC regulations as the preferred alternative where continuous compliance is not feasible. An example might be where a facility operates in a batch manner with multiple lines and various products. Reference is made to the December 8, 1980, **Federal Register** (copy attached) where can coating operators are allowed to "bubble" several production lines and average emissions over a 24-hour time period.

The preferred daily weighted average alternative may not be feasible in all cases. Where the source operations are such that daily VOC emissions cannot be determined or where the application of RACT for each emission point (line, machine, etc.) is not economically or technically feasible on a daily basis, longer averaging times can be permitted under certain conditions. In determining feasibility, consideration might be given, for example, to the extent to which modifications can be made to testing, inventory, or recordkeeping practices in order to quantify daily emissions. Also, variability or lack of predictability in a source's daily operation might be considered as well as availability of control technology or the physical impediment or restriction to control equipment installation. In order to allow longer than daily averaging in SIP regulations, the following conditions or principles must be honored:

1. Real reductions in actual emissions must be achieved, consistent with the RACT control levels specified in SIP's or the control technique guidelines (CTG's). These limits are typically expressed in terms of VOC per unit of production (a qualitative term such as lbs VOC/gal coating). Where it is not feasible to specify emission limits in such terms, emission limits per unit of time can be approved provided that:

a. The emission limits reflect typical (rather than potential or allowable) production rate and operating hours. These emission limits must truly reflect emissions reductions consistent with RACT and are not simply an artificial constraint on potential emissions. This must be supported in the SIP revision by historical production and operation data.

b. Nonproduction or equipment downtime credits are not allowed in the emission limit calculation unless a Federally enforceable document specifically restricts operation during these times. Such credit must be based on real, historical emissions.

2. Averaging periods must be as short as practicable and in no case longer than 30 days.

3. A demonstration must be made that the use of long-term averaging (greater than 24-hour averaging) will not jeopardize either ambient standards attainment or the reasonable further progress (RFP) plan for the area. This must be accomplished by showing that the maximum *daily* increase in emissions associated with long-term averaging is consistent with the approved ozone SIP for the area.

4. Sources in areas lacking approved SIP's, or in areas with approved SIP's but showing measured violations, cannot be considered for longer term averages until the SIP has been revised demonstrating ambient standards attainment and maintenance of RFP (reflecting the maximum daily emissions from the source with long-term averaging).

Meaningful short-term (i.e., daily) emission caps are desirable especially for sources subject to large fluctuations in emissions. The use of a daily cap (equal to or less than current average emissions on a daily basis) that limits short-term emissions to RACT equivalent levels would meet the above objective of ensuring VOC control that is consistent with attaining the NAAQS for ozone.

States have the primary responsibility to show adherence to the above principles and, to do so, must include the following information (in detail) in all SIP revision requests that seek VOC averaging times greater than 24 hours:

1. The VOC limits specified in an enforceable form with appropriate compliance dates.

2. A description of the affected processes and associated historical production and operating rates.

3. A description of the control techniques to be applied to the affected processes such as low solvent and waterborne coating technology and/or add-on controls.

4. The nature of the emission control program whether a bubble, a regulation change, a compliance schedule, or some other form of alternative control program.

5. The method of recordkeeping and reporting to be employed to demonstrate compliance with the new emission limit requirement and to support the showing that the emission limit is consistent with RFP and the demonstration of attainment.

Each EPA Regional Office shall have

the primary responsibility for determining the approvability of application requests. However, in order to assure Regional consistency, coordination with the Office of Air Quality Planning and Standards staff is encouraged during the initial development of any single "time average" SIP revision or regulation. Also, all SIP revisions involving long-term averaging must be proposed in the Federal Register with an explanation of how the principles listed above have been satisfied.

Should there be any questions on this policy, please call Tom Helms (FTS 629-5526) or Brock Nicholson (FTS 629-5516).

Attachment

cc:

Barbara Bankoff
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Appendix E—Radii of Significant Impact for Approving "Complex Terrain" PM, SO_2 and CO Trades Under Level I Modeling Approaches

Appendix E indicates on its vertical axis the post-trade emission rate for the stack with increasing emissions (E), and on its horizontal axis the radius of significant impact (R) within which level I trades may be approved despite the presence of complex terrain outside that radius.

The curves in Appendix E have been generated using a normally conservative screening model, VALLEY, to estimate R for each E, using the 24-hour and 3-hour air quality impact significance level for SO_2 and the 24-hour significance level for particulate matter (PM) which have been established for level II modeling. It was assumed that the short-term standards would be controlling.

The F-stability class was assumed, and wind speed was presumed to be one meter per second for estimating the radius of significant impact for the three-hour period, and 2.5 meters per second for the 24-hour cases. In developing the three-hour curve, it was assumed that F-stability and a wind speed of one meter per second would persist for as much as fourteen consecutive hours. In developing the 24-hour curves, it was assumed that F-stability with a wind speed of 2.5 meters per second would occur for six hours of any 24-hour period.[1]

This Appendix provides different estimates for SO_2 and PM because the significance levels for these pollutants are different. For CO, the R value for E value may be determined by multiplying the E for SO_2 by twenty (20). This is a conservative approach towards determining radii of significant impact for CO. Where the effective height of the stack with increasing emissions is not changed (e.g., where the only change is in the sulfur content of fuel burned), the change in the hourly emission rate (E) may be used in lieu of E."

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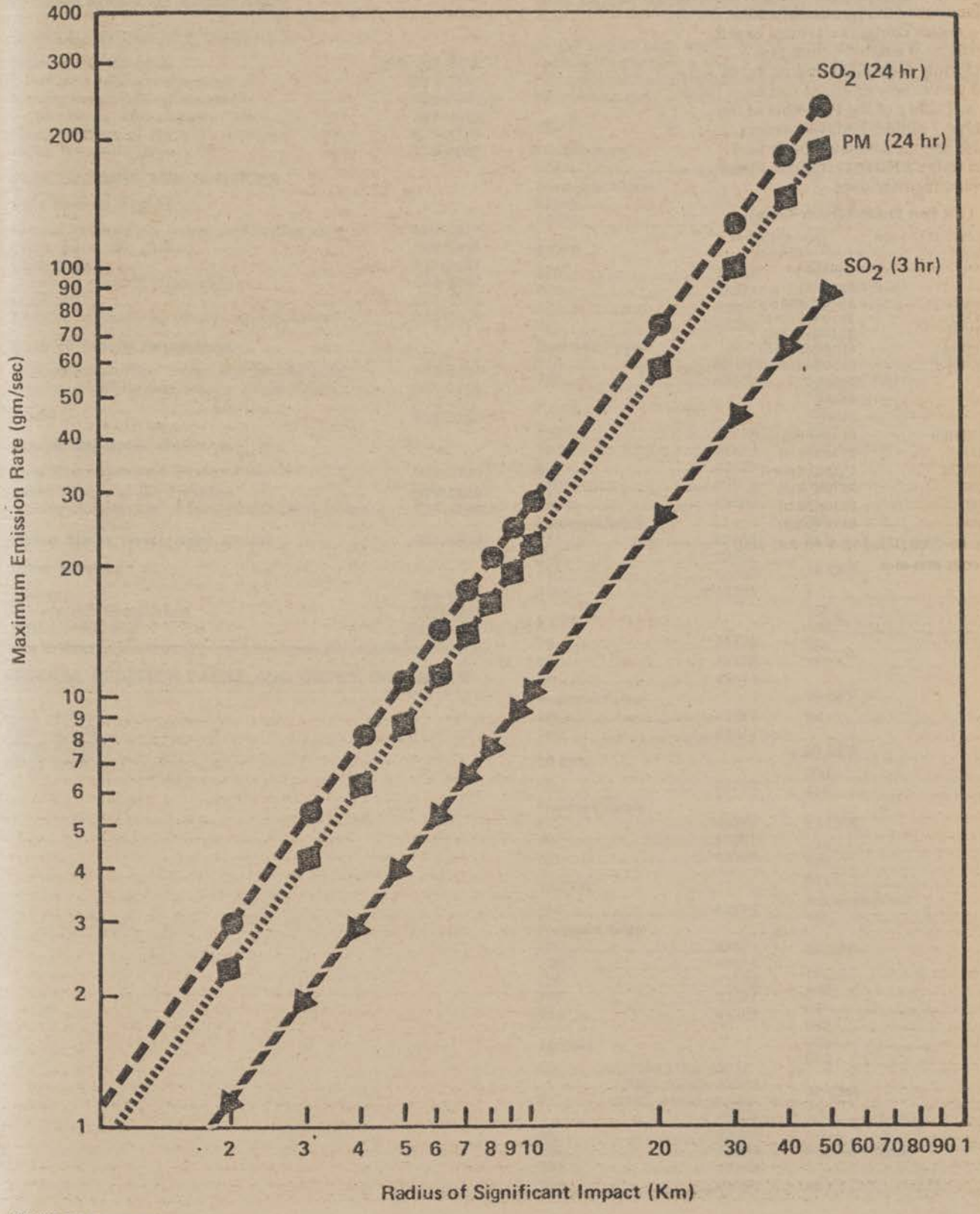
[1] The curves in Appendix E were derived using the assumptions described above so that they could be used to determine radii of significant impact for sources in any part of the country. However, it is possible that for some areas, local meteorological conditions will be such that alternative, less conservative meteorological assumptions can be employed in determining these radii. Where states can show that the use of such alternative assumptions is appropriate for a given area, they develop alternative curves or formulas for determining radii of significant impact and submit them for review and approval by EPA, either in conjunction with an individual bubble submittal or as part of a generic rule. States are advised to work closely with the appropriate Regional Office in any effort to develop such alternative approaches.

FIGURE I:

Radii of Significant Impact for PM & SO_2 for Different Averaging Times



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Appendix F—CFR Part 51 Conversion Table

On November 7, 1986 (51 FR 40656) EPA restructured CFR Part 51 and renumbered many of that part's sections. Because most readers will be more familiar with prior designations, today's notice contains citations based on Part 51 as it existed before this restructuring. A detailed finding list of the old versus new citations can be found in Table 2 of the Preamble of the November 7 notice. Today's readers may also use the following table to convert today's Part 51 citations to the corresponding new ones.

CFR Part 51 Conversion Table

Old 40 CFR 51 Citation	*New 40 CFR 51 Citation*
51.18	Subpart I
51.18(j)	51.165(a)
51.18(j)(1)(vi)	51.165(a)(1)(vi)
51.18(j)(1)(x)	51.165(a)(1)(x)
51.18(j)(1)(xi)	51.165(a)(1)(xi)
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51.24(b)(16)	51.166(b)(16)
51.24(b)(21)	51.166(b)(21)
51.24(b)(23)	51.165(b)(23)

[FR Doc. 86-27092 Filed 12-3-86; 8:45 am]

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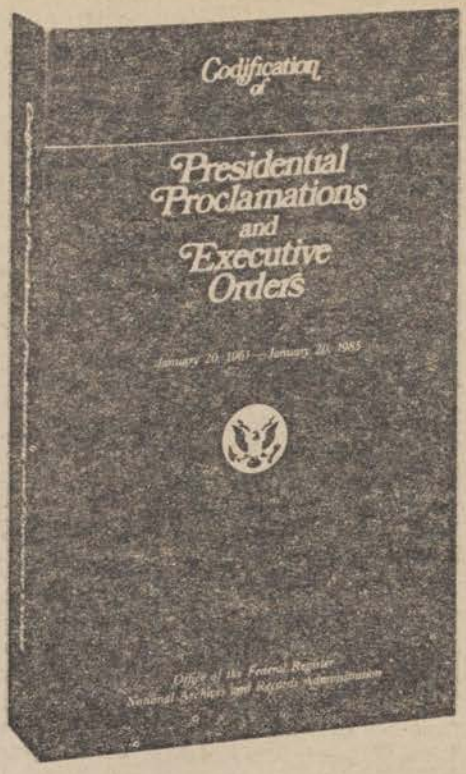

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