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# Presidential Documents

Title 3—

The President

## Presidential Determination No. 87–12 of March 17, 1987

## Presidential Certification To Permit US Contributions to the International Fund for Ireland and North Ireland

**Memorandum for the Secretary of State**

Pursuant to Section 5(c) of the Anglo-Irish Agreement Support Act of 1986 (P.L. 99–415), I hereby certify that: (1) the Board of the International Fund established by the Anglo-Irish Agreement is, as a whole, broadly representative of the interests of the communities in Ireland and Northern Ireland; and (2) disbursements from the International Fund (a) will be distributed in accordance with the principle of equality of opportunity and nondiscrimination in employment, without regard to religious affiliation; and (b) will address the needs of both communities in Northern Ireland.

You are requested to report this determination to the Congress immediately.

This determination shall be effective immediately and shall be published in the **Federal Register**.

Ronald Reagan

THE WHITE HOUSE,
*Washington, March 17, 1987.*

[FR Doc. 87–8303
Filed 4–9–87; 3:10 pm]
Billing code 3195–01–M

# Presidential Documents

**Proclamation 5628 of April 9, 1987**

## Education Day, U.S.A., 1987

**By the President of the United States of America**

**A Proclamation**

Parents and educators recognize a sacred trust to help children learn about the world in which we live, about all that has gone before, and about all that can be. This trust includes teaching our children about the whole of civilization and humanity's quest for truth, so that they will learn the great lesson that wisdom, love, decency, moral courage, and compassion, as well as technical knowledge and sharpened skills, must be part of everyone's education and everyone's lifework.

American history teaches this lesson well, and American culture, both its weaknesses and its strengths, testifies to its importance. But this lesson needs continual reinforcement. Because education is vital to our children and to the future of all Americans, we do well to call attention to the unflagging efforts of the many people who stress excellence and completeness in education. One of them is the leader of the worldwide Lubavitch movement of Hasidic Judaism, Rabbi Menachem Mendel Schneerson, whose 85th birthday falls on April 10. The Lubavitch movement has fostered teaching of the ethical values that make civilization possible and that enrich life for everyone. We can be most grateful for all who seek to endow our children with the precious heritage that others have built and preserved for us.

In recognition of Rabbi Schneerson's achievements and in celebration of his 85th birthday, the Congress, by House Joint Resolution 200, has designated April 10, 1987, as "Education Day, U.S.A." and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Friday, April 10, 1987, as Education Day, U.S.A., and call upon the people of the United States, and in particular our teachers and other educational leaders, to observe that day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 9th day of April, in the year of our Lord nineteen hundred and eighty-seven, and of the Independence of the United States of America the two hundred and eleventh.

Ronald Reagan

[FR Doc. 87-8318
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Billing code 3195-01-M

# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Parts 271, 272, 273, 274 and 278

[Amdt. No. 288]

### Food Stamp Program; Community Mental Health Centers, Credit Unions and Farm Self-Employment Losses

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This action finalizes the interim rule published on February 25, 1986 which implemented three Food Stamp Program provisions contained in the Food Security Act of 1985. The first provision allows Food Stamp Program participation by publicly operated community mental health centers which conduct residential programs for drug addicts and/or alcoholics under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.). The second provision allows certain federally insured credit unions to redeem food stamps and the third provision permits farm self-employment losses to be offset against other household income. This action also includes technical amendments to current regulations concerning alcoholic and drug addiction treatment and rehabilitation programs.

**EFFECTIVE DATE:** This final action is effective retroactive to February 25, 1986.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding this rulemaking should be addressed to Judith M. Seymour, Supervisor, Certification Rulemaking Section, Eligibility and Monitoring Branch, Program Development Division, Family Nutrition Programs, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Va. 22302, or by telephone at (703) 756–3429.

**SUPPLEMENTARY INFORMATION:**

**Classification**

*Executive Order 12291*

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512–1. The effect of this action on the economy will be less than $100 million a year. The rule will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, the Department has classified the rule as "not major".

*Executive Order 12372*

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule Related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

*Regulatory Flexibility Act*

This final rule has also been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–12). S. Anna Kondratas, Acting Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies are affected to the extent that they administer the Program. Publicly operated community mental health centers will be affected because of changes to allow for the residents' participation in the Program. Self-employed farmers whose farm operations show losses will be affected because of changes in policy to determine eligibility and benefits for these farmers. The rule will also affect retail food stores and wholesale food concerns and credit unions which accept and redeem food stamps, respectively. However, while the rule may affect a substantial number of small entities, the effect on the entities will not be significant.

*Paperwork Reduction Act*

The provisions in this regulation concerning mental health centers and offsetting losses for farmers do not contain reporting and recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The reporting requirements relating to the provision on the redemption of food stamps have been approved by OMB under OMB number 0584–0085.

*Publication Less Than 30 Days Prior to Effective Date*

Except for the addition of clarifying language, the provisions of the interim rule published February 25, 1986, to be implemented not later than 30 days thereafter, are being adopted without change. Thus, the substantive provisions of this final rule have been in effect since March 27, 1986. For this reason, good cause is found pursuant to 5 U.S.C. 553(d) for implementation of this rule less than 30 days after publication.

**Background**

On February 25, 1986 the Department published an interim rule at 51 FR 6511 which implemented the Food Security Act of 1985 provisions on community mental health centers, retail food stores, wholesale food concerns and credit unions. The Department accepted comments on this rulemaking through May 28, 1986. Nine letters were received which addressed the provisions of the interim rule. The major concerns raised by the commenters are discussed below. Comments which are not relevant to the final rulemaking or which address issues not related to the rulemaking process are not discussed. An explanation of the rationale of the rules is contained in the preamble of the interim rule. For a full understanding of the provisions of this rule the reader should refer to the preamble of that rule.

*Community Mental Health Centers*

In accordance with section 3(f) of the Food Stamp Act of 1977 (7 U.S.C. 2012(f)) as amended by section 1501 of the Food Security Act of 1985, the interim rule established that Food Stamp Program participation is allowed for publicly operated community mental health centers which conduct residential

programs for drug addicts and/or alcoholics under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.). In addition, the interim rule provided that publicly operated community mental health centers which treat drug addicts or alcoholics now meet the definition of a retail food store and can be authorized to use food stamps at a designated wholesale food concern. Prior to the Food Security Act, on-going participation in the Program was limited to private, nonprofit centers which operate drug addiction or alcoholic rehabilitation programs.

This interim rule also revised the definition of "Drug addiction and alcoholic treatment and rehabilitation program" in § 271.2 to remove references to now repealed laws. This revision is consistent with the change made to the Food Stamp Act definition of these programs by the Food Security Act.

After publication of the interim rule, several questions were raised about the status of private, nonprofit centers because of the addition of the phrase at § 273.11(e)(1), "or is *funded* under part B of title XIX of the Public Health Service Act. . . ." (emphasis added). The Department was informed that the use of the word "funded" concerning community mental health centers in the interim rule could result in removing already participating private, nonprofit centers from eligibility in the Food Stamp Program. Since some of the private, nonprofit centers already participating in the Food Stamp Program do not actually receive funds under part B, a question was raised about their eligibility. It was never the Department's intent to remove or prevent from future participation from the Program private, nonprofit centers that while eligible, do not elect to receive funding under the Public Health Service Act or which are eligible to receive funds but do not because the funds are not available. The Department notified State agencies not to remove any of these private, nonprofit centers from participation in the program pending publication of this final rule. The word "funded" is not used in the Food Stamp Act, as amended by the Food Security Act. Section 3(f) of the Act states that the definition of a drug addiction or alcoholic treatment and rehabilitation program "means any such program conducted by a private nonprofit organization or institution, or a publicly operated community mental health center, under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) to provide treatment that can lead to the rehabilitation of drug addicts or alcoholics". The interim rule in § 271.2 defined drug addiction or alcoholic treatment and rehabilitation program in the same way as the Act and does not mention the word "funded". However, in § 273.11(e)(1) and § 278.1(e) the word funded was used in the interim rule. Consistent with the language of the Act, the Department is removing the word "funded" from § 273.11(e)(1) in this final action. Therefore, the last sentence of the section, after removing everything after "FNS as a retailer", will read "or is under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.)." This final rule also makes corresponding changes in § 278.1(e) by deleting the word "funded" in the first sentence. However, the Department believes that the word "under" should be construed here as meaning that a center should meet the criteria which would make it *eligible* to receive funds, even if it does not actually receive funding under part B of title XIX. Clearly, the legislative language assumes some connection to part B of title XIX and the Department wants to ensure that the centers are actually bona fide treatment centers. Part B of title XIX of the Public Health Service Act requires that to be eligible to receive funds for its operation under the Act community mental health centers must meet Federal requirements and additional State requirements. In this final rule language has been added to the definition of *"Drug addiction or alcoholic treatment and rehabilitation program"* in § 271.2 to the effect that "under part B of title XIX of the Public Health Service Act" is defined as meeting the criteria which would make it eligible to receive funds. It will be necessary for the State agencies to determine whether unfunded treatment centers would have met the criteria to be found eligible for funding under Part B of title XIX before FNS approves them as retailers or before the State certifies residents for food stamps.

Two commenters noted that the interim regulations failed to provide State agencies with information or guidance regarding how FNS field staff can determine if a center is certified to receive funding or is eligible to receive funding under the Public Health Service Act. In the past, treatment centers wishing to be authorized as retailers so that they could redeem food stamps through wholesalers have provided verification of their status so that they could be authorized as retailers. This procedure remains unchanged. Because this procedure remains unchanged the language of the interim rule is adopted without change. If the center does not have verification of their eligibility for funding they can obtain documentation from the State-level office which accepts applications for eligibility of funding under part B of title XIX of the Public Health Service Act.

One commenter wanted the Department to clarify that if any public or private center that is *not* authorized by FNS to redeem food stamps as a retailer provides meals to the President, *and* the resident uses this meal program, then that resident should not be eligible to participate in the Food Stamp Program. The commenter misunderstands the policy governing residents of community mental health centers. The eligibility of these residents is not affected by whether the center has been authorized to redeem food stamps as a retailer. On June 8, 1979, the Department published an interim rule which included an amendment to provide that alcoholic and drug addiction treatment and rehabilitation programs do not have to be authorized as retail food stores in order for their residents to be certified to participate in the Program. These programs are authorized as retailers only if they wish to redeem food stamps through wholesalers. However, through an oversight, § 273.1(e) was not changed in the June 8, 1979 rule and continues to require authorization of these programs as a condition of certification of residents. This rule makes technical amendments to §§ 273.1(e) and 273.11(e) to clarify that it is not necessary for treatment programs to be authorized as retailers in order for their residents to participate in the Program. However, if a treatment program has been authorized by FNS as a retailer, it is not necessary for the State agency to verify that the treatment program qualifies under part B of title XIX of the Public Health Service Act (42 U.S.C. 300X et seq.) prior to certifying its residents. This verification will have been made by FNS in authorizing the treatment program as a retailer. Residents of centers that are not authorized as retail food stores may participate in the Program in accordance with § 273.1(f)(2) as long as the center is eligible for funding under the Public Health Service Act and the residents meet the eligibility criteria otherwise required of food stamp recipients. However, if the center is not authorized as a retail food store, it may not redeem food stamps through wholesalers. The center must use residents' food stamps at other, authorized retail food stores.

*Redemption of Food Stamps by Credit Unions*

Prior to the publication of the interim rule, the Food Stamp Program regulations provided that only those

financial institutions insured by the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC) could redeem food stamps for retail food stores and wholesale food concerns participating in the program. Consistent with section 1522 of the Food Security Act of 1985 the interim rule provided that financial institutions which are insured under the Federal Credit Union Act and which have retail food stores or wholesale food concerns in their field of membership may also redeem food stamps.

One commenter expressed concern that there will be limitations on the redemption of food stamps by credit unions in the State of Wisconsin because many credit unions in Wisconsin are not insured under the Federal Credit Union Act. The Food Security Act of 1985 is very explicit in specifying that credit unions must be insured under the Federal Credit Union Act in order to be allowed to redeem food stamps. Therefore, the Department has no discretion to allow credit unions not insured under the Federal Credit Union Act to redeem food stamps. In any event, the Department has learned that while many credit unions in Wisconsin are not insured under the Federal Credit Union Act, the majority of them are in the process of obtaining such insurance. The interim provision concerning the redemption of food stamps by credit unions is adopted by this final rule without change.

*Offsetting Losses of Self-Employed Farmers*

The interim rule, consistent with section 1509 of the Food Security Act of 1985 required farm self-employment losses to be offset against other countable income in a household. Prior to this such offsetting was not allowed.

Several commenters stated that the interim rule at § 273.11(a)(2)(iii) failed to clearly specify how the farm losses were to be applied in the budgeting process. The current regulations at § 273.11(a)(2)(iii) provide for all self-employment income and expenses to be calculated together. We had hoped to issue form FNS–386, the Application Worksheet soon after the rule was published. This form provides step-by-step instructions on how the computation of benefits is handled. However, it was decided to delay the revisions to the Application for Food Stamps and the Application Worksheet so that changes resulting from several interim and final rulemakings could be included. These rules are: Community Mental Health Centers, Credit Unions and Farm Self-Employment Losses—2/25/86; Eligibility, Certification and Notice Provisions and Technical Amendments—3/28/86; Provisions on Earned Income, Shelter and Dependent Care Deductions, Resource Limits and Sales Tax on Food Stamp Purchases—4/1/86; and Nondiscretionary Provisions of the Food Security Act 1985—5/21/86.

The Application Worksheet has now been revised and sent to all FNS Regional Offices for distribution to State agencies. This worksheet shows how farm losses are to be handled in the budgeting process. Losses from farm self-employment enterprises are offset in two phases. The first phase is an offsetting against non-farm self-employment income. The second phase is offsetting against the total of earned and unearned income. In addition, FNS Policy Memo 86–13 dated April 7, 1986 describes the procedure for offsetting farm losses against other income. In this final rule the Department has added more specific language to § 273.11(a)(2)(iii) to clarify this area as requested by the commenters.

One commenter stated that no basis in law could be found for a new definition of self-employment income (the preamble to the regulations explained that $1,000 is to be used to determine whether a farmer is self-employed). The Department was describing who would be considered a self-employed farmer, not trying to define self-employment income. Another commenter wanted a definition of minimum gross revenue somewhat larger than $1,000. It is true that the $1,000 figure pertaining to a self-employed farmer is not in the Act. However, the Department believes that in order to ensure uniform treatment some criteria is needed to identify a person as a self-employed farmer. The Department wanted to give some direction to State and local welfare agencies in order to implement the farm loss provision. In the absence of any specific legislative direction in this area, the Department tried to determine a precedent for defining a self-employed farmer. The Department used in the interim regulations the definition from the 1982 Census of Agriculture, published by the Bureau of the Census. It was believed that using the $1,000 figure from the Census of Agriculture was preferable to arbitrarily picking a figure. The Department continues to believe this is preferable and consequently the final rule is unchanged in this area.

A few commenters felt that we should narrow the definition of "farming enterprise", as regulations do not specify if the farm loss provision was intended to apply only to farmers involved in the production of agricultural products (e.g., fruit and vegetables) as opposed to other categories of farmers (shrimp farmers, raising worms, growing Christmas trees). The Department does not see a basis for arbitrarily eliminating as farmers those persons not growing fruits and vegetables. The Internal Revenue Code, § 31.3121(g)–1, mentions that the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, ranches, nurseries and orchards, among others. By limiting the application of this provision to only farmers involved in the production of fruits and vegetables, the variety of farming enterprises used by households to produce income would not be accounted for. Consequently, the final rule remains unchanged in this area.

One commentor felt that information was needed on whether land owners meet the definition of a farmer and receive the farm loss offset or whether the individual who rents or leases the land from the land owner and actually does the farming gets the farm loss offset. The Department has established the position in response to inquiries that the individual who qualifies as a farmer is the one who has direct involvement in the agricultural activity, i.e., the individual actively participating in the growing/harvesting of the crop.

Still another commentor said that the regulations should be revised to coincide with the requirement in the preamble that the losses of the self-employed farmer should be prorated in the same manner used to prorate the income. The Department decided that for purposes of clarification we will adopt this suggestion. This final action adds to the regulations, at § 273.11(a)(2)(iii), the requirement that farm offsets must be prorated over the year in a manner comparable to that used for self-employment income.

Finally, clarification was requested on how to average farm income if farm work is done for three months out of a year. Does the eligibility worker average this income over the year or average only during the three months? In accordance with 7 CFR 273.11(a)(1)(iii), self-employment income which is intended to meet the household's needs for only part of the year and is received only in some months does not represent the household's annual support and must be averaged over the period of time the income is intended to cover. There is no need for a further clarification of this in the regulation.

*Implementation*

The implementation section of the interim rule stated that State agencies shall implement the requirements regarding publicly operated community mental health centers, offsetting farm self-employment losses and credit unions not later than thirty days after the publication of the interim rule. Publication occurred on February 25, 1986.

The Department received several comments on the short timeframe for implementing this rule. The commentors felt that an implementation date of 30 days from the date of publication was unrealistic. They further stated that the interim regulations were not received by the State agencies until three weeks prior to implementation and that it is impossible to change computer systems, write and release manual material and train on this material in such a short time period. The Department acknowledges the tight implementation timeframe and is sensitive to State agency administrative problems which can arise. Whenever possible the Department tries to allow at least 60 days for implementation. However, the Department was concerned about economic difficulties being experienced by certain farm families and the effect of delayed implementation on those families. We do distribute advance copies of the rules to our Regional offices to share with their respective State agencies usually on the same day that we receive OMB clearance and/or deliver the rule to the Office of the Federal Register for official publication. This process is intended to speed up dissemination of rulemakings to the State agencies.

Since most of the provisions in the interim rule are being adopted without change the provisions of this final rule have, for the most part, already been implemented. Consistent with the memorandum to all FNS Regional Directors dated June 23, 1986, the removal of the word "funded" from the rule is effective on February 25, 1986 and shall be implemented retroactive to not later than March 27, 1986. Consequently, the interim provision concerning implementation is adopted by this final rule without change, i.e., the provisions on community mental health centers, farm self-employment losses, and the provision allowing federally insured credit unions to redeem food stamps are effective retroactive to February 25, 1986. Credit unions were allowed to begin accepting food stamps for redemption not later than March 27, 1986.

**List of Subjects**

*7 CFR Part 271*

Administrative practice and procedures, Food Stamps, Grant programs—social programs.

*7 CFR Part 272*

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

*7 CFR Part 273*

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting requirements, Social Security, Students.

*7 CFR Part 274*

Administrative practice and procedure, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

*7 CFR Part 278*

Administrative practice and procedure, Banks, Banking claims, Food stamps, Groceries—retail groceries, general line—wholesaler, Penalties.

Therefore, 7 CFR Parts 271, 272, 273, 274 and 278 are amended as follows:

1. The authority citation for Parts 271, 272, 273, 274 and 278 is revised to read as follows:

**Authority:** 7 U.S.C. 2011–2029.

## PART 271—GENERAL INFORMATION AND DEFINITIONS

2. The amendment to § 271.2 to amend the definition of "Insured financial institution", as published at 51 FR 6513, February 25, 1986, is adopted as final without change.

3. The amendment to § 271.2 to amend the definition of "Retail food store", as published at 51 FR 6513, February 25, 1986, is adopted as final without change.

4. The amendment to § 271.2 to revise the definition of "Drug addiction or alcoholic treatment and rehabilitation program" as published at 51 FR 6513, February 25, 1986, is adopted as final and a new sentence is added to the end of the paragraph to read as follows:

**§ 271.2 Definitions.**

* * * * *

*"Drug addiction or alcoholic treatment and rehabilitation program"*

* * * Under part B of title XIX of the Public Health Service Act is defined as meeting the criteria which would make it eligible to receive funds, even if it does not actually receive funding under part B of title XIX.

* * * * *

## PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

5. The amendment to § 272.1 to add a new paragraph (g)(72), as published at 51 FR 6513, February 25, 1986, is adopted as final and a new paragraph (g)(86) is added to read as follows:

**§ 272.1 General terms and conditions.**

* * * * *

(g) *Implementation.* * * *

(86) *Amendment No. 288.* The removal of the word "funded" from the last sentence in § 273.11(e)(1), the amendments to the first and fourth sentences in § 278.1(e), and the revision of paragraph (a)(2)(iii) in § 273.11 are effective February 25, 1986 and shall be implemented not later than March 27, 1986.

* * * * *

## PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

**§ 273.1 [Amended]**

6. In § 273.1(e), the first sentence is amended by removing the phrase "and the institution has not been authorized to accept coupons" at the end and putting a period after the word "services".

7. The amendment to § 273.1 to amend paragraph (f)(2)(i), as published at 51 FR 6514, February 25, 1986, is adopted as final without change.

**§ 273.10 [Amended]**

8. The amendment to § 273.10, to add a new sentence at the end of paragraph (e)(1)(i)(A), as published at 51 FR 6514, February 25, 1986, is adopted as final without change.

9. In § 273.11:

a. Paragraph (a)(2)(iii) is revised.

b. Paragraph (e)(1) is revised.

The revisions read as follows:

**§ 273.11 Action on households with special circumstances.**

(a) *Self-employment income.* * * *

(2) *Determining monthly income from self-employment.* * * *

(iii) The monthly net self-employment income shall be added to any other earned income received by the household. The total monthly earned income, less a 20 percent earned income deduction, shall then be added to all monthly unearned income received by the household. If the cost of producing

self-employment income exceeds the income derived from self-employment as a farmer, such losses shall be offset against any other countable income in the household. Losses from farm self-employment enterprises shall be offset in two phases. The first phase is an offsetting against non-farm self-employment income. The second phase is offsetting against the total of earned and unearned income. For purposes of this provision, to be considered a self-employed farmer, the farmer must receive or anticipate receiving annual gross proceeds of $1000 or more from the farming enterprise. The standard deduction, dependent care, and shelter costs shall be computed in accordance with § 273.9(d) and subtracted to determine the monthly net income of the household. Net losses from the self-employment income of a farmer shall be prorated over the year in accordance with § 273.11(a)(1).

* * * * *

(e) *Residents of drug/alcoholic treatment and rehabilitation programs.* (1) Narcotic addicts or alcoholics who regularly participate in publicly operated or private non-profit drug or alcoholic treatment and rehabilitation programs on a resident basis may voluntarily apply for the Food Stamp Program. Resident addicts and alcoholics shall have their eligibility determined as a one-person household. The State agency shall certify residents of addict/alcoholic treatment centers by using the same provisions that apply to all other applicant households except that certification must be accomplished through an authorized representative as described in § 273.1(f)(2). Prior to certifying any residents for food stamps, the State agency shall verify that the treatment center is authorized by FNS as a retailer if the center wishes to redeem coupons through a wholesaler or, if it is not authorized by FNS as a retailer that it is under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) (as defined in "*Drug addiction or alcoholic treatment and rehabilitation program*" in § 271.2). The guidelines for issuing FNS authorizations to these treatment centers are set forth in § 278.1(e).

* * * * *

## PART 274—ISSUANCE AND USE OF FOOD COUPONS

10. The amendment to § 274.10 to amend paragraph (d)(1), as published at 51 FR 6514, February 25, 1986, is adopted as final without change.

## PART 278—PARTICIPATION OF RETAIL FOOD STORES, WHOLESALE FOOD STORES, WHOLESALE FOOD CONCERNS AND INSURED FINANCIAL INSTITUTIONS

11. In § 278.1(e) the first sentence is amended by removing the word "certified" and the remainder of the sentence and adding in its place the words "under part B of title XIX of the Public Health Service Act (42 U.S.C. 300x et seq.) (in accordance with the definition in "*Drug addiction or alcoholic treatment and rehabilitation program*" in § 271.2). The second and third sentences are removed, and the fourth sentence is revised to read as follows:

**§ 278.1 Approval of retail food stores and wholesale food concerns.**

* * * * *

(e) *Treatment programs.* * * * Approval to participate is automatically withdrawn once the treatment and rehabilitation program no longer meets the criteria which would make it eligible for funding under part B of title XIX (in accordance with the definition in "*Drug addiction or alcoholic treatment and rehabilitation program*" in § 271.2).

* * * * *

**§ 278.5 [Amended]**

12. The amendment to § 278.5 to amend paragraph (a)(1), as published at 51 FR 6514, February 25, 1986, is adopted as final without change.

**§ 278.9 [Amended]**

13. The amendment to § 278.9 to add a new paragraph (c), as published at 51 FR 6513, February 25, 1986, is adopted as final without change.

Dated: April 6, 1987.

**S. Anna Kondratas,**

*Acting Administrator.*

[FR Doc. 87-8040 Filed 4-10-87; 8:45 am]

BILLING CODE 3410-30-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 87-AGL-1]**

### Alteration to Control Zone and Transition Area; Evansville, IN

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

**ACTION:** Final rule.

**SUMMARY:** The nature of this action is to alter the existing Evansville, Indiana, control zone and transition area to accommodate existing Standard Instrument Approach Procedures (SIAPs) to Evansville Dress Regional Airport.

The intended effect of this action is to eliminate the extensions to the control zone; decrease the transition area radius; and, increase the width of the transition area extension.

**EFFECTIVE DATE:** 0901 UTC, July 30, 1987.

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

**SUPPLEMENTARY INFORMATION:**

**History**

On Friday, February 13, 1987, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Evansville, IN, control zone and transition area (52 FR 4629).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Sections 71.171 and 71.181 of Part 71 of the Federal Aviation Regulations were republished in Handbook 7400.6C dated January 2, 1987.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations alters the present control zone and transition area to eliminate the extensions to the control zone; decrease the transition area radius; and, increase the width of the transition area extension. The transition area modification will decrease the present 10-mile radius to an 8.5-mile radius, and will increase the width to each side of the transition area extension from 2 miles to 4.75 miles.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter

that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Aviation safety, Control zones, Transition area.

**Adoption of the Amendment**

**PART 71—[AMENDED]**

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

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

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

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Evansville, IN [Amended]**

Within a 5-mile radius of Evansville Dress Regional Airport (lat. 38°02'17" N., long. 87°31'50" W.).

**§ 71.181 [Amended]**

3. Section 71.181 is amended as follows:

**Evansville, IN [Amended]**

That airspace extending upward from 700 feet above the surface within an 8.5 mile radius of Evansville Dress Regional Airport (lat. 38°02'17" N., long. 87°31'50" W.); and within 4.75 miles each side of the Evansville VORTAC 060 radial, extending from the 8.5 mile radius area to the VORTAC.

Issued in Des Plaines, Illinois, on March 31, 1987.

**Teddy W. Burcham,**

*Manager, Air Traffic Division.*

[FR Doc. 87-8109 Filed 4-10-87; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 522

### Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Amikacin Sulfate Injection

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Bristol Laboratories providing for safe and effective use of amikacin sulfate injection in dogs for treating certain urinary tract, skin, and soft tissue infections.

**EFFECTIVE DATE:** April 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3420.

**SUPPLEMENTARY INFORMATION:** Bristol Laboratories, Division of Bristol-Myers Co., P.O. Box 4755, Syracuse, NY 13221-4755, is the sponsor of supplemental NADA 127-892, which provides for intramuscular or subcutaneous injection of a 50-milligram-per-milliliter solution of amikacin sulfate (AMIGLYDE-V®) in dogs for the treatment of genitourinary tract infections 8(cystitis) caused by susceptible strains of *Escherichia coil* and *Proteus* spp. and skin and soft tissue infections caused by susceptible strains of *Pseudomonas* spp. and *E. coli*. The application is approved and 21 CFR 522.56 is added accordingly. The basis for approval is discussed in the freedom of information summary.

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

The agency has 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, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

**List of Subjects in 21 CFR Part 522**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 522 is amended as follows:

**PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION**

1. The authority citation for 21 CFR Part 522 continues to read as follows:

**Authority:** Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. By adding § 522.56 to read as follows:

**§ 522.56 Amikacin sulfate injection.**

(a) *Specifications.* Each milliliter of sterile aqueous solution contains 50 milligrams or amikacin (as the sulfate).

(b) *Sponsor.* See 000015 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Amount.* 5 milligrams per pound of body weight twice daily.

(2) *Indications for use.* The drug is used in dogs for treatment of genitourinary tract infections (cystitis) caused by susceptible strains of *Escherichia coli* and *Proteus* spp. and skin and soft tissue infections caused by susceptible strains of *Pseudomonas* spp. and *E. coli*.

(3) *Limitations.* The drug is administered intramuscularly or subcutaneously. Treat dogs with skin and soft tissue infections for a minimum of 7 days and those with genitourinary infections for 7 to 21 days or until culture is negative and asymptomatic. If no response is observed after 3 days of treatment, therapy should be discontinued and the case reevaluated. Maximum duration of therapy should not exceed 30 days. Systemic aminoglycoside therapy is contraindicated in dogs with seriously impaired renal function. Not for use in breeding dogs as reproductive studies have not been conducted. Use with extreme caution in dogs in which hearing acuity is required for functioning. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: April 6, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87-8115 Filed 4-10-87; 8:45 am]

BILLING CODE 4160-01-M

**INTERNATIONAL DEVELOPMENT COOPERATION AGENCY**

**Agency for International Development**

**22 CFR Part 212**

**Implementation of Freedom of Information Act**

**AGENCY:** Agency for International Development, (A.I.D.), DCA.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Agency for International development is amending its public information regulations to implement certain provisions of the Freedom of Information Act Reform Act of 1986, Pub. L. 99–570 and OMB Uniform Freedom of Information Act Fee Schedule and Guidelines 52 FR 10012 (March 27, 1987).

**DATES:** Interim rule effective May 25, 1987. Comments must be received on or before May 13, 1987.

**ADDRESS:** Mail comments to Rhea Johnson, XA/PI, Room 4889 NS A.I.D., Washington, DC 20523.

**FOR FURTHER INFORMATION CONTACT:** XA/PI, Mr. Rhea Johnson, telephone (202) 647–4220.

**SUPPLEMENTARY INFORMATION:** Agencies are required to issue regulations to implement the provisions of the Freedom of Information Act of 1986 in conformance with OMB's fee schedule and guidelines by April 25, 1987. In order to meet this deadline it was necessary to issue the amendments as an interim rule. Following the close of the comment period the amendments will be issued as a final rule.

The terms, definitions and fee schedules of this interim rule are fully consistent with OMB's notice and request for public comment and final publication of fee schedule and guidelines. 52 FR 1992 (January 16, 1987) and 52 FR 10012 (March 27, 1987).

This rule also amends Part 212 to reflect the changes to the law enforcement provisions of the Freedom of Information Act.

This action will not have a significant economic impact on a substantial number of small entities; does not constitute a "major rule" under Executive Order No. 12291; and does not constitute a major Federal action significantly affecting the quality of the human environment.

**List of Subject in 22 CFR Part 212**

Public information.

For the reasons set forth in the preamble, 22 CFR Part 212 is amended as follows:

1. The authority citation for Part 212 is revised to read as follows:

**Authority:** Section 621 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2381; the Freedom of Information Act, as amended; 5 U.S.C. 552.

2. Section 212.35 is revised to read as follows:

**§ 212.35 Schedule of fees and methods of payment for services rendered.**

(a) *Definitions.* (1) "Direct costs" means those expenditures which the Agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request.

(2) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Line-by-line search will not be done when duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" is distinguished from "review" (see paragraph [a][4] of this section).

(3) "Duplication" refers to the process of making a copy of a document available to the FOIA requester. Copies can take the form of paper copy, micro film, audio-visual materials among others and will be in a form that is reasonably usable by requesters.

(4) "Review" refers to the process of examining documents located in response to a commercial use request (see paragraph [a][5] of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g. doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that is related to commerce, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Agency will determine the use to which a requester will put the documents requested. Where the Agency has reasonably cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the Agency may seek additional clarification before assigning the request to a specific category.

(6) "Educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) "Non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph [a][5] of this section and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news" who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually emoloyed by it. A publication contract would be the clearest proof, but the Agency may also look to the past publication record of a requester in making this determination.

(b) *Fees to be charged.* The following specific fees shall be applicable with respect for services rendered as outlined below:

(1) *Commercial use requesters.* Fees will cover the full direct costs of searching for, reviewing for release, and duplicating the records requested. Search costs are $11.00 an hour. Review costs are $24.00 an hour. Duplicating costs are 20¢ a page. Search costs will be assessed even though no records may be found or, after review, there is no disclosure of records.

(2) *Educational and non-commercial scientific institution requesters.* The Agency will provide documents to requesters in this category for the cost of reproduction alone (20¢ a page), excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters eligible for free search must reasonably describe the records sought.

(3) *Requesters who are representatives of the news media.* The Agency will provide documents to requesters in this category for the cost of reproduction alone (20¢ a page) excluding charges for the first 100 pages. To be eligible for inclusion in this category a requester must meet the criteria in paragraph (a)(8) of this section, and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters eligible for free search must reasonably describe the records sought.

(4) *All other requesters.* The agency will charge requesters who do not fit into any of the categories in paragraphs (b) (1), (2), and (3) of this section, fees which recover the full direct cost of search for the reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. The hourly rates outlined in paragraph (b)(1) of this section will prevail. Requesters must reasonably describe the records sought. Moreover, requests from subjects for records about themselves filed in the Agency's systems of records will continue to be treated under the fee provision of the Privacy Act of 1975.

(c) *Non Payment of fees.* (1) The Agency will begin assessing interest charges on the 31st day following the day in which the requester is advised of the fee charged. Interest will be at the rate prescribed in section 3717 of Title 31, USCA.

(2) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e. within 30 days of the billing date), the Agency will require the requester to pay the full amount owed plus any applicable interest as provided above, and to make an advance payment of the full amount of the estimated fee before the Agency begins to process a new request or a pending request from the requester.

(3) When the Agency acts under paragraph (c) (1) or (2) of this section the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e. 10 working days from receipt of initial request and 20 working days from receipt of appeals from initial denial plus permissible extentions of these time limits) will begin only after the Agency has received fee payments described above.

(d) *Advance payments.* Where the Agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00 the Agency will require a requester to make an advance payment of the entire fee before continuing to process the request.

(e) *Waiving or reducing fee.* In accordance with section (4)(A)(ii) of the FOIAct the Agency will furnish documents without charge or at reduced charges if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(f) *Restrictions on assessing fees.* With the exception of requesters seeking documents for a commercial use, section (4)(A)(iv) of the FOIAct, as amended, requires agencies to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits agencies from charging fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. These provisions work together so that, except for commercial use requesters, the Agency will not begin to assess fees until after providing the free search and reproduction. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, the agency will determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost is equal to or less than the cost of processing the fee collected, there will be no charge to the requester.

(g) *Other provisions.*

(1) Charges for Unsuccessful Search. The Agency will assess charges for time spent searching, even if the Agency fails to locate the records or if records located are determined to be exempt from disclosure.

(2) Aggregating Requesters. When the Agency reasonably believes that a requester is attempting or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Agency will aggregate any such requesters and charge accordingly.

(3) Effect of the Debt Collection Act of 1982 (Pub. L. 97-365). The Agency will use the authorities of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

(4) *Remittances.* (i) Remittances will be in the form of either a personal check or bank draft drawn on a bank in the United States, a money order, or cash.

(ii) Remittances shall be made payable to the order of the U.S. Treasurer and mailed to the Director, Office of Public Inquiries, Bureau for External Affairs, Agency for International Development, Washington, DC 20523. The Agency will assume no responsibility for cash which is lost in the mail.

(iii) A receipt for fees paid will be given only upon request.

(iv) Where it is anticipated that the fees chargeable under this section will amount to more than $25.00, and the requester has not indicated in advance a willingness to pay fees as high as are anticipated, the requester will be promptly notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In appropriate cases an advance deposit may be required. The requester is at any time welcome to confer with knowledgeable Agency personnel in an attempt to formulate the request in a manner which will reduce the fee and meet the needs of the requester. A request will not be deemed to have been received until the requester has agreed to pay the anticipated fees and has made an advance deposit if one is required.

3. Section 212.41 is amended by revising paragraph (g) as follows:

**§ 212.41 Exemptions from the publication and disclosure requirements of subparts B, C, D.**

* * * * *

(g) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (1) could reasonably be expected to interfere with enforcement proceedings; (2) would deprive a person of a right to a fair trial or an impartial adjudication; (3) could reasonably be expected to constitute an unwarranted invasion of personal privacy; (4) could reasonably be expected to disclose the identity of a

confidential source, including a State, local or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source; (5) would disclose techniques and procedure for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or (6) could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

4. Section 212.42 is added to read as follows:

**§ 212.42 Exemption from 5 U.S.C. 552.**

Whenever a request is made which involves access to records described in paragraph (g) of § 212.41 and the investigation or proceeding involves a possible violation of criminal law; and there is reason to believe that the subject of the investigation or proceeding is not aware of its pendency, and disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of 5 U.S.C. 552 and this subpart.

Dated: March 3, 1987.

**Rhea Johnson,**

*Director, Office of Public Affairs, Bureau for External Affairs.*

[FR Doc. 87-8126 Filed 4-10-87; 8:45 am]

BILLING CODE 6116-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 261 and 266

**[SW-FRL-3183-3]**

## Hazardous Waste Management System; Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces; Technical Corrections

**AGENCY:** Environmental Protection Agency.

**ACTION:** Technical corrections to hazardous waste fuel/used oil fuel rules.

**SUMMARY:** On November 29, 1985, EPA promulgated a final rule regulating hazardous waste fuels and certain used oil fuels. EPA has since identified several provisions that require correction or clarification. This notice makes those changes and modifies the previous package accordingly.

**EFFECTIVE DATE:** April 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** RCRA Hotline, toll free, at (800) 424-9346 or (202) 382-3000. For technical information contact Robert Holloway, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

### I. Technical Corrections to Rule

*A. Notification*

The rules of hazardous waste fuels indicate that marketers and burners of hazardous waste fuels must submit a one-time notification to EPA describing their waste as fuel activities. See §§ 266.34(b) and 266.35(b). Marketers, transporters, and burners of off-specification used oil fuel likewise are required to file a one-time notification. See §§ 266.43(b)(3) and 266.44(b). This requirement first took effect on January 29, 1986, and also applies to facilities commencing hazardous waste fuel or off-specification used oil fuel management activities after that date. Section 3010(a) of RCRA, as amended by the 1984 amendments, requires producers, marketers and burners of hazardous waste or used oil fuel to notify the Agency "(n)ot later than fifteen months after the date of enactment" of the statutory amendments of February 8, 1986. This statutory notification is a prerequisite to interim status. H. Rep. No. 198 at 41. The Administrator may waive the statutory notification requirement for certain types of facilities. RCRA section 3010(a).

There is considerable confusion in the regulations as to whether the notification requirement in the rules implements the section 3010(a) requirement (and hence is a prerequisite to interim status), or whether it implements general information-gathering authorities (e.g., section 3007(a)). In addition, neither the statute nor the regulation clearly indicate which facilities are subject to the section 3010(a) notification requirement. The statutory requirement could apply to facilities in existence on November 8, 1984, or to those in existence on the date when notification is due, February 8, 1986. In today's notice, EPA clarifies both of these issues.

With respect to the issue of which facilities were subject to the section 3010 notification requirement, neither the statutory language nor its legislative history provides these alternatives, and EPA did not address the issue in the November 29, 1985, rules. Indeed, the issue may have been further confused by the addition of a regulatory notification requirement which took effect on January 29, 1986, and continued thereafter for facilities commencing activities after that date.

To avoid further confusion, EPA is taking the following positions. First, the notification requirements in the regulation are in addition to, not in replacement of, the statutory 3010 notification requirements. Second, because of the lapsed time since the publication of the rule and the date of statutory notification and because EPA believes a facility could reasonably have chosen either interpretation, EPA believes that a facility will have failed to meet the section 3010(a) requirement only if it was in existence on *both* November 8, 1984, and February 8, 1986, and did not notify by February 8, 1986. (In this regard, facilities notifying on January 29, 1986, who were in existence on November 8, 1984, would be deemed to satisfy this requirement.)

The most important clarifying change we are making today is to indicate that the notification requirement in the regulations does not implement section 3010(a), and so is *unrelated* to eligibility for interim status. This is shown by the commencement of the regulatory requirement on January 29, 1986, for facilities in existence on November 29, 1985 (rather than any of the possible statutory dates), and by the fact that the regulatory notification applies to facilities commencing waste fuel activities after February 8, 1986.

However, section 3010(a) notification, where required, is still a prerequisite for interim status. Thus, facilities in existence on November 8, 1984, and February 8, 1986, must have provided a 3010(a) notice by February 8, 1986, in order to qualify for interim status. (Conversely, facilities not in existence on both of these dates are not required to notify as a prerequisite to obtaining interim status.)

Since §§ 266.31, 266.34, and 266.35 indicate erroneously that the notification requirement applies "under section 3010", we are striking this reference. Thus, the notification continues to be required under the regulations but is not a prerequisite for interim status. (Notification may continue to be provided on EPA Form 8700-12. We note, however, that this form refers to section 3010(a). It should be understood that this reference does not apply in all cases, and that the notification is in reality required

pursuant to other RCRA information-gathering authorities.)

*B. Regulation of Hazardous Waste Fuel Blending Tanks*

Another feature of the November 29 rules that could be better articulated involves regulation of tanks used to blend hazardous waste fuels. These tanks are found most often at hazardous waste fuel marketers' facilities, where hazardous wastes are blended with oil and other materials to produce hazardous waste fuels. Tanks can also be used to settle out impurities such as bulk solids and water in the course of hazardous waste fuel production.

Several persons have questioned whether these tanks are considered to be exempt recycling units. We believe a fair reading of the rules reflects the Agency's intent that these tanks be regulated, not exempt.

The current rules require marketers and burners to comply with all "applicable" storage standards, and thus do not address specifically the case of hazardous waste fuel blending tanks. See §§ 266.34(c), 266.35(c). The preamble likewise does not speak directly to the issue of fuel blending tanks. The preamble does, however, articulate a strong policy to regulate hazardous waste fuels cradle to grave, to regulate hazardous waste fuel marketers strictly, and to remove certain existing regulatory anomalies that had resulted in gaps in regulatory coverage. Thus, EPA stated that

> *all* storage of *all* hazardous waste fuels is subject to regulation. . . The Agency is today regulating the storage (and transportation) of any hazardous waste used to produce a fuel and of any hazardous waste fuel so produced. . . As proposed, today's rules subject hazardous waste fuels to storage (and other) controls. This includes storage by the initial marketers (e.g., processors, blenders), storage by subsequent marketers (e.g., distributors), and storage by burners. 50 FR at 49198 (emphasis original).

In the same discussion, the Agency emphasized that it was eliminating existing regulatory exemptions for non-sludge wastes which are hazardous solely because they exhibit a characteristic of hazardous waste. *Id.* The Agency also eliminated an exemption for blended hazardous waste fuels produced by a person who neither generated nor burned the fuel. *Id.* at 49168/1. The Agency took these steps because the exemptions were without environmental basis, and interfered with the announced goals of controlling hazardous waste fuels cradle to grave. Such exemptions also interfered with another stated Agency goal of strictly controlling hazardous waste fuel marketers' activities, and making certain that storage of both marketers' incoming hazardous waste and outgoing hazardous waste fuels is fully regulated. *Id.* at 49199.

Given that a chief, articulated purpose of the November 29 rules was to control storage of hazardous wastes used to produce fuels, to further control storage of the hazardous waste fuels once produced, and that the Agency was at pains to remove anomalous exemptions relating to storage from the rules, the Agency believes it clear that storage controls apply to hazardous waste fuel blending tanks. It simply makes no sense to enact a cradle to grave regulatory system but to leave a gap for the blending operation. The Agency notes further that where it wished an activity relating to hazardous waste fuel management to remain exempt, it provided a specific regulatory exemption, as for the act of burning. There is no explicit exemption for blending tank storage. We consequently are clarifying in today's notice that the reference to "applicable" storage standards in the hazardous waste rules subjects hazardous waste fuel blending tanks (along with all other hazardous waste fuel storage devices) to storage regulations.

*C. Exemption of Coke and Coal Tar Produced From Coal Tar Decanter Sludge by the Iron and Steel Industry*

It has come to the Agency's attention that certain iron and steel facilities may be combining various hazardous wastes with their coke and coal tar and claiming that the resulting fuel is exempt from regulation. This practice is not intended to result in an exempt fuel except when EPA Hazardous Waste No. K087 is involved. In response to industry comment, EPA exempted from regulation coke and coal tar produced from iron and steel industry coal tar decanter sludge (Hazardous Waste K087) on the grounds that coke and coal tar so produced contain the same concentrations of hazardous constituents as coke and coal tar produced without the hazardous waste sludge. 50 FR at 49170–171. The Agency was absolutely explicit that coke and coal tar produced from Hazardous Waste K087 were the only waste fuels being exempted. *Id.* Likewise, the comments on this issue, from the American Iron and Steel Institute and from Koppers, referred only to coke and coal tar produced from Hazardous Waste K087.

EPA mistakenly codified this exemption as applying to iron and steel industry coke and coal tar produced from *any* iron and steel industry hazardous waste, rather than just from waste K087. This obviously was neither the Agency's intent, nor commenters', since all discussion on this issue has involved exclusively use of K087 in the coking and coal tar processes. We consequently are correcting the language of the exemption to indicate that it applies only to coke and coal tar produced from coal tar decanter sludge (EPA Hazardous Waste K087).

*D. Notification by Burners of Used Oil Meeting the Fuel Specification*

EPA indicated in the preamble to the final regulations that "burners who first claim that used oil fuel meets the specifications" must notify EPA or an authorized state of their used oil fuel management activity. 50 FR at 49195/3. The Agency neglected, however, to include this requirement in the used oil fuel burner regulations (although the parallel notification requirement for marketers who first claim that used oil fuel meets the specification is included in the rules for used oil fuel marketers. See § 266.43(a)(2)).

The Agency also indicated, however, that notification requirements ordinarily do not apply to burners of specification used oil fuel. 50 FR 49195, 49196. This language only apparently conflicts with the preamble language cited above. EPA intended that burners who generate and burn their own specification oil are not required to notify. In contrast, burners who receive off-specification oil from a marketer and blend it themselves must notify, since they are otherwise prohibited from receiving shipments of off-specification used oil from marketers. See § 266.43(b)(5)(A). Accordingly, we are also clarifying in today's rule that burners who generate and burn their own specification used oil fuel—the only burners not affected by the requirement in § 266.43(b)(5)(A)—are not required to notify.

In light of the Agency's clear intent and inadvertent omission, we feel justified in conforming the rule for burners to reflect the preamble statement and parallel regulations. Thus, used oil fuel burners who are the first person to claim that used oil fuel meets the specification—but do not themselves generate such oil—must file a one-time notification of their activities with the Agency. As a practical matter, we expect this requirement to affect only burners engaged in blending activities.

*E. Change to § 261.3(c)*

The final rules included a conforming change to § 261.3(c)(2)(ii)(B) referring to materials exempted under

"§ 261.3(a)(3)(iv), (vi), (vii), or (viii)". This reference should be to the wastes exempted by § 261.6(a)(3)(v)–(ix). We are correcting this erroneous reference in today's notice.

*F Definition of Marketer*

Marketers of hazardous waste fuels and off-specification used oil fuels are subject to a number of regulatory requirements including notification, invoice (for used oil), certification, manifest (for hazardous waste), and storage standards for hazardous waste. A question has been raised whether processors and blenders who send used oil to brokers or distributors rather than to ultimate burners are marketers of used oil fuels.

These types of processors and blenders are marketers under the rules. The rules for hazardous waste fuel marketers indicate explicitly that "persons who receive hazardous waste from generators and produce, process or blend hazardous waste from these hazardous wastes" are marketers. See § 266.34. Although the parallel provision for used oil fuel marketers does not contain this language (due to inadvertent omission), the Agency was at pains to indicate that intermediate processors and blenders are marketers, notwithstanding lack of sale to burners. Thus, the Agency stated that "EPA is adopting today a system to track hazardous waste fuel and off-specification used oil fuel from the initial marketers (e.g., processors, blenders, distributors, or generators who market to burners) through intermediaries (e.g., transporters, distributors) to the industrial users who burn the fuel for energy recovery." 50 FR at 49196/2. To the same effect, see 50 FR 49198/2 (storage controls apply to "storage by the initial marketer (e.g. processors, blenders), storage by subsequent marketers (e.g. distributors), and storage by burners").

The only persons who are *not* marketers are initial generators and transporters who do not not sell directly to burners, and subsequent transporters and brokers who do not take ownership of the oil. Section 266.43(a)(1) and 50 FR 49195/1. An example is an industrial facility that generates used oil in the course of its operations. This type of initial generator does not know that its oil could be a fuel. Processors and blenders, on the other hand, are in the used oil business and know that fuel use is the only reasonable disposition of the used oil they process. Thus, virtually by definition, processors and blenders produce a used oil or fuel. We note that Congress took this view in the 1984 RCRA amendments, stating that hazardous waste fuel requirements applied to both "blenders and distributors". H. Rep. No. 198 at 40. Likewise, in discussing used oil, Congress provided an example of a used oil processor removing contaminants from used oil and selling the processed oil to a retail dealer as an entity to be regulated as a used oil fuel facility. *Id.* at 69. (Should any blenders or processors deal exclusively with the handful of rerefiners in the country, or if they are processing used oil exclusively for road oiling (an illegal activity in many jurisdictions) they could conceivably argue that they are not marketing used oil fuel. These are very unlikely scenarios, and the Agency knows of no other circumstances when a processor or blender would be dealing with intermediaries and not be producing a used oil fuel.)

In light of the Agency's explicit statements, Congressional statements in legislative history, and the fact that any reading eliminating processors and blenders from the existing rules would result in the very type of unintended loophole the rules and statute were intended to prevent, we think the only sensible reading of the current rules is that initial blenders and processors of used oil (except those who generate the waste itself and send it to a person who does not burn it) are marketers. We have added one clarifying sentence to the current rules to make this point more explicit, and incorporated the parallel language from the definition of marketer for hazardous waste fuel.

*G. Typographical Errors*

Today's notice also corrects several miscellaneous typographical errors and omissions in the rule.

## II. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. Since this notice makes technical corrections and does not change the previously approved final rule, this rule is not a major rule, and, therefore no Regulatory Impact Analysis is required.

## List of Subjects in 40 CFR Parts 261 and 266

Hazardous waste, Recycling.

J. W. McGraw,

*Acting Assistant Administrator for Solid Waste and Emergency Response.*

For the reasons set out in the Preamble, Title 40 of the Code of Federal Regulations is amended as follows:

## PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

**Authority:** Sections 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6921, and 6922].

2. Section 261.3 is amended by revising paragraph (c)(2)(ii)(B) to read as follows:

**§ 261.3 Definition of hazardous waste.**

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) Waste from burning any of the materials exempted from regulation by § 261.6(a)(3)(v–ix).

* * * * *

2. Section 261.6 is amended by revising paragraph (a)(3)(vii) to read as follows:

**§ 261.6 Requirements for recycable materials.**

(a) * * *

(3) * * *

(vii) Coke and coal tar from the iron and steel industry that contains EPA Hazardous Waste No. K087 (Decanter tank tar sludge from coking operations) from the iron and steel production process;

* * * * *

## PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC WASTES AND SPECIFIC TYPES OF WASTE MANAGEMENT FACILITIES

1. The authority citation for Part 266 continues to read as follows:

**Authority:** Sections 1006, 2002(a), 3004, and 3014 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended [42 U.S.C. 6905, 6912(a), 6924, and 6934].

### Subpart D—Hazardous Waste Burned for Energy Recovery

2. Section 266.31 is amended by revising paragraph (a)(1) to read as follows:

**§ 266.31 Prohibitions.**

(a) * * *

(1) To persons who have notified EPA of their hazardous waste fuel activities and have a U.S. EPA Identification Number; and

* * * * *

3. Section 266.34 is amended by revising paragraphs (e)(1)(i), (ii) and the

first sentence of paragraph (b) to read as follows:

**§ 266.34 Standards applicable to marketers of hazardous waste fuel.**

* * * * *

(b) *Notification.* Notification of hazardous waste fuel activites. * * *

* * * * *

(e) * * *

(1) * * *

(i) The burner or marketer has notified EPA and identified his waste-as-fuel activities; and

(ii) If the recipient is a burner, the burner will burn the hazardous waste fuel only in an industrial furnace or boiler identified in § 266.31(b).

* * * * *

4. Section 266.35 is amended by revising the introductory paragraph and paragraphs (c)(3), (d)(1) and the first sentence of paragraph (b) to read as follows:

**§ 266.35 Standards applicable to burners of hazardous waste fuel.**

Owners and operators of industrial furnaces and boilers identified in § 266.31(b) that burn hazardous waste fuel are "burners" and are subject to the following requirements:

(b) *Notification.* Notification of hazardous waste fuel activities. * * *

(c) * * *

(3) For new storage facilities, the applicable provisions of Subparts A through L of Part 264, and Parts 270 and 124 of this chapter;

(d) * * *

(1) He has notified EPA and identified his waste-as-fuel activities; and

* * * * *

## Subpart E—Used Oil Burned for Energy Recovery

5. Section 266.43 is amended by revising paragraph (a) introductory text to read as follows:

**§ 266.43 Standards applicable to marketers of used oil burned for energy recovery.**

(a) Persons who market used oil fuel are termed "marketers". Except as provided below, marketers include generators who market used oil fuel directly to a burner, persons who receive used oil from generators and produce, process, or blend used oil fuel from these used oils (including persons sending blended or processed used oil to brokers or other intermediaries), and persons who distribute but do not process or blend used oil fuel. The following persons are not marketers subject to this subpart:

* * * * *

6. Section 266.44 is amended by revising the first sentence of paragraph (b) to read as follows:

**§ 266.44 Standards applicable to burners of used oil burned for energy recovery.**

* * * * *

(b) *Notification.* Burners of off-specification used oil fuel, and burners of used oil fuel who are the first to claim that the oil meets the specification provided under § 266.40(e), except burners who burn specification oil that they generate, must notify EPA stating the location and general description of used oil management activities. Burners of used oil fuel that meets the specification who receive such oil from a marketer that previously notified EPA are not required to notify. Owners and operators of used oil-fired space heaters that burn used oil fuel under the provisions of § 266.41(b)(2) are exempt from this notification requirement. * * *

* * * * *

[FR Doc. 87-8033 Filed 4-10-87; 8:45 am]

BILLING CODE 6560-50-M

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## 40 CFR Part 721

[OPTS-50532A; FRL-3185-3]

## Methyl n-Butyl Ketone; Determination of Significant New Use

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

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) that requires persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of methyl n-butyl ketone (MBK) (CAS Number 591-78-6) for any use. EPA believes that this action is necessary because MBK may be hazardous to human health, and any use of MBK and activities associated with such use may result in significant human exposure. The required notice will furnish EPA with the opportunity to evaluate the intended use, and, if necessary, prohibit or limit that activity before it occurs.

**DATES:** In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on April 27, 1987. This rule becomes effective on May 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Telephone: (202-554-1404).

**SUPPLEMENTARY INFORMATION:**

### I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a significant new use. This determination is made by rule after consideration of all relevant factors, including those listed in section 5(a)(2). Once a use is determined to be a significant new use, persons must, under section 5(a)(1)(B), submit a notice to EPA at least 90 days before they commence the manufacture, import, or processing of the substance for that use.

Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d) (1), the exemptions authorized by section 5(h) (1), (2), (3), and (5), and the regulations at 40 CFR Part 720. Once EPA receives a SNUR notice, the Agency may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires the Agency to explain in the Federal Register its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR Part 707. Persons who intend to import a substance are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Persons who import a substance identified in a final SNUR must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification requirements appears at 40 CFR Part 707.

### II. Applicability of General Provisions

In the Federal Register of September 5, 1984 (49 FR 35011), EPA promulgated general regulatory provisions applicable to SNURs (40 CFR Part 721, Subpart A). The general provisions are discussed in detail in the cited Federal Register document, and interested persons should refer to that document for further information. These general provisions apply to this SNUR, except as provided

in § 721.385(b)(1). On April 22, 1986 (51 FR 15104), EPA proposed revisions to the general provisions, some of which would apply to this SNUR.

### III. Summary of This Rule

EPA is designating any use of MBK as a significant new use of this chemical substance. This rule requires persons who intend to manufacture, import, or process MBK for any use to notify EPA at least 90 days before such manufacture, import, or processing.

### IV. Discussion of the Chemical Substance

*A. Production and Use Data*

MBK has been used as a solvent for lacquers, and in lacquer and varnish removers. Other uses include as a solvent for oils, fats, and waxes.

MBK can be produced commercially by the catalyzed reaction of acetic acid with ethylene under pressure, or from 1-hexene catalyzed by 1,4-benzoquinone. The TSCA Chemical Substances Inventory listed 1977 U.S. manufacture or import of between 1,000,000 and 10,000,000 pounds. Evidence developed during the mid-1970s of the neurotoxicity of MBK has led to voluntary industry control and reduction of use since then. The only MBK manufacturer in the U.S. discontinued commercial production in 1979, and in 1980 and 1981 sold all remaining stockpiles. This company has indicated that it does not plan to resume manufacture of MBK. No importers of MBK were identified. It is not likely that MBK has been processed or used subsequent to 1982.

EPA did not receive any comments in response to the proposed SNUR (July 7, 1986, 51 FR 24551) that would indicate that manufacture, import, or processing of MBK for commercial purposes subject to this rule has resumed. The only comment received by the Agency concerned the distribution of small quantities for research and development (See Unit IX).

*B. Human Health Effects*

EPA has extensive data on the human health effects of MBK. Peripheral neuropathy resulting from MBK exposure has been observed in humans. These observations have been supported by similar results in toxicological testing on several species of laboratory animals.

The toxic effects of human exposure to MBK were first noted in 1973, when 86 out of 1,161 workers in a treated fabrics plant in Ohio developed peripheral neuropathy. The neurological pattern of the disorders was distal sensory and motor disorder with minimal reflex loss. Symptoms were similar to neurotoxic effects induced by n-hexane. Subsequent studies from other industries where humans were occupationally exposed to MBK have reported identical symptoms. These neurotoxic effects have been reproduced in several studies on laboratory animals.

It is generally believed that MBK is metabolized readily to 2,5-hexanedione, which is the chemical substance eliciting the toxic effect. 2,5-Hexanedione is believed to react irreversibly with amine side chains on neurofilaments. This may then lead to axonal degeneration of the distal parts of vulnerable neuronal processes, accompanied by axonal swelling and myelin breakdown. At low doses, peripheral nervous system axons are selectively affected; larger doses are more likely to cause damage to central nervous system fibers in the spinal pathway. This substance may produce some degree of permanent nerve damage in some affected individuals.

Other toxic effects observed to have been caused by exposure to MBK include testicular atrophy in rats, and a moderate irritant effect on the skin, eyes, and mucous membranes of humans and laboratory animals.

*C. Past and Current Exposure Data*

During the early to mid-1970s there was considerable opportunity for human exposure to MBK. In 1981, the National Institute for Occupational Safety and Health (NIOSH) estimated that more than 190,000 persons per year were potentially occupationally exposed to MBK. This estimate was based upon the results of the National Occupational Hazard Survey, conducted in 1972 to 1974. NIOSH also estimated that MBK was used in 49 major Standard Industrial Classification industry divisions. Because the production of MBK ended in 1979, few, if any, persons should actually be exposed at the present time. EPA does not expect this situation to change unless MBK is manufactured, imported, or processed for use again.

Exposure to MBK has been primarily via inhalation or skin contact. Exposure is mainly to MBK vapor, although skin and eye contact with the liquid is possible. In the past, concentrations have been measured in MBK manufacturing, processing, and use facilities and have ranged from below 0.01 mg/M$^3$ to as high as 746 mg/M$^3$. Average concentration levels were usually reported to be between 40 and 60 mg/M$^3$.

*D. Regulatory Background*

The Occupational Safety and Health Administration (OSHA) permissible exposure limit for MBK is an 8-hour time-weighted average (TWA) of 100 ppm (410 mg/M$^3$). The immediately dangeous to life and health level is 5,000 ppm. The American Conference of Governmental Industrial Hygienists recommends an 8-hour TWA of 5 ppm (20 mg/M$^3$) with no separate short-term exposure limit. The NIOSH-recommended 10-hour TWA is 1 ppm (4.10 mg/M$^3$).

Neuropathies resulting from MBK exposure have been observed in humans from air concentrations reported to be as low as 9 ppm. It is also likely that dermal exposure to liquid MBK would elicit these same neurotoxic effects. For these reasons, the OSHA permissible exposure limit of 100 ppm may not adequately protect against unreasonable risk in the event of resumed manufacture, import, processing, or use.

### V. Objectives and Rationale for This Rule

MBK is a known neurotoxicant and is not currently manufactured, imported, processed, or used for commercial purposes. MBK is not subject to any Federal regulation that would notify the Federal government of activities that might result in adverse exposures to this substance or provide a regulatory mechanism that could protect human health from potentially adverse exposures before they occur.

EPA believes that the resumption of any use of MBK and the related manufacture, import, or processing of MBK for such use has a high potential to increase the magnitude and duration of exposure to this substance and to change the type or form of exposure from that which currently exists. Given the toxicity of this chemical substance, the reasonably anticipated situations that could result in exposure, and the lack of sufficient existing regulatory controls, individuals could be exposed to MBK at levels which may result in adverse effects.

The consideration of these factors has resulted in EPA's decision to designate any use of MBK as a significant new use of this chemical substance. Persons intending to manufacture, import, or process MBK for use are required to notify EPA 90 days before they begin such manufacuture, import, or processing. Advance notification will allow EPA the opportunity to evaluate the intended activities and to protect against adverse exposures to MBK before they can occur.

Because EPA is concerned about potential exposure during the entire life cycle of MBK, the Agency has modified § 721.5(a)(2) to require any

manufacturer, importer, or processor who intends to distribute MBK in commerce to submit a notice.

### VI. Alternatives

In the proposed SNUR, EPA considered alternative regulatory actions for MBK. In the absence of comments on the regulatory approach discussed in the proposal, EPA has decided to proceed with the promulgation of a SNUR for this substance.

### VII. Applicability of Proposal To Uses Occurring Before Promulgation of Final Rule

EPA believes that the intent of section 5(a)(1)(B) is best served by determining whether a use is a significant new use as of the proposal date of the SNUR rather than after the promulgation of a final rule. If uses begun during the proposal period of the SNUR were considered ongoing as of the date of promulgation, it would be difficult for the Agency to establish SNUR notice requirements, because any person could defeat the SNUR by initiating the proposed significant new use before the rule becomes final.

Thus, persons who began commercial manufacture, import, or processing of MBK for a proposed significant new use designated in this rule between proposal and promulgation of the SNUR must cease that activity before the effective date of this rule. To resume their activities, these persons must comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

### VIII. Test Data and Other Information

Although EPA has a considerable amount of test data on the potential adverse effects of MBK to human health, EPA lacks data on the potential adverse effects of MBK to the environment. EPA recognizes that, under TSCA section 5, a person is not required to develop any particular test data before submitting a notice. Rather, persons are only required to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, in view of the potential risks that may be posed by a significant new use of MBK, EPA encourages significant new use notice submitters to conduct tests that would permit a reasoned evaluation of the substance's toxic potential to the environment when utilized for an intended use.

Significant new use notices submitted with such test data would improve EPA's ability to make a reasoned evaluation of the environmental effects of MBK. Test data should be developed in accordance with TSCA Good Laboratory Practices Standards at 40 CFR Part 792. Failure to do so may lead the Agency to find such data to be insufficient to reasonably evaluate the enviromental effects of the substance. EPA encourages persons to consult with the Agency before selecting a testing protocol.

In addition to environmental effects test data, EPA encourages significant new use notice submitters to develop and submit relevant exposure and release data on this substance. Notice submitted with such exposure and release data would improve EPA's ability to make an evaluation of the human exposure and environmental release potential when MBK is utilized for an intended significant new use.

Finally, EPA urges persons to submit information on potential benefits of this substance and information on risks posed by the substance compared to risks posed by potential substitutes.

### IX. Comment on Proposed Rule

During the 60-day comment period following the publication of the proposed rule (51 FR 24551), one comment was received. The commenter stated that though MBK has not been produced in commercially significant quantities for a number of years, it has been continuously available in minute quantities for use as analytical standards and reference materials.

EPA did not consider this use in the SNUR because an exemption for these activities is set forth in section 5(h)(3) of TSCA. That section of TSCA states:

> The requirements of subsections (a) and (b) do not apply with respect to the manufacturing or processing of any chemical substance which is manufactured or processed, or proposed to be manufactured or processed, only in small quantities (as defined by the Administrator by rule) solely for purposes of—
>
> (A) Scientific experimentation or analysis, or
>
> (B) Chemical research on, or analysis of such substance or another substance, including such research or analysis for development of a product, if all persons engaged in such experimentation, research, or analysis for a manufacturer or processor are notified (in such form and manner as the Administrator may prescribe) of any risk to health which the manufacturer, processor, or the Administrator has reason to believe may be associated with such chemical substance.

Thus, persons who manufacture, import, or process a chemical substance in small quantities solely for research and development (R&D) can conduct the R&D concerning a significant new use without submitting a notice. However, the manufacturer or importer of such a substance must comply with the requirements of 40 CFR 720.36 and 720.78(b).

### X. Economic Analysis

The Agency has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of MBK. EPA estimates that the cost of filing a significant new use notice will be between $1,400 and $8,000. The Agency's complete economic analysis is available in the public record for this rule (OPTS–50532A).

### XI. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPTS–50532A). The record includes the following basic information considered by the Agency in developing this rule:

1. Economic analysis of the significant new use rule for MBK.
2. A chemical hazard information profile for MBK.
3. Comment received on the proposed significant new use rule.

A public version of this record is available in the OTS Public Information Office, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Public Information Office is located in Rm. NE–G008, 401 M St., SW., Washington, DC.

### XII. Regulatory Assessment Requirements

*A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule is not a "Major Rule" because it will not have an effect on the economy of $100 million or more, and it will not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the annual cost of this rule, EPA believes that the cost will be low. Even if EPA received 50 significant new use notices, the direct cost of the rule would be under one million dollars. In addition, because of the nature of the rule and the substance subject to it, EPA believes that there will be few significant new use notices submitted. Further, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovation, that

impact will be limited because such factors are unlikely to discourage an innovation that has high potential value.

This regulation was submitted to the Office of Management and Budget (OMB) for review by Executive Order 12291.

*B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant impact on a substantial number of small businesses. The Agency cannot determine whether parties affected by this rule are likely to be small businesses. However, because EPA has no evidence of recent commercial manufacture, import, processing, or use of MBK, EPA believes that few manufacturers, importers, or processors will submit significant new use notices. Therefore, although the costs of preparing a notice under this rule might be significant for some small businesses, the number of such businesses affected is not expected to be substantial.

*C. Paperwork Reduction Act*

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned them the OMB control number 2070–0038.

**List of Subjects in 40 CFR Part 721**

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements, Significant new uses.

Dated: April 3, 1987.

**John A. Moore,**

*Assistant Administrator for Pesticides and Toxic Substances.*

**PART 721—[AMENDED]**

Therefore, 40 CFR Part 721 is amended as follows:

1. The authority citation for Part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604 and 2607.

2. By adding a new § 721.385 to read as follows:

**§ 721.385 Methyl n-butyl ketone.**

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance methyl n-butyl ketone, CAS Number 591–78–6, is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is any use.

(b) *Specific Requirements.* The provisions of Subpart A of this Part apply to this section except as modified by this paragraph.

(1) *Persons who must report.* Section 721.5 applies to this section except for § 721.5(a)(2). A person who intends to manufacture, import, or process for commercial purposes the substance identified in paragraph (a)(1) of this section and intends to distribute the substance in commerce must submit a significant new use notice.

(2) [Reserved]

(Approved by the Office of Management and Budget under control number 2070–0038)

[FR Doc. 87–8160 Filed 4–10–87; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 86–208; RM–5115, 5197, 5212, 5394]**

### Radio Broadcasting Services; Windcrest and Fentress, TX et al.

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document substitutes Channel 251C1 for Channel 252A at Austin, Texas and modifies the license of Station KHFI–FM to specify operation on the new frequency, at the request of Capitol Cities Broadcasting Corporation. A restricted site of approximately 4.5 kilometers (2.8 miles) southwest of the community is required. Concurrence by the Mexican government has been obtained. This action further dismisses the proposals to allot Channel 251A to either New Braunfels (RM–5394) or Windcrest (RM–5115), Texas at the request of the petitioners, Donald L. Freed and National Enterprises, Inc., respectively. In addition the petition of Fentress FM Project (RM–5212), proposing the allotment of Channel 251A to Fentress, Texas is dismissed for failure to demonstrate community status. With this action, this proceeding is terminated.

**EFFECTIVE DATES:** May 18, 1987.

**FOR FURTHER INFORMATION CONTACT:** Patricia Rawlings, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 86–208, adopted February 10, 1987, and released April 3, 1987. The full text of this Commission decision 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 contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments is amended, under Texas, by revising Channel 252A to 251C1 for Austin.

**Mark N. Lipp,**

*Chief, Allocations Branch, Mass Media Bureau.*

[FR Doc. 87–8165 Filed 4–10–87; 8:45 am]

BILLING CODE 6712–01–M

## GENERAL SERVICES ADMINISTRATION

**48 CFR Part 542**

**[APD 2800.12 CHGE 42]**

### General Services Administration Acquisition Regulation; Bankruptcy, Insolvency or Dissolution of Business

**AGENCY:** Office of Acquisition Policy, GSA.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration Acquisition Regulation (GSAR), Chapter 5, is amended to add Subpart 542.70 to provide guidance to contracting officers on dealing with situations where a contractor is experiencing financial difficulty, has filed for bankruptcy, or is dissolving its business. The intended effect is to improve the regulatory coverage and provide uniform procedures for contracting under the regulatory system.

**EFFECTIVE DATE:** April 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Spagnola, Jr., Office of GSA Acquisition Policy and Regulations (VP), 18th and F Streets, NW., Room 4031, Washington, DC 20405, (202) 523–4768.

**SUPPLEMENTARY INFORMATION:**

**Background**

This rule was published in the **Federal Register** for public comment on September 11, 1986 (51 FR 32340). The Office of Federal Procurement Policy

responded by indicating that they had no objection to the substance of the coverage, but recommended the coverage be considered for inclusion in the Federal Acquisition Regulation (FAR). A copy of this rule is being forwarded to the Chairman of the Civilian Agency Acquisition Council with a suggestion that it be considered for inclusion in the FAR. No other public comments were received. Comments received from various GSA activities were considered and adopted when appropriate.

**Impact**

The Director, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain procurement regulations from Executive Order 12291. The exemption applies to this rule. The GSA certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The rule simply elaborates on existing regulations to provide additional guidance to GSA contracting officers on handling situations where a contractor is experiencing financial difficulty, has filed for bankruptcy, or is dissolving its business. Therefore, no flexibility analysis has been prepared. The rule does not contain information collection requirements which require the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

**List of Subjects in 48 CFR Part 542**

Government procurement.

1. The authority citation for 48 CFR Part 542 continues to read as follows:

Authority: 40 U.S.C. 486(c).

2. The table of contents for Part 542 is amended by adding Subpart 542.70 and related sections to read as follows:

## PART 542—CONTRACT ADMINISTRATION

**Subpart 542.70 Bankruptcy, Insolvency or Dissolution of a Business**

Sec.

542.7000 Scope of subpart.
542.7001 General.
542.7002 Procedures.
542.7002–1 Contractor experiencing financial difficulty.
542.7002–2 Contractor that has filed for bankruptcy.
542.7002–3 Contractor dissolving business.

3. Subpart 542.70 is added to read as follows:

### Subpart 542.70 Bankruptcy, Insolvency or Dissolution of a Business

**542.7000 Scope of subpart.**

This subpart prescribes the procedures to be followed when a contractor is found to be in financial difficulty or has filed for bankruptcy.

**542.7001 General.**

Prompt action is vital in the case of a contractor who has been determined insolvent or who has filed under any of the applicable laws relating to bankruptcy, insolvency, and dissolution of businesses (11 U.S.C. 1 et seq.) to assure that the Government's rights are protected in any formal proceedings. Terminated contracts as well as current contracts with the contractor must be considered in any action contemplated. Contracting officers may be advised of such difficulties by the cognizant quality assurance specialist (QAS) via GSA Form 1679, Contract Administration, contracting officer's representatives (COR), the Office of Finance, the Office of Inspector General, or other means, e.g., newspaper items, Dun and Bradstreet, an industry association, prime contractors, subcontractors or vendors, industry competitors, other Federal agencies, or financial institutions. The contracting officer shall verify the accuracy of the information received and when appropriate follow the procedures outlined in section 542.7002.

**542.7002 Procedures.**

**542.7002–1 Contractor experiencing serious financial difficulty.**

When a contractor is experiencing serious financial difficulties the contracting officer shall proceed as follows:

(a) Determine whether the contractor is delivering supplies and/or performing the services within the timeframes specified in the contract and whether the contractor is making satisfactory progress in connection with future deliveries or performance. Obtain, if needed, the recommendations of the appropriate QAS or COR.

(b) If a determination is made that the contractor has failed without excuse to deliver or perform in accordance with the terms of the contract or has failed to make progress so as to endanger performance of the contract, the contracting officer should consider terminating the contract for default in accordance with the procedures outlined at FAR 49.402–3 and the Termination for Default clause in the contract.

(c) If contract termination is not considered necessary, continue to monitor contract(s) by requesting that the QAS or COR visit the contractor's plant or the work site more often than usual to ascertain that progress is being made.

(d) If a small business contractor is involved, notify the regional Small Business Administration (SBA) office.

(e) If the contract has a performance bond and/or payment bond, the bonding company should be notified if the circumstances of the particular case dictate such notification.

**542.7002–2 Contractor that has filed for bankruptcy.**

When a contractor has filed for bankruptcy, the contracting officer shall proceed as follows:

(a) Notify the contracting director, assigned counsel, the Office of Finance and other interested parties.

(b) Determine whether the contractor is performing in accordance with the terms of the contract and/or is making satisfactory progress towards completion of the contract. If a determination is made that the contractor has failed without excuse to deliver or perform in accordance with the terms of the contract or failed to make progress so as to endanger performance of the contract, the contracting officer should consider terminating the contract for default in accordance with the procedures outlined at FAR 49.402–3 and the Termination for Default clause in the contract. Termination must not be effected without concurrence of assigned counsel, who will coordinate such action with the assigned Assistant United States Attorney.

(c) Determine the status of and provide for the protection and disposition of Government-owned property, if applicable.

(d) If special safeguards for Government property controlled by the contractor are needed, the contracting officer should determine the names, addresses, and phone numbers of the local Government officials concerned in the bankruptcy proceedings, e.g., sheriff, marshal, or the Receiver or Trustee in bankruptcy, if assigned.

(e) Transmit immediately all relevant communications to assigned counsel; e.g., notice of bankruptcy, notice of meeting of creditors, plan of arrangement, status of such plan, claims bar date and address of the Bankruptcy Court where proceedings were filed. Assigned counsel shall immediately transmit a copy of the notice of bankruptcy to the appropriate office in the Office of General Counsel (i.e., LG, LP, or LR) or to the assigned Assistant United States Attorney.

(f) Prepare, in consultation with assigned counsel, the preliminary, contingent and, after reprocurement (if any), final proof of claim. Such proofs of claim will be forwarded by the assigned counsel to the appropriate office in the Office of General Counsel (i.e., LG, LP, or LR) or to the assigned Assistant United States Attorney.

(g) Consult with assigned counsel regarding possible setoffs of Government claims from retained and unpaid contractor earnings.

(h) Advise the Inspector General whenever there is reason to believe that the contractor may have fraudulently transferred assets before filing for bankruptcy. Also advise the Inspector General in any case where the contracting officer is aware of an ongoing audit or investigation of the contractor.

**542.7002-3 Contractor dissolving business.**

Upon receipt of information that a contractor intends to dissolve his business or to cease operations for whatever reason, e.g., because of retirement, fire sale of business (without public notice), etc., the contracting officer shall verify the accuracy of the information. If the information is accurate, the contracting officer shall request the QAS or COR verify status of contract(s) and notify other directly interested parties. However, the QAS or COR should not be requested to make special contract administration visits unless all other efforts to obtain the necessary information have failed. If a claim against the contractor is either pending or outstanding, notify assigned counsel and simultaneously obtain information that would aid in finalizing the amount of claim(s).

Dated: April 1, 1987.

**Richard H. Hopf, III,**

*Acting Associate Administrator for Acquisition Policy.*

[FR Doc. 87-8121 Filed 4-10-87; 8:45 am]

BILLING CODE 6820-61-M

# Proposed Rules

Federal Register
Vol. 52, No. 70
Monday, April 13, 1987

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

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Parts 317, 319, and 381

**[Docket No. 78-733N]**

### Labeling for Meat and Poultry Products With Cheese Substitutes; Revised Pizza Standard

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of withdrawal of proposal.

**SUMMARY:** A proposed rule was issued by the Food Safety and Inspection Service (FSIS) to establish certain labeling requirements for meat and poulty products containing cheese substitutes and to amend the Federal meat inspection regulations on the standard for pizza. The Department has determined that the proposal should be withdrawn, and it is terminating the rulemaking in this matter.

**FOR FURTHER INFORMATION CONTACT:** Ms. Ashland L. Clemons, Acting Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6042.

**SUPPLEMENTARY INFORMATION:** A proposed rule was issued by FSIS in 1973 (38 FR 16363) to allow the use of uncooked meat in pizza products and to identify a minimum cheese requirement in pizzas with meat or sausage. A final rule was not issued. In 1983, a new proposed rule (48 FR 35654) was issued, withdrawing and superseding the previous proposal, to establish certain labeling requirements for meat and poultry products containing cheese substitutes and to amend the Federal meat inspection regulations on the standard for pizza (9 CFR 319.600) to require a minimum cheese content and to clarify that only cooked meat or meat food products can be used in pizza with meat.

The Department received 5,543 written comments to the proposed rule concerning standards for meat pizzas and the labeling of meat and poultry products containing cheese substitutes. The majority of comments (5,155) was submitted by consumers. Many of the commenters opposed the proposed rule for various reasons.

A comment in opposition to the proposed rule, submitted by the Pillsbury Company of Minneapolis, Minnesota, pointed out that a different labeling scheme for cheese substitutes implied that these products are "inferior" to natural cheese. Research conducted by the company indicates that there is very little difference between cheese substitutes and cheese from a nutritional or organoleptic standpoint. The company further pointed out that cost savings from the use of cheese substitutes benefits manufacturers and consumers, and that as such, there was no need for a change in the existing standard.

Some commenters opposed the requirement that product names must be qualified when a cheese substitute is used in place of or in combination with cheese. These commenters pointed out that the use of cheese substitutes is made known to consumers through the ingredients statement disclosure. Because the use of cheese substitutes is already required on product labeling, these commeters contended that costs incurred by labeling changes were unwarranted.

Some commenters also opposed the proposed rule on the basis that it would prohibit meat pizzas from being formulated entirely with cheese substitutes in place of cheese. For dietary reasons these commenters desired the ability to purchase meat pizzas that contain no dairy products.

The Department believes that those comments in opposition to the proposed rule are persuasive. In addition, approximately 4,000 comments were received relating to the proposed clarification of existing requirements that pizzas may contain only cooked meat. Seventy-five percent of these comments supported the current requirement. The cooked meat requirement is understood by the regulated industry and enforced through prior label approval and inspection mechanisms. As such, the Department does not believe that a regulatory change is warranted to clarify a requirement that is understood by all parties that must apply the requirement.

Upon reconsideration of the issues involved in this proceeding, the Department has concluded that the proposed new requirements are not necessary and the proposed rule should not be promulgated as a final rule. Therefore, the Department is withdrawing the proposal and terminating rulemaking proceedings in this matter.

Done at Washington, DC, on April 7, 1987.

**Donald L. Houston,**

*Administrator, Food Safety and Inspection Service.*

[FR Doc. 87-8145 Filed 4-10-87; 8:45 am]
BILLING CODE 3410-DM-M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 87-AGL-2]**

### Proposed Alteration of VOR Federal Airway Between Zanesville, OH, and Kokomo, IN

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to alter the description of Federal Airway V-214 between Zanesville, OH, and Kokomo, IN. The Indianapolis Air Route Traffic Control Center (ARTCC) has been resectorized and V-214 has been identified for deletion so as not to complicate new arrival routes to Cincinnati and Columbus, OH, terminal areas. This action would decrease en route and terminal delays, increase safety, reduce coordination procedures and controller workload.

**DATE:** Comments must be received on or before May 25, 1987.

**ADDRESS:** Send comments on the proposal in triplicate to: Director, FAA, Great Lakes Region, Attention: Manager, Air Traffic Division, Docket No. 87-AGL-2, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and

5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An infomal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

**FOR FURTHER INFORMATION CONTACT:** Lewis W. Still, Airspace and Air Traffic Rules Branch (ATO–230), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9254.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 87–AGL–2." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V–214 between Kokomo, IN, VORTAC and Appleton, OH, VORTAC. In order to improve traffic flow in that area, FAA plans to resector certain sections in the Indianapolis ARTCC to enhance traffic flow into Cincinnati, OH, and Columbus, OH, terminal areas. This action would decrease en route and terminal delays, increase safety, reduce coordination procedures and controller workload. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

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

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

Aviation safety, VOR Federal Airways.

**The Proposed Amendment**

**PART 71—[AMENDED]**

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

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

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

**§ 71.123 [Amended]**

2. Section 71.123 is amended as follows:

**V–214 [Amended]**

By deleting the words "Richmond, IN; INT Richmond 097° and Appleton, OH, 236° radials; INT Appleton 236° and substituting the words "Richmond, IN. From INT Appleton, OH, 236°T(238° M)"

Issued in Washington, DC, on April 3, 1987.

**Harold H. Downey,**

*Acting Manager, Airspace-Rules and Aeronautical Information Division.*

[FR Doc. 87–8111 Filed 4–10–87; 8:45 am]

BILLING CODE 4910–B–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 700

### Permanent Regulatory Program; Definitions

**AGENCY:** Office of Surface Mining Reclamation and Enforcement, Interior.

**ACTION:** Proposed rule; notice of hearing.

**SUMMARY:** The Office of Surface Mining Reclamation and Enforcement (OSMRE) of the U.S. Department of the Interior proposes to amend its rules to add a definition of the terms *OSM* and *OSMRE*. These terms if adopted will be cross-referenced in the Federal programs established by OSMRE for the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. Upon request, OSMRE will hold hearings in these States to receive testimony as to whether unique conditions exist in any of these States relating to the proposed definition.

**DATE:** *Public Hearing:* Upon request, OSMRE will hold a public hearing on the proposal in a Federal program State at a time and on a date to be announced prior to the hearing. OSMRE will accept a request for a public hearing in a Federal program State until 5:00 p.m. Eastern Time on April 30, 1987. Individuals wishing to attend but not testify at any hearing should contact the person identified under **"FOR FURTHER INFORMATION CONTACT"** beforehand to verify that the hearing will be held.

**ADDRESSES:** *Public Hearings:* The addresses for any hearings scheduled in the States of Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington will be announced prior to the hearings.

*Request for public hearings:* Submit orally or in writing to the person and address specified under **"FOR FURTHER INFORMATION CONTACT."**

**FOR FURTHER INFORMATION CONTACT:** Andrew F. DeVito, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: (202) 343–5241 (Commercial or FTS).

**SUPPLEMENTARY INFORMATION:** On March 31, 1987 (52 FR 10352) OSMRE published a proposed rule which among other things would revise existing 30 CFR 700.5 by adding a definition of the terms *OSM* and *OSMRE* to mean the Office of Surface Mining Reclamation and Enforcement established under Title II of the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* The definition would apply throughout 30 CFR Chapter VII. The proposed definition also would apply through cross-referencing to the following Federal program States: Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR Parts 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Comments are specifically solicited as to whether unique conditions exist in any of these States relating to this proposal which should be reflected either as changes to the national rules or as State-specific amendments to any or all of the Federal programs.

Any person interested in participating at a hearing in any of the Federal program States should inform Mr. DeVito (see **"FOR FURTHER INFORMATION CONTACT"**) either orally or in writing by 5:00 p.m. Eastern Time on April 30, 1987. If no one has contacted Mr. DeVito to express an interest in participating in a hearing by that date, no hearing will be held. If only one person expresses an interest, a public meeting rather than a hearing may be held and the results included in the Administrative Record. Those who wish to comment on the proposed rule but not to attend a public hearing may do so by submitting written comments. The March 31, 1987 notice contains detailed instructions, including addresses, for anyone wishing to submit written comments on the proposed rule.

Dated: April 7, 1987.

**Jed D. Christensen,**

*Director, Office of Surface Mining Reclamation and Enforcement.*

[FR Doc. 87–8129 Filed 4–10–87; 8:45 am]

BILLING CODE 4310–05–M

## SELECTIVE SERVICE SYSTEM

## 32 CFR Part 1662

## Rules Regarding Availability of Information; Freedom of Information Reform Act

**AGENCY:** Selective Service System.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Selective Service System proposes to amend its Rules Regarding Availability of Information to implement the Freedom of Information Reform Act (FOI Reform Act), Pub. L. 99–570, in accord with OMB Guidelines (52 FR 10017) by revising the schedule of fees applicable to requests for records pursuant to the Freedom of Information Reform Act (FOIA).

**DATE:** Comments on this proposal should be received by April 20, 1987 so that the System can meet the statutory requirement to publish revised FOIA fee regulations in final form no later than April 25, 1987. A short comment period is appropriate in light of the fact that these regulations directly follow, almost verbatim, the OMB final guidance. The affected public received notice through OMB's proposed guidance that agencies would be required to issue implementing regulations based on OMB's final guidance. OMB provided a 30-day public comment period prior to publications of its final guidance.

**ADDRESS:** Interested parties are invited to submit written comments to Selective Service System, ATTN: General Counsel, Washington, D.C. 20435.

**FOR FURTHER INFORMATION CONTACT:** Henry N. Williams, General Counsel, Selective Service System, Washington, DC. 20435, Phone (202) 724–1167.

**SUPPLEMENTARY INFORMATION:** The FOI Reform Act requires each agency to "promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under the Freedom of Information Act . . . ." This schedule conforms to the guidelines promulgated by the Office of Management and Budget (OMB) on March 27, 1987 (52 FR 10017).

### Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 et seq.), I have determined that the proposed amendment will not have a significant economic impact on a substantial number of small entities. The proposed amendment is a change to agency procedures and practice and does not have a particular effect on small entities.

### List of Subjects in 32 CFR Part 1662

Freedom of Information Act, Selective Service System.

Dated: April 8, 1987.

**Wilfred L. Ebel,**

*Acting Director.*

The proposed regulations are set forth below.

## PART 1662—FREEDOM OF INFORMATION ACT (FOIA) PROCEDURES

1. The authority citation for Part 1662 continues to read as follows:

**Authority:** 5 U.S.C. 552.

2. Section 1662.6 is revised to read:

### § 1662.6 Fee schedule; waiver of fees.

(a) Definitions—For the purposes of this section:

(1) "Direct costs" mean those expenditures which the Selective Service System (SSS) actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of the rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) The term "search" includes all time spent lookng for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. "Search" should be distinguished from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (a)(4) below). Searches may be done manually or by computer using existing programming.

(3) "Duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies may take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(4) "Review" refers to the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise to prepare them for release. Review does not include time spent

resolving general legal or policy issues regarding the application of exemptions.

(5) The term "commercial use request" refers to a request from or on behalf of one who seeks information for the use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request properly belongs in this category the agency must determine the use to which a requester will put the documents requested. Moreover where there is reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the agency may seek additional clarification before assigning the request to a specific category.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in (a)(5) above, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but the agency may also look to the past publication record of a requester in making this determination.

(b) Fees to be Charged—Categories of Requesters. There are four categories of FOIA requesters: commercial use requesters; education and non-commercial scientific institutions; representatives of the news media; and other requesters. The FOI Reform Act prescribes specific levels of fees for each of these categories:

(1) Commercial use requesters—A request for documents for commercial use will be assessed charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the record sought. Commercial use requesters are not entitled to two hours of free search time near 100 free pages of reproduction of documents. The cost of searching for an reviewing records will be recovered even if there is utimately no disclosure of records (see (5) below).

(2) Educational and Non-commercial Scientific Institution Requesters—Documents to requesters in this category will be provided for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must show that the request is bieng made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

(3) Requesters who are Representatives of the News Media—Documents will be provided to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in (a)(8) above, and his or her request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Requesters must reasonably describe the records sought.

(4) All Others Requesters—The agency will charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for an reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves filed in the agency's systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction.

(c) *Assessment and collection of fees*—(1) *Aggregated requests.* If the Records Manager reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the Records Manager may aggregate any such requests accordingly.

(2) *Payment procedures*—(i) *Fee payment.* The Records Manager may assume that a person requesting records pursuant to this Part will pay the applicable fees, unless a request includes a limitation on fees to be paid or seeks a waiver or reduction of fees pursuant to paragraph (4) below. Unless applicable fees are paid, the agency may use the authorities of the Debt Collection Act (Pub. L. 97–365), including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage payment.

(ii) *Advance payment.* (A) The Records Manager may require advance payment of any fee estimated to exceed $250. The Records Manager may also require full payment in advance where a requester has previously failed to pay fees in a timely fashion.

(B) If the Records Manager estimates that the fees will likely exceed $25, he will notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Late charges.* The Records Manager may assess interest charges when fee payment is not made within 30 days of the date on which the billing was sent. Interest will be at the rate prescribed in section 3717 of Title 31 U.S.C.A.

(4) *Waiver or reduction of fees.* (i) Standards for determining waiver or reduction. The Records Manager shall grant a waiver or reduction of fees chargeable under this section where it is

determined that disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Selective Service System and is not primarily in the commercial interest of the requester. The Records Manager shall also waive fees that are less than the average cost of collecting fees. In determining whether disclosure is in the public interest, the following factors may be considered:

(A) The relation of the records to the operations or activities of the System;

(B) The information value of the information to be disclosed;

(C) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(D) The significance of that contribution to the public understanding of the subject;

(E) The nature of the requester's personal interest, if any, in the disclosure requested; and

(F) Whether the disclosure would be primarily in the requester's commercial interest.

(ii) Contents of request for waiver. The Records Manager will normally deny a request for a waiver of fees that does not include:

(A) A clear statement of the requester's interest in the requested documents;

(B) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(C) A statement of how the public will benefit from such use and from the release of the requested documents; and

(D) If specialized use of the documents or information is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(iii) *Burden of proof.* In all cases the burden shall be on the requester to present evidence or information in support of a request for a waiver of fees.

(5) *Fees for nonproductive search.* Fees for record searches and review may be charged even if not responsive documents are located or if the request is denied, particularly if the requester insists upon a search after being informed that it is likely to be nonproductive or that any records found are likely to be exempt from disclosure. The Records Manager shall apply the standards set out in paragraph (4) above in determining whether to waive or reduce fees.

**Appendix A to § 1662.6—Freedom of Information Fee Schedule**

Duplication:

| | |
|---|---|
| Photocopy, per standard page | $.10 |
| Paper Copies of microfiche, per frame | $.10 |

Search and review:

Salary of the employee (the basic rate of pay of the employee plus 16 percent of that rate to cover benefits), performing the work of manual search and review.

Computer search and production:

For each request the Records Manager will separately determine the actual direct costs of providing the service, including computer search time, tape or printout production, and operator salary.

Special services:

The Records Manager may agree to provide and set fees to recover the costs of special services not covered by the Freedom of Information Act, such as certifying records or information, packaging and mailing records, and sending records by special methods such as express mail. The Records Manager may provide self-service photocopy machines and microfiche printers as a convenience to requesters and set separate per-page fees reflecting the cost of operation and maintenance of those machines.

Fee waivers:

For qualifying educational and noncommercial scientific institution requesters and representatives of the news media the Records Manager will not asses fees for review time, for the first 100 pages of reproduction, or, when the records sought are reasonably described, for search time. For other noncommercial use requests no fees will be assessed for review time, for the first 100 pages of reproduction, or for the first two hours of search time.

The Records Manager will waive in full fees that total less that $1.00 or that are less than the average cost of collecting fees.

The Records Manager will also waive or reduce fees, upon proper request, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the System and is not primarily in the commercial interest of the requester.

[FR Doc. 87-8206 Field 4-10-87; 8:45 am]

BILLING CODE 8015-01-M

## FEDERAL MARITIME COMMISSION

### 46 CFR Part 586

**[Docket No. 87-6]**

### Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Peru Trade

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Maritime Commission in response to apparent unfavorable conditions in the foreign oceanborne trade between the United States and Peru proposes rules suspending the tariffs of Peruvian-flag carriers in that trade unless certification is received ensuring that these conditions no longer exist. The effect of the rule will be to adjust or meet unfavorable conditions by imposing burdens on Peruvian-flag carriers which approximate those imposed on non-Peruvian-flag carriers by Peruvian laws and regulations.

**DATE:** Comments due on or before May 13, 1987.

**ADDRESS:** Comments (Original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5725.

**FOR FURTHER INFORMATION CONTACT:** Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523-5740.

**SUPPLEMENTARY INFORMATION:**

Pursuant to the authority of section 19(1)(b), Merchant Marine Act, 1920 ("Section 19"), 46 U.S.C. app. 876, as implemented by 46 CFR Part 585, the Federal Maritime Commission ("Commission") is authorized and directed to make rules and regulations affecting shipping in the foreign trade of the United States in order to adjust or meet general or special conditions unfavorable to shipping in the foreign trade of the United States and which arise out of, or result from, foreign laws, rules or regulations, or from competitive methods or practices employed by owners, operators, agents or masters of vessels of a foreign country.

The types of conditions which the Commission has found to be unfavorable to shipping in the foreign trade of the United States are set forth at 46 CFR 585.3. Among these are conditions which: (1) Preclude vessels in the foreign trade of the United States from competing in the trade on the same basis as any other vessel; (2) reserve substantial cargoes to the national-flag

or other vessels and fail to provide, on reasonable terms, for effective and equal access to such cargo by vessels in the foreign trade of the United States; and (3) are discriminatory or unfair as between carriers, shippers, exporters, importers, or ports or between exporters from the United States and their foreign competitors, 46 CFR 585.3 (a), (b) and (d).

## Background

The Commission has received a number of complaints from shippers, shippers' associations, freight forwarders and third-flag carriers regarding conditions in the United States/Peru trade ("Trade"). In addition, certain comments filed in connection with a proposed equal access agreement among U.S. and Peruvian-flag carriers (Agreement No. 204-010986)[1] cited certain potential adverse conditions in the Trade. Those commenting contend that actions taken by the Government of Peru have created actual or potential unfavorable conditions in the Trade. Although the Commission has not received a formal petition for rulemaking under Section 19, a number of those commenting request that the Commission, on its own motion, take action under Section 19 to remedy the alleged unfavorable conditions.

These complaints arise out of the enactment, implementation and enforcement by the Government of Peru of Supreme Decree No. 009-86-TC [2] ("Supreme Decree"), which became effective on February 28, 1986, and which reserves for Peruvian-flag carriers 100 percent of all imported and exported ocean freight generated by Peru's foreign trade. The amount of cargo reserved by the Supreme Decree for Peruvian-flag carriers may be reduced as follows: (1) On the basis of strict reciprocity;[3] (2) pursuant to government or commercial agreements [4] among non-Peruvian and Peruvian-flag carriers, preferably including Compania Peruana de Vapores ("CPV"], the Peruvian state shipping line; or (3) when the Peruvian Director General of Maritime Transportation or Peruvian Consuls grant non-Peruvian-flag or non-associate carriers authorization to carry Peruvian export or import cargoes. Authorization for the use of non-Peruvian-flag or non-associate carriers may be granted in the form of a waiver or cargo manifest certification when Peruvian-flag or associate carriers are not available and in position within 12 days [5] following the proposed date of shipment of non-perishable products, or within 4 days in the case of perishable products, or when no Peruvian-flag carrier serves the relevant port.

During March, 1986, following the implementation of the Supreme Decree, the Commission received a number of communications from shippers, shippers' associations, and carriers expressing concern over the inability of shippers to select their preferred carriers and of non-Peruvian-flay carriers to operate freely in the Trade. Shippers alleged that service levels would be inadequate if third-flag carriers were eliminated from the Trade. Further, they alleged that Peruvian-flay carriers' service was unreliable and inadequate. Comments reported that shippers had become reluctant to use non-Peruvian-flag carriers because of penalties that may be incurred for violating the Supreme Decree.

In order to obtain further information regarding conditions in the Trade, the Commission issued a Notice in the Federal Register on April 22, 1986 (51 FR 15069) ("April Notice"), requesting interested persons to submit views, arguments or data relating to the impact of the Government of Peru's Supreme Decree, no later than May 18, 1986.[6]

The April Notice indicated that, based on the comments received, the Commission would evaluate conditions in the Trade and determine whether action pursuant to Section 19 was warranted. The April Notice further indicated that the Commission was requesting the Department of State to continue and intensify its efforts to reach a resolution to this matter through diplomatic channels with the Government of Peru.

Comments to the April Notice were received from 17 interested parties. Those commenting included shippers, shippers' associations, Peruvian and non-Peruvian-flag carriers.

Comments filed by shippers, shippers' associations and non-Peruvian carriers generally alleged that: (1) The Government of Peru's waiver system is severely restricting the participation of third-flag carriers in the Trade and has caused at least one carrier to cancel port calls; (2) certain shippers prefer the service of Chilean-flag carriers in the Trade;[7] (3) shippers are experiencing a deterioration of service and a rise in cost associated with this deterioration; (4) U.S.-flag carriers are currently being permitted to operate in the trade even though no commercial agreement between U.S. and Peruvian-flag carriers exists;[8] and (5) negotiations between the Peruvian-flag carriers and Peruvian Government on the one hand, and the non-Peruvian-flag carriers and U.S. and Chilean Governments on the other, have not produced any guarantees from the Peruvians for open access to the Trade.

Joint comments were filed by CPV and Neptuno. They contended that implementation of the Supreme Decree and other Peruvian decrees have not and will not result in conditions unfavorable to shipping in the Trade, and, therefore, Commission action under section 19 is unnecessary. CPV and Neptuno stated that the Supreme Decree merely continues, with certain modifications, Peruvian rules and regulations contained in prior Peruvian decrees or laws. They interpreted the provisions of the Supreme Decree as alllowing the carriers of the bilateral trading partner to carry up to 50 percent of the cargoes in that trade on the basis of reciprocity. Further, they noted that if Peruvian-flag or associate carriers are not available within the required time period, a wavier for the shipment of those import of export cargoes would be granted immediately to the rquesting non-Peruvian-flag or non-associate carrier. CPV and Neptuno gave a number of reasons for the Peruvian cargo reservation decrees, including the necessity for supporting a Peruvian

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[1] This agreement was filed with the Commission on August 24, 1986, but has not become effective. The Commission requested further information on the agreement. However, to date no response from the parties has been received.

[2] Supreme Decree No. 009-86-TC amended Supreme Decree No. 036-82-TC, which reserves Peruvian import and export cargoes for Peruvian-flag vessels and sets out waiver and cargo manifest certification requirements. While Supreme Decree No. 036-82-TC has been in place since September, 1982, apparently, non-associate and non-Peruvian-flag carriers were allowed to operate freely in the Trade.

[3] *E.g.*, U.S. carriers' access to Peruvian cargoes will be proportional to Peruvian carriers' access to U.S. cargoes.

[4] Non-Peruvian-flag carriers which become parties to such commercial agreements may be granted associate status upon approval by the Peruvian Government. Associate carriers are generally excepted from cargo manifest certification and waiver requirements under Supreme Decree Nos. 009-86-TC and 036-82-TC.

[5] Supreme Decree No. 033-86-TC of June 11, 1986, modified Supreme Decree No. 009-86-TC by reducing the number of days a shipment must wait for a Peruvian or associate carrier from 15 days to 12 days.

[6] On May 15, 1986, the Commission granted a request by certain carriers in the Trade to extend the due date for all comments from May 18 to June 18, 1986.

[7] Prior to the implementation of the Supreme Decree in February, 1986, Chilean-flag carriers transported approximately 35 pecent of the cargoes in the Trade (source: Bureau of Census).

[8] CPV and Naviera Neptuno, S.A. ("Neptuno"), a privately-owned Peruvian-flag carrier, explained in their comments that the Government of Peru had agreed to grant U.S.-flag carriers associate status even though a commercial agreement among U.S. and Peruvian-flag carriers was not yet in effect.

merchant marine and the fact that Chilean-flag carriers had increased their share of general cargo carried in the Trade from 7 percent in 1982, to 33 percent in 1985.

On June 17, 1986, the Department of State transmitted to the Commission a diplomatic note from the Government of Peru. In this note, the Peruvian Government requested a six-month extension of the Commission's deadline for submitting comments in response to the April Notice, and guaranteed that over this period there would be no interruption of services or disruption in the Trade. Before acting on the Government of Peru's request for a six-month extension, the Commission sought clarification from the Peruvian Government, through the Department of State, regarding the status of U.S. and third-flag carrier opeations in the Trade, and the effect on those carriers of the guarantee referred to by the Government of Peru. On August 19, 1986, the Department of State transmitted to the Commission a comunique from the Government of Peru in which it provided certain assurances ("Assurances") regarding the implementation of the Supreme Decree and clarified points made in its diplomatic note of June 17, 1986.

In its communique, the Government of Peru assured that Peruvian regulations allow third-flag carriers to operate in the Trade in accordance with established rules, and that over the six-month period it would not levy and fines on third-flag carriers operating in the Trade for noncompliance with the Supreme Decree. Further, the Government of Peru informed the Commission that the Government of Chile had on August 7, 1986, implemented Resolution No. 2 which excludes Peruvian-flag carriers from operating in certain Chile/third-country trades including the Chile/United States trade.[9]

On August 27, 1986, the Commission issued a Notice in the **Federal Register** (51 FR 30543) ("August Notice"), stating the following:

> By removing the threat of penalties for noncompliance with the waiver and cargo manifest certification requirements, the communique from the Government of Peru is taken by the Commision to mean, in effect, that shippers will be allowed to select the carrier of their choice and all carriers, including U.S. and third-flag, will have free and open access to the U.S./Peru trade. Based on this understanding, the Commision is hereby serving notice that it will defer any action pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, with respect to the implementaion of the February Decree, for a period of six months from the date of publication of this Notice in the **Federal Register** provided the assurances given in the Peruvian communique transmitted to the Commision on August 19, 1986, are observed.

Further, the Commission's August Notice advised that it did not see a need for extending the comment period, as requested by the Government of Peru, but noted that it would expect interested parties to advise the Commision promptly if they believe that conditions in the Trade warrant further Commission action.

Subsequent to the issuance of the August Notice, there were further exchanges of letters between the Commission and the Department of State regarding the ability of shippers to select their preferred carriers and non-Peruvian-flag carriers to operate freely in the Trade, under the Peruvian Assurances. Based on information obtained from the Government of Peru, the Department of State reported to the Commission that the waiver requirement remained in effect, even though the Government of Peru would not impose fines over the six-month period ending February 27, 1987, for use of non-Peruvian-flag carriers without waivers. The Department of State further advised that because shippers are not prepared to incur the risks of shipping without waivers, the Peruvian Assurances have not been widely tested.

During the six-month period from August 27, 1986, through February 27, 1987, the Commission also received communications from shippers, shippers' associations, freight forwarders, non-Peruvian-flag carriers and the Government of Peru.

Many of the shippers and freight forwarders commenting complained that they had been unable to use the frequent and dependable service of third-flag carriers in the Trade because of the Government of Peru's waiver system and exclusion of Chilean-flag carriers from the Trade. They contended that waivers for use of third-flag carriers and, in one instance, for use of a U.S.-flag carrier, have been denied. As a result, these parties stated that they have been forced to use the unreliable and inadequate services of Peruvian-flag carriers, particularly CPV. They noted that, as a result, they had experienced long delays and shutouts caused by insufficient capacity. Cases of increases in costs were reported by several shippers due to their inability to use their preferred carrier. They urged the Commission and Department of State to take whatever actions were necessary to open the Trade to third-flag carriers.

Compania Sud Americana de Vapores ("CSAV"), a Chilean-flag carrier, commented that, even prior to the implementation of Peru's Resolution No. 044–86–TC/AC,[10] shippers had been unable to obtain waivers from Peruvian Consuls in order to employ it. CSAV contended that most shippers and consignees have been unwilling to take the risk of failing to comply with the waiver and cargo manifest certification requirements of Peruvian law.

On February 20, 1987, the Department of State transmitted to the Commission a note from the Government of Peru which included a list of vessel sailing schedules in the Trade. In its note, the Government of Peru stated that it was providing the list to illustrate that, with the exception of Chilean-flag carriers, third-flag carrier participation in the Trade had increased since September, 1986.

After the six-month period ended on February 27, 1987, the Commission received additional communications from shippers' associations, Peruvian-flag carriers, third-flag carriers and a U.S.-flag carrier which, for the most part, reported on developments over that period. Shippers for Competitive Ocean Transport ("SCOT") reiterated its concern over the lack of third-flag service in the Trade and the inadequate service of CPV. SCOT contended that the waiver system places severe administrative burdens on shippers, and causes delays and reductions in customer service. SCOT noted that waivers are seldom granted for use of third-flag carriers. SCOT also mentioned that, in at least one recent case, a letter of credit was used to implement the Government of Peru's cargo reservation policies. SCOT explained that the U.S. shipper received a letter of credit wherein the Peruvian customer had specified that a Peruvian-flag or associate carrier must be used for shipment of the cargo. Further, SCOT stated that Peruvian laws discourage other third-flag carriers from entering the Trade.

CPV, Neptuno and Empresa Naviera Santa, S.A. ("Santa"), three Peruvian-flag carriers, as well as Lykes Brothers Steamship Co., Inc., a U.S.-flag carrier, submitted comments which contended that over the six-month period Peruvian and U.S.-flag service in the Trade has

[9] On September 26, 1986, it was reported by the Department of State that the Government of Chile had implemented Resolution No. 2 because of the Government of Peru's decision to apply the Supreme Decree to Chilean carriers. The Department further explained that on September 15, 1986, the Government of Peru issued Ministerial Resolution No. 044–86–TC/AC, which excludes Chilean-flag vessels from transporting cargo in certain Peru/third-country trades because of the Government of Chile's refusal to lift Resolution No. 2.

[10] *See* n. 9, *supra*.

improved and is now adequate for meeting shipper needs. The Peruvian-flag carriers stated they believe that waivers have been granted liberally during this period, but that due to the upgraded service, few applications have been made.

Great Lakes Transcaribbean Line ("GLTL"), a third-flag carrier operating in the Trade from ports on the Great Lakes to ports in Peru, commented that it had previously advised the Commission that CPV was willing to enter into commercial negotiations regarding GLTL's access to the Trade. GLTL noted, however, that no commercial agreement has so far been reached. GLTL reported that it had served the Trade over the six-month period on the basis that no fines would be imposed for noncompliance with the Supreme Decree. Now that the six-month period hs expired, GLTL contended that the risk of fines has returned. GLTL requested the Commission to take appropriate action to ensure its access to the Trade.

CSAV commented that the six-month deferral period has failed to reopen the Trade to all non-Peruvian-flag carriers and has not permitted shippers to select their preferred carriers. CSAV also stated that there has been a continuous effort by the Government of Chile to resolve the situation between Peru and Chile, but that no progress hs been made.

**Discussion**

On the basis of all the information received to date, the Commission has reason to believe that unfavorable conditions may in fact exist in the foreign oceanborne trade between the United States and Peru. It appears tht the Government of Peru, through its laws and regulations, has imposed burdens on non-Peruvian-flag carriers which are not experienced by Peruvian-flag carriers and has imposed restrictions on the movement of United States' goods to that country through the implementation of its waiver system, cargo manifest certification requirement and, at least in one instance, through its letter of credit requirement. The restricitons imposed by the Government of Peru appear to have had an injurious effect on carriers, shippers and the Trade, generally.

U.S. shippers and receivers are deterred or restricted from using the carrier of their choice by the Supreme Decree. They advise that they have been reluctant to employ non-Peruvian-flag carriers despite the Government of Peru's stated policy that it would not impose fines for noncompliance with the Supreme Decree for the six-month period ending February 27, 1987. The record shows that waivers have been denied for the use of third-flag carriers and, in one instance, for the use of a U.S.-flag carrier.

There may be additional discriminatory effects on U.S. shippers. Peruvian Resolution No. 044–86–TC/AC excludes Chilean-flag carriers from Peru/third-country trades with the exception of the Peru/Europe trade when carrying cargoes covered by the European South Pacific and Magellan Conference. Thus, the practical effect of Peruvian Resolution No. 044–86–TC/AC is to deny U.S. shippers the ability to employ Chilean-flag carriers which, prior to the implementation of the Supreme Decree, where the major third-flag carriers in the Trade.[11] Chilean-flag carriers are said to provide efficient, low-cost service in the Trade. The denial of such service, coupled with the fact that Chilean-fag carriers are currently allowed to operate within the Peru/Europe trade, may effectively create conditions unfavorable to shipping in the U.S. trades by discriminating against U.S. shippers in the U.S. trade with Peru vis-a-vis their competitors shipping cargoes between Europe and Peru. The result of these restrictions on shipping service in the Trade may be to put at risk the Peruvian markets of U.S. shippers, and bring about the loss of these markets to European competitors.

Non-Peruvian-flag or non-associate carriers find themselves in a position where it is unlawful for them to carry cargoes in the Trade without obtaining waivers or cargo manifest certifications. While U.S.-flag carriers are able to operate freely in the Trade, they nevetheless are technically required under Peruvian law to become associate carriers in order to gain free access to the Trade. Peruvian-flag carriers which compete for U.S. export and import cargoes are subjected to none of the impediments imposed on non-Peruvian-flag carriers by Peruvian cargo reservation laws.

The comments and data provided by the Government of Peru and Peruvian-flag carriers did not satisfactorily refute the apparent conditions unfavorable to shipping in the Trade.[12] The Government of Peru and the Peruvian-flag carriers did not dispute the fact that waivers or cargo manifiest certifications are required for cargoes shipped on non-Peruvian-flag or non-associate carriers and are granted only when Peruvian-flag or associate carriers are unavailable within the required time period. Further, while the Government of Peru had previously assured the Department of State that letters of credit would not be used to implement its cargo reservation policies, a recent letter of credit under which a shipment from the U.S. was to be made specified that a Peruvian-flag or associated carrier be used.

Nor do the allegations made regarding adequacy of service dispose of the matter before us. Adequacy of service is not necessarily the primary consideration in Section 19 proceedings.[13] The issue, while important, is not determinative here, given the scope of the Peruvian cargo reservation decrees. Nevertheless, the fact that the Peruvian cargo reservation decrees impose burdens and restrictions on non-Peruvian-flag carrier participation in the Trade and may, as a result, deny shippers their preferred choice of carrier, tends to call into question the adequacy of service in the Trade.

For reasons stated above, the Commission finds it necessary and appropriate to propose action to adjust or meet apparent conditions described above which it finds unfavorable to shipping in the Trade. Therefore, pursuant to Section 19 and 46 CFR Part 585, the Commission will initiate, on its own motion, a proposed rulemaking to address those conditions.

The proposed rule allows Peruvian-flag carriers 25 days from the date of publication of a final rule in which to act to avoid suspension of their tariffs in the Trade. Such carriers may obtain authorized status by filing with the Commission a certificate from the Government of Peru stating unequivocally that no law, regulation or practice precludes any non-Peruvian-flag vessel from competing in the Trade on the same basis as any other vessel. If a Peruvian-flag carrier fails to submit the required certificate within 25 days, its tariffs will be suspended 5 days subsequently. Section 13(b)(3) of the Shipping Act of 1984, 46 U.S.C. app. 1712(b)(3), subjects a carrier which accepts or handles cargo for carriage

[11] *See* n. 7, *supra.*

[12] The data provided by the Government of Peru in its note of February 20, 1987, is of questionable relevance. For example, it does not indicate the type of carriage (*i.e.*, liner, bulk or tramp) performed by the vessels listed, nor does it indicate the amount of cargo carried by those vessels. Finally, the claimed increase in third-flag carrier access to the Trade does not take into account past substantial participation of Chilean-flag carriers.

[13] *See Actions to Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade*, No. 82–58, Interim Report on Current Status of Proceedings, 21 S.R.R. 1621, 1626–1627 (February 25, 1983).

under a tariff which has been suspended to a civil penalty of up to $50,000 for each shipment.

Unless implementation of the waiver system and cargo manifest certification requirement in the Trade is suspended, Peruvian-flag carriers could not obtain authorized status. Suspension of fines for violations of the Supreme Decree would not by itself serve to confer authorized status. The very existence of the waiver system and cargo manifest certification requirement appears to deter shippers from using non-Peruvian-flag carriers. Indications are that these requirements, even when made subject to some form of penalty immunity, have a chilling effect on a shipper's selection of the carrier of its choice.

The Commission recognizes that the proposed rule has implications for the situation which has developed between the Governments of Peru and Chile. Because the Peruvian-flag carriers could only obtain authorized status upon their submission to the Commission of a certificate stating that no law, regulation or practice of the Government of Peru will preclude non-Peruvian-flag carriers from competing in the Trade, authorized status could not be granted as long as Chilean-flag carriers were excluded from the Trade. While the situation existing between the Governments of Peru and Chile might best be resolved on a bilateral basis, that situation will not necessarily prevent the Commission from taking whatever ultimate action is deemed necessary and appropriate in the U.S.Peru trade in this proceeding. However, the Commission invites the Governments of Peru and Chile to submit their views regarding this matter.

In order to provide proper notice and a fair opportunity to respond to the proposed action, the Commission is giving all interested parties 30 days from the date of publication of this Notice in the **Federal Register** to file comments and additional factual submissions relating to conditions in the Trade. To the extent possible, all factual assertions should be attested to and accompanied by supporting documentation.

**List of Subjects in 46 CFR Part 586**

Cargo vessels, Exports, Foreign relations, Imports, Maritime carriers, Penalties, Rates and fares, Reporting and recordkeeping requirements.

Therefore, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b), Reorganization Plan No. 7 of 1961, 75 Stat. 840, and 46 CFR Part 585, it is proposed to add a Part 586 to Title 46 of the Code of Federal Regulations to read as follows:

## PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE UNITED STATES/PERU TRADE ("THE TRADE")

Sec.

586.1 Conditions unfavorable to shipping in the Trade.
586.2 Peruvian-flag carriers without authorized status—suspension of tariffs.

**Authority:** 46 U.S.C. app. 876(1)(b); 46 CFR Part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961.

### § 586.1 Conditions unfavorable to shipping in the Trade.

(a) The Federal Maritime Commission has determined that the Government of Peru has created conditions unfavorable to shipping in the foreign trade of the United States by enacting, implementing and enforcing laws and regulations which unreasonably restrict non-Peruvian-flag carriers from competing in the Trade on the same basis as Peruvian-flag carriers, and additionally deny to non-Peruvian-flag carriers effective and equal access to cargoes in the Trade. Moreover, the laws and regulations at issue unilaterally allocate and reserve export liner cargoes from the United States for carriage by Peruvian-flag carriers.

(b) Peruvian law provides for a waiver system and cargo manifest certification requirement whereby non-Peruvian-flag carriers and non-associate carriers may carry reserved cargo in the event that Peruvian-flag or associate carriers are not available within 12 days following the proposed date of shipment of non-perishable products, or within 4 days for perishable products. Further, letters of credit under which U.S. goods are shipped to Peru have, in at least one case, specified that Peruvian-flag or associate carriers must be used. The enforcement of the waiver, cargo manifest certification, and letter of credit requirements, and their accompanying potential penalties, discriminates against U.S. shippers and exporters, restricts their opportunities to select a carrier of their own choice, and hampers their ability to compete in international markets.

### § 586.2 Peruvian—flag carriers without authorized status—suspension of tariffs.

(a)(1) On a date 30 calendar days from the date of publication of a final rule in the **Federal Register**, the following tariffs and all amendments thereto, insofar as they relate to the Trade, shall be suspended, unless the enumerated Peruvian-flag carriers first obtain authorized status pursuant to paragraph (b) of this section:

**Compania Peruana de Vapores (CPV)**

FMC No. 14—Applicable BETWEEN U.S. Atlantic and Gulf Ports AND Ports in South America, Trinidad, and the Leeward and Windward Islands.

FMC No. 15—Applicable FROM United States West Coast Ports and Hawaii TO Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America.

FMC No. 16—Applicable FROM Ports in Chile, Peru, Mexico, Panama and the West Coast of Central America TO United States West Coast Ports and Hawaii.

**Empresa Naviera Santa, S.A.**

FMC No. 3—Applicable FROM Rail Container Terminals at U.S. Pacific Coast Ports TO Ports in South America.

FMC No. 4—Applicable FROM U.S. Gulf and Atlantic Ports TO Ports in South America.

FMC No. 5—Applicable FROM Rail Terminals at United States Interior Ports and Points TO Peru and Chile.

FMC No. 6—Applicable FROM Ports in South America TO U.S. Gulf and Atlantic Ports.

**Naviera Amazonica Peruana, S.A. (Peruvian Amazon Line)**

FMC No. 3—Applicable FROM U.S. Gulf, Atlantic and West Coast Ports TO Brazilian Amazon River Ports, West Coast Central and South America, West Coast Mexico and West Coast Canada

AND

FROM Brazilian Amazon River Ports, West Coast Central and South America, West Coast Mexico and West Coast Canada TO U.S. Gulf, Atlantic and West Coast Ports.

**Naviera Neptuno, S.A.**

FMC No. 1—Applicable BETWEEN South Atlantic and Gulf Ports AND Ports in the Caribbean, Ports on the North, East and West Coast of South America (Including Brazil), Ports on the East and West Coast of Central America, and all Ports in Mexico.

FMC No. 2—Applicable BETWEEN U.S. Atlantic Coast Ports AND Ports on the West Coast of South America.

FMC No. 4—Applicable BETWEEN ports in Florida AND Ports in Peru.

FMC No. 5—Applicable BETWEEN U.S. Pacific Ports AND Peru and Pacific Coast Ports in Chile, Columbia and Ecuador.

FMC No. 6—Applicable BETWEEN U.S. Gulf Ports AND Ports in Peru, Chile and Ecuador.

**Naviera Universal, S.A. (Uniline)**

FMC No. 2—Applicable FROM U.S. Great Lakes, St. Lawrence River Ports and U.S. East Coast Ports and Ports in Puerto Rico TO Ports in Central and South America, Haiti and the Dominican Republic.

(2) Other tariffs which may be filed by or on behalf of the carriers listed in paragraph (a)(1) of this section or other Peruvian-flag carriers in the Trade shall also be suspended if the conditions of paragraph (b) of this section are not met.

(3) The right of the carriers listed in paragraph (a)(1) of this section, or any other Peruvian-flag carrier in the Trade to use the following conference tariffs, or any other conference tariff covering the Trade, including intermodal tariffs covering service from interior U.S. points, will, absent compliance with paragraph (b) of this section, be suspended:

**Atlantic & Gulf/West Coast of South America Conference**

FMC No. 3—Applicable FROM Points and Ports in the U.S. TO Points and Ports in Peru, Chile and Bolivia.

FMC No. 5—Applicable FROM Points and Ports in Chile, Peru and Bolivia TO Points and Ports in the U.S.

FMC No. 6—Applicable FROM U.S. Atlantic and Gulf Ports TO West Coast Ports in Peru and Chile via the Panama Canal.

(4) In the event of suspension of tariffs pursuant to this paragraph, all affected conference or rate agreement tariffs shall be amended to reflect said suspensions. Operation by any carrier under suspended, cancelled or rejected tariffs shall subject said carrier to all applicable remedies and penalties provided by law.

(b)(1) In order to avoid suspension of its tariffs pursuant to paragraph (a) of this section, or to reinstate tariffs suspended for previous failure to follow the procedures prescribed herein, each Peruvian-flag carrier enumerated in paragraph (a)(1) of this section must secure authorized status from the Federal Maritime Commission.

(2) Authorized status shall be conferred upon a Peruvian-flag carrier upon that carrier's submission to the Commission within 25 calendar days of the date of pulication of a final rule in the Federal Register of a certificate from the Government of Peru stating unequivocally that no law, regulation or policy of the Government of Peru will:

(i) Preclude any non-Peruvian-flag carrier from competing in the Trade on the same basis as any other carrier;

(ii) Result in less than meaningful and competitive access by any non-Peruvian-flag carrier, to cargo designated as reserved under Supreme Decree No. 009–86–TC; and

(iii) Impose any administrative burden, including but not limited to the necessity to secure a waiver or cargo manifest certification based on the national status of the carrier, or otherwise discrimination against any non-Peruvian-flag carrier in the Trade.

(3) If no such submission is made, the tariffs identified in paragraph (a) of this section shall be suspended effective five calendar days after the expiration of the 25-day period.

(c) When the tariff of a non-Peruvian-flag carrier has been suspended for failure to secure authorized status, that carrier may apply for authorized status by submitting to the Commission the certification described in paragraph (b)(2) of this section. Reinstatement of the tariff will occur upon Commission review and approval of the certification.

(d) Upon conferment of authorized status, the Commission may require periodic reports from the Peruvian-flag carriers in order to monitor conditions in the Trade.

By the Commission.

**Joseph C. Polking,**

*Secretary.*

[FR Doc. 87–8197 Filed 4–10–87; 8:45 am]

BILLING CODE 6730–01–M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[MM Docket No. 87–74, RM–5649]**

## Radio Broadcasting Services; Oxnard, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by KUTE, Inc., licensee of Station KUTE, Glendale, California, proposing the substitution of either Channel 275A or 279A in lieu of Channel 271A at Oxnard, California. This would allow Station KUTE to relocate its transmitter site. Since channel 271A in Oxnard is an "omnibus" allotment from MM Docket No. 84–231, and since the filing window period has not opened, the substitution can only be made upon a showing of compelling need or Commission error. In addition to eliciting comments concerning the compelling need showing, this proceeding also requests comments concerning a short-spacing increase from the proposed transmitter location site.

**DATES:** Comments must be filed on or before May 26, 1987, and reply comments on or before June 10, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows:

Irving Gastfreund

Barry J. Fleishman

Finley, Kumble, Wagner, Heine, Underberg, Manley, Myerson & Casey 1120 Connecticut Avenue NW., Washington, DC 20036. (counsel for KUTE, Inc.).

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–74, adopted March 11, 1987, and released April 3, 1987. The full text of this Commission decision 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 contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time of Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Bradley P. Holmes,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87–8167 Filed 4–10–87; 8:45 am]

BILLING CODE 6712–01–M

**47 CFR Parts 21 and 94**

**[Docket No. 87-47; RM-5192; FCC 87-78]**

## Amendment of the Commission's Rules To Provide for a Minimum Antenna Gain of 34.0 dBi for the 10,550-10,680 MHz Band

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Proposed rules.

**SUMMARY:** The FCC has adopted this Notice of Proposed Rule Making (Notice) which sets forth for review antenna standards specified in §§ 21.108(c) and 94.75(b) of the Commission's Rules. This action is taken in response to a Petition for Rulemaking filed by Harris Corporation—Farinon Division ("Harris"). After review of the Petition, the F.C.C. concluded that a rulemaking is needed to assess the potential for new and increased interference to licensees and permittees operating on cochannel or adjacent channels which could result from F.C.C. action adopting a minimum antenna gain of 34 dBi instead of the present 38 dBi for point-to-point users, and a more relaxed "side lobe" suppression standard.

**DATES:** Comments are due on or before May 26, 1987. Reply comments must be received on or before June 9, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Donald L. McClure, Domestic Facilities Division, Common Carrier Bureau (202) 634-1774.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rulemaking, Gen. Docket No. RM-5192, adopted March 2, 1987, and released April 6, 1987. The complete text of this action is available for inspection and copying in the Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the International Transcription Service, (202) 857-3800, 2100 M Street NW., Washington, DC 20037.

### Summary of Notice

On September 10, 1985, "Harris" filed a Petition for Rulemaking requesting that proceedings be initiated looking toward the amendment of the tables of Antenna Standards in §§ 21.108(c) and 94.75(b) of the Commission's Rules to provide a minimum antenna gain of 34 dBi vice the present 38 dBi standard for the 10,550-10,680 MHz band. The specific point-to-point microwave band segments are 10,550-10,565 MHz (Channel Group A) and 10,615-10,630 MHz (Channel Group B). Additionally, the Notice contains a recommendation that the "side lobe suppression" standards associated with 38 dBi be amended to comport with the 34 dBi antenna gain standard. The proposed "side lobe suppression" standard being less stringent than the present standard.

2. The Notice further states that the 34 dBi antenna gain standard was adopted for Digital Termination Station users operating in the 10,550-10,680 MHz band in the First Report and Order (1st R&O) in General Docket 79-188, FCC 81-18, 49 RR 2d 509 (January 14, 1981), and that there is no reasonable basis to forego applying this standard to point-to-point users in the 10,550-10,680 MHz band. Also, the Notice contends that adoption of the 34 dBi antenna gain standard instead of 38 dBi will permit the use of an antenna diameter of two feet in lieu of 3.25 feet, and that this will result in lower antenna costs. Finally, the Notice requested comment as to whether F.C.C. action adopting the proposed standard could or might generate significant new or increased interference that could adversely impact licensees and/or permittees operating on cochannel and adjacent channels in the 10,550-10,680 MHz band.

### Ex Parte Contacts

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

### Initial Regulatory Flexibility Analysis

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding will enable point-to-point users operating in the 10,550-10,680 MHz band to utilize antennas having a diameter of two (2) feet instead of 3.25 feet. The two (2) foot antenna is less costly to manufacture and will occupy less space on congested metropolitan rooftops. Hence, point-to-point users will be able to avoid significant costs in the purchase and installation of these antennas. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's decision.

5. Accordingly, pursuant to the authority contained in section 4(i) and (303) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 303, we hereby give Notice of our intent to adopt the rule provisions set forth below. The Secretary shall cause a copy of the Notice to be sent to the Chief, Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a) 1981.

### List of Subjects

*47 CFR Part 21*

Communications common carriers, Communications equipment, Radio, Reporting and recordkeeping requirements, Television.

*47 CFR Part 94*

Communications equipment, Radio, Reporting and recordkeeping requirements.

Parts 21 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

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

Authority. 47 U.S.C. 154, 303.

2. Section 21.108 is amended by revising the table of Antenna Standards in paragraph (c) to read as follows:

**§ 21.108 [Amended]**

* * * * *

(c) Directional antennas shall meet the performance standards (for parallel polarization) indicated in the following table:

ANTENNA STANDARDS

| Frequency (MHz) | Category | Maximum beam width to 3 dB points (included angle in degrees) | Minimum antenna gain (dBi) | Minimum radiation suppression to angle in degrees from centerline of main beam in decibles | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 5° to 10° | 10° to 15° | 15° to 20° | 20° to 30° | 30° to 100° | 100° to 140° | 140° to 180° |
| 2,500 to 5,000 | A | n/a | 36.0 | 23 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 36.0 | 20 | 24 | 28 | 32 | 32 | 32 | 32 |
| 5,000 to 10,550 | A | n/a | 38.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 38.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |
| 10,550 to 10,680 | A | 3.4 | 34.0 | 20 | 24 | 28 | 33 | 35 | 40 | 60 |
| | B | 3.4 | 34.0 | 20 | 24 | 28 | 32 | 35 | 35 | 39 |
| 17,700 to 18,820 | A | n/a | 38.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 38.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |
| 18,920 to 19,700 | A | n/a | [1] 38.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | [1] 38.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |
| 21,200 to 23,600 | A | n/a | 38.0 | 25 | 29 | 33 | 36 | 42 | 55 | |
| | B | n/a | 38.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |
| 31,000 to 31,300 | n/a | [2] 4.0 | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a |
| Above 31,300 | A | n/a | 38.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 38.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |

[1] Digital Termination User Station antennas shall meet performance Standard B and have a minimum antenna gain of 34 dBi.
[2] The minimum front-to-back ratio shall be 38 dBi.

Note.—Stations must employ an antenna that meets the performance standards for category A, except that in areas not subject to frequency congestion antennas meeting standards for category B may be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

*Part 94 of Title 47 of the Code of Federal Regulations is to be amended as follows:*

## PART 94—PRIVATE OPERATIONAL—FIXED MICROWAVE SERVICE

1. The authority citation for Part 94 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

2. Section 94.75 is amended by revising the table of Antenna Standards in paragraph (b) to read as follows:

**§ 94.75 Antenna limitations.**

* * * * *

(b) Directional antennas shall need the performance standards (for parallel polarization) indicated in the following table:

ANTENNA STANDARDS

| Frequency (MHz) | Category | Maximum beam width to 3 dB points (included angle in degrees) | Minimum antenna gain (dBi) | Minimum radiation suppression to angle in degrees from centerline of main beam in decibles | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 5° to 10° | 10° to 15° | 15° to 20° | 20° to 30° | 30° to 100° | 100° to 140° | 140° to 180° |
| 952 to 960[1] [4] | A | 14.0 | n/a | ..... | 6 | 11 | 14 | 17 | 20 | 24 |
| | B | 20.0 | n/a | ..... | ..... | 6 | 10 | 13 | 15 | 20 |
| 1,850 to 2,690 [2] | A | 5.0 | n/a | 12 | 18 | 22 | 25 | 29 | 33 | 39 |
| | B | 8.0 | n/a | 5 | 18 | 20 | 20 | 25 | 28 | 36 |
| 6,525 to 6,875 | A | 1.5 | n/a | 26 | 29 | 32 | 34 | 38 | 41 | 49 |
| | B | 2.0 | n/a | 21 | 25 | 29 | 32 | 35 | 39 | 45 |
| 10,550 to 10,680 | A | 3.4 | 34.0 | 20 | 24 | 28 | 33 | 35 | 40 | 60 |
| | B | 3.4 | 34.0 | 20 | 24 | 28 | 32 | 35 | 35 | 39 |
| 12,200 to 13,250 [6] | A | 1.0 | n/a | 23 | 28 | 35 | 39 | 41 | 42 | 50 |
| | B | 2.0 | n/a | 20 | 25 | 28 | 30 | 32 | 37 | 47 |
| 17,700 to 19,700 [3] | A | n/a | 38.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 38.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |
| 21,200 to 23,600 [5] | A | n/a | 38.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 38.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |
| 31,000 to 31,300 | n/a | 74.0 | n/a | n/a | n/a | n/a | n/a | n/a | n/a | n/a |

ANTENNA STANDARDS—Continued

| Frequency (MHz) | Category | Maximum beam width to 3 dB points (included angle in degrees) | Minimum antenna gain (dBi) | Minimum radiation suppression to angle in degrees from centerline of main beam in decibles | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | | 5° to 10° | 10° to 15° | 15° to 20° | 20° to 30° | 30° to 100° | 100° to 140° | 140° to 180° |
| 27,500 to 29,500 | A | n/a | 38.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 38.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |
| 38,600 to 40,000 | A | n/a | 38.0 | 25 | 29 | 33 | 36 | 42 | 55 | 55 |
| | B | n/a | 38.0 | 20 | 24 | 28 | 32 | 35 | 36 | 36 |

[1] Except for frequencies listed in § 94.65(a)(1) where omnidirectional antennas may be used.
[2] Except for 2,150–2,160 MHz, where the maximum beamwidth is 360 and except for frequencies in the 2,500–2,690 MHz band where standards contained in § 94.95 apply.
[3] Except as provided in § 94.199 for Digital Termination System antennas.
[4] Antennas used at outlying stations as part of a central protection alarm system need conform to only the following 2 standards: (1) The minimum on-beam forward gain must be at least 10 dBi, and (2) the minimum front-to-back ratio must be at least 20 dB.
[5] Except as provided in § 94.91.
[6] Except for temporary-fixed operations in the band 13,200–13,250 MHz with output powers less than 250 mW and as provided in § 94.90.

Note.—Stations in this service must employ an antenna that meets the performance standards for category A, except that, in areas not subject to frequency congestion antennas meeting standards for category B may be employed. Note, however, that the Commission may require the use of a high performance antenna where interference problems can be resolved by the use of such antennas.

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

[FR Doc. 87–8170 Filed 4–10–87; 8:45 am]

BILLING CODE 6712-01-M

## 47 CFR Part 73

**[MM Docket No. 87–73; RM–4961, etc.]**

## Radio Broadcasting Services in Benton, El Dorado, Hampton, Harrison, Mena, Sherwood, AR; Homer, LA; Sallisaw and Vinita, OK; and Hooks and Kilgore, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on eleven mutually exclusive petitons for rule making in the states of Arkansas, Louisiana, Oklahoma and Texas. Three of the petitions propose new allotments at: Mena, Arkansas on Channel 242C1; Sherwood, Arkansas on Channel 294A; and Homer, Louisiana on Channel 294C2. Eight of the petitions propose modifications of license at: Benton, Arkansas by substituting Channel 294C2 for Channel 296A; El Dorado, Arkansas by substituting Channel 241C1 for Channel 240A; Hampton, Arkansas by substituting Channel 295C2 for Channel 296A; Harrison, Arkansas by substituting Channel 242C2 for Channel 244A; Vinita, Oklahoma by substituting Channel 241C2 for Channel 240A; Sallisaw, Oklahoma by substituting Channel 241C2 for Channel 240A; Hooks, Texas by substituting Channel 241C2 for Channel 240A; and Kilgore, Texas by substituting Channel 241C2 for Channel 240A.

**DATES:** Comments must be filed on or before May 26, 1987, and reply comments on or before June 10, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows:

Service List

David G. Rozelle, Esq., Fletcher, Heald & Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036 (Counsel for DLB Broadcasting Corp.)

M. Anne Swanson, Spiegel & McDermott, 1350 New York Avenue NW., Washington, DC 20005–4798, (Counsel for Demaree Enterprises, Inc.)

C.R. Crisler, Double Eagle Broadcasting, P.O. Box 6324, Fort Smith, AR 72906 (Consultant to Douglas S. Harlan)

Lawrence J. Bernard, Jr., Esq., Ward & Mendelsohn, P.C., 1100 Seventeenth Street NW., Suite 900, Washington, DC 20036 (Counsel to Harrison Radio Station, Inc.)

Eugene T. Smith, Esq., 715 G Street SE., Washington, DC 20003 (Counsel to Texarkana Broadcasting, Inc.)

Robert W. Coll, Esq., McKenna, Wilkinson & Kittner, 1150 Seventeenth Street NW., Washington, DC 20036 (Counsel to Noalmark Broadcasting Corp.)

KIXK, Inc., c/o Charles R. Shinn, President, P.O. Box 1901, El Dorado, AR 71731 (Petitioner for El Dorado, AR)

Robert S. Stone, Esq., McCampbell & Young, 2021 Plaza Tower, P.O. Box 550, Knoxville, TN 37901–0550 (Counsel for Southern Arkansas Radio Co.)

J. Boyd Ingram, P.O. Box 73, Batesville, MS 38606 (Consultant to Homer Broadcasters)

Mark E. Fields, Esq., Miller & Fields, P.C., P.O. Box 33003, Washington, DC 20033 (Counsel to Bridges Broadcasting Services)

Dan Winn & Associates, P.O. Box 214, Little Rock, AR 72203 (Consultant to Sherwood Broadcasting Corporation)

**FOR FURTHER INFORMATION CONTACT:** D. David Weston, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–73, adopted March 10, 1987, and released April 3, 1987. The full text of this Commission decision 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 test of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800.

2100 M Street NW., Suite 140, Washington, DC 20037.

The eleven mutually exclusive petitions were filed by: (1) Bridges Broadcasting Service, licensee of Station KAKI (FM), (Channel 296A), Benton, Arkansas, requesting the substitution of Channel 294C2 for Channel 296A and modification of its license to specify operation on Channel 294C2, as that community's first wide coverage area FM station (RM–4961). A site restriction of 8.8 kilometers (5.5 miles) east of the community is required; (2) KIXK, Inc., licensee of Station KIXK(FM), (Channel 240A), El Dorado, Arkansas, requesting the substitution of Channel 241C1 for Channel 240A and modification of its license to specify operation of Channel 241C1, as that community's first wide coverage area FM station (RM–5381). The channel can be allotted in compliance with the minimum distance separation requirements at Station KIXK's present transmitter site. However, finalization of this proposal is contingent upon: (a) The outcome of a pending case in the U.S. Court of Appeals for the District of Columbia, [*James Reeder* v. *FCC & USA*, Case No. 86–1045] and (b) the reconsideration of a proposal to allot Channel 241A to Ruston, Louisiana; (3) Southern Arkansas Radio Company, licensee of Station KKOL(FM), (Channel 296A), Hampton, Arkansas, requesting the substitution of Channel 295C2 for Channel 296A and modification of its license to specify operation on Channel 295C2, as that community's first wide coverage area FM station (RM–5615). A site restriction 9.3 kilometers (5.8 miles) of the community is required. (4) Harrison Radio Station, Inc., licensee of Station KCWD(FM), (Channel 244A), Harrison, Arkansas, requesting the substitution of Channel 242C2 for Channel 244A and modification of its license to specify operation of Channel 242C2, as that community's first wide coverage area FM station (RM–5411). A site restriction 12.9 kilometers (8 miles) south of the community is required; (5) Douglas S. Harlan requesting the allotment of Channel 242C1 to Mena, Arkansas, as that community's second FM channel (RM–5339). Channel 242C1 can be alloted to Mena in compliance with the minimum distance separation requirements; (6) Sherwood Broadcasting Corporation, requesting the allotment of Channel 294A to Sherwood, Arkansas as that community's first FM channel (RM–5488). Channel 294A can be alloted to Sherwood in compliance with the minimum distance separation requirements; (7) Homer Broadcasters, requesting the allotment of Channel 294C2 to Homer, Louisiana as that community's second FM channel (RM–5286). A site restriction of 31.4 kilometers (19.1 miles) west of the community is required. However, it can be allotted with a site restriction 3.8 kilometers west if a pending application (BPH–860805IB) filed by Station KNAN(FM) (Channel 291), Monroe, Louisiana is approved; (8) Demaree Enterprises, Inc., licensee of Station KKID–FM (Channel 240A), Sallisaw, Oklahoma, requesting the substitution of Channel 241C2 for Channel 240A and modification of its license to specify operation on Channel 241C2 as that community's first wide coverage area FM station (RM–5508). The channel can be allotted in compliance with the minimum distance separation requirements at Station KKID–FM's present transmitter site; (9) DLB Broadcasting Corporation, licensee of Station KITO(FM), (Channel 240A), Vinita, Oklahoma, requesting the substitution of Channel 241C2 for Channel 240A and modification of its license to specify operation of Channel 241C2 as that community's first wide coverage area FM station (RM–5291). A site restriction 23.2 kilometers (14.4) miles southeast of the community is required. Although the site restriction is currently short spaced to the 16 kilometer buffer zones of Station KWEN (Channel 238) and Station KRAV (Channel 243), Tulsa, Oklahoma both stations have pending applications (BMPH–850917IG) and BMPH–860206IA) to relocate their transmitter sites which will resolve the problem. However, any finalization of this proposal must await the issuance of a license for each Tulsa station to operate at its new site; (10) Texarkana Broadcasting, Inc. licensee of Station KLLI(FM) (Channel 240A), Hooks, Texas requesting the substitution of Channel 241C2 for Channel 240A and the modification of its license to specify operation on Channel 241C2 as that community's first wide coverge area FM station (RM–5314). Channel 241C2 can be allotted to Hooks in compliance with the minimum distance separation requirements. In connection with the requested upgrade we shall reallocate Channel 240A to Hooks, Texas (currently allotted to New Boston, Texas) to reflect its actual usage in Hooks, Texas; and (11) Noalmark Broadcasting Corporation licensee of Station KKTX(FM) (Channel 240A), Kilgore, Texas requesting the substitution of Channel 241C2 for Channel 240A and modification of its license to specify operation on Channel 241C2 as that community's first wide coverage area FM Station (RM–5421). The channel can be allocated in compliance with the minimum distance separation requirements at Station KKTX(FM)'s application site (BPH–860203IC). This *Notice* solicits comments and showings to aid the Commission in the comparative evaluation of the conflicting proposals to determine which communities will receive allotments. A basic issue to be decided concerns the preference to be accorded a new primary service represented by a new allotment *vis-a-vis* an increase in existing service represented by a modification proposal. Based on existing policies and procedures we are initially proposing allotments which favor new primary services at: (1) Mena, Arkansas (Channel 242C1); (2) Sherwood, Arkansas (Channel 294A) and (3) Homer, Louisiana (Channel 294C2). Modification requests which do not conflict with the new service allotments are proposed at: (1) El Dorado, Arkansas (Channel 241C1 for Channel 240A) (2) Vinita, Oklahoma (Channel 241C2 for Channel 240A) and (3) Kilgore, Texas (Channel 241C2 for Channel 240A). Modification proposals which are precluded by the allotment of a new primary service are: (1) Benton, Arkansas (Channel 242C2 for Channel 296A); (2) Hampton, Arkansas (Channel 295C2 for Channel 296A); (3) Harrison, Arkansas (Channel 242C2 for Channel 244A); (4) Sallisaw, Oklahoma (Channel 241C2 for Channel 240A) and (5) Hooks, Texas (Channel 241C2 for Channel 240A). However, since this *Notice* invites comments from all proponents and requests further showings to demonstrate a preference under allocation priorities, we are provisionally proposing allotments at all communities pending evaluation of the comments and showings received.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**Bradley P. Holmes,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8166 Filed 4-10-87; 8:45 am]

BILLING CODE 6712-01-M

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## 47 CFR Part 73

**[MM Docket No. 87-59, RM-5535]**

## Radio Broadcasting Services; Outlook, MT

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Timothy D. Martz, proposing the allocation of FM Channel 289 to Outlook, Montana, as that community's first FM broadcast service. Canadian concurrence is required for the allocation of this channel

**DATES:** Comments must be filed on or before May 26, 1987, and reply comments on or before June 10, 1987.

**ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James R. Bayes, Jerry V. Haines, Wiley & Rein, 1776 K Street NW., Washington, DC 20006 (counsel for the petitioner)

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheurele, Mass Media Bureau, (202) 634-6350.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Dockst No. 87-59, adopted February 20, 1987, and released April 3, 1987. The full text of this Commission decision 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 contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibits in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

**Mark N. Lipp,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 87-8163 Filed 4-10-87; 8:45 am]

BILLING CODE 6712-01-M

# Notices

Federal Register
Vol. 52, No. 70
Monday, April 13, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of Advocacy and Enterprise, Citizens' Advisory Committee on Equal Opportunity; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), an announcement is made of the following committee meeting:

Name: Citizens' Advisory Committee on Equal Opportunity.

Date: May 4–6, 1987.

Place: Omni Northstar Hotel, 618 Second Avenue South, Minneapolis, Minnesota 55402.

Time: 8:30 a.m.–5:00 p.m.

Purpose:

—Advise the Secretary on the effectiveness of compliance program directives;

—Review all aspects of the Department's policies, practices, and procedures on Equal Opportunity;

—Recommend changes in Department rules, regulations, and orders to assure USDA activities are free from discrimination;

Additionally, the Committee will focus on:

—Operational programs in the Animal and Plant Health Inspection Service (APHIS);

—The reports on findings of EEO Program Reviews in Arkansas and Florida; and

—USDA initiatives regarding the employment of and services to Hispanic and American Indian persons.

The meeting is open to the public. Persons may participate in the meeting as time and space permit. Persons who wish to address the Committee at the meeting or who wish to file written comments before or after the meeting should contact: Lawrence Cavallaro, Acting Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, 14th & Independence Avenue SW., Room 1226, South Building, Washington, DC 20250, (202) 447–5681.

Written statements may be submitted until April 27.

**Lawrence Cavallaro,**

*Acting Associate Director, Equal Opportunity, Office of Advocacy and Enterprise.*

[FR Doc. 87–8207 Filed 4–10–87; 8:45 am]

BILLING CODE 3410–94–M

### Commodity Credit Corporation Premiums for High-Quality Grain; Request for Public Comment

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Request for public comment.

**SUMMARY:** Pursuant to the provisions of section 305 of the Grain Quality Improvement Act of 1986, Pub. L. 99–641, the Commodity Credit Corporation (CCC) is soliciting comments on the feasibility and appropriateness of adjusting CCC grain premium and discount schedules used under the price support loan program. Adjustments to the premium and discount schedules are contemplated in order to improve the quality of U.S. grain for domestic and export markets.

**DATE:** Comments must be submitted on or before April 24, 1987.

**ADDRESS:** Comments must be submitted in writing to Jerry Kretsch, Commodity Operations Division, USDA, ASCS, Room 5755 South Building, P.O. Box 2415, Washington, DC 20013, telephone (202) 447–4069. Users of an express delivery service should address such correspondence to: 12th and Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1–27(b)).

**FOR FURTHER INFORMATION CONTACT:** Jerry Kretsch, address as above, telephone (202) 447–4069.

**SUPPLEMENTARY INFORMATION:** The Grain Quality Improvement Act of 1986, Pub. L. 99–641, amending the United States Grain Standards Act (7 U.S.C. 71 et seq.), became effective November 10, 1986. Section 305 of the Grain Quality Improvement Act provides:

**Study of Premiums for High-Quality Grain**

(a) *Study.* After public comment from and in consultation with grain producers, grain merchants, grain processors, and grain exporters, the Secretary of Agriculture shall conduct a study of the feasibility and appropriateness of adjusting Commodity Credit Corporation grain premium and discount schedules—

(1) to encourage the delivery, storage, and export of high-quality, clean grain; and

(2) to offer incentives to minimize the quantity of moisture, foreign material, dockage, shrunken and broken kernels, and damaged kernels in lots of grain pledged as collateral for Commodity Credit Corporation loans or in grain owned by the Commodity Credit Corporation.

(b) *Report.* Not later than 180 days after the date of enactment of this Act, the Secretary shall transmit a report describing the results of the study required under subsection (a), together with recommendations, to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

The CCC is soliciting comments on the feasibility and appropriateness of adjusting CCC grain premium and discount schedules to encourage delivery, storage, and export of high-quality clean grain. Comments are also requested from all interested parties on the manner in which the CCC discount schedules would be adjusted to offer incentives to producers to deliver higher-quality grain to CCC.

This request for public comment does not constitute notification that changes to the CCC grain premium and discount schedules are or will be made.

(Sec. 305, Pub. L. 99–641, Grain Quality Improvement Act of 1986 (7 U.S.C. 74))

Signed at Washington, DC, on April 1, 1987.

**Milt Hertz,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 87–8146 Filed 4–10–87; 8:45 am]

BILLING CODE 3410–05–M

## Forest Service

### Exterior Boundary Changes; Tongass National Forest, AL

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of availability.

**SUMMARY:** The Alaska National Interest Lands Conservation Act of December 2, 1980 (Pub. L. 96–487, 94 Stat. 2371; 16 U.S.C. 3210) changed the exterior boundary of the Tongass National Forest, Alaska, in four locations with a net addition of 1,463,380 acres.

Legal descriptions and maps of the Brabazon Range, the Juneau Ice Field, and the Kates Needle additions and the Brabazon Range exclusion are now on

file for public inspection at the following offices:

Chief, Forest Service, USDA, South Agriculture Building, Room 4238, 12th and Independence Avenue, SW., Washington, DC 20013, (all four changes)
Regional Forester, Alaska Region, P.O. Box 021628, Juneau, AK 99802–1628, (all four changes)
Forest Supervisior, Tongass NF-Chatham Area, 204 Siginaka Way, Sitka, AK 99835, (all four changes)
Forest Supervisor, Tongass NF-Stikine Area, P.O. Box 309, Petersburg, AK 99833, (Kates Needle addition only)

**FOR FURTHER INFORMATION CONTACT:** Charles Low, Lands, Minerals, and Watershed Staff, Alaska Region, P.O. Box 021628, Federal Office Building, Juneau, AK 99802, (907) 586–7847.

Dated: March 24, 1987.

**Michael A. Barton,**

*Regional Forester, Alaska Region.*

[FR Doc. 87–8148 Filed 4–10–87; 8:45 am]

BILLING CODE 3410–11–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Establishment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber Silk Blends and Other Vegetable Fiber Textiles and Textile Products From the Republic of Korea; Correction

April 7, 1987.

In the **Federal Register** notice and the letter to the Commissioner of Customs published in January 14, 1987 (52 FR 1519) reference to the restraint periods for textiles and textile products in Group VI, and individual categories within the group, should be corrected as follows:

| Category | Restraint period |
|---|---|
| Group VI | |
| 369–L, 670–L/870, as a group. | Jan. 1–Dec. 31, 1986. |
| 369–L | Jan. 1–Dec. 31, 1986. |
| 670–L | Jan. 1–Dec. 31, 1986. |

In the letter to the Commissioner of Customs, the restraint limits should be corrected as follows:

| Category | Restraint limit |
|---|---|
| Group VI | |
| 369–L, 670–L/870, as a group. | 58,300,000 square yard equivalent. |
| 369–L | 500,000 pounds. |
| 670–L/870 | 32,000,000 pounds of which not more than 26,000,000 pounds shall be in TSUSA numbers 706.3415, 706.4130 and 706.4135,. |

**Ronald I. Levin,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 87–8108 Filed 4–10–87; 8:45 am]

BILLING CODE 3510–DR–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Science Board Task Force on B–1B Defensive Avionics Review Subgroup

**ACTION:** Notice of Advisory Committee Meetings.

**SUMMARY:** The Defense Science Board Task Force on B–1B Defensive Avionics Review Subgroup will meet in closed session on May 12–13, 1987 at the Eaton Corporation, Deer Park, New York.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate the status of the Air Force B–1B Defensive Avionics Program.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c) (1) (1982), and that accordingly these meetings will be closed to the public.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 7, 1987.

[FR Doc. 87–8143 Filed 4–10–87; 8:45 am]

BILLING CODE 3810–01–M

### U.S. Court of Military Appeals Code Committee Meeting

**ACTION:** Notice of public hearing.

**SUMMARY:** This notice announces the forthcoming public meeting of the Code Committee established by Article 67(g), Uniform Code of Military Justice, 10 U.S.C. 867(g), to be held at 2:00 p.m. on April 29, 1987, in the Judge William Holmes Cook Conference Room at the Courthouse of the United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442–0001. The agenda for this meeting will include consideration of the proposed changes to the Manual for Courts-Martial, United States, 1984, as well as other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Services.

**DATE:** April 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Thomas F. Granahan, Clerk of Court, United States Court of Military Appeals, 450 E Street, Northwest, Washington, DC 20442–0001; telephone (202) 272–1448.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 7, 1987.

[FR Doc. 87–8218 Filed 4–10–87; 8:45 am]

BILLING CODE 3810–01–M

### Department of the Air Force

### Intent to Prepare Environmental Impact Statement; Low Altitude Flight Operations

The United States Air Force, Department of Defense, will prepare a generic Environmental Impact Statement (EIS) for low altitude flight oprations. This generic EIS will include all Air Force, Air National Guard and Air Force Reserve low altitude aircraft operations.

Low altitude airspace is required for diverse activities such as training, research, development, test and evaluation programs. Air crew proficiency is essential in such missions as air defense, air superiority, close strategic and tactical bombing, low altitude refueling and strategic/tactical airlift. Although low level missions will be conducted throughout the country over varied terrain, the environmental impacts and the methodologies used to analyze those impacts do not vary significantly. The Air Force believes the best way to analyze these similar actions is to treat their common features in a single generic EIS and then tier from that EIS for future EISs and environmental assessments.

The Air Force proposes to adopt a process based on environmental considerations to identify and evaluate future site-specific airspace training areas. The EIS will analyze the range of environmental impacts that might be expected at the site-specific level, from future proposals. Alternatives to this

process will not be addressed. Altitudes to be assessed range from 100 feet above ground level (AGL) for fixed wing aircraft and 50 feet AGL for rotary wing aircraft to a maximum altitude of 3,200 feet AGL.

The Air Force will conduct scoping meetings to determine the nature, extent and scope of the issues and concerns that should be addressed in the generic EIS. Dates and places are as follows:

28 April 87-Boston MA, World Trade Convention Center
29 April 87-Raleigh NC, Holiday State Capital
30 April 87-Tallahassee FL, Ramada North
11 May 87-Rapid City SD, Alex Johnson
12 May 87-Denver CO, Stouffer Concourse
13 May 87-Kansas City MO, Alameda Plasa
14 May 87-Dallas TX, Sheraton Park Central
26 May 87-Reno NV, The Nugget
28 May 87-Seattle WA, Seattle Sheraton
9 June 87-Anchorage AK, Eagan Convention Center

For further information concerning the generic EIS for low altitude flight operations, contact HQ SAC/DEV (Dr. Hugh Stirts), Offutt AFB NE 68113-5001, Telephone: (402) 294-5854.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-8106 Filed 4-10-87; 8:45 am]

BILLING CODE 3910-01-M

## USAF Scientific Advisory Board; Meeting

April 7, 1987.

The Technology Panel of the USAF Scientific Advisory Board's Ad Hoc Committee on Space-Based Radar will conduct a meeting at The Aerospace Corporation on April 28, 1987, from 8:00 A.M. to 5:00 P.M.

The purpose of this meeting is to discuss the Panel's approach to addressing technology issues relevant to Air Force requirements for a space-based radar system.

This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-8404.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 87-8107 Filed 4-10-87; 8:45 am]

BILLING CODE 3910-01-M

## Privacy Act of 1974; System of Records Notice

**AGENCY:** Department of the Air Force (DAF), DoD.

**ACTION:** Notice of a new Air Force System of Records.

**SUMMARY:** The Air Force is publishing for any public comment a new record system being added to its inventory of systems of records subject to the Privacy Act of 1974.

**EFFECTIVE DATE:** This proposed action will be effective without further notice on May 13, 1987, unless comments are received which would result in a contrary determination.

**ADDRESS:** Send any comments to Major James J. Valdez, USAF, HQ USAF/DADQ, Room 4A-1088, The Pentagon, Washington, D.C. 20330-5024, Telephone (202) 694-3431, Autovon: 224-3431.

**FOR FURTHER INFORMATION:** Contact Major James J. Valdez above.

**SUPPLEMENTARY INFORMATION:** The Air Force systems of records inventory subject to the Privacy Act of 1974, Title 5, United States Code, Section 552a (Pub. L. 93-579) has been published in the **Federal Register** as follows:

FR Doc. 85-10237 (50 FR 22332) May 29, 1985 (compilation)
FR Doc. 85-14122 (50 FR 24672) June 12, 1985
FR Doc. 85-15062 (50 FR 25737) June 21, 1985
FR Doc. 85-26775 (50 FR 46477) November 8, 1985
FR Doc. 85-29261 (50 FR 50337) December 10, 1985
FR Doc. 86-2527 ((51 FR 4531) February 5, 1986
FR Doc. 86-4546 (51 FR 7317) March 3, 1986
FR Doc. 86-10044 (51 FR 16735) May 6, 1986
FR Doc. 86-11696 (51 FR 18927) May 23, 1986
FR Doc. 86-25787 (51 FR 41382) November 14, 1986
FR Doc. 86-25788 (51 FR 41402) November 14, 1986
FR Doc. 86-27635 (51 FR 44332) December 9, 1986

A new system report as required by 5 U.S.C. 552a(o) of the Privacy Act was submitted on March 19, 1987, pursuant to paragraph 4b of Appendix I of OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 7, 1987.

**F010 AF A**

**SYSTEM NAME:**

010 AF A Automated Orders Data System.

**SYSTEM LOCATION:**

Any location where temporary duty travel orders are published at all levels down to and including Air Force squardrons. Official mailing addresses are in the Department of Defense directory in the appendix to the Air Force's systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Air Force civilian employees and military members who perform temporary duty travel.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

All temporary duty travel orders published by the organization maintaining the system also contains identification data on individuals who perform travel.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 8012, Secretary of the Air Force: Powers and duties; delegation by, as implemented by the DoD Joint Travel Regulations.

**PURPOSE(S):**

Used to prepare temporary duty travel orders and to determine status of individual orders.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

Records from this system of records may be disclosed for any of the blanket routine uses published by the Air Force.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:**

Maintained on computer.

**RETRIEVABILITY:**

Filed by name, Social Security Number, or Air Force Service Number.

**SAFEGUARDS:**

Records are accessed by person(s) responsible for servicing the records in performance of their official duties who are properly screened for need-to-know. Records are protected by computer system software.

**RETENTION AND DISPOSAL:**

Orders are maintained for one year after the year in which they are published. Identification data is maintained until the individual is reassigned.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of Administration, Headquarters United States Air Force, Washington, D.C. Local System

Manager: Base director or Chief of Administration.

**NOTIFICATION PROCEDURE:**

Requests from individuals should be addressed to the local system manager.

**RECORD ACCESS PROCEDURES:**

Individuals can obtain assistance in gaining access from the local system manager.

**CONTESTING RECORDS PROCEDURES:**

The Air Force's rules for access to records and for contesting and appealing initial determinations by the individual concerned may be obtained from the System Manager and are published in Air Force Regulation 12–35 (32 CFR Part 806b).

**RECORD SOURCE CATEGORIES:**

Information is obtained from personnel records and travel order requests prepared by clerical staff serving the individual traveler.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 87–8139 Filed 4–10–87; 8:45 am]

BILLING CODE 3810–01–M

## Department of the Army

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Public Information Collection Requirement Submitted to OMB for Review.

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information; Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Extension.

Tender of Service and Letter of Intent for Personal Property HHG and unaccompanied Baggage (OMB No. 0702–0022)

Since household goods move at government expense, data is needed to choose the best service at least cost. The information provided amounts to a bid for contract to transport household goods and unaccompaned baggage. The best service for least cost carrier receives the contract.

Businesses or other for profit, small businesses or organizations

Responses: 600

Burden Hours: 12,400.

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson David Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

**SUPPLEMENTAL INFORMATION:** A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, DAIM–ADI, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 694–0754.

**Patrica H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 87–8136 Filed 4–10–87; 8:45 am]

BILLING CODE 3510–01–M

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Public Information Collection Requirement Submitted to OMB for Review.

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information; Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

NEW

Heavy Hauler Truck Trailer Database Survey

The DoD needs detailed and accurate information on heavy hauler truck trailers located in the U.S. This information will be used by the DoD for contingency planning and execution of deployment and mobilization plans. Heavy hauler owners identified from publicly available information sources—will be surveyed in order to validate and supplement information on their heavy hauler trailer inventory.

Businesses or other for profit, small businesses or organizations

Responses: 1,750

Burden Hours: 1,750.

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

**SUPPLEMENTAL INFORMATION:** A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, DAIM–ADI, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 694–0754.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 7, 1987.

[FR Doc. 87–8137 Filed 4–10–87; 8:45 am]

BILLING CODE 3810–01–M

### Public Information Collection Requirement Submitted to OMB for Review

**ACTION:** Public Information Collection Requirement Submitted to OMB for Review.

**SUMMARY:** The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information; Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information

collection are to be forwarded; and (8) The point of contact for whom a copy of the information proposal may be obtained.

Revision

Motor Carrier Facilities Questionnaire, MT Form 45 (OMB No. 0702–0024)

This form is used to obtain information on motor carrier's operating authority and types and amount of equipment for prequalification and freight routing purposes. Only new freight motor carriers desiring to participate in Department of Defense freight movements are affected.

Businesses or other for profit, small businesses or organizations

Responses: 150

Burden Hours: 150.

**ADDRESSES:** Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

**SUPPLEMENTAL INFORMATION:** A copy of the information collection proposal may be obtained from Ms. Angela R. Petrarca, DAIM–ADI, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 694–0754.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 7, 1987.

[FR Doc. 87–8138 Filed 4–10–87; 8:45 am]

BILLING CODE 3810–01–M

## Privacy Act of 1974; New and Altered Record Systems

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of one new and one altered record system subject to the Privacy Act.

**SUMMARY:** The Army is publishing a notice for public comment on a new record system that will be added; one system that is being altered, to its existing inventory of systems of records subject to the Privacy Act of 1974.

**DATE:** This proposed action will be effective without further notice May 13, 1987, unless comments are received which would result in a contrary determination.

**ADDRESS:** Send any comments to Mr. Cliff Jones further identified below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Cliff Jones, HQDA DAIM-FAR-RI, Room 1138, Hoffman Building I, Alexandria, VA 22331–0301. Telephone: (202) 325–6044, Autovon: 221–6044.

**SUPPLEMENTARY INFORMATION:** The Army's systems of records notices inventory subject to the Privacy Act of 1974 (5 U.S.C. 552a) have been published to date in the **Federal Register** as follows:

FR Doc. 85–10237 (50 FR 22090) May 29, 1985 (Compilation)

FR Doc. 86–14668 (51 FR 23576) June 30, 1986

FR Doc. 86–19534 (51 FR 30900) August 29, 1986

FR Doc. 86–25274 (51 FR 40478) November 7, 1986

FR Doc. 86–27580 (51 FR 44361) December 9, 1986.

One new and one altered system report as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 were submitted pursuant to paragraph 4b of Appendix I of OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985, to the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Executive Office of Management and Budget (EOMB) on March 19, 1987. The new record system is identified as A0319–01bDAEN and is required by the Army Corps of Engineers for their debt collection efforts under Debt Collection Act of 1982 (Pub. L. 97–365). The altered system, identified as A1306–01DAPE, was last published in the **Federal Register** on May 29, 1985 at 50 FR 22243 and is being revised because of a significant change in the categories of individuals covered by the system. It is being expanded to cover not only Army service members, but will now include family members of the service members, certain DoD civilian employees, and samples of the general U.S. population to determine why people do or do not consider military service as a career option.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 7, 1987.

**A0319–01bDAEN**

**SYSTEM NAME:**

Corps of Engineers Debt Collection System.

**SYSTEM LOCATION:**

Finance and Accounting Offices at U.S. Army Corps of Engineers Installations worldwide.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Separated and retired military and civilian personnel and others indebted to the U.S. Army.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

These records include, but are not limited to:

1. Records of current and former military members and civilian employees' pay accounts showing entitlements, deductions, payments made, and any indebtedness resulting from deductions and payments exceeding entitlements.

2. Individual military pay records, substantiating documents such as military pay orders, pay adjustment authorizations, military master pay account printouts from the Joint Uniform Military Pay System (JUMPS), records of travel payments, financial record data folders, miscellaneous vouchers, personal financial records, credit reports, promissory notes, individual financial statements and related correspondence.

3. Applications for waiver of erroneous payments or for remission of indebtedness with supporting documents including, but not limited to: Statements of financial status (personal income and expenses); statements of commanders and/or finance and accounting officers; and correspondence with members and employees.

4. Claims of individuals requesting additional payments for services rendered with supporting documents including, but not limited to: Time and attendance reports; leave and earning statements; travel orders and/or vouchers; and correspondence with members and employees.

5. Delinquent accounts receivable including, but not limited to: Returned checks; default on lease agreements; collection records; and summaries of Army Criminal Investigation Command and/or Federal Bureau of Investigation reports.

6. Reports from probate courts regarding estates of deceased debtors.

7. Reports from bankruptcy courts regarding claims of the United States against debtors.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Debt Collection Act of 1982 (Pub. L. 97–365); 5 U.S.C. 552a(b)(12); 5 U.S.C. 5514(a); 10 U.S.C. 2774; 12 U.S.C. 1715; 15 U.S.C. 1681a(f); Federal Claims Collection Act of 1966 31 U.S.C. 952(d); 31 U.S.C. 3711; E.O. 9397.

**PURPOSE:**

To process, monitor, and post-audit accounts receivable. To administer the Federal Claims Collection Act of 1966 and the Debt Collection Act of 1982 and to answer inquiries pertaining thereto. To match application data with state information in order to verify eligibility for benefits.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

Information may be disclosed to:

1. U.S. Department of Justice/U.S. Attorneys for legal action and/or final disposition of debt claims.

2. The Department of the Treasury/ Internal Revenue Service for the purpose of obtaining locator status for delinquent accounts receivable, and/or to report write-off amounts as taxable income as pertains to amounts comprised and accounts barred from litigation due to age, and for the purpose of offset, either administrative or salary.

3. Private collection agencies for the purpose of credit information and for the purpose of obtaining credit reports or skip traces when the Army has exhausted its internal collection efforts.

4. Consumer reporting agencies pursuant to the Privacy Act of 1974, 5 U.S.C. 552a(b)(12) as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) when an individual is responsible for a debt to the U.S. Army, provided the debt has been validated, is overdue, and the debtor has been advised of the disclosure and his/her rights to dispute, appeal or review the claim; and/or whenever a financial status report is requested for use in the administration of the Federal Claims Collection Act. Claims of the United States may be compromised, terminated or suspended when warranted by information collected.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders and bulk storage, card files, magnetic tapes, paper printouts and microfiche.

**RETRIEVABILITY:**

By SSN, name and substantiating document number.

**SAFEGUARDS:**

Security guards are employed at all Corps of Engineers Finance and Accounting Offices. Paper records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Computerized records are accessed by the custodian of the records system and by persons responsible for servicing the records in the performance of their official duties. Certifying Finance and Accounting Officers of debts have access to debt information to conform if the debt is valid and collection action is to be continued. Computer equipment and files are located in a separate secured area.

**RETENTION AND DISPOSAL:**

Delinquent accounts receivables are retained for six (6) years and three (3) months and then destroyed.

**SYSTEM MANAGER AND ADDRESS:**

The Finance and Accounting Officer at the Headquarters, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, NW., Washington, D.C. 20314–1000.

**NOTIFICATION PROCEDURES:**

Individual desiring to know whether this system of records contains information about them should contact the Finance and Accounting Officer at the appropriate U.S. Army Corps of Engineers installation, furnishing full name, SSN Number, and other information verifiable from the record itself.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records in this system pertaining to them should submit a written request as indicated in 'Notification Procedures' and furnish information required therein.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing determinations are contained in AR 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

Information is received from the Department of Defense staff and field installations, other creditor Federal agencies, Social Security Administration, Treasury Department, Banks, Savings and Loan Associations, Employee Credit Unions and other financial organizations.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**A1306-O1DAPE**

**SYSTEM NAME:**

Behavioral and Social Sciences Research Project Files

**SYSTEM LOCATION:**

Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333 and field offices located at Fort Lewis, WA; Boise, ID; Camp Zama, Japan; Fort Huachuca, AZ; London, England; Mannheim, Germany; Naval Training Center, Orlando, FL; Falls Church, VA; Fort Hood, TX; Fort Knox, KY; Fort Leavenworth, KS; Presidio of Monterey, CA; Fort Rucker, AL; and St Louis, MO.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

(1) Current and former officer, warrant officer, and entlisted military personnel, including Army Reservists and National Guard.

(2) Family members of the service members in category (1).

(3) Civilian employees of DoD.

(4) Samples of civilians from the general U.S. population who are surveyed to determine why people do or do not consider military service as a career or a short-term employment option.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name and SSN, questionnaire-type data relating to service member's and civilian employee's pre-service education, work experience, social environment and culture, learning ability, physical performance, combat readiness, discipline, motivation, attitude about Army life, and measures of individual and organizational adjustments; test results from Armed Services Vocational Aptitude Battery and Skill Qualification Tests. Also, individual's name and SSN, and questionnaire-type data relating to non-service member's education, work experience, motivation, knowledge of and attitude about the Army. When records show military service or marriage to a service member, the appropriate non-service records will be linked to the service record.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C., sections 2358 and 4503.

**PURPOSE(S):**

To research human factors inherent in the recruitment, selection, classification, assignment, evaluation, and training of military and civilian personnel; to enhance readiness effectiveness of the Army by developing personnel management methods, training devices, and testing of weapons methods and systems aimed at improved group performance. (No decisions affecting an individual's rights or benefits are made using these research records.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:**

See the "blanket routine uses" set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:**

Paper records in file folders; punch card; magnetic tape.

**RETRIEVABILITY:**

By individual's name and/or SSN. For research purposes, the data are usually retrieved and analyzed with respect to relative times of entry into service, training performance, and demographic values. Scheduled data for follow-up data collections however, are retrieved by month of scheduled follow-up and by name.

**SAFEGUARDS:**

Access to records is restricted to authorized personnel having official need therefor. Automated data are further protected by controlled system procedures and code numbers governing access.

**RETENTION AND DISPOSAL:**

Information is retained until completion of appropriate study or report, after which it is destroyed by shredding or erasing.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, The Pentagon, Washington, D.C. 20310.

**NOTIFICATION PROCEDURE:**

Individuals wishing to know whether or not this system of records contains information about themselves should write to the system manager, providing their full name, SSN, current address, the subject area and the year of testing if known.

**RECORDS ACCESS PROCEDURES:**

For access to information about themselves in this system of records, individuals should follow information in Notification Procedure above.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES:**

From the individual, his or her peers, or, in the case of ratings and evaluations, from supervisors.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 87–8140 Filed 4–10–87; 8:45 am]

BILLING CODE 3810–01–M

## Defense Logistics Agency

### Announcement of Direct Conversion to Contract Performance of Commercial Activities (CA) Function

**AGENCY:** Defense Logistics Agency (DLA).

**ACTION:** Notification of intent to effect direct conversion to contract performance of DLA CA function.

**SUMMARY:** The publication of decisions to directly convert commercial activities (CA) to contract performance is required by Supplement to OMB Circular No. A–76 (Revised) and DoD Instruction 4100.33, "Commercial Activities Program Procedures."

1. Based on a Simplified Cost Comparison conducted 13 February 1987, the Defense Logistics Agency will issue a solicitation to directy convert to contract performance the commercial reservations and ticket services of the DLA Administrative Support Center's (DASC) Travel Office. The DASC Travel Office furnishes support to Headquarters, DLA and DLA field activities located in Alexandria, VA.

For further information contact: Mr. Preston B. Speed, Chief, Administration Management Branch, DLA Administrative Support Center, Cameron Station, Alexandria, VA 22304–6130, (202) 274–6234.

2. Based on a Simplified Cost Comparison conducted 29 January 1987, the Defense Logistics Agency will issue a solicitation to directly convert to contract performance the commercial reservations and ticket services of the Defense Electronics Supply Center's Travel Office, Dayton, OH.

For further information contact: Mr. Richard Shepherd, Commercial Activities, Office of Policy and Plans, Defense Electronics Supply Center, 1507 Wilmington Pike, Dayton, OH 45444–5000, (513) 296–5295.

Interested commercial concerns should refer to announcements in the Commerce Business Daily (CBD) to be made as part of the contract solicitation process.

**William J. Cassell,**

*Comptroller, Defense Logistics Agency.*

[FR Doc. 87–8123 Filed 4–10–87; 8:45 am]

BILLING CODE 3620–01–M

## Uniformed Services University of the Health Sciences (USUHS)

### Privacy Act of 1974: New Systems of Records

**AGENCY:** Uniformed Services University of the Health Sciences (USUHS), DOD.

**ACTION:** Notice for any public comment on new record systems subject to the Privacy Act.

**SUMMARY:** The USUHS is adding nine (9) new record systems to its existing inventory of record systems subject to the Privacy Act of 1974, as amended, (5 U.S.C. 522a).

**DATE:** This proposed action will be effective without further notice May 13, 1987 unless comments are received which would result in a contrary determination.

**ADDRESS:** Send any comments to Ms. Norma Cook, Records Management Division, Washington Headquarters Services, Room 5C–315, The Pentagon, Washington, D.C. 20301–1155. Telephone: 202–697–2501.

**SUPPLEMENTARY INFORMATION:** The Uniformed Services University of the Health Sciences (USUHS) systems of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** at 50 FR 22960, May 29, 1985 (FR Doc. 85–10237).

The nine (9) record systems to be added to the existing USUHS inventory of records is deemed necessasry by the agency and is being proposed under this action.

A new system report, as required by 5 U.S.C. 522a(o) of Privacy Act of 1974, was submitted to the Speaker of the House, the President of the Senate, and the Administrator, Office of Information and Regulatory Affairs (OMB) on March 19, 1987, pursuant to paragraph 4b of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

**Patricia H. Means,**

*OSD Federal Register Liaison Officer, Department of Defense.*

April 7, 1987.

**WUSU08**

**SYSTEM NAME:**

USUHS Radiation Safety Training Records.

**SYSTEM LOCATION:**

Department of Environmental Health and Occupational Safety, Uniformed Services University of the Health Sciences (USUHS), 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records will be maintained on University personnel who are assigned duties involving work with radioactive material, or whose duties may require them to frequently enter work areas in which radioactive materials are used or stored.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information in the system includes name, department, name of principal investigator, authorization number, date of initial briefing, date of last training, and date dosimeter issued (if applicable).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 2112; 10 CFR Part 20; NAVMED P–5055, U.S. Nuclear Regulatory Commission (NRC) Materials License 19–23344–01.

**PURPOSE(S):**

The Radiation Safety Officer and his/her staff maintain the computer data base system. It is used to record information concerning the individual's training in radiation safety. This information is also transcribed for inclusion in the individual's dosimetry records. The Radiation Safety Committee of the University may review such records as are relevant to their determinations of an individual's qualification and/or expertise in using radioactive materials.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Records may be reviewed by U.S. Nuclear Regulatory Commission (NRC) inspectors as part of their on-going administration of the Materials License, and by the Radiation Safety Committee or the Radiation Safety Officer and his/her staff to review an individual's qualifications and/or expertise in conducting experiments using radioiodine compounds.

See also the existing "blanket routine uses" set forth at the beginning of the Uniformed Services University of Health Sciences (USUHS) record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in the University's main computer.

**RETRIEVABILITY:**

Records are accessed by name, department or data fields.

**SAFEGUARDS:**

Records in the data base may be accessed only by EHS staff members who have been granted access to the University computer.

**RETENTION AND DISPOSAL:**

Records are kept permanently on file.

**SYSTEM MANAGER(S) AND ADDRESS:**

Dosimetry Manager, Department of Environmental Health and Occupational Safety, Uniformed Services University of Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

**NOTIFICATION PROCEDURE:**

Inquiries regarding the records should be directed to the System Manager.

**RECORD ACCESS PROCEDURES:**

Information on the procedures for gaining access to and contesting records will be furnished upon request by the System Manager.

**CONTESTING RECORD PROCEDURES:**

Individuals may contest any information maintained in the record system by submitting their request in writing to the System Manager. The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in OSD Administrative Instruction No. 81 (32 CFR Part 286b).

**RECORD SOURCE CATEGORIES:**

Individual, previous employers, training attendance records.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**WUSU09**

**SYSTEM NAME:**

USUHS Grants Management Information System (Protocols/Grants).

**SYSTEM LOCATION:**

The primary system will be located at Computer Operations, Uniformed Services University of the Health Sciences (USUHS), 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799. Decentralized segments will be maintained by the department chairpersons of Anatomy, Anesthesiology, Biochemistry, Dermatology, Military Medicine, Family Practice, Medical Psychology, Medicine, Microbiology Surgery, Neurology, Obstetrics/Gynecology, Pathology, Pediatrics, Pharmacology, Physiology, Preventive Medicine and Biometrics, Psychiatry, and Radiology, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Research proposals of grant requesters; in addition, research records will be maintained on military active duty, retired, their dependents, civilians and volunteers who have signed an appropriate consent form for a particular research project(s).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Grant proposals and protocols; statistical data, results of laboratory experiments, research subjects' medical history including pathological results and standard behavioral tests.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Pub. L. 92–426, Ch. 104, section 2113; 10 U.S.C. 2113.

**PURPOSE(S):**

Research faculty and staff use the research records as a data base for the analysis of experimental data. Research records contain the results of laboratory experiments, research subjects' medical histories, and statistical data including pathological and standard behavioral tests, and are used as submission to research proposals. Summary statistics on the research records are maintained by faculty/staff and updated when appropriate. Study and summary statistics are published without individual identifiers, but in some instances the selection of elements is such that individuals could be identified by reference. This data is given to collaborators and is sometime used for clinical evaluation of the patient.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See Uniformed Services University of the Health Science (USUHS) "Blanket Routine Uses" set forth at the beginning of the agency's listing of published record system notices.

**SAFEGUARDS:**

Computer hardware, disks and folders are stored in a controlled area, and are accessible only by password, which is changed at random intervals.

**RETENTION AND DISPOSAL:**

Records are retained until studies are complete or until no further information can be utilized from this material. However, all studies involving human volunteers will be maintained for five years. If the study involves a minor(s) the record will be kept until the individuals is age 18 plus five years.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Grants Management, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

**NOTIFICATION PROCEDURE:**

Inquiries regarding the records should be directed to the System Manager.

**RECORD ACCESS PROCEDURES:**

Information as to exact procedure for gaining access may be obtained from the System Manager. Address requests to Record Administrator, Uniformed Services University of the Health Sciences (USUHS/Adm) 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

**CONTESTING RECORD PROCEDURES:**

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in OSD Administrative Instruction No. 81 (32 CFR Part 286b).

**RECORD SOURCE CATEGORIES:**

Patients, normal subject volunteers, research collaborators and experimental results.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**WUSU10**

**SYSTEM NAME:**

USUHS Thyroid Bioassay Records.

**SYSTEM LOCATION:**

Department of Environmental Health and Occupational Safety, Uniformed Services University of Health Sciences (USUHS), 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records will be maintained on laboratory workers who use radioiodine compounds.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information in the system includes name, SSAN, department, date of bioassay, results of the individual's thyroid bioassay counts, and the purpose for each assay.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 2113; 10 CFR Part 19; 10 CFR Part 20; NAVMED P–5055, U.S. Nuclear Regulatory Commission (NRC) Materials License 19–23344–01.

**PURPOSE(S):**

The Radiation Safety Officer and his/her staff use the results in determining possible uptake of radioiodine compounds by the body resulting from overexposure to the compounds, and in detecting trends which mark the uptake and elimination by the body of such compounds. The results of each assay are also transcribed by Radiation Safety Personnel for inclusion on an addendum to DD Form 1141, "Record of Exposure to Ionizing Radiation." The Radiation Safety Committee of the University may review such records as are relevant to their determinations of an individual's qualifications and/or expertise in conducting experiments using radioiodine compounds.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Records may be reviewed by U.S. Nuclear Regulatory Commission (NRC) inspectors as part of their on-going administration of the Materials License, and by the Radiation Safety Committee of the Radiation Safety Officer and his/her staff to review an individual's qualifications and/or expertise in conducting experiments using radioiodine compounds.

See also the existing "blanket routine uses" set forth at the beginning of the Uniformed Services University of Health Sciences (USUHS) record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored on floppy diskettes.

**RETRIEVABILITY:**

Records are accessed by Date of Assay, Name, SSN, or Department.

**SAFEGUARDS:**

Records are stored in a controlled area which is kept locked when not in use. Back-up copies of each diskette are stored in a locked file cabinet.

**RETENTION AND DISPOSAL:**

Record diskettes are kept permanently on file. Records may be forwarded to new employer with written permission of the employee.

**SYSTEM MANAGER(S) AND ADDRESS:**

Dosimetry Manager, Department of Environmental Health and Occupational Safety, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

**NOTIFICATION PROCEDURE:**

Inquires regarding the records should be directed to the System Manager.

**RECORD ACCESS PROCEDURE:**

Information on the procedures for gaining access to and contesting records will be furnished upon request by the Radiation Safety Officer or the System Manager.

**CONTESTING RECORD PROCEDURES:**

Individuals may contest any information maintained in the record system by submitting their request in writing to the System Manager. The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in OSD Administrative No. 81 (32 CFR Part 286b).

**RECORD SOURCE CATEGORIES:**

Individual and bioassy results.

**EXEMPTION CLAIMED FOR THE SYSTEM:**

None.

**WUSU11**

**SYSTEM NAME:**

USUHS Radiation Dosimetry Records.

**SYSTEM LOCATION:**

Department of Environmental Health and Occupational Safety, Uniformed Services University of the Health Sciences (USUHS), 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records maintained on University personnel who are assigned duties in areas requiring the wearing of a radiation dosimeter.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information in the system includes name, SSAN, department, dates of employment, results of dosimeter measurements for each measurement period, results of the individual's thyroid bioassays (if applicable), results of the individual's tritium bioassays (if applicable), records obtained from individual's previous work experience involving radioactive materials, and records of individual's training in radiation safety.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 2112, 2113; 10 CFR Part 19; 10 CFR Part 20; NAVMED P–5055; U.S. Nuclear Regulatory Commission (NRC) Material License 19–23344–01.

**PURPOSE(S):**

The record system is used to record and file pertinent information, and used for determining possible exposure to radioactive materials in excess of

allowable limits. The Radiation Safety Committee of the University may review such records as are relevent to their determinations of an individual's qualifications and/or expertise in using radioactive materials.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

Records may be reviewed by U.S. Nuclear Regulatory Commission (NRC) inspectors as part of their on-going administration of the Materials License, and by the Radiation Safety Committee or the Radiation Safety Officer and his/her staff to review an individual's qualifications and/or expertise in conducting experiments using radioiodine compounds. Also see Uniformed Service University of the Health Sciences (USUHS) "Blanket Routine Uses" set forth at the head of this agency's published record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records are stored in file folders.

**RETRIEVABILITY:**

Records are accessed by name, SSAN, or department.

**SAFEGUARDS:**

Records are stored in filing cabinets which are kept locked when not in use.

**RETENTION AND DISPOSAL:**

Records are kept permanently on file. Upon termination of an individual's employment at the University, copies of the records are sent, with the employees written consent, to the gaining employer's Radiation Safety Officer.

**SYSTEM MANGER(S) AND ADDRESS:**

Dosimetry Manager, Department of Environmental Health and Occupational Safety Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Maryland 20814–4799.

**NOTIFICATION PROCEDURE:**

Inquires regarding the records should be directed to the System Manager.

**RECORD ACCESS PROCEDURES:**

Information on the procedures for gaining access to and contesting records will be furnished upon request from the System Manager.

**CONTESTING RECORD PROCEDURES:**

Individuals may contest any information maintained in the record system by submitting their request in writing to System Manager. The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in OSD Administration Instruction No. 81 (32 CFR Part 286b).

**RECORD SOURCE CATEGORIES:**

Individual, previous employers, medical records, bioassay results.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**WUSU12**

**SYSTEM NAME:**

USUHS Vehicle Administration Records.

**SYSTEM LOCATION:**

Primary system—USUHS Computer Operations, Decentralized Segments—USUHS Parking Control Office.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All personnel assigned or visiting the University who park privately owned vehicles at the University, including personnel who participate in USUHS carpools.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name of individual, office symbol, office phone, office room number, home address, working hours, map coordination of home address and USUHS Form 5004, "Certificate of Compliance—Private Motor Vehicle Registration."

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended; 10 U.S.C. 2112, 2113.

**PURPOSE(S):**

Used by USUHS Parking Control Office to monitor parking of eligible personnel at the University. The Computer Operations Center provides a printout to be used by the Parking Control Office of all potential carpool prospects.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

See Uniformed Services University of Health Sciences (USUHS) Blanket Routine Uses at the head of this Component's published record system notices.

**POLICIES AND PROCEDUE FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

Forms filed in hard copy, computer magnetic tapes, disks and paper printouts.

**RETRIEVABILITY:**

Information is accessed and retrieved by name, home address map grid, permit number, tag number. The original request, USUHS Form 5004 is filed alphabetically by name.

**SAFEGUARDS:**

USUHS Form 5004 is filed in the Parking Control Office, and access is only on a need-to-know basis. The door is locked during non-duty hours. Computer data base in Computer Operations is stored in a controlled area. The computer terminal can only be accessed by use of closely held passwords by the Parking Control Office.

**RETENTION AND DISPOSAL:**

Information is kept on assigned personnel and destroyed one year after they depart the University.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Support Services Division, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**NOTIFICATION PROCEDURE:**

Inquiries regarding the records should be directed to the System Manager.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to Chief, Support Services Division, Uniformed Services University, Department of Defense, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**CONTESTING RECORD PROCEDURES:**

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

**RECORD SOURCE CATEGORIES:**

USUHS Form 5004, "Certificate of Compliance—Private Motor Vehicle Registration and Related Information Pertaining to Carpooling."

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**WUSU13**

**SYSTEM NAME:**

USUHS Civilian Employee Health Records.

**SYSTEM LOCATION:**

Department of Environmental Health and Occupational Safety, Uniformed Services University of the Health Sciences (USUHS), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records maintained on University civilian personnel.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information in the system includes name, SSAN, department, date of employment, physical examination results, medical test results, reports by physicians, nurses, and other medical personnel.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 2112, 2113; 21 CFR Part 1910, 10 CFR Part 19, 10 CFR Part 20, NAVMED P–5055.

**PURPOSE(S):**

To record and file pertinent information, and use the results in determining possible exposure to occupational hazards in excess of allowable limits. The Director, EHS, and the representatives may review such records as are necessary to correlate exposure data and physical examination results.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Records may be reviewed by the Occupational Health Nurse and staff, the Director, EHS, and representative; and Occupational Safety and Health Administration (OSHA), to review an individual's possible exposure to occupational hazards in excess of allowable limits. See also Uniformed Services University of the Health Sciences (USUHS) Blanket Routine uses at the head of this Component's published system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSSING, RETAINING, DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in medical record folders.

**RETRIEVABILITY:**

Records are accessed by name, SSAN, or department.

**SAFEGUARDS:**

Records in the system may be accessed only by EHS staff members. The file cabinets are kept locked when not in use.

**RETENTION AND DISPOSAL:**

Records are kept permanently on file. Upon termination of an individual's employment at the University, copies of the records are sent, with the employee's written consent, to the gaining employer, or given to the employees.

**SYSTEM MANAGER(S) AND ADDRESS:**

Occupational Health Nurse, Department of Environmental Health and Occupational Safety, Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**NOTIFICATION PROCEDURE:**

Inquiries regarding the records should be directed to the System Manager.

**RECORD ACCESS PROCEDURE:**

Address request for access to the record to the System Manager.

**CONTESTING RECORD PROCEDURES:**

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in OSD Administrative Instruction No. 81 (32 CFR Part 286b).

**RECORD SOURCE CATEGORIES:**

Information contained in the file is furnished by the individual, previous employers, physicians and physical examination results.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**WUSU14**

**SYSTEM NAME:**

USUHS Occupational Physical Examination Program.

**SYSTEM LOCATION:**

Department of Environmental Health and Occupational Safety, Uniformed Services University of the Health Sciences (USUHS), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Records will be maintained on University personnel who are assigned duties in areas requiring preplacement and/or occupational physical examinations.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Information in the system includes name, SSAN, department, date of employment date of baseline physical examination, frequency of examination, date examination due, special tests required, frequency of special tests, date of special tests, and date special tests due.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 2112, 2113; 21 CFR Part 1910, 10 CFR Part 19, 10 CFR Part 20, NAVMED P–5055.

**PURPOSE(S):**

The Occupational Health Nurse and staff maintain the record system to record and file pertinent information and use the results in determining possible exposure to occupational hazards in excess of allowable limits. The Director, EHS, and representatives may review such records as are necessary to correlate exposure data and physical examination results.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Records may be reviewed by Occupational Health Nurse and staff, the Director, EHS, and representative; and the Office of Occupational Safety and Health Administration (OSHA) for the purpose of determining exposure to occupational health hazards. See also Uniformed Services University of Health Sciences (USUHS) Blanket Routine Uses at the beginning of this agency's published record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in the University's main computer system.

**RETRIEVABILITY:**

Records are accessed by name, SSAN, department, or other data fields.

**SAFEGUARDS:**

Records in the data base may be accessed only by EHS staff members who have been granted access to the University computer.

**RETENTION AND DISPOSAL:**

Records are kept permanently on file. Upon termination of and individual's employment at the University, copies of the records are sent, with the employee's written consent, to the gaining employer.

**SYSTEM MANAGER(S) AND ADDRESS:**

Occupational Health Nurse, Department of Environmental Health and Occupational Safety, Uniformed Services University of Health Sciences, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**NOTIFICATION PROCEDURE:**

Inquiries regarding the records should be directed to the System Manager.

**RECORD ACCESS PROCEDURE:**

Information on the procedures for gaining access to and contesting records will be furnished upon request from the System Manager.

**CONTESTING RECORD PROCEDURES:**

The agency's rules for access to records and for contesting contents and appealing initial determinations by the individual concerned are contained in OSD Administrative Instruction No. 81 (32 CFR Part 286b).

**RECORD SOURCE CATEGORIES:**

Individual, previous employers, medical records, physical examination results.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**WUSU15**

**SYSTEM NAME:**

USUHS Security Status Master List.

**SYSTEM LOCATION:**

Security Officer, Uniformed Services University of the Health Sciences (USUHS), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All applicants for employment with USUHS; all military personnel assigned, detailed or attached to USUHS; all persons hired or serving in an advisory capacity to USUHS who require access to classified information.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Record contains type of investigation, date completed, file number, agency which conducted investigation, investigation, security clearance data information, name, SSAN, finger prints, date and place of birth, organizational assignment, dates interim and final clearances issued, position sensitivity and related data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 2112, 2113; 44 U.S.C. 2904, 3102, 5 U.S.C. 7531 through 7533; Executive Order 10450, "Security Requirements for Government Employees," as amended; Executive Order 12356, "National Security Information Material."

**PURPOSE(S):**

To maintain and provide security clearance data to DoD contractors on USUHS employees assigned to or visiting a contract facility or visiting or applying for employment with another Federal agency.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Records from this system of records may be disclosed to other Federal agencies for the purpose of asserting level of security clearance and background investigation data. Also see the blanket routine uses at the beginning of this component's published system of records notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in file folders maintained by the security officer.

**RETRIEVABILITY:**

File folders are filed alphabetically, by last name of individual concerned for all USUHS personnel or by subject matter.

**SAFEGUARDS:**

Records are accessible only to those authorized personnel required to prepare, process, and type necessary documents; or to answer authorized inquiries for information contained therein. Records are stored in locked filing cabinets. After normal business hours the building is protected by the USUHS guard force.

**RETENTION AND DISPOSAL:**

Records are destroyed two years after an individual is separated from the agency.

**SYSTEM MANAGER(S) AND ADDRESS:**

Security Officer (USUHS/SSD), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**NOTIFICATION PROCEDURES:**

Information may be obtained from Records Administrator, Uniformed Services University of the Health Sciences (USUHS/ADM), 4301 Jones Bridge Road, Bethesda, MD 20814–4799, telephone: (202) 295–3004.

**RECORD ACCESS PROCEDURES:**

Request from individual should be addressed to Records Administrator, Uniformed Services University of the Health Sciences (USUHS/ADM), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

Written requests for information should contain full name of the individual, current address and telephone number and current business address.

For personal inspections of records, the individual should be able to provide acceptable identification, that is, driver's license or employing office's identification card.

**CONTESTING RECORD PROCEDURES:**

The agency's rules for contesting contents and appealing initial determination by the individual concerned are contained in 32 CFR Part 286b, and OSD Administrative Instruction No. 81.

**RECORD SOURCE CATEGORIES:**

Information is furnished by the individual concerned; application for employment; or assignment, and reports of investigation by Federal investigative agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**WUSU16**

**SYSTEM NAME:**

USUHS Home Town News Release Background Data File.

**SYSTEM LOCATION:**

USUHS, Office of University and Public Affairs, 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Army, Navy, Air Force, and U.S. Public Health Service active duty personnel who have entered or graduated from the University's medical school or graduate school programs, who have been awarded a medal or decoration, or who otherwise have participated in a newsworthy event.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Biographical information including, but not limited to name, current grade, SSAN, marital status, local address, name and address of parents, educational background and military history, and photographs.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 2113.

**PURPOSES:**

Preparation of news releases for distribution to newspapers across the United States.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE(S) OF SUCH USES:**

Records from this system of records may be disclosed for any, of the blanket routine uses published at the beginning of this Component's published record system notices. Information from this

system of records may also be disclosed to the media as part of news releases.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored in locked cabinets, and the office is locked during non-duty hours.

**RETRIEVABILITY:**

Records are accessed by name and SSAN.

**SAFEGUARDS:**

Records are accessed only by person(s) responsible for servicing the records system in performance of their official duties.

**RETENTION AND DISPOSAL:**

Information on students is kept from the beginning of freshman year until 90 days after graduation and then destroyed. The University and Public Affairs office keep no information on medal or decoration awardees, as the original home-town newspaper release form is sent to the services' news centers and no copies are retained.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director of Public Affairs, USUHS, Office of University and Public Affairs, 4301 Jones Bridge Road, Room A1045, Bethesda, MD 20814–4799, telephone (202) 295–3049.

**NOTIFICATION PROCEDURE:**

Inquiries regarding the records should be directed to the System Manager.

**RECORD ACCESS PROCEDURES:**

Requests from individuals should be addressed to the System Manager, Office of University and Public Affairs, Uniformed Services University, 4301 Jones Bridge Road, Room: A1045, Bethesda, MD 20814–4799.

**CONTESTING RECORDS PROCEDURES:**

The rules for access to records and for contesting and appealing initial determination by the individual concerned are contained in 32 CFR Part 286b and OSD Administrative Instruction No. 81.

**RECORD SOURCE CATEGORIES:**

Information is obtained from the individual.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 87–8141 Filed 4–10–87; 8:45 am]

BILLING CODE 3810–01–M

## DEPARTMENT OF EDUCATION

### National Advisory and Coordinating Council on Bilingual Education; Meeting

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory and Coordinating Council on Bilingual Education. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of the opportunity to attend.

**DATES:** May 4 and 5, 1987—9:15 a.m.—5:00 p.m. The meeting will be conducted at the Hotel Intercontinental, 333 West Harbor Drive, San Diego, California 92101.

**FOR FURTHER INFORMATION CONTACT:** Anna Maria Farias, Designated Federal Official, Office of Bilingual Education and Minority Languages Affairs, Reporters' Building, Room 421, 400 Maryland Avenue, SW., Washington, DC 20202, (202) 245–2600.

**SUPPLEMENTARY INFORMATION:** The National Advisory and Coordinating Council on Bilingual Education is established under section 752(a) of the Bilingual Education Act (20 U.S.C. 3262). NACCBE is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations. The meeting of the Council is open to the public. The proposed agenda includes the following:

I—Call to Order
II—Roll Call
III—Approval of Minutes from the previous meeting
IV—Update on OBEMLA Activities and Proposed Legislation
V—Old Business
VI—New Business
VII—Site Visits

Records are kept of all Council proceedings and are available for public inspection at the Office of Bilingual Education and Minority Languages Affairs, Reporters' Building, Room 421, 400 Maryland Avenue SW., Washington, DC 20202, Monday through Friday from 9:00 a.m.—5:30 p.m.

Dated: April 8, 1987.

**Carol Pendas Whitten,**

*Director Office of Bilingual Education and Minority Affairs.*

[FR Doc. 87–8198 Filed 4–10–87; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

### Office of Conservation and Renewable Energy

**[Case Nos. CAC–002 and CAC–001]**

### Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Test Procedures for Central Air Conditioners, Including Heat Pumps, to the Trane Co. and Modification of a Decision and Order Granting Waiver From Central Air Conditioner and Heat Pump Test Procedures to Carrier Corp.

**AGENCY:** Conservation and Renewable Energy Office, DOE.

**ACTION:** Decision and order.

**SUMMARY:** Notice is given of the Decision and Order (Case No. CAC–002) granting The Trane Company a waiver for its variable-speed TTS/TWS model central air conditioners and heat pumps from existing DOE test procedures for central air conditioners and heat pumps. Notice is also given of the modification of the Decision and Order (Case No. CAC–001) as published in the **Federal Register** on October 3, 1986, for Carrier variable-speed (VSP) model central air conditioner and heat pumps. (51 FR 35403).

**FOR FURTHER INFORMATION CONTACT:**

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE–132, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 430.279(g), notice is hereby given of the issuance of the Decision and Order and modified Decision and Order as set out below. In the Decision and Order, the Trane Company has been granted a waiver for its variable-speed central air conditioners and heat pumps, permitting the company to use an alternate test method. In the modified Decision and Order, Carrier Corporation has been granted an amendment to its previous waiver test procedure for its variable-speed central air conditioners and heat pumps, permitting the company to test with a capacity integration time determined in the same manner as in the Trane Decision and Order.

Issued in Washington, DC, March 26, 1987.

Donna R. Fitzpatrick,

*Assistant Secretary, Conservation and Renewable Energy.*

**Decision and Order of the Department of Energy Office of Conservation and Renewable Energy**

[Case No. CAC–002]

In the matter of: the Trane Company.

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95–619, 92 Stat. 3266, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including central air conditioners. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the prescribed test procedure regulations by adding paragraph 430.27 on September 26, 1980, creating the waiver process. (45 FR 64108). DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed product test procedures. November 26, 1986 (51 FR 42823). The waiver process allows the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristices as to provide materially inadequate comparative data. The Carrier Corporation was granted a waiver to central air conditioner test procedures on October 3, 1986, and petitioned for modification of the waiver on November 11, 1986, and January 23, 1987. Carrier requested that the capacity integration time be a function of the indoor fan cycle time. The November request was denied by DOE. The January 23, 1987, request presented additional arguments substantiating previous data and information presented to DOE.

The Trane Company (Trane) filed a "Petition for Waiver" in accordance with paragraph 430.27 of 10 CFR Part 430. DOE published in the **Federal Register** Trane's petition and solicited comments, data, and information respecting the petition. October 3, 1986 (51 FR 35410). Comments were received from ICG KeepRite Corporation (KeepRite) and The Carrier Corporation (Carrier). The comments received by DOE were sent to the petitioner on November 10, 1986. The petitioner submitted to DOE a rebuttal statement to the comments on December 3, 1986. DOE consulted with the National Bureau of Standards and the Federal Trade Commission concerning the Trane petition.

**Assertations and Determinations**

Trane's petition seeks a waiver from the DOE test provisions that require testing at a single compressor speed. Trane requests allowance to use Appendix B of the Air Conditioning and Refrigeration Institute (ARI) Standard 210/240–84 with amendments. The amendments to ARI Standard 210/240–84 requested by Trane include revisions to cycling period and intermediate steady-state test point. The intermediate speed proposed by Trane matches system capacity to building load at 87°F. Also, Trane requests the allowance of test and calculation procedures which incorporate test data for system operation at minimum and maximum speeds.

All interested parties, including DOE, agree that the existing test and calculation methods of Appendix M to Subpart B of 10 CFR Part 430 are inappropriate for variable-speed units. The previous waiver for variable-speed units granted to the Carrier Corporation, was based on Appendix B of the ARI Standard 210/240–84. October 3, 1986 (51 FR 35403).

Trane identified its models in the TTS/TWS product lines as using variable speed motors to drive the compressor, indoor blower, and outdoor fan. The compressor is controlled over a wide range of speeds: the indoor blower and outdoor fan motors operate over a smaller range. Modulation of all three motors allows the system to meet specific load requirements. The system requires use of a microprocessor in conjunction with a special thermostat, in order to operate at variable speeds.

Of the comments received, Carrier Corporation presented arguments against the methods of determining the "on" time and "off" time used for the cyclic tests. Carrier feels that the "on" time is an operational characteristic of the controls not the capacity ratio of maximum to minimum speed. Carrier also commented that the "off" time be such that the ratio of the "on" time to the total cycle time equal 0.2, where 0.2 represents the 20% loading used in the cyclic tests throughout the test procedures (also expressed as cooling load factor) (CLF)=0.2. In its response, Trane acknowledged the confusion created by its initial description of the cycling characteristics of variable-speed products. Trane responded by replacing sections 1.2 and 1.3 of its proposed test procedure with a simplified procedure. The essence of the revision is that the compressor "on" time be six minutes or the minimum allowed by the controls, whichever is greater; and that the "off" time be four times the compressor "on" time. This would preserve the cooling load factor (CLF) of 0.20.

The ICG KeepRite (KeepRite) Corporation expressed two concerns, the first was the validity of using ARI 210/240–84 to determine the SEER for variable speed cooling units. The second was Trane's proposed method and the discrepancy of unit performance caused by manual versus automatic controls. KeepRite believed that the test would not properly match building load when operated manually or used with poor automatic controls.

KeepRite proposed that the test procedure should incorporate a means for measuring the difference between automatic and manual variable-speed cooling units. This would measure the "load matching ability" of the test unit. The procedure would require the introduction of a fixed heat load determined by paragraph 2.1 in Appendix B of ARI 210/240–84. The load would follow a linear interpolation based on the outdoor bin temperature and maximum unit capacity. The unit control is set to maintain indoor temperature at 80°F. The company recommends a minimum ½ hour run time with the duration established by the time necessary to achieve the 80°F average. The addition of several test points to the Case II operating region were also suggested.

Trane disagreed with the need to evaluate manual versus automatic controls, and stated that reputable HVAC manufacturers would provide controls capable to performing the necessary load matching.

Trane believes that additional tests would result in increased ratings; however, Trane contends that the burden of running these additional tests would outweigh the benefits.

The comments and Trane's rebuttal were forwarded to the National Bureau of Standards (NBS) for review and investigation. NBS agreed that Carrier's comments concerning testing cycle times were valid and found that the Trane response was an acceptable solution. The KeepRite comments concerning central air conditioner controls raised the question of how to best analyze variable-speed units. Since the manufacturers do not currently offer any models of variable-speed equipment in the marketplace, NBS was unable to perform any actual tests. However, based on available information, NBS believes that the procedure revised by Trane is reasonable and compatible with the existing single speed test procedure and the waiver issued to Carrier for its variable-speed units.

Concurrent with the Department's review of the comments on the Trane request for wavier, Carrier petitioned for Modification of the Decision and Order granted Carrier for its variable-speed model central air conditioners and heat pumps. Carrier requested that it be allowed to calculate the system capacity over the period the indoor fan is on as determined by the automatic controls which the manufacturer normally supplies with the unit. Based upon the Department's review of Carrier's request, the comments on the Trane waiver, ARI Standard 210/240–84, and the DOE central air conditioner test procedure, the Department determined that a capacity integration time based on the indoor fan cycle time for variable-speed units yielded comparable results with the existing test procedure. Therefore, the Decision and Order issued today for Trane and the Modification of the Carrier Decision and Order October 3, 1986 (51 FR 35403), stipulates that the cyclic test capacity integration time shall be a function of the indoor fan cycle times.

It is DOE's position that for the purpose of these waivers, the ARI Standard 210/240–84 with the modifications provided in the Decision and Order is the best test method for variable-speed equipment currently available. The data available and comments of manufacturers and testing laboratories on these waivers have not demonstrated any inconsistencies with the current test procedure.

Based on the information provided by the petitioner and the commenters, DOE has determined to grant Trane's request for the use of ARI Standard 210/240–84 as modified as the method for determining the seasonal energy efficiency of variable-speed central air conditioners and heat pumps (cooling mode).

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by The Trane Company (CAC–002) is hereby granted as set forth in paragraph (3) below, subject to the provisions of paragraphs (5) and (6).

(2) The Carrier Corporation Petition for Modification of Waiver (CAC–001) is hereby granted as set forth in paragraph (4), (5), and (6).

(3) Notwithstanding any contrary provisions of Appendix M of 10 CFR Part 430 Subpart B, The Trane Company shall be permitted to test its variable-speed TTS/TWS model air conditioners and heat pumps on the basis specified in 10 CFR Part 430, with the modifications set forth below:

(i) Test Procedure

Test procedures shall be as specified in section 5 of ARI Standard 210/240–84 and in section 8.0 of ANSI/ASHRAE Standard 116–1983, with the inclusion of the following conditions.

(a) *Cooling cycle tests* shall be conducted by cycling the compressor "on" for 6 minutes or the minimum "on" time allowed by the controls, whichever, is greater and 24 minutes "off" or four times the "on" time. The capacity and all electrical energy shall be measured for the compressor "on" time or the indoor fan "on" time, whichever is greater. The duration of the indoor fan "on" and "off" period is governed by the automatic controls which the manufacturer normally supplies with the unit. All off-cycle electrical energy shall be measured for the compressor "off" time. Off-cycle electrical energy does not include fan power. In lieu of conducting cyclic tests C and D, an assigned value of 0.25 shall be used for the degradation coefficient for cooling $C_D$.

(b) *Intermediate cooling steady-state tests* shall be conducted at indoor coil and outdoor coil air conditions selected for the intermediate steady-state test from Table B1 of ARI Standard 210/240–84. The tolerances for the dry-bulb and wet-bulb temperatures of the air entering the indoor and outdoor coils shall be within the test operating tolerance and test condition tolerance specified in Table III–A of ANSI/ASHRAE Standard 116–1983. The intermediate compressor speed during the cooling test shall be in the range from ⅓ to ½ between the minimum and maximum speed. Determination of the compressor speed shall be conducted by a method which has the ability to provide results with less than two percent error.

The air volumetric flow rate at fan speeds less than the maximum speed shall be determined using the fan laws for a fixed resistance system. The following equation shall be used to calculate the flow rate of air:

$$CFM_{(k=v)} = \frac{RPM_{(k=v)}}{RPM_{(k=2)}} CFM_{(k=2)}$$

where:

$CFM_{(k=v)}$=Air flow rate at lower speed

$CFM_{(k=v)}$= Air flow rate from Test A in Table 1

$RPM_{(k=v)}$=Fan RPM from Test A in Table 1

$RPM_{(k=v)}$=Fan RPM at lower speed

(ii) Seasonal Energy Efficiency Ratio, SEER

The SEER shall be determined by the method for two-speed or two compressor units, as specified in ANSI/ASHRAE Standard 116–1983 and ARI Standard 210/240–84, and in accordance with the following changes. For variable speed compressor units the seasonal energy efficiency ratio (SEER) is found from the following equations:

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$$SEER = \frac{\sum_{j=1}^{N} q(t_j)}{\sum_{j=1}^{8} E(t_j)}$$

The terms $q(t_j)$ and $E(t_j)$ as defined in ASHRAE 116, summed over temperature bins, are evaluated at each temperature bin according to the three possible casees listed below.

The building cooling load $BL(t_j)$ for the three cases is obtained from the following equation:

eq.(1)

$$BL(t_j) = \frac{t_j - 65}{95 - 65} \frac{[q_{ss}^{k=2}(95F)]}{\text{Size Factor}}$$

where $q_{ss}^{k=2}(95)$ = steady state capacity measured from Test "A" in Table 1.

Size Factor = 1.1 for 10% oversizing.

CASE I

Units operating at minimum compressor speed (k=1) for which the steady state cooling capacity $q_{ss}^{k=1}(t_j)$ is greater than or equal to the building cooling load $BL(t_j)$, evaluate the following.

eq.(2)

$$q_{ss}^{k=1}(t_j) = q_{ss}^{k=1}(67F) + \frac{q_{ss}^{k=1}(82F) - q_{ss}^{k=1}(67F)}{82 - 67}(t_j - 67)$$

where $q_{ss}^{k=1}(67F)$ = steady state capacity measured from the Low Ambient Cooling Steady State Test, Table 1.

$q_{ss}^{k=1}(82F)$ = steady state capacity measured from Test "B-1", Table 2.

$q_{ss}^{k=1}(t_j)$ = steady state capacity at the minimum compressor speed intended for normal operation in the cooling mode at temperature $t_j$.

eq. (3)

$$E_{ss}^{k-1}(t_j) = E_{ss}^{k-1}(67F) + \frac{E_{ss}^{k-1}(82F) - E_{ss}^{k-1}(67F)}{82 - 67}(t_j - 67)$$

where $E_{ss}^{k-1}(67F)$ = the electrical power input for the Low Ambient Cooling Steady State Test.

$E_{ss}^{k-1}(82F)$ = the electrical power input from Test "B-1"

$E_{ss}^{k-1}(t_j)$ = the electrical power input at the minimum compressor speed in the cooling mode at temperature $t_j$.

Cooling Building Load Factor $$X^{k-1} = \frac{BL(t_j)}{q_{ss}^{k-1}(t_j)}$$

Cooling Part Load Factor

$$PLF^{k-1} = 1 - C_D(1 - X^{k-1})$$

where $C_D$ is as defined in Chapter 9 of ASHRAE 116 with the Dry Coil Cooling Steady State test construed as Test C and the Cyclic Cooling Dry Coil test construed as Test D, both run at minimum compressor speed. (See Table 1)

$$q(t_j) = X^{k-1} q_{ss}^{k-1}(t_j) n_j$$

$$E(t_j) = \frac{X^{k-1} E_{ss}^{k-1}(t_j) n_j}{PLF^{k-1}}$$

where $n_j$ = is the number of cooling hours in the $j^{th}$ temperature bin given in ARI Standard 210/240, Appendix A.

CASE II

When the compressor speed varies between the maximum (k=2) and minimum (k=1) compressor speeds (such that k=v) to satisfy the building cooling load a temperature $t_j$, (NOTE: unit does not cycle on and off), evaluate the following equations.

$$q_{ss}^{k=v}(t_j) = BL(t_j)$$

where $q_{ss}^{k=v}(t_j)$ = steady state capacity delivered by the unit at any speed between minimum and maximum compressor speeds at temperature $t_j$.

when $t_j \geq 87°F$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(87F) + \frac{E_{ss}^{k=2}(t_2) - E_{ss}^{k=v}(87F)}{t_2 - 87}(t_j - 87)$$

where $t_2$ = temperature $t_j$ at which $q_{ss}^{k=2}(t_j) = BL(t_j)$ found by equating eq.(1) and eq.(4) and solving for $t_j$.

$E_{ss}^{k=2}(t_2)$ = the electrical power input at maximum compressor speed at temperature $t_2$ calculated from eq.(5).

$E_{ss}^{k=v}(t_j)$ = the electrical power input required by the unit at temperature $t_j$ and some variable compressor speed between the minimum and maximum compressor speeds.

$E_{ss}^{k=v}(87F)$ = the electrical power input at 87F, from either equation (6) or equations (7) and (8).

When the measured capacity at the intermediate test point (Table 1), $q_{ssI}^{k=vI}(87F)$, is within 1% of BL(87F), then

eq.(6)

$$E_{ss}^{k=v}(87F) = E_{ssI}^{k=vI}(87F)$$

When two intermediate points are measured, where one measured capacity, $q_{ss1}^{k=v1}$ (87F), is within +3% of BL(87F) and the other, $q_{ss2}^{k=v2}$ (87F), is within -3% of BL(87F), then $E_{ss}^{k=v}$ (87F) is evaluated using eq.(7) and (8):

eq.(7)

$$\text{WEIGHT} = \frac{q_{ss1}^{k=v1}(87F) - BL(87F)}{q_{ss1}^{k=v1}(87F) - q_{ss2}^{k=v2}(87F)}$$

eq.(8)

$$E_{ss}^{k=v}(87F) = E_{ss1}^{k=v1}(87F) - \text{WEIGHT}\left(E_{ss1}^{k=v1}(87F) - E_{ss2}^{k=v2}(87F)\right)$$

When $t_j < 87°F$

$$E_{ss}^{k=v}(t_j) = E_{ss}^{k=v}(87F) + \frac{E_{ss}^{k=2}(t_2) - E_{ss}^{k=v}(87F)}{t_2 - 87F}(t_j - 87)$$

where $t_1$ = temperature $t_j$ at which $q_{ss}^{k=1}(t_j) = BL(t_j)$ found by equating eq.(1) and eq.(2) and solving for $t_j$.

$E_{ss}^{k=1}(t_1)$ = the electrical power input at minimum compressor speed at temperature $t_1$ calculated from eq.(3).

$$q(t_j) = q_{ss}^{k=v}(t_j) n_j$$

$$E(t_j) = E_{ss}^{k=v}(t_j) n_j$$

Test points which fall outside of the 3% variance are unacceptable and new test points run.

**CASE III**

When a unit operates continuously at maximum compressor speed (k=2) at an outdoor temperature $t_j$, evaluate the following equations:

eq. (4)

$$q_{ss}^{k=2}(t_j) = q_{ss}^{k=2}(82F) + \frac{q_{ss}^{k=2}(95F) - q_{ss}^{k=2}(82F)}{95 - 82}(t_j - 82)$$

where $q_{ss}^{k=2}(t_j)$ = steady state capacity at the maximum compressor speed at temperature $t_j$.

$q_{ss}^{k=2}(82F)$ = steady state capacity from Test "B-2", Table 1

eq. (5)

$$E_{ss}^{k=2}(t_j) = E_{ss}^{k=2}(82F) + \frac{E_{ss}^{k=2}(95F) - E_{ss}^{k=2}(82F)}{95 - 82}(t_j - 82)$$

where $E_{ss}^{k=2}(t_j)$ = the electrical power input at the maximum compressor speed at temperature $t_j$.

$E_{ss}^{k=2}(82F)$ = the electrical power input from Test "B-2", Table 1

$E_{ss}^{k=2}(95F)$ = the electrical power input from Test "A", Table 1

$$q(t_j) = q_{ss}^{k=2}(t_j)\, n_j$$

$$E(t_j) = E_{ss}^{k=2}(t_j)\, n_j$$

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TABLE I.—TEST CONDITIONS

| Test | Indoor coil | | Outdoor coil | |
|---|---|---|---|---|
| | Air entering | | Air entering | |
| | DB F | WB F | DB F | WB F |
| "A" Cooling Steady State At Maximum (k=2) Compressor Speed | 80 | 67 | 95 | [1] 75 |
| "B-2" Cooling Steady State At Maximum (k=2) Compressor Speed | 80 | 67 | 82 | [1] 65 |
| "B-1" Cooling Steady State At Minimum (k=1) Compressor Speed | 80 | 67 | 82 | [1] 65 |
| Low Ambient Cooling Steady State At Minimum (k=1) Compressor Speed | 80 | 67 | 67 | [1] 53.5 |
| Dry Coil Cooling Steady State At Minimum (k=1) Compressor Speed | 80 | [4] 57 | 67 | [1] 53.5 |
| Cyclic Cooling Dry Coil [3] At Minimum (k=1) Compressor Speed | 80 | [4] 57 | 67 | [1] 53.5 |
| Intermediate Cooling Steady State [2] At Variable (k=v) Compressor Speed | 80 | 67 | 87 | [1] 69 |

All tests are performed at the condenser speed and indoor blower speed intended for normal operation notes:
[1] Not maintained if no condensate rejected to outdoor coil.
[2] Compressor speed is selected to provide capacity as described in Case II calculations, Attachment I.
[3] Test conducted by cycling compressor as described in Attachment I, Sections 1.2 and 1.3.
[4] Wet bulb sufficiently low that no condensate forms on evaporator.

(4) The Decision and Order granted to Carrier Corporation on September 19, 1986, (51 FR 35403, October 3, 1986) (Case No. CAC-001) is modified by deleting the last three sentences of paragraph (2)(i)(A) and inserting the following:

The capacity and all electrical energy shall be measured for the compressor "on" time or the indoor fan "on" time, whichever is greater. The duration of the indoor fan "on" and "off" periods is governed by the automatic controls which the manufacturer normally supplies with the unit. All off-cycle electrical energy shall be measured for the compressor 48 minutes "off" time. Off-cycle electrical energy does not include fan power.

(5) The waivers shall remain in effect from the date of issuance of this Order until the Department of Energy prescribes final test procedures appropriate to variable-speed central air conditioners and heat pumps.

(6) These waivers are based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicants and commenters. These waivers may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

[FR Doc. 87-8096 Filed 4-10-87; 8:45 am]

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## Federal Energy Regulatory Commission

[Docket Nos. CP87-264-000]

## Algonquin Gas Transmission Company, et al.; Natural Gas Certificate Filings

Take notice that the followings filings have been made with the Commission:

### 1. Algonquin Gas Transmission Company

[Docket No. CP87-264-000]

April 8, 1987.

Take notice that on March 25, 1987, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston Massachusetts 02135, filed in Docket No. CP87-264-000 an application pursuant to Section 7(c) of the Natural Gas Act for authorization to add a new delivery point to Connecticut Light and Power Company (CL&P), as well as construct and operate any appurtenant facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Algonquin requests authorization to add a new delivery point in Southbury, Connecticut, for deliveries of natural gas to CL&P under Algonquin's existing Rate Schedule F-4 sales service. Algonquin states that it currently provides sales and transportation services to CL&P under various rate schedules contained in its Second Revised Volume No. 1, FERC Gas Tariff. It is stated that such service is provided at eleven existing meter and regulating stations at various locations in Connecticut for the account of CL&P. CL&P has informed Algonquin that it requires a new delivery point in the Southbury, Connecticut, area to provide service to International Business Machines which is establishing a large office complex adjacent to Algonquin's existing pipeline facilities. In addition, Algonquin explains that CL&P has requested Algonquin to transfer 890 MMBtu to natural gas per day of its Rate Schedule F-4 maximum daily quantity contemplated to be delivered to CL&P at the Vernon, Connecticut, delivery point, to the proposed new Southbury delivery point.

It is stated that Algonquin would construct the necessary meter and regulator station at an estimated cost of $183,000, which cost would be reimbursed by CL&P.

Comment date: April 29, 1986, in accordance with Standard Paragraph F at the end of this notice.

### 2. Southern Natural Gas Company

[Docket No. CP87-257-000]

April 7, 1987.

Take notice that on March 18, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP87-257-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing for three years the transportation of natural gas for Amoco Production Company (Amoco), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to tansport gas on behalf of Amoco in accordance with the terms and conditions of two transportation agreements between Amoco and Southern, each dated December 5, 1986. It is indicated that one of the transportation agreements provides for the transportation of gas for Amoco between various delivery and redelivery points located exclusively on Southern's supply area pipeline facilities (Supply Area Agreement), and the other transportation agreement provides for the transportation of gas for Amoco through Southern's entire system to various redelivery points located in its market area (Market Area Agreement). Southern states that it would transport on an interruptible basis up to an aggregate quantity of 250,000 and 70,000

MMBtu of gas per day pursuant to the Supply Area and Market Agreements, respectively. Southern has not indicated the ultimate users of this gas nor the volume of gas to be delivered at the various redelivery points.

It is stated that the Supply Area and Market Area Agreements provide that Amoco would deliver or cause gas to be delivered to Southern for transportation at the various existing points on Southern's contiguous pipeline system specified in First Revised Exhibit A to the respective Agreements and Exhibit F to the Application. Pursuant to the Supply Area Agreement, Southern would redeliver to Amoco at: (1) The existing point of interconnection between Southern's pipeline system and Florida Gas Transmission Company's pipeline system in Washington Parish, Louisiana; (2) the existing point of interconnection between Southern's pipeline system and Amax Nickel, Inc., in Plaquemines Parish, Louisiana; and (3) the existing point of interconnection between the facilities of Southern and Acadian Gas Pipeline System at Southern's Meter Station No. 6014 in Iberville Parish, Louisiana, it is stated. Pursuant to the Market Area Agreement, Southern would redeliver to Amoco at (1) the Atlanta Area Delivery Point, as set forth in the Exhibit A to the Service Agreement between Atlanta Gas Light Company and Southern dated September 23, 1969, (Atlanta Area Redelivery Point); (2) Meter Station No. 2 of the Warner Robins Delivery Point, as set forth in the Exhibit A to the Service Agreement between the City of Warner Robins, Georgia, and Southern dated September 22, 1969, (Warner Robins Redelivery point); and (3) the Aiken Meter Station of the Aiken Delivery Point, as set forth in the Exhibit A to the Servcie Agreement between South Carolina Pipeline Corporation and Southern dated November 1, 1969 (Aiken Redelivery Point), it is stated. Southern proposes to redeliver an equivalent quantity of gas less 3.25 percent of such amount which would 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 Amoco's pro-rate share of any gas delivered for Amoco's account which is lost or vented for any reason.

Southern states that the Supply Area Agreement provides that Amoco would pay Southern each month a transportation rate of 10.0 cents for each MMBtu of gas redelivered by Southern.

Pursuant to the Market Area Agreement, Amoco would pay Southern each month a transportation rate equal to seventy-five percent (75%) of Southern's fully allocated transportation rate in effect from time to time during the term of the Agreement, it is stated. The initial transportation rates for redelivery to the Atlanta Area, Warner Robins, and Aiken Redelivery Points are 32.7 cents when the volumes redelivered are within contract demand and 50.1 cents when the volumes redelivered are in excess of contract demand.

It is further stated that the transportation rate applicable for service to a pariticular redelivery point is subject to a credit provision which provides that in the event Southern provides transportation services for a shipper other then Amoco, including affiliates of Southern, for redelivery at any existing market area delivery point and: (i) The quantities actually transported for such shipper in any month equal or exceed the volumes transported for Amoco to such existing market area redelivery point under the Market Area Agreement for that month, and (ii) the transportation rate charge such shipper by Southern for such transportation service is less than the rate charged Amoco for such service under the Market Area Agreement, the Southern would credit Amoco for transportation services rendered in the succeeding month with an amount equal to the difference between the transportation rate charged Amoco for transportation services to the existing market area redelivery point during the previous month and the lowest transportation rate charged for the delivery of gas at such existing market area redelivery point during the previous month. In addition, Southern proposes to collect from Amoco the GRI surcharge of 1.52 cents per Mcf.

Southern also requests flexible authority to provide transportation service from additional delivery points and to additional redelivery points as such points may be required by Amoco.

Southern states that the proposed transportation servie is in accordance with the terms and provisions of a Settlement Agreement and Release entered into between Amoco and Southern. Southern states that the proposed transportation service would make more competitively-priced gas available to Southern's customers and provide them with another alternative in their efforts to diversify their natural gas supply sources.

Comment date: April 27, 1987, in accordance with Standard Paragraph F at the end of this notice.

### 3. Southern Natural Gas Company

[Docket No. CP86–336–002]

April 8, 1987

Take notice that on March 23, 1987, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP86–336–000 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 an interruptible basis on behalf of MacMillan Bloedel Inc. (MacMillan) for a term expiring on October 31, 1988, all as more fully set forth in the application which is on file with the Commission and open to the public inspection.

Southern proposes to transport natural gas for MacMillan in accordance with the terms and conditions of a transportation agreement between MacMillan and Southern dated February 14, 1986, which Southern and MacMillan are currently amending to provide for the proposed extended term. Southern states that by Commission order issuing limited-term certificates on June 13, 1986, in Docket No. CP86–336–000 and by order issued September 11, 1986, in Docket Nos. CP86–336–001, the Commission authorized Southern to perform limited-term transportation service on behalf of MacMillan. Southern states that the existing certificate authorizes Southern to transport up to 16,000 MMBtu equivalent of natural gas per day for a term expiring June 13, 1987.

Southern states that it has received a request from MacMillian to continue the transportation service after the expiration of the existing certificate authorization. Southern explains that it has decided to continue to make interrruptible transportation services available on its pipeline system for a limited-term after October 31, 1987, the date to which it previously proposed to make transportation services available, and in accordance therewith, Southern filed a revision to its statement of policy in Docket Nos. CP86–277, *et al.*, on February 17, 1987. In that revision to its policy, Southern stated that it was willing to seek limited-term certificate authorization to transport gas for either a new shipper or an existing shipper through October 31, 1988. Accordingly, Southern agreed to file herein this petition for extension of the term as requested by the shipper

Southern requests that the limited-term certificate issued June 13, 1986, as extended September 11, 1986, in Docket Nos. CP86–336–000 and CP86–336–001, be further extended for a limited-term

ending October 31, 1988. Southern does not propose any other change in the authorized service.

Comment date: April 29, 1987, in accordance with Standard Paragraph F at the end of this notice.

**4. Texas Eastern Transmission Corporation and Natural Gas Pipeline Company of America**

[Docket No. CP77-568-018]

April 8, 1987.

Take notice that on March 30, 1987, Texas Eastern Transmission Corporation (Texas Eastern) P.O. Box 2521, Houston, Texas 77252, and Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP77-568-018, a petition to amend the order issued November 29, 1977, in Docket No. CP77-568, as amended, pursuant to section 7(c) of the Natural Gas Act so as to authorize the addition of two exchange balancing points to an existing transportation and exchange agreement dated July 27, 1977, as amended, on file in Texas Eastern's FERC Rate Schedule X-85 and Natural's FERC Rate Schedule X-89, 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 Natural and Texas Eastern have agreed to amend their agreement for the purpose of adding two additional balancing points, for Texas Eastern's account, with Acadian Gas Pipeline System in Vermillion Parish and Point Coupee Parish, Louisiana.

Comment date: April 29, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

**5. Southern Natural Gas Company**

[Docket No. CP86-569-002]

April 8, 1987.

Take Notice that on March 23, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP86-569-000 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 an interrruptible basis on behalf of Alabama Gas Corporation (ACIPCO) for a term expiring on October 31, 1988, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Southern proposes to transport natural gas for Alagasco, as agent for ACIPCO, in accordance with the terms and conditions of a transportation agreement between Alagasco and Southern dated June 12, 1986, which Southern and Alagasco are currently amending to provide for the proposed extended term. Southern states that Commission order issuing limited-term certificates on August 11, 1986, in Docket No. CP86-569-000 and by order issued September 11, 1986, in Docket No. CP86-569-001, the Commission authorized Southern to perform limited-term transportation service on behalf of Alagasco as agent for ACIPCO. Southern states that the existing certificate authorizes Southern to transport up to 6,000 MMBtu equivalent of natural gas per day for a term expiring August 11, 1987.

Southern states that it has received a request from Alagasco, acting as agent for ACIPCO, to continue the transportation service after the expiration of the existing certificate authorization. Southern explains that it has decided to continue to make interruptible transportation services available on its pipeline system for a limited-term after October 31, 1987, the date to which it previously proposed to make transportation services available, and in accordance therewith, Southern filed a revision to its statement of policy in Docket Nos. CP86-277, *et al.*, on February 17, 1987. In that revision to its policy, Southern stated that it was willing to seek limited-term certificate authorization to transport gas for either a new shipper or an existing shipper through October 31, 1988. Accordingly, Southern agreed to file herein this petition for extension of the term as requested by the shipper.

Southern requests that the limited-term certificate issue August 11, 1986, as extended September 11, 1986, in Docket Nos. CP86-569-000 and CP86-569-001, be further extended for a limited-term ending October 31, 1988. Southern does not propose any other change in the authorized service.

Comment date: April 29, 1987, 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 persons 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.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8178 Filed 4-10-87; 8:45 am]

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**[Project Nos. 5950-004 et al.]**

**Lewis County Public Utility District No. 1 et al.; Surrender of Preliminary Permits**

April 8, 1987.

Take notice that the following preliminary permits have been surrendered effective as described in Standard Paragraph I at the end of this notice.

**1. Lewis County Public District No. 1**

[Project No. 5950-004]

Take notice that Lewis County Public Utility District No. 1, permittee for the Johnson Creek Project No. 5950, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 5950 was issued on July 9, 1984, and would have expired on June 30, 1987. The project would have been located on Johnson Creek in Lewis County, Washington.

The permittee filed the request on February 17, 1987.

**2. Minersville Associates**

[Project No. 9268-002]

Take notice that Minersville Associates, permittee for the proposed

Rocky Ford Hydro Project No. 9268, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 26, 1985, and would have expired on November 30, 1988. The project would have been located on the Beaver River in Beaver County, Utah. The Permittee states that the project would not be economically feasible to develop at this time.

The permittee filed the request on March 11, 1987.

**3. Palisade Associates**

[Project No. 9239–001]

Take notice that Palisade Associates, Permittee for the proposed Palisade Pipeline Hydro Project No. 9239, has requested that its preliminary permit be terminated. The preliminary permit was issued on December 5, 1985, and would have expired on November 30, 1988. The project would have been located on the Six Mile Creek in Sanpete County, Utah. The Permittee states that the project would not be economically feasible to develop at this time.

The permittee filed the request on March 11, 1987.

**4. South Fork Irrigation District**

[Project No. 4059–004]

Take notice that South Fork Irrigation District, exemptee for the proposed West Valley Hydroelectric Project No. 4059, has requested that its exemption be terminated. The exemption was issued on August 11, 1983. The project would have been located on the South Fork Pit River and West Valley Reservoir, near Likely, in Modoc County, California. Construction of the project has not commenced.

The exemptee filed the request on February 17, 1987.

Standard Paragraphs:

I. The preliminary permit shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007 in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87–8179 Filed 4–10–87; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. TA87–3–48–000, 001]**

## ANR Pipeline Co.; PGA Rate Change Filing

April 7, 1987.

Take notice that on March 31, 1987, ANR Pipeline Company ("ANR"), pursuant to section 15 of the General Terms and Conditions of its F.E.R.C. Gas Tariff, Original Volume No. 1, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheets:

Ninth Revised Sheet No. 18
Fifth Revised Sheet No. 19
First Revised Sheet No. 76
First Revised Sheet No. 77
First Revised Sheet No. 78
First Revised Sheet No. 78A

Ninth Revised Sheet No. 18 reflects a 7.74¢ per dekatherm ("dth") increase in the gas cost component of the commodity rate of ANR's CD–1 and MC–1 Rate Schedules, a decrease of $0.054 in the monthly demand rate of CD–1 and MC–1 Rate Schedules and an increase in ANR's one-part rates applicable to Rate Schedules SGS–1 and LVS–1 of 6.88¢ and 7.48¢ respectively, per dth.

First Revised Sheet No. 76, First Revised Sheet No. 77, First Revised Sheet No. 78 and First Revised Sheet No. 78A reflect a change in the terms of ANR's Purchased Gas Cost Adjustment (PGA) tariff provisions. These revisions to Section 15 and Paragraph 15.1 of Original Volume No. 1, F.E.R.C. Gas Tariff modify ANR's PGA provisions to provide for an annual surcharge adjustment for deferred purchased gas costs to be effective May 1 of each year, in lieu of ANR's existing seminannual deferred purchased gas cost adjustment. ANR will continue to file its current Purchased Gas Cost Adjustment on a semiannual basis having an effective date of May 1 or November 1.

Fifth Revised Tariff Sheet No. 19 reflects that since there were zero MSAC's reported by ANR's customers, there is no PGA reduction.

ANR states that copies of the filing were served upon all of its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the 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 April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87–8190 Filed 4–10–87; 8:45 am]

BILLING CODE 6717–01–M

**[Docket No. ST87–1283–000 et al.]**

## Arkla Energy Resources et al.; Self-Implementing Transactions

April 8, 1987.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA).[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline of behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any person seeking to participate in the proceeding to approve a rate listed in the table should file a petition to intervene with the Secretary of the Commission.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G–S" indicates transportation by an interstate pipeline company on behalf of any shipper pursuant to § 284.233 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G(LT)" or "G(LS)" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

A "G(HT)" or "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to make any protest with reference to a transaction reflected in this notice should on or before April 24, 1987, 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 385.214 or 385.211). 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 party to a 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.

**Kenneth F. Plumb,**

*Secretary.*

| Docket No.[1] | Transporter/Seller | Recipient | Date filed | Subpart | Expiration date [2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST87-1283 | Arkla Energy Resources | Liberty Natural Gas Co | 02-02-87 | B | | |
| ST87-1284 | Arkla Energy Resources | J-W Operating Co | 02-02-87 | B | | |
| ST87-1285 | Arkla Energy Resources | Arkla Energy Resources, (LA Intra. Seg). | 02-02-87 | B | | |
| ST87-1286 | El Paso Natural Gas Co | Intersearch Gas Corp | 02-02-87 | B | | |
| ST87-1287 | Arkla Energy Resources | Arkansas Louisiana Gas Co | 02-02-87 | B | | |
| ST87-1288 | Arkla Energy Resources | Shreveport Intrastate Gas Trans., Inc | 02-02-87 | B | | |
| ST87-1289 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-02-87 | B | | |
| ST87-1290 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-02-87 | B | | |
| ST87-1291 | Arkla Energy Resources | Arkansas Louisiana Gas Co | 02-02-87 | B | | |
| ST87-1292 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-02-87 | B | | |
| ST87-1293 | ANR Pipeline Co | Northern Indiana Fuel & Light Co | 02-02-87 | B | | |
| ST87-1294 | ANR Pipeline Co | North Central Public Service Co | 02-02-87 | B | | |
| ST87-1295 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-02-87 | B | | |
| ST87-1296 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-02-87 | B | | |
| ST87-1297 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-02-87 | B | | |
| ST87-1298 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-02-87 | B | | |
| ST87-1299 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-02-87 | B | | |
| ST87-1300 | Arkla Energy Resources | Arkansas Louisiana Gas Co | 02-02-87 | B | | |
| ST87-1301 | Arkla Energy Resources | Arkansas Louisiana Gas Co | 02-02-87 | B | | |
| ST87-1302 | Columbia Gulf Transmission Co | NGC Intrastate Pipeline Co | 02-02-87 | B | | |
| ST87-1303 | Columbia Gulf Transmission Co | Texas Eastern Transmission Corp | 02-02-87 | G | | |
| ST87-1304 | Natural Gas Pipeline Co. of America | Illinois Power Co | 02-02-87 | B | | |
| ST87-1305 | Tennessee Gas Pipeline Co | Gas Systems Network, Inc | 02-02-87 | B | | |
| ST87-1306 | Texas Gas Transmission Corp | Memphis Light, Gas and Water Division. | 02-02-87 | B | | |
| ST87-1307 | Texas Eastern Transmission Corp | Mountaineer Gas Co | 02-02-87 | B | | |
| ST87-1308 | Colorado Interstate Gas Co | Public Service Co. of Colorado | 02-03-87 | B | | |
| ST87-1309 | Texas Eastern Transmission Corp | Endevco Pipeline Co | 02-02-87 | B | | |
| ST87-1310 | Natural Gas Pipeline Co. of America | Pennsylvania Gas and Water Co | 02-02-87 | B | | |
| ST87-1311 | Natural Gas Pipeline Co. of America | Northern Illinois Gas Co | 02-02-87 | B | | |
| ST87-1312 | United Gas Pipe Line Co | ONG Transmission Co | 02-03-87 | B | | |
| ST87-1313 | United Gas Pipe Line Co | Humble Gas System, Inc | 02-03-87 | B | | |
| ST87-1314 | Texas Gas Transmission Corp | Terre Haute Gas Corp | 01-28-87 | B | | |
| ST87-1315 | Texas Gas Transmission Corp | City of Hamilton | 01-28-87 | B | | |
| ST87-1316 | Texas Gas Transmission Corp | Central Illinois Public Service Co | 01-28-87 | B | | |
| ST87-1317 | Texas Gas Transmission Corp | Memphis Light, Gas and Water Division. | 01-28-87 | B | | |
| ST87-1318 | Texas Gas Transmission Corp | City of Olive Branch | 01-28-87 | B | | |
| ST87-1319 | Transcontinental Gas Pipe Line Corp | Public Service Electric and Gas Co | 02-04-87 | B | | |
| ST87-1320 | Transok, Inc | Peoples Natural Gas Co | 02-05-87 | C | 07-05-87 | 26.25 |
| ST87-1321 | Trunkline Gas Co | Consumers Power Co | 02-05-87 | B | | |
| ST87-1322 | Trunkline Gas Co | Consumers Power Co | 02-05-87 | B | | |
| ST87-1323 | Trunkline Gas Co | Consumers Power Co | 02-05-87 | B | | |
| ST87-1324 | Trunkline Gas Co | Consumers Power Co | 02-05-87 | B | | |
| ST87-1325 | Texas Gas Transmission Corp | Western Kentucky Gas Co | 02-05-87 | B | | |
| ST87-1326 | Trunkline Gas Co | Consumers Power Co | 02-05-87 | B | | |

| Docket No.[1] | Transporter/Seller | Recipient | Date filed | Subpart | Expiration date [2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST87-1327 | Trunkline Gas Co | Consumers Power Co | 02-05-87 | B | | |
| ST87-1328 | Trunkline Gas Co | Consumers Power Co | 02-05-87 | B | | |
| ST87-1329 | Texas Gas Transmission Corp | Indiana Gas Co | 02-05-87 | B | | |
| ST87-1330 | Texas Gas Transmission Corp | Western Kentucky Gas Co | 02-05-87 | B | | |
| ST87-1331 | Texas Gas Transmission Corp | Central Hudson Gas & Elec. Corp., et al. | 02-05-87 | B | | |
| ST87-1332 | Texas Gas Transmission Corp | Indiana Gas Co | 02-05-87 | B | | |
| ST87-1333 | Texas Gas Transmission Corp | Western Kentucky Gas Co | 02-05-87 | B | | |
| ST87-1334 | Texas Gas Transmission Corp | South Eastern Indiana Natural Gas Co | 02-05-87 | B | | |
| ST87-1335 | Arkla Energy Resources | Arkansas Louisiana Gas Co | 02-05-87 | B | | |
| ST87-1336 | PGC Pipeline, Div. of LPC Energy Inc | El Paso Natural Gas Co | 02-05-87 | C | 07-05-87 | 25.20 |
| ST87-1337 | PGC Pipeline, Div. of LPC Energy Inc | Mississippi Valley Gas Co | 02-05-87 | D | | |
| ST87-1338 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-05-87 | B | | |
| ST87-1339 | ANR Pipeline Co | Northern Indiana Public Service Co | 02-05-87 | B | | |
| ST87-1340 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-05-87 | B | | |
| ST87-1341 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-05-87 | B | | |
| ST87-1342 | ANR Pipeline Co | Wisconsin Gas Co | 02-05-87 | B | | |
| ST87-1343 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-05-87 | B | | |
| ST87-1344 | ANR Pipeline Co | Columbia Gas of New York, Inc | 02-05-87 | B | | |
| ST87-1345 | Transcontinental Gas Pipe Line Corp | Illinois Power Co | 02-05-87 | B | | |
| ST87-1346 | Transcontinental Gas Pipe Line Corp | Columbia Gas Dist. of Ohio, et al | 02-05-87 | B | | |
| ST87-1347 | Transcontinental Gas Pipe Line Corp | Baltimore Gas and Electric Co | 02-05-87 | B | | |
| ST87-1348 | Northern Natural Gas Co | Great Plains Natural Gas Co | 02-05-87 | B | | |
| ST87-1349 | Northern Natural Gas Co | West Texas Gas, Inc | 02-05-87 | B | | |
| ST87-1350 | Northern Natural Gas Co | Central Illinois Gas Co | 02-05-87 | B | | |
| ST87-1351 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-05-87 | B | | |
| ST87-1352 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-05-87 | B | | |
| ST87-1353 | Valero Transmission Co | Texas Eastern Transmission Corp | 02-06-87 | C | | |
| ST87-1354 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1355 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-06-87 | B | | |
| ST87-1356 | ANR Pipeline Co | Eastex Gas Transmission | 02-06-87 | B | | |
| ST87-1357 | ANR Pipeline Co | Wisconsin Power and Light Co | 02-06-87 | B | | |
| ST87-1358 | ANR Pipeline Co | Wisconsin Power and Light Co | 02-06-87 | B | | |
| ST87-1359 | ANR Pipeline Co | Wisconsin Fuel and Light Co | 02-06-87 | B | | |
| ST87-1360 | ANR Pipeline Co | Llano, Inc | 02-06-87 | B | | |
| ST87-1361 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1362 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1363 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1364 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1365 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1366 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1367 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-06-87 | B | | |
| ST87-1368 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-06-87 | B | | |
| ST87-1369 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1370 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-06-87 | B | | |
| ST87-1371 | ANR Pipeline Co | Wisconsin Southern Gas Co., Inc | 02-06-87 | B | | |
| ST87-1372 | Transcontinental Gas Pipe Line Corp | Brooklyn Union Gas Co | 02-06-87 | B | | |
| ST87-1373 | MIGC, Inc | Northern Indiana Pub. Service Co., et al. | 02-06-87 | B | | |
| ST87-1374 | MIGC, Inc | Iowa-Illinois Gas & Electric Co | 02-06-87 | B | | |
| ST87-1375 | Texas Eastern Transmission Corp | Columbia Gas of Kentucky, Inc | 02-06-87 | B | | |
| ST87-1376 | Northern Natural Gas Co | UGI Corp | 02-06-87 | B | | |
| ST87-1377 | Northern Natural Gas Co | Enron Industrial Natural Gas Co | 02-06-87 | B | | |
| ST87-1378 | Northern Natural Gas Co | Channel Industries Gas Co | 02-06-87 | B | | |
| ST87-1379 | Northern Natural Gas Co | NGP Pipeline Co | 02-06-87 | B | | |
| ST87-1380 | Louisiana Resources Co | Northern Intrastate Pipeline Co | 02-06-87 | C | 07-06-87 | 26.43 |
| ST87-1381 | Sea Robin Pipeline Co | Piedmont Natural Gas Co., et al | 02-06-87 | B | | |
| ST87-1382 | United Gas Pipe Line Co | Madleon Transmission Co., Inc | 02-06-87 | B | | |
| ST87-1383 | United Gas Pipe Line Co | Texas Southern Pipeline, Inc | 02-06-87 | B | | |
| ST87-1384 | United Gas Pipe Line Co | Quivira Gas Co | 02-06-87 | B | | |
| ST87-1385 | United Gas Pipe Line Co | J-W Gathering Co | 02-06-87 | B | | |
| ST87-1386 | United Gas Pipe Line Co | South Alabama Utilities | 02-06-87 | B | | |
| ST87-1387 | Houston Pipe Line Co | Northern Natural Gas Co | 02-06-87 | C | | |
| ST87-1388 | Oasis Pipe Line Co | Minnegasco, Inc | 02-06-87 | C | | |
| ST87-1389 | Oasis Pipe Line Co | Columbia Gas of Pennsylvania, Inc | 02-06-87 | C | | |
| ST87-1390 | Oasis Pipe Line Co | Columbia Gas of Ohio, Inc | 02-06-87 | C | | |
| ST87-1391 | ONG Transmission Co | Williams Natural Gas Co | 02-06-87 | C | 07-06-87 | 10.00 |
| ST87-1392 | United Gas Pipe Line Co | Clajon Industrial Gas, Inc | 02-06-87 | B | | |
| ST87-1393 | Taft Pipeline Co | Northern Natural Gas Co | 02-06-87 | C | | |
| ST87-1394 | Tennessee Gas Pipeline Co | Rochester Gas & Electric Co., et al | 02-06-87 | B | | |
| ST87-1395 | Tennessee Gas Pipeline Co | Southern Connecticut Gas Co | 02-06-87 | B | | |

| Docket No.[1] | Transporter/Seller | Recipient | Date filed | Subpart | Expiration date [2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST87-1396 | United Gas Pipe Line Co | Texas Southern Pipeline, Inc | 02-06-87 | B | | |
| ST87-1397 | United Gas Pipe Line Co | Niagara Mohawk Power Corp | 02-06-87 | B | | |
| ST87-1398 | Transok, Inc | Lone Star Gas Co | 02-09-87 | C | 07-09-87 | 21.75 |
| ST87-1399 | Texas Eastern Transmission Corp | Commonwealth Gas Co | 02-09-87 | B | | |
| ST87-1400 | Texas Eastern Transmission Corp | City of Richmond Dept. of Public Util | 02-09-87 | B | | |
| ST87-1401 | Texas Eastern Transmission Corp | Niagara Mohawk Power Corp | 02-09-87 | B | | |
| ST87-1402 | Texas Eastern Transmission Corp | Consumers Gas Co | 02-09-87 | B | | |
| ST87-1403 | Texas Eastern Transmission Corp | New York State Electric and Gas Co | 02-09-87 | B | | |
| ST87-1404 | Texas Eastern Transmission Corp | Hope Gas, Inc | 02-09-87 | B | | |
| ST87-1405 | Tennessee Gas Pipeline Co | Eastex Gas Transmission | 02-09-87 | B | | |
| ST87-1406 | Tennessee Gas Pipeline Co | Columbia Gas of Virginia, Inc | 02-09-87 | B | | |
| ST87-1407 | Tennessee Gas Pipeline Co | Coronado Transmission Co | 02-09-87 | B | | |
| ST87-1408 | Tennessee Gas Pipeline Co | National Fuel Gas Distribution Corp | 02-09-87 | B | | |
| ST87-1409 | Tennessee Gas Pipeline Co | Columbia Gas of Kentucky, Inc | 02-09-87 | B | | |
| ST87-1410 | Ohio River Pipeline Corp | Indiana Gas Co | 02-09-87 | B | | |
| ST87-1411 | Panhandle Eastern Pipe Line Co | Central Illinois Public Service Co | 02-09-87 | B | | |
| ST87-1412 | Northern Natural Gas Co | Peoples Natural Gas Co | 02-09-87 | B | | |
| ST87-1413 | Northern Natural Gas Co | St. Croix Valley Natural Gas Co | 02-09-87 | B | | |
| ST87-1414 | Tennessee Gas Pipeline Co | Columbia Gas of Ohio, Inc | 02-09-87 | B | | |
| ST87-1415 | Tennessee Gas Pipeline Co | Columbia Gas of New York, Inc | 02-09-87 | B | | |
| ST87-1416 | Tennessee Gas Pipeline Co | Louisiana Intrastate Gas Corp | 02-09-87 | B | | |
| ST87-1417 | Tennessee Gas Pipeline Co | Columbia Gas of Maryland, Inc | 02-09-87 | B | | |
| ST87-1418 | Tennessee Gas Pipeline Co | Columbia Gas of Pennsylvania, Inc | 02-09-87 | B | | |
| ST87-1419 | Natural Gas Pipeline Co. of America | Washington Gas Light Co | 02-09-87 | B | | |
| ST87-1420 | United Gas Pipe Line Co | Woodward Pipeline, Inc | 02-09-87 | B | | |
| ST87-1421 | Natural Gas Pipeline Co. of America | Memphis Light, Gas and Water Co | 02-09-87 | B | | |
| ST87-1422 | Natural Gas Pipeline Co. of America | Central Illinois Public Service Co | 02-09-87 | B | | |
| ST87-1423 | United Gas Pipe Line Co | Louisville Gas & Electric Co., et al | 02-09-87 | B | | |
| ST87-1424 | Columbia Gulf Transmission Co | Nashville Natural Gas Co | 02-09-87 | B | | |
| ST87-1425 | Enogex, Inc | Brandywine Industrial Gas, Inc | 02-09-87 | C | 07-09-87 | 26.50 |
| ST87-1426 | Texas Gas Transmission Corp | Michigan Consolidated Gas Co., et al | 02-10-87 | B | | |
| ST87-1427 | Texas Gas Transmission Corp | NGC Intrastate Pipeline Co | 02-10-87 | B | | |
| ST87-1428 | El Paso Natural Gas Co | Texline Gas Co | 02-10-87 | B | | |
| ST87-1429 | Trunkline Gas Co | Consumers Power Co | 02-11-87 | B | | |
| ST87-1430 | Sea Robin Pipeline Co | Texas Products Corp., Inc. (TPC) | 02-11-87 | B | 07-11-87 | 21.75/26.25 |
| ST87-1431 | Transok, Inc | Natural Gas Pipeline Co. of America | 02-11-87 | C | | |
| ST87-1432 | Tennessee Gas Pipeline Co. | Louisville Gas & Electric Co., et al | 02-11-87 | B | | |
| ST87-1433 | Natural Gas Pipeline Co. of America | Coastal States Gas Transmission Co | 02-12-87 | B | | |
| ST87-1434 | Natural Gas Pipeline Co. of America | Illinois Power Co | 02-12-87 | B | | |
| ST87-1435 | Northern Natural Gas Co | TAFT Pipeline Co | 02-12-87 | B | | |
| ST87-1436 | Tennessee Gas Pipeline Co | Nashville Gas, Div. Piedmont Nat. Gas Co. | 02-12-87 | B | | |
| ST87-1437 | Williams Natural Gas Co | Kansas Gas Supply Corp | 02-12-87 | B | | |
| ST87-1438 | ANR Pipeline Co | Wisconsin Power and Light Co | 02-12-87 | B | | |
| ST87-1439 | ANR Pipeline Co | Wisconsin Public Service Co | 02-12-87 | B | | |
| ST87-1440 | ANR Pipeline Co | Wisconsin Public Service Co | 02-12-87 | B | | |
| ST87-1441 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1442 | ANR Pipeline Co | Wisconsin Public Service Co | 02-12-87 | B | | |
| ST87-1443 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-12-87 | B | | |
| ST87-1444 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-12-87 | B | | |
| ST87-1445 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-12-87 | B | | |
| ST87-1446 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1447 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-12-87 | B | | |
| ST87-1448 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1449 | ANR Pipeline Co | Columbia Gas of KY, Inc | 02-12-87 | B | | |
| ST87-1450 | ANR Pipeline Co | Wisconsin Public Service Co | 02-12-87 | B | | |
| ST87-1451 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-12-87 | B | | |
| ST87-1452 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1453 | ANR Pipeline Co | Wisconsin Public Service Corp | 02-12-87 | B | | |
| ST87-1454 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1455 | ANR Pipeline Co | Michigan Gas Utilities Co | 02-12-87 | B | | |
| ST87-1456 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1457 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-12-87 | B | | |
| ST87-1458 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1459 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-12-87 | B | | |
| ST87-1460 | Delhi Gas Pipeline Corp | Mississippi River Transmission Corp | 02-13-87 | C | | |
| ST87-1461 | Transcontinental Gas Pipe Line Corp | Washington Gas Light Co., et al | 02-13-87 | B | | |
| ST87-1462 | Transcontinental Gas Pipe Line Corp | TRI-County Natural Gas Co | 02-13-87 | B | | |
| ST87-1463 | Transcontinental Gas Pipe Line Corp | Pontchartrain Natural Gas System | 02-13-87 | B | | |
| ST87-1464 | Transcontinental Gas Pipe Line Corp | City of Winder | 02-13-87 | B | | |
| ST87-1465 | Transok, Inc | Panhandle Eastern Pipe Line Co | 02-13-87 | C | 07-13-87 | 26.25 |

| Docket No.[1] | Transporter/Seller | Recipient | Date filed | Subpart | Expiration date [2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST87-1466 | United Gas Pipe Line Co | Endevco Pipeline Co | 02-13-87 | B | | |
| ST87-1467 | Northern Natural Gas Co | Delhi Gas Pipeline Corp | 02-13-87 | B | | |
| ST87-1468 | Nothern Natural Gas Co | Gas Gathering Systems, Inc | 02-13-87 | B | | |
| ST87-1469 | Tennessee Gas Pipeline Co | Channel Industries Gas Co | 02-17-87 | B | | |
| ST87-1470 | Tennessee Gas Pipeline Co | Creole Gas Pipeline Corp | 02-17-87 | B | | |
| ST87-1471 | Tennessee Gas Pipeline Co | Commonwealth Gas Services | 02-17-87 | B | | |
| ST87-1472 | Northern Natural Gas Co | Columbia Gas of Virginia, Inc | 02-17-87 | B | | |
| ST87-1473 | Northern Natural Gas Co | Columbia Gas of Kentucky, Inc | 02-17-87 | B | | |
| ST87-1474 | Northern Natural Gas Co | Columbia Gas of New York, Inc | 02-17-87 | B | | |
| ST87-1475 | Transwestern Pipeline Co | Valero Transmission Co | 02-17-87 | B | | |
| ST87-1476 | Transwestern Pipeline Co | West Texas Gas, Inc | 02-17-87 | B | | |
| ST87-1477 | Panhandle Gas Co | Minnegasco, Inc | 02-17-87 | B | | |
| ST87-1478 | Conolidated Gas Transmission Corp | National Fuel Gas Distribution Corp | 02-17-87 | B | | |
| ST87-1479 | Consolidated Gas Transmission Corp | Hanley and Bird | 02-17-87 | B | | |
| ST87-1480 | Consolidated Gas Transmission Corp | New York State Electric and Gas Co | 02-17-87 | B | | |
| ST87-1481 | Consolidated Gas Transmission Corp | National Fuel Gas Distribution Corp | 02-17-87 | B | | |
| ST87-1482 | Tennessee Gas Pipeline Co | Louisiana Intrastate Gas Corp | 02-17-87 | B | | |
| ST87-1483 | Producer's Gas Co | Natural Gas Pipeline Co. of America | 02-17-87 | C | 07-17-87 | 25.20 |
| ST87-1484 | Producer's Gas Co | Pacific Gas and Electric Co | 02-17-87 | D | | |
| ST87-1485 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-17-87 | B | | |
| ST87-1486 | ANR Pipeline Co | Northern Indiana Public Service Co | 02-17-87 | B | | |
| ST87-1487 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-17-87 | B | | |
| ST87-1488 | Producer's Gas Co | Peopleservice Inc | 02-17-87 | C | 07-17-87 | 25.20 |
| ST87-1489 | Producer's Gas Co | El Paso Natural Gas Co | 02-17-87 | C | 07-17-87 | 25.20 |
| ST87-1490 | Producer's Gas Co | Natural Gas Pipeline Co. of America | 02-17-87 | C | 07-17-87 | 25.20 |
| ST87-1491 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-17-87 | B | | |
| ST87-1492 | Panhandle Eastern Pipe Line Co | Kansas Pipeline Co | 02-17-87 | B | | |
| ST87-1493 | ANR Pipeline Co | Wisconsin Public Service Co | 02-17-87 | B | | |
| ST87-1494 | ANR Pipeline Co | Wisconsin Gas Co | 02-17-87 | B | | |
| ST87-1495 | ANR Pipeline Co | Consumers Power Co | 02-17-87 | B | | |
| ST87-1496 | Trunkline Gas Co | Consumers Power Co | 02-17-87 | B | | |
| ST87-1497 | Trunkline Gas Co | Bishop Pipeline Corp | 02-17-87 | B | | |
| ST87-1498 | Trunkline Gas Co | Consumers Power Co | 02-17-87 | B | | |
| ST87-1499 | Trunkline Gas Co | Citizens Gas Fuel Co | 02-17-87 | B | | |
| ST87-1500 | Trunkline Gas Co | Consumers Power Co | 02-17-87 | B | | |
| ST87-1501 | Trunkline Gas Co | Kansas Pipeline Co | 02-17-87 | B | | |
| ST87-1502 | Panhandle Eastern Pipe Line Co | Great River Gas Co | 02-17-87 | B | | |
| ST87-1503 | ANR Pipeline Co | Wisconsin Public Service Co | 02-17-87 | B | | |
| ST87-1504 | ANR Pipeline Co | Northern Indiana Public Service Co | 02-17-87 | B | | |
| ST87-1505 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-17-87 | B | | |
| ST87-1506 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-17-87 | B | | |
| ST87-1507 | ANR Pipeline Co | Wisconsin Public Service Co | 02-17-87 | B | | |
| ST87-1508 | Producer's Gas Co | Brandywine Industrial Gas, Inc | 02-17-87 | C | 07-17-87 | 25.20 |
| ST87-1509 | ANR Pipeline Co | Columbia Gas of Ohio, Inc | 02-17-87 | B | | |
| ST87-1510 | ANR Pipeline Co | Wisconsin Gas Co | 02-17-87 | B | | |
| ST87-1511 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-17-87 | B | | |
| ST87-1512 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-17-87 | B | | |
| ST87-1513 | ANR Pipeline Co | Wisconsin Public Service Co | 02-17-87 | B | | |
| ST87-1514 | ANR Pipeline Co | Wisconsin Gas Co | 02-17-87 | B | | |
| ST87-1515 | United Gas Pipe Line Co | Louisiana State Gas Corp | 02-18-87 | B | | |
| ST87-1516 | Colorado Interstate Gas Co | Northern Indiana Pub. Service Co., et al. | 02-18-87 | B | | |
| ST87-1517 | Delhi Gas Pipeline Corp | Natural Gas Pipeline Co. of America | 02-18-87 | C | | |
| ST87-1518 | Delhi Gas Pipeline Corp | Cincinnati Gas and Electric Co | 02-18-87 | C | 07-18-87 | 54.31 |
| ST87-1519 | Delhi Gas Pipeline Corp | Polaris Corp | 02-18-87 | C | | |
| ST87-1520 | Lawrenceburg Gas Transmission Corp | Lawrenceburg Gas Co | 02-18-87 | B | | |
| ST87-1521 | United Texas Transmission Co | Natural Gas Pipeline Co. of America | 02-18-87 | C | | |
| ST87-1522 | Texas Gas Transmission Corp | Lawrenceburg Gas Co | 02-19-87 | B | | |
| ST87-1523 | Tennessee Gas Pipeline Co | Corning Natural Gas Corp | 02-19-87 | B | | |
| ST87-1524 | Northern Natural Gas Co | Illinois Power Co | 02-20-87 | B | | |
| ST87-1525 | Acadian Gas Pipeline System | Spindletop Gas Distribution System | 02-24-87 | C | | |
| ST87-1526 | Acadian Gas Pipeline System | Columbia Gas of Ohio, et al | 02-24-87 | C | | |
| ST87-1527 | Acadian Gas Pipeline System | Florida Gas Transmission Co | 02-24-87 | C | | |
| ST87-1529 | Natural Gas Pipeline Co. of America | City of Pickneyville | 02-24-87 | B | | |
| ST87-1530 | Natural Gas Pipeline Co. of America | City of Perryville | 02-24-87 | B | | |
| ST87-1531 | Valero Transmission Co | Southern California Gas Co | 02-24-87 | C | | |
| ST87-1532 | Turnkline Gas Co | Consumers Power Co | 02-24-87 | B | | |
| ST87-1533 | Trunkline Gas Co | Baltimore Gas & Electric Co., et al | 02-24-87 | B | | |
| ST87-1534 | ONG Transmission Co | Phillips Gas Pipeline Co | 02-24-87 | C | 07-24-87 | 24.32 |
| ST87-1535 | Louisiana Intrastate Gas Corp | Columbia Gas Transmission Corp | 02-24-87 | C | 07-24-87 | 22.40 |
| ST87-1536 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |

| Docket No.[1] | Transporter/Seller | Recipient | Date filed | Subpart | Expiration date [2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST87-1537 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1538 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-24-87 | B | | |
| ST87-1539 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1540 | ANR Pipeline Co | Wisconsin Public Service Co | 02-24-87 | B | | |
| ST87-1541 | ANR Pipeline Co | Fountaintown Gas Co | 02-24-87 | B | | |
| ST87-1542 | ANR Pipeline Co | Wisconsin Power and Light Co | 02-24-87 | B | | |
| ST87-1543 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1544 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1545 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1546 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1547 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-24-87 | B | | |
| ST87-1548 | Texas Gas Transmission Corp | Louisville Gas & Electric Co | 02-24-87 | B | | |
| ST87-1549 | Texas Gas Transmission Corp | Western Kentucky Gas Co | 02-24-87 | B | | |
| ST87-1550 | Texas Gas Transmission Corp | Indiana Gas Co | 02-24-87 | B | | |
| ST87-1551 | Texas Gas Transmission Corp | Central Illinois Public Service Co | 02-24-87 | B | | |
| ST87-1552 | Texas Gas Transmission Corp | Associated Intra. Pipeline Co | 02-24-87 | B | | |
| ST87-1553 | Texas Gas Transmission Corp | Louisville Gas and Electric Co | 02-24-87 | B | | |
| ST87-1554 | Tennessee Gas Pipeline Co | Nycotex Gas Transport | 02-24-87 | B | | |
| ST87-1555 | Tennessee Gas Pipeline Co | Equitable Gas Co | 02-24-87 | B | | |
| ST87-1556 | Tennessee Gas Pipeline Co | New York State Electric and Gas Co | 02-24-87 | B | | |
| ST87-1557 | Tennessee Gas Pipeline Co | Louisiana Gas System, Inc | 02-24-87 | B | | |
| ST87-1558 | Tennessee Gas Pipeline Co | Niagara Mohawk Power Corp | 02-24-87 | B | | |
| ST87-1559 | Tennessee Gas Pipeline Co | East Ohio Gas Co., et al | 02-24-87 | B | | |
| ST87-1560 | Tennessee Gas Pipeline Co | Piedmont Natural Gas Co | 02-24-87 | B | | |
| ST87-1561 | Tennessee Gas Pipeline Co | National Fuel Gas Distribution Corp | 02-24-87 | B | | |
| ST87-1562 | Houston Pipe Line Co | Natural Gas Pipeline Co. of America | 02-24-87 | C | | |
| ST87-1563 | Houston Pipe Line Co | Seagull Interstate Corp | 02-24-87 | C | | |
| ST87-1564 | Texas Eastern Transmission Corp | Tennessee River Interstate Gas Co | 02-24-87 | B | | |
| ST87-1565 | Texas Eastern Transmission Corp | Baltimore Gas and Electric Co | 02-24-87 | B | | |
| ST87-1566 | Texas Eastern Transmission Corp | Southern Gas Pipeline Co | 02-24-87 | B | | |
| ST87-1567 | Texas Eastern Transmission Corp | East Ohio Gas Co | 02-24-87 | B | | |
| ST87-1568 | Texas Eastern Transmission Corp | Terre Haute Gas Corp | 02-24-87 | B | | |
| ST87-1569 | Texas Eastern Transmission Corp | Columbia Gas of Pennsylvania, Inc | 02-24-87 | B | | |
| ST87-1570 | Texas Eastern Transmission Corp | Washington Gas Light Co | 02-24-87 | B | | |
| ST87-1571 | Texas Eastern Transmission Corp | Columbia Gas of Maryland, Inc | 02-24-87 | B | | |
| ST87-1572 | Texas Eastern Transmission Corp | Corpus Christi Industrial Pipeline Co | 02-24-87 | B | | |
| ST87-1573 | Texas Eastern Transmission Corp | South Jersey Gas Co | 02-24-87 | B | | |
| ST87-1574 | Texas Eastern Transmission Corp | Lawrenceburg Gas Co | 02-24-87 | B | | |
| ST87-1575 | Texas Eastern Transmission Corp | City of Grayville | 02-24-87 | B | | |
| ST87-1576 | Texas Eastern Transmission Corp | Union Light, Heat & Power Co | 02-24-87 | B | | |
| ST87-1577 | Texas Eastern Transmission Corp | Virginia Natural Gas | 02-24-87 | B | | |
| ST87-1578 | Texas Eastern Transmission Corp | Suffolk Gas Corp | 02-24-87 | B | | |
| ST87-1579 | Texas Eastern Transmission Corp | Terre Haute Gas Corp | 02-24-87 | B | | |
| ST87-1580 | Texas Eastern Transmission Corp | City of Richmond Dept of Public Util | 02-24-87 | B | | |
| ST87-1581 | Texas Eastern Transmission Corp | Hanley and Bird | 02-24-87 | B | | |
| ST87-1582 | Texas Eastern Transmission Corp | Red Bay Water Works and Gas Board | 02-24-87 | B | | |
| ST87-1583 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1584 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1585 | ANR Pipeline Co | Southeastern Michigan Gas Co | 02-24-87 | B | | |
| ST87-1586 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1587 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1588 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1589 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-24-87 | B | | |
| ST87-1590 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1591 | ANR Pipeline Co | Ohio Valley Gas Corp | 02-24-87 | B | | |
| ST87-1592 | ANR Pipeline Co | Wisconsin Natural Gas Co | 02-24-87 | B | | |
| ST87-1593 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1594 | ANR Pipeline Co | Columbia Gas of Ohio, Inc | 02-24-87 | B | | |
| ST87-1595 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1596 | ANR Pipeline Co | Columbia Gas of Maryland, Inc. | 02-24-87 | B | | |
| ST87-1597 | ANR Pipeline Co | NGC Intrastate Pipeline Co | 02-24-87 | B | | |
| ST87-1598 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-24-87 | B | | |
| ST87-1599 | Seagull Energy Corp | Seagull Interstate Corp | 02-24-87 | C | 07-24-87 | 10.00 |
| ST87-1600 | Seagull Interstate Corp | Seagull Energy Corp | 02-24-87 | B | | |
| ST87-1601 | Louisiana Resources Co | | 02-24-87 | C | 07-24-87 | 26.43 |
| ST87-1602 | El Paso Natural Gas Co | Southern California Gas Co | 02-25-87 | B | | |
| ST87-1603 | El Paso Natural Gas Co | Pacific Gas and Electric Co | 02-25-87 | B | | |
| ST87-1604 | El Paso Natural Gas Co | Southern California Gas Co | 02-25-87 | B | | |
| ST87-1605 | El Paso Natural Gas Co | Southern California Gas Co | 02-25-87 | B | | |
| ST87-1606 | El Paso Natural Gas Co | Pacific Gas and Electric Co | 02-25-87 | B | | |
| ST87-1607 | El Paso Natural Gas Co | Pacific Gas and Electric Co | 02-25-87 | B | | |

| Docket No.[1] | Transporter/Seller | Recipient | Date filed | Subpart | Expiration date [2] | Transportation rate (¢/MMBTU) |
|---|---|---|---|---|---|---|
| ST87-1608 | El Paso Natural Gas Co | Pacific Gas and Electric Co | 02-25-87 | B | | |
| ST87-1609 | El Paso Natural Gas Co | Pacific Gas and Electric Co | 02-25-87 | B | | |
| ST87-1610 | El Paso Natural Gas Co | Southern California Gas Co | 02-25-87 | B | | |
| ST87-1611 | Natural Gas Pipeline Co. of America | Peoples Gas Light & Coke Co | 02-25-87 | B | | |
| ST87-1612 | Natural Gas Pipeline Co. of America | Peoples Gas Light & Coke Co | 02-25-87 | B | | |
| ST87-1613 | ARKLA Energy Resources | Arkansas Oklahoma Gas Corp | 02-25-87 | B | | |
| ST87-1614 | Intrastate Gathering Corp | Michigan Gas Utilities | 02-25-87 | C | | |
| ST87-1615 | El Paso Natural Gas Co | Southern California Gas Co | 02-25-87 | B | | |
| ST87-1616 | El Paso Natural Gas Co | Southern California Gas Co | 02-25-87 | B | | |
| ST87-1617 | Mountain Fuel Resources, Inc | Quivira Gas Co | 02-25-87 | B | | |
| ST87-1618 | Natural Gas Pipeline Co. of America | Northern Illinois Gas Co | 02-26-87 | B | | |
| ST87-1619 | Colorado Interstate Gas Co | Llano, Inc | 02-26-87 | B | | |
| ST87-1620 | Superior Offshore Pipeline Co | Northern Illinois Gas Co., et al | 02-26-87 | B | | |
| ST87-1621 | Colorado Interstate Gas Co | Northern Illinois Gas Co., et al | 02-26-87 | B | | |
| ST87-1622 | ARKLA Energy Resources | Midwest Natural Gas Co | 02-26-87 | B | | |
| ST87-1623 | Ringwood Gathering Co | Kansas Power and Light Co | 02-26-87 | B | | |
| ST87-1624 | Williams Natural Gas Co | Llano, Inc | 02-27-87 | B | | |
| ST87-1625 | Tennessee Gas Pipeline Co | City of Richmond | 02-27-87 | B | | |
| ST87-1626 | United Gas Pipe Line Co | Texas Southern Pipeline, Inc., et al | 02-27-87 | B | | |
| ST87-1627 | Williams Natural Gas Co | Kaisas Public Service Co., et al | 02-27-87 | B | | |
| ST87-1628 | Texas Eastern Transmission Corp | Town of Belmont | 02-27-87 | B | | |
| ST87-1629 | Texas Eastern Transmission Corp | Cincinnati Gas and Electric Co | 02-27-87 | B | | |
| ST87-1630 | Transwestern Pipeline Co | Gas Co. of NM (Div. Public Serv. Co. NM). | 02-27-87 | B | | |
| ST87-1631 | ANR Pipeline Co | Wisconsin Power and Light Co | 02-25-87 | B | | |
| ST87-1632 | ANR Pipeline Co | Northern Indiana Fuel & Light Co | 02-27-87 | B | | |
| ST87-1633 | ANR Pipeline Co | Orbit Gas Co | 02-27-87 | B | | |
| ST87-1634 | ANR Pipeline Co | NGC Intrastate Pipeline Co | 02-27-87 | B | | |
| ST87-1635 | ANR Pipeline Co | Michigan Consolidated Gas Co | 02-27-87 | B | | |
| ST87-1636 | ANR Pipeline Co | Ohio Valley Gas Corp | 02-27-87 | B | | |
| ST87-1637 | ANR Pipeline Co | Wisconsin Power and Light Co | 02-27-87 | B | | |
| ST87-1638 | ANR Pipeline Co | Llano, Inc | 02-27-87 | B | | |
| ST87-1639 | ANR Pipeline Co | Delhi Gas Pipeline Corp | 02-27-87 | B | | |
| ST87-1640 | ANR Pipeline Co | Consumers Power Co | 02-27-87 | B | | |
| ST87-1641 | ANR Pipeline Co | Mighigan Consolidated Gas Co | 02-27-87 | B | | |
| ST87-1642 | ANR Pipeline Co | Mighigan Consolidated Gas Co | 02-27-87 | B | | |
| ST87-1643 | ANR Pipeline Co | Michigan Gas Utilities | 02-27-87 | B | | |
| ST87-1644 | ANR Pipeline Co | NGC Intrastate Pipeline Co | 02-27-87 | B | | |
| ST87-1645 | ANR Pipeline Co | Coastal States Gas Transmission Co | 02-27-87 | B | | |
| ST87-1646 | ANR Pipeline Co | Washington Gas Light Co | 02-27-87 | B | | |
| ST87-1647 | ANR Pipeline Co | Iowa Public Service Co | 02-27-87 | B | | |
| ST87-1648 | ANR Pipeline Co | Northern Indiana Fuel & Light Co | 02-27-87 | B | | |
| ST87-1649 | Louisiana Intrastate Gas Corp | Transcontinental Gas Pipe Line Corp | 02-27-87 | C | 07-27-87 | 22.40 |
| ST87-1650 | ONG Transmission Co | Natural Gas Pipeline Co. of America | 02-27-87 | C | 07-27-87 | 10.00 |
| ST87-1651 | ONG Transmission Co | Natural Gas Pipeline Co. of America | 02-27-87 | C | 07-27-87 | 10.00 |
| ST87-1652 | Equitable Gas Co | Public Service Electric and Gas Co | 02-27-87 | B | | |
| ST87-0704 | Tennessee River Intrastate Gas Co[3] | Alabama-Tennessee Natural Gas Co | 02-06-87 | C | 07-06-87 | 1.92 |

[1] Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 10/18/85).

[2] The Intrastate Pipeline has sought Commission approval of its transportation rate pursuant to §284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

[3] A petition for rate approval. It is noticed at this time to give interested parties the appropriate comment period.

[FR Doc. 87-8182 Filed 4-10-87; 8:45 am]
BILLING CODE 6717-01-M

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**[Docket No. TA87-2-22-003]**

## Consolidated Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 8, 1987.

Take notice that Consolidated Gas Transmission Corporation (Consolidated) on March 30, 1987, filed Substitute Thirteenth Revised Sheet No. 31, to its FERC Gas Tariff, Original Volume No. 1, to comply with the Commission's February 27, 1987, suspension order in this proceeding. The substitute tariff sheet reduces the sales commodity rates filed January 30th by 0.26¢/Dt to correct certain Section 104 producer pruchase prices in accordance with Ordering Paragraph (B)(5) of the suspension order.

Copies of the filing were served upon Consolidated's jurisdictional sales and storage customers, interested state commissions and parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E. Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before April 15, 1987. 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 filed 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. 87-8191 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. RP86-99-002 and TA87-3-4-000, 001]**

## Granite State Gas Transmission, Inc.; Proposed Changes in Rates and Tariff Provisions

April 7, 1987.

Take notice that on April 2, 1987, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021 tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2, containing changes in rates and other tariff provisions for effectiveness on the dates indicated:

*Revised Tariff Sheet and Proposed Effective Date*

First Revised Volume No. 1

Second Substitute Seventeenth Revised Sheet No. 7—December 1, 1986
Substitute Eighteenth Revised Sheet No. 7—January 1, 1987
Nineteenth Revised Sheet No. 7—April 1, 1987
Second Revised Sheet No. 12—December 1, 1986
First Revised Sheet No. 14—December 1, 1986
Second Substitute Original Sheet No. 116—December 1, 1986

Original Volume No. 2

Sixth Revised Sheet No. 17—December 1, 1986
Sixth Revised Sheet No. 27—December 1, 1986

According to Granite State, the filing combines two matters: (1) Rate and tariff revisions in compliance with the provisions of a Stipulation and Agreement settling a general rate filing in Docket No. RP86-99-000; and (2) an out-of-cycle purchased gas cost adjustment. Granite State further states that the Stipulation and Agreement in Docket No. RP86-99-000 was approved in a letter order issued March 30, 1987, establishing new Base Tariff rates and other tariff revisions, effective December 1, 1986. It is also stated that the revised rates on Nineteenth Revised Sheet No. 7, proposed for effectiveness on April 1, 1987, reflect, in addition to the settlement Base Tariff rates, the effect of a reduction in the cost of gas from Granite State's principal supplier, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) which was made effective April 1, 1987 under Tennessee's flexible purchased gas cost adjustment provisions.

Granite State further states that its proposed rates are applicable to wholesale sales to its two affiliated distribution company customers: Bay State Gas Company and Northern Utilities, Inc. According to Granite State, the effect of the proposed rates in its filing is a decrease of approximately $5,229,467 annually in its rates for sales to Bay State and $1,088,840 annually for sales to Northern Utilities.

According to Granite State, copies of its filing were served upon its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

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 sections 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 April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8181 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA87-5-51-000, 001]**

## Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Under Purchased Gas Adjustment Clause Provisions

April 7, 1987.

Take notice that Great Lakes Gas Transmission Company (Great Lakes), on March 30, 1987 tendered for filing the following tariff sheets to its FERC Gas Tariff, proposed to be effective May 1, 1987.

*First Revised Volume No. 1*

Seventh Revised Sheet No. 57(i)
Seventh Revised Sheet No. 57(ii)
Fourteenth Revised Sheet No. 57-A

Seventh Revised Sheet Nos. 57(i) and 57(ii) reflect a gas cost surcharge resulting from maintaining unrecovered purchased gas cost accounts for the period commencing September 1, 1986 and ending February 28, 1987.

These tariff sheets also contain a PGA adjustment reflecting the current gas costs at the time of this filing, applicable to gas purchases for resale gas and an allocation of the current cost of company use gas purchased by Great Lakes.

Fourteenth Revised Sheet No. 57-A reflects the estimated incremental pricing surcharge for the six month period commencing May 1, 1987 and ending October 31, 1987. No incremental costs are estimated for the period.

Also, in compliance with the Commission Order dated November 28, 1986 in Docket Nos. TA86-6-51-000,001 and TA87-1-51-000, 001, Great Lakes tendered for filing the following tariff sheets to its FERC Gas Tariff.

*First Revised Volume No. 1*

Fourteenth Revised Sheet No. 54-A
Original Sheet No. 54-A1

*Original Volume No. 2*

Fourth Revised Sheet No. 53-C
Fifth Revised Sheet No. 53-D
Third Revised Sheet No. 78-B
Fourth Revised Sheet No. 78-C
Original Sheet No. 78-C1

Fourth Revised Sheet No. 54-A and Original Sheet No. 54-A1 of First Revised No. 1 and Fourth Revised Sheet No. 53-C, Fifth Revised Sheet No. 53-D, Third Revised Sheet No. 78-B, Fourth Revised Sheet No. 78-C, and Original Sheet No. 78-C1 of Original Volume No. 2 reflect revisions to Great Lakes' FERC Gas Tariff in compliance with conditions set forth by the FERC in two of Great Lakes' prior surcharge filings. These revisions clarify and make certain modifications in the PGA provisions ordered by the Commission.

Finally, to correct a typographical error in Great Lakes tariff filing of February 16, 1987 in Docket No. CP86-12-000 there are tendered for filing Twelfth Revised Sheet No. 1, First Revised Volume No. 1 and Eighteenth Revised Sheet No. 1, Original Volume No. 2 reflecting corrected Table of Contents, which change the designation for Rate Schedule X-6 to Rate Schedule T-6.

Great Lakes requests an effective date of May 1, 1987 for the tariff sheets submitted herewith so as to be in conformity with the 30 day notice requirement and the semi-annual effective date as provided for in its tariff.

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 would be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8180 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA87-4-46-000, 001]**

## Kentucky West Virginia Gas Co.; Proposed Change in FERC Gas Tariff

April 7, 1987.

Take notice that Kentucky West Virginia Gas Company (Kentucky West) on March 31, 1987, tendered for filing with the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to become effective May 1, 1987.

Thrity-Eighth Revised Sheet No. 27
Twenty-third Revised Sheet No. 27A

Kentucky West states that the change in rates results from the application of the Purchase Gas Cost Adjustment provision in Section 18, General Terms and Conditions of its FERC Gas Tariff, First Revised Volume No. 1.

The current purchase gas adjustment is an increase of 3.01¢ per deka-therm (dth). The deferred gas cost ajustment is a reduction of 3.01¢ per dth. These changes result in a total net jurisdiction purchase gas cost charge of 168.48¢ per dth, to become effective May 1, 1987.

Kentucky West further states that the Tariff sheet filed herewith does not reflect the Market Incentive Purchase Gas Cost Charge which the Commission rejected at its meeting on March 26, 1986, and is filed without prejudice to any further pleadings or tariff filings, which Kentucky West may make in light of that rejection.

Kentucky West states that this PGA filing has been prepared in full compliance with the Commission's order of October 31, 1986. Said order summarized the findings of an audit performed by the Cost Analysis and Field Review Branch of the Commission from August 19 through August 30, 1985 concerning Kentucky West's purchase gas adjustment filing in Docket Nos. TA85-1-46 and TA85-2-46.

Kentucky West states that a copy of its filing has been served upon its purchasers and interested state commissions and upon each party to these proceedings.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8192 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP86-170-003]**

## Mississippi River Transmission Corp.; Filing of Motion to Make Suspended Tariff Sheets Effective

April 7, 1987.

Take notice that on March 31, 1987, Mississippi River Transmission Corporation ("Mississippi") filed in the captioned docket a "Motion to Make Suspended Tariff Sheets Effective." The tariff sheets which Mississippi moves to make effective on April 1, 1987 are as follows:

*Second Revised Volume No. 1*

First Revised Sheet No. 1A
Twentieth Revised Sheet No. 4
Sixth Revised Sheet No. 42
Fourth Revised Sheet No. 43
Third Revised Sheet No. 44
Fourth Revised Sheet No. 49
Fifth Revised Sheet No. 50
Third Revised Sheet No. 51
Third Revised Sheet No. 56
Eighth Revised Sheet No. 74

*Original Volume No. 2*

Ninth Revised Sheet No. 86
First Revised Sheet No. 226
First Revised Sheet No. 240
First Revised Sheet No. 253

Mississippi states that pursuant to Commission order issued and as described in the Motion, revisions have been made to the rates and charges in the tariff sheets to reflect: (1) the cost of purchased gas and surcharge adjustments as contained in Mississippi's PGA effective March 1, 1987, filed with the Commission on January 30, 1987, as revised on March 10, 1987; (2) elimination of recovery over a five-year amortization period of approximately $9.7 million of nonrecoupable advance payments for gas, and (3) the appropriate federal income tax rate in effect on April 1, 1987.

Mississippi states that copies of the Motion, together with the revised tariff sheets and computations in support of the rate revisions, have been served on all jurisdictional customers, parties to this proceeding and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8183 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA87-2-28-003]**

## Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

April 7, 1987.

Take notice that on March 30, 1987 Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised sheets to its FERC Gas Tariff, Original Volume No. 1:

Substitute Fifty-Eighth Revised Sheet No. 3-A
Substitute Thirty-Fifth Revised Sheet No. 3-B

The effective date of these revised tariff sheets is March 1, 1987.

Panhandle states that these revised tariff sheets reflect (1) a separate deferred surcharge adjustment credit and carrying cost surcharge credit based on the December 1986 overcollection in

Panhandle's Account No. 191, to be amortized over twelve-months beginning March 1, 1987, and (2) a separate deferred surcharge adjustment and carrying cost surcharge based on the November 30, 1986 deferred Account No. 191 balance, to be amortized over the instant six-month PGA period.

Panhandle further states that this filing is without prejudice to Panhandle's request for rehearing and any subsequent review of the conditions contained in the February 27, 1987 Order.

Copies of this letter and enclosures are being served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with section 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 April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8193 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. CP87-263-000 and C171-714-002]**

## Panhandle Eastern Pipe Line Co. and Pan Eastern Exploration Co.; Petition for Declaratory Order

April 8, 1987.

On March 23, 1987, Panhandle Eastern Pipe Line Company (Panhandle) filed a petition for a declaratory order in Docket No. CP87-263-000. Panhandle's petition concerns Pan Eastern Exploration Company's (Pan Eastern) compliance with the terms of the Stipulation and Agreement (Agreement) and the Amended Stipulation and Agreement (Amended Agreement), approved by the Commission in Docket Nos. CP71-237-000 and C171-714-000 on December 22, 1976,[1] and on April 30, 1982, respectively,[2] the Final Status Report (Final Report) and the Special Supply Refund Adjustment Report (Special Report), both filed by Pan Eastern, and the interrelationship between the Agreement and the Amended Agreement and (1) Order No. 451 *et seq.*[3] and (2) Pan Eastern's application for limited term abandonment authority in Docket No. CI86-51-000 *et al.*

Panhandle states that the Agreement, and the Amended Agreement provided, in essence, that (1) Pan Eastern was authorized to sell its gas to Panhandle at the same rate an independent producer could, and Panhandle was authorized to recover from its customers the additional amount it paid to Pan Eastern; (2) Pan Eastern was obligated to invest a stipulated amount of money in lease acquisition, exploration, and development, including the difference between what Pan Eastern received for its gas and what Panhandle would have received had the gas remained subject to cost of service regulation; (3) Pan Eastern was obligated to commit the gas if found as a result of its efforts to Panhandle; and (4) Pan Eastern was obligated to sell to Panhandle certain vintages of gas it found as a result of its efforts, at a discount, until the amount of the accumulated discounts exceeded the difference between the revenues Pan Eastern received at the higher rate and the amount it would have received at cost-of-service rates. Under Article VIII of the Amended Agreement, anytime after December 31, 1986, when Pan Eastern had satisfied its investment obligation under the Amended Agreement, it could file a Final Report which would terminate the Amended Agreement. Pan Eastern filed the Final Report on February 2, 1987, and notice of the filing was issued on March 4, 1987. If the Commission accepts the Final Report, or if the Commission does not notify Pan Eastern of its failure to accept the report within four months from the filing of the Final Report, Pan Eastern is discharged from all its obligations under the Amended Agreement except its obligation to commit gas to Panhandle and to sell certain vintages of gas to Panhandle at a discount. Panhandle asserts that it does not dispute Pan Eastern's right to file the Final Report but notes that the Final Report is not based on actual data, but on certain estimates. Panhandle requests that Pan Eastern file actual data.

Under the Amended Agreement, Pan Eastern is obligated to sell certain vintages of its gas, called New Gas to Panhandle at a discount from the rates authorized for sales by independent producers (the Supply Refund Adjustment). Termination of the Amended Agreement does not terminate Pan Eastern's obligation to reduce the price of New Gas sold to Panhandle by the Supply Refund Adjustment until the cumulative discount equals the difference between the revenues Pan Eastern received and the revenues it would have received under cost-of-service rates. On February 2, 1987, Pan Eastern filed its Special Report in which it stated that it had satisfied the requirement in the Amended Agreement to sell New Gas at a discount. Notice of Pan Eastern's filing was issued on March 13, 1987.

Panhandle protests that Pan Eastern has not satisfied its discount obligation because it credited certain sums not authorized under the Amended Agreement. Panhandle requests that the Commission issue a declaratory order finding that Pan Eastern's suspension of the Supply Refund Adjustment violates the terms of the Amended Agreement. Panhandle also seeks a ruling on the effect of the Agreement and the Amended Agreement on the request of Pan Eastern for a certificate of limited term abandonment filed by Pan Eastern in Docket Nos. CI86-51-000 and CI87-340-000.

Finally, Panhandle notes that by letter dated March 18, 1987, Pan Eastern invoked the renegotiation procedures of Order No. 451. Panhandle states that the invocation of Order No. 451's procedures raises significant and novel questions for Panhandle and its customers with respect to gas covered by the Amended Agreement, including whether Pan Eastern's continuing obligation under the Amended Agreement to pay back the Supply Refund Adjustment and to commit its gas to Panhandle expires if Panhandle and Pan Eastern are unable to negotiate a new price.

Panhandle states that because the time available for conducting good faith negotiations under Order No. 451 is very short and because of Pan Eastern's pending application for limited-term abandonment authority, the Commission should issue a declaratory order resolving these questions expeditiously, at the same time resolving the related issues raised by Pan Eastern's Final and Special Reports. Panhandle requests the Commission to (1) shorten the response time to its petition, (2) delay acting on the Final Report until Pan Eastern has

[1] 56 FPC 3717.

[2] 19 FERC ¶ 62.235.

[3] Ceiling Prices: Old Gas Pricing Structure FERC Statutes & Regulations ¶ 30,701 (1986).

submitted the actual data for all of calendar year 1986, (3) issue expeditiously a declaratory order finding that Pan Eastern's suspension of the Supply Refund Adjustment violates the terms of the Amended Agreement, and (4) clarify the effect of Order No. 451 and any other abandonment by Pan Eastern of gas subject to the Agreement on the rights and obligations of Pan Eastern, Panhandle, and its customers under the Amended Agreement.

Any person desiring to be heard or to make any protests with reference to the petition should, on or April 23, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with Rules 214 or 211, respectively.[4] 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 Rule 214.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8184 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP87-53-000]**

## Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

April 7, 1987.

Take notice that Southern Natural Gas Company (Southern) on March 31, 1987, tendered for filing proposed changes to its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective May 1, 1987. The proposed tariff sheets reflect certain changes to the Purchased Gas Adjustment section of Southern's FERC Gas Tariff. The first such change is being made in accordance with Ordering Paragraph B(2) of the Commission's order dated March 31, 1987 in Docket Nos. TA87-2-7. The second change is being made in order to permit Southern to make interim adjustments to its projected cost of purchased gas between regular adjustment dates in order to track known and measurable changes in its cost of gas supply.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed won or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8194 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. CP86-277-005 et al.]**

## Southern Natural Gas Co. and South Georgia Natural Gas Co.; Petition To Amend

April 8, 1987.

Take notice that on March 23, 1987, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama 35202-2563, and South Georgia Natural Gas Company (South Georgia), P.O. Box 1279, Thomasville, Georgia 31792, collectively referred to as Applicants, filed in Docket No. CP86-277-005, *et al.*, a petition to amend orders issued pursuant to section 7(c) of the Natural Gas Act by authorizing Applicants to transport natural gas on an interruptible basis on behalf of various shippers for a term ending October 31, 1988, all as more fully set forth in the appendices hereto and in the petition to amend which is on file with the Commission and open to public inspection.

Applicants state that by order issued between June 13, 1986, and February 20, 1987, the Commission authorized Applicants to perform limited-term transportation services on behalf of the shippers set forth in Appendices A and B to this notice. Appendix A is a listing of the certificates covering interruptible transportation service for which Southern singularly is requesting an extension of term. Appendix B is a listing of the certificates covering interruptible transportation services for which Southern and South Georgia jointly request an extension of term. It is stated that with two exceptions each of the certificates authorized Southern or South Georgia to transport gas for a term expiring one year from the date of the order that authorized the service. The limited-term certificates would begin expiring on June 1, 1987, with the most recently issued certificates to expire on February 20, 1988.

Applicants state that they have received numerous requests, from the customers for whom they provide transportation services, to continue the transportaion services after the expiration of the existing certificate authoization. Applicants have decided to continue to make interruptible transportation services available on their pipeline systems for a limited term after October 31, 1987, the date to which they previously proposed to make transportation services available, and, in accordance therewith, Southern filed a revision to its statement of policy in Docket No. CP86-277, *et al.*, on February 17, 1987. In that revision of policy, Southern stated that it was willing to seek limited-term certificate authorization to transport gas for either a new shipper or an existing shipper through October 31, 1988. Applicants state that customers receiving transportation services under 51 dockets, representing 71 separate transportation agreements, have indicated that they wish to be part of this filing.

Appliants request that each of the limited-term certificates set forth in Appendices A and B to this notice be extended for a limited term ending October 31, 1988. Applicants do not propose any other change in the authorized services.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before April 29, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in according with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). and the Regulations under the Natural GAs Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**

*Secretary.*

[4] 18 CFR 385.214 or 385.211 (1986).

## Appendix A

DOCKETS TO BE EXTENDED (SOUTHERN ONLY)

| Docket No. | Transportation on behalf of | Volume | Certificate issued | Certificate expires |
|---|---|---|---|---|
| CP86-277 | Alabama Gas Corporation | 189,00 | 6-13-86, Extended 9-11-86 | 6-13-88 |
| CP86-308 | Alabama Gas Corporation as Agent for Various End-Users | 50,000 | 6-13-86, Extended 9-11-86 | 6-13-87 |
| CP86-318 | South Carolina Pipeline Corporation | 80,000 | 6-13-86, Extended 9-11-86 | 6-13-88 |
| CP86-358 | Union Camp Corporation | 20,000 | 6-13-86 Extended 9-11-86 | 6-13-87 |
| CP86-359 | United States Steel Corporation | 65,630 | 6-13-86 Extended 9-11-86 | 6-13-87 |
| CP86-365 | Alabama Gas Corporation as Agent for Harbison-Walker Refractories, Division of Dresser Industries, Inc. | 1,350 | 6-13-86, Extended 9-11-86 | 6-13-87 |
| CP86-392 | The Southeast Alabama Gas District | 37,000 | 6-13-86, Extended 9-11-86 Amended 2-10-87 | 6-13-87 |
| CP86-400 | Atlanta Gas Light Company As Agent for Engelhard Corporation | 20,000 | 6-13-86, Extended 9-11-86 | 6-13-87 |
| CP86-409 | Southeast Alabama Gas District as Agent for Harbison-Walker Refractories, Division of Dresser Industries, Inc. | 3,200 | 6-13-86, Extended 9-11-86 | 6-13-87 |
| CP86-433 | Atlanta Gas Light Company as Agent for Georgia Kaolin Company | 9,000 | 9-29-86 | 6-29-87 |
| CP86-439 | Columbia Nitrogen Corporation and Nipro, Inc | 76,000 | 7-18-86, Extended 9-11-86 | 7-18-87 |
| CP86-461 | Atlanta Gas Light Company as Agent for Packaging Corporation of America. | 2,000 | 6-20-86, Extended 9-11-86 | 6-20-87 |
| CP86-500 | Atlanta Gas Light Company as Agent for Chemical Products Corporation. | 1,700 | 7-18-86 Extended 9-11-86 | 7-18-87 |
| CP86-558 | Atlanta Gas Light Company as Agent for Calsilite Corporation | 2,500 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-559 | Atlanta Gas Light Company as Agent for Thomaston Mills, Inc | 3,500 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-560 | Atlanta Gas Light Company as Agent for Kemira Inc | 11,000 | 8-11-86 Extended 9-11-86 | 8-11-87 |
| CP86-561 | Kaichem International Corporation | 2,200 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-562 | Atlanta Gas Light Company as Agent for Armstrong World Industries, Inc. | 11,250 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-563 | Atlanta Gas Light Company as Agent for Cherokee Brick and Tile, Inc. | 3,000 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-564 | Atlanta Gas Light Company as Agent for Archer-Daniels-Midland Company. | 4,500 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-565 | Atlanta Gas Light Company as Agent for Katalistiks, a Subsidiary of Union Carbide. | 4,500 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-567 | Savannah Sugar Refinery a Division of Savannah Foods and Industries, Inc. | 8,000 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-568 | Atlanta Gas Light Company as Agent for Owens-Illinois, Inc | 7,000 | 8-11-86, Extended 9-11-86 | 8-11-87 |
| CP86-592 | Atlanta Gas Light Company as Agent for Genstar Gypsum Produts | 4,500 | 8-28-86, Extended 9-11-86 | 8-28-87 |
| CP86-594 | Atlanta Gas Light Company and City of Thomson, Georgia as Agents for Thiele Kaolin Company. | Atlanta—3,200, Thomson—2,700 | 8-28-86 Extended 9-11-86 | 8-28-87 |
| CP86-609 | United Cities Gas Company | 60,000 | 8-28-86, Extended 9-11-86 | 8-28-87 |
| CP86-611 | Chattanooga Gas Company | 50,000 | 8-28-86, Extended 9-11-86 | 8-28-87 |
| CP86-614 | Atlanta Gas Light Company as Agent for Florida Tile Division of Sikes Corporation. | 1,400 | 8-28-86, Extended 9-11-86 | 8-28-87 |
| | Atlanta Gas Light Company As Agent for Burlington Industries, Inc | 550 | | |
| | Alabama Gas Corporation as Agent for the Tape-Craft Corporation | 630 | | |
| CP86-644 | United Cites Gas Company | United Cities—2,000 | 12-29-86 | 12-29-87 |
| | Utilities Board of the City of Phenix City, Alabama | Phenix City—1,000 | | |
| | The Utilities Board of the City of Union Springs, Alabama | Union Springs—100 | | |
| | Southeast Alabama Gas District As Agents for Columbus Mills, Inc | Southeast Alabama—600 | | |
| CP86-654 | Atlanta Gas Light Company as Agent for Southwire Company | 4,000 | 11-26-86 | 11-26-87 |
| CP86-672 | Bunge Corporation-Soy-bean Processing Division | 1,425 | 2-20-87 | 2-20-88 |
| CP86-686 | Alabama Gas Corporation as Agent for Various End-Users | 90,000 | 12-22-86 | 12-22-87 |
| CP87-52 | Jim Walters Metals, a Division of the Georgia Marble Company, A Wholly Owned Subsidiary of Jim Walter Corporation. | 1,200 | 2-20-87 | 2-20-88 |
| | Masonite Corporation | 1,500 | | |
| CP87-62 | Southeast Gas Acquisition and Supply Association, Inc.: | | | |
| | As Agent for The Water Works and Gas Board of the Town of Ashville, Alabama. | Ashville—3,000 | 2-20-87 | 2-20-88 |
| | The Gas Board of the City of Boaz, Alabama | Boaz—2,200 | | |
| | The Water Works and Gas Board of the City of Fultondale, Alabama. | Fultondale— | | |
| | Utilities Board of the City of Trussville, Alabama | Trussville—15,000 | | |
| | Gulf States Paper Corporation | 9,000 | 2-20-87 | 2-20-88 |
| | Mt. Vernon Mille, Inc | 1,000 | | |
| CP87-64 | Marshall County Gas District | 30,000 | 1-21-87 | 1-21-88 |
| CP87-72 | City of Wrens, Georgia | 5,000 | 2-20-87 | 2-20-88 |
| CP87-73 | City of Thomson Natural Gas System | 4,500 | 2-20-87 | 2-20-88 |
| CP87-79 | Town of Calera, Alabama as Agent for Abex Corporation | 2,000 | 2-20-87 | 2-20-88 |
| CP87-80 | City of Sylvania, Georgia | 3,000 | 2-20-87 | 2-20-88 |
| | City of Statesboro, Georgia | 4,000 | | |
| CP87-96 | Atlanta Gas Light Company as Agent for Georgia Kaolin Company | 10,000 | 2-20-87 | 2-20-88 |
| CP87-97 | Cullman-Jefferson Counties Gas District | 10,000 | 2-20-87 | 2-20-88 |
| CP87-98 | Utilities Commission, City of Fort Valley, Georgia | 5,000 | 2-20-87 | 2-20-88 |

## Appendix B

DOCKETS TO BE EXTENDED (SOUTHERN AND SOUTH GEORGIA)

| Docket No. | Transportation on behalf of | Volume | Certificate issued | Certificate expires |
|---|---|---|---|---|
| CP86-366 | Floridin Company | 5,000 | 6-13-86, Extended 9-11-86 | 6-13-87 |
| CP86-382 | City of Andersonville as Agent Mutlite Company of America | 3,000 | 6-13-86, Extended 9-11-86 | 6-13-87 |
| CP86-401 | Engelhard Corporation | 6,000 | 6-13-86, Extended 9-11-86 | 6-13-87 |
| CP86-595 | Water, Gas and Light Commission of Albany | 15,000 | 8-28-86, Extended 9-11-86 | 8-28-87 |

DOCKETS TO BE EXTENDED (SOUTHERN AND SOUTH GEORGIA)—Continued

| Docket No. | Transportation on behalf of | Volume | Certificate issued | Certificate expires |
|---|---|---|---|---|
| CP86-610 | Occidental Chemical Corporation | 16,300 | 8-28-86, Extended 9-11-86 | 8-28-87 |
| CP87-99 | Procter & Gamble Paper Products Company | 10,000 | 2-20-87 | 2-20-88 |
| CP87-100 | City of Moultrie, Georgia, as Agent for Various End-Users | 2,200 | 2-20-87 | 2-20-88 |
| CP87-101 | City of Thomasville Water and Light Department | 3,000 | 2-20-87 | 2-20-88 |

[FR Doc. 87-8186 Filed 4-10-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CI87-396-000]

## Tejas Power Corp.; Application for Blanket Certificate of Public Convenience and Necessity and for Abandonment and Pre-Granted Abandonment Authorization

April 8, 1987.

Please take notice that on March 26, 1987, Tejas Power Corporation ("Tejas"), pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717–717(z) ("NGA"), and § 2.77 and Parts 157 and 385 of the regulations of the Federal Energy Regulatory Commission ("Commission") filed an application for a blanket certificate of public convenience and necessity: (i) Authorizing, for the periods more fully specified therein, sales for resale of all Natural Gas Policy Act categories of gas (subject to the Commission's NGA jurisdiction) by Tejas and the producer/suppliers with whom Tejas contracts, and/or acts as agent, for the purchase of gas, and (ii) granting partial abandonment and pregranted abandonment of certain sales for resale as described more fully in Tejas' Application.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 23, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any 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. 87-8185 Filed 4-10-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP87-7-007]

## Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

April 7, 1987.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on April 1, 1987, tendered for filing certain revised tariff sheets to Second Revised Volume No. 1 and Original Volume No. 2 of its FERC Gas Tariff. The purpose of the instant filing is to adjust the rates filed on October 6, 1986: (1) To comply with Ordering Paragraph (F)(1) of the Commission's order of November 5, 1986 in this proceeding by eliminating the costs associated with facilities not in service as of February 28, 1987; (2) to reflect intervening tracking filings subsequent to the original filing in this docket; (3) to reflect elimination of costs associated with buyouts of take-or-pay obligations and buydowns of contract provisions, subject to reinstatement and other disposition; and (4) to comply with Ordering Paragraph (A)(1) of the Commission's Order of November 5, 1986 by reflecting the implementation of a modified fixed-variable rate design with D-1 and D-2 components. The proposed effective date of this rate change is April 1, 1987, the conclusion of the suspension period in this case.

Transco further states that in accordance with section 154.16 of the Commission's regulations, copies of this filing were mailed to all parties to this proceeding and to all persons upon whom the original filing herein were made.

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. All such motions or protests should be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8195 Filed 4-10-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP87-15-008]

## Trunkline Gas Co.; Compliance Filing

April 7, 1987.

Take notice that Trunkline Gas Company (Trunkline) on March 31, 1987, tendered for filing revised tariff sheets to its FERC Gas Tariff, Original Volume Nos. 1 and 2 , to be effective May 1, 1987.

These revised tariff sheets are being filed in compliance with the Commission's Order date November 28, 1986 in Docket No. RP87-15-000. the Commission's Order of November 28, 1986 accepted Trunkline's proposed revised tariff sheets as filed on October 31, 1986 subject to certain conditions. Trunkline states that the revised tariff sheets identified on Appendix Nos. (1) and (2) are in compliance with those conditions. Trunkline has also revised its rates included in these revised tariff sheets to reflect the current GRI Funding Unit Adjustment effective January 1, 1987 as approved in Docket No. TA87-1-30-000, 001 and the current cost of purchased gas to be effective March 1, 1987 as approved in Docket No. TF87-1-30-000.

Trunkline states that the filing of these revised tariff sheets which satisfy the requirements of the Commission's Order dated November 28, 1986 in this proceeding is without prejudice to Trunkline's position and its still unresolved Petition for Rehering and ultimate review with respect to the November 28, 1986 Order. Trunkline also reserves the right to supersede these tariff sheets in accordance with the

Natural Gas Act and the Commission's Regulations.

Copies of this filing are being served on Trunkline's jurisdictional customers, interested state commissions and all parties to this proceeding.

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 Shreet, NE., Washington, DC., 20426, in accordance with § 385.214 and 385.211 of this chapter. All such motions or protests should be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8189 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. RP87-52-000]**

## United Gas Pipe Line Co.; Proposed Changes in FERC Gas Tariff

April 7, 1987.

Take notice that on March 31, 1987, United Gas Pipe Line Company (United) tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1.

United States that this filing provides for a level of rates and charges required to recover its increased operating costs. The proposed new rates, when compared to the currently effective rates at Docket No. RP85-209, will result in an annual jurisdictional revenue increase of approximately $32.7 million.

In addition, modified fixed-variable (MFV) principles of cost classification, allocation and rate design have been applied to all jurisdictional customers.

Also included are proposed tariff sheets to incorporate nomination provisions applicable to Monthly Entitlement Quantities and an Authorized Overrun Service (AOS) to provide best efforts sales above a customer's monthly entitlements or contract demand quantity. Tariff language is also proposed to be added to section 19 of the General Terms and Conditions of United's FERC Gas Tariff to provide For a credit to Account No. 191 for fuel costs recovered from transportation customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8196 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA87-2-50-000, 001]**

## Valley Gas Transmission, Inc.; Change in Rates Pursuant to Purchased Gas Adjustment

April 7, 1987.

Take notice that on March 31, 1987, Valley Gas Transmission, Inc. ("Valley") tendered for filing and acceptance the following tariff sheets as part of its FERC Gas Tariff:

Thirty-Fifth Revised Sheet No. 2A to Original Volume No. 1

Eighth Revised Sheet No. 10 to Original Volume No. 2

Valley states that these tariff sheets, which are proposed to become effective on May 1, 1987 are being filed pursuant to the purchased gas cost adjustment provisions of its tariff. Valley further states that these proposed changes reflect adjustments to its current surcharge adjustment and current gas cost adjustment, and that its filing has been served on all jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before April 14, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Lois D. Cashell,**

*Acting Secretary.*

[FR Doc. 87-8187 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket No. TA87-1-52-002]**

## Western Gas Interstate Co.; Petition of Western Gas Interstate Company for Waiver of Regulations

April 8, 1987.

Take notice that on March 20, 1987, Western Gas Interstate Company (Western) filed a petition for waiver of the refund provisions of § 282.506 of the Federal Energy Regulatory Commission's (Commission) regulations. Western states that it is seeking authorization to pass refunds received by Western from Colorado Interstate Gas Company (CIG) through its Account No. 191, as filed on December 29, 1987 in this proceeding.

In compliance with the Commission order issued on January 29, 1987 in this proceeding, Western researched its Account No. 191 treatment of CIG's refunds and discovered that the CIG refunds were in fact attributable to service provided to non-exempt industrial boiler fuel facilities prior to January 1, 1980. Accordingly, the amounts received by Western from CIG should be refunded in a lump sum to Southern Union Gas Company. However, Western states that to comply with the lump sum refund requirements, it would be forced to recalculate its most recently filed PGA rates under Rate Schedule G-N and make a revised PGA filing with the Commission. Western submits that the administrative and expense burdens of recalculating rates and preparing a new filing would be disproportionately high with the benefit that its customer might receive from refunding on a lump sum basis. Also, as discussed more fully in its filing, Western submits that requiring a lump sum refund would have a destabilizing effect on its rates.

Western has served copies of this filing on the Gas Company of New Mexico, Southern Union Gas Company, New Mexico Public Service Commission, Corporation Commission of Oklahoma, and the Railroad Commission of Texas.

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. All such motions or protests should be filed on or before April 15, 1987. 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. 87-8188 Filed 4-10-87; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-3184-8]

### California State Motor Vehicle Pollution Control Standards; Opportunity for Public Hearing

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

**ACTION:** Notice of an Opportunity for Public Hearing.

**SUMMARY:** The California Air Resources Board (CARB) has notified EPA that it has amended its exhaust emission standards and enforcement procedures for heavy-duty gasoline and diesel-powered engines and vehicles. California has requested EPA to grant a waiver of Federal preemption for these amendments pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b). This notice announces that EPA has tentatively scheduled a public hearing for May 13, 1987 to consider CARB's request and to hear comments from interested parties regarding CARB's amendments. Any party desiring to present oral testimony for the record at the public hearing, instead of, or in addition to, written comments, must notify EPA by May 4, 1987. If no party informs EPA that it wishes to testify on these "heavy-duty" regulations, no hearing will be held and EPA will consider CARB's request based on written submissions to the record.

**DATES:** EPA will hold a public hearing on May 13, 1987 beginning at 9:00 a.m., if any party notifies EPA by May 4, 1987 that it wishes to present oral testimony regarding CARB's requests. Any party may submit written comments regarding CARB's requests by June 12, 1987.

**ADDRESSES:** EPA will hold the public hearing announced in this notice at: U.S. Environmental Protection Agency, Regional Office (Region IX), ——— Room, 215 Fremont Street, San Francisco, California. Parties wishing to present oral testimony at the public hearing should notify in writing: Charles N. Freed, Director, Manufacturers Operations Division (EN-340-F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Any party may also submit written comments regarding the waiver request to the same address to the attention of the Docket EN-86-18. Copies of material relevant to the waiver request (Docket EN-86-18) will be available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m., Monday through Friday) at the U.S. Environmental Protection Agency, Central Docket Section (A-130), Gallery I, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Alice M. Crowe, Attorney, Manufacturers Operations Division (EN-340-F) U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2514.

**SUPPLEMENTARY INFORMATION:**

#### I. Background and Discussion

Section 209(a) of the Act, as amended, 42 U.S.C. 7543(a), provides in part: "No state or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part . . . [or] require certification, inspection, or any other approval relating to the control of emissions as condition precedent . . . to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment."

Section 209(b) of the Act requires the Administrator, after notice and opportunity for public hearing, to waive application of the prohibitions of section 209(a) for California "if the State determines that [its] . . . standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards . . . [unless] the Administrator finds that—(A) The determination of the State is arbitrary and capricious, (B), [California] does not need such . . . standards to meet compelling and extraordinary conditions, or (C) [its] standards and accompanying enforcement procedures are not consistent with section 202(a) of [the Act]."

Once California has received a waiver of the application of the prohibitions of section 209(a) for its standards and enforcement procedures for a class of vehicles, it may adopt other conditions precedent to initial retail sale, titling or registration of the subject class vehicles without the necessity of receiving a further waiver of Federal preemption. If California acts to amend previously waived emission standards or accompanying enforcement procedures, the change may be considered to be within the scope of the previous waiver if it does not undermine California's determination that its standards, in the aggregate, are as protective of public health and welfare as comparable Federal standards, does not affect the consistency of California's requirements with respect to section 202(a) of the Act, and raises no new issues affecting EPA's previous waiver determinations.

By two letters both dated September 19, 1986, CARB submitted to EPA requests for waivers of Federal preemption for amendments to its emission standards and test procedures for heavy-duty gasoline and diesel-powered engines and vehicles. These amendments more closely align California's heavy-duty certification requirements with the corresponding Federal requirements. For 1987 and later model year heavy-duty gasoline-powered engines and vehicles the amendments:

1. Incorporate the Federal emission standards for hydrocarbon (HC), carbon monoxide (CO), and nitrogen oxide (NOx) but do not permit NOx averaging;
2. Incorporate the current Federal transient cycle test procedures;
3. Extend the useful-life period for emissions compliance, engine durability and recall to the Federal full-life distance of 110,000 miles;
4. Incorporate the Federal idle CO emissions limit and idle test procedures for heavy-duty gasoline-powered engines using exhaust aftertreatment;
5. Eliminate the use of the steady-state emission standards and test procedures at the conclusion of the 1986 model year, with a limited carryover provision;
6. Eliminate California's optional transient cycle test procedures adopted in 1981.

For 1988 and later model year diesel-powered engine and vehicles the amendments:

1. Incorporate the Federal emissions standards for particulate matter (PM) and NOx;
2. Incorporate in significant part the Federal transient cycle test procedures;
3. Establish a .10g/bhp-hr PM standard for urban buses for 1991-1993 model years;
4. Provide, as an option, averaging for PM for 1991-1995 model years, excluding urban buses;

5. Incorporate Federal smoke opacity and test procedures.

California states in its September 19, 1986 letters that it has determined that its standards are, in the aggregate, at least as protective of the public health and welfare as the applicable Federal standards and that this determination is not arbitrary or capricious since these amended standards are basically identical to the Federal standards. Further, California states that it continues to need its standards to meet compelling and extraordinary conditions. Finally, California states that these amendments are consistent with section 202(a) of the Act since they are basically identical to the Federal standards.

California's request will be considered according to the requirements for a full waiver determination, and therefore an opportunity for a hearing is being provided to consider comments from interested parties. Any party wishing to present testimony at the hearing should address the following issues:

(1) Whether or not California's determination that the amended standards are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious;

(2) Whether or not California needs its standards to meet compelling and extraordinary conditions; and

(3) Whether or not California standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

### II. Procedures for Public Participation

If the scheduled hearing takes place, it will provide an opportunity for interested parties to state orally their views or arguments or to provide pertinent information concerning the amendments at issue. Any party desiring to make an oral statement should file 10 copies of its proposed testimony and other relevant material along with its request for a hearing with the Director of EPA's Manufacturers Operations Division at the address listed above not later than May 13, 1987. In addition, the party should submit 25 copies, if feasible, of the proposed statement to the Presiding Officer at the time of the hearing.

Since a public hearing is designed to give interested persons an opportunity to participate in this proceeding, their are no adversary parties as such. Statements by participants will not be subject to cross examination by other participants without special approval by the Presiding Officer. The Presiding Officer is authorized to strike from the record statements which he or she deems irrelevant or repetitious and to impose reasonable limits on the duration of the statements of any witness.

If EPA does hold the hearing, the Agency will make a verbatim record of the proceedings. Interested persons may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. I will base my determination with regard to CARB's request on the record of the public hearing, if any, and on any other relevant written submissions and consider other pertinent information. This information will be available for public inspection at the EPA Central Docket Section.

Dated: April 2, 1987.

**Don R. Clay,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 87-8128 Filed 4-10-87; 8:45 am]

BILLING CODE 6560-50-M

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[OPP-180730; FRL-3185-6]

## Receipt of Applications for Emergency Exemptions From Oregon To Use Dinoseb; Solicitation of Public Comment

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

**ACTION:** Notice of receipt.

**SUMMARY:** EPA has received specific exemption requests of February 13 and March 23, 1987, from the Oregon Department of Agriculture (hereafter referred to as "Oregon") to use dinoseb (CAS 88-85-7) on dry peas, chickpeas, and lentils to control broadleaf weeds. EPA, in accordance with 40 CFR 166.24, is required to issue a notice of receipt and, time permitting, to solicit public comment before making the decision whether to grant the exemptions.

**DATE:** Comments must be received on or before April 20, 1987.

**ADDRESS:** Three copies of written comments, bearing the identification notation "OPP-180730 should be submitted by mail to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to:

Rm. 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 236, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

**FOR FURTHER INFORMATION CONTACT:** By mail: Donald R. Stubbs, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 716, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7700).

**SUPPLEMENTARY INFORMATION:**

### I. Background

Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State or Federal agency from any provision of FIFRA if he determines that emergency conditions exist which require such exemption. The applicable EPA regulations for emergency exemptions are set forth at 40 CFR Part 166.

The Department of Agriculture for the state or Oregon, in letters dated February 13, and March 23, 1987, has requested the Administrator to issue specific exemptions for the use of dinoseb to control broadleaf weeds in on dry peas, chickpeas, and lentils in Morrow, Umatilla, and Union counties.

On October 7, 1986, EPA suspended all registrations of dinoseb products (51 FR 36634, October 14, 1986). The basis for the suspension of all dinoseb registrations was significant risk of developmental toxicity and other adverse health effects to applicators and other populations exposed to dinoseb.

Subsequently four registrants submitted requests for an expedited suspension hearing on the question of whether or not sale, distribution, or use of dinoseb would pose an imminent hazard during the time required to conduct a cancellation hearing. These registrants withdrew their expedited hearing requests on the question of imminent hazard on October 30, 1986, resulting in the immediate entry,

pursuant to the terms of the Agency's October 7 decision, of a final order suspending the registrations of their dinoseb products during the pendency of the cancellation hearing. The Applicant's specific exemption requests are therefore subject to EPA's Subpart D regulations, 40 CFR 164.130 to 164.133, in addition to the regulations at 40 CFR Part 166 governing the issuance of exemptions under section 18. Subpart D provides that any application for a registration of a pesticide use that has been suspended or cancelled shall be considered a petition for reconsideration of the prior suspension or cancellation order. The Administrator will determined that reconsideration is warranted if among other things he finds that the Applicant has presented substantial new evidence which may materially affect the prior suspension or cancellation order (40 CFR 164.131(c)). If the Administrator finds that the substantial new evidence test in 40 CFR 164.131 is met, the Subpart D rules require a formal hearing to determine whether a modification of the suspension or cancellation order is justified (40 CFR 164.131(c)).

Should the Administrator decide to lift the suspension of certain dinoseb registrations, the Agency would then determine whether and under what terms and conditions dinoseb products might be used in accordance with the terms of the Administrator's order and 40 CFR Part 166.

On April 3, 1987, the Administrator signed a Notice under Subpart D to reconsider the prior suspension decision concerning dinoseb products as that decision applies to dry peas, lentils, and chickpeas in the state of Oregon.

### II. Emergency Condition

Oregon states that there is no federally registered preemergent herbicide suitable for broadleaf weed control on lentils and made the following additional assertions. Metribuzin is registered for pre-emergency application for suppression of certain broadleaf weed; however, according to Oregon, a serious gap in weed control exists, since metribuzin does not control the entire broadleaf spectrum found in the lentil growing region of northeastern Oregon and certain weed species can escape control to compete with pea, lentil and chickpea seedlings. Difficult to control broadleaf weeds include tarweed, mayweed, pigweed and lambsquarter. Additionally, metribuzin is registered at low application rates in order to prevent crop injury and cannot be used on light soils, clay knobs, or shallow seeding conditions. Flucloralin (Basalin), MPCA, and trifluralin (Treflan) are registered alternatives for some uses. According to Oregon, Balalin does not control problem broadleaf weeds which occur in lentils and generally must be applied in combination with other herbicides for broadleaf weed control on peas. Trifluralin is primarily effective against grass species and requires incorporation. MCPA is only approved for use on peas and must be applied after peas are four to six inches tall, after problem broadleaf weeds have had an opportunity to germinate and compete with new seedlings.

According to Oregon, a particularly difficult to control weed species in peas is nightshade for which dinoseb has provided effective early season control in past years. There are no alternative means of control of broadleaf weeds on these crops during early season seedling germination. Since peas, chickpeas and lentils are direct-seeded crops, cultivation practices cannot provide effective weed control during germination and early seedling growth stages.

Oregon estimates a 25 to 30 percent yield loss in dry peas, a 35 to 40 percent yield loss in lentils and a 50 percent yield loss in chickpeas if dinoseb is not available to control broadleaf weeds.

Oregon indicates that resulting losses are estimated to be approximately $2.05 million per year to growers of dry peas, lentils and chickpeas. By crop, losses are estimated to be $1.92 million to dry peas growers, $7,920 to lentil growers, and $127,680 to chickpea growers.

### III. Proposed Use

Oregon has requested the use dinoseb on dry peas, lentils, and chickpeas from March 25 to June 15, 1987, in the counties of Morrow, Umatilla and Union. The proposed specific exemption programs involve a single, pre-emergency or early crop emergence application of dinoseb at 3 pounds active ingredient per acre in 20 to 30 gallons of water with ground equipment and 5 to 10 gallons of water with aerial equipment for broadleaf weed control. Registered dinoseb product containing three pounds of dinoseb amine per gallon as the active ingredient would be used. A total of 40,800 pounds active ingredient to treat 100 acres of lentils, 12,000 acres to peas and 1,500 acres of chickpeas has been requested. Other conditions of use include: (1) All applications would be made by licensed commerical applicators or certified private applicators using their own equipment; (2) closed mixing systems would be required and enclosed cabs for all application equipment; (3) applicators would be required to wear protective clothing while mixing, loading, applying dinoseb or repairing application equipment; women of child bearing age will be prohibited from performing these activities; (4) field flagging during aerial application would be prohibited; and (5) hand-held spray applications would be prohibited.

### IV. Notification and Comment

This notice does not constitute a decision by the Agency on the applications submitted. The Agency's final decision on the specific exemption request from Orgeon will be based on whether or not there is sufficient new information to open Subpart D hearings and, if so, the outcome of the Subpart D hearings and compliance with the regulations governing section 18.

The regulations governing section 18 require publication of a notice in the **Federal Register** of receipt of an application that proposes any emergency use of a pesticide if such pesticide was the subject of a suspension notice under section 6(c) of FIFRA. The regulations also provide for the opportunity for public comment on the applications (40 CFR 166.24).

An expedited comment period of 5 days is provided to facilitate decision making on the specific exemption requests in the event the Administrator were to lift the suspension of certain dinoseb registrations (40 CFR 164.24(c)).

Accordingly, interested persons may submit written views on the applications for emergency exemption to the Program Management and Support Division at the address given above:

The Agency will review and consider all comments received during the comment period.

Dated: April 8, 1987.

**Edwin F. Tinsworth,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 87-8244 Filed 4-10-87; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirements Submitted for Review

April 6, 1987.

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 further 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: 3060–0243
Title: Section 74.551, Equipment Changes
Action: Extension
Respondents: Licensees of aural broadcast studio transmitter links (STL) or intercity relay stations
Frequency of Response: On occasion
Estimated Annual Burden: 20 Responses; 20 Hours
Needs and Uses: Section 74.551 requires that licensees of aural broadcast studio transmitter links (STL) or intercity relay stations notify the Commission in writing of minor equipment changes upon completion of such changes. The data is used by FCC staff to assure that the changes made comply with the rules and regulations.

OMB Number: 3060–0320
Title: Section 73.1400, Remote Control Authorization
Action: Extension
Respondents: Licensees of AM and FM broadcast stations
Frequency of Response: On occasion
Estimated Annual Burden: 115 Responses; 69 Hours
Needs and Uses: Section 73.1400 requires that licensees of AM and FM broadcast stations operating by remote control points at places other than the main studio or transmitter site locations to send a written notification containing the remote location to the FCC within 3 days after commencing remote control operation from such points. The data is used by FCC staff to maintain complete technical information regarding licensees and to assure that the remote control location will not cause interference to another station.

William J. Tricarico,
*Secretary, Federal Communications Commission.*

[FR Doc. 87–8172 Filed 4–10–87; 8:45 am]
BILLING CODE 6712-01-M

[Report No. 1651]

## Petitions for Reconsideration, Clarification and Stay of Actions in Rulemaking Proceeding

April 3, 1987.

Petitions for reconsideration, clarification and stay have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C., or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed [April 28, 1987.] See § 1.4(b)(1) of the Commission's rules (37 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Sedona, Arizona) (MM Docket No. 86–102, RM–5124) Number of petitions received: 2
Subject: Amendment of the Amateur Radio Service Rules to Expand the Privileges Available to Novice Operators. (PR Docket No. 86–161, RM's 5022, 5023, 5024, 5025, 5038, 5251, 5281 & 5282) Number of petitions received: 4
Subject: Amendment of of the Amateur Radio Service Rules to Permit Emission F8E on Frequency Band 0.35 Meters and above (1240 MHz and above). (PR Docket No. 86–207, RM–5208) Number of petitions received: 1
Subject: Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985. (Gen Docket No. 86–285) Number of petitions received: 2.

William J. Tricarico,
*Secretary, Federal Communications Commission.*

[FR Doc. 87–8173 Filed 4–10–87; 8:45 am]
BILLING CODE 6712-01-M

[CC Docket No. 87–78]

## Applications for hearing; Christina Communications et al.

**AGENCY:** Federal Communications Commission (FCC).

**ACTION:** Order designating applications for hearing.

**SUMMARY:** This order designates non-wireline cellular radio applications in five markets for hearing pursuant to section 309(e) of the Communications Act of 1934, as amended (47 U.S.C. 309(e)). In San Juan, Puerto Rico, it is the application of Christina Communications and San Juan Cellular Settlement Partnership (File No. 30887–CL–P–091–A–84). In Little Rock, Arkansas, it is the application of Haines Partnership and Little Rock Cellular Settlement Partnership (File No. 34375–CL–P–092–A–84). In York, Pennsylvania, it is the application of Dupont Highway Partnership and York Cellular Settlement Partnership (File No. 33605–CL–P–099–A–84). In Jackson, Mississippi, it is the application of the Mounger Partnership No. 3 and Jackson Cellular Settlement Partnership (File No. 31435–CL–P–106–84). In Reading, Pennsylvania, it is the application of Wilton Partnership and Reading Cellular Settlement Partnership (File No. 34688–CL–P–118–A–84). The Commission finds that a hearing is necessary to determine whether the applicants are the real parties in interest behind their applications whether they or their settlement partnerships misrepresented material facts to the Commission regarding real party in interest and whether the applicants are financially qualified.

**DATES:** Within 20 days of the release date of this order, applicants must file a written notice of their intention to appear on the day of the hearing and to present evidence on the specified issues.

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

**FOR FURTHER INFORMATION CONTACT:** Gerald Zuckerman (202) 653–5560.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Common Carrier Bureau's designation order, pursuant to delegated authority; adopted March 23, 1987, and released April 3, 1987.

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 NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC. 20037.

Albert Halprin,
*Chief, Common Carrier Bureau.*

[FR Doc. 87–8171 Filed 4–10–87; 8:45 am]
BILLING CODE 6712-01-M

[PRB-3]

## Privatization of Special Call Sign System for Amateur Stations

**AGENCY:** Federal Communications Commission.

**ACTION:** Public notice; Extension of comment/reply comment period.

**SUMMARY:** The American Radio Relay League, Inc. (ARRL) has requested that the time for filing comments in this proceeding regarding privatization of special call sign system for amateur stations be extended. ARRL has shown good cause why such extension of time would be in the public interest.

**DATES:** Comments and proposals must be filed by July 31, 1987 and replies by August 31, 1987.

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

**FOR FURTHER INFORMATION CONTACT:** Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554.

**SUPPLEMENTARY INFORMATION:**

In the matter of privatization of special call sign system for amateur stations.

### Order

Adopted: March 31, 1987.
Released: April 7, 1987.
By the Chief, Private Radio Bureau.

1. On February 3, 1987, the FCC issued a Public Notice in this proceeding concerning a special call sign system for amateur stations. Comments and proposals were due on or before April 23, 1987, with reply comments due on or before May 22, 1987. The American Radio Relay League, Inc. (ARRL) has requested that the time for filing comments and proposals be extended to and including July 31, 1987.

2. In support of its request, ARRL notes that an incomplete text of the Public Notice was published in the **Federal Register** on February 12, 1987 (52 FR 4530).[1] Further, ARRL states that it would not be able to obtain the approval of its Board of Directors before the deadline for any proposal it may submit to be a special call sign coordinator, since the Board will not meet until July.

3. ARRL further states that there should be a full understanding by the amateur community of all the ramifications of a call sign system administered by the private sector. We believe that the input of the ARRL will be useful and will further that goal.

4. In view of the foregoing, and pursuant to the authority contained in Section 0.331 of the FCC Rules, the request of the ARRL for extension of time is granted. Comments or proposals concerning PRB-3 must be filed on or befoe July 31, 1987. Reply comments are due on or before August 31, 1987.

Federal Communications Commission.

**Michael T. N. Fitch,**

*Chief, Private Radio Bureau.*

[FR Doc. 87-8169 Filed 4-10-87; 8:45 am]

BILLING CODE 6712-01-M

[1] The complete text of the Public Notice in PRB-3 will be published in a subsequent edition of the **Federal Register.**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Type:* Extension of 3067-0034.

*Title:* Application for Community Disaster Loan.

*Abstract:* The Community Disaster Loan Program aspect of the Disaster Relief Act of 1974, Public Law 93-288, offers loans to disaster affected local governments with the possibility that all or part of the loan could be cancelled. Basic Authorities are contained in section 414, PL 93-288 and Federal Regulations 44 CFR 205 subpart F.

*Type of Respondents:* State or local governments.

*Number of Respondents:* 5.

*Burden Hours:* 30.

*Frequency of Recordkeeping or Reporting:* On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C. Street, SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: April 6, 1987.

**Wesley C. Moore,**

*Director, Office of Administrative Support.*

[FR Doc. 87-8119 Filed 4-10-87; 8:45 am]

BILLING CODE 6718-01-M

## FEDERAL RESERVE SYSTEM

### Peoples Ltd. et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. section 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. section 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their veiws in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 6, 1987.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Peoples Ltd.*, Wyalusing, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank of Wyalusing, Wyalusing, Pennsylvania.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Buffalo Bancshares, Inc.*, Kansas City, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of O'Bannon Banking Co., Buffalo, Missouri. Comments on this application must be received by May 3, 1987.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Morrill Co.*, Morrill, Nebraska; to become a bank holding company by acquiring 94 percent of the voting shares of First National Bank in Morrill, Morrill, Nebraska.

Board of Governors of the Federal Reserve System, April 7, 1987.

James McAfee,

*Associate Secretary of the Board.*

[FR Doc. 87-8144 Filed 4-10-87; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 87N-0056]

### Development of Model Food Protection Unicode

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing a project to update the existing model retail food codes and to combine them into a new model Food Protection Unicode. This project is being initiated in cooperation with several national organizations concerned with retail food protection. The Food Protection Unicode will bring together in one document the similar food protection and sanitation provisions now contained in separate model codes.

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

**FOR FURTHER INFORMATION CONTACT:** Arthur L. Banks, Center for Food Safety and Applied Nutrition (HFF-342), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0140.

**SUPPLEMENTARY INFORMATION:** For over 60 years there have been efforts to develop model food codes. In 1934, the Public Health Service (PHS) began developing an ordinance relating to sanitary control in food-service establishments. At that time, in cooperation with the Conference of State and Territorial Health Officials and the National Restaurant Code Authority, PHS drafted suggested minimum food-sanitation standards. At the request of many State and local health authorities, the proposed standards prepared by PHS became the basis for a model ordinance published in tentative form in 1935. It was expanded in 1938 and revised in 1943 and again in 1962, with the publication of the model "Food Service Sanitation Ordinance and Code, 1962 Recommendations of the Public Health Service."

In 1968, FDA assumed responsibility for the retail food protection program and for the development of model codes. FDA updated the "Food Service Sanitation Ordinance" in 1976. In 1978, FDA published an updated model code on "The Vending of Food and Beverages." Finally, in 1982, FDA and the Association of Food and Drug Officials (AFDO) jointly published a model "Retail Food Store Sanitation Code." This latter code culminated an 8-year cooperative effort by FDA and AFDO.

Thirty-seven States and 160 local jurisdictions have adopted the 1976 edition of the model food-service code. Many other State and local jurisdictions have adopted earlier editions. About half of the States and some local jurisdictions have adopted the provisions of the model food vending code. Twelve States and eight local jurisdictions are reported to have adopted the model retail food store code.

FDA's consultation with State program officials and its evaluations of the effectiveness of State programs have revealed significant problems with the codes that States have adopted in response to the model codes. Among the problems that the agency has found are:

1. Inconsistencies among these codes in sanitation requirements such as those involving customer self service of potentially hazardous foods, warewashing facilities, and the cooking of roast beef;

2. Inconsistencies among these codes in plan review provisions and grandfather clauses; these inconsistencies discourage reciprocity among jurisdictions in accepting plans, structures, and operations;

3. Duplicative administrative efforts at the State and local levels to hold hearings on, and publish, adopt, and update, three or more similar but separate codes to cover the retail food industry;

4. Use of a format that does not facilitate easy updating;

5. Inadequate inspection forms and scoring systems; and

6. A failure to reflect that many retail food establishments now perform one or more food processing or service functions within the same establishment.

As a result of these and related concerns, many food protection officials have recognized the need to update and unify model code requirements. In addition, the development of such a unified code, or "unicode," would offer an opportunity to:

1. Involve State and local regulatory officials and the industry in the code development process, thereby fostering commitment to the process and to the end product;

2. Work toward elimination of duplication and conflicts in the codes of States in which the food store and food-service responsibilities belong to separate agencies by encouraging these agencies to work together on joint adoption of the unicode and interpretations;

3. Develop new and improved code language and provisions that can be applied to existing codes irrespective of whether the unicode is adopted by a particular jurisdiction; and

4. Provide for participation by FDA, State, and local regulatory officials, as well as by industry, in any future revisions of the unicode.

In 1986, the Conference for Food Protection (Conference) endorsed "the development of a model Food Protection Unicode as a priority project." That endorsement led to the current initiative to provide a model food protection unicode.

Conference members envisioned that the unicode project would serve to update the provisions contained in the existing three model codes and would combine into a single document the food protection requirements for all establishments in the retail segment of the food industry. The retail segment includes those points in the food distribution chain where the consumer takes possession of the food, such as commercial and institutional food-service facilities—including temporary and mobile operations, food vending machine locations, and most types of retail food stores.

The goals of the unicode project can be accomplished by structuring the unicode to include a large core of basic requirements as well as those exceptions and special provisions needed to accommodate special operations or facilities. Such as structure will allow States to adopt the entire unicode or if appropriate, for example in States in which regulatory responsibilities for food service, food stores, and food vending operations are divided among two or more agencies, to adopt unicode provisions on an agency-by-agency basis.

Conference members agreed that the most viable strategy for developing a unicode and for ensuring that it will be effectively maintained is to have FDA assume a leadership role. They recommended, however, that FDA seek to maximize involvement of State and local regualtory officials, as well as industry and consumers. Conference members also recommended that FDA follow procedures that ensure that, when a controversial issue arises, no one cooperating party will be able to

veto the unicode or otherwise prevent it from serving as a consensus document. To accomplish this goal, the Conference members recommended that FDA convene a meeting that includes representatives from key national organizations to participate in a Unicode Development Task Froce with the goal of developing the model unicode that will serve as a guide for State and local officials. The key national organizations are: American Public Health Association; Association of Food and Drug Officials; Conference of State Health and Environmental Managers; Food Marketing Institute; International Association of Milk, Food and Environmental Sanitarians; Institute of Food Technologists; National Automatic Merchandising Association; National Conference of Local Environmental Health Administrators; National Environmental Health Association; National Restaurant Association; National Sanitation Foundation; National Society of Professional Sanitarians; and U.S. Department of Agriculture. The agency also intends to add a national consumer group shortly.

Conference members recognized, and FDA agrees, that although the joint involvement of regulatory, industry, and third party officials is important, their roles should be sufficiently different to avoid any possible conflict of interest. Such conflicts can be avoided if the industry and third party representatives have an advisory, rather than a concurring, status. Such an advisory status would allow industry and third party representatives to take an active role in developing scientific and technical information and to participate fully in the Task Force's deliberations but not to vote on any regulatory provisions of the unicode.

FDA and the Conference members held the first meeting of the Unicode Development Task Force on December 9, 1986, at the FDA office in Washington, DC. At the meeting, Task Force members agreed upon the scope and structure of the unicode, listed the concerns and controversial issues in order of priority, and agreed upon a mechanism to resolve those issues.

The Task Force identified the following controversial issues:

1. Time-temperature relationships;
2. Roast beef cooking requirements;
3. Facility plan review needs;
4. Three compartment sinks versus two compartment sinks and the use of chemicals with these sinks;
5. Open case thermometers in retail food stores;
6. Enforcement provisions;
7. Clarification of requirements for food additives such as sulfites;
8. Person-in-charge definitions, responsibilities, and requisite knowledge;
9. Selling of live products (shellfish, crabs) from mobile units such as pickup trucks; and
10. Clarification of requirements for retail ice manufacture, microwave cooking, storage of wiping cloths, and coffee creamers.

Although Task Force members except that most of these issues can be addressed in the draft unicode, they agreed that special work is necessary for the resolution of issues regarding manual warewashing (two versus three compartment sinks), the cooking of roast beef, and industry manager responsibility. To resolve these three issues, three committees consisting of Task Force members were formed to work with FDA.

Other organizations and individuals interested in the unicode project can participate by providing comments on draft documents when they become available. Copies of minutes of Task Force meetings will also be available from the agency contact. The minutes of the first meeting are presently available. FDA will publish a notice of availability of the draft model food protection unicode in the **Federal Register**. The notice will provide an opportunity for comment on the draft. By writing the agency contact, interested persons may request that they be placed on a mailing list to receive all unicode-related documents directly.

Dated: April 6, 1987.

**John M. Taylor,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 87-8117 Filed 4-10-87; 8:45 am]

BILLING CODE 4160-01-M

## Monensin for Use in Quail; Availability of Data

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** the Food and Drug Administration (FDA) is announcing the availability of target animal safety and effectiveness and environmental data to be used in support of a new animal drug application (NADA) for use of monensin in Type C quail feed. The data, contained in Public Master File (PMF) 5014, were compiled under Interregional Research Project No. 4 (IR-4), a national agriculture program for obtaining clearances for use of agricultural products for minor or special uses.

**ADDRESS:** Submit NADA's to the Document Control Section (HFV-16), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Adriano R. Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

**SUPPLEMENTARY INFORMATION:** The use of monensin in quail feed is a new animal drug use under section 201(w) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(w)). As a new animal drug it is subject to section 512 of the act (21 U.S.C 360b) requiring that its uses be the subject of an approved NADA. Rutgers University, IR-4 Project, Cook College, New Brunswick, NJ 08903, has provided data and information to demonstrate effectiveness, safety to the target animal, and tissue residue depletion, for use of monensin in the Type C quail feed for prevention of coccidiosis cause by *Eimeria dispersa* and *E. lettyae*. Rutgers also provided an environmental assessment of possible impacts at the site of use of the animal drug product. The data and information are contained in PMF 5014. Sponsors of NADA's or supplemental NADA's may reference without further authorization the PMF to support approval. An NADA or supplemental NADA should include, in addition to a reference to the PMF, drug labeling, and other information needed for approval, such as data concerning human food safety; manufacturing methods, facilities, and controls; and information addressing the potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA may contact Adriano R. Gabuten (address above).

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

Dated: April 3, 1987.

**Gerald B. Guest,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 87-8116 Filed 4-10-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87F-0083]

## Sumitomo Chemical America, Inc.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Sumitomo Chemical America, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-propenoic acid, 2-(1,1-dimethylethyl)-6-[3-(1,1-dimethylethyl)-2-hydroxy-5-methylbenzyl]-4-methyl phenylester as an antioxidant for polymers intended to contact food.

**FOR FURTHER INFORMATION CONTACT:** Marvin D. Mack, 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:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5B3897) has been filed by Sumitomo Chemical America, Inc., 385 Park Ave., New York, NY 10154, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 2-propenoic acid, 2-(1,1-dimethylethyl)-6-[3-(1,1-dimethylethyl)-2-hydroxy-5-methylbenzyl]-4-methyl phenylester as an antioxidant for polymers intended to contact food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: April 2, 1987.

**Richard J. Ronk,**

*Acting Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 87-8118 Filed 4-10-87; 8:45 am]

BILLING CODE 4160-01-M

## Public Health Service

## Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 52 FR 6221, March 2, 1987), is amended to reflect the division-level substructure within the Training and Laboratory Program Office.

*Section HC-B, Organization and Functions,* is hereby amended as follows:

After the heading and statement for the Training and Laboratory Program Office (HCH), insert the following:

*Office of the Director (HCH1).* (1) Directs and coordinates the activities of the Training and Laboratory Program Office (TLPO); (2) advises the Director, CDC, on matters relating to training and laboratory performance; (3) for TLPO, develops long-range plans, sets annual objectives and monitors progress toward their achievement, and evaluates results; (4) coordinates TLPO assistance to CDC programs, States, other nations, and other Federal agencies; (5) coordinates collaborative projects with academic institutions and other public health organizations, especially schools of public health and departments of preventive and community medicine; (6) coordinates and conducts activities that provide technical and scientific support to the Health Care Financing Administration (HCFA) in its regulation of clinical laboratories; (7) interacts with public, private, academic, and voluntary sectors of the health community; (8) maintains information management policies, procedures, and services in support of TLPO planning and operational needs; (9) provides administrative and support services to TLPO.

*Division of Assessment and Management Consultation (HCH2).* (1) Assesses the performance needs of health agencies; (2) monitors the quality of public health systems using ongoing data collection systems; (3) analyzes needs and disseminates results of needs assessments; (4) evaluates the scope and quality of training and laboratory activities; (5) develops and disseminates information on clinical laboratory practices; (6) serves as a focal point for implementing the interagency agreement with HCFA with respect to the evaluation, development, and revision of standards and guidelines; (7) assists health agencies in applying planning and management skills; (8) provides consultation in the planning and operation of public health laboratories; (9) evaluates the effectiveness of TLPO consultation and training efforts; (10) in carrying out the above functions, collaborates with other parts of TLPO and with other Centers, Institute, and Offices of CDC.

*Division of Training (HCH3).* (1) Serves as CDC's focus of training expertise; (2) identifies appropriate instructional strategies for meeting training needs; (3) evaluates effectiveness of training activities; (4) works in close collaboration with technical experts from both within and outside CDC to develop appropriate training solutions; (5) provides consultation and assistance in instructional design and development and delivery to other components of CDC and to health agencies; (6) conducts training and consultation as needed, including formal classroom, laboratory, and non-resident instruction; (7) develops and produces training methods and materials; (8) disseminates training materials and information on public health training opportunities; (9) supports training laboratories in the Atlantic area; (10) in carrying out the above functions, collaborates and coordinates with other components of TLPO and with other Centers, Institute, and Offices of CDC.

*Division of Technical Services (HCH4).* (1) Provides assistance in technical arts media selection, design, and production; (2) supports CDC programs through the provision of technical arts services, including photography, graphic arts, audiotapping, still picture archiving and distribution, photomicrography and photomacrography, television, and computer graphics; (3) operates central graphics services; (4) provides conference management services for CDC programs; (5) manages classrooms and conference facilities in the Atlanta area.

Dated: April 2, 1987.

**Robert E. Windom,**

*Assistant Secretary for Health.*

[FR Doc. 87-8175 Filed 4-10-87; 8:45 am]

BILLING CODE 4160-18-M

## DEPARTMENT OF THE INTERIOR

## National Strategic Materials and Minerals Program Advisory Committee; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, that the National Strategic Materials and Minerals Program Advisory Committee (NSMMPAC) will meet on Saturday, April 25, 1987 from 9:30 a.m. until 12:00 noon, or until business is concluded. The meeting will convene in the Jefferson Room at the Cavalier Inn, 105 Emmet Street, Charlottesville, Virginia. It will be open to the public.

There will be discussion of activities of working groups as well as proposed activities in support of the National Critical Materials Council.

Statements are invited from groups and members of the general public who have an interest in mining, minerals or materials issues. The committee is particularly interested in hearing any comments or suggestions for educational programs advancing public awareness of our dependence on minerals in our daily lives. To ensure that time will be available to hear such statements, prospective witnesses are requested to notify the Executive Director (see below) of their intention to appear.

**FOR FURTHER INFORMATION CONTACT:** Gully Walter, Department of the Interior, Washington, DC, Room 6650, (202) 343–2136.

Dated: April 7, 1987.

**Gully Walter,**

*Executive Director.*

[FR Doc. 87–8114 Filed 4–10–87; 8:45 am]

BILLING CODE 4310–10–M

## Bureau of Indian Affairs

### Receipt of Petition for Federal Acknowledgement of Existence as an Indian Tribe

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Yokayo Tribe of Indians, c/o Mrs. Dorene Mitchell, 1114 Helen Avenue, Ukiah, California 95482, has filed a petition for acknowledgement by the Secretary of the Interior that the gruop exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on March 9, 1987, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit and/or legal arguments in support of or in opposition to the group's petitions. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs' files.

The petition may be examined by appointment in the Branch of Acknowledgement and Research, Bureau of Indian Affairs, Department of the Interior, Mail Stop 32–SIB, 1951 Constitution Avenue NW., Washington, DC 20245, Phone: (202) 343–3568.

**Ross O. Swimmer,**

*Assistant Secretary, Indian Affairs.*

[FR Doc. 87–8127 Filed 4–10–87; 8:45 am]

BILLING CODE 4310–02–M

## Bureau of Land Management

**[CO–940–07–4121–14; C–44693]**

### Colorado; Notice of Public Hearing and Request for Comments on the Environmental Assessment, Maximum Economic Recovery and Fair Market Value; Emergency Coal Lease Application C–44693

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** THE DEPARTMENT OF THE INTERIOR, Bureau of Land Management, Colorado State Office, Denver, Colorado, hereby gives notice that a public hearing will be held to receive comments on the environmental assessment, maximum economic recovery and fair market value of Federal coal to be offered. An emergency by-pass application was filed by Western Fuels-Utah, Inc., to the Bureau of Land Management to offer for lease approximately 344 acres of Federal land in Rio Blanco County, Colorado.

**DATES:** The Public Hearing will be held at 7:00 p.m., May 20, 1987. Written comments should be received no later than May 25, 1987.

**ADDRESSES:** The Public Hearing will be held in the Rangely Town Hall, 209 E. Main, Rangely, Colorado. Written comments should be addressed to the Bureau of Land Management, White River Resource Area Office, Attention: Roger Wickstrom, P.O. Box 928, Meeker, Colorado 81641.

**FOR FURTHER INFORMATION CONTACT:** Roger Wickstrom, Project Leader, White River Resource Area Office, (303) 878–3601.

**SUPPLEMENTARY INFORMATION:** The Department of the Interior, Bureau of Land Management, Colorado State Office, Denver, Colorado, hereby gives notice that a public hearing will be held on May 20, 1987, at 7:00 p.m. in the Rangely Town Hall, 209 E. Main, Rangely, Colorado. An emergency by-pass application was filed by Western Fuels-Utah, Inc., to the Bureau of Land Management to offer for lease the "D" coal seam in the lands hereinafter described. The purpose of the hearing is to obtain public comments on the Environmental Assessment and on the following items: (1) The method of mining to be employed to obtain Maximum Economic Recovery of the coal, (2) the impact that mining the coal in the proposed leasehold may have on the area, and (3) methods of determining the Fair Market Value of the coal to be offered. Written requests to testify orally at the May 20, 1987, public hearing should be received at the White River Resource Area Office prior to the close of business May 20, 1987. Those who indicate they wish to testify when they check in at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the Fair Market Value and Maximum Economic Recovery of the coal resource. Public comments will be utilized in establishing Fair Market Value for the coal resources in the described lands. Comments should address specific factors related to Fair Market Value including, but not limited to:

1. The quality and quantity of the coal resource;
2. The price that the mined coal would bring in the market place;
3. The cost of producing the coal;
4. The interest rate at which anticipated income streams would be discounted;
5. Depreciation and other accounting factors;
6. The mining method or methods which would achieve maximum economic recovery of the coal;
7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area; and
8. Any comparable sales data of similar coal lands.

Should any information submitted as comments be considered to be proprietary by the commenter, the information should be labeled as such and stated in the first page of the submission. Written comments on the Environmental Assessment, Maximum Economic Recovery and Fair Market Value should be sent to the White River Resource Area Office at the above address prior to close of business on May 25, 1987.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering.

The coal resource to be offered is limited to coal recoverable by underground mining methods from the "D" seam in the following lands located adjacent the Deserado Mine near Rangely, Colorado:

T. 2 N., R. 101 W., 6th P.M.

Sec. 1, Lots 1, 2, 5, and 6, SW¼NE¼, W½SE¼NE¼, and N½SE¼;
T. 3 N., R. 101 W., 6th P.M.
Sec. 36, SW¼SE¼, W½SE¼SE¼.
The land described contains 344.31 acres.

The Draft Environmental Assessment and Maximum Economic Recovery report are available from the White River Resource Area Office upon request.

A copy of the draft Environmental Assessment, the Maximum Economic Recovery report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado.

Dated: April 2, 1987.

**Evelyn W. Axelson,**

*Chief, Mineral Leasing Section.*

[FR Doc. 87–8125 Filed 4–10–87; 8:45 am]

BILLING CODE 4310-JB-M

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[NV-030-07-4212-14; N-42967]

## Realty Action Competitive Sale of Pubic Lands in Churchill County, NV

The following public lands have been examined and found suitable for disposal through competitive sale under section 203 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750; 43 U.S.C. 1713), at not less than fair market values:

Parcel A

*Mt. Diablo Meridian*

T. 19 N., R. 31 E.,
Sec. 6, Lot 3.
Containing 39.97 acres.

Parcel B

*Mt. Diablo Meridian*

T. 20 N., R. 31 E.,
Sec. 31, E½SW¼.
Containing 80 acres.

The lands are hereby segregated from appropriation under the public land laws including the mining laws but not from sale under the above cited statute. This segregative effect shall terminate upon issuance of a patent, upon publication in the **Federal Register** of a termination of the segregation or 270 days from the date of this publication, whichever occurs first.

Sale of these parcels is consistent with the Bureau's Planning System and with local governmnent plans. The lands are not needed for support of any resource programs and are not suitable for management by another federal agency.

The patent when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890, 26 Stat. 391; U.S.C. 945.

2. Geothermal steam and associated resources and sodium and potassium compounds, together with the right to prospect for, mine and remove the minerals.

Parcel A will be subject to the following:

1. An easement 50 feet in width along the northern boundary of Lot 3, section 6, T. 19 N., R. 31 E., M.D.M., NV in favor of Churchill County for continued use of the Kent Lake Deep Drain.

2. An easement 60 feet in width, being the south sixty feet of the north 110 feet of Lot 3, section 6, T. 19 N., R. 31 E., M.D.M., NV in favor of Churchill County, for road and public utility purposes to insure continued ingress and egress to adjacent lands.

3. Those rights for buried telephone cable purposes which have been granted to Churchill County Telephone Company, its successors or assigns, by Right-of-way N–46287.

No bids will be accepted for less than the appraised fair market value of the property. The fair market value of each parcel will be printed in an information brochure which will be made available to the public prior to the sale date. Federal law requires that bidders be U.S. citizens, 18 years of age or older, or in the case of a corporation, be subject to the laws of any State or of the United States. Bids may be made by a principal or his qualified agent.

Sealed bids shall be considered only if received at the Carson City District Office, Bureau of Land Management, 1535 Hot Springs Road, Suite 300, Carson City, Nevada 89701, prior to 9:00 a.m., June 25, 1987. The written sealed bids will be opened and publicly declared at the sale, which will be held on June 25 at 10:00 a.m. Each bid shall be accompanied by a certified check, postal money order or cashier's check made payable to the Department of the Interior—BLM for not less than ten (10) percent of the amount of the bid and shall be enclosed in a sealed envelope marked in the lower left hand corner *BLM Land Sale,* N–42967. The parcel being bid on should also be specified. If two or more sealed bids containing valid bids of the same amount are received for either parcel, the determination of whom is to be considered the highest bidder shall be by oral bidding following opening of the sealed bids. If the parcels do not sell at the first offering, sealed bids will be accepted at the Carson City District Office during business hours (7:30 to 4:15) every Wednesday following the date of the sale until the parcels are sold or withdrawn from sale.

The remainder of the full bid price shall be paid within 180 days of the sale. Failure to submit the full bid price within 180 days shall disqualify the apparent high bidder and the deposit shall be forfeited and disposed of as other receipts of sale. All other bids will either be returned or rejected. Conveyance of the mineral estate, except for geothermal steam and associated resources, and sodium and potassium compounds, will occur simultaneously with sale of the lands in accordance with section 209(b)(l)(1) of Pub. L. 94–579. Acceptance of a bid offer will constitute an application for conveyance of the available mineral estate and will require payment of a $50.00 non-refundable fee which must accompany the bid.

BLM may reject any and all offers or withdraw the lands from sale if the authorized officer determines that sale would not be fully consistent with the Federal Land Policy and Management Act or other applicable law. The lands will not be offered for sale for at least 60 days after the date of this notice. For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Carson City District Office. Any adverse comments will be evaluated and this notice upheld, modified or vacated.

Dated this 30th day of March, 1987.

**James W. Elliott,**

*District Manager.*

[FR Doc. 87–8124 Filed 4–10–87; 8:45 am]

BILLING CODE 4310-HC-M

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## National Park Service

## National Capital Memorial Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Thursday, April 23, 1987, at 1:30 p.m., in the Conference Room at the National Park Service, National Capital Regional Headquarters Building, 1100 Ohio Drive SW., Room 234, Washington, DC 20242.

The Commission was established by Pub. L. 99–652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy

and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

William Penn Mott, Chairman, Director, National Park Service, Washington, DC
George M. White, Architect of the Capitol, Washington, DC
Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC
J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC
Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC
Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC
William Sullivan, Commissioner, Public Buildings Service, Washington, DC
Caspar W. Weinberger, Secretary, Department of Defense, Washington, DC

The purpose of the meeting will be to review and take action on the following:

I. Legislative Proposals—Comments to the Secretary of the Interior.
  a. H.J. Resolution 135—Providing for a time capsule to honor Dr. Martin Luther King, Jr.
II. Site Selection of Authorized Memorials.
  a. National Law Enforcement Officers Memorial—Pub. L. 98–534
  b. Korean War Veterans Memorial—Pub. L. 99–572
III. Discussion of Regulations Pursuant to Public Law 99–652
IV. General Business.

The meeting will be open to the public. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Mr. John G. Parsons, Associate Regional Director, Land Use Coordination, National Capital Region, at 202–426–7750. A transcript of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Land Use Coordination, National Capital Region, Room 201, 1100 Ohio Drive SW., Washington, DC 20242.

Dated: April 7, 1987.

**Manus J. Fish, Jr.,**

*Regional Director, National Capital Region.*

[FR Doc. 87–8205 Filed 4–10–87; 8:45 am]

BILLING CODE 4310–70–M

## Decker Canyon Development Concept Plan; Santa Monica Mountains National Recreation Area; CA; Availability of Draft Environmental Impact Statement

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act, the National Park Service, Department of the Interior, has prepared a draft environmental impact statement (DEIS) assessing the potential impacts of the proposed management and development of the Decker Canyon property in the Santa Monica Mountains National Recreation Area.

The DEIS addresses the proposal to develop a portion of the Decker Canyon property as an overnight, barrier free environment education center along with alternatives ranging from no action to exchanging part of the property for other high priority lands to development of day use facilities only.

**DATES:** Written comments on the DEIS will be accepted until June 8, 1987. Also, during the comment period, a public meeting will be held to solicit comments on both the DEIS and the proposal. The date and time will be announced by the Superintendent, Santa Monica Mountains National Recreation Area.

**ADDRESSES:** Comments on the DEIS and questions on the time and place of the public meeting should be directed to: Superintendent, Santa Monica National Recreation Area, 22900 Ventura Blvd., Suite 140, Woodland Hills, California 91364.

Copies of the DEIS are available for inspection at the park headquarters in Woodland Hills and in libraries located in the park vicinity. Copies also are available at the following address: Western Regional Office, National Park Service, Attn: Division of Planning, Grants and Environmental Quality, P.O. Box 36063, 450 Golden Gate Ave., Room 14033, San Francisco, California 94102.

Dated: March 18, 1987.

**W. Lowell White,**

*Acting Regional Director, Western Region.*

[FR Doc. 87–8044 Filed 4–10–87; 8:45 am]

BILLING CODE 4310–70–M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability

**AGENCY:** National Archives and Records Administration, Office of Records Administration.

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records sehedules that: (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

**DATE:** Requests for copies must be received in writing on or before May 28, 1987. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

**ADDRESS:** Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

**SUPPLEMENTARY INFORMATION:** Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are

updates of previously approved schedules. Such schedules also may include records that are designed for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

**Schedules Pending Approval**

1. Department of Agriculture, Forest Service, Minerals and Geology Staff (N1–95–87–7). Minerals materials permits.

2. Department of Commerce, International Trade Administration (N1–151–87–6). Subject file of the Export Supply Procedures and Publications Branch, Office of International Trade, 1942–48.

3. Department of Commerce, International Trade Administration, Reports and Records Branch, Office of Export Licensing (N1–151–87–7). Operational records relating to the inspection of export licenses and certificates.

4. Defense Logistics Agency, Office of Administration (N1–361–86–5). Non-litigation records relating to fraud and irregularities.

5. Environmental Protection Agency (NC1–412–85–20). Records relating to the regional offices enforcement programs for air and water pollution.

6. Environmental Protection Agency, Office of Radiation Programs (N1–412–86–1). Records relating to measurement and control of radiation exposure.

7. Federal Emergency Management Agency (N1–GRS–87–10) Case files on reservists and applicants maintained by all Federal agencies with National Defense Executive Reserve (NDER) units.

8. Department of Health and Human Services, Social Security Administration, Office of Central Operations (N1–47–87–2). Forms relating to representative payee status, reports, and custody.

9. Department of Health and Human Services, Social Security Administration, Office of Supplemental Security Income (N1–47–87–3). Sheltered workshop wage reports and pay stubs to verify SSI recipients income.

10. Department of Labor, Bureau of Labor Statistics, Office of Prices and Living Conditions (NC1–257–85–2). Comprehensive schedule for records relating to the International Price Indexes Program and the Producer Price Indexes.

11. National Archives and Records Administration, Office of the National Archives (N2–227–87–1). Records of the Office of the Secretary of Defense relating to the daily administrative activities of the defunct WWII Office of Scientific Research and Development.

12. Tennessee Valley Authority, Division of Management Systems (NC1–142–85–14). Comprehensive records schedule.

13. Department of the Treasury, Comptroller of the Currency (N1–101–87–1). Daily reports of the Organization Division giving the number of national banks in business, and the names of banks opened or closed, 1886–93 and 1899–1964, and the reports on the number of national banks in each state, territory and reserve city, 1903–1961.

14. Department of the Treasury, Comptroller of the Currency (N1–101–87–3). Certificates extending and re-extending corporate existence of national banks, 1882–1922.

15. Department of the Treasury, Financial Management Service (N1–425–87–1). Routine administrative files of the defunct Bureau of Accounts and the Division of Bookkeeping and Warrants.

Dated: April 6, 1987.

**Frank G. Burke,**

*Acting Archivist of the United States.*

[FR Doc. 87–8204 Filed 4–10–87; 8:45 am]

BILLING CODE 7515–01–M

## NATIONAL SCIENCE FOUNDATION

### Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines the National Science Foundation is posting this notice of information collection that will affect the public.

*Agency Clearance Officer:* Herman G. Fleming, (202) 357–9520.

*OMB Desk Officer:* Carlos Tellez, (202) 395–7340.

*Title:* Industrial Panel on Science and Technology.

*Affected Public:* Businesses or other for profit and small businesses or organizations.

*Number of Responses:* 2,500 responses; total of 1,300 burden hours.

*Abstract:* Information, especially of a qualitative nature, is needed to supplement and explain the data on science and technology (S&T) employment and funding which are obtained from other NSF sources. Special requests by OMB, OSTP and Congress can be answered by quickly contacting company research and development officials.

Dated: April 7, 1987.

**Herman G. Fleming,**

*NSF Reports Clearance Officer.*

[FR Doc. 87–8208 Filed 4–10–87; 8:45 am]

BILLING CODE 7555–01–M

### Forms Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines the National Science Foundation is posting this notice of information collection that will affect the public.

*Agency Clearance Officer:* Herman G. Fleming, (202) 357–9520.

*OMB Desk Officer:* Carlos Tellez, (202) 395–7340.

*Title:* Survey of Industrial Research and Development, 1987, 1988, 1989.

*Affected Public:* Businesses or other for profit and small businesses or organizations.

*Number of Responses:* 12,000 responses; total of 32,000 burden hours.

*Abstract:* This survey ascertains the amount and direction of R&D expenditures by U.S. industry. Government agencies, corporations, research organizations, universities, etc., use the data to analyze and forecast technological growth, investigate productivity, determinants, formulate tax policy, and compare individual company R&D performance against industry averages. All manufacturing companies with 1,000 or more employees, samples of companies in selected nonmanufacturing industries, and a sample of smaller companies are included.

Dated: April 7, 1987.

**Herman G. Fleming,**

*NSF Reports Clearance Officer.*

[FR Doc. 87–8209 Filed 4–10–87; 8:45 am]

BILLING CODE 7555–01–M

### Advisory Committee for Astronomical Sciences; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Astronomical Sciences.

Date and Time: April 30, 1987, 8:30 a.m.–5:00 p.m.; May 1, 1987, 9:00 a.m.–5:00 p.m.

Place: National Science Foundation, Room 540.

Type of Meeting: Open.

Contact Person: Dr. Laura P. Bautz, Director, Division of Astronomical Sciences, Room 615, National Science Foundation, Washington, DC 20550 (202/357–9488).

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Committee: To provide advice and recommendations concerning research programs, proposals, and projects in NSF-funded astronomy with the objective of achieving the highest quality forefront research for the funds allocated. To provide advice and recommendations concerning short-range and long-range plans in astronomy, including a recommendation of relative priorities.

Agenda: Thursday, April 30.

8:30 am–5:00 pm—Status of FY 87 and FY 88 Budget; Astronomy, Research Section Oversight Report; Long-Range Plans and FY 89 Priorities; Status of Selected Instrumentation Topics.

Friday, May 1.

9:00 am–5:00 pm—Future of National Optical Astronomy Observatories; Supernova 1987A; Continuation of Discussion of Topics from Previous Day.

April 8, 1987.

**M. Rebecca Winkler,**

*Committee Management Office.*

[FR Doc. 87–8210 Filed 4–10–87; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Committee for Atmospheric Sciences; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Atmospheric Sciences (ACAS).

Date and Time: April 29, 30 and May 1, 1987—9:00 a.m.–5:00 p.m. each day.

Place: Room 1242, National Science Foundation, 1800 G Street, NW., Washington, DC.

Type of Meeting: Closed.

Contact Person: Dr. Eugene W. Bierly, Director, Division of Atmospheric Sciences, Room 644, National Science Foundation, Washington, DC 20550, Telephone: 202/357–9874.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: Perform oversight of program management, overall program balance, and other aspects of program performance.

Agenda: Committee Review of the Meteorology, Solar Terrestrial, and Upper Atmospheric Facilities Programs, including examination of proposal jackets, reviewer comments, and other privileged materials.

Reason for Closing: The meeting will consist of review of grant and declination jackets that contain the names of applicant institutions and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the peer review documentation pertaining to the applicants. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

April 8, 1987.

[FR Doc. 87–8211 Filed 4–10–87; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Committee for Chemistry; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. –463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Chemistry.

Date and Time; April 23–24, 1987; 9:00 am to 5:00 pm each day.

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Edward F. Hayes, Director, Division of Chemistry, National Science Foundation, Washington, DC 20550, Telephone (202) 357–7947.

Summary Minutes: May be obtained from Dr. Edward F. Hayes.

Purpose of Committee: To provide advice and recommendations concerning NSF support for research in chemistry.

Agenda: Open-Discussion of the current status and future plans of the Chemistry Division's activities.

**M. Rebecca Winkler,**

*Committee Management Officer.*

April 8, 1987.

[FR Doc. 87–8212 Filed 4–10–87; 8:45 am]

BILLING CODE 7555-01-M

## Advisory Committee for Computer and Computation Research; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Computation Research.

Date and Time: April 29, 1987, 9:00 a.m. to 5:00 p.m.—April 30, 1987, 9:00 a.m. to 5:00 p.m.—May 1, 1987, 9:00 a.m. to 3:00 p.m.

Place: Room 543, National Science Foundation, 1800 G. Street, NW., Washington, DC 20550.

Type of Meeting: Part Open—April 29 Closed (9:00 a.m. to 5:00 p.m.); April 30 Open (9:00 a.m. to 5:00 p.m.); May 1 Open (9:00 a.m. to 3:00 p.m.)

Contact Person: Kent K. Curtis, Division Director, Division of Computer and Computation Research, Room 304, National Science Foundation, 1800 G. Street, NW., Washington, DC 20550. Telephone: (202) 357–9747. Anyone planning to attend this meeting should notify Mr. Curtis no later than April 27, 1987.

Purpose of Committee: To provide advice and recommendations concerning support of Computer Research.

Summary Minutes: May be obtained from the contact person at the above address.

Agenda:

**Wednesday, April 29, 1987, Room 543—9:00 a.m. to 5:00 p.m.—Closed**

Oversight Review of Theory, Software Systems, Software Engineering, Numeric and Symbolic Computation, Computer Systems Architecture, and CISE Instrumentation Programs.

**Thursday, April 30, 1987, Room 543—9:00 a.m. to 5:00 p.m.—Open**

Status of Committee Reports and other Committee Activities.

Reports of the Oversight Review Subcommittees.

**Friday, May 1, 1987, Room 543—9:00 a.m. to 3:00 p.m.—Open**

DARPA Programs and Plans.

FCCSET Report Update, Computer research.

FCCSET Report Update, Supercomputers.

Discussion of Research Priorities and Support.

Reason for Closing: The meeting will consist of a review of grants and declination jackets that contain the names of applicant institution and principal investigators and privileged information contained in declined proposals. The meeting will also include a review of the merit review documentation pertaining to the applications. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

**M. Rebecca Winkler,**

*Committee Management Officer.*

April 8, 1987.

[FR Doc. 87–8213 Filed 4–10–87; 8:45 am]

BILLING CODE 7555-01-M

# SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–24301; Filed No. SR–NSCC–87–04]**

## Self-Regulatory Organizations; National Securities Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on February 27, 1987, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission a proposed rule change expanding its guarantee of trades in the Continuous Net Settlement ("CNS") system[1] and

[1] The CNS system nets together each Member's daily transactions in each issue with any previous open positions to arrive at a net long or net short position for each Member each day.

revising Members' Clearing Fund requirements. The Commission is publishing this Notice to solicit comments on the proposal from interested persons.

**I. Description of the Proposal**

Under the proposed rule change, NSCC would guarantee settlement of Member trades in the CNS system on the day each trade is reported as compared, and would revise Members' Clearing Fund requirements to protect against the increased risk which this expanded guarantee entails. Currently, pursuant to NSCC's SCC Division Rule 18, NSCC interposes itself between the parties to trades subject to CNS accounting and guarantees settlement of those trades as of the fourth day after trade date ("T+4") when the positions are netted.[2] NSCC proposes to revise NSCC Rule 18 to adopt a policy of guaranteeing settlement of CNS trades as of midnight on the day trades are reported to Members as compared (usually T+1 or T+2).[3] If, however, one of the parties to a trade is a member of a clearing agency which interfaces with NSCC, NSCC will provide the increased guarantee only if that clearing agency also has adopted a similar guarantee.

In connection with this extended guarantee, NSCC proposes to modify the CNS portion of its Clearing Fund formula to collateralize more appropriately existing CNS system risks. Specifically, each Member would be required to contribute: (a) 2% of its projected total long CNS position; plus (b) the net of each day's difference between the contract price of pending compared CNS trades and the current market price for all guaranteed pending CNS trades which have not yet reached settlement; plus (c) ¼ of 1% of the net of all guaranteed pending CNS trades and open CNS positions.[4] Under the existing Clearing Fund formula, NSCC calculates a Clearing Member's Clearing Fund contribution monthly based on the Clearing Member's average daily settlement activity. The proposal also makes conforming revisions to the Alternative Clearing Fund Formula available for Municipal Securities Brokers' Brokers Sponsored Accounts.

Additionally, the proposed rule change makes certain conforming and technical changes to SCC Division Rules. In particular, the proposal adjusts the guidelines for computing Clearing Fund requirements for settling Members on surveillance to correspond to the changes in the basic Clearing Fund formula. The proposal also allows NSCC to collect an additional Clearing Fund deposit sooner than monthly if a Clearing Member's Clearing Fund requirement increases by 10% (or $10,000 for Clearing Members with a Clearing Fund requirement of less than $100,000) under the new formula.

**II. NSCC's Rationale for the Proposal**

NSCC believes that that proposed rule change is consistent with the purposes and requirements of section 17A of the Act. NSCC states that the earlier guarantee will provide for increased stability and certainty in the securities markets. Moreover, NSCC represents that the related reformulation of the CNS portion of the Clearing Fund will assess Members in a manner that adequately accounts for the added risk assumed by NSCC in connection with the expanded guarantee.

In addition, NSCC states that the new Clearing Fund assessment will be more closely related to the actual risk posed by each Member, but will have no material effect on the size of the total CNS Clearing Fund. NSCC accomplishes this under the new formula by focusing on the risk that: (i) A Member who has purchased securities will be unable to pay for those securities on delivery; (ii) the market price of the securities will move away from the contract price before settlement; and (iii) an insolvent Member will be unable to make its daily mark-to-the-market payment. Because the current Clearing Fund assessment formula focuses on daily settlement debits and credits, NSCC believes that the resulting contribution may not reflect the full nature and extent of these risks.

**III. Solicitation of Comments.**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 4, 1987.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: April 3, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-8155 Filed 4-10-87; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-24300; File No. SR-NSCC-87-5]**

## Proposed Rule Change by National Securities Clearing Corp., Relating to an Amendment to National Securities Clearing Corporation's ("NSCC") Rules and Fee Structure

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 30, 1987, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The rule change eliminates NSCC's Order Out Service and related fees.

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[2] A second accounting system, Balance Order processing, is used to net those transactions in securities which are not eligible for the CNS system. NSCC does not interpose itself on Balance Orders although Balance Orders (in the form of receive and deliver tickets distributed on T+4) are guaranteed by NSCC from the date of issuance. For securities included in the CNS system, NSCC continues to guarantee long and short open positions; for securities in the Balance Order System, the guarantee generally lasts only through settlement date. NSCC has indicated in a letter to its Members that it is reviewing that portion of the Clearing Fund formula and the guarantee provided for non-CNS activity and may propose additional changes in this area.

[3] On March 11, 1987, NSCC filed an amendment to the proposed "Statement of Policy in Relation to the Completion of Pending CNS Trades" contained in the filing, which clarifies that trades executed with respect to when-issued securities are not covered by the increased guarantee.

[4] In addition, the Member would be required to contribute 2½% of its average daily envelope settlement system debits and credits or 5% of its average daily envelope settlement system debits, whichever is greater, subject to a $10,000 minimum contribution. This portion of the rule would not be changed by the proposal.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NSCC includes statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

NSCC has determined to eliminate its Order Out Service. NSCC's Order Out Service permits Members to receive physical securities without having to withdraw securities from their depository accounts after they are allocated securities from the Continuous Net Settlement ("CNS") allocation. This service, however, has experienced declining participation over the last three years. Since October, 1986, there has been no volume at all in the service; for the months prior to October, 1986, there was extremely limited volume. This decline was due to a number of factors, including an increase in the number of Canadian participants in depositories (the Order Out Service often was used to make deliveries to Canadians) and the existence of other methods by which to receive physical securities. Accordingly, NSCC has determined that it no longer is cost-effective to offer the service.

Insofar as the proposed rule change will eliminate a service which is not in use and thus is not cost-effective to maintain, it is consistent with the requirements of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder applicable to NSCC.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NSCC does not perceive that the proposed rule will have an impact or impose a burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

By notice dated February 17, 1987, NSCC solicited comments from its Members on the proposed elimination of the service. No comments were received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3) of the 1934 Act and subparagraph (e) of Securities Exchange Act Rule 19b–4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the 1934 Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 4, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 3, 1987.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87–8156 Filed 4–10–87; 8:45 am]

BILLING CODE 8010–01–M

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**[Release No. 34–24309; File No. SR–Phlx–86–49]**

## Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Rule Change

Pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] the Philadelphia Stock Exchange, Inc. ("Exchange"), on January 9, 1987 submitted to the Securities and Exchange Commission ("Commission") a proposal to amend its rules relating to off-floor trading by market makers.

The proposed rule change was published for comment in Securities Exchange Act Release No. 24114 (February 19, 1987), 52 FR 6260. No comments were received.

The purpose of the proposed rule change is to address the issue of off-floor trading by market makers. Specifically, the proposed rule change is intended to ensure that market makers effect trades on the floor of the exchange as much as possible.

New Floor Procedure Advices B–8(b) and C–3(b) are designed to ensure that a registered options trader who is on the floor has knowledge of the terms of a trade initiated on his behalf by a floor broker. In order for a registered options trader to open a position in a market maker account and be entitled to exempt credit for margin purposes, the order must be initiated on the floor. The proposed rules would establish a clear procedure to provide for compliance with the requirement that market maker trades qualifying for exempt credit for margin purposes be initiated on the floor. In addition, appropriate fine schedules are provided for failure to comply with these established procedures.

The Exchange also is proposing that Floor Procedure Advice B–3 be amended to require that each quarter a registered options trader trade in person the greater of 1,000 contracts or 50% of his or her contract volume. The rule previously required only that at least 1,000 contracts per quarter be traded in person. This rule will not require market makers to trade on the floor. However, it will require half of their trading activity to be effected in person by themselves or by registered options traders associated with the same market member organization, rather than by floor brokers. This rule will ensure that traders with market making obligations are present on the trading floor a sufficient amount of time to fulfill these obligations.

Finally, the Exchange proposes two new floor procedure advices intended to ensure the proper functioning of the Exchange's auction market. One advice requires that orders received on the floor be represented in the trading crowd, where they will receive

[1] 15 U.S.C. 78(b)(1) (1984).

[2] 17 CFR 240.19b–4 (1986).

maximum interaction with orders competing for the other side of the trade, before they may be represented away from the crowd, *i.e.*, to an upstairs firm. A complimentary floor procedure advice provides that bids and offers in the crowd must be general and not specific to any person in the crowd. The purpose, again, is maximum interaction among orders.

The proposed amendments are designed to ensure that registered options traders' transactions are effected to provide depth and liquidity to the trading floor. In addition, the amendments, by helping to ensure that options orders are represented to the entire trading crowd, will improve the quality of customer executions and the functioning of the Exchange's auction market.

Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) [3] and the rules and regulations thereunder.

*It Is Therefore Ordered,* pursuant to section 19(b)(2) of the Act,[4] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Dated: April 7, 1987.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 87-8199 Filed 4-10-87; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. IC-15664; 812-6628]

## Banco de Santander,S.A. de C.; Application of Foreign Bank To Issue Debt and Equity Securities

April 3, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

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*Applicant:* Banco de Santander, S.A. de C.

*Relevant 1940 Act Section:* Exemption requested under section 6(c) from all provisions.

*Summary of Application:* Applicant seeks an order permitting it to issue and sell in the United States its American Depositary Shares ("ADS"), representing its ordinary shares as evidenced by American Depositary Receipts, and medium- and long-term debt securities, and commercial paper, denominated either in U.S. dollars or foreign currency.

*Filing Date:* The application was filed on February 17, 1987, and amended on March 18 and April 3, 1987.

*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 April 28, 1987. 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 5th Street NW., Washington, DC 20549. Applicant, c/o Sergio J. Galvis, Esq., Sullivan & Cromwell, 125 Broad Street, New York, New York 10004.

**FOR FURTHER INFORMATION CONTACT:** Victor R. Siclari, Staff Attorney, (202) 272-3037, 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 who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

*Applicant's Representatives:*

1. Applicant, organized in 1857, is a bank organized under the laws of Spain. Its principal business, like that of major United States banks, is the receipt of deposits and the making of loans. Applicant also engages in other banking and bank-related activities. As of December 31, 1986, Applicant was the sixth largest Spanish bank in terms of loans and discounts ($8 billion), and the fifth largest Spanish bank in terms of assets ($20.9 billion), on a consolidated basis. Total deposits amounted to $17.1 billion (86.4 percent of total liabilities), and capital funds amounted to $1,044 million for the year ended December 31, 1986. (Amounts stated herein in United States dollars have been converted from Spanish pesetas at the rate of exchange published by the Bank of Spain for December 31, 1986, of 132.295 pesetas to one United States dollar.)

2. Applicant is subject to a comprehensive scheme of regulation under Spanish banking law. The Bank of Spain exercises general supervision over all Spanish financial institutions in a manner similar to the central banks of most European countries and the United States. The Bank of Spain supervises the compliance of Spanish banks with the following compulsory ratios: cash ratio, short-term Treasury bonds ratio, investment ratio, and reserve-to-assets ratio. These compulsory ratios create, in effect, reserve requirements. In addition, Applicant is subject to periodic inspections by the Bank of Spain.

3. Applicant considers that it has a substantial presence in the United States through its 99 percent-owned subsidiary bank in Puerto Rico (Banco de Santander-Puerto Rico, or "BDS-PR"), its branch in New York and its agency in Miami. BDS-PR is the third largest bank in Puerto Rico, with assets of $1.3 billion as of December 31, 1986. BDS-PR is a full-fledged bank organized under Puerto Rican law and regulated under applicable Puerto Rican and United States banking laws and regulations. It is insured by the Federal Deposit Insurance Corporation (the "FDIC"), but is not a member of the Federal Reserve System. It abides by the same capital requirements and other regulations ensuring safety and soundness as are applicable to all FDIC-insured non-member banks.

4. Applicant's New York branch is engaged principally in receiving deposits and making loans, and had assets of $227.7 million as of December 31, 1986. Applicant's New York branch operates under a license from the Superintendent of Banks of the State of New York, and is subject to state supervision and regulation substantially eqivalent to those applicable to a domestic bank organized under the New York Banking Law. In addition, under section 7 of the International Banking Act of 1978 (the "IBA") the New York branch is subject to federal reporting and examination requirements similar to those imposed on domestic banks which are Federal Reserve System members.

5. Applicant's Miami agency is engaged principally in making loans and issuing letters of credit, and had assets of $42.1 million as of December 31, 1986. The Miami agency operates as a state agency subject to the supervision of the Banking Department of the State of Florida. In addition, Applicant wholly owns Banco de Santander International-Miami ("International"), which had total assets of $552.7 million as of December 31, 1986, and net income of approximately $3.3 million for fiscal

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[3] 15 U.S.C. 78f (1984).

[4] 15 U.S.C. 78s(b)(2) (1984).

year 1986. International is chartered by the Federal Reserve Board as an "Edge Act" bank and, thus, may not engage in activities in the United States except as incidental to foreign business.

6. Applicant presently proposes to make an initial public offering in the United States of ADSs representing its ordinary shares with a market value of approximately $100 million. Applicant will file with the SEC a registration statement under the Securities Act of 1933 ("1933 Act") both for the ordinary shares represented by ADSs and for the ADSs. In connection with the proposed public offering of ADSs, Applicant will comply with the prospectus disclosure and delivery requirements of the 1933 Act and will be subject to the reporting requirements for foreign issuers under the Securities Exchange Act of 1934 ("1934 Act"). Although Applicant will offer the ADSs to the general public, it has been advised by its investment bankers that the market for the ADSs will be largely institutional.

7. In addition, Applicant may, from time to time, issue and sell in the United States commercial paper notes, medium- or long-term debt securities or additional equity either through private offerings or through registered public offerings. Any public offerings by the Applicant of its debt securities in the United States will be registered under the 1933 Act, will rank *pari passu* with other debt securities of the Applicant having the same degree of subordination, and will rank senior to the Applicant's shares. Applicant also will comply with the prospectus disclosure and delivery requirements of the 1933 Act. Applicant undertakes that any private placement of ADSs or medium- or long-term debt securities in the United States will meet the prevailing standards for an exemption from registration requirements under the 1933 Act. Aplicant further undertakes that it will not effect such private placement without obtaining an opinion of United States counsel that such placement will be exempt from the registration requirements of the 1933 Act.

8. Any commercial paper sold by Applicant in the United States in reliance upon the requested order will be prime quality commercial paper notes (the "Notes") in bearer form and in denominations of at least $100,000. Such Notes will rank *pari passu* among themselves, senior to Applicant's ordinary shares and equally with other unsecured obligations of Applicant. The Notes will be issued and sold through one or more United States commercial paper dealers who, as principals, will reoffer the Notes to investors who normally purchase commercial paper notes in the United States, without advertisement or offer for sale to the general public. Aplicant undertakes that each such dealer will provide each offeree of Notes with a disclosure memorandum as described below. Applicant may appoint a bank or other financial institution in the United States as its authorized agent to issue its Notes from time to time. Applicant undertakes not to issue or sell Notes without obtaining an opinion of its United States counsel that the Notes are entitled to the exemption from registration under seciton 3(a)(3) of the 1933 Act.

9. Applicant undertakes that any prospectus or private placement memornadum realting to an offering of equity securities, the Notes, or medium- or long-term debt securities will contain a description of Applicant's business and disclosure at least as comprehensive as that customarily provided with respect to foreign issuers making those types of offerings in the United States. It also will contain Applicant's most recently published financial statements audited by a firm of independent public accountants of recognized international standing. Any such prospectus or memorandum will disclose any material differences between the accounting principles applied in the preparation of such financial statements and United States generally accepted accounting principles applicable to United States banks and will be updated promptly to reflect material changes in the Applicant's financial condition. Applicant undertakes that in the event of an offering in the United States of medium- and long-term debt securities and commercial paper denominated in currency other than United States dollars, Applicant will set forth in the prospectus or memorandum relating to such offering (i) the rate of exchange between the currency in which the securities are denominated and United States dollars as a recent date, and (ii) appropriate disclosure of the risks to investor regarding the potential for exchange rate fluctuations.

10. Applicant also undertakes that all issues of medium- and long-term debt securities and Notes (not including deposits) in the United States shall have received prior to issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization and that Applicant's United Staets counsel shall have certified that such rating has been received, provided, however, that no such rating need be obtained with respect to any such issue if, in the opinion of Applicant's United States counsel, an exemption from registration is available under section 4(2) of the 1933 Act.

11. Applicant further undertakes to submit expressly to the jurisdiction of the federal and New York State courts sitting in the City of New York for the purpose of any suit, action or proceeding arising out of the presently proposed or future offering of ADSs, medium- and long-term debt securities and Notes ("Securities"). Applicant also undertakes to appoint an agent in the City of New York to accept service of process in connection with any such offering of Securities. Such consent to jurisdiction and appointment of an agent for service of process will be irrevocable for so long as any of Applicant's Securities remain outstanding in the United States. Such submission to jurisdiction and appointment of agent for service of process will not affect the right of any holder of such Securities to bring suit in any court having jurisdiction over Applicant by virtue of the offer and sale of the Securities or otherwise. The agent for service of process will not be a trustee for the holders of Securities or have any responsibilities or duties to act for such holders.

12. Applicant has no present intention to curtail its banking operations in the United States or Spain so as to cease to be regulated as a bank in the United States or Spain. Aplicant will issue Securities in the United States only so long as it is supervised and examined by governmental authorities in Spain having the power of supervision over banks in that country and by state or federal authorities in the United States having power of supervision over banks in the United States. If, however, such operations are curtailed in the future with the result that Applicant no longer is regulated as a bank in the United States, Applicant agrees that it will continue to comply with the undertakings concerning its submission to jurisdiction and appointment of an agent for service of process until such time as there shall be no holders in the United States of Applicant's Securities.

13. The requested order is necessary and appropriate in the public interest because Applicant would be effectively precluded from offering its Securities publicly in the United States if required to register as an investment company under the 1940 Act. Such exemptive order will facilitate an offering of Applicant's Securities in the United States and, thus, will advance the IBA's policy objective of parity of treatment

between domestic and foreign banks in like circumstances. It also will facilitate domestic investment by U.S. investors in a major foreign issuer, subject to the protections afforded by the 1933 Act and the 1934 Act.

14. The requested order is consistent with the protection of investors because: (1) Applicant is subject to a comprehensive banking regulatory scheme both in Spain and in the United States; (2) such regulation affords investors protection very similar to that which provides the rationale for exemption of United States commercial banks from application of the 1940 Act; and (3) investors are protected by the benefits afforded by the 1933 Act, the 1934 Act, and Spanish and United States banking laws.

15. The requested order is consistent with the purposes fairly intended by the policy and provisions of the 1940 Act since Applicant is a closely regulated banking entity with investments and objectives totally different from the investment companies at which the 1940 Act is directed and is an entity for which the substantive provisions of the 1940 Act are neither necessary nor suitable.

*Applicant's Condition:* If the requested order is granted, Applicant agrees to the following condition:

Applicant consents to any SEC order being expressly conditioned upon its compliance with the undertakings and representations summarized above and more fully set forth in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Shirley E. Hollis,

*Assistant Secretary.*

[FR Doc. 87-8157 Filed 4-10-87; 8:45 am]

BILLING CODE 8010-01-M

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[Rel. No. IC-15663; 812-6512]

## Dean Witter CMO Inc.; Issuance of Mortgage-Backed Securities and the Sale of Equity Interest in Trusts

Dated: April 3, 1987.

**AGENCY:** Securities and Exchange Commission (the "SEC").

**ACTION:** Notice of application for an exemption under the Investment Company Act of 1940 (the "1940 Act").

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*Applicant:* Dean Witter CMO Inc.

*Relevant 1940 Act Section:* Exemption requested under section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant seeks an order conditionally exempting the Applicant and each trust to be established by the Applicant (each, a "Trust") from all provisions of the 1940 Act in connection with their proposed issuance of collateralized mortgage obligations (the "Bonds") and Applicant's sale of certificates representing beneficial interest in such Trusts.

*Filing Date:* The application was filed on October 22, 1986, and amendments thereto on February 5 and March 26, 1987.

*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 April 24, 1987. 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 attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Dean Witter CMO Inc., 2121 San Jacinto Street, Suite 960, Dallas, Texas 75201, Attention: John Cutler.

**FOR FURTHER INFORMATION CONTACT:** Sherry A. Hutchins, Staff Attorney at (202) 272-2799 or Brion R. Thompson, Special Counsel at (202) 272-3016, Office of Investment Company Regulation, 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)).

*Applicant's Representations*

1. Applicant, a Delaware corporation, is a direct, wholly-owned, limited purpose finance subsidiary of Dean Witter Financial Services, Inc. ("Dean Witter"). Applicant was organized solely for the purpose of issuing the Bonds in one or more series (the "Series") and establishing Trusts, each of which will issue one or more Series of Bonds. Applicant will also sell certificates representing beneficial ownership interest in such Trusts ("Certificates"). Applicant does not intend to offer any of its shares of capital stock to an entity not affiliated with Dean Witter.

2. Applicant will not engage in any business or investment activity other than issuing and selling one or more Series of Bonds under an indenture (an "Indenture") between the Applicant and a bank, trust company or other fiduciary acting as bond trustee (a "Bond Trustee"). The Indentures will be qualified under the provisions of the Trust Indenture Act of 1939 (the "1939 Act").

3. Each Trust will be created pursuant to a trust agreement ("Trust Agreement") between Applicant and a bank, trust company or other fiduciary acting as owner trustee ("Owner Trustee"). Each Trust will not engage in any business or investment activity other than issuing and selling one Series of Bonds under an indenture (also, an "Indenture") between the Owner Trustee of such Trust and a Bond Trustee.

4. Each Series of Bonds will be collateralized by certificates (the "Mortgage Certificates") evidencing undivided interests in pools of mortgage loans (or participation interests in mortgage loans) that are (1) "fully-modified" pass-through mortgage-backed certificates guaranteed by the Government National Mortgage Association ("GNMA Certificates"), (2) guaranteed mortgage pass-through securities issued by the Federal National Mortgage Association ("FNMA Certificates"), (3) mortgage participation certificates issued by the Federal Home Loan Mortgage Corporation ("FHLMC Certificates") and other collateral pledged to secure such Series of Bonds. As appropriate, the Applicant or a Trust, as the issuer of a Series of Bonds, is referred to herein as the "Issuer".

5. In the case of each Series of Bonds: (a) The Issuer will hold no substantial assets other than the Mortgage Certificates; (b) each Series of Bonds will be secured by Mortgage Certificates having a collateral value determined under the related Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of such Series of Bonds; (c) distributions of principal and interest received on the Mortgage Certificates securing each Series of Bonds and any applicable reserve funds, plus reinvestment income thereon, will be sufficient to pay all interest on such Series of Bonds and to retire each class of Bonds of a Series by its stated maturity; (d) the Mortgage Certificates will be assigned to the related Bond Trustee and will be subject to the lien of the related Indenture; and (e) no Indenture will permit substitution of Mortgage Certificates pledged to secure a Series of Bonds.

6. Each Series of Bonds to be issued may contain one or more classes of

variable or floating interest Bonds which will have a fixed maximum rate of interest ("interest rate cap") that will be payable on the Bonds (or the minimum rate of interest, in the case of an inverse-floating rate Bond). Any Series of Bonds containing one or more classes of variable or floating interest rate Bonds will be structured with reference to the interest rate caps for that particular Series, to insure that the cash flow scheduled to be received by the related Bond Trustee from the Mortgage Certificates pledged to secure such Series of Bonds will be sufficient to make all payments of principal and interest on such Series of Bonds, even if the interest rate on any class of variable or floating interest rate Bonds in such Series climbed to the interest rate cap in the first interest period and remained constant throughout the life of such Series of Bonds. The collateral will be paid down as the mortgages underlying the Certificates are repaid, but will not be released from the lien of the related Indenture prior to the payment of such Series of Bonds.

7. In addition to the issuance and sale of the Bonds, Applicant intends to sell Certificates in each Trust to a limited number (initially, in no event more than twenty-five) of sophisticated institutional investors in transactions exempt from the registration requirements of the Securities Act of 1933, as amended ("1933 Act"). Such institutional investors may include one or more banks, savings and loan associations, insurance companies, and pension plans or other investors that would have prior experience in making investments in mortgage related securities or real estate ("Eligible Institutions"). Applicant submits that Eligible Institutions have such knowledge and experience in financial and business matters as to evaluate the risks and volatility of interest rate fluctuations as they affect the value of mortgages, mortgage related securities and residual interests in mortgage related securities, such as those represented by the Certificates. Each Eligible Institution will be required to represent that it is purchasing such Certificates for investment purposes. In addition, the Trust Agreement relating to each Trust will further prohibit the transfer of any Certificates if there would be more than one hundred owners of such Certificates at any time.

8. Neither the Certificateholders, the related Owner Trustee nor the related Bond Trustee will be able to impair the security afforded by the Mortgage Certificates to the holders of the Bonds. The related Indenture will provide that without the consent of each Bondholder to be affected, neither the Certificateholders, the related Owner Trustee nor the related Bond Trustee will be able to: (1) Change the stated maturity on the related Series of Bonds; (2) reduce the principal amount or the rate of interest on the related Series of Bonds; (3) change the priority of the repayment on any class of the related Series of Bonds; (4) impair or adversely affect the Mortgage Certificates securing the related Series of Bonds; (5) permit the creation of a lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Mortgage Certificates; or (6) otherwise deprive the related Bondholders of the security afforded by the lien of the related Indenture.

9. The sale of the Certificates in each Trust will not alter the payment of cash flows under the related Indenture including the amounts to be deposited in the collection account or any reserve fund created pursuant to the related Indenture to support payments of principal and interest on the related Series of Bonds.

10. Each Trust Agreement will require that no holder of a controlling interest in any Trust (as the term "control" is defined in Rule 405 under the 1933 Act), will be affiliated with the statistical rating agency rating the related Series of Bonds or the Owner Trustee.

11. The interest of the Bondholders will not be compromised or impaired by the sale of Certificates in each Trust, and there will not be a conflict of interest between the Bondholders and the Certificateholders for the following reasons: (a) The Mortgage Certificates which initially will be deposited into each Trust and pledged to secure the Series of Bonds issued by such Trust will not be speculative in nature because it will consist of GNMA Certificates, FNMA Certificates and/or FHLMC Certificates, which Mortgage Certificates are guaranteed as to timely payment of interest and timely or ultimate payment of principal by each respective entity; (b) each Series of Bonds will only be issued provided an independent nationally recognized statistical rating agency has rated such Series of Bonds in one of the two highest rating categories, which by definition means that such nationally recognized statistical rating agency has determined that the capacity of the issuing Trust to repay principal and interest on such Series of Bonds is extremely strong; (c) the related Indenture under which each Series of Bonds will be issued subjects the collateral pledged to secure such Series of Bonds, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Bond Trustee on behalf of the Bondholders;[1] and (d) the Certificateholder will be entitled to receive current distributions representing the residual payments on the collateral from the related Trust in accordance with the terms of the related Trust Agreement, which distributions are analogous to dividends payable to a shareholder of a corporate issuer of collateralized mortgage obligations. Further, the Certificateholders will be liable for the expenses, taxes and other liabilities of such Trust (other than the principal and interest on the Bonds) to the extent provided in the related Trust Agreement and not previously paid from the Trust estate. The choice of the form of issuer for a Series of Bonds and the identity of the Certificateholders, however, will not alter in any way the payments made to the holders of such Series of Bonds, which are payments governed by an Indenture which will meet the requirements of the 1939 Act.

12. The election by any Trust to be treated as a real estate mortgage investment conduit (A "REMIC") under the Internal Revenue Code of 1986, will have no effect on the level of the expenses that would be incurred by any such Trust. The related Trust Agreement of any Trust that elects to be treated as a REMIC will provide that all administrative fees and expenses in connection with the administration of the Trust will be paid or provided for in a manner satisfactory to a nationally recognized statistical rating agency. The related Trust Agreement of any Trust that elects to be treated as a REMIC will provide for the payment of administrative fees and expenses by

[1] Each Indenture shall specifically provide that no amounts may be released from the lien of such Indenture to be remitted to the related Issuer (and any Certificateholder) until (i) the related Bond Trustee has made the scheduled payment of principal and interest on the related Series of Bonds, (ii) the related Bond Trustee has received all fees currently owed to it, (iii) the firm of independent accountants referred to in such Indenture has received all fees owed to it for services rendered under such Indenture, and (iv) to the extent required by any Indenture related to a Series of Bonds, deposits have been made to certain reserve funds which will ultimately be used to make payments of principal and interest on such Series of Bonds. If the Issuer of a Series of Bonds is a Trust, once amounts have been released from the lien of such Indenture, the related Trust Agreement for the related Trust will provide that the related Owner Trustee under such related Trust Agreement will have a lien superior to that of the owners of the Certificates of such related Trust to the remaining cash flow to the extent of amounts owed to the related Owner Trustee.

one, or a combination of two or more, of the methods outlined in the application. Each Trust will ensure that the anticipated level of fees and expenses will be more than adequately provided for, regardless of the method which is selected by such Trust to provide for the payment of such fees and expenses.

13. The aggregate interest of the Certificateholder in the collateral and the expected returns earned by such owners will be far less than the payments made to Bondholders. Applicant does not intend to deposit in any Trust, Mortgage Certificates with a collateral value which exceeds 110% of the aggregate principal amount of the related Series of Bonds.

14. Applicant states that the relief requested is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act for the reasons set forth in the application.

*Applicant's Conditions:* Applicant agrees that if the exemption is granted it will be expressly conditioned on the following:

1. Each Series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to an exemption from the 1933 Act.

2. The Bonds will be "mortgage related securities" within the meaning of Section 3(a)(41) of the Securities Exchange Act of 1934. The Mortgage Certificates directly securing, each Series of Bonds will be limited to GNMA Certificates, FNMA Certificates, and/or FHLMC Certificates.

3. All Mortgage Certificates, funds, accounts and other collateral securing the Bonds ("Collateral") will be held by a Bond Trustee. The related Bond Trustee may not be an affiliate (as the term "affiliate" is defined in Rule 405 under the 1933 Act, 17 CFR 230.405) of an Issuer. Each Bond Trustee will have a first priority perfected secuity or lien interest in and to all Collateral securing a related Series of Bonds.

4. Each Series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating agency that is not affiliated with the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the 1940 Act.

5. No less than annually, an independent public account will audit the books and records of each Issuer of a Series of Bonds; in addition, will report on whether the anticipated payments of principal and interest on the Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report will be provided to each related Bond Trustee.

6. In addition, the above representations regarding the Certificates, the floating and variable rate Bonds, and the expenses of any Trust which elects to be treated as a REMIC (and as more fully described in the application) will be express conditions to the requested exemption.

For the SEC, by the Division of Investment Management, under delegated authority.

**Shirley E. Hollis**

*Assistant Secretary.*

[FR. Doc. 87-8158 Filed 4-10-87; 8:45am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-15662; 812-6499]**

## Freedom Investment Trust II; Notice of Application

April 3, 1987.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

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*Applicant:* Freedom Investment Trust II.

*Relevant 1940 Act Sections:* Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c), 22(d) and Rule 22c-1.

*Summary of Application:* Applicant seeks an order to permit its two existing series of shares and all future series of shares to assess a contingent deferred sales charge on certain redemptions of its shares.

*Filing Date:* The application was filed on October 14, 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 April 27, 1987. 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 5th Street, NW., Washington, DC 20549. Applicant, Three Center Plaza, Boston, MA 02108.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Heaney (202) 272-2847 or Special Counsel Karen L. Skidmore (202) 272-3023, 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. Applicant was organized as a business trust under the laws of the Commonwealth of Massachusetts and it is registered as an open-end management investment company under the Act. Applicant is authorized to issue shares in series and currently two series of shares have been authorized, the Freedom Global Fund and the Freedom Global Income Plus Fund ("Funds").

2. Shares in each of the Funds are offered for sale to the public through broker-dealers pursuant to dealer agreements with the Funds' principal underwriter, Tucker, Anthony & R.L. Day, Inc. ("Tucker, Anthony"). Applicant currently assesses sales charges of up to 4% of the public offering price on purchases of shares of the Funds, except that the initial sales charge on shares of the Funds purchased in excess of $2,000,000 or more has been eliminated.

3. Applicant proposes to impose a contingent deferred sales load charge (the "CDSL") on certain redemptions of shares having an initial purchase price of $2,000,000 or more. The CDSL would only be imposed on redemptions occurring within one year of a purchase and will never exceed ½ of 1% of the lesser of (1) the net asset value of the shares redeemed, or (2) the total cost of such shares. Tucker, Anthony will receive the proceeds of any CDSL received as reimbursement for commissions which it has paid for sales of these shares.

4. No CDSL will be imposed when the investor redeems (1) amounts derived from increases in the value of his account above the total cost of shares being redeemed due to increases in the net asset value per share of a Fund, (2) shares acquired through reinvestment of dividend income and capital gains distributions, or (3) shares held for at least one year.

5. In determining whether a CDSL is payable and, if so, the percentage charge applicable, it is assumed that

shares held the longest are the first to be redeemed. Shares held prior to the imposition of the CDSL may be redeemed without imposition of such charge.

6. There is no CDSL on exchanges of shares between the Funds but a CDSL may be payable upon the redemption of shares of the Fund acquired as a result of the exchange. For purposes of calculating the CDSL, the initial purchase date will be deemed to be the date of purchase of the shares of the first Fund being exchanged rather than the date of the exchange.

7. The exemptions requested are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act since the proposed CDSL permits substantial shareholders to have the advantages of greater investment dollars working for them from the time of their purchase of shares of the Funds. Since shareholders purchasing more than $2,000,000 of Fund CDSL will pay no sales charge on purchases of their shares, it is fair to impose the CDSL on those investors who redeem their shares before the Funds have had an opportunity to realize the anticipated benefits of the investment proceeds of such shares (e.g. reduced brokerage, custodial costs and other expenses for all of the shareholders of the Funds. Thus, CDSL should deter early redemptions of shares which will lead to these benefits for all shareholders of the Funds.

For the Commission, by the Division of Investment Management, under delegated authority.

**Shirley E. Hollis,**

*Assistant Secretary.*

[FR Doc. 87-8159 Filed 4-10-87; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. IC-15668; 812-6232]**

## Salomon Brothers Inc.; Issuance of Stripped Certificates Representing Interests in Bonds Held in the Custody of a Bank

Dated: April 7, 1987.

**AGENCY:** Securities and Exchange Commission (the "SEC").

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act")

*Applicant:* Salomon Brothers Inc.

*Relevant 1940 Act Section:* Exeption requested under section 6(c) from all provisions of the 1940 Act.

*Summary of Application:* Applicant requests an exemption from all provisions of the 1940 Act so that it can issue "stripped" certificates representing interests in the principal or interest payments due on certain bonds held in the custody of a major commercial bank.

*Filing Date:* The application was filed on October 23, 1985, and amended on March 27, 1987.

*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 May 4, 1987. 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 sent it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Cleary, Gottlieb, Steen & Hamilton, 1752 N Street NW., Washington, DC 20036, Attention: Edward F. Greene, Esq.

**FOR FURTHER INFORMATION CONTACT:** Sherry A. Hutchins, Staff Attorney at (202) 272-2799 or Brion R. Thompson, Special Counsel at (202) 272-3016, Office of Investment Company Regulation, 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)).

*Applicant's representations:*

1. Applicant is a Delaware corporation and an indirect wholly-owned subsidiary of Phibro-Salomon Inc. Applicant also is registered as a broker-dealer under the Securities Exchange Act of 1934.

2. Applicant proposes to offer for sale component parts of interest-bearing bonds (the "Bonds") issued or to be issued by an international financial institution (e.g., the World Bank, the Inter-American Development Bank or the Asian Development Bank), foreign sovereign governments, or corporations (the "Obligor"). Applicant anticipates that the Bonds will be intermediate term securities with maturities ranging from five to eight years.

3. Applicant or an affiliate thereof (as "Depositor") will purchase directly from the Obligor, or in the secondary market, some or all of the Bonds of a single series and deposit them with a bank (the "Custodian"). The Bonds will be held in the Custodian's name pursuant to a custody and agency agreement (the "Custody Agreement") meeting the requirements for unit investment trusts in section 26(a) of the 1940 Act.[1] Applicant proposes that the corporate trust department of a major commercial bank (with total assets of not less than $500,000,000) act as its Custodian, and states that it will pay the annual fee and certain expenses of the Custodian.

4. Upon deposit of the Bonds, the Custodian will deliver to Applicant certain deposit receipts (the "Certificates") representing interests in the serially maturing interest and principal payments on the Bonds. Thereafter, the Certificates will be offered only to institutional investors who are "accredited investors" for purposes of Regulation D under the Securities Act of 1933 ("1933 Act"), 17 CFR 230.501-506 (as now or hereafter in effect), and who have knowledge and experience in financial and business matters to be able to evaluate the risks associated with investing in instruments, such as the Certificates, that are not redeemable and represent interests in principal and interest payments on the underlying Bonds. The Certificates will not be offered to individuals. The minimum purchase price for Certificates will be $150,000. Since Certificates will be sold at a discount, such minimum purchase price will correspond to a face amount in excess of $150,000.

5. Applicant further expects to (but is not required to) maintain a secondary market for the Certificates. Each Certificate will be transferable and represent the right to receive the single payment of interest or principal to which such Certificate relates at the date of maturity of the Certificate, the payment being equal to the face amount of the Certificate.

6. The issue price of each Certificate will be equal to the present value of the face amount of such Certificate. Each series of Certificates will be offered pursuant to a private placement memorandum containing appropriate disclosure of all material aspects of the Certificates and relevant information concerning the Bonds and the Obligor,

[1] Section 26(a) requires among other things, the custodial arrangement to provide that the Custodian may not make any payment to the Depositor except for payments not exceeding what the Commission may prescribe as a reasonable amount for providing bookkeeping and other administrative services; the Custodian shall have possession of all the securities in which the assets of the trust are invested; and the Custodian shall not resign until the trust is liquidated or a successor Custodian has been designated.

the custodial arrangement and tax consequences. If the Certificates are issued in connection with a primary distribution of Bonds that is required to be registered under the 1933 Act, the private placement memorandum may be in the form of, or accompanied by, the Bond prospectus.

7. The Bonds may or may not be exempt from the registration provisions of the 1933 Act. In the case of Bonds that are so exempt (for example, obligations issued by certain international financial institutions of which the United States is a member), no trustee typically is appointed or indenture entered into with respect to the initial issuance of the Bonds. For exempt Bonds, however, there is typically a fiscal agency agreement pursuant to which a bank as agent for the Obligor of the Bonds agrees to disburse principal and interest to holders. Bonds that are registered will generally be issued pursuant to an indenture qualified under the Trust Indenture Act of 1939 ("1939 Act").

8. Under the proposed arrangement, the Bonds will be held in name of the Custodian for the Benefit of the Certificateholders. The Obligor will pay all interest and principal payments due on the Bonds held in custody directly to the Custodian. The Custodian will disburse the payments to holders of the Certificates to which such payments relate upon their presentation and surrender. In addition, a holder owning Certificates evidencing beneficial ownership of the entire principal amount of a Bond and the remaining unpaid interest due thereon ("Whole Certificate") will be entitled to surrender such Whole Certificate to the Custodian and direct the Custodian to register on the books of the Obligor's fiscal agent a transfer to that holder of a Bond in an aggregate principal amount corresponding to the Whole Certificate so surrendered. The Custodian will, in effect, act as both the receiving and disbursing agent, and may appoint sub-paying agents.

9. The Custody Agreement will provide that Certificateholders, as owners of direct interest in the Bonds, will possess all of the rights and privileges of owners of the Bonds, except that the Custodian shall have the sole and exclusive right to hold the underlying Bonds on behalf of Certificateholders and to act on behalf of the Certificateholders in the event of a default should they so request (as described below). The Custodian will achnowledge in writing in the Custody Agreement that the Bonds are held for the accounts of Certificateholders and will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the Custodian or any person claiming through it. All payments received by the Custodian will be immediately available upon receipt to holders of Certificates entitled to such payments, and the Custodian will not be authorized to exercise, with regard to any such payment received, any investment discretion whatsoever.

10. Applicant's compensation for its activities in connection with the proposed issuance of the Certificates will be an amount equal to the difference between the aggregate amount it receives from the sale of the Certificates and the cost of acquiring the underlying Bonds and the related transaction expenses (including the expenses and charges of the Custodian), and the profits realized, if any, as a result of trading Certificates in the secondary market. Applicant asserts that the purpose of the proposed arrangement is to provide a more flexible market for debt securities of the Obligor, thereby increasing liquidity and assisting financially sophisticated institutional investors in matching their portfolio requirements with such available investments.

11. The indentures governing the issuance of the Bonds will contain provisions permitting acceleration of interest and principal payments upon the occurrence of certain events. Acceleration provisions contained in Bond indentures generally provide that if the Obligor is in default for a given period on the payment of the principal or interest on any bonds or notes (including the Bonds) or of certain other obligations, then the holder of any of the Bonds may elect to accelerate the principal of the Bonds held by him, and the Obligor must pay such principal, together with interest accrued thereon through the date of payment, unless prior to that time all such defaults are cured.

12. In the aggregate, the Certificateholders' rights in the event of a default on the underlying Bonds will be the same as direct holders of the Bonds, i.e., to elect to accelerate the principal of the Bonds, and thereby make the Obligor pay such principal, together with interest accrued thereon through the date of payment, unless prior to that time all such defaults are cured. However, under the proposed arrangement, individual Certificateholders will have to notify the Custodian of such holders' election to accelerate and the Custodian will only notify the Obligor that the principal on all of the Bonds represented by a specific Certificate is accelerated if a stated percentage of holders so notify it. Moreover, in the event of such a default by the Obligor, a holder of a Whole Certificate representing ownership of all the principal and remaining unpaid interest due on a Bond will continue to have the above-mentioned right to surrender such Whole Certificate and direct the Custodian to register on the books of the Obligor's fiscal agent a transfer to that holder of such Bond in the appropriate aggregate principal amount. Such Whole Certificateholder will have the same rights with regard to the defaulted Bond as any other Bondholder.

13. If the Obligor fails to make any payment due on the Bonds, the holder of any Certificate not paid by virtue of such default may sue the Obligor directly, or, if not permitted to maintain such an action under applicable law, he may cause the Custodian to commence or join such an action against the Obligor to recover the amount due on such Certificate at the holder's expense. Also, in the event of a default on any Bonds which triggers acceleration (*e.g.*, non-payment which continues beyond the specified cure period), the holders of 25 percent in the aggregate of "amortized face amount" (as defined in the application) of Certificates then outstanding may direct the Custodian to take such action as such holders deem appropriate with regard to all of the Bonds of the defaulting Obligor then held by the Custodian.

14. In the case of an acceleration, the Custodian, as representative of the Certificateholders, will have the same rights as any other Bondholder to deliver notice to the Obligor (or to the Bond trustee, in a case of Bonds issued pursuant to an indenture qualified under the 1939 Act) stating that the Custodian elects to declare the principal of all of the Bonds then held by the Custodian to be immediately due and payable. At such time as the Bonds are accelerated, the interest of each holder of Certificates in the Bonds would be transformed into an undivided interest in all of the proceeds thereafter received on such Bonds, allocated in proportion to the relative amortized face amounts of the respective Certificates.

15. Without conceding the applicability of the 1940 Act to the proposed offering of the Certificates (absent an acceleration of the obligation to pay the principal and interest on the underlying Bonds upon a default), Applicant asserts that it would be approporiate in the public interest and consistent with the protection of investors and the purposes of the 1940 Act to exempt the proposed

arrangement from all provisions of the 1940 Act. Applicant submits that, except in the event of an acceleration of principal and interest payments on the Bonds, the Certificates will represent a direct ownership interest in the principal or interest in the underlying Bonds. Applicant further submits that neither the structure nor the mode of operations of the proposed arrangement resembles a typical investment company, and offering of the Certificates to financially sophisticated institutional investors is not the type of transaction that needs to be regulated under the 1940 Act. Applicant contends that the Custodian will not be trading, dealing, or generally investing in securities and, thus, will not exercise any investment discretion, but will perform only administrative and mechanical functions.

16. Applicant asserts that the selection of the underlying securities will be made prior to the purchase of Certificates, and, thus, will be known by the purchaser at the time of purchase. Moreover, since the Certificates will be sold on the basis of the creidt of the Obligor on the underlying Bonds, Applicant asserts that the Certificateholders will look ultimately to the Obligor for their assurance of repayment, not to the Applicant, Depositor or Custodian. Applicant further asserts that even if an investment company is formed upon acceleration of interest and principal payments on the Bonds, such company would be engaged in activities associated with its liquidation and, thus, should be deemed exempt from all provisions of the 1940 Act under section 7(b) of the 1940 Act.

17. In addition, Applicant represents that each Certificate and the Custody Agreement will provide that the Certificateholder is the real party in interest and shall have the right upon default to proceed directly and individually against the Obligor (to the extent permitted by law) in the manner such holder deems appropriate. Because of the structure of the proposed arrangement and the nature of the direct interests represented by Certificates, Applicant asserts that the arrangement will present no risk of loss separate from or in addition to that presented by the underlying investment in the Bonds themselves. Applicant believes that the Custodian's obligation under the Custody Agreement to enforce the Certificateholders' rights will provide a sufficient safeguard against the potential problems associated with a pool of liquid assets that are the principal concern of the 1940 Act and, more generally, will provide adequate assurance that the Certificates will be paid in accordance with their terms.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 87-8200 Filed 4-10-87; 8:45 am]

BILLING CODE 8010-01-M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster Loan Area #2271]**

### Declaration of Disaster Loan Area; Massachusetts

Plymouth County and the adjacent Counties of Barnstable and Norfolk in the State of Massachusetts constitute a disaster area because of damage from coastal flooding which occurred on January 2, 1987. Applications for loans for physical damage may be filed until the close of business on June 2, 1987, and for economic injury until the close of business on January 4, 1988, at the address listed below:

Disaster Area 1 Office, Small Business Administration, 15-01 Broadway, Fairlawn, New Jersey 07410,

or other locally announced locations.

The interest rates are:

| | Percent |
|---|---|
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 7.500 |
| Businesses without credit available elsewhere | 4.000 |
| Businesses (EIDL) without credit available elsewhere | 4.000 |
| Other (non-profit organizations including charitable and religious organizations | 9.500 |

The number assigned to this disaster is 227106 for physical damage and for economic injury the number is 651500.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 3, 1987.

**James Abdnor,**

*Administrator.*

[FR Doc. 87-8133 Filed 4-10-87; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2273]**

### Declaration of Disaster Loan Area; Massachusetts

The City of Lowell, Massachusetts, constitutes a disaster area because of damages from a fire which occurred on March 23, 1987, in the Lawrence Manufacturing Complex. Applications for loans for physical damage may be filed until the close of business on June 8, 1987, and for economic injury until the close of business on January 7, 1988, at the address listed below:

Disaster Area 1 office, Small Business Administration, 15-01 Broadway, Fairlawn, New Jersey 07410,

or other locally announced locations.

The interest rates are:

| | Percent |
|---|---|
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 7.500 |
| Businesses without credit available elsewhere | 4.000 |
| Businesses (EIDL) without credit available elsewhere | 4.000 |
| Other (non-profit organizations including charitable and religious organizations | 9.500 |

The number assigned to this disaster is 227305 for physical damage and for economic injury the number is 651800.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 7, 1987.

**James Abdnor,**

*Administrator.*

[FR Doc. 87-8134 Filed 4-10-87; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2272]**

### Declaration of Disaster Loan Area; Mississippi

Warren County in the State of Mississippi constitutes a disaster area because of damage from severe storms, tornadoes, torrential rains and flooding which occurred on March 17 and 18, 1987. Applications for loans for physical damage may be filed until the close of business on June 8, 1987, and for economic injury until the close of business on January 7, 1988, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Floor, Atlanta, Georgia 30308,

or other locally announced locations.

The interest rates are:

| | Percent |
|---|---|
| Homeowners with credit available elsewhere | 8.000 |
| Homeowners without credit available elsewhere | 4.000 |
| Businesses with credit available elsewhere | 7.500 |
| Businesses without credit available elsewhere | 4.000 |

| | Percent |
|---|---|
| Businesses (EIDL) without credit available elsewhere | 4.000 |
| Other (non-profit organizations including charitable and religious organizations) | 9.500 |

The number assigned to this disaster is 227212 for physical damage and for economic injury the number is 651600. (Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: April 7, 1987.

**James Abdnor,**

*Administrator.*

[FR Doc. 87-8135 Filed 4-10-87; 8:45 am]

BILLING CODE 8025-01-M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceedings; Agreements Filed During the Week Ending Apr. 3, 1987

The following agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

**Docket No. 44764**

*Parties:* Members of International Air Transport Association.
*Date Filed:* March 31, 1987.
*Subject:* Cargo Rates from Morocco.
*Proposed Effective Date:* April 1, 1987.

**Docket No. 44765**

*Parties:* Members of International Air Transport Association.
*Date Filed:* March 31, 1987.
*Subject:* Composite Currency Revalidation.
*Proposed Effective Date:* April 1, 1987.

**Docket No. 44770 R-1—R-4**

*Parties:* Members of International Air Transport Association.
*Date Filed:* April 3, 1987.
*Subject:* Increase Cargo Rates UK to US.
*Proposed Effective Date:* May 1, 1987.

**Docket No. 44771 R-1—R-32**

*Parties:* Members of International Air Transport Association.
*Date Filed:* March 26, 1987.
*Subject:* Africa/Mid-East—TC3 Fares.
*Proposed Effective Date:* April 1, 1987.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 87-8214 Filed 4-10-87; 8:45 am]

BILLING CODE 4910-62-M

### Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending April 3, 1987

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases, a final order without further proceedings.

**Docket No. 44766**

*Date Filed:* March 31, 1987.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* April 28, 1987.
*Description:* Application of Skagway Air Service, Inc., pursuant to section 401(d)(1) of the Act and Subpart Q of the Regulations requests authority to engage in interstate and overseas scheduled air transportation of persons, property, and mail: Between any point in any State in the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

**Docket No. 44772**

*Date Filed:* April 3, 1987.
*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* May 1, 1987.
*Description:* Application of Eastern Air Lines, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity so as to authorize service as follows: Between the terminal point New York, N.Y./ Newark, N.J. and the coterminal points Rio de Janeiro and Sao Paulo, Brazil.

**Docket No. 44774**

*Date Filed:* April 3, 1987.
*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* May 1, 1987.
*Description:* Application of Tower Air, Inc., pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessary (or amendment of its current certificate) authorizing it to engage in scheduled foreign air transportation of persons, property and mail on a permissive basis, between New York, N.Y., on the one hand, and Stockholm, Sweden, on the other hand.

**Phyllis T. Kaylor,**

*Chief, Documentary Services Division.*

[FR Doc. 87-8215 Filed 4-10-87; 8:45 am]

BILLING CODE 4910-62-M

## Federal Aviation Administration

**[Summary Notice No. PE-87-5]**

### Petition for Exemption; Summary of Petitions Received and Dispositions of Petitions Issued

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

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATE:** Comments on petitions received must identify the petition docket number involved and must be received on or before May 4, 1987.

**ADDRESS:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 915G,

FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part II of the Federal Aviation Regulations (14 CFR Part II).

Issued in Washington, DC, on April 7, 1987.

**Leonard R. Smith,**

*Program Manager, Program Management Staff.*

## Petitions for Exemption

| Docket No. | Petitioner | Regulations affected | Description of relief sought |
|---|---|---|---|
| 25179 | Israel Aircraft Industries | 14 CFR Parts 43, 65, and 145 | To allow petitioner and its Bedek Aviation Division to repair, overhaul, or modify U.S.-registered aircraft and components operating within the United States. |
| 25089 | Hawkins and Powers Aviation, Inc | 14 CFR 137.53(c)(2) | To allow petitioner to operate its DC-6 aircraft without the capability to jettison one-half of its load in 45 seconds as required. |
| 23875 | Beech Aircraft Corporation | 14 CFR 45.29(b)(2) | To allow petitioner to display N-numbers on the outboard surfaces of the engine nacelles on its Model 2000 and Model 115-67 aircraft. |
| 25176 | Regional Airline Association | 14 CFR 135.293, 135.297, and 135.351(c) | To allow members of the Regional Airline Association and any other commuter airline to permit the satisfactory completion of an approved course of training in an airplane Advanced Training Device to be substituted for the recurrent pilot competency/instrument proficiency check requirements of Part 135 on an alternating basis. |
| 25161 | Mesa Airlines | 14 CFR 135.181(a)(2) | To allow petitioner to utilize drift down procedures in lieu of meeting the requirements of the regulations. |
| 24915 | Alaska Air Carriers Association | 14 CFR 121.119, 121.651, 135.213, and 135.225. | To allow Alaska Air Carriers Association member airlines relief to the extent that in Alaska weather observations provided by A-Paid observers shall be considered latest weather for the purpose of initiating IFR approaches and departures in performance with published procedures in order to provide essential service to Alaskan communities. |
| 25191 | Northwest Airlines, Inc | 14 CFR 121.371(a) and 121.378 | To allow petitioner to contract with original equipment manufacturers and foreign repair stations that are certificated and appropriately rated under the French, West German, and United Kingdom civil aviation authorities for inspection, repair, and overhaul of selected aircraft parts to support its Boeing B-747 and B-757 aircraft. |
| 25168 | Evergreen International Airlines, Inc | 14 CFR 121.583(a)(8) | To allow petitioner to transport employees and dependents on DC-8 cargo flights. |
| 11144 | American Airlines, Inc | 14 CFR 121.99 and 121.351(a) | To allow petitioner to operate its airplanes between Wilmington, North Carolina, and St. Croix and St. Thomas, Virgin Islands, via Nassau, without maintaining two-way radio communications between each airplane and the dispatch office along the named routes. |
| 035CE | Beech Aircraft Corporation | SFAR 41C(5)(e)(k) | To allow the aisle width to be less than 15 inches at locations 25 inches or more from the floor on their 300 series airplanes equipped with the executive interior. |
| 25220 | Eagle International Ministries | 14 CFR 91.303 | Petitioner seeks a full and complete exemption to operate its Boeing 707 State 1 aircraft in the U.S. As an alternative to a complete exemption, petitioner seeks relief to allow fewer operations at a specified airport. |
| 014NM | Gulfstream Aerospace Corporation | 14 CFR § 25.813(e) | To permit installation of fixed bulkheads with doors that divide the passenger cabin into two sub-cabin areas for GULFSTREAM MODEL GIV AIRCRAFT operating under part 91 rules. |

## Petitions for Exemption

| Docket No. | Petitioner | Regulations affected | Description of relief sought disposition |
|---|---|---|---|
| 25005 | Critical Care Services, Inc | 14 CFR 135.213(a) and 135.225(a), (b), and (f). | To allow qualified pilots in command to use weather information based on their own observations for operations under both instrument flight rules and visual flight rules, the conduct of instrument approach procedures at airports without approved weather reporting facilities, and qualified pilots in command to take off from airports without having approved weather reporting facilities at those airports. *Denied, March 20, 1987.* |
| 25074 | Aero Industries, Inc | 14 CFR 135.267 | To allow petitioner to assign a flight crewmember and its flight crewmembers to accept duty during flight time without having had a least 10 consecutive hours of rest during the 24-hour period preceding the planned completion of the assignment. *Denied, March 11, 1987.* |
| 25038 | Skyworld Airlines, Inc | 14 CFR 121.503(a) and (b) and 121.511(a) | To allow petitioner to schedule a pilot or flight engineer for more than 8 hours of flight time during any 24 consecutive hours without a rest period of 16 hours following the flight time. *Denied, March 24, 1987.* |
| 25180 | Ransome Airlines, Inc | 14 CFR 121.411(a)(1), (a)(2), (a)(3), and (a)(6) and 121.413(b) and (c). | To allow petitioner to utilize certain highly-qualified pilot flight instructors from Aeroformation and Aerospatiale for the purpose of training petitioner's initial cadre of pilots in the Aerospatiale 42 type airplane in Toulouse, France, without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121. *Granted, March 9,1987.* |
| 24938 | Piedmont Airlines | 14 CFR 121.99 | To allow To allow petitioner to operate certain of its Fokker F-28 airplanes without maintaining continuous communications under normal operation conditions over the entire route between each airplane and the appropriate dispatch office. *Granted, March 20, 1987* |
| 20816 and 20187 | Zephyrhills Parachute Center | 14 CFR 91.15(a)(2), 91.47, and 105.43(a)(2). | To allow foreign nationals to participate in petitioner's skydiving events without complying with parachute equipment and packing requirements and the carriage of 40 parachutists in the DC-3/C47. *Granted, March 17, 1987.* |
| 23392 | Beaver Aviation Service, Inc | 14 CFR 141.91(a) | To allow the conduct of training at a satellite base located more than 25 nautical miles from the main base of operation. *Granted, March 25, 1987.* |

## Dispositions of Petitions for Exemption

| Docket No. | Petitioner | Regulations affected | Description of relief sought disposition |
|---|---|---|---|
| 24165 | Department of the Air Force | 14 CFR 91.73(a) | To allow the petitioner to conduct certain night flight military training operations without lighted aircraft position lights. *Granted, February 18, 1987* |
| 030CE | Mooney Aircraft Corp | 14 CFR 23.991(a)(1) | To allow installation of the Porsche PFM3200No3 engine in the M20L airplane, with two identical electric-driven fuel pumps for the fuel injection system rather than a fuel pump directly driven by the engine. *Granted, February 13, 1987* |
| 24187 | Florida Department of Law Enforcement | 14 CFR 91.79(c) 91.109(a) | To allow petitioner to be exempted from the FAR 91.79(c), and 91.109(a) to conduct law enforcement air support. *Granted, March 4, 1987* |

DISPOSITIONS OF PETITIONS FOR EXEMPTION—Continued

| Docket No. | Petitioner | Regulations affected | Description of relief sought disposition |
|---|---|---|---|
| 22473 | Ransome Airlines, Inc. | 14 CFR 93.123, 93.125, 93.129 | FAA Exemption 3752B currently permits commuter operators at Washington National Airport to conduct two additional operations per hour above the limits specified in FAR 93.123, on stub ends of runways utilizing short takeoff and landing ("STOL") aircraft. Petitioner seeks amendment of Exemption 3752B to extend the expiration date of the exemption indefinitely and to increase the limit on operations under the exemption to six per hour. *Granted, February 1, 1987.* |

[FR Doc. 87-8112 Filed 4-10-87; 8:45 am]
BILLING CODE 4910-13-M

## National Airspace Review Enhancement Program; Advisory Committee Meeting

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C App. 1) notice is hereby given of a meeting of the Federal Aviation Administration National Airspace Review Enhancement Program Advisory Committee (NAREAC). The agenda for this meeting is as follows:

Opening Remarks
NARE Program Overview/Direction
NAREAC Membership and Responsibilities
New Program Description
Status of Recommendations
Closing

**DATE:** May 28, 1987, convenes at 9:30 a.m.

**ADDRESS:** The meeting will be held at the Federal Aviation Administration, room 1010, 800 Independence Avenue, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** National Airspace Review Program Management Staff, Federal Aviation Administration, 800 Independence Avenue, SW., ATO-20, Washington, DC 20591, (202) 267-3145. Attendance is open to the interested public, but limited to the space available. To ensure consideration, persons desiring to make statements at the meeting should submit them in writting to the Program Manager, National Airspace Review Program, ATO-20, 800 Independence Avenue, SW., Washington DC 20591, by May 15, 1987. Time permitting and subject to the approval of the chairman, these idividuals may make oral presentations of their previously submitted statements.

Issued in Washington, DC on April 3, 1987.

**Brooks C. Goldman,**

*Executive Director, NAREAC.*

[FR Doc. 87-8113 Filed 4-10-87; 8:45 am]
BILLING CODE 4910-13-M

## Federal Railroad Administration

### Petitions for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST-84-21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before May 28, 1987 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

**West Virginia Railroad Maintenance Authority, South Branch Valley Railroad (SBVR)**

(Waiver Petition Docket Numbers RSGM-87-3, LI-87-4, SA-87-1, PB-87-1)

The West Virginia Railroad Maintenance Authority is the operator of the South Branch Valley Railroad (SBVR). The Authority seeks a waiver for the SBVR TM95 Trackmobile. They plan to use the vehicle for switching purposes at Grace Cabin Road and in emergencies to Greenspring, West Virginia. The TM95, when used to move freight cars and provide a switching service, is defined as a locomotive and must comply with Federal Railroad Administration (FRA) safety standards 49 CFR Part 223—Safety Glazing Standards, Part 229—Locomotive Safety Standards; Part 231—Safety Appliance Standards and Part 232—Power Brakes Regulation. The SBVR indicates that the Trackmobile does not comply with all the requirements.

The safety glazing is automotive safety glass and not in compliance with Part 223. The vehicle is deficient in proper headlights Part 229, and the air brake system is not in compliance with Part 232. The safety appliances are not adequate to satisfy Part 231. The Authority realizes that the Trackmobile, because of its configuration and size, is not a conventional locomotive and it could not be equipped with all the FRA required equipment. Therefore, they are requesting relief in order to be allowed to use it.

**Union Pacific Railroad Company**

(Waiver Petition Docket Number SA-87-3)

The Union Pacific Railroad Company seeks a temporary waiver of compliance with certain provisions of Safety Appliance Standards (49 CFR Part 231) for two prototype six unit rotary coal gondolas, UP 48000 and 48001.

The cars are equipped with an automatic spring applied parking brake which operates in harmony with the power brakes in place of the conventional handbrake. Reduction of brake pipe pressure to 40 psi or below automatically allows a spring in the brake cylinder to apply the parking brake. A valve located on the B-end of the car allows manual operation of the spring brake.

The cars are not equipped with full side and end ladders at the BR and AL corners. A four tread side ladder is provided at the BR and BL corners for access to the handbrake and crosssover

platform. A three tread side ladder is provided at the AR and AL corners for personnel to ride on during car movement. Full ladders are not provided as operating personnel are not required to acces the top of car, interior of car or high handbrake.

The truck support castings infringe on the end sill area where the lower end handhold is to be located. It thus becomes necessary to relocate the end handholds twenty-eight (28) inches from side of car to facilitate truck and underframe inspection. An additional sixteen (16) inch handhold has been provided at each corner of A and B ends of car to facilitate uncoupling lever operation. The upper end handholds have been eliminated as no longer being required.

UP 48000 is currently undergoing testing at the Transportation Test Center, Pueblo, Colorado. Testing is expected to be completed by July 1987. UP 48001 is undergoing structural tests, expected to be completed by end of March, at which time car will be given road tests in loaded and unloaded conditions.

On completion of testing, subject cars will be placed in limited revenue service.

Issued in Washington, DC, on April 3, 1987.

**J.W. Walsh,**

*Associate Administrator for Safety.*

[FR Doc. 87-8120 Filed 4-10-87; 8:45 am]

BILLING CODE 4910-06-M

## National Highway Traffic Safety Administration

### Light Truck Fuel Economy Standards; Denial of Petition for Rulemaking

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

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This notice denies a petition for rulemaking submitted by Lands Motor Company, Inc., which requested relief from the light truck fuel economy standards for model years 1986 through 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. Orron Kee, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-366-4936).

**SUPPLEMENTARY INFORMATION:** Lands Motor Company submitted a petition for rulemaking, requesting relief from the light truck fuel economy standards for model years 1986 through 1988. That company requested establishment of a separate class for its Precedent model light truck, and a separate fuel economy standard for that class. As an alternative, Lands requested establishment of an exemption procedure for small volume light truck manufacturers.

NHTSA recently attempted to contact Lands for additional information concerning its petition. However, the telephone number listed by the petitioner is now out of service. Also, a letter sent to Lands by certified mail was returned undelivered.

Since NHTSA is unable to determine the current status of Lands or the extent to which the information provided in that company's petition remains valid, it will not proceed with further consideration of the petition. Accordingly, the petition is denied at this time. If Lands wishes consideration of its request to be reopened, it should submit a new petition with up-to-date information, including a current address.

Issued on April 7, 1987.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 87-8174 Filed 4-10-87; 8:45 am]

BILLING CODE 4910-59-M

## Research and Special Programs Administration

### Office of Hazardous Materials Transportation; Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applicants for exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

**DATES:** Comment period closes May 11, 1987.

Address Comments To: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Buildings, 400 7th Street, SW., Washington, DC.

NEW EXEMPTIONS

| Application | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 9739-N | Unocal Corp., Los Angeles, CA | 49 CFR 173.245 | To authorize shipment of sodium tetrathiocarbonate, classed as a corrosive liquid, in a DOT Specification MC-306 cargo tank. (modes 1, 2) |
| 9740-N | National Aeronautics and Space Administration, Kennedy Space Center, FL. | 49 CFR 173.34(c) | To authorize periodic retesting, reinspection and marking of DOT specification 3A, 3AA and 3AAX cylinders every 10 years when shipping certain gases. (modes 1, 2) |
| 9741-N | Moura Batteries Co., Inc., Mount Vernon, NY | 49 CFR 173.260(a)(3) | Authorization to ship palletized electrical storage battery, wet classed as corrosive material, in a single year without a structure to withstand a superimposed weight. (modes 1, 2, 3) |
| 9742-N | M1 Engineering Ltd., West Yorkshire, England | 49 CFR 173.353, 178.245 | To manufacture, mark and sell non-DOT specification steel portable tanks for shipping methyl bromide, liquid classed as poison B. (modes 1, 2, 3) |
| 9743-N | Allied-Signal Inc., Morristown, NJ | 49 CFR 173.420(a)(2) | To authorize shipment of uranium hexafluoride classed as radioactive material in cylinders not manufactured in accordance with ANSI N14.1—1982 standard. (modes 1, 2, 3) |
| 9744-N | Noury Chemicals, Chicago, IL | 49 CFR 173.157(a)(5) | To authorize shipment of benzoyl peroxide, wet with at least 30% water, classed as an organic peroxide, in a DOT Specification 12B65 fiberboard box containing a bag with 31.5 pounds of material. (mode 1) |

NEW EXEMPTIONS—Continued

| Application | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|
| 9745-N | Metal Box Enterprises, Inc., Vernona, NJ | 49 CFR 173.306, 175.3, 178.33-2(b) | To manufacture, mark and sell non-DOT specification metal container, comparable to DOT Specification 2P, for shipment of certain flammable and nonflammable compressed gases, and an insecticide, liquefied gas containing no poison A or material. (modes 1, 2, 3, 4) |
| 9746-N | Air Products and Chemicals, Inc., Allentown, PA | 49 CFR 173.264(b)(1) | To authorize shipment of hydrogen fluoride, classed as a corrosive material in DOT Specification 3BN cylinders. (mode 1) |
| 9747-N | Aerosol Services Co., Inc., City of Industry, CA | 49 CFR 173.1200(a)(8)(ii), 173.301(h), 173.306(a)(3)(i), 175.3, 178.33-2(b), 178.33-9. | To authorize shipment of insecticide containing no poison A or B material, classed as nonflammable gas and flammable liquefied gas, in non-DOT specification containers similar to DOT Specification 2P. (modes 1, 3, 4) |
| 9748-N | Grief Bros. Corp., Springfield, NJ | 49 CFR 178.224 | To manufacture, marking and sell non-DOT specification fiber drums of not over 75-gallon capacity, similar to the DOT specification 21C except that the top head is of molded polyethylene, for shipment of hazardous solids authorized in a DOT Specification 21C fiber drum. (modes 1, 2) |
| 9749-N | Union Carbide Corp., Danbury, CT | 49 CFR 172.203(c), 172.324 | To authorize the shipment of a material containing a hazardous substance without listing the name of the hazardous substances on the shipping papers and on the package when transported by private or contract carriers. (mode 1) |
| 9750-N | IRECO, Inc., Salt Lake City, UT | 49 CFR 173.154(a)(18) | To authorize shipment of 86% ammonium nitrate solution, classed as an oxidizer, in DOT Specification MC-307 or MC-311 insulated cargo tanks. (mode 1) |
| 9751-N | C-I-L Inc., North York, Ont., Canada | 49 CFR 173.81(c), 175.3 | To authorize of detonating cord, high explosive, Class A, to be shipped as a Class C explosive, when offered in a specifically designed packaging configuration. (modes 1, 2, 3, 4) |
| 9752-N | Ethyl Corp., Baton Rouge, LA | 49 CFR 173.354(a)(7), 175.3 | To authorize shipment of motor fuel antiknock compound, Class B poison, contained in a metal can, surrounded by vermiculite, enclosed in a hermetically sealed metal can overpacked in a DOT Specification 2B fiberboard box. (modes 1, 3, 4) |
| 9753-N | Moog Inc., East Aurora, NY | 49 CFR 173.302(a)(4), 175.3 | To manufacture, mark and sell approximately six non-DOT specification pressure vessels for shipment of helium, classed as nonflammable gas. (modes 1, 2, 4) |
| 9754-N | Armin Thermodynamics Corp., Broken Arrow, OK | 49 CFR 173.247, 173.266, 178.19, Part 173, Subpart D, F, H. | To manufacture, mark and sell non-DOT specification polyethylene containers not to exceed 55 gallon capacity comparable to DOT Specification 34 except for larger opening for shipment of those commodities presently authorized in DOT Specification 34. (modes 1, 2, 3) |
| 9755-N | Explosive Technology, Inc., Fairfield, CA | 49 CFR 173.65(a)(4) | To authorize shipment of a High explosive, Class A, in a specially designed non-DOT specification wooden box not to exceed 700 pounds gross weight. (mode 1) |
| 9756-N | General Electric Co., Schenectady, NY | 49 CFR 173.245(a)(8) | To authorize use of a steel portable tank containing up to, but not exceed 10,000 pounds gross weight of a solid mixture of 50% sodium hydroxide and 50% potassium hydroxide, corrosive solid, n.o.s. classed as a corrosive material. (mode 1) |
| 9757-N | JP Services, Inc., Benicia, CA | 49 CFR 173.245b(a)(8) | To authorize use of a stainless steel closed bin containing in excess of 7,000 pounds gross weight of waste corrosive solid, n.o.s., classed as corrosive material. (mode 1) |
| 9758-N | Application Des Gaz, Paris, France | 49 CFR 173.304(d)(3)(ii), 178.33 | To authorize shipment of Butane, Classed as flammable gas, in non-DOT specification nonrefillable metal containers comparable to DOT Specification 2P except for diameter and volume. (modes 1, 2, 3) |

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on April 7, 1987.

**J. Suzanne Hedgepeth,**

*Chief, Office of Hazardous Materials Transportation.*

[FR Doc. 87-8216 Filed 4-10-87; 8:45 am]

BILLING CODE 4910-60-M

## Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications To Become Party to an Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applications for renewal or modification of exemptions or Application to Become a Party to an Exemption.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing a public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comment period closes April 28, 1987.

**ADDRESS COMMENTS TO:** Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC

| Application No. | Applicant | Renewal of Exemption |
|---|---|---|
| 2709-X | IRECO Inc., Salt Lake City, UT | 2709 |
| 4719-X | Allied-Signal Inc., Morristown, NJ | 4719 |
| 4884-X | Solkatronic Chemicals, Inc., Fairfield, NJ | 4884 |
| 5022-X | National Aeronautics and Space Administration, Washington, DC | 5022 |
| 5206-X | Mesabi Powder Co., Hibbing, MN | 5206 |
| 5206-X | Nelson Brothers, Inc., Parish, AL | 5206 |
| 5600-X | Solkatronic Chemicals, Inc., Fairfield, NJ | 5600 |
| 6232-X | McDonnell Douglas Corp., Saint Louis, MO | 6232 |
| 6759-X | IRECO Inc., Salt Lake City, UT | 6759 |
| 6824-X | Bio-Lab, Inc., Conyers, GA | 6824 |
| 6824-X | GPS Industries, City of Industry, CA | 6824 |
| 7489-X | Micor Company, Inc., Milwaukee, WI | 7489 |
| 7526-X | Schering Aktiengesellschaft, West Berlin, West Germany | 7526 |
| 7605-X | General Dynamics Corp., For Worth, TX | 7605 |
| 7607-X | The Foxboro Co., South Norwalk, CT | 7606 |
| 7628-X | Chemtech Industries, Inc., St. Louis, MO | 7628 |
| 7769-X | Brunswick Corp., Lincoln, NE | 7769 |
| 7835-X | Solkatronic Chemicals, Inc., Fairfield, NJ | 7835 |
| 7835-X | MG Industries, Valley Forge, PA | 7835 |
| 7886-X | W.M. Barr & Company, Inc., Memphis, TN | 7886 |
| 8096-X | Pressure-Pak Container Co., Inc., East Hampton, CT | 8096 |
| 8099-X | Union Carbide Agricultural Products Co., Inc., Danbury, CT | 8099 |
| 8131-X | National Aeronautics and Space Administration, Washington, DC | 8131 |
| 8151-X | Ropak West, Inc., La Mirade, CA | 8151 |
| 8152-X | Allied-Signal Inc., Morristown, NJ | 8152 |
| 8167-X | Monstat Corp., New York, NY | 8167 |
| 8178-X | National Aeronautics and Space Administration, Washington, DC | 8178 |
| 8184-X | Trojan Corp., Salt Lake City, UT | 8184 |
| 8209-X | Coastal Planes Airways, Inc., Warner Robins, GA | 8209 |
| 8238-X | ASARCO Inc., New York, NY | 8238 |
| 8249-X | LPS Industries Inc., Formerly Lawrence Packaging, Newark, NJ | 8249 |
| 8362-X | Altus Corp., San Jose, CA (See Footnote [1]) | 8362 |
| 8390-X | J.T. Baker Chemical Co., Phillipsburg, NJ | 8390 |
| 8487-X | Brunswick Corp., Lincoln, NE | 8487 |
| 8558-X | Trojan Corp., Salt Lake City, UT | 8558 |
| 8577-X | Micor Company, Inc., Milwaukee, WI | 8577 |
| 8678-X | Eurotainer, S.A., Paris, France | 8678 |
| 8691-X | Aluminum Company of America, Pittsburgh, PA | 8691 |
| 8692-X | Mitsubishi International Corp., New York, NY | 8692 |
| 8706-X | Petro-Steel Division of Prairie State Equipment, Sioux Falls, SD | 8706 |
| 8757-X | Y-Z Industries, Inc., Snyder, TX | 8757 |
| 8812-X | The Protectoseal Co., Bensenville, IL (See Footnote [2]) | 8812 |
| 8815-X | Nelson Brothers, Inc., Parrish, AL | 8815 |
| 8921-X | Hoover Group, Inc., Beatrice, NE (See Footnote [3]) | 8921 |
| 8938-X | Cryogenic Services, Inc., Canton, GA (See Footnote [4]) | 8938 |
| 8956-X | Clif Mock Company, Conroe, TX | 8956 |
| 8958-X | Track of the Wolf, Inc., Brooklyn Park, MN | 8958 |
| 8969-X | McDonnell Douglas Corp., Saint Louis, MO | 8969 |
| 8977-X | Eurotainer, S.A. Paris, France | 8977 |
| 8986-X | Cook Slurry Co., Salt Lake City, UT | 8986 |
| 8988-X | Vann Systems, Division of Halliburton Co., Houston, TX | 8988 |
| 8990-X | Pressure Pak, Inc., East Hampton, CT | 8990 |
| 8991-X | Lea-Ronal, Inc., Freeport, NY | 8991 |
| 8999-X | Scott Aviation Div. of Figgie International, Inc., Lancaster, NY | 8999 |
| 9014-X | Hunter Drums, Ltd., Bramalea Ontario, Canada | 9014 |
| 9023-X | Eurotainer, S.A., Paris, France | 9023 |
| 9036-X | Marison Co., South Elgin, IL | 9036 |
| 9052-X | Chemical Handling Equipment Co., Inc., Toldeo, OH | 9052 |
| 9063-X | Hoechst Aktiengesellschaft, Frankfurt, West Germany | 9063 |
| 9108-X | Trojan Corp., Salt Lake City, UT | 9108 |
| 9108-X | Atlas Powder Co., Dallas, TX | 9108 |
| 9129-X | Weldex Corp., Grafton, MA | 9129 |
| 9138-X | National Aeronautics and Space Administration, Washington, DC | 9138 |
| 9275-X | Hercules, Inc., Wilmington, DE | 9275 |
| 9275-X | McCormick & Co., Inc., Hunt Valley, MD | 9275 |
| 9281-X | GOEX, Inc., Clevurne, TX (See Footnote [5]) | 9281 |
| 9312-X | National Aeronautics and Space Administration, Washington, DC | 9312 |
| 9386-X | Pacific Scientific, HTL Division, Duarte, CA | 9386 |
| 9401-X | Arbel-Fauvet-Rail, Paris, France | 9401 |
| 9402-X | Arbel-Fauvet-Girel, St. Laurent-Balngy France | 9402 |
| 9402-X | ALGECO, Paris, France | 9402 |
| 9419-X | FIBA Leasing Co./Mass Oxygen Equipment Co., Inc., Westboro, MA | 9419 |
| 9426-X | Rheem Manufacturing Co., Linden, NJ | 9426 |
| 9431-X | U.S. Department of Defense, Falls, Church, VA | 9431 |
| 9433-X | Aldrich Chemical Co., Inc., Milwaukee, WI | 9433 |
| 9450-X | Marison Co., South Elgin, IL | 9450 |
| 9577-X | Altus Corp., San Jose, CA (See Footnote [6]) | 9577 |
| 9678-X | Rossborough Manufacturing Co., Avon Lake, OH (See Footnote [7]) | 9678 |
| 9681-X | Space Ordnance Systems, Canyon Country, CA (See Footnote [8]) | 9681 |

[1] To authorize rail as an additional mode of transportation.

[2] To authorize Naphtha, Turpentine, Butyl and Ethyl alcohol as additional commodities for shipment in 5 gallon containers similar to DOT Specification 5L.

[3] To authorize an alternative style overpack for polyethylene portable tank for shipment of certain corrosive or flammable liquids or hydrogen peroxide solutions.

[4] To authorize an additional cylinder design for shipment of certain refrigerated liquids.

[5] To authorize DOT Specification 12H-65, 23F-65 and 23H-65 fiberboard boxes as alternate packagings for ceratian Class C explosives.

[6] To increase pressure of small vessel in battery configuration from 5125 psi to 7000 psi.

[7] To authorize shipment of various mixtures: Magnesium granules 0 to 30%; Salt-coated magnesium granules 0 to 30%; Calcium carbide 40 to 90%; and Calcium oxide 5 to 20% classed as flammable solids.

[8] To authorize an alternate packaging for certain high explosive not to exceed five pounds of wetted explosive in polyethylene bags overpacked in a DOT-17C drum containing not more than five bags each.

| Application No. | Applicant | Parties to exemption |
|---|---|---|
| 6418-P | Brown & Bryant, Inc., Shafter, CA | 6418 |
| 6418-P | Farmer's Supply Co-operative, Inc., Ontario, OR | 6418 |
| 6530-P | FIBA Leasing Co./Mass Oxygen Equipment Co.,Inc., Westboro, MA | 6530 |
| 6765-P | Union Helium Co., Ltd., Minato-ku, Tokyo, Japan | 6765 |
| 7052-P | Hydril, Houston, TX | 7052 |
| 7052-P | ITT Corp., Fort Wayne, IN | 7052 |
| 7052-P | Southwest Electronic Inc., Stafford, TX | 7052 |
| 7052-P | Teledyne Systems Co., Northridge, CA | 7052 |
| 7052-P | Eastman Christensen, Salt Lake City, UT | 7052 |
| 7495-P | Vulcan Chemicals, Birmingham, AL | 7495 |
| 7546-P | National Aeronautics and Space Administration, Washington, DC | 7546 |
| 7607-P | Sverdrup Corp., St. Louis, MO | 7607 |
| 7616-P | Soo Line Railroad Co., Minneapolis, MN | 7616 |
| 8236-P | Ford Motor Co., Dearborn, MI | 8236 |
| 8554-P | ECONEXPRESS Inc., Wheaton, Il | 8554 |
| 8554-P | Thermex Energy Corp., Dallas, TX | 8554 |
| 8585-P | Dixie Poly-Drum Corp., Yemassee, SC | 8585 |
| 8955-P | Western Atlas International, Inc., Houston TX | 8955 |
| 8988-P | Western Atlas International, Inc., Houston TX | 8988 |
| 9120-P | Western Atlas International, Inc., Houston TX | 9120 |
| 9498-P | Rentokil Inc., Norcross, GA (See Footnote [1]) | 9498 |
| 9549-P | Pesco, Inc., Mills, WY | 9549 |
| 9652-P | Western Atlas International, Inc., Houston, TX | 9652 |

[1] Request party status and authorization to ship copper arsenate, solid, poison B, as additional commodity.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on April 7, 1987.

**J. Suzanne Hedgepeth,**

*Chief, Exemptions Branch, Office of Hazardous Materials Transportation.*

[FR Doc. 87-8217 Filed 4-10-87; 8:45 am]

BILLING CODE 4910-60-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

Dated: April 7, 1987.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

#### U.S. Customs Service

*OMB Number:* 1515-0133
*Form Number:* None
*Type of Review:* Extension
*Title:* Application to Receive Free Materials in a Bonded Manufacturing Warehouse (19 CFR 19.14)
*Description:* The proprietor of a bonded manufacturing warehouse must make application to the district director to enter into that warehouse any domestic merchandise, except merchandise which is subject to Internal Revenue tax, which is to be used in connection with the manufacture of articles permitted to be manufactured.
*Respondents:* Businesses
*Estimated Burden:* 3,000 hours
Clearance Officer: B.J. Simpson, (202) 566-7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

#### Internal Revenue Service

*OMB Number:* 1545-0159
*Form Number:* 3250
*Type of Review:* Extension
*Title:* Creation of or Transfers to Certain Foreign Trusts
*Description:* Internal Revenue Code 6048 requires that U.S. persons who create or transfer property to a foreign trust must file information returns on the creation and transfer. IRS uses the information to determine if any of the U.S. persons who create or transfer property should pay the excise tax and if any income from the trust should be reported on U.S. income tax returns.
*Respondents:* Individuals, Businesses
*Estimated Burden:* 370 hours
*OMB Number:* 1545-0201
*Form Number:* 5308
*Type of Review:* Revision
*Title:* Request for Change in Plan/Trust Year
*Description:* Form 5308 is used to request permission to change the plan or trust year for a pension benefit plan. The information submitted is used in determining whether IRS should grant permission for the change.
*Respondents:* Businesses
*Estimated Burden:* 339 hours
*OMB Number:* 1545-0415
*Form Number:* W-4P/W-4PA
*Type of Review:* Revision
*Title:* Withholding Certificate for Pension or Annuity Payments
*Description:* This form is used by the recipient of pension or annuity payments to designate the number of withholding allowances he or she is claiming, an additional amount to be withheld, or to elect that no tax be withheld, so that the payer can withhold the proper amount.
*Respondents:* Individuals
*Estimated Burden:* 3,537,319 hours
*OMB Number:* New
*Form Number:* 8633
*Type of Review:* New
*Title:* Preparer/Transmitter Application to File 1987 Individual Income Tax Returns Electronically
*Description:* Form 8633 will be filled-in by tax preparers and submitted to IRS as an application for filing individual income tax returns electronically.
*Respondents:* Businesses
*Estimated Burden:* 167 hours
Clearance Officer: Garrick Shear, (202) 566-6150, International Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

**Dale A. Morgan,**

*Departmental Reports, Management Officer.*

[FR Doc. 87-8150 Filed 4-10-87; 8:45 am]

BILLING CODE 4810-25-M

## Fiscal Service

### St. Lawrence Seaway Toll Rebate Program

**SUBAGENCY:** Financial Management Service.

**ACTION:** Notice.

Subject: St. Lawrence Seaway Toll Rebate Program.

**SUMMARY:** The Harbor Maintenance Revenue Act of 1986, Pub L. 99–662, amends the Internal Revenue Code (IRC) by establishing the Harbor Maintenance Trust Fund under section 9505 of the IRC. Section 805 of the Act requires the Secretary of the Treasury to rebate to the person paying the toll, the United States portion of tolls collected and deposited into the trust fund by the St. Lawrence Seaway Development Corporation. The Corporation must certify who will receive rebates. Within 30 days of receipt of the Corporation's certification, the Secretary of the Tresaury will make appropriate payments.

**DATE:** This program is effective April 1, 1987, however, rebate of tolls requires passage of a Treasury Department supplemental appropriations bill.

**FOR FURTHER INFORMATION CONTACT:** Karl Foltz, Department of the Treasury, Financial Management Service, Madison Place & Pennsylvania Avenue NW., Treasury Annex #1, Washington DC 20226; 202/566–5613 (FTS) 566–5613.

Dated: April 16, 1987.

**Mitchell A. Levine,**

*Assistant Commissioner, Comptroller.*

[FR Doc. 87–8105 Filed 4–10–87; 8:45 am]

BILLING CODE 4810–35–M

## VETERANS ADMINISTRATION

### Career Development Committee; Meeting

The Veterans Administration gives notice under the provisions of Pub. L. 92–463 that a meeting of the Career Development Committee, authorized by 38 U.S.C. 4101 will be held in the Lahaina Room of the Hanalei Hotel, 2270 Hotel Circle North, San Diego, CA 92138, April 29, April 30 and May 1, 1987 at 8:30 a.m. The meeting will be for the purpose of scientific review of applications for appointment to the Career Development Program in the Veterans Administration. The committee advises the Director, Medical Research Service on selection and appointment of Associate Investigators, Research Associates, Clinical Investigators, Medical Investigators, and Senior Medical Investigators.

The meeting will be open to the public up to the seating capacity of the room from 8:30 a.m. to 9 a.m. to discuss the general status of the program. Because of the limited seating capacity of the room, those who plan to attend should contact Mr. David D. Thomas, Executive Secretary of the Career Development Committee (151J), Veterans Administration Central Office, Washington, DC 20420 (Phone 202–233–2317) prior to April 27, 1987.

The meeting will be closed from 9 a.m. to 5 p.m. on April 29, April 30, and May 1 for consideration of individual applications for positions in the Career Development Program. This necessarily requires examination of personnel files and discussion and evaluation of the qualifications, competence, and potential of the several candidates, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, closure of this portion of the meeting is permitted by section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463 as amended, in accordance with subsection (c) (6), 5 U.S.C. 552b.

Minutes of the meeting and rosters of the committee members may be obtained from Mr. David D. Thomas, Chief, Career Development Program, Medical Research Service (151J), Veterans Administration, Washington, DC 20420 (Phone 202–233–2317).

Dated: April 1, 1987.

By direction of the Administrator.

**Rosa Maria Fontanez,**

*Committee Management Officer.*

[FR Doc. 87–8176 Filed 4–10–87; 8:45 am]

BILLING CODE 8320–01–M

# Sunshine Act Meetings

Federal Register
Vol. 52, No. 70
Monday, April 13, 1987

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 ENERGY REGULATORY COMMISSION**

April 8, 1987.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

**TIME AND DATE:** 10:00 a.m., April 15, 1987.

**PLACE:** 825 North Capitol Street, NE., Room 9306, Washington, DC 20424.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth F. Plumb, Secretary, Telephone (202) 357–8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

**Consent Power Agenda, 854th Meeting—April 15, 1987, Regular Meeting (10:00 a.m.)**

CAP–1.
Project No. UL87–5–001, Pardeeville Electric Company
CAP–2.
Omitted
CAP–3.
Project No. 10077–002, Iron Mountain Mines, Inc.
CAP–4.
Docket No. EL86–56–005 and Project No. 4885–017, South Fork Resoures, Inc.
CAP–5.
Docket No. EL86–56–002, 003, Project Nos. 4885–014 and 015, South Fork Resources, Inc.
CAP–6.
Project No. 4644–004, Stevens and Thompson Paper Company, Inc.
CAP–7.
Project No. 4660–004, Independence County, Arkansas
CAP–8.
Project Nos. 8235–002, 7791–002 and 8915–001, Hydroelectric Development, Inc.
CAP–9.
Project No. 9985–000, Rivers Electric Company, Inc.
CAP–10.
Project No. 2739–011, Utilities Commission and City of Vanceburg, Kentucky
CAP–11.
Docket No. EL83–15–000 and Project No. 459–000, Casino Pier, Inc. v. Union Electric Company
CAP–12.
Docket No. ER87–207–001, Green Mountain Power Corporation
Docket No. EL87–17–001, Connecticut Light & Power Company
CAP–13.
Docket No. ER87–180–002, Cincinnati Gas & Electric Company
CAP–14.
Docket No. EL86–27–003, Sacramento Municipal Utility District v. Pacific Gas and Electric Company
CAP–15.
Docket No. EL86–23–001, Northern California Power Agency
CAP–16.
Docket No. ER87–277–000, Public Service Company of New Hampshire
CAP–17.
Docket No. ER87–263–000, Cambridge Electric Light Company
CAP–18.
Docket Nos. ER87–107–001 and 002, Idaho Power Company and Utah Power & Light Company
Docket No. EL87–8–000, Pacific Power & Light Company
Docket No. ER86–570–002, Idaho Power Company
CAP–19.
Docket No. ER83–437–005, Commonwealth Edison Company
CAP–20.
Docket No. ER86–687–003, New England Power Company
CAP–21.
Omitted
CAP–22.
Docket Nos. EF85–2011–001, EF85–2011–006, EF85–2021–001, EF85–2021–006, EF86–2051–000 and EF86–2041–002, United Stated Department of Energy—Bonneville Power Administration
CAP–23.
Docket Nos. EF81–2011–005, 006, EF82–2011–005 and 006, United States Department of Energy—Bonneville Power Administration
CAP–24.
Docket Nos. ER81–177–004 and 005 (Phase I), Southern California Edison Company
CAP–25.
Docket Nos. ER82–769–006 and 007, Minnesota Power & Light Company
CAP–26.
Docket No. ER86–383–001, Florida Power & Light Company
CAP–27.
Docket No. ER86–622–001, Philadelphia Electric Company
CAP–28.
Docket No. QF86–343–001, Foster Wheeler Power Systems, Inc.

*Consent Miscellaneous Agenda*

CAM–1.
Docket No. RM82–6–002, Confirmation and Approval of the Rates of the Bonneville Power Administration
CAM–2.
Docket No. RM86–12–000, Generic Determination of Rate of Return on Common Equity for Public Utilities
CAM–3.
Docket No. FA84–46–001, Iowa-Illinois Gas and Electric Company
CAM–4.
Docket No. FA84–29–001, Iowa Electric Light and Power Company
CAM–5.
Docket No. FA85–48–001, Bangor Hydro-Electric Company
CAM–6.
Docket No. FA85–34–002, Stingray Pipeline Company
CAM–7.
Docket No. RM79–76–243 (Colorado—39 Addition II), High-Cost Gas Produced from Tight Formations
CAM–8.
Docket No. GP87–5–000, Texas American Energy Corporation v. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAM–9.
Docket No. GP83–54–000 Oklahoma Corporation Commission, Union Texas Petroleum Corporation, Section 108 Determination, Crosswhite-Duncan No. 2 Well, FERC No. JD 83–38899
CAM–10.
Docket No. RO87–1–000, Texaco, Inc.
CAM–11.
Florida Public Service Commission

*Consent Gas Agenda*

CAG–1.
Docket No. TA87–2–22–002, Consolidated Gas Transmission Corporation
CAG–2.
Docket No. TA87–2–28–002, Panhandle Eastern Pipe Line Company
CAG–3.
Docket No. RP87–26–006, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG–4.
Docket No. RP87–34–001, Northwest Alaskan Pipeline Company
CAG–5.
Docket Nos. RP86–32–003, 004, 005, RP86–68–005, 006 and 007, Williams Natural Gas Company (formerly Northwest Central Pipeline Corporation)
CAG–6.
Docket Nos. RP82–58–011 throught 017, Panhandle Eastern Pipe Line Company
Docket Nos. RP82–105–001 through 004, Central Illinois Light Company
CAG–7.
Docket Nos. RP87–33–001 and 002, Williams Natural Gas Company (formerly Northwest Central Pipeline Corporation)
CAG–8.

Docket No. RP87-50-000, Algonquin Gas Transmission Company
CAG-9.
Docket Nos. TA87-1-59-000 and 001, Northern Natural Gas Company, Division of Enron Corporation
CAG-10.
Docket Nos. CP68-179-011 and 007, Florida Gas Transmission Company
CAG-11.
Docket No. RP87-6-000, El Pasco Natural Gas Company
CAG-12.
Docket Nos. ST87-752-000, ST87-753-000, ST85-1116-001 and ST86-1915-001, Producer's Gas Company
CAG-13.
Docket No. ST82-424-000 and ST86-922-000, Sun Gas Transmission Company, Inc.
CAG-14.
Docket No. TA84-2-9-008 and TA85-1-9-005, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG-15.
Docket No. CI86-138-001, Chevron U.S.A., Inc.
Docket No. CI86-295-001, Tenneco Oil Company
CAG-16.
Docket No. CI85-707-000, Pioneer Exploration Company
CAG-17.
Docket No. TC82-43-005, K N Energy, Inc.
CAG-18.
Docket No. CP85-511-002, Northern Natural Gas Company, Division of Enron Corporation
CAG-19.
Docket No. CP86-701-001, Tennessee Gas Pipeline Company, a Division of Tenneco Inc.
CAG-20.
Docket No. CP84-654-022 and 023, Algonquin Gas Transmission Company
CAG-21.
Docket No. CP86-649-001, EL Paso Natural Gas Company
CAG-22.
Docket Nos. CP86-747-001, 002, CP86-265-001, CP86-406-001 and CP87-128-001, Transcontinental Gas Pipe Line Corporation
CAG-23.
Docket No. CP85-492-001, Transcontinental Gas Pipe Line Corporation and United Gas Pipe LIne Company
Docket No. CP85-648-001, Natural Gas Pipe Line Company of America
Docket No. CP86-236-001 and CP-86-237-001, Transcontinental Gas Pipe Line Corporation
CAG-24.
Docket No. CP87-14-000, Natural Gas Pipeline Company of America
CAG-25.
Docket No. CP87-122-000, Williston Basin Interstate Pipeline Company
CAG-26.
Docket No. CP86-86-000, Northern States Power Company
CAG-27.
Docket No. CP86-735-000, CP87-10-000 and CP87-66-000, Pacific Gas Transmission Company
CAG-28.
Docket No. CP85-133-002, ANR Pipeline Company
CAG-29.
Docket No. CP86-481-000, Panhandle Eastern Pipe Line Company

**I. Licensed Project Matters**

P-1.
Project 4632-001, Clifton Power Corporation. Order on rehearing of order issuing license.
P-2.
Omitted

**II. Electric Rate Matters**

ER-1.
Docket No. EF84-2011-006, United States Department of Energy—Bonneville Power Administration. Opinion and order concerning Bonneville Power Administration's NF-83 section 7(k) rates.
ER-2.
Docket Nos. EL85-6-001 and 002, Public Utilities Commission of the State of California, *et al.*, v. United States Department of Energy—Bonneville Power Administration. Order on rehearing concerning Intertie Access Policy.
ER-3.
Docket No. QF86-512-001, Nelson Industrial Steam Company. Order on rehearing concerning an application for certification of a cogeneration facility.
ER-4.
Docket Nos. EF85-2011-007, 008, 009, EF85-2021-007, 008 and 009, United States Department of Energy—Bonneville Power Administration. Order on rehearing concerning BPA's NF-85 section 7(k) rates.

*Miscellaneous Agenda*

M-1.
Reserved
M-2.
Reserved
M-3.
Docket No. RM84-6-034, Refunds Resulting from Btu Measurement Adjustments. Order clarifying Order No. 399-C.
M-4.
Docket No. RM86-7-000, Compression Allowances and Protest Procedures Under NGPA Section 110. Final Rule.
M-5.
(A) Docket No. RI74-188-091, 092, 093, 094, 095, RI75-21-086, 087, 088, 089 and 090, Independent Oil & Gas Association of West Virginia. Order on settlements.
(B) Docket No. RM87-14-000, Delegation of Authority to the Director of the Office of Pipeline and Producer Regulation to Pass Upon Certain Uncontested Settlements. Final Rule delegating to Director of OPPR authority to approve routine settlements in the IOGA proceedings.

*Gas Agenda*

**I. Pipeline Rate Matters**

RP-1.
Docket No. RP84-53-000, Ozark Gas Transmission System. Order on initial decision concerning section 4 cost of service issues in rate case.
RP-2.
Docket Nos. RP85-150-000, 003, 007, RP85-200-000, 001, 002, 003, and 004, Natural Gas Pipeline Company of America. Order on settlement of section 4 rate case.
RP-3.
Docket Nos. TA85—3-29-013, 014, 015, 017, 018, 019, 021, 022, 023, 024, 026 and CP86-405-000, Transcontinental Gas Pipe Line Corporation. Order on rehearing concerning Order No. 436 filing.
RP-4.
(A) Docket Nos. CP86-582-000, 001, RP86-162-000 and 002, Natural Gas Pipeline Company of America. Order on settlement and rehearing request concerning Order No. 436 filing.
(B) Docket Nos. RP86-97-000 and 002, Natural Gas Pipeline Company of America. Order on settlement and rehearing request concerning Order No. 436 filing.
RP-5.
Docket Nos. RP86-161-000, 002, CP86-596-000 and 001, MIGC, Inc. Order on settlement concerning Order No. 436 filing.
RP-6.
Docket Nos. CP86-589-000 and RP86-104-000, Colorado Interstate Gas Company. Order on settlement concerning Order No. 436 filing.
RP-7.
Docket No. RP86-105-000, ANR Pipeline Company. Order on settlement concerning Order No. 436 filing.

**II. Producer Matters**

CI-1.
Reserved

**III. Pipeline Certificate Matters**

CP-1.
(A) Docket Nos. CP86-395-000 and 001, Northern Border Pipeline Company
(B) Docket No. CP86-250-000, Ozark Gas Transmission System
(C) Docket No. CP86-720-000, Trailblazer Pipeline Company
Application for Order No. 436 blanket certificates for transportation, and for waivers of § 284.7 (rate design).
CP-2.
Omitted

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 87-8258 Filed 4-9-87; 2:05 pm]

BILLING 6717-01-M

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**PAROLE COMMISSION**

**DATE AND TIME:** April 21, 1987, 9:30 a.m.

**PLACE:** 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

**STATUS:** Closed pursuant to a vote to be taken at the beginning of the meeting.

**MATTERS TO BE CONSIDERED:** Appeals to the Commission of approximately 13 cases decided by the National Commissioners pursuant to a reference under 28 CFR 2.17 and appealed pursuant to 28 CFR 2.27. These are all

cases originally heard by examiner panels wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release. In addition, the Commission will consider an application for a certificate of exemption under 29 U.S.C. 1111, and the Parole Commission's 1989 Budget request, including the personnel matters related to that request.

**CONTACT PERSON FOR MORE INFORMATION:** David J. Dorworth, Chief Analyst, National Appeals Board, United States Parole Commission, (301) 492–5987.

Dated: April 8, 1987.

**Patrick J. Glynn,**

*General Counsel, United States Parole Commission*

[FR Doc. 87–8284 Filed 4–9–87; 1:39 pm]

BILLING CODE 4410–01–M

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**PAROLE COMMISSION**

**PLACE:** 5550 Friendship Boulevard, Chevy Chase, Maryland 20815.

**DATE AND TIME:**

Wednesday, April 22, 1987—9:00 a.m. to 5:30 p.m.

Thursday, April 23, 1987—9:00 a.m. to 4:00 p.m.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

1. Approval of minutes of open business meeting of January 21 through January 22, 1987.
2. Reports from the Chairman, Vice Chairman, Commissioners, Legal, Research, Case Management, and Administrative Section.
3. Proposal that Parole Commission take a more active role in supervising parolees (discussion only).
4. Discussion of Parole Supervision by Donald Chamlee, Chief, Division of Probation, Administrative Office of the U.S. Courts and Benjamin F. Baer, Chairman, U.S. Parole Commission.
5. Adoption of Final Rules: (1) Transportation of Unlawful Aliens Involving Detention and Demand for Payment; (2) Offense Severity for Contempt of Court under 18 U.S.C. 401; (3) Rescission Guidelines for New Criminal Conduct in the Community; (4) Dispositional Revocation Hearings.
6. Proposal that Commission amend 28 CFR 2.19(c) to permit in certain situations consideration of charges as to which a prisoner has been acquitted in a criminal prosecution.
7. Proposal that General Note 7 under 28 CFR 2.20, concerning crime sprees, be modified such that only state offenses related in time *and* nature, and occurring within a three month period, are included.

Consent Items: (subject to automatic adoption unless a Commissioner requests discussion by April 15, 1987).

1. Approval of *Rules and Procedures Manual* effective April 5, 1987.
2. Approval of Research Report 43: *Workload and Decision Trends: Statistics Highlights (Fiscal Years 1983–1986).*

**CONTACT PERSON FOR MORE INFORMATION:** James L. Beck, Director of Research, United States Parole Commission, (301) 492–5980.

Dated: April 8, 1987.

**Patrick J. Glynn,**

*General Counsel, United States Parole Commission.*

[FR Doc. 87–8285 Filed 4–9–87; 1:39 pm]

BILLING CODE 4410–01–M

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**SECURITIES AND EXCHANGE COMMISSION**

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 13, 1987:

A closed meeting will be held on Tuesday, April 14, 1987, at 2:30 p.m. An open meeting will be held on Thursday, April 16, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 14, 1987, at 2:30 p.m., will be:

Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Formal orders of investigation.
Opinion.

The subject matter of the open meeting scheduled for Thursday, April 16, 1987, at 10:00 a.m., will be:

1. Consideration of whether to issue a concept release concerning Management's Discussion and Analysis, Item 303 of Regulation S–K. The release would solicit comment on MD&A generally and on proposals from the accounting profession to change MD&A. For further information, please contact Brian J. Lane at (202) 272–2589 or Laurel Bond Mitchell at (202) 272–2130.
2. Consideration of whether to issue a release proposing an amendment to Rule 3a12–8 under the Securities Exchange Act of 1934 that would designate as an exempted security, solely for purposes of futures trading thereon, foreign government debt (a) issued by an country the sovereign debt of which is rated in one of the two highest rating categories of two nationally recognized rating agencies or (b) issued by the government of Australia, France or New Zealand. For further information, please contact David L. Underhill at (202) 272–2375.
3. Consideration of an interpretative release regarding the application of mark-up policy to zero-coupon securities. For further information, please contact Christine Sakach at (202) 272–2418.
4. Consideration of whether to adopt Securities Exchange Act Rules 15Cal–1 through 15Ccl–1 and revisions to Rule 15b2–2 and Form BD in order to implement the registration and notice requirements of the Securities Exchange Act of 1934 ("Act") as amended by the Government Securities Act of 1986. The Act requires government securities broker-dealers to register or file notice with the Commission of their government securities activities. The rules prescribe the form and information government securities broker-dealers must file with the Commission in order to register or file notice. For further information, please contact Lynne G. Masters at (202) 272–2848.
5. Consideration of a release proposing for comment inclusion of a consent to service of process in Form BD, the registration application form for broker-dealers. The proposed revision would add a consent to Commission service and notice of process to the form. For further information, please contact Henry E. Flowers at (202) 272–2848.
6. Consideration of a release proposing to adopt revisions to Form BDW, the form filed by a registered broker-dealer to withdraw from registration. The proposed revisions reflect a clarification of existing Form BDW questions. For further information, please contact Henry E. Flowers at (202) 272–2848.

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: Bernard Black at (202) 272–2468.

**Jonathan G. Katz,**

*Secretary.*

April 8, 1987.

[FR Doc. 87–8309 Filed 4–9–87; 3:58 pm]

BILLING CODE 8010–01–M

# Corrections

Federal Register
Vol. 52, No. 70
Monday, April 13, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. 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 COMMERCE

### International Trade Administration

[A-588-041]

### Synthetic Methionine From Japan; Final Results of Antidumping Duty Administrative Review

*Correction*

In notice document 87-7312 beginning on page 10600 in the issue of Thursday, April 2, 1987, make the following corrections:

1. On page 10600, in the third column, in the subject heading, "Form" should read "From".

2. On page 10601, in the second column, following the paragraph *Comment 3*, two paragraphs of text were omitted. The omitted material reads as follows:

*Department's Position*:

Since we do not consider payments between related parties as commissions, we consider Mitsui (Japan)'s so-called "commissions" from Nippon Soda to be indirect selling expenses. We included these expenses, as well as Mitsui (Japan)'s other selling expenses, as an offset to U.S. commissions and as part of the ESP offset. Since neither Nippon Soda nor Mitsui identified what portion, if any, of Nippon Soda's SG&A was attributable to selling expenses, we disallowed this claim. We allowed the cost of freight from Nippon Soda to Mitsui (Japan)'s warehouse as an indirectly related selling expense. We allowed a monthly weighted-average of discounts actually given, but they did not qualify as quantity discounts pursuant to § 353.14 of the Commerce Regulations. Finally, we allowed a monthly weighted-average amount for Mitsui (Japan)'s claimed credit expenses, as differences in circumstances of sale.

*Comment 4*:

Monsanto alleges that, because Fuji Chemical "sold" to Mitsui (U.S.A.) at a price less than its acquisition cost from Mitsui (Japan), Fuji Chemical engaged in "middleman dumping" on at least one of the two involved transactions. Mitsui, on the other hand, claims the seeming "middleman dumping" was caused by a typographical error. In reality Fuji Chemical's acquisition cost was overstated in the original response, and its resale "price" to Mitsui (U.S.A.) included a markup to cover all its expenses.

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51665; FRL-3168-7]

### Certain Chemicals Premanufacture Notices

*Correction*

In notice document 87-5563, beginning on page 8962 in the issue of Friday, March 20, 1987, make the following corrections:

1. On the same page, in the same column, in the 13th line from the bottom of the page, "P 87-701" should have appeared on a separate line as a boldface heading above the next entry.

2. On the same page, in the third column, under **P 87-705**, in the 10th line, "≤2,000" should read "<2,000" and in the 11th line, "<2,000" should read "≤2,000".

BILLING CODE 1505-01-D

federal register

Monday
April 13, 1987

Part II

# Department of Transportation

**Urban Mass Transportation Administration**

**49 CFR Part 604**

**Charter Service; Final Rule and Request for Comments**

**DEPARTMENT OF TRANSPORTATION**

**Urban Mass Transportation Administration**

**49 CFR Part 604**

**[Docket No. 82-I]**

## Charter Service

**AGENCY:** Urban Mass Transportation Administration, DOT.

**ACTION:** Final rule and request for comments.

**SUMMARY:** This final rule sets forth the Urban Mass Transportation Administration's (UMTA) revised regulations governing the charter service that UMTA's recipients may provide using UMTA funded equipment or facilities. With a few exceptions, UMTA recipients will now be prohibited from providing any charter service using UMTA funded equipment or facilities if there is at least one private charter operator willing and able to provide the charter service that the recipient desires to provide. UMTA is also requesting public comments on the portion of the rule that expands the rule's applicability to UMTA funded buses and vans.

**DATES:** This final rule is effective May 13, 1987, and comments are due on May 28, 1987.

**ADDRESS:** Comments must be submitted to UMTA Docket No. 82–I, 400 7th Street SW., Room 9228, Washington, DC 20590. All comments and suggestions are available for examination in room 9228 at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. UMTA will acknowledge the receipt of comments if the commenter includes a self-addressed, stamped postcard with the comment.

**FOR FURTHER INFORMATION CONTACT:** Douglas G. Gold, Attorney-Advisor, Office of the Chief Counsel, Room 9228, Urban Mass Transportation Administration, 400 7th Street, SW., Washington, DC 20590, (202) 366–1936.

**SUPPLEMENTARY INFORMATION:**

### I. Summary of the Rule

Under the revised final charter regulation, an UMTA recipient is prohibited from providing any charter service using UMTA funded equipment or facilities if there is at least one private charter operator willing and able to provide the charter service that the recipient proposes to provide. This prohibition applies not only to charter service provided with UMTA funded buses, but applies to any UMTA funded van. UMTA is seeking comments on this portion of the final rule.

The rule requires every applicant for UMTA assistance to include a charter agreement with the first grant application it submits to UMTA following the effective date of this rule. For the UMTA State administered programs, the State must send in the agreement and obtain and retain in its records a certification of compliance from the subrecipients. If a recipient does not anticipate submitting a grant application to UMTA during Federal fiscal year 1987, the recipient must send an agreement to UMTA within 60 days of the rule's effective date.

There are five exceptions to this general prohibition. First, a recipient may provide any and all charter service with UMTA funded equipment and facilities to the extent that there is no willing and able private charter operator.

Second, a recipient may enter into a contract with a private charter operator to supply equipment for or to actually provide a specific charter trip if the private charter operator does not have the capacity needed for the trip. Third, a recipient may enter into a contract with a private charter operator to supply equipment for or to actually provide a specific charter trip if the private charter operator is unable to provide equipment accessible to elderly and handicapped persons. Under the second and third exceptions the recipient would not provide the equipment or service directly to the customer, but to the private charter operator.

Fourth, recipients in non-urbanized areas may petition UMTA for an exception if the charter service that would be provided by willing and able private charter operators would result in a hardship on the customer. The rule limits the factors that would result in a hardship to two. The first is where willing and able private charter operators impose minimum durations pursuant to a State regulatory requirement. The second is where the willing and able private charter operators are located too far from the origin of charter service.

Fifth, UMTA provides an exception to permit recipients to petition UMTA to enable it to provide charter service directly to the customer when the private charter operators are not capable of providing charter service for special events.

Any charter service which a recipient provides under one of these five exceptions, however, must be incidental charter service.

The rule requires that any recipient desiring to provide charter service using UMTA funded equipment or facilities must publish a notice annually in a newspaper(s) of general circulation and provide a copy of the notice to specified parties describing the charter service it desires to provide. A private charter operator is invited to respond with evidence to prove that it is willing and able to provide some or all of the service which the recipient has stated that it desires to provide. To the extent that the recipient determines that there is at least one private charter operator willing and able to provide the service that the recipient desires to provide, the recipient is prohibited from providing that service using UMTA funded equipment and facilities.

The rule applies not just to recipients that receive assistance directly from UMTA, but also to all the entities that receive UMTA assistance through the recipients. Since one recipient often has several subrecipients, the rule provides an option for complying with the notice process. A recipient, including the State in the State administered programs, may conduct the process for itself and all subrecipients to determine whether there is at least one willing and able private charter operator, or it may delegate this responsibility for the subrecipients to the subrecipients.

If an interested party believes that the recipient has not complied with the rule, it may file a written complaint with the UMTA Chief Counsel. The Chief Counsel will conduct the investigation and issue a decision. The losing party may appeal the decision to the UMTA Administrator. The Chief Counsel's decision or the Administrator's decision on appeal is a final agency action subject to judicial review under the Administrative Procedure Act.

### II. Background on the Rulemaking

On April 1, 1976, UMTA published the previous final rule regulating the charter bus activities that an UMTA recipient could provide. (41 FR 14123, 49 CFR Part 604.) That rule implemented two statutory provisions in the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 *et seq.*) (UMT Act). The first, section 12(c)(6), defines "mass transportation" to specifically *exclude* charter service, sightseeing service and school buses. The second, section 3(f), requires all applicants for UMTA assistance for the purchase or operation of buses to enter into an agreement with the Secretary of Transportation (delegated to the UMTA Administrator in 49 CFR 1.51) which governs a recipient's intercity charter bus operations. Section 3(f) requires that this agreement set forth equitable terms to ensure that private intercity charter bus

operators are not foreclosed from this business by recipients.

Recipients complained that the rule imposed too many administrative and paperwork burdens on them. Private charter bus operators complained that the rule did not provide sufficient protections for them and that UMTA recipients were forcing them out of business. UMTA, too, experienced problems with the rule including the inability to resolve complaints expeditiously. Consequently, UMTA proposed to revise the rule in an advance notice of proposed rulemaking (ANPRM) on January 19, 1981 (46 FR 5394). This ANPRM proposed a very detailed approach to revising the rule. After a thorough review of the comments received, UMTA determined that there were additional issues and questions that needed addressing before a notice of proposed rulemaking (NPRM) could be published. Thus, UMTA published a second ANPRM on October 12, 1982 (47 FR 44795).

The second ANPRM proposed four alternative approaches to the regulation and requested comments. Several collateral issues were discussed and UMTA requested comments on these also. UMTA reviewed the comments to the ANPRM and determined that none of the proposed approaches adequately addressed the problems with the rule. Thus, in the NPRM, UMTA proposed a new approach which is substantially identical to the final rule published today. (March 6, 1986, 51 FR 7892.)

UMTA provided a 60-day comment period on the NPRM which closed on May 5, 1986. Several commenters requested that UMTA extend the comment period for an additional period. They argued that many recipients in rural areas did not have access to the **Federal Register** and thus received the news of the proposed changes too late to respond. In addition, they argued that additional time was warranted due to the complexities of the issues and the extent of the proposed changes.

UMTA agreed with these commenters and reopened the comment period for an additional 30 days on May 20, 1986 (51 FR 18466). The comment period closed on June 19, 1986.

UMTA received 307 comments on the NPRM. The breakdown among commenter categories is as follows:

86 UMTA recipients
69 Private charter operators
28 Private citizens
24 Corporations and businesses
18 Other consumer organizations
16 Convention and tourism bureaus
15 State Departments of Transportation or other State agencies
13 Trade associations
11 State or local officials
11 Schools
6 Metropolitan Planning Organizations or other planning agencies
3 Members of Congress
3 Chambers of Commerce
2 Private school bus operators
2 Private charter operators receiving UMTA assistance

In general, recipients, State DOTs, Members of Congress, private citizens, convention and tourism bureaus, corporations, Chambers of Commerce, other consumers, and schools opposed the NPRM. They cited many reasons for this opposition including: not experiencing the problems UMTA described with the current regulation; taking away the consumer's choice of charter provider; belief that the current regulation provides sufficient protections for private operators; the negative impact that not having ready access to a large fleet of charter buses will have on local efforts to encourage convention and tourism; the loss of charter revenues will increase the need for subsidies that are also decreasing; the needs of the consumers were not considered; it is not consistent with UMTA's private sector policy which emphasizes competition; and a belief that UMTA should take enforcement actions against the violators of the rule and not penalize all recipients.

Private charter operators and the trade associations that represent them supported the NPRM. These commenters generally stated their support and their belief that the NPRM, if adopted as a final rule, would finally provide the protections that the UMT Act provides for them.

UMTA will address and respond to the specific comments received in the following Section-by-Section Analysis.

## III. Section-by-Section Analysis

This portion of the preamble discusses each section of the final rule and focuses on the significant comments on each issue. UMTA provides its response to these comments and discusses the reasons for making the decisions incorporated in the final rule.

*Section 604.1 Purpose.*

This section states that the purpose of this rule is to implement section 3(f) and 12(c)(6) of the UMT Act. This section is identical to the purpose section in the NPRM and no comments were received on it.

*Section 604.3 Applicability.*

In the NPRM, UMTA proposed that the new rule apply to all recipients of financial assistance under sections 3, 5, 9A, 9 or 18 of the UMT Act or under sections 103(e)(4) and 142 (a) and (c) of 23 USC, which permit the use of Federal-Aid Highway funds to purchase buses. UMTA specifically excluded recipients under section 16(b)(2) of the UMT Act consistent with UMTA's longstanding administration of this program.

Due to a typographical error in the **Federal Register** printing of the NPRM, § 604.3(a) stated that the NPRM would have applied to, "Section 3 (excluding sections 16(b)(2)), 5, 9A, 9 or 18 of the UMT Act." (Emphasis added.) Several commenters noted this error and asked if the NPRM, therefore, excluded not only section 16(b)(2), but also sections 5, 9A, 9 and 18. As stated above, it was UMTA's intention to exclude only section 16(b)(2) and the final rule makes this clear.

As proposed, UMTA has made the final rule applicable to the section 18 program. This program provides financial assistance to rural and small urban areas with populations of less than 50,000 for capital, operating and administrative expenses. Twenty commenters addressed the issue of whether the rule should apply to this program. The comments were mainly from recipients, State DOTs, and the trade associations that represent the rural providers. All favored either not applying the rule or modifying it for section 18.

The commenters argued that there are few, if any, private operators in these areas to compete with the recipients. Since the private charter operators would have to come great distances to provide charter service, these commenters argued that the customer would have to pay higher prices for charter service provided by private operators due to excessive deadhead charges. In addition, the commenters stated that the paperwork burden would be so great that the cost to comply with the administrative portions of the rule will exceed the revenues generated from any resulting charter service.

UMTA is sympathetic to these comments and has modified the rule to account for some of the differences between the urban and rural recipients. The changes will be noted in the specific sections of the rule.

We are, however, unable to exclude the section 18 program totally from the rule. Section 18(f) of the UMT Act states, "Grants under this section shall be subject to such terms and conditions (which are appropriate to the special needs of public transportation in areas other than urbanized areas) as the Secretary shall prescribe." While this language appears to give UMTA the discretion to exclude the Section 18

program from the charter requirements in the UMT Act, the legislative history dictates the opposite conclusion.

The Conference Report for the Surface Transportation Assistance Act of 1978, which added the section 18 program to the UMT Act, states with reference to the provision quoted above from section 18(f), "However, the Secretary would not be authorized to waive or modify basic provisions of the Act, such as sections 3(f) and 3(g). . . ." H.R. Rep. No. 1797, 95th Cong., 2d Sess. 136 (1978). Consequently, UMTA believes that we have the authority to modify the charter regulatory requirements that apply to these recipients, but cannot exclude the entire program from the regulation.

Several commenters suggested that UMTA tailor the requirement of the rule to the size, based on population, of the recipient. In support of this position, these commenters made many of the same arguments that were noted above in support of treating the section 18 program differently.

The commenters suggested various ways of responding to these concerns. These included excluding all recipients which have less than a specified population, such as less than 200,000 or 50,000, or providing special requirements for these recipients. This approach would be consistent with the Department of Transportation's new regulation implementing Section 504 of the Rehabilitation Act of 1973, as amended, for UMTA recipients. 51 FR 18994, May 23, 1986. This rule provides different requirements, both administrative and substantive, for recipients in areas with populations of less than 50,000.

UMTA, however, rejects the suggestion that recipients in areas with small populations be excluded from the rule. Since UMTA is prohibited from excluding the Section 18 recipients from the rule, it would not be possible to exclude any category of recipients to which they would belong such as those with populations of less than 200,000 or even 50,000. Moreover, if the less than 200,000 population figure were used, UMTA would exclude 251 of the 366 urban areas listed in UMTA's 1983 Section 15 report. This represents almost 70% of the urban areas and far too large a percentage to exclude from this important rule.

Moreover, UMTA has not modified the requirements for recipients in areas with small populations because we believe that the requirements of this rule are not so burdensome as to unfairly affect these recipients. We have taken special pains to minimize the administrative and paperwork burdens imposed by the rule to ensure that all recipients will be capable of complying without hardship.

Another issue concerning applicability is whether the rule will include a revenue exception. UMTA did not propose to include a revenue exception in the NPRM. The previous rule did contain such an exception so that any recipient that did not earn more than $15,000 in annual charter revenues was excluded from the rule's cost and revenue requirements if the recipient provided intercity charter service. We stated in the preamble to the NPRM that we proposed to delete this exception since the UMT Act provides protections for private charter operators from all recipients, not just from those that earn in excess of a certain amount. In addition, we stated that while the revenue exception may provide some relief from the regulation's paperwork burdens the proposed burdens would be so much less that there would be no hardship on any recipient, regardless of revenues. UMTA, however, asked in the preamble whether the final rule should include a revenue exception.

Twelve commenters addressed this issue. Ten of these, mainly recipients and State DOTs, favored retaining a revenue exception. None, however, offered any arguments that rebut the conclusions that UMTA had come to and presented in the NPRM for not including the exception. Therefore, we have not included a revenue exception in the final rule.

One area of constant concern with any charter regulation is to clearly define the category or categories of equipment and facilities to which it applies. UMTA stated in the NPRM that we proposed to continue the position adopted in the previous rule that the rule only applies to charter service using UMTA funded equipment and facilities. If a recipient sets up a separate company that has only locally funded equipment, facilities and operates these with only local funds, or the recipient is able to maintain separate accounts for its charter operations that show that the charter service is truly a separate division which receives no benefits from the mass transportation division, then the charter rule would not apply.

Twelve commenters addressed this issue. Recipients expressed the fact that even though the rule would not apply to a wholly locally funded entity, it has little application since few, if any, recipients can set up a separate company. Commenters representing the private charter operators, however, argued that a recipient's entire operation must be subject to the rule if there are going to be any real protections for private operators.

UMTA has chosen to continue the proposed approach in the final rule. Applying the rule's restrictions only to charter service using UMTA funded equipment or facilities is the more straightforward interpretation of the UMT Act and limits the reach of Federal rules to only federally funded activities. Moreover, UMTA agrees with the recipients who commented that the exception probably has little effect since it is so difficult to set up a totally separate company for charter service. As a result, UMTA believes that this approach not only is more legally tenable, but that it poses no real threat to the well-being of private charter operators.

Another issue under the larger question of applicability is whether the rule will apply to any entity, public or private, that receives UMTA assistance through an UMTA recipient. Since one of the Administration's major policy objectives is to increase the participation of the private sector in the provision of transportation services that are funded with Federal assistance, this is a particularly timely issue.

In the UMTA program the accomplishment of this policy objective has meant an emphasis on those provisions in the UMT Act, including section 3(e), which call for the participation of the private sector to the maximum extent feasible. UMTA has issued several **Federal Register** notices to provide guidance on compliance with the provisions. One concern, however, is that private mass transportation providers may be reluctant to participate in UMTA's program if the charter regulations apply to them.

The previous charter rule applied to all recipients and operators for recipients. That is, a private operator that receives UMTA assistance through a recipient, whether under contract to provide specific service or by means of an allocation plan as in New Jersey, was subject to the regulation to the extent that the assisted equipment or facilities were used to provide charter service. UMTA proposed to continue this approach in the NPRM.

The reason that UMTA proposed the continuation of the approach is due to the language in section 3(f) of the UMT Act. It states that its restrictions apply to the recipient "or any operator of mass transportation" for the recipient. It is UMTA's opinion that this language provides little room for discretion and requires that all entities, public or private, that operate for a recipient must be covered by the rule to the extent that the entity provides charter service using UMTA funded equipment or facilities.

Very few commenters addressed this issue. Those that did, however, were mainly private operators and the trade associations that represent them. These commenters generally disfavored the approach and argued that to apply the regulation to subsidized private operators will remove any incentives to contract with an UMTA recipient, a result contrary to UMTA's private sector policies.

While UMTA is aware of the potential policy conflict, we are bound by the words of the UMT Act. Consequently, all operators for a recipient, whether public or private, under contract or receiving assistance through the recipient, are subject to the charter rule but only to the extent that the operator uses UMTA funded equipment or facilities to provide charter service. This is the same proviso that applies to recipients. Therefore, in shorthand, the rule treats all operators for a recipient as a recipient to the extent that they stand in a recipient's shoes.

As part of UMTA's private sector actions, we have recently stated our policy on the use of capital assistance to pay for the capital portion of private sector service contracts. UMTA encourages recipients to take advantage of this policy and provided information about it in the "Dear Grantee" letter of November 19, 1986. The letter also explains how various UMTA requirements will apply to the private operators whose capital costs are paid for with UMTA funds.

A private operator that receives UMTA assistance under the capital cost of contracting arrangements is subject to the charter regulations. Since the private operator receives UMTA assistance, even though it is through another entity, the private operator is treated as a recipient and falls under the definition of this term for this rule.

Under a capital cost of contracting arrangement, there are at least two common situations. First, the private operator could use its own vehicles to provide service under the contract. In this case, the charter rule, although applicable, would have no practical effect since UMTA will be paying for mass transportation which consumes 100 percent of the capital funds we provide to the private operator through the recipient and the provision of incidental non-mass transportation using UMTA funding is not possible.

Second, the private operator could use UMTA funded equipment or facilities leased to it by the recipient. In this case, the private operator would have the equipment or facilities available for incidental non-mass transportation service and the charter rules will apply if any charter service is provided with the leased equipment or facilities.

The final issue that concerns the applicability of the final rule is whether it will apply to all charter service or provide different requirements depending where the charter service is provided. The previous regulation distinguished between charter service that a recipient provided in its service area, intracity charter service, and charter service a recipient provided outside of its service area, intercity charter service. The regulation made this distinction based on the distinction that the UMT Act makes in section 3(f) which restricts only a recipient's intercity charter service. The NPRM proposed to eliminate this distinction and to treat all charter service provided by a recipient using UMTA funded equipment or facilities the same.

Seventeen commenters addressed this issue. Most were private charter operators and they supported the NPRM elimination of this distinction. The commenters felt that by treating all charter service the same, the protections for their businesses would be increased.

One recipient who addressed this issue favored the retention of the distinction, but added that no recipient should be providing charter service outside of its service area anyway.

Several recipients and trade associations addressed this issue in an indirect way. They challenged UMTA's legal authority to promulgate the rule. They argued that the only language in the UMT Act which provides protections for private charter operators is in section 3(f) and that this only speaks to private intercity charter operators. Thus, in their view, the proposed expansion of protections to intracity private charter operators is beyond UMTA's authority and the final rule must continue to distinguish between intercity and intracity charter service.

In the final rule, UMTA has decided to apply the restrictions to all charter service and not to provide different requirements for intercity and intracity service. Although UMTA will address the legal basis of this rule in more detail below, it is important to state here that it is our opinion that the melding of the two categories of charter service is permissible under the UMT Act. Since this approach provides greater protections for private charter operators, UMTA has decided to follow it in the final rule.

*Section 604.5 Definitions.*

Charter Service

The definition of "charter service" is as the heart of this regulation. The NPRM did not propose to change the definition from that in the previous regulation. This definition had several components which attempt to define charter service in a way that meaningfully distinguishes it from "mass transportation" and "sightseeing service." The main features were: 1) The service was by bus; 2) the service was to a defined group of people; 3) there was a single contract between the recipient and the riders, not individual contracts between the recipient and each rider; 4) the patrons had the exclusive use of the bus; 5) the charge for the bus was a set rate; and 6) the riders had the sole authority to set the destination.

Under section 12(c)(6) of the UMT Act, "mass transportation" is defined as service to the public, either general service or special service, on a regular and continuing basis. By contrast, "charter service" is usually thought of as a one-time provision of service and the user, not the recipient, has the control of the service. "Sightseeing service," consistent with our understanding of the Interstate Commerce Commission's definition of "special service," is when the recipient offers and arranges the service and contracts individually with each patron, not with the patrons as a group.

While these distinctions may appear to be neat and clean, there are many difficulties in determining in a given case which category the service fits into most appropriately. These problems are particularly apparent in the Section 18 program where service provided under a contract with a social service agency for a defined group of users is a common occurrence. Also, under all UMTA programs, recipients provide subscription service, parking lot shuttles and other services that while open to the public may be of limited utility due to destination, hours of service or need.

Many commenters addressed the problem of the definition of charter service. The majority of these commenters are recipients of Section 18 funds and State DOTs. Since these commenters explained that some of the services for which they now receive UMTA funding as mass transportation might fall within the NPRM's definition of charter service, they argued that there would be serious repercussions for their riders if the service were determined to be charter, not mass transportation, and thus not permissible under the NPRM.

Although UMTA is aware of the many problems that the proposed definition poses, we have decided to retain it with one change. This change expands the definition so that charter service provided by van is included. This

change will be discussed in detail below.

There are several reasons for our decision to keep the definition of "charter service" as proposed. First, the proposed definition is identical to that in the previous regulation. Thus, all parties are familiar with it and the problems that UMTA has experienced with it have been few during the over 10 years in which it has been in effect. Second, UMTA believes that the problems associated with distinguishing between "charter service" and "sightseeing service" are fairly clearly marked and do not require a revision to the definition to make the distinctions clearer. For example, if a customer comes to the recipient and contracts for the exclusive use of the vehicle, the service would probably be charter service. On the other hand, if the recipient offers individual contracts to anyone to ride to a destination that the recipients has selected, the service would probably be sightseeing service.

Although UMTA considered including restrictions on sightseeing service using UMTA funded equipment and facilities in this rule, we will issue a separate regulation on sightseeing service in the future. While the restrictions on sightseeing service will be based on section 12(c)(6) and could be similar to those imposed in this rule, the fact that this rule is also based on section 3(f), which address only charter service, would make including sightseeing service unnecessarily complicated.

The third reason that UMTA has not changed the proposed definition of "charter service" is that the problems associated with distinguishing charter service from mass transportation can, in UMTA's opinion, be better addressed by giving some additional guidance here as to the nature of mass transportation, not by altering the definition of "charter service." While the UMT Act defines mass transportation as provided to the public and operating on a regular and continuing basis, UMTA believes that it shares other salient characteristics which logically follow from this.

First, mass transportation is under the control of the recipient. Generally the recipient is responsible for setting the route, rate, and schedule, and deciding what equipment is used. Second, the service is designed to benefit the public at large and not some special organization such as a private club. Third, mass transportation is open to the public and is not closed door. Thus, anyone who wishes to ride on the service must be permitted to do so.

These three characteristics of mass transportation are not exhaustive, but merely illustrative. In any complaint situation, UMTA would review the service in question and determine to which category it most properly belongs.

UMTA acknowledges that there are two exceptions to this third characteristic. In 1968, Congress amended the definition of "mass transportation" to permit special service in addition to general service. Special service, according to the legislative history is service that may be provided closed door. The only examples that Congress provided, however, are service exclusively for elderly and handicapped persons and service provided for the workers who live in the intercity, but work in a factory in the suburbs. See, H.R. Rep. No. 1785, 90th Cong., 2d Sess., reprinted in 1968 *U.S. Code Cong. Ad. & News,* 2941. It is UMTA's position that any exclusive service must fit within one of these two exceptions to qualify as mass transportation in the future.

By way of example, UMTA provides descriptions of service that would be "charter service." First, regular and continuing exclusive service for college students living at an apartment complex, arranged by the owner of the complex, and over which the owner sets that fares and schedules would be charter service. This result would occur since the UMTA recipient is not controlling the service and it is exclusively for the college students. Second, shuttle service provided by a recipient to the attendees at a convention that operates on a regular and continuing basis, according to a preprinted schedule, but which is closed to anyone that is not attending the convention would also be charter service.

Third, assume a human services agency contracts with a recipient to provide weekly service to a shopping center for the agency's clients. If the service is open-door and the recipient can put any rider on the vehicle in addition to the agency's clients, the service would probably be mass transportation.

As stated above, UMTA has changed the definition of charter service to include charter service provided by vans. Only one commenter commented on the types of vehicles that the rule would apply to. The commenter asked if the NPRM would apply to charter trolley service provided by a recipient. UMTA has struggled with the lack of regulations to govern other than charter bus service for several years. Since UMTA's previous rule only regulated charter bus service, there was little assistance that UMTA could provide if the complaint concerned charter van or charter rail service.

While the statutory provisions in section 3(f) of the UMT Act apply only to buses, the service which section 12(c)(6) distinguishes from mass transportation is merely charter service, not charter bus service. The limitations on the use of UMTA funded equipment and facilities under section 12(c)(6) are to protect the equipment and facilities to assure that they are available for mass transportation. Thus, all vehicle modes could be included within these protections since they all provide mass transportation.

UMTA, however, has decided to only expand the scope of the rule to vans as well as buses. Since there are so few private rail or ferry boat operators, we believe that not including charter rail and charter ferry boat service within this rule will have little if any adverse effect on these operators.

In addition, we believe that this change will have at most a minimal impact on recipients. First, most urban recipients operate only buses and do not offer mass transportation by van. Thus, this change will not have any effect on them. Second, the rule, as discussed below, considers that a private charter bus operator is only willing and able to provide charter bus service, not charter van service even if the origin and destinations of the trip can be served by van. Thus, since the vast majority of private charter operators are bus only operators, there should not be a significant effect on those recipients that are able to provide charter service by van as well as bus.

Nonetheless, since this does represent a change from the NPRM, UMTA is seeking public comment on this aspect of the final rule. UMTA is providing a 45-day comment period. While 60 days is the normal practice, we believe that this issue is sufficiently narrow to be adequately addressed within a shorter period of time. UMTA will review the comments received and make a determination on further actions at that time. It is important to note that the expansion of the scope of the rule to vans will be effective 30 days after publication along with the rest of the rule and subject to change after the comment period closes.

### Willing and Able

The definition of "willing and able" is another key definition in this regulation. As proposed in the NPRM and as included in this final rule, only if the recipient determines that there is at least one private charter operator willing and able to provide the charter service that the recipient proposes to provide is the recipient prohibited from providing the service.

The NPRM defined "willing and able" as, "having the physical capability to actually provide charter bus service and the legal authority and the necessary safety certifications, licenses and other legal requirements to provide charter bus service in the area it proposes to provide such service."

In the preamble to the NPRM, UMTA stated that this definition focuses on the physical ability of the private charter operator to provide charter service and the possession of the legal authority to provide it. We stated specifically that the definition included no concept of capacity and that a private charter operator with the requisite legal authority and one bus is just as willing and able as a private operator that possesses the same legal authority but has 100 buses. In the preamble, UMTA asked for comments on this aspect of the definition and whether there should be other elements added to the definition.

Thirty-four commenters addressed this issue. The nine private charter operators that commented favored the proposal and stated that if any other elements were added to the definition it would provide the recipients with the ability to delay determinations of willing and able and, in the end, permit the finding of fewer willing and able private operators. These commenters complimented UMTA on the easy, straightforward proposed definition.

The remaining 25 commenters criticized the definition. These commenters were recipients, State DOTs, planning organizations, and trade associations. These commenters suggested various additional elements that would be needed in the definition. Chief among these is the need to add the notion of capacity. For many commenters capacity to provide the amount of service requested is synonymous with having the ability to provide the service. They argued that without a check on the private charter operator's capacity, the customer will not be fairly served and will end up with a variety of companies and equipment to serve its charter request. In addition, the commenters argued that it would not be fair for the regulation to permit a private charter operator with one bus to enter the market and prohibit the recipient from providing any charter service.

UMTA has decided not to include any notion of capacity in the final rule's definition of "willing and able." UMTA believes that the customer will not be harmed in any way by not taking into account the capacity of the private operators. If the private operators do not have the required capacity, it can be obtained from other private charter operators. While some commenters stated that private operators do not always work this closely and harmoniously, UMTA believes that they have a responsibility to work together for mutual support. It is, in effect, the private charter operators duty to work in concert and put aside differences if the protections under this rule are to be of any real benefit to them. As a last resort, the private operator may obtain the extra capacity from the recipient. Thus, the customer will be served. Moreover, a continued request for more capacity than it possesses should encourage the private operator to expand its fleet to serve the market.

Commenters also suggested that definition of "willing and able" should take into consideration the type of equipment that a private charter operator can provide. Many recipients and consumers stated that recipients provide a category of vehicle that is not available from private charter operators. These commenters stated that private charter operators offer only luxury coaches and private school bus operators offer only school buses. For these commenters, the provision of a transit coach is the desired bus and an operator which cannot provide it is not able.

UMTA is aware that the type of equipment requested can sometimes, at least at this time, only be provided by the recipient. This is particularly true in rural areas where, due to small populations, the customer's need is for a small charter vehicle such as a van. While UMTA recipients easily can provide this type of vehicle since UMTA funds mainly the acquisition of vans under our rural and small urban program, private charter operators in these same areas usually can offer only buses.

Therefore, UMTA has changed the definition of "willing and able" to account for these problems. Under the final rule, a private operator is only willing and able to the extent that it can provide the categories of revenue vehicles specified by the recipient. The final rule defines "categories of revenue vehicles" as vans and buses.

Accordingly, if the recipient desires to provide charter service with buses and vans, but the private charter operator only has the physical capability to provide buses, the private operator is willing and able to provide only the charter bus service that the recipient proposed to provide. The regulation will permit the recipient to provide charter service with its vans as long as it is incidental charter service. Since the final rule does not apply to rail service or ferry boats, the only restriction that the UMT Act imposes on charter rail service and ferry boat service provided with UMTA funded equipment or facilities is that it be incidental to the provision of mass transportation.

UMTA believes that this approach is necessary to ensure that the needs of the charter customer are met. Without this addition, customers could be forced to charter a type of vehicle that is not suited to their purposes. The result could be to force the customer to forgo the trip. UMTA does not intend to hinder transportation in this way and adding the type of vehicle to the definition of "willing and able" is one way to address the problem.

A third concept that commenters suggested adding to the definition of "willing and able" is duration of the charter trip. Commenters stated that under some State rules, private operators are often required to set the minimum time for charter bus service at 5 or more hours. Since many customers may only want a bus for 2 hours, the private charter operator in these States provides more service, and at a higher cost, than is desired. The commenters stated that recipients often fill this gap since they have either no minimum durations or lower minimum durations.

UMTA is aware of this problem, but it is our position that the final rule should not take this into consideration in the definition of "willing and able." The cause for minimum periods that may be longer than the customer's needs is, as described by the commenters, State or local rules. To the extent that this needs correction, therefore, UMTA believes that it should be addressed at the State or local level, not at the Federal level.

Except for specifying capacity and duration, the rule permits a recipient to describe its desired charter service with a great deal of specificity. Thus, a recipient may specify the days, times of day, and geographic area of its desired charter trips. For example, a recipient could state in its notice that it desires to provide charter bus service on weekends in its State.

A private charter operator could respond that it desires to provide all of the service. It could also respond that it only desires to provide weekend charter bus service within the recipient's urbanized area. Under the rule, this private charter operator is only "willing and able" to provide weekend charter bus trips inside the recipient's urbanized area and the recipient, absent any other private charter bus operators, is permitted to provide weekend charter bus trips outside of its urbanized area, but within its State.

UMTA believes that it is important to permit recipients to provide specific

information in their descriptions of proposed charter service. In this way, the rule attempts to ensure that the customer's needs will be met and that the customer will not be forced to purchase service that it does not want or to forgo the charter trip.

Finally, UMTA has amended the proposed definition to require that the private operator have the desire to provide charter service. The omission of this component in the NPRM definition was an oversight on UMTA's part. The result is that UMTA proposed a definition of "willing and able" that included only the idea of "able" and omitted any notion of "willing." The definition in the final rule now includes both.

It is important to note, however, that the desire expressed by the private operator is only to provide charter service in general terms and not necessarily to provide every charter request that the private operator receives. UMTA recognizes that it is possible where there is only one willing and able private operator that has precluded the recipient from providing any charter service that the private operator could refuse to provide requested charter service and leave the customer without transportation.

While UMTA recognizes in the abstract that this is a possibility, we do not believe that it is a real probability. Our position is based on our belief that private charter operators behave like any other entrepreneurs. That means that their goal is to maximize profits and stay in business. To achieve this goal, the private charter operators must satisfy customers and provide all the service they can. To refuse the provision of charter service is inconsistent with this philosophy and the attainment of this goal. If there are any disreputable private operators that refuse to provide charter service, UMTA believes that the market will take care of the situation.

Brokers

In the NPRM, UMTA's proposed definition of "willing and able" would have required the actual ability to provide charter service. The preamble to the NPRM noted that a broker, who has only an office and a telephone and arranges for another party to provide charter service, would not be willing and able since it would never itself provide the service. UMTA asked if brokers should be included within the definition since including them would be one way to achieve the goal of increasing opportunities for as much of the private sector as possible.

Fifteen commenters opposed including brokers. These commenters were evenly divided between recipients and private operators. The commenters noted that the UMT Act only protects private charter operators and that a broker, since it is not part of this class, is not entitled to protection under the regulation. They argued that including brokers would increase costs for the customer since a broker would add another layer of work and bureaucracy. They also argued that it could lead to fly-by-night operations.

Nine commenters favored including brokers. These commenters, both recipients and private operators, limited their willingness to include only those brokers that have the legal authority to actually operate charter service and brokers that contract only with "willing and able" private operators.

UMTA recognizes that to the extent that the rule is aimed at restricting charter service by recipients with UMTA funded equipment and facilities, the identity of the actual provider of service in the recipient's absence is not a concern. The only purpose of determining whether there is a willing and able private charter operator is to establish the recipient's ability to provide charter service, not to set up the recipient as a regulatory body that limits the members of the private charter industry. The customer under the rule is still free to contract with any private charter operator it wishes; the rule does not and cannot limit those choices.

Consequently, it would seem that including brokers in the definition of "willing and able" would maximize the customer's range of choices and further involve the private sector in the provision of transportation services. To exclude them could be viewed as favoring one segment of the private industry over another.

On the other hand, UMTA recognizes that a broker with no transportation equipment of its own is hardly able to provide service. Its service provision is always contingent on contracting with another entity to secure equipment. This could result in uncertainty for the customer since there would never be a guarantee that the broker could provide the equipment. This does not seem fair or in the best interest of the customer. Therefore, UMTA has decided not to include brokers within the definition of "willing and able."

Other Definitions

UMTA has added several other definitions to the final rule. First, we have added a definition of "incidental charter service." This will be discussed below in connection with § 604.9.

Second, we have added a definition of "Chief Counsel." This will be discussed below in connection with complaint procedures in § 604.15.

Third, in response to several commenters, we have clarified the role of the State, as direct grant recipient, in the Section 18 program and in some instances in the Section 9 program. UMTA refers to these programs in the final rule as "State administered programs" and has added a definition to the rule to reflect this.

*Section 604.7 Agreement.*

Section 604.7(a) of the final rule requires every applicant for UMTA funds to include a charter service agreement with the first grant application it submits to UMTA after the effective date of the rule. Section 604.7(b) provides the language that the applicant must use.

If UMTA approves the application, we will sign the agreement and return a copy of it to the applicant who has now, in terms of UMTA's program, become a recipient. Once UMTA and a recipient have entered into an agreement, the rule permits a recipient to incorporate the agreement by reference into subsequent grant applications. These requirements are the same as those proposed in the NPRM.

UMTA has added a new provision to this section for the final rule. This provision, § 604.7(f), applies only to a current recipient that does not anticipate submitting a grant application to UMTA during Federal fiscal year 1987. The rule requires these recipients to submit two copies of the charter agreement to the appropriate UMTA regional office within 60 days of the rule's effective date. Since these recipients do not anticipate becoming UMTA applicants for the foreseeable future, the NPRM did not provide a mechanism for them to enter into a charter agreement with UMTA. This new provision takes care of this problem. UMTA believes that a small number of entities will be affected by this provision since most UMTA recipients apply for new funds each year and are not one-time recipients. Therefore, we believe that this requirement will place a minimal paperwork burden.

There were two main comments on this section in the NPRM. First, commenters stated that requiring this agreement places too much of an administrative burden on the recipient. While UMTA recognizes that the requirement for an agreement does place paperwork burdens on applicants, the agreement is required by section 3(f) of the UMT Act and we must include it in the rule.

UMTA has attempted to minimize the burden by providing the language that must be used and to permit a recipient to incorporate it by reference in subsequent grant applications. Moreover, the paperwork requirements associated with this agreement procedure are considerably reduced from those in the previous regulation. Under the previous regulation a recipient had to issue notices, hold hearings and submit to UMTA detailed cost allocation plans before an agreement could be signed. UMTA estimated that the proposed agreement procedure would reduce the previous rule's burden by 75 percent. UMTA believes that this reduction justifies retaining the proposed approach and, therefore, we have not changed the requirements for an agreement from the NPRM.

The second area which commenters addressed concerns who must enter into an agreement under UMTA's State administered programs. As indicated above in the section of this preamble on "Definitions," the State administered programs are the Section 18 program for small urban and rural areas and, if the State has elected, the Section 9 program. Under these programs, the State applies for UMTA funds and passes the funds to subrecipients who in turn further pass the funds on to other public or private providers of mass transportation services.

The NPRM did not specify whether the State, as recipient, or the subrecipients must enter into a charter agreement with UMTA. Commenters, therefore, asked for clarification.

UMTA has decided that for the State administered programs that the State, as recipient, must enter into the charter agreement with UMTA. This approach is consistent with how UMTA structures other requirements for these programs. Section 604.7(a) makes this responsibility clear.

Since the subrecipient in the State administered programs will, in most cases, be the actual service provider, it is critical that these operators be familiar with the requirements of and their responsibilities under the rule. Thus, § 604.7(e) requires the State to obtain a certification of compliance from each subrecipient within 60 days of the rule's effective date. The rule provides the text for this certification. It is a one sentence statement certifying compliance with 49 CFR Part 604. The rule requires the State to retain the certification and to assure UMTA in each grant application submitted to UMTA after the effective date of this rule that the State has received a certification from each applicant.

This change will not increase paperwork burdens since the NPRM's paperwork burden which OMB has approved included an agreement for each subrecipient. Therefore, requiring a certification instead, will have no effect on the total burden.

*Section 604.9 Charter Service.*

This section of the final rule is nearly identical to the provisions in the NPRM on charter service. Subsection (a) sets forth the basic prohibition in the rule. According to this, before a recipient may provide any charter service using UMTA funded equipment or facilities, it must first determine if there are any willing and able private charter operators. To the extent that there is a private operator willing and able to provide the service that the recipient proposes to provide in its public notice, the recipient is foreclosed from providing that charter service using UMTA funded equipment or facilities. Again, if the recipient is able to set up a separate entity that provides charter service using only local funds or to keep its accounts for two divisions completely separate, this rule does not restrict that charter service.

While we have stated it before in this preamble, it bears repeating that the prohibition only applies to the extent that there is a private operator willing and able to provide the desired service. Therefore, if the recipient alone desires to provide charter service at specified times or places, it would be able to provide this charter service using UMTA funded equipment and facilities. To emphasize the point that such charter service is permissible, UMTA has added language to this effect in subsection (b). Although the text is nearly identical to that in the last sentence of subsection (a), UMTA believes that it is critical to make an affirmative expression of this position.

Section 604.9(b) also sets out the two exceptions which permit a recipient to provide charter service with UMTA funded equipment or facilities when there is a willing and able private charter operator. These are the same two exceptions that we proposed in the NPRM.

First, a recipient may provide charter service using UMTA funded equipment and facilities if the private operator under contract with the customer cannot provide enough capacity. The rule permits the recipient to provide the extra capacity to the private operator or to actually operate the service for the private operator. In either case, however, the recipient is under contract with the private charter operator and not in a direct contractual relationship with the customer.

The second exception is similar to the first. Here the recipient may enter into a contractual relationship with a private charter operator to provide equipment or to operate charter service for it if the private charter operator does not have equipment that is accessible to elderly or handicapped persons. Again, the contract would never be between the recipient and the customer, but always between the recipient and the private operator.

UMTA asked in the preamble to the NPRM whether the recipient should be able to contract directly with the customer in these two situations. Twenty-five commenters addressed this issue. Fifteen were recipients and the rest were private operators, State DOTs, and trade associations. Eighteen favored the ability to contract directly since it would result in lower costs for the customer and decrease paperwork. The majority of these commenters were recipients. Some of the commenters limited their approval by stating that the recipient would only be able to contract directly if the recipient alone had the total needed capacity or the accessible equipment.

The commenters that opposed direct contracting stated that if it were permitted, the regulation would provide the recipient with too much discretion since the recipient would be making threshold decisions as to the availability of equipment which are more properly made by private charter operators.

Several commenters raised the issue of the applicability of section 13(c) of the UMT Act in this context. This statutory provision requires the Secretary of the Department of Labor to determine, before an UMTA grant can be made, that fair and equitable arrangements are in place to protect the interests of employees affected by the grant. Commenters questioned whether the recipient, when it is under contract with a private charter operator, must operate within the terms of its labor contract and whether the private charter operator would be bound by the recipient's labor contract, work rules and 13(c) agreement.

UMTA does not believe that section 13(c) raises any problems in this area. First, section 13(c) does not prohibit contracting by a recipient to another entity for the use of UMTA funded equipment and services. If a given 13(c) agreement does contain such provisions, it is because the recipient and the labor unions have agreed to them. Second, the terms that would govern the contract between a recipient and a private operator would be agreed on by those two parties. If the recipient's 13(c)

agreement requires that certain provisions relating to the the use of the recipient's drivers for contracted service be included in such contracts, the private charter operator may have to accept such terms in order to secure the use of the equipment. These matters are the concern of the local parties and not UMTA.

After a thorough review of this issue, UMTA has decided not to revise the NPRM to permit direct contracting under either the second or third exception. While direct contracting may reduce paperwork for the private operator, it certainly would not affect the customer's paperwork burden since direct contracting could result in multiple contracts to secure the required capacity. Moreover, it is consistent with our policy that recipients should participate in charter service only to the extent that there is no willing and able private operator.

Under either of these two exceptions, it is important to note that the private charter operator is not required to attempt to secure the additional or accessible equipment from other private charter operators before contacting the recipient. Thus, the private charter operator may automatically contact and contract with the recipient when it is requested to provide capacity beyond its fleet size or accessible equipment.

This approach is different from the NPRM where we proposed to require that the private charter operator exhaust the other willing and able private charter operators of capacity or accessible equipment before it could contact and contract with the recipient for the equipment. This approach made sense in the NPRM where we proposed to require that the recipient create a roster of all willing and able private charter operators.

In the final rule, UMTA has, as will be discussed below, removed the requirement that the recipient review the evidence submitted by all potential willing and able private operators, in favor of permitting the recipient to cease this review once it has determined that there is one or more willing and able private charter operator for all the charter service it desires to provide. Thus, there will not be a roster for the private charter operator to use and contacting other private charter operators first would be a random search. UMTA admits that we cannot police these searches by private charter operators. Since they do not receive any UMTA assistance, we have no jurisdiction to regulate their activities.

For example, suppose XYZ, a private charter company, is requested to provide 15 buses for a charter trip. XYZ has only 8 buses available for this service. XYZ would be able to contract for some or all of the additional 7 buses from the UMTA recipient even if there were a private charter operator that could provide the extra equipment.

In these situations, the regulation does not require that the recipient contract with the private operator. The recipient may refuse to provide any equipment or services to the private charter operators. Many commenters to the NPRM were concerned that the rule would require the recipient to provide the extra or accessible vehicles to the private charter operator. This was not the intention of the NPRM or this final rule.

In the situations where either of these exceptions apply, there is no requirement that the recipient contract only with a willing and able private charter operator. The rule permits the recipient to fill the needs of all private operators, not just those that it has determined are willing and able.

In the preamble to the NPRM, UMTA asked whether there should be any other exceptions added in the final rule. A total of 60 commenters responded to this question. The majority of these commenters were consumers many of whom sent in form comments. The rest of the commenters were almost equally divided between recipients and private charter operators.

Nine commenters opposed any additional exceptions. The remaining 51 suggested a variety of exceptions. The majority supported an exception for intracity charter service and charter service of a limited duration.

UMTA has not included a separate exception for geographic location because the rule as proposed and as adopted in final form in essence provides an exception in the definition of "willing and able." As stated above, a recipient may describe its proposed charter service by many characteristics including geographic location. To the extent that there is no private charter operator willing and able to provide the described service, the recipient may provide it. Thus, the rule already provides for this.

As stated earlier, however, UMTA has not provided an exception for duration. Problems related to longer minima than needed or desired by customers are imposed by State and local rules and should be addressed at these levels, not in a Federal regulation.

Commenters suggested other exceptions including; 1) if the customer is a non-profit organization; 2) if the cost difference between the recipient and the private charter operator is of a certain magnitude; 3) if the recipient decides that the charter service it provides is superior to that provided by any private charter operator; and 4) if the event is of over-riding importance to the public.

UMTA believes that each of these suggestions has some merit. The second, third and fourth suggestions, however, place the recipient in a position of making a subjective decision which affects the private charter operator's ability to provide charter service. UMTA is opposed to creating such subjective tests and, to the extent possible, the exceptions should provide easy objective tests to let both the recipient and the private charter operators know when the recipient may provide charter service. Moreover, including subjective tests would result in many complaints filed with UMTA and increase the burdens on us. This would not be consistent with our goal of making the rule easier to enforce.

An exception for non-profit customers seems to be based on two assumptions. First, non-profit customers cannot pay as much as other customers. Second, recipients charge less for charter service than private charter operators. While UMTA does not offer an opinion on the veracity of the first assumption, we do not believe that the second holds up to scrutiny. UMTA does not believe that private charter operators will act to gouge the public by charging exorbitant rates. As stated repeatedly in this preamble, it is UMTA's opinion that private charter operators behave like any other business entity to maximize profits and to provide competitive service. Accordingly, UMTA believes that private charter operators will respond as sound businessmen which may at times require tailoring prices to meet the buyer's limitations. There appears, therefore, little reason to include any exceptions for the nonprofit customer.

UMTA has, however, decided to include an additional exception in this final rule for recipients in non-urbanized areas, i.e. areas with populations of less than 50,000 people. Generally, recipients in these areas receive funds under UMTA's Section 18 program. They may also in some circumstances receive funds under Section 3 or even Sections 5 or 9. Since UMTA intends this exception to apply to all recipients in non-urbanized areas regardless of the UMTA funding source, we state that it applies to recipients in non-urbanized areas, rather than to Section 18 recipients.

Under this provision, a recipient in a non-urbanized area may petition UMTA for an exception to the rule to permit it to provide charter service directly to customers even though there is at least one willing and able private charter

operator. To qualify for an exception, however, the recipient would have to show that the charter service provided by the willing and able private charter operator or operators would create a hardship for the customer.

The rule limits the factors that would result in a hardship to two. First, as mentioned above, some State regulatory bodies impose minimum durations on private charter operators that are longer than the customer desires. If the willing and able private charter operators are required to provide charter minimum durations which the recipient believes work a hardship on the customer, the recipient may seek an exception which would permit it to provide charter service, but only for trips of up to the State imposed minimum. If the minimum durations are the result of an industry practice, there would not be any basis for granting an exception.

Second, in non-urbanized areas it is possible that the willing and able private charter operators are located a considerable distance from the non-urbanized area and the origin of the charter service. This would affect the charter service since it would take longer for the equipment to be delivered to the origin of the service than it would take for the recipient to deliver it and could affect the price and other factors of the service. Since the recipient is usually located closer to the origin of the charter trip, there is less impact on the service due to distance. Therefore, if the recipient believes that the private charter operators' distance from the origin of charter service would result in a hardship on the customer, it may petition UMTA for an exception.

The process for seeking an exception under either of these hardships is the same. The recipient, after determining that there is at least one willing and able private charter operator, must provide an explanation to each willing and able charter operator why an exception should be granted by UMTA. The notice must inform the willing and able private charter operators that they have at least 30 days to provide written comments on the proposed exception request to the recipient.

After the comment period closes, the recipient, if it still desires to seek an exception, must send to the UMTA Chief Counsel a copy of the notice it sent to the willing and able private charter operators, a copy of all comments received, and any additional material it wishes in support of its request. The Chief Counsel will review the materials and issue a written decision. In the decision, the Chief Counsel may deny the request or grant it in whole or in part.

The rule states that any exception will only be in effect for at most 12 months from the date the Chief Counsel grants it. Thus, the exception may be in effect for less than an entire year. This will necessitate the recipient's repeating the exception request process once the approval lapses if the recipient still believes that an exception is warranted.

Since an exception could be in effect for up to 12 months, UMTA does not envision that recipients in non-urbanized areas will seek an exception on a trip-by-trip basis. While this is a possibility, the administrative process that we have provided in the rule will probably not be responsive to such requests. Rather, the exception will provide a recipient with the ability to provide charter service directly to customers with UMTA funded equipment for several months at a time.

UMTA has added this exception because we are concerned that in rural areas charter service will not be as readily available as in urbanized areas. This could adversely affect the customer and in extreme cases force it to forgo service since minimum durations which State regulations require a willing and able private charter operator to impose are too long or willing and able private charter operators are located too far to make the service viable.

UMTA has added another exception to the final rule. Under this provision, any recipient may petition the Administrator for an exception to provide charter service even if there are willing and able private charter operators but only for special events to the extent private charter operators are not capable of providing the charter service. The rule does not define "special events," but UMTA intends that it include only events of an extraordinary, special and singular nature such as the Pan American Games and the visits of foreign dignitaries.

The process that a recipient must follow to obtain an exception is set forth in § 604.9(d). The recipient must submit its petition for an exception to the Administrator at least 90 days before the event for which it desires to provide charter service. The petition must describe the event, explain how it is special and explain why private charter operators are not capable of providing the service. The Administrator shall review the materials submitted and deny or grant, in whole or in part, the request. The exception shall be valid only for the event and not apply to any other charter service.

The central issue in this exception is the determination of the extent to which private charter operators are capable of providing the charter service for the special event. UMTA has chosen not to define "capable" to provide for the maximum degree of flexibility. Nevertheless, it is UMTA's position that private charter operators would not be capable of providing charter service if, for example, their fleets, even when pooled together, would not equal or even approximate the level of service required by the event.

UMTA has added this exception to cover the potential situation where a city is hosting an event of national or international importance and private charter operators simply will not be capable of delivering the service needed.

In the final rule, however, UMTA has added a requirement that any charter service provided under any of the exceptions be incidental charter service. The previous regulation required that all charter bus service provided with UMTA funded equipment or facilities be incidental to the provision of mass transportation. The rule specified that any weekday charter service that was provided during peak periods, required the use of a bus for more than 6 hours in one day, or went 50 miles beyond the recipient's urban area was presumed to be not incidental. These presumptions were rebuttable.

The NPRM did not propose to impose any restrictions on the charter service provided with UMTA funded equipment or facilities if there were no willing and able private operators. UMTA did, however, state that we expected that the revenues for any charter service would cover the costs of the service. We asked in the preamble whether there should be some specific restrictions on such charter service.

Twenty-three commenters addressed this issue. The majority were recipients, but private charter operators, trade associations, and State DOTs also offered comments on this issue. Sixteen commenters favored the imposition of some restriction. The majority of these suggested including the previous incidental use presumptions as written or revising them to make them conclusive. Others suggested requiring that the service not interfere with the provision of mass transportation or that the revenues cover the costs.

Seven commenters stated that UMTA should not further restrict a recipient's charter service. These commenters argued that when there is no willing and able private charter operator, there is no reason to impose further restrictions on the recipient.

In the final rule, UMTA has included the requirement that any charter service which a recipient is permitted to provide

under any of the exceptions must be "incidental charter service." This requirement is found in § 604.9(g). We believe that this requirement is legally required in order to comply with the Comptroller General's Opinion of December 7, 1966 (B–160204). In this opinion, the Comptroller General stated that charter service by recipients with UMTA funded equipment and facilities is permissible but only if it is incidental to the provision of mass transportation.

There are many ways in which UMTA could define "incidental charter service." We have specifically declined to use the previous incidental use presumptions. These presumptions were ineffective and they had little if any real impact on a recipient's charter service. Due to the fact that they were rebuttable and because of the 46 per cent nationwide spare ratio, which will be discussed in more detail below, a recipient was usually able to rebut them and they served as an ineffective protection for UMTA's equipment.

While UMTA could have made those presumptions conclusive, we feel that this would be too restrictive and could intrude in the provision of a customer's needed charter service. Therefore, UMTA has chosen to define "incidental charter service" as, charter service which does not: (1) interfere with or detract from the provision of the mass transportation service for which the equipment or facilities were funded under the Acts; or (2) shorten the mass transportation life of the equipment or facilities.

UMTA favors this broad definition in order to provide our recipients with as much flexibility as possible. The language is very close to that used by the Comptroller General in his 1966 opinion and, thus, reflects concepts and ideas that UMTA, recipients, and the private charter industry have been familiar with and worked with for 20 years.

In order to provide some guidance as to the specifics that this definition includes, UMTA offers the following examples of what characteristics the charter service should have to ensure that it is consistent with the definition. First, the revenues from each charter trip should equal or exceed the fully allocated costs of providing the service. Charter service provided at costs below the full recovery level is possible only because of the UMTA subsidy and has a negative, detracting effect on the mass transportation use of the equipment.

Second, the provision of the service should be consistent with UMTA's policies on useful life and spare ratios. UMTA's policy on useful life in UMTA Circular 9030.1, "Section 9 Formula Grant Application Instructions," states that a transit bus, for example, has a mass transit useful life of 12 years. UMTA will not permit a recipient to count charter service toward meeting this 12 year mark. As a result, UMTA will, absent extenuating circumstances, only permit a bus to be replaced after the bus is used in 12 mass transportation years, not just 12 calendar years. This same policy, with necessary adjustments based on the type of vehicle, applies to all vehicles that UMTA funds and are used in charter service.

This same Circular states that a recipient's spare ratio should not exceed 20 percent. While UMTA admits that the national average spare ratio is 46 percent, a recipient should not, consistent with the requirement of incidental charter service, use buses in excess of the 20 percent figure to provide charter service. To do so takes unfair advantage of a fleet size that is in excess of needs.

Third, a recipient should not provide any charter service during peak hours. Peak hours vary from recipient to recipient and may even vary from season to season within one recipient's system. In general, peak hours run from 6 a.m. to 9 a.m. and from 4 p.m. to 7 p.m., but may vary from recipient to recipient. Since UMTA funds revenue vehicles to meet peak hour needs, other uses of equipment during these times would interfere with the meeting of these needs. Thus, any charter service during these times would not be incidental.

It is important to note that these three characteristics are examples only and do not exhaust the explanation of charter practices which interfere or detract from the provision of mass transportation. In a complaint, UMTA would review the facts and make a case-by-case determination.

*Section 604.11 Procedures for Determining if There Are Any Private Willing and Able Charter Operators.*

In the NPRM, UMTA proposed that before a recipient could provide any charter service it would have to determine whether there were any private charter operators willing and able to provide the charter service it proposed to provide. The process that UMTA proposed would have included notice in a newspaper, actual notice to specified parties and a public hearing at which the potential willing and able private charter operators would have presented evidence to substantiate their claims to be willing and able.

The main comment that commenters offered concerning this procedure was that it would impose too large a paperwork burden on recipients. Twenty commenters, half of whom were recipients, made this argument and stated that the burden would be so great that it would cost more to comply than they would make from any resulting charter service. Thus, these commenters argued that there would be little, if any, incentive to go through the hearing process.

Other commenters stated that this approach would be contrary to this Administration's goal of reducing regulatory burdens. The commenters did not provide any data to explain the amount of the increased burden that they would experience under the NPRM.

In the preamble to the NPRM, UMTA argued that the proposal would not increase paperwork burdens on recipients. We calculated that the previous rule imposed approximately 4,000 burden hours per year on recipients as a whole. This burden was mainly consumed in the preparation of the cost allocation plan.

We calculated that the NPRM would only impose 1,190 hours the first year it would be effective and only 1,073 in subsequent years. These would have been the total burden on all recipients, not on each recipient. Thus, we proposed a rule that would decrease burden hours by approximately 75 per cent.

UMTA has not altered the requirements in this final rule to increase these figures. The final rule, therefore, will impose substantially reduced burdens on recipients from the previous rule and the comments of increased burdens appear to be without basis.

UMTA has decreased the administrative burden on recipients in the public participation process by eliminating the hearing requirement. The only purpose of the hearing was to provide the private charter operators with a forum at which they could present evidence that they are willing and able. Since the process UMTA proposed was not premised on any need for face-to-face contact between the recipient and the prospective willing and able private charter operators, a hearing does not appear to be necessary.

Therefore, in the final rule, UMTA requires only that a recipient publish a notice requesting private operators to submit written evidence to it to prove that they are willing and able. The process requires a recipient that desires to provide charter service using UMTA funded equipment or facilities after the effective date of the rule to publish a notice in a newspaper of general

circulation in the geographic area in which it desires to provide charter service. If the geographic area is large enough, the notice may have to be published in more than one newspaper in order to cover the entire area. The notice will describe the recipient's proposed charter service and request private operators to respond with evidence to prove that they are willing and able to provide the proposed charter service.

UMTA specifies when the notice must be published. First, if a recipient never desires to provide charter service, it would never have to publish a notice. Second, if a recipient does not want to provide any charter service immediately after the effective date of the final rule, it would not need to publish a notice until at least 60 days before it will provide charter service in the future. This will require some advance planning on the recipient's part and will not permit a recipient to provide charter service soon after it receives a request.

Third, if a recipient is providing charter service with UMTA funded equipment or facilities on the effective date of this rule and desires to continue to provide it, the recipient must publish its notice not more than 90 days after the effective date of the rule. During this period, the previous rule will remain in effect and govern any charter bus service (the previous rule does not regulate charter service provided by other modes of vehicles) that the recipient may provide.

The parties to which the notice must be sent and the content of the information that must be included in the notice are identical to what UMTA proposed in the NPRM. Thus, a recipient must send a copy of the notice to any private charter operator that requests a copy and to the two major trade associations to which private charter bus operators belong: the American Bus Association and the United Bus Owners of America. UMTA believes that actual notice to these two trade associations is important to ensure that there is as wide a distribution of the recipient's proposal as possible in order to get as large a response as possible.

The changes in the information that a recipient is required to include in the notice are few and result from eliminating a hearing. For example, the rule states that the recipient must inform the potential willing and able private charter operators that they must submit their evidence within at least 30 days of the date the notice appears. Recipients may provide private operators with more than 30 days, but there must be at least 30 days. Recipients may require that the evidence must be received in hand by the deadline or that it be postmarked by that date. The rule is silent as to this and leaves it to the recipient's discretion.

In the NPRM, UMTA proposed that a hearing be held once each year by recipients that desire to continue to provide charter service. This annual hearing would have to have been held during the month in which the recipient held its first hearing. We asked in the preamble whether a hearing should be held on a different basis.

Twenty-eight commenters addressed this issue. The commenters were almost equally divided between recipients, private operators, and State DOTs. Eight recipients opposed the holding of an annual hearing since it would be too burdensome. Thirteen commenters felt that an annual hearing would be appropriate. These commenters were mostly private operators. Two private operators suggested that the hearing be held twice each year. Two recipients suggested that a hearing be held every two years.

While UMTA has determined that a hearing is not needed, we have determined that an annual public participation process is appropriate. While requiring such a process more frequently would permit the recipient's determinations to account for new entrants into the private charter market, it would place an increased burden on the recipient. The utility of this is questionable since the rule restricts a recipient's charter service equally regardless of the number of willing and able private operators that occupy the universe of charter service that the recipient desires to provide. This, in fact, provides reasons to require a recipient to repeat the public participation process only every two or more years. Nonetheless, UMTA believes that once each year is the fairest approach for the recipient, by minimizing its paperwork burden, and for the private operators by giving them an opportunity annually to stake their claim in the local charter service arena.

One change that UMTA has made in this procedural section is to account explicitly for the way the process will work for the State administered programs and for any recipient that passes through UMTA assistance to other entities under any UMTA grant program. In Section 604.11(e), UMTA has given the recipient, including the State in State administered programs, the choice to decide how it will comply in the situations where subrecipients desire to provide charter service using UMTA funded equipment and facilities.

The recipient may elect to follow the procedure itself, or delegate it to some or all of the subrecipients. This permits the recipient to account for the varying administrative capabilities of the subrecipients and pass on the procedural requirements only to those subrecipients that are capable of complying.

For example, in the State administered programs, if the State does choose to conduct the process itself for all or some of the subrecipients, it can comply in various ways. The rule does not spell these out, but provides the State with the flexibility to tailor its procedures as it feels works best. Thus, the State could publish one newspaper notice to cover all of the subrecipients. This would require publishing the notice in several newspapers to ensure State-wide coverage. The information from all potential willing and able private charter operators would go to the State who would make the determinations to the extent to which the private operator is willing and able.

The State may also publish a notice for each subrecipient and tailor the publication to cover only the geographical area in which the particular subrecipient desires to provide charter service. The rule also permits the State to strike a middle ground and to publish regional notices to cover several subrecipients with one notice. UMTA believes that flexibility is the best policy to follow in this issue and permits the State to decide. There is nothing that requires the State to make its election once and to be bound by it forever. The State could follow a different scheme each year. The end result, however, is that notice must be given for each subrecipient, collectively or singly, that desires to provide charter service using UMTA funded equipment and facilities.

The rule provides this same degree of flexibility to recipients in any grant program that have subrecipients that desire to provide charter service with UMTA funded equipment or facilities. The decision who will conduct the public participation is up to the recipient. The only requirement imposed by this rule is that the process be completed before the charter service is provided.

*Section 604.13 Reviewing Evidence Submitted by Private Charter Operators.*

This section provides the procedures that a recipient must follow when it reviews evidence submitted by prospective willing and able private charter operators. The procedures in this final rule are nearly identical to those in

the NPRM. The changes will be discussed below.

As in the NPRM, the recipient must review the evidence submitted within 30 days of the deadline that the recipient has established for the private charter operators to submit their evidence to the recipient. UMTA believes it is necessary to place a time limit on recipients for this task to ensure that the decisions will be made in a timely manner. Similarly, as in the NPRM, the recipient must inform all the private operators that submitted evidence of the decisions that it has made within 60 days of the deadline.

In the NPRM, UMTA proposed not to provide recipients with any discretion in reviewing the evidence submitted by a private charter operator. This would have affected the recipient's action in two ways. First, the recipient would not have been able to conclude that a private charter operator that met the definition of willing and able was not willing and able. UMTA has decided not to alter this for the final rule. As a result, if a private charter operator satisfies the definitional requirements of desire, ability to obtain the vehicles, and legal authority, the private charter operator is automatically willing and able. UMTA believes that this approach is necessary in order to make the rule as objective as possible and to minimize subjective decisions.

Second, in the NPRM UMTA did not provide discretion since we did not propose to provide any mechanism for the recipient to challenge the evidence that a private operator presented. We asked in the preamble whether the recipient should be able to look behind the evidence in all cases or at least when the recipient has reason to believe that the documents have been falsified.

Twenty commenters addressed this issue. Half were private charter operators and the rest were recipients, State DOTs, and trade associations. Thirteen commenters, including all 10 private charter operators, favored the proposal of no discretion. Six commenters favored some degree of discretion to enable the recipient to look behind the evidence.

In the final rule, UMTA has added subsection (e) to permit a recipient to look behind the evidence, but only in the situation where the recipient has "reasonable cause to believe that some or all of the evidence has been falsified." UMTA believes that this is necessary to enable the recipient to make as valid a determination of the private operator's status as possible. While UMTA believes that recipients should not provide charter service to the extent that there are willing and able private charter operators, we have no intention of permitting an unscrupulous private operator from affecting the services that a recipient may provide to the ultimate detriment of the customer.

UMTA, however, has limited the recipient's discretion only to those situations when it has a "reasonable cause" to believe that the evidence is falsified. This language has been added to prevent the recipient from looking behind the evidence submitted by every private operator as a matter or course. Such tactics are not in the spirit of this regulation. To ensure that this provision is not abused, UMTA will entertain complaints from a private operator that the recipient does not have "reasonable cause" if the private charter operator believes that the recipient is unfairly scrutinizing the evidence it has submitted.

UMTA has also added a new subsection (f) to this section. This new provision permits a recipient to cease reviewing the evidence submitted by private charter operators once the recipient has determined that there is one or more private charter operators willing and able to provide all of the charter service that the recipient has stated in its notice that it desires to provide. At that point in a recipient's review process there is no reason to continue to determine if additional private charter operators are willing and able since the recipient already will be prevented from providing any charter service with UMTA funded equipment or facilities. Thus, further review would not serve any function under the regulation.

If a recipient does elect to suspend its review at this point, the information that it will provide under § 604.13(b) will not be specific to each private operator that has submitted evidence.

Rather, it could be a notice of the one private operator that is willing and able to provide all of the charter service that the recipient proposed to provide. Similarly, under § 604.13(d), a recipient would not have to find each private charter operator that meets the test "willing and able" since it would not be reviewing the evidence each submits. While this does not give the recipient any discretion, it recognizes that suspending the review of evidence makes some of the other provisions inoperative.

The rule, however, does permit a recipient to continue to review evidence at that point in its review process to determine whether each of the private charter operators that submitted evidence is willing and able. This was the approach that UMTA proposed in the NPRM. If a recipient were to follow this process, it would create a roster of all the willing and able private charter operators. Such a list could be beneficial since a customer could refer to this list when contacting potential providers of service.

Since UMTA believes that such rosters do provide valuable information, the final rule does not preclude a recipient from creating one. It is important to note, however, that this information is not necessary under the rule since the intention of the rule is not to create a list of willing and able private charter operators. Rather, the rule aims only at determining if there is a private charter operator willing and able to provide the charter service that the recipient desires to provide. If such an entity exists, the recipient is not able to provide the service. The fact that there may be 1 or 100 such private operators is irrelevant and to require a recipient to review evidence once it has determined that it cannot provide any charter service using UMTA funded equipment or facilities would impose an unnecessary burden on recipients. Therefore, UMTA has given recipients the discretion to cease its review of the evidence once it has been foreclosed from providing its proposed service.

UMTA has also added a new subsection (g) to this section to parallel the procedure in § 604.11(e) which permits a recipient, including the States in State administered programs, to follow the public participation process for all, some, or none or its subrecipients. A corresponding change has been added here to make the party that conducts the process under § 604.11 responsible for reviewing the evidence and making the determinations whether a private charter operator is willing and able.

*Section 604.15 Filing a Complaint.*

This section sets forth the procedures that a complainant must follow in filing a complaint with UMTA. In the NPRM, UMTA proposed a complaint procedure much like the process in the previous rule, but with a few changes. First, UMTA proposed that all complaints would be investigated by UMTA's Regional Offices with Headquarters review and concurrence. Second, UMTA proposed that the first step in complaint resolution would have been local conciliation by the parties without UMTA involvement. Third, the NPRM would have imposed strict deadlines on all parties in the complaint including UMTA. Under the NPRM, a complaint generally would have been resolved approximately 80 days after filing.

Eleven commenters commented on the proposed complaint process. The commenters were distributed almost evenly between recipients, private operators and State DOTs. Three commenters supported mandatory local resolution as the first step in the complaint process and other commenters supported reducing the overall 80-day timeframe to 60 days. In general, the comments were brief and requested that UMTA make the process simple.

Consistent with these comments, UMTA has made the complaint process simple and retained the proposed process with minor alterations. First, UMTA has decided that all complaints will be investigated by UMTA's Headquarters Office, not in the Regional Offices as proposed. This is merely an internal change within UMTA and will not affect the parties or decisions in any way. The main reason that UMTA has decided to make this change is to expedite the complaint process.

The final rule reflects this decision by stating that the person to whom all complaints must be sent is the UMTA Chief Counsel. The Chief Counsel will function in the same capacity as the Regional Administrator in the NPRM. Therefore, the Chief Counsel will receive complaints, review them to ensure that the actions complained of constitute a complaint, order the parties to attempt to resolve the complaint locally, send copies of the documents to the parties for response if local conciliation is unsuccessful, and prepare and sign the decision.

The second alteration that UMTA has made to the proposed process is to increase the timeframes. Under the NPRM, UMTA proposed that local conciliation last for 20 days, that the respondent have 20 days to respond to the complaint, that the complainant have 15 days to rebut the response and that UMTA prepare a draft decision within 15 days.

In the final rule these timeframes are uniformly set at 30 days. While this will make complaint resolution longer, UMTA believes that it may in fact expedite the process. With short deadlines, there is the great possibility that the parties would request extensions of time. The NPRM would have permitted UMTA to grant such extensions for administrative convenience. UMTA fears with short timeframes that there would be routine requests for extensions and that without them, the quality of the evidence submitted would not be enlightening. Therefore, in order to create a better and more realistic process, we have extended the process to 120 days. To provide for unanticipated problems, UMTA may extend deadlines for administrative convenience.

As under the NPRM, UMTA will reserve for itself the ability to request additional information from the parties. This ability is necessary since UMTA may discover that more information is needed before a decision can be made. UMTA, as part of this process, may schedule an informal hearing. The final rule also permits the complainant or respondent to request a hearing. The decision to hold such a hearing is, as under the NPRM, within UMTA's discretion.

*Section 604.17 Remedies.*

This section of the final rule sets forth the remedies, or penalties, that UMTA may impose on a recipient if we find that there has been a violation of the regulation. This section is identical to the proposed remedies in the NPRM and permits UMTA to: (a) order such remedies as are appropriate; and (b) to bar the recipient from the future receipt of UMTA capital assistance for facilities and equipment if there has been a continuing pattern of violations of the regulation.

In the NPRM, UMTA asked whether the final rule should specify the penalties for violations of the regulation. For example, we stated that a 10% reduction in UMTA funds could be imposed for each violation of the rule.

Twenty-three commenters responded to this question. These commenters included private operators, recipients and a variety of State DOTs and trade associations. Seven of the commenters, including several of the recipients, supported specifying penalties. An almost equal number of recipients favored not stating penalties in the rule to provide flexibility for UMTA.

Many commenters stated that if UMTA does specify penalties that they should not be too severe or UMTA would never impose them. Others did not understand what the penalties would be. Still others stated that there is too much variation now in the penalties that UMTA imposes, but these commenters did not support specifying penalties.

In this final rule, UMTA has decided not to specify any penalties. We agree with several of the commenters that this approach provides UMTA with the flexibility needed to fashion a remedy that fits the situation. While this may permit the possibility of arbitrary penalties and remedies, UMTA's close reliance on and following of precedents should prevent this.

UMTA did not propose to define "continuing pattern" in the NPRM, but asked in the preamble whether the final rule should define this term. The UMT Act does not require that UMTA bar a recipient when a continuing pattern of violations has been found. The decision to do so is discretionary. Eight commenters addressed this question. Five of these, mainly State DOTs and MPOs, supported including a definition. The other commenters opposed defining this term.

UMTA believes that there are several reasons to support defining "continuing pattern." These include consistency, objectivity, and providing recipients with a fair warning of the consequences that may result from non-compliance. On the other hand, defining "continuing pattern," like specifying penalties, takes away UMTA's discretion to impose the penalty that is deemed appropriate. UMTA believes that such discretion is a powerful tool in complaint resolution and relinquishing it for the sake of consistency is not appropriate.

*Section 604.19 Appeals.*

The NPRM proposed a specific appeals process. The losing party would have been able to appeal the Regional Office decision to the UMTA Administrator within 10 days of the date of the decision. The Administrator would have been able to entertain the appeal only if the Administrator determined that the appellant presented evidence that there were new matters of fact or points of law that were not available or not known during the investigation of the complaint. If the Administrator accepted the appeal, the Administrator would have provided the appellee with 10 days to respond and then issue the decision on the appeal.

UMTA has decided to revise this process slightly. The first change provides the appellant with 10 days to rebut the appellee's response to the appeal. UMTA believes that this change is necessary to provide due process to both parties and to make the appeals process consistent with the rest of the complaint process.

The second change alters the timetable for the Administrator to issue the decision on appeal. As proposed, the Administrator would have been required to issue the decision on appeal within 15 days of the appellee's response. In the final rule UMTA has changed this to 10 days from the receipt of the appellant's rebuttal and makes this language precatory, not mandatory. UMTA believes that while it is important to issue decisions expeditiously, rigid timeframes may result in poorly thought out decisions and exalting expediency over substance. UMTA intends to hold

firmly to this deadline and to strive in each case to meet the 10 day limit.

Third, we have made the timing of the appeals process identical with the rest of the complaint process. Thus, we have set the time limit for responses and rebuttals from the date the party receives the document, not from when UMTA sends the appeal or the response.

In the NPRM, UMTA asked whether the losing party should be able to appeal UMTA's decision without a need to show new matters of fact or law. Seventeen commenters addressed this issue. The commenters were fairly evenly divided between recipients, private operators, State DOTs, and trade associations. Eight commenters favored not providing such an intermediate appeal. These comments came from mainly private operators and recipients who stated that they feared that such an appeal possibility would slow down the complaint process. If such an appeal would expedite complaints, these commenters said that they would favor including it.

Six commenters favored including an intermediate appeal. Half of these commenters were private operators who argued that a two-step process would be fairer.

UMTA has decided not to provide an intermediate appeal in the final rule. While a second look at a decision may be of some benefit, UMTA believes that this sort of an appeal would merely increase the complaint workload since it would permit the reexamination of every decision just because the losing party does not like the result.

UMTA also asked in the preamble to the NPRM whether the final rule should include an advisory committee as part of the complaint process. The advisory committee, as envisioned in the preamble, would have included representatives of both recipients and private operators who would have reviewed the submissions of the parties and offered advice to the UMTA decisionmaker. UMTA stated that such a committee could be helpful if there were an intermediate appeals process as discussed above.

Sixteen commenters addressed this question. Of these, six were private operators, four were recipients, and three were trade associations. Ten commenters opposed such a committee and argued that it would: slow down the complaint process; be cumbersome; the representatives would not be objective; and it is UMTA's proper role to make all decisions.

Five commenters favored including such a committee. Three of these commenters were private operators who argued that this committee would be especially helpful if there were an intermediate appeals process.

UMTA has decided not to include an advisory committee in the final rule for a variety of reasons. We agree with those commenters who stated that it would be cumbersome, too subjective, and slow down the complaint process. Furthermore, this Administration is trying to eliminate advisory committees and to create one with such limited value would be contrary to this goal.

*Section 604.21 Judicial Review*

This section of the final rule provides that the Chief Counsel's decision or the Administrator's decision on appeal is a final agency action subject to judicial review under the Administrative Procedure Act. This section, on which no comments were received, remains unchanged from the NPRM.

**Legal Basis for the Rule**

In the preamble to the NPRM, UMTA provided an explanation of the legal basis for the proposed changes to the charter rule. We recognized that it is particularly important when changing an existing regulation to do so only when there is a legal basis to support the changes. UMTA has not altered the NPRM significantly and it is our opinion that the legal arguments made in the NPRM's preamble are sufficient to support this final rule.

The final rule is based on two provisions in the UMT Act, sections 3(f) and 12(c)(6). Section 12(c)(6) defines "mass transportation" to specifically *exclude* charter service. Thus, this provision provides an absolute prohibition on the provision of charter service with UMTA assistance.

The Comptroller General, however, has interpreted this provision to permit a recipient to provide charter service with UMTA funded equipment and facilities as long as the charter service is incidental to the provision of the mass transportation service for which the equipment or facilities were purchased. Thus, recipients are provided with a very narrow exception. The ability to provide such incidental charter service, however, is not an absolute right and is limited by UMTA's discretion. UMTA exercises this discretion in the way we define incidental use.

The other provision that the rule is based on is section 3(f). This was added 10 years after section 12(c)(6). This provision requires the Secretary of Transportation to enter into an agreement with each applicant to UMTA for the purchase or operation of buses. The agreement must provide fair and equitable provisions to protect private intercity charter bus operators from being foreclosed from providing this service by UMTA recipients.

In the previous rule, UMTA implemented these two statutory provisions in two distinct requirements. The rule implemented section 12(c)(6) with the incidental use presumptions. These stipulated that certain charter service, by the nature of its length or time or day, was not incidental to the provision of mass transportation. The rule permitted a recipient to rebut the presumptions in a complaint situation.

The rest of the rule implemented section 3(f). The rule set forth the procedures that a recipient had to follow if it desired to provide intercity charter service and specified the fair and equitable arrangements that the recipient had to agree to if it wanted to provide any intercity charter service. Basically, the recipient has to agree that the annual revenues from all charter service would cover its annual charter costs and that it would charge no predatory cost for any charter service.

This final rule does not separate the rule into two parts with one implementing section 12(c)(6) and the other implementing section 3(f). The two are merged into one. This one approach states that charter service will be incidental if an UMTA recipient is prohibited from the provision of any charter service to the extent that there is a willing and able private charter operator. This approach gives the private charter industry the right of first refusal in all charter service, including intercity charter bus service.

It must be noted that the NPRM would not have imposed any restrictions on the charter service a recipient would have been able to provide if one of the exceptions applied. As indicated above, UMTA does not believe that this lack of restriction is permitted under section 12(c)(6) and the Comptroller General's Opinion. Thus, the final rule must contain some restrictions for this service to ensure that it, too, is incidental. UMTA has added a definition of "incidental charter service" that applies to the extent that a recipient provides charter service under any of the exceptions.

It is also UMTA's belief that section 12(c)(6) provides UMTA with the discretion to impose restrictions in addition to those in section 3(f) if we determine that restrictions are necessary. As described throughout this preamble and particularly in the section summarizing the Regulatory Analysis, UMTA is keenly aware of many problems in the private charter industry that go beyond problems in just the private intercity charter bus industry.

We firmly believe that section 12(c)(6) enables us to address these problems and to correct them to the extent we are able.

Several commenters addressed the legal basis for the rule in their comments. The comments from recipients and the trade associations that represent them argued that the NPRM went beyond UMTA's statutory authority. The comments from private charter operators and their trade associations argued that the UMT Act does provide UMTA with the legal authority to impose the proposed requirements.

The commenters questioning UMTA's legal authority for the NPRM began by stating that the language in section 12(c)(6) and the Comptroller General's Opinion clearly establish the principle that incidental charter use is permitted and that section 12(c)(6) can not be used as a basis to preclude all charter service by a recipient using UMTA funded equipment and facilities.

UMTA does not disagree. There is nothing in this final rule which precludes the provision of incidental charter service with UMTA funded equipment and facilities. The rule simply makes a new and tighter interpretation of incidental service. If there is a willing and able private charter operator, the charter service by a recipient using UMTA funded equipment and facilities would not be incidental. To the extent that there are no willing and able private charter operators and to the extent that a recipient provides any charter service under one of the other three exceptions, the rule requires, in essence, that the service not detract from the provision of mass transportation. Thus, the rule provides a two tier implementation of the concept of "incidental" and permits all charter service with UMTA funded equipment and facilities that is incidental. The final rule, therefore, is consistent with the Comptroller General's interpretation of section 12(c)(6) and permits the provision of incidental charter service with UMTA funded equipment and facilities.

The commenters also stated that section 3(f) only applies to intercity charter bus service and not to all charter bus service. The commenters argued that the additional proposed restrictions on intracity charter bus service are not permissible under section 3(f).

UMTA agrees with this argument. Section 3(f) clearly applies only to provide protections to the intercity charter bus industry. UMTA cannot use this language to impose restrictions on recipients to protect private intracity charter bus operators or private charter operators of other than buses regardless of whether the service is intercity or intracity.

As stated above, these new protections are founded on the language in section 12(c)(6), not section 3(f). The language in section 12(c)(6) is broad enough to provide UMTA with the authority to address problems with recipient's charter service. UMTA has noted that many of these problems exist in the intracity charter bus industry and in the charter industry as a whole, not merely in the intercity charter industry. UMTA believes that many of these problems will be solved with the new concept of incidental charter service. Therefore, UMTA believes that there is a sufficient legal basis to support the increased protections for all private charter operators.

Several commenters also argued that the effect of the NPRM would be to preclude a recipient from providing any charter service. As a result, public transit authorities would have to decide whether they want to receive UMTA assistance or provide charter service. The commenters stated that this dilemma was the reason that the 1973 charter bus restriction was repealed in favor of the current language in section 3(f).

The earlier version of section 3(f) was enacted by Congress in 1973 as section 164(a) of the Federal-Aid Highway Act of 1973 (Pub. L. No. 93-87). This required a recipient of mass transit funds to enter into an agreement with the Secretary that it would not operate any charter bus service outside of the area within which it provided mass transportation service in competition with private operators except as provided in the agreement. A violation of the agreement resulted in a bar of future receipt of mass transit funds.

In 1974, Congress passed the Housing and Community Development Act of 1974 (Pub. L. No. 93-383) to revise section 164(a) by creating the current section 3(f). The Senate Report accompanying this legislation states,

> [i]t appears that its immediate consequence has been to force a prospective applicant for Federal assistance for the purchase of buses to choose between accepting the Federal assistance and continuing its existing charter service. Section 164(a) has halted grants of Federal funds for bus purchases under the UMTA program and virtually eliminated Federal-Aid Highway funds from consideration by State and local officials as a funding source for bus transit needs. S. Rep. No. 693, 93d Cong., 2d Sess. 92 (1974).

The Report states that this result is contrary to the growth of mass transportation. The commenters stated that the effect of the NPRM would be the same as that of the 1973 legislation and, therefore, the NPRM is not consistent with the law.

UMTA disagrees. The result of the 1973 law was, as the Senate Report states, to provide recipients with a choice: UMTA funding or charter service. This is not the result of the NPRM or this final rule. The final rule permits a recipient to provide charter service with the equipment and facilities that UMTA funds, but limits those opportunities to ensure that they are incidental to the provision of mass transportation. Thus, the final rule does not set up an "either/or" choice. If the final rule sets up a choice, it is the choice which any entity seeking Federal assistance must make: follow the Federal requirements or forgo the Federal assistance.

Therefore, UMTA concludes that this final rule does not run afoul of the problems that resulted from the 1973 charter legislation.

### Regulatory Analysis

A copy of the final regulatory analysis that UMTA prepared for this final rule has been placed in the docket for public inspection. In the NPRM, UMTA summarized the key issues discussed in the Draft Regulatory Analysis. Many commenters addressed these issues. A summary of these comments and UMTA's responses follow. A more detailed discussion of these comments and responses may be found in the Final Regulatory Analysis.

First, in the NPRM, we stated that the health of the private intercity charter bus industry has been failing for many years. Between 1970 and 1984, this industry's profitability has decreased from 9.9 per cent to 1.7 per cent. During this same period, the private intercity charter industry's profits have decreased by more than 50 per cent to $39.9 million. UMTA's opinion is that the charter service provided by UMTA recipients is partly responsible for this decline and this rule is needed to help stop this trend.

Many commenters disagreed with our conclusion that the charter service provided by UMTA recipients has anything to do with the problems facing the private intercity charter industry. These commenters cited the general effects in deregulation and the desire by customers to travel by modes other than intercity bus as more realistic causes for these declines.

UMTA does not believe that these commenters are incorrect. There are many causes for the problems that the intercity charter industry has been experiencing. Nonetheless, it cannot be

denied that part of the cause is the charter service provided by UMTA recipients. This is the one cause over which UMTA has some influence and, thus, we have chosen to address the problem with the means available to us. While this rule will not reverse 20-year trends immediately, we believe that it will help to ameliorate an unacceptable situation.

Second, UMTA stated in the NPRM that our research shows, based on the data supplied by recipients themselves in response to UMTA's Section 15 reporting requirements, that in the aggregate, there is a $2.5 million loss experienced by UMTA recipients in the provision of charter service. The 1982 Section 15 Report shows that recipients earned $45 million in charter revenues at a cost of $47.5 million. Since most UMTA recipients operate mass transportation services at a loss, the reduction in charter service resulting from this rule should provide help to reduce overall deficits.

Many commenters disagreed with our presentation. They argued that some recipients on an individual basis, rather than on a nationwide basis, do earn profits from their charter services. Moreover, these commenters stated that the charter revenues are critical to their ability to provide mass transportation services. While UMTA stated that any losses suffered by such recipients could be made up by State and local sources, these commenters stated that extra revenues at these levels of government are non-existent and that service cutbacks will result.

UMTA does not doubt that some recipients earn profits from their charter services. Many of the commenters stated that these revenues equal 1, 2 or 3 percent of their total revenues. While UMTA cannot deny that these amounts of revenues may be important to these recipients, they do not appear to be so enormous that their loss will seriously affect these recipients.

Furthermore, it is still UMTA's position that mass transportation is a local concern. Thus, while a loss of charter revenues may have an adverse impact on the services that these recipients are able to provide, we believe that such losses are the responsibility of the State and local governments to correct.

UMTA has also found that what some recipients claim to be charter profits are not really profits. The previous regulation required that a recipient recover its fully allocated costs on an annual basis if it provided intercity charter service and earned more than $15,000 per year from its charter service. UMTA's research indicates that what many recipients considered to be revenues are amounts that exceeded their marginal costs. This is not a true profit in terms of the previous regulation.

Third, UMTA stated in the draft analysis that one way recipients could reduce their deficits is to contract out peak service. The accumulation of buses to meet the peak needs has led to large spare ratios that encourage recipients to provide charter service in off-peak and peak hours. UMTA estimates that savings of 20 to 60 per cent might result by contracting out peak requirements to private providers of mass transportation.

Many commenters questioned our figures on this. An UMTA study has shown that one recipient operates its own peak service, but also uses several private operators to provide peak service. The recipient put out several of its peak routes to bid and in every case, the private operators' bids for the service were lower. While UMTA does not believe that every route on every transit system can be operated more cost effectively by private operators, we believe that such results can be experienced on many and that the savings can be significant.

Fourth, the final rule shifts the burden in the previous rule from the private operators to the recipients. Under the previous rule, private operators had a very difficult time seeking to enforce their protections. Not only did private operators have a difficult time distinguishing when a UMTA funded bus was used for charter, but they had problems interpreting and understanding the cost allocation plans submitted by recipients.

Several commenters argued that this burden shift is not appropriate since it now assumes that a recipient is guilty until proven innocent. UMTA does not agree. The shift in the burden in complaints is important. The new rule creates easier tests to apply and attempts to make the answers to questions as objective as possible. This will make a private charter operator's burden easier in complaints. It will also make UMTA's job at enforcement easier and enable us to render decisions in a more timely fashion.

Fifth, UMTA noted that one of the problems in the private charter industry is that there were no protections for private intracity charter operators in the previous rule. Thus, UMTA proposed not to make any distinction in the NPRM between the charter service a recipient provides intracity or intercity. UMTA discussed commenters' responses to this issue in the section on the legal basis for the rule above and we refer the reader to that material for our response.

Sixth, many commenters stated that the NPRM was drafted without any regard to the needs of the charter customer. By restricting the charter ability of recipients, these commenters argued that they will have less choice in service provider, have to pay higher costs, receive poorer quality service, or have no service.

UMTA does not agree. The rule restricts the ability of UMTA recipients to provide charter service, but it takes special pains to provide exceptions to ensure that there will always be a source for charter service. In the final rule, we have provided additional elements to further address the customers' needs. Thus, the final rule distinguishes between categories of revenue vehicles and limits a willing and able private charter operator only to those categories that it can provide. This ensures that the customer will receive the type of vehicle it desires.

UMTA does not believe that this rule will result in the complete absence of charter service for anyone. The rule always permits the recipient to provide service if there are no willing and able private operators. Moreover, we are convinced that private charter operators will fill in markets that presently provide few charter choices, but for which there is a demand.

Finally, many commenters stated that this rule is not consistent with UMTA's private sector policies for mass transportation where we advocate competition. These commenters viewed the NPRM as severely limiting competition to the detriment of the consumer.

It is important to note that the provisions in the UMT Act that serve as the basis for UMTA's policies promoting competition in the private sector concern only mass transportation. The UMT Act's definition of "mass transportation" specifically excludes charter service. Since the UMT Act treats these two types of service as mutually exclusive, there is no reason that our implementing policies need to be parallel.

Moreover, the rule continues to permit a recipient to provide charter service free of the restrictions in this rule to the extent that it creates a separate company or keeps its charter accounts separate. This charter service would be completely open and competitive.

**Regulatory Flexibility Analysis**

Pursuant to the Regulatory Flexibility Act (Pub. L. No. 96-354) I certified that the NPRM, if promulgated, would not

have a significant economic impact on a substantial number of small entities. UMTA considered Section 18 recipients as the small entities effected by the NPRM. This certification was based on the position that while the NPRM may affect a substantial number of these entities, the economic impact would not be significant. UMTA also argued that the positive benefit on small private charter operators would not be significant.

UMTA, however, did request comments on this certification. We stated that based on these comments and on in-house research a Regulatory Flexibility Analysis would be prepared if warranted.

Six commenters commented on the certification made in the NPRM. Five of the commenters disagreed with UMTA's assessment that the proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities. These commenters were recipients and State DOTs who argued that the loss of even a small amount of revenues would have a serious impact on their mass transportation operations. Since charter revenues are often used by these entities as the local share which must be provided to get UMTA funding, any decrease in charter revenues would, these commenters argued, have a direct and negative impact on their services.

While UMTA recognizes that revenue losses by these entities will affect their operations, we believe that the final rule minimizes these problems so that the certification made in the NPRM is still valid. In this final rule, as discussed above, we permit a recipient to describe its desired charter service by stating what type of vehicle it will provide. This includes vans which are the major vehicle that UMTA funds for small recipients and the charter vehicle of choice in rural areas. Since many private charter operators do not operate vans, this will permit small recipients to provide charter service with UMTA funded equipment and facilities.

In addition, UMTA has added an exception provision specifically for small recipients. This will permit small recipients to provide charter service directly to customers even when there is a willing and able private charter operator if the charter service provided by that private charter operator would result in a hardship on the customer.

By including these additional provisions to the final rule, UMTA is confident that this final rule will have even less of an adverse financial impact on small entities than the NPRM would have had and I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12291**

This final rule is not a "major" regulation as defined in Executive Order 12291.

**DOT Policies and Procedures on Improving Government Regulations**

This is a "significant" regulation as defined in "DOT's Policies and Procedures on Improving Governmental Regulations" because of substantial public interest and the effects that the rule will have on competition.

**Collection of Information Requirements**

The Office of Management and Budget (OMB) has approved, in connection with the NPRM for this rule, the information collection requirements that it contains. The information collection requirements are virtually the same in the final rule as they were in the NPRM. The OMB Paperwork Reduction Act number for these information collection requirements is 2132–0543. The current OMB clearance for these requirements expires on December 31, 1988.

**List of Subjects in 49 CFR Part 604**

Administrative practice and procedures, Buses, Mass transportation, Reporting and recordkeeping requirements.

In consideration of the foregoing, UMTA revises Part 604 of Title 49 Code of Federal Regulations to read as follows:

## PART 604—CHARTER SERVICE

### Subpart A—General

Sec.

604.1 Purpose.
604.3 Applicability.
604.5 Definitions.
604.7 Charter agreement.
604.9 Charter service.
604.11 Procedures for determining if there are any willing and able private charter operators.
604.13 Reviewing evidence submitted by private charter operators.

### Subpart B—Complaint Process

604.15 Filing a Complaint.
604.17 Remedies.
604.19 Appeals.
604.21 Judicial Review.

**Authority:** Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 *et seq.*); 23 U.S.C. 103(e)(4), 142(a), and 142(c); and 49 CFR 1.51.

### Subpart A—General

#### § 604.1 Purpose.

The purpose of this Part is to implement section 3(f) and section 12(c)(6) of the UMT Act.

#### § 604.3 Applicability.

This Part applies to all applicants and recipients of Federal financial assistance under:

(a) Sections 3 (excluding section 16(b)(2)), 5, 9A, 9 or 18 of the UMT Act; or

(b) Sections 103(e)(4), 142(a), or 142(c) of Title 23 United States Code which permit the use of Federal-Aid Highway funds to purchase buses.

#### § 604.5 Definitions.

(a) All definitions in the UMT Act (at 49 U.S.C. 1608) are applicable to this Part, except as may otherwise be provided in this section.

(b) "The Acts" means the UMT Act and those parts of Title 23 United States Code, 23 U.S.C. 103(e)(4), 142(a) and 142(c), that provide for assistance to public bodies for purchasing buses.

(c) "Administrator" means the Administrator of UMTA or his or her designee.

(d) "Categories of Revenue Vehicle" means bus or van.

(e) "Charter Service" means transportation using buses or vans, or facilities funded under the Acts of a group of persons who pursuant to a common purpose, under a single contract, at a fixed charge (in accordance with the carrier's tariff) for the vehicle or service, have acquired the exclusive use of the vehicle or service to travel together under an itinerary either specified in advance or modified after having left the place of origin. This definition includes the incidental use of UMTA funded equipment for the exclusive transportation of school students, personnel, and equipment.

(f) "Chief Counsel" means the Chief Counsel of UMTA.

(g) "Days" means calendar days in Subpart A and Federal working days in Subpart B.

(h) "Designated Official" means the applicant's and recipient's employee authorized to file applications on behalf of the applicant or to enter into agreements on behalf of the recipient.

(i) "Incidental Charter Service" means charter service which does not: (1) interfere with or detract from the provision of the mass transportation service for which the equipment or facilities were funded under the Acts; or (2) does not shorten the mass

transportation life of the equipment or facilities.

(j) "Interested Party" means an individual, partnership, corporation, association, or public or private organization that has a financial interest which is adversely affected by the act or acts of a recipient regarding charter service.

(k) "Non-urbanized area" means an area with a population of less than 50,000 people.

(l) "Recipient" means one that has received or is receiving Federal financial assistance under the Acts. The term includes subrecipients of a recipient, subrecipients in UMTA's State administered programs, public bodies that receive assistance that will be passed on to another public or quasi-public body, any operator for a recipient, whether publicly or privately owned, and may include lessees of federally assisted buses and other equipment. For any UMTA State administered program, the State is the recipient.

(m) "State Administered Program" means any UMTA grant program in which the State is the recipient of funds, passes the funds to subrecipients, and administers the program for UMTA.

(n) "UMT Act" means the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1601 *et seq.*

(o) "UMTA" means the Urban Mass Transportation Administration.

(p) "Willing and able" means having the desire, having the physical capability of providing the categories of revenue vehicles requested, and possessing the legal authority, including the necessary safety certifications, licenses and other legal prerequisites, to provide charter service in the area in which it is proposed to be provided.

**§ 604.7 Charter agreement.**

(a) Every applicant for financial assistance under sections 3 (excluding section 16(b)(2)), 5, 9A, 9 or 18 of the UMT Act, or under 23 U.S.C. 103(e)(4), 142(a) or 142(c), must include two copies of a charter bus agreement signed by the applicant's designated official with each grant application submitted to UMTA after May 13, 1987. For UMTA's State administered programs, the State is the applicant.

(b) The text of the agreement must be as follows:

I, (name), (title), agree that (name of applicant) and all recipients through (name of applicant) will provide charter service that uses equipment or facilities provided under the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 *et seq.*) or under 23 U.S.C. 103(e)(4), 142(a) or 142(c) (the Acts) only to the extent that there are no private charter service operators willing and able to provide the charter service that (name of applicant) and all recipients through (name of applicant) desire to provide unless one or more of the exceptions in 49 CFR 604.9 applies.

I further agree that (name of applicant) and all recipients through (name of applicant) will comply with the provisions in 49 CFR Part 604 before they provide any charter service using equipment or facilities provided under the Acts, that the requirements of 49 CFR Part 604 will apply to any such charter service that is provided, and that the definitions in 49 CFR Part 604 apply to this agreement.

*Applicant*

_____

Name

_____

Title

_____

Date

*Urban Mass Transportation Administration*

_____

Name

_____

Title

_____

Date

(c) If UMTA approves the grant application, the approving official shall sign the agreement when the grant application is approved. One copy of the signed agreement will be retained by UMTA and the other copy will be returned to the recipient, formerly the applicant.

(d) Once the applicant and UMTA enter into a charter agreement, the applicant may incorporate that agreement by reference into any subsequent grant application instead of submitting an agreement under 49 CFR 604.7(a).

(e) Each State in UMTA's State administered programs must:

(1) Obtain a certification of compliance with this Part from each of its current subrecipients within 60 days of May 13, 1987. The certification shall state: "(Name of subrecipient) certifies that it shall comply with 49 CFR Part 604 in the provision of any charter service provided with UMTA funded equipment or facilities.";

(2) Retain this certification as long as the subrecipient is a subrecipient; and

(3) Assure in each application submitted to UMTA after May 13, 1987, that all subrecipients have submitted the certification.

(f) If any recipient does not anticipate submitting a grant application to UMTA during Federal fiscal year 1987, the recipient must submit two copies of the agreement set forth in § 604.7(b) of this part within 60 days of May 13, 1987, to the appropriate UMTA regional office. UMTA will sign the agreement, retain one copy of the agreement and return the other to the recipient.

(Approved by the Office of Management and Budget under Control No. 2132-0543)

**§ 604.9 Charter service.**

(a) If a recipient desires to provide any charter service using UMTA equipment or facilities the recipient must first determine if there are any private charter operators willing and able to provide the charter service which the recipient desires to provide. To the extent that there is at least one such private operator, the recipient is prohibited from providing charter service with UMTA funded equipment or facilities unless one or more of the exceptions in § 604.9(b) applies.

(b) *Exceptions.* (1) A recipient may provide any and all charter service with UMTA funded equipment and facilities to the extent that there are no willing and able private charter operators.

(2) A recipient may enter into a contract with a private charter operator to provide charter equipment to or service for the private charter operator if:

(i) The private charter operator is requested to provide charter service that exceeds its capacity; or

(ii) The private charter operator is unable to provide equipment accessible to elderly and handicapped persons itself.

(3) A recipient in a non-urbanized area may petition UMTA for an exception to provide charter service directly to the customer if the charter service provided by the willing and able private charter operator or operators would create a hardship on the customer because:

(i) The willing and able private charter operator or operators impose minimum durations pursuant to State regulation and the desired trip length is shorter than the mandatory trip length; or

(ii) The willing and able private operator or operators are located too far from the origin of the charter service.

(4) Any recipient may petition the Administrator for an exception to provide charter service directly to the customer for special events to the extent that private charter operators are not capable of providing the service.

(c) The process for requesting and granting an exception under 49 CFR 604.9(b)(3):

(1) The recipient must provide the private charter operators that it has determined are willing and able in accordance with this Part with a written notice explaining why it is seeking an exception and state that they have at

least 30 days to submit written comments to the recipient on the request;

(2) The recipient must send a copy of the notice, all comments received, and any further information it desires in support of its request to the Chief Counsel.

(3) The Chief Counsel shall review the materials submitted and issue a written decision denying or granting in whole or in part the request. In making this decision, the Chief Counsel may seek such additional information as the Chief Counsel determines is needed.

(4) Any exception that the Chief Counsel grants under 49 CFR 604.9(b)(3) shall be effective for not longer than 12 months from the date that the Chief Counsel grants it.

(d) The process for requesting and granting and exception under 49 CFR 604.9(b)(4):

(1) The recipient must submit its petition for an exception to the Administrator at least 90 days prior to the day or days on which it desires to provide charter service.

(2) The petition must describe the event, explain how it is special, and explain the amount of charter service which private charter operators are not capable of providing.

(3) The Administrator will review the materials and issue a written decision denying or granting in whole or in part the request. In making this decision, the Administrator may seek such additional information as the Administrator determines is needed.

(4) Any exception granted by the Administrator under 49 CFR 604.9(b)(4) shall be effective solely for the event for which the recipient requests an exception.

(e) Any charter service that a recipient provides under any of the exceptions in this Part must be incidental charter service.

**§ 604.11 Procedures for determining if there are any willing and able private charter operators.**

(a) To determine if there is at least one private charter operator willing and able to provide the charter service that the recipient desires to provide, the recipient must complete a public participation process:

(1) At least 60 days before it desires to begin to provide charter service if it is not doing so on May 13, 1987; or

(2) Not more than 90 days after May 13, 1987 if the recipient is providing charter service on May 13, 1987 and desires to continue to provide charter service.

(b) The public participation process must at a minimum include:

(1) Placing a notice in a newspaper, or newspapers, of general circulation within the proposed geographic charter service area;

(2) Sending a copy of the notice to all private charter service operators in the proposed geographic charter service area and to any private charter service operator that requests notice;

(3) Sending a copy of the notice to the United Bus Owners of America, 1275 K Street, NW., Suite 800, Washington, D.C. 20005, and the American Bus Association, 1025 Connecticut Avenue, NW., Washington, D.C. 20036.

(c) The notice must:

(1) State the recipient's name;

(2) Describe the charter service that the recipient proposes to provide limited to the days, times of day, geographic area, and categories of revenue vehicle, but not the capacity or the duration of the charter service.

(3) Include a statement providing any private charter operator desiring to be considered willing and able with at least 30 days from the date of the notice to submit written evidence to prove that it is willing and able;

(4) State the address to which the evidence must be sent.

(5) Include a statement that the evidence necessary for the recipient to determine if a private charter operator is willing and able includes only the following:

(i) A statement that the private operator has the desire and the physical capability to actually provide the categories of revenue vehicle specified; and

(ii) A copy of the documents to show that the private charter operator has the requisite legal authority to provide the proposed charter service and that it meets all necessary safety certification, licensing and other legal requirements to provide the proposed charter service.

(6) Include a statement that the recipient shall review only that evidence submitted by the deadline, shall complete its review within 30 days of the deadline, and within 60 days of the deadline shall inform each private operator that submitted evidence what the results of the review are.

(7) Include a statement that the recipient shall not provide any charter service using equipment or facilities funded under the Acts to the extent that there is at least one willing and able private charter operator unless the recipient qualifies for one or more of the exceptions in 49 CFR Section 604.9(b).

(d) Any recipient that desires to continue to provide charter service using UMTA funded equipment or facilities shall follow the procedures in 49 CFR Section 604.11 (b) and (c) annually during the month in which it published its first newspaper notice to redetermine the extent to which there is at least one willing and able private charter operator.

(e) Any recipient, including the State in State administered programs, may elect to comply with this procedure for all of its subrecipients, or delegate this responsibility to the subrecipients, or delegate this responsibility to only some of its subrecipients.

(Approved by the Office of Management and Budget under Control No. 2132–0543)

**§ 604.13 Reviewing evidence submitted by private charter operators.**

(a) The recipient shall review the evidence submitted in response to the notice given under 49 CFR 604.11 within 30 days of the deadline for the submission of evidence.

(b) Within 60 days of the deadline for the submission of evidence, the recipient shall notify each private charter operator that submitted evidence of the recipient's decision.

(c) The recipient must review the evidence submitted to determine if the evidence proves that the private charter operator has:

(1) The desire and the physical capability to actually provide charter service using the categories of revenue vehicles; and

(2) The required legal authority and the necessary safety certifications, licenses and other legal requirements to provide charter service.

(d) The recipient must determine that a private charter operator which meets the requirements in 49 CFR 604.13(c) is willing and able.

(e) A recipient may look behind the evidence submitted by a private charter operator only if the recipient has reasonable cause to believe that some or all of the evidence has been falsified.

(f) A recipient may, within its discretion, stop reviewing the evidence submitted by private charter operators when the recipient has determined that there is one or more private charter operators willing and able to provide all of the charter service that the recipient proposed to provide in its notice. A recipient may, however, review the evidence submitted by all private charter operators and create a roster of willing and able private charter operators.

(g) The entity that complies with the public participation process under 49 CFR 604.11(e) shall be responsible for complying with the requirements in 49 CFR Section 604.13.

(Approved by the Office of Management and Budget under Control No. 2132–0543)

## Subpart B—Complaint Process

### § 604.15 Filing a complaint.

(a) An interested party ("complainant") who believes that a recipient is in violation of the requirements of this Part may submit a written complaint to the UMTA Chief Counsel. The complainant shall also send a copy of the complaint to the recipient ("respondent").

(b) If the Chief Counsel determines that the complaint is not without obvious merit and that it states grounds on which relief may be granted, the Chief Counsel shall advise the complainant and respondent to attempt to conciliate the dispute. The period for informal conciliation shall last for up to 30 days from the date of receipt of the Chief Counsel's order unless an extension is mutually agreed upon by the parties.

(c) If the parties are unable to conciliate the dispute, either party may so notify the Chief Counsel in writing. The Chief Counsel shall send a copy of the complaint to the respondent and provide it with 30 days from the receipt of the notice to provide written evidence to show that no violation has occurred. The respondent shall provide a copy of this information to the complainant.

(d) After the Chief Counsel receives that respondent's evidence, the Chief Counsel shall inform the complainant that it has 30 days from the receipt of the notice to rebut the respondent's evidence. The complainant shall provide a copy of its rebuttal to the respondent.

(e) The Chief Counsel shall review the evidence submitted and prepare a written decision. The Chief Counsel shall attempt to transmit the written decision to the parties within 30 days of receiving all of the evidence.

(f) If the Chief Counsel determines that further investigation is necessary, including the submission of additional information or the holding of an informal evidentiary hearing, the Chief Counsel shall so inform the parties in writing.

(g) Either party may request an informal evidentiary hearing prior to the transmission of the Chief Counsel's decision. The Chief Counsel may grant or deny the request.

(h) If an informal evidentiary hearing is held, the date and location shall be arranged by the Chief Counsel in consultation with the parties. Any new evidence introduced by the parties at the informal evidentiary hearing shall be submitted to the Chief Counsel within 10 days after the hearing.

(i) The Chief Counsel may extend the deadlines imposed in this Part for administrative convenience by notifying all parties in writing of the extensions.

### § 604.17 Remedies.

(a) If the Chief Counsel determines that a violation of this Part has occurred, the Chief Counsel may order such remedies as the Chief counsel determines are appropriate.

(b) If the Chief Counsel determines that there has been a continuing pattern of violation of this part, the Chief Counsel may bar the respondent from the receipt of further financial assistance for mass transportation facilities and equipment.

### § 604.19 Appeals.

(a) The losing party may appeal the Chief Counsel's decision to the Administrator within 10 days of receipt of the decision. The losing party ("appellant") shall include in its appeal the basis for the appeal and evidence to support the position. The appellant shall send a copy of the appeal to the prevailing party ("appellee").

(b) The Administrator will only take action on an appeal if the appellant presents evidence that there are new matters of fact or points of law that were not available or not known during the investigation of the complaint.

(c) If the Administrator takes action on an appeal, the Administrator shall provide the appellee with 10 days from the receipt of the notice to respond to the evidence contained in the appeal.

(d) The Administrator shall send a copy of the appellee's response to the appellant and provide it with 10 days from the receipt of the notice to rebut the appellee's response.

(e) The Administrator shall endeavor to make a final determination on the appeal within 10 days of the receipt of the appellant's rebuttal.

### § 604.21 Judicial review.

The Chief Counsel's decision, or the Administrator's decision on appeal, shall be final and conclusive on all parties, but it is subject to judicial review pursuant to sections 701–706 of Title 5 of the United States Code.

Issued on April 7, 1987.

Ralph L. Stanley,

*Administrator, Urban Mass Transportation Administrator.*

[FR Doc. 87–8087 Filed 4–8–87; 10:41 am]

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Federal Register

Monday
April 13, 1987

Part III

# Department of the Interior

Bureau of Reclamation

43 CFR Part 426

Acreage Limitation; Final Rulemaking

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### 43 CFR Part 426

### Acreage Limitation Rules and Regulations

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Final rulemaking.

**SUMMARY:** These rules replace the existing rules for the administration of the Reclamation Reform Act of 1982 (RRA). The existing rules were revised primarily to add provisions for administering section 203(b) of the act. Section 203(b) mandates that after April 12, 1987, parties remaining subject to prior law must pay the full-cost rate for irrigation water delivered to land leased in excess of a landholding of 160 acres. The rules have also been revised to clarify and expand upon provisions in the existing rules.

**EFFECTIVE DATE:** May 13, 1987.

**FOR FURTHER INFORMATION CONTACT:** Phillip T. Doe, Chief, Acreage Limitation Branch; Bureau of Reclamation; E&R Center, Code D–410; P.O. Box 25007; Denver, CO 80225, (303) 236–8065.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Reclamation Reform Act of 1982 (RRA), title II, Pub. L. 97–293 (96 Stat. 1263), was signed into law by President Reagan on October 12, 1982. The act is the culmination of an effort to modernize Reclamation law that began with the 95th Congress. The act makes a number of changes to prior Reclamation law but retains the basic principle of limiting the amount of land in ownership which may receive water deliveries from Reclamation projects. The act makes a major change to prior law by introducing the concept of full-cost pricing for some water deliveries.

#### Purpose for Revising Rules

Final rules and regulations for implementing the Reclamation Reform Act were published in the **Federal Register** on December 6, 1983 (48 FR 54768). However, during that rulemaking process, the Department of the Interior (DOI) decided not to include provisions for implementing section 203(b) of the act. Section 203(b), commonly known as the "hammer clause," mandates that after April 12, 1987, parties remaining subject to prior law must pay the full-cost rate for irrigation water delivered to land leased in a landholding in excess of 160 acres. DOI's decision to publish rules without provisions for implementing section 203(b) was made in response to concerns regarding the constitutionality of that section. During the rulemaking process, segments of the public voiced strong objection to section 203(b), maintaining that this provision jeopardized water districts' financing abilities and abrogated existing contracts between water districts and the United States. However, since Congress has not repealed section 203(b), it is necessary for the DOI to promulgate rules and regulations implementing this provision of the law. Toward this end, proposed rules and regulations were published in the **Federal Register** on November 7, 1986. In addition to those changes made for the purpose of administering section 203(b), the proposed rules contained other changes reflecting recent policy initiatives and legal determinations. Comments about the proposed rules that were received during the public review period were taken into consideration as these final rules and regulations were prepared.

#### Executive Order 12291

The DOI has determined that the proposed rules do not constitute a major rule under Executive Order 12291; therefore, a Regulatory Impact Analysis is not required and has not been prepared.

#### National Environmental Policy Act Compliance

An environmental assessment and FONSI (finding of no significant impact), which examine the environmental impacts of four alternative approaches for administering section 203(b) of the RRA, have been prepared and are available to the public. Copies of these documents may be obtained upon request from the Bureau offices located in Boise, Idaho; Sacramento, California; Boulder City, Nevada; Salt Lake City, Utah; Amarillo, Texas; Billings, Montana; Denver, Colorado; and Washington, D.C.

#### Small Entity Flexibility Analysis

The proposed rules will not have a significant economic effect on a substantial number of small entities. If there are economic impacts to the water user resulting from these rules, they will almost certainly occur as a result of implementation of section 203(b). Section 203(b) applies only to landholders who remain subject to prior law and who lease land in excess of a landholding of 160 acres. Of the farms remaining subject to the provisions of prior Reclamation law, approximately 67 percent are small entities of 160 acres or less in size. Section 203(b) will not affect such landholdings.

#### Paperwork Reduction Act

The information requirements contained in § 426.10 have either been approved by the Office of Management and Budget or are in the process of being submitted to that office for approval as required by 44 U.S.C. 3501 et seq.

#### Effective Date

Under the requirements of the Administrative Procedure Act in 5 U.S.C. 553(d) these rules are effective 30 days from the date of publication. To fully effectuate the policy underlying section 553(d), however, a provision has been included in 43 CFR 426.2 providing that any election by a water district or landowner or lessee to come under the discretionary provisions of the Reclamation Reform Act made after April 12, 1987, but on or before the effective date of the rules, will relate back to April 12, 1987. This provision allows informed elections to be made that reflect consideration of the relevant provisions of the rules.

*Significant Comments and Changes.* The following narrative addresses each part and subpart of the proposed rules and regulations for which a significant comment was received or to which a significant change has been made.

Introduction: During the comment period from November 7, 1986, to February 5, 1987, we received 335 documents containing comments about the proposed revisions to the existing rules for implementating the RRA. This number includes the oral testimonies presented at the 15 hearings held throughout the West and Washington, DC, where a total of 171 speakers participated. The following list shows a summary of the number of speakers at each hearing and the number of pages contained in each transcript:

| Location | No. of speakers | No. of pages in transcript |
|---|---|---|
| Albuquerque, New Mexico | 8 | 32 |
| Amarillo, Texas | 1 | 11 |
| Bend, Oregon | 1 | 18 |
| Billings, Montana | 7 | 30 |
| Boise, Idaho | 4 | 27 |
| Grand Junction, Colorado | 1 | 9 |
| North Platte, Nebraska | 7 | 33 |
| Phoenix, Arizona | 28 | 154 |
| Richland, Washington | 4 | 39 |
| Sacramento, California | 21 | 153 |
| Salt Lake City, Utah | 4 | 25 |
| Visalia, California | 41 | 230 |
| Washington, D.C. | 10 | 90 |
| Willows, California | 27 | 109 |
| Yuma, Arizona | 7 | 56 |
| Total | 171 | 1,016 |

Note.—In some instances additional documents were submitted in conjunction with the transcripts from the hearings. These additional documents were not counted separately nor were their pages added to the total number of pages in the transcripts.

Most of the documents were received from respondents residing in California. A numerical breakdown by the number of documents received from each geographical area is shown in the following list:

| Geographic area | No. of documents |
|---|---|
| National or Regional | 18 |
| Arizona | 41 |
| California | 211 |
| Colorado | 3 |
| Idaho | 6 |
| Kansas | 0 |
| Montana | 5 |
| Nebraska | 15 |
| Nevada | 0 |
| New Mexico | 13 |
| North Dakota | 1 |
| Oklahoma | 0 |
| Oregon | 3 |
| South Dakota | 1 |
| Texas | 0 |
| Utah | 4 |
| Washington | 8 |
| Wyoming | 1 |
| Other | 3 |
| Total | 335 |

Each document was classified into 1 of 13 interest groups. The following list shows how many documents were received from each of these groups:

| Segment of interest groups | No. of documents |
|---|---|
| U.S. Congress | 16 |
| Federal Departments and Agencies | 8 |
| States and State Agencies | 7 |
| City and County Governments | 4 |
| Water User Districts | 113 |
| Water Resources and Farm Organizations | 19 |
| Conservation and Environmental Organizations | 4 |
| Other Organizations (law firms, banks, etc.) | 30 |
| Farm Operators | 125 |
| Landowners Who Are Not Operators | 3 |
| Potential Farmer | 0 |
| Religious and/or Charitable Organizations | 1 |
| Other | 5 |
| Total | 335 |

Water districts submitted approximately one-third of all the documents. Another one-third of the documents (approximately) were received from farm operators. About two-thirds of the documents received from water districts came from California. Of the 125 documents from operators, 109 of them were from California, while 11 were from Arizona. Sixteen documents were submitted from United States Congressmen—topping this category were the seven documents from Congressmen representing the State of California.

Overall, the 335 documents contained approximately 1,398 specific comments about various provisions in the proposed rules. Of these, 1,339 reflected unfavorable comments regarding the proposed rules while 59 comments supported various provisions in the proposed rules.

The section of the proposed rules that addresses leasing and full-cost pricing received, by far, the most comments. A major portion of the remaining comments addressed provisions in the following three sections of the rules: information and reporting requirements (§ 426.10), ownership entitlement (§ 426.6), and definitions (§ 426.4). The following list shows a complete breakdown of the number of comments received regarding each section of the proposed rules and regulations.

| Specific provisions | No. of comments |
|---|---|
| 426.1 Objectives | 0 |
| 426.2 Applicability | 0 |
| 426.3 Authority | 0 |
| 426.4 Definitions | 146 |
| 426.5 Contracts | 54 |
| 426.6 Ownership Entitlement | 158 |
| 426.7 Leasing and Full-Cost Pricing | 517 |
| 426.8 Operation and Maintenance Charges | 10 |
| 426.9 Class 1 Equivalency | 8 |
| 426.10 Certification and Reporting Requirements | 168 |
| 426.11 Excess Land | 98 |
| 426.12 Excess Land Appraisals | 12 |
| 426.13 Exemptions | 12 |
| 426.14 Residency | 0 |
| 426.15 Religious and Charitable Organizations | 2 |
| 426.16 Involuntary Acquisition of Land | 91 |
| 426.17 Land Held by Governmental Agencies | 28 |
| 426.18 Commingling | 50 |
| 426.19 Water Conservation | 10 |
| 426.20 Public Participation | 3 |
| 426.21 Small Reclamation Projects | 3 |
| 426.22 Decisions and Appeals | 1 |
| 426.23 Scheme or Device | 27 |
| 426.24 Severability | 0 |
| Total | 1,398 |

Numerous documents contained comments regarding not only specific provisions within the proposed rules but also the rules in general. For example, seventy-four persons requested that due to the complexity of the rules, the comment period by extended 30 days. This was accommodated by extending the comment period from January 6, 1987, to February 5, 1987. Further, numerous comments were received objecting to any revisions outside of those revisions necessary to implement 203(b). Many participants from the National Water Resources Association contended that their input had been ignored over the past year. Numerous respondents stated that many of the provisions in the proposed rules were contrary to specific provisions in the RRA. The farmers' inability to afford any increased costs was also a commonly voiced complaint. Similar to the comments received concerning the 1983 rules, many districts objected to the increased workload and public relation difficulties created for them by the reporting requirements. Many persons and districts thought the implementation of section 203(b) should be delayed for another year so that farmers could arrange their operations to conform within the law. While most of the unfavorable comments objected to provisions in the proposed rules because they were too restrictive, some respondents stated that the rules still needed to be tightened to some extent. In contrast to these unfavorable comments, the Bureau of Reclamation also received commendations for (1) developing rules that accurately reflect the intent of Congress, (2) holding workshops to review the changes, and (3) employing field personnel who are very receptive to individual and district problems.

**43 CFR 426.4 Definitions**

*43 CFR 426.4(g) Excess Land.*

*Comment:* One person suggested that the definition be expanded to include both "owned and leased" land, not just owned land.

*Response:* Because of the need to maintain the distinction between owned land in excess of the ownership limitations established by Congress through various laws and leased land for which there is no legally established limit, this suggestion was not accommodated.

Note.—The definition of "formerly excess land" has been deleted.

*43 CFR 426.4(k) Individual.*

*Comment 1:* Three persons suggested that the provision relating to prior law ownership limitations be deleted.

*Response:* The definition has not been changed. Substantial legal research demonstrates that the definition reflects congressional intent.

*Comment 2:* Three persons stated that the term "and leasing" be added after the word "ownership" in the provision relating to prior law ownership limitations.

*Response:* Sufficient clarification of individual entitlements under prior law is provided in the "Leasing and full-cost pricing" section, section 426.7.

*43 CFR 426.4(m) Irrigable land.*

*Comment 1:* One person stated that, for consistency, the term "water supply" be changed to "irrigation water".

*Response:* This suggestion has been accommodated.

*Comment 2:* Four persons stated that language be added to exclude permanent roads and ponds from irrigable acreage. Two others suggested

that field roads, farm ditches, drains and tailwater ponds be excluded.

*Response:* The definition was changed to exclude permanent roads and ponds. The other items, however, are subject to change by the landowner and must be considered a part of the irrigable land.

*43 CFR 426.4(n) Irrigation land.*

*Comment:* Forty-five persons objected to the phrase "regardless of whether it is receiving irrigation water" in the proposed definition.

*Response:* The subject phrase has been deleted, and the definition has been further revised so that the term means all irrigable land receiving irrigation water and other land receiving irrigation water.

*43 CFR 426.4(q) Landholding.*

*Comment:* Thirty-nine persons stated that the deletion of the phrase "served with irrigation water pursuant to the contract with the Secretary" serverely changed the meaning of acreage limitation law in a manner similar to the proposed change to the definition of "landholding," section 426.4(n). Five persons objected to the deletion of the proviso which required no attribution of holdings of 4 percent or less in a limited recipient.

*Response:* In regard to the first comment, the subject phrase has been put back in the definition. The second comment has also been accommodated. That is, attribution will not be required with respect to a landholder's interest of 4 percent or less in a limited recipient.

*43 CFR 426.4(r) Lease.*

*Comment:* One person stated that the phrase "in some part" in the definition is inconsistent with the language in section 426.7(a).

*Response:* The phrase has been deleted from the definition.

*43 CFR 426.4(s) Legal entity.*

*Comment:* Twenty-five persons stated that partnerships and/or tenancies should not be considered legal entities. In those cases where business arrangements are made to pool resources, divide skills, etc. through a partnership, joint tenancy, or tenancy-in-common, each participant should have an entitlement of 960 acres.

*Response:* This suggestion could not be accommodated since the law does not give special treatment to partnerships, joint tenancies, and tenancies-in-common. In fact, only individuals and legal entities have status as qualified recipients under the law. Tenancies are not individuals, and if they are not legal entities, it could be argued that they have no entitlement under the law. It is inconceivable, however, that Congress did not intend entitlement status for a form of ownership which is very common on Reclamation projects. Moreover, it is extremely awkward to suggest that Congress intended to limit husband and wife ownership to 960 acres, many of which are joint tenancies, and yet allow all other forms of tenancies to achieve unlimited size provided that no tenant owns more than 960 acres in the tenancy. In these rules, partnerships, tenancies-in-common, and joint tenancies are treated as legal entities.

*43 CFR 426.4(t) Limited recipient.*

*Comment:* One person stated that language should be added to this definition to exclude nonresident aliens as eligible participants in multiownership arrangements.

*Response:* This comment was not accommodated because of the determination that nonresident aliens can receive irrigation water on land owned through legal entities [explained in 426.6(b)(3)1.

**Note.**—The terms "nonresident alien" and "nonresident alien entitlement" have been added to the definition section.

*43 CFR 426.4(x) Operator.*

*Comment:* Seventeen persons objected to the addition of this term to the rules, mainly because the RRA refers to only landowners and lessees, not operators.

*Response:* The term has been deleted.

*43 CFR 426.4(z) Prior law recipient.*

*Comment 1:* Two persons stated that this term be replaced with "individual subject to prior law" to ensure that husband and wife are treated as two individuals for leasing limitations.

*Response:* This comment was not accommodated because clarification that husband and wife under prior law will be treated as individuals has been made elsewhere in the rules.

*Comment 2:* Three persons stated that the phrase "and which are subject to the Federal Reclamation law in effect immediately prior to October 12, 1982," be added to the definition.

*Response:* This comment was not accommodated because prior law recipients are also subject to a major portion of the RRA.

*43 CFR 426.6(ee) Resident alien.*

*Comment:* One person stated that the IRS definition should be used.

*Response:* The definition has been changed to IRS definition.

**Note.**—Three comments were received stating that a definition of "nonexcess land" was needed. This was not accommodated because the definition of "excess land" provides sufficient clarification.

**43 CFR 426.5 Contracts**

*43 CFR 426.5(a)(1) Contracts in force on October 12, 1982.*

*Comment 1:* One person commented that the last sentence in this section is not necessary to implement section 203(b) of the RRA and should be deleted. The sentence in question states that parties not subject to the discretionary provisions are referred to as "prior law recipients."

*Response:* We have deleted the subject sentence from the full rules.

*43 CFR 426.5(a)(2) New contracts.*

*Comment 1:* Two persons objected to the fact that the City of Albuquerque has become subject to acreage limitation by virtue of its contract with the United States for storage of water in a Federal facility. They believe acreage limitation should not apply because the City pays an M&I (municipal and industrial) water rate and because the water supply can be used for agricultural purposes only on a short-term basis.

*Response:* These comments deal with a specific situation that does not have application to other water service or repayment contractors; therefore, we have not addressed the comments in the body of the rules. However, the Southwest Regional Office is in the process of working with the City of Albuquerque to resolve the problems that have resulted from the unique set of circumstances relating to the City's contract.

*Comment 2:* We received one comment objecting to the addition of the language in the third sentence of this paragraph, as well as in paragraph (a)(3) of this section, which provided that individual entity members become subject to the discretionary provisions when an entity becomes subject to such provisions by virtue of a contract action. The respondent maintained that this language is inconsistent with section 426.5(d), which provides that an irrevocable election by an entity does not bind the members of that entity.

*Response:* The Department has reviewed this issue and has determined that members of a legal entity do not automatically become qualified or limited recipients by virtue of a district action that causes the entity to become subject to the discretionary provisions. That is, they may stay under prior law if that is their desire. Members of a legal entity will only become qualified or limited recipients if they (1) make an irrevocable election or (2) also own land

directly, rather than through an entity, in a district that has become subject to the discretionary provisions. Therefore, we have accommodated the respondent's comment by deleting the proposed additional language and by adding language to paragraphs (a)(2) and (a)(3) setting forth the recent decision on this matter.

*43 CFR 426.5(a)(3) Amended contracts.*

*Comment 1:* Several respondents commented that the term "contract action" should be replaced throughout this paragraph with the term "contract amendment." These respondents maintained that, based on section 203(a) of the RRA, only contract amendments, not the broader contract actions, can be considered as additional or supplemental benefits requiring conformance to the discretionary provisions.

*Response:* The Department has reviewed this matter and agrees with the respondents' position. In the final rules, this paragraph has been modified to accommodate their suggestion.

*Comment 2:* Fifteen persons expressed concern about the language added to the proposed rules dealing with the criteria which must be met in order for water transfers not to be considered additional and supplemental benefits. They did not think these criteria should apply to districts whose existing contracts already contain water transfer provisions. They maintained that the new criteria would be cost prohibitive to districts, resulting in fewer, if any, transfers. Thereby, an effective method for conserving water would be eliminated. However, one respondent commented that, at the very least, a rate that covers full O&M costs should be charged when irrigation water is transferred.

*Response:* These comments, for the most part, have been accommodated. That is, the final rules provide that contract amendments that allow for the transfer of water on an annual basis will not be considered an additional or supplemental benefit requiring conformance to the discretionary provisions provided that certain conditions, as discussed in the following, are met: (1) As in the proposed rules, both districts must have a contract with the United States. (2) While the proposed rules have not been revised, as requested by one respondent, to require that a rate at least equal to the actual O&M costs must be charged for transferred water, the rate paid for such water must be the higher of the applicable water rate for each district and cannot put the United States in a position of incurring and increased operating losses or decreased capital repayment. (3) Lastly, the full O&M rate or full-cost rate must be paid by those recipients who would be subject to such costs if the water was not considered transferred water.

In those cases where existing contracts already contain water transfer provisions, the transfers will be administered pursuant to the conditions set forth in those contracts and in accordance with current water transfer policies and practices.

*Comment 3:* One person commented that the Bureau needs to go beyond the provisions set forth in the proposed rules and establish a formal procedure regarding water transfers.

*Response:* The Bureau, in fact, has initiated studies for the purpose of developing a formal Bureauwide policy on water transfers. However, until that policy is finalized, water transfers will be treated as set forth in the response to the preceding comment.

*Comment 4:* Three respondents questioned whether the water transfer criteria would apply to "bucket for bucket" exchanges.

*Response:* As a general rule, the water transfer provisions will not apply to such exchanges; however, the attending circumstances of each case will need to be examined before any final determination can be made. Therefore, this situation is not specifically addressed in these rules.

*Comment 5:* One respondent submitted a list of water transfer criteria applicable to the transfer of water from a district to a public agency and requested that these criteria be added to the rules.

*Response:* We have not accommodated this request in the final rules because the respondent's proposed language addresses a very specific situation with a unique set of circumstances. The language would not have application to water transfers in general.

*Comment 6:* We received one comment which stated that this section should be revised to allow the Bureau to review all contract articles when a contract is amended to provide additional benefits.

*Response:* Based on the language in section 203(d) of the RRA, we believe the Bureau may be precluded from changing certain provisions of contracts when they are amended, unless the contractor agrees to the changes. Therefore, this comment has not been accommodated in the rules. However, it has been longstanding Departmental policy to review all provisions of a contract when it is amended to provide new benefits and make changes as necessary. This policy still remains in effect.

*43 CFR 426.5(c) Master contract-subcontract arrangements.*

*Comment 1:* Six persons commented on this provision of the rules. In summary, they requested that this provision be expanded to provide that: (1) A subcontract may be amended to conform to the discretionary provisions only if the United States is a party to that subcontract, (2) acreage limitation and pricing provisions of Federal Reclamation law apply to only those districts and landholders that receive irrigation water made available under the master contract, and (3) this provision applies to both existing master-subcontract arrangements and to those that may be entered into in the future.

*Response:* The Department has determined that these requests are permissible under the RRA. Therefore, the requests have been incorporated into the final rules.

*43 CFR 426.5(d)(1) Individual election.*

*Comment 1:* One person asked the following question: If a corporation (under 25 members) makes an irrevocable election, can it receive irrigation water on 960 acres and can each member also irrigate 960 acres in his own name?

*Response:* If such a corporation makes an irrevocable election, it is entitled to receive irrigation water on a maximum of 960 acres of owned land. However, the corporation's election does not automatically increase the entitlements of its members; therefore, it may not always be able to realize its maximum entitlement. To illustrate, if a corporation that has made an election is held equally by three members who remain subject to prior law, the corporation may only irrigate 480 acres ($160 \times 3$), even though its maximum entitlement is 960 acres. However, if each of the members also becomes subject to the discretionary provisions, through either an irrevocable election or a district contract action, each would also be entitled to receive irrigation water on a total of 960 acres. This means the corporation would be able to realize its 960-acre entitlement because each member, assuming equal interest, would be able to irrigate up to 320 acres in the corporation. Furthermore, each member would be able to irrigate another 640 acres ($960-320$) outside his interest in the corporation.

*Comment 2:* One person objected to the sentence in this paragraph that states all irrigation land in an elector's

holding become subject to the discretionary provisions. The respondent felt that only the land receiving irrigation water should become subject to the discretionary provisions.

*Response:* The language in this section of the rules has not been modified; nevertheless, this comment has been accommodated because the definition of "irrigation land," as set forth in section 426.4, has been revised to include only that land receiving irrigation water.

*Comment 3:* One respondent asked who should sign the irrevocable election form in those cases where an elector is a minor.

*Response:* We have not included a response to this question in the rules themselves; however, in such cases, the person(s) responsible for the child's legal matters must sign the election form, whether that be the child's parents, guardians, or a power-of-attorney.

*43 CFR 426.5(d)(2) Disposition of irrevocable election forms.*

*Comment 1:* We received two comments requesting that the rules clarify whether it is the Bureau's or the district's responsibility to keep the original irrevocable election and certification and reporting forms.

*Response:* This matter has been clarified in these final rules. That is, the Bureau retains the original irrevocable election form and the districts retain the original certification forms.

*Comment 2:* Six persons requested that landholders be required to file their irrevocable election forms concurrently with the Bureau and the districts.

*Response:* This request has been accommodated in these final rules.

*Comment 3:* Several persons requested the Bureau to notify districts in writing when an irrevocable election becomes effective.

*Response:* This request has not been accommodated in the rules because it has been Bureau policy during the last 4 years to consider an election binding (on a contingent basis pending approval) as of the date it is filed with the Bureau. However, the rules have been modified to provide that the Bureau shall prepare a letter advising the recipient of the approval or disapproval of the election.

*Comment 4:* One person questioned why an irrevocable election must be submitted to the Bureau for approval.

*Response:* Some individuals and entities cannot meet the requirements for being a qualified or limited recipient. Therefore, it is necessary for the Bureau to review elections. Furthermore, we do not believe it is unreasonable for the Bureau to review a document which permanently affects the water rates applicable to that landholder. Therefore, we have not modified the rules to accommodate this suggestion.

*43 CFR 426.5(d)(3) District reliance on election information.*

*Comment:* We received one comment requesting that the rules specify that districts are not required to investigate the information on an elector's certification and reporting forms in the same way that the rules specify they are not required to investigate information on the election form itself.

*Response:* The rules require only that the district inform the Bureau of known discrepancies [see section 426.10(h) in the final rules. It does not require that they investigate further. That shall remain the responsibility of the Bureau.

**43 CFR 426.6 Ownership Entitlement**

*43 CFR 426.6(a) In general.*

*Comment:* Throughout this section of the proposed rules, the words "receiving irrigation water" were replaced with the term "irrigation land." Three persons objected to this revision. They maintain that ownership entitlement should be calculated on the basis of land actually receiving water.

*Response:* This response has been accommodated by revising the definition of "irrigation land, " as set forth in section 426.4(m) of these final rules, to include only that land receiving irrigation water.

*43 CFR 426.6(b)(1) Individual landowners.*

*Comment:* One respondent commented that the entitlement language is somewhat ambiguous and suggested that the rules clearly spell out that a qualified recipient is entitled to receive irrigation water on 960 acres of owned land plus any land under recordable contract.

*Response:* We agree with this comment and have reworded the sentence in question to clarify its meaning.

*43 CFR 426.6(b)(2) Husband and wife.*

*Comment:* Several people stated that the rules discriminate against married couples. In their opinion, a husband and wife should each have a 960-acre entitlement.

*Response:* The RRA specifically provides that a husband, wife, and their dependents are to be treated as one individual and that the entitlement for an individual, whether a married couple or a single person, is 960 acres. We have no authority to increase the limitations set by law.

*43 CFR 426.6(b)(3) Multiownership arrangements and 43 CFR 426.6(c) Limited recipient entitlement.*

*Comment 1:* Thirty-seven respondents objected to the provision in the proposed rules requiring members of legal entities to be U.S. citizens or U.S. residents in order for the entity to be eligible to receive irrigation water. One person commented further that nonresident aliens should be allowed to remain anonymous on the certification forms.

*Response:* The Department has reviewed this issue and it has been determined that the RRA requires qualified recipient entities to meet only one condition in order to be eligible to receive irrigation water—that is, such entities must be established under State or Federal law. Therefore, the U.S. citizenship or residency requirement for members of a legal entity has been eliminated from the final rules, except in the case of individual ownership. However, the forms requirements have not been revised to provide special exemptions for members of legal entities who are nonresident aliens. The forms requirements must apply to these individuals, in the same way they do to any other members of legal entities, in order to ensure compliance with their individual ownership limitations.

*Comment 2:* One respondent commented that the rules need to be written in such a way that legal entities cannot be used as a vehicle to set up a network of "paper farms" that are actually farmed as one unit even though they appear to be independent farms.

*Response:* The Department believes these rules consistent with the law, provide adequate protection from any potential abuse in the use of legal entities.

*43 CFR 426.6(b)(4) and 426.6(d)(6) Trusts.*

*Comment 3:* We received 76 comments regarding the trust criteria in the proposed rules. Several of the comments expressed support for the criteria, stating that such restrictions are necessary in order to ensure that trust arrangements are not a means of circumventing acreage limitation. However, most of the comments objected to one or more of the criteria.

*Response:* The Department has reviewed this issue and has determined that section 214 of the RRA does not mandate that trust agreements meet the criteria set forth in the proposed rules. Therefore, the final rules have been revised to provide that trust agreements must (1) be in writing, (2) be approved

by the Secretary, (3) identify the beneficiaries, and (4) describe the interests of the beneficiaries. In addition, the final rules provide, in the same way the 1983 rules did, that the interest of each beneficiary in trust land, in combination with other land owned by the beneficiary, may not exceed the ownership limitations set by Reclamation law.

*43 CFR 426.6(d) Prior law recipients.*

*Comment 1:* One person questioned whether a prior law recipient becomes eligible to receive irrigation water on 960 acres if he makes an irrevocable election.

*Response:* An individual under prior law can increase his ownership entitlement from 160 to 960 acres (1) by making an irrevocable election or (2) by owning or leasing lands as an individual in a district that has become subject to the discretionary provisions.

*Comment 2:* Two respondents thought the rules should apply the ownership limitations for prior law recipients strictly on a westwide basis. On the other hand, eight respondents thought there should be no westwide application for prior law recipients.

*Response:* As in the current and proposed rules, the approach on this issue in the final rules recognizes past practices, but also is consistent with Solicitor Krulitz's December 6, 1979, opinion which concluded that acreage limitation must be applied on a westwide basis. That is, if a landowner owned land prior to December 6, 1979, he is entitled to receive irrigation water on that land, provided he owns no more than 160 acres in each district. For any land acquired after December 6, 1979, the eligibility of the newly acquired land is based on the landowner's westwide ownership.

*43 CFR 426.6(d)(3) Tenants-in-common.*

*Comment:* One person thought the term "joint tenancies" should be added to this paragraph. This person also suggested that this paragraph be clarified to show that it is the individual who is subject to prior law, not the tenancy.

*Response:* This section applies to joint tenancies as well as tenancies-in-common. Therefore, we have accommodated the respondent's first comment by adding the term "joint tenancies" to the final rules. However, we have not changed this paragraph, as suggested in the respondent's second comment, to show that it is the individual, not the tenancy, that is subject to prior law. The purpose of this paragraph in fact, is to address entitlements for tenancies subject to prior law. Within such tenancies, it is possible for some of the individual tenants to be subject to prior law and some to be subject to the discretionary provisions. Regardless, neither can receive irrigation water on more than 160 acres through the tenancy so long as the tenancy remains subject to prior law. This respondent also applies to partnerships that remain subject to prior law.

*43 CFR 426.6(d)(4) Partnerships.*

*Comment 1:* One person commented that a partnership agreement should not be deemed to restrict severability in partnerships just because it contains the following provisions: (1) Right of first refusal and (2) a provision precluding a partner from transferring his interest to a third party if it results in any of the partnership's property being designated as nonexcess.

*Response:* These two provisions would not be considered conditions eliminating the separate interests of partners. However, the rules have not been revised to reflect these suggestions, since the present rules accommodate the suggestion without revision.

*Comment 2:* One person asked the following questions about the provisions in this paragraph of the rules: (1) What happens to the entitlement of individual partners when the partners do not have a separable interest? (2) Can a partnership in which each partner does not have a separable interest make an irrevocable election? (3) Why does this paragraph, which is about partners subject to prior law, include a sentence about partnerships subject to the discretionary provisions?

*Response:* Following is a response to these questions: (1) If each partner in a partnership subject to prior law does not have a separable interest, the partnership is entitled to irrigate a maximum of 160 acres. The number of acres attributable to a partner depends on the percentage of interest held by each partner. For example, if there are 4 partners and each holds a 25 percent interest in the partnership, 40 acres of the partnership's land would be attributed to that partnership's entitlement. If the partner remains subject to prior law, he may own and receive irrigation water on another 120 acres outside the partnership in order to complete his individual 160-acre entitlement. If the partner is subject to the discretionary provisions, he may receive water on another 920 acres outside the partnership. (2) A partnership in which the partners do not have separable interests is not precluded from making an irrevocable election. (3) The sentence that refers to the discretionary provisions has been included in this paragraph because it is possible, through an irrevocable election or contract action by a district in which a partner holds land directly, for some or all partners in a prior law partnership to be subject to the discretionary provisions.

*43 CFR 426.6(d)(6) Trusts.*

*Comment 1:* One person commented that, as the proposed rules are written, it implies that land held by a trustee is exempt from acreage limitation. The respondent suggested that the rules be reworded to state that land held by a trustee does not accrue to the personal entitlement of the trustee.

*Response:* We believe the respondent's suggestion has merit; however, we have not accommodated it in the final rules because the proposed wording, which is the same as that in the current rules, has not caused any problems or confusion in the past.

*Comment 2:* Eight persons questioned whether trust land will be attributed to the parent in those cases where the beneficiary is a dependent minor subject to prior law.

*Response:* Under prior law, each minor child is considered to be an individual, and therefore, has a 160-acre entitlement separate from that of his parents.

*43 CFR 426.6(g) Multidistrict ownerships.*

*Comment:* Three persons objected to this provision. They felt that a multidistrict landowner should not automatically become subject to the discretionary provisions by virtue of a district contract amendment if the landowner never received irrigation water in that district.

*Response:* Since the definition of "irrigation land" has been revised to include only that land receiving irrigation water [see § 426.4(m)], in effect, the respondents' comment has been accommodated. Furthermore, as discussed in the response to comment 2 under § 426.5(a)(2), individuals will not become qualified or limited recipients in districts that have become subject to the discretionary provisions, unless they own land as an individual rather than through a legal entity.

*CFR 426.6(h) Loss of eligibility.*

*Comment:* We received six comments stating that this paragraph should be revised to allow landowners to purchase themselves into excess and make the land eligible through redesignation, even

if the landowner chooses not to make an irrevocable election.

*Response:* The Department has reviewed this issue and determined that the respondents' comment can be accommodated. The rules have been changed accordingly.

**43 CFR 426.7 Leasing and Full-cost Pricing**

*43 CFR 426.7(a) What constitutes a lease.*

*Comment 1:* One hundred twenty-two individuals wanted the definition of "lease" to remain as it is in the current rules. Generally, they felt the proposed changes were too broad in scope and would inhibit legitimate farming practices. On the other hand, nine commenters supported the proposed changes and, in some cases, felt further restrictions were necessary.

*Response:* The wording in the proposed rules has been deleted. The definition from the current rules has been reinstated with changes for clarification.

*Comment 2:* Six persons felt that farmers would face an onerous burden if they had to have their farm management arrangements approved in advance. They felt the burden of proof should rest with the Bureau of Reclamation.

*Response:* This section has been revised to eliminate the requirement that all farm management arrangements be approved in advance by the Bureau. However, at the Secretary's request, landowners will be responsible for providing information concerning a farm management arrangement or a consulting arrangement.

*Comment 3:* One individual suggested a review process needed to be established for cases in which the Bureau alleges that a farm management agreement is a lease.

*Response:* The Bureau agrees. To insure a consistent evaluation of such arrangements the Bureau will issue policy guidelines in the near future for use by the Bureau's Regional Offices in evaluating farm management arrangements.

*43 CFR 426.7(a)(1) Legitimate custom farming operations.*

*Comment 1:* One hundred twenty-one persons declared that the language in the 1983 rules on farm management arrangements should be retained. They based their argument on the fact that the RRA only addresses ownership and leasing. In their opinion, the proposed language goes well beyond the intent of the law. On the other hand, six persons agreed with this provision and, in fact, provided suggestions for further strengthening it. They argued that Congress intended to limit the subsidy to all farm operations, not just ownerships and leases.

*Response:* This section has been revised to reflect the wording in the 1983 rules. However, the section has been clarified by adding language stating that management arrangements or consulting agreements will not be considered leases if: (1) the manger or consultant performs a management or consulting service for the landowner for a fee but does not assume the economic risk in the farming operation, and (2) the landowner retains the right to the use and possession of the land, is responsible for payment of the operating expenses, and is entitled to receive the profits from the farming operation.

*Comment 2:* Eleven persons found inconsistencies between the proposed provisions in this section and regulations they must follow for other Federal agencies. Some of these individuals felt that the other agencies' regulations made the proposed changes unnecessary.

*Response:* These comments have been accommodated by reinstating, with some modification, the language from the 1983 rules.

*Comment 3:* Two individuals felt that families should be granted exceptions to the full-cost pricing provisions, regardless of how such families are organized or how much land they farm.

*Response:* The RRA provides no special dispensation to families. In fact, under the discretionary provisions, the definition of "individual" specifically includes a farmer, spouse, and any dependents. The Department cannot provide any special treatment to family farmers who exceed the ownership or water subsidy limitations of the RRA.

*43 CFR 426.7(a)(2) Nonreclamation dependent activities.*

*Comment:* In this section, the sentence on subleasing is irrelevant and out of place.

*Response:* We agree with this comment. The subject sentence is now located in section 426.7(c).

*43 CFR 426.7(b)(1) Present leases.*

*Comment 1:* Several persons objected to the practice of keeping leases and farm operation agreements on file in district offices.

*Response:* Neither the existing nor the proposed rules require districts to keep such agreements on file. This section merely requires that lessors and lessees have written leases, and that they must be able to provide those leases at the Secretary's request. The language pertaining to farm operation agreements has been deleted; however, section 426.7(a)(1) provides that the Secretary may request information from the landowner concerning a farm management arrangement or consulting arrangement.

*43 CFR 426.7(b)(2) Written leases in existence prior to October 12, 1982.*

*Comment:* One person asked why Reclamation law contains provisions limiting the term of any lease.

*Response:* Section 227 of the RRA specifically limits the term of any lease, whether subject to prior law or the discretionary provisions. The purpose of this provision is apparently to prevent landholders from controlling land parcels for long periods of time—in other words, effectively becoming the owners of land through leasing. The underlying principle is that Reclamation project benefits should be distributed to as many potential landholders as possible. Tying up land for long periods through leasing is inconsistent with that principle.

*43 CFR 426.7(c) Full-cost acreage thresholds.*

*Comment 1:* Eleven respondents commented that, in section 426.7(c), non-full-cost acreage should be counted on an instantaneous rather than cumulative basis. In their opinion, cumulative counting would be an administrative nightmare and would prevent farmers from operating economically and efficiently.

*Response:* We believe that counting non-full-cost acreage cumulatively is the simpler administrative method. Instantaneous counting would permit farmers to change their non-full-cost acreage selections repeatedly during the water year, and would thus result in increased paperwork and more complicated billing for districts. Under the rules as written, once a landholder reaches his/her non-full-cost entitlement during any water year, any land leased later in that water year is automatically subject to full cost. This rule also prevents landholders from attempting to avoid full-cost payments on land leased in excess of entitlements through constant reselection of non-full-cost land.

*Comment 2:* Four respondents commented that, in section 426.7(c), the burden of proving that a farm operation agreement is not a lease should be with the Bureau, not the landholder.

*Response:* This suggestion has been adopted; the relevant sentences have been deleted.

*Comment 3:* One respondent suggested that the last sentence of

paragraph (c) be deleted because the manner in which districts collect revenues is either an internal matter or governed by State law.

*Response:* Sections 203(c) and 205(a) of th RRA are clear in that additonal charges incurred by landholders are to be collected from the responsible landholders. It is patently unfair to force all water users in a district to pay the increased charges incurred by a few large landholders. To do so would defeat the purpose of the Federal law (RRA) in eliminating the subsidy to landholdings above specified thresholds. Furthermore, a district which attempts to spread the increased costs incurred by a few landholders over the entire district may be exposing itself to a significant risk of lawsuit by the nonresponsible landholders.

*Comment 4:* Two respondents stated the Bureau should be responsible for determining what land should be subject to full cost and/or full operation and maintenance (O&M), and the Bureau should inform the district of these determinations.

*Response:* Under their contracts with the United States, districts are responsible for collecting appropriate water charges, complying with Federal regulations, and providing data as required by the United States. Landholders are responsible for selecting their full-cost and non-full-cost land on the appropriate certification or reporting forms. There should be no significant difficulty in determining what or how much land is subject to full cost or full O&M, using these regulations and the appropriate forms. Of course, the Bureau of Reclamation stands ready to assist if questions should arise concerning the application of these rules.

*Comment 5:* One respondent suggested that the rules should clearly establish the extent of the district's obligation to collect full-cost charges; i.e., is the district required to file suit, secure judgement, etc? Also, if the lessee fails to pay, does the district have recourse against the owner?

*Response:* These matters are worthy of consideration, but are more appropriately addressed through policy memoranda rather than in the rules. Some of these questions have already been answered by the Commissioner. For example, in a letter dated November 7, 1985, the Commissioner established that districts were responsible for collection of full-cost charges, and that the district does have recourse against the landowner if the lessee fails to pay full cost or full O&M charges.

*Comment 6:* One respondent suggested that landholders be required to select full-cost land out of their owned land before their leased land; this would make it easier for the district to refuse water, since a third party (the lessor) would not be involved.

*Response:* The certification and reporting forms provide for the concurrence of the nonresponsible party (be it the lessor or the lessee) whenever land is selected to pay full cost; there should consequently be little difficulty regarding the payment of full cost due to the involvement of a third party.

*Comment 7:* One respondent suggested that farmers should not be required to count owned land against their non-full-cost entitlements if they lease that land to another party.

*Response:* The RRA defines "landholding" as land "owned or operated under a lease" and further stipulates that land in a landholding exceeding certain thresholds can receive water only at full cost. The fact that one farmer may lease his/her owned land to another farmer does not remove the land from the first farmer's landholding.

*Comment 8:* One respondent proposed that the rules regarding selection of non-full-cost land should address the situation of crops, such as winter wheat, that are planted in one water year and continue to receive water in the next water year.

*Response:* Unique types of situations are more properly addressed on a case-by-case basis rather than through rulemaking.

*43 CFR 426.7(c)(1) Non-full-cost entitlement for qualified recipients.*

*Comment:* One respondent suggested that the rules spell out more clearly that non-full-cost acreage is counted on an annual cumulative basis.

*Response:* We have modified section 426.7(c) accordingly.

*43 CFR 426.7(c)(3) Non-full-cost entitlement for prior law recipients.*

*Comment 1:* Thirty-five persons believed that section 203(b) of the RRA violated their existing contracts, was unconstitutional and/or should be repealed. Some stated that if it was not changed, those with contracts executed prior to October 12, 1982, should be grandfathered in. On the other hand, three persons declared that section 203(b) should be implemented—Congress was aware of its impacts.

*Response:* The executive branch of Government does not have the latitude to ignore any provisions of an Act signed into law or to provide exemptions when the law clearly does not allow them. Only the legislative branch may repeal a law in part or in its entirety. Finally, the constitutionality of section 203(b) must be decided by the judicial branch. Until informed to the contrary by Congress or the courts, section 203(b) must be implemented.

*Comment 2:* Twelve persons stated that implementation of section 203(b) would cause hardships for certain farmers and force greater uses of other sources of water.

*Response:* The effects associated with the implementation of section 203(b) on each prior law individual will be dependent on a variety of factors. It is not feasible for the Bureau to craft regulations that will mitigate all negative effects, especially in light of the fact that Congress specifically included section 203(b) to encourage landholders to become subject to the discretionary provisions.

*Comment 3:* Seven individuals requested a delay in the implementation of section 203(b), since it was being implemented so close to the April 12, 1987, deadline.

*Response:* By law, section 203(b) cannot be implemented before or after April 12, 1987. When Congress enacted the RRA, it specifically gave landholders 4½ years to study their situations and make decisons on whether or not to convert to the discretionary provisions.

*Comment 4:* Thirty-two persons declared that the non-full-cost entitlement for husbands and wives should be 320 acres, not 160 acres. Some of the commenters based their opinion on view that the definition of "individual" in the RRA does not apply to prior law recipients.

*Response:* Upon legal review, it was determined that the definition of "individual" in the RRA does not apply to prior law recipients. The non-full-cost entitlement for husbands and wives will be 320 acres owned or leased.

*Comment 5:* Nineteen respondents stated that section 203(b) should be implemented on a district-by-district rather than westwide basis. In contrast, one person commented that the westwide interpretation was sound.

*Response:* Based on the Department's legal interpretation of section 203(b), all owned and leased land receiving irrigation water westwide will be counted against a prior law recipient's non-full cost entitlement.

*Comment 6:* Fourteen respondents suggested that the non-full-cost entitlement for partnerships should be 160 acres per partner.

*Response:* This suggestion has been accommodated. The non-full-cost entitlement is computed in the same manner as ownership entitlement is computed; that is, on an individual rather than entity basis. As a result, the

non-full-cost entitlement will be 160 acres for each member of a prior law entity (other than a corporation), with no limit for the noncorporate entity itself.

*Comment 7:* One person wanted a provision added to the rules to address the options irrevocable electors have if section 203(b) is declared unconstitutional.

*Response:* This issue will be addressed if the courts make that decision.

*43 CFR 426.7(d) Multidistrict landholding.*

*Comment:* Six respondents suggested that a multidistrict landholder should not become subject to the discretionary provisions when one of the districts in which he/she holds land amends its contract, provided the landholder never receives water in the amended district.

*Response:* Since the definition of "irrigation land" has been revised to include only that land receiving irrigation water, in effect, this suggestion has been adopted.

*43 CFR 426.7(e) Calculating full cost and 426.7(f) Interest rate calculations for full cost.*

*Comment 1:* One commenter suggested that an example be added pertaining to calculation of full cost in the Central Valley Project.

*Response:* This comment was adopted; a fourth example has been added.

*Comment 2:* Four respondents requested additional detail and explanation of how full-cost rates and interest rates are calculated.

*Response:* It would be impossible to cover in these rules all the details and possible situations that might arise in the calculations of full-cost rates. We have prepared a document, "Technical Instructions for Full-Cost Calculations" that interested parties may review by contacting the Bureau to obtain a copy.

**Note:** In the proposed rules, the "note" after section 426.7(f)(2) stated that prior law recipients who become subject to the discretionary provisions after April 12, 1987, will then become eligible for the lower full-cost interest rate as set forth in section 426.7(f)(1). This statement is true except for those legal entities that are limited recipients that did not receive irrigation water prior to October 1, 1981. In such cases, the higher full-cost rate, as set forth in section 426.7(f)(2), will apply. In the final rules, the subject sentence has been revised to note this exception.

*43 CFR 426.7(g) Proportional charges for full-cost water.*

*Comment:* Eleven commenters expressed concern over this section. Some felt it was too specific and inflexible, while others suggested changes to accommodate the use of water meters.

*Response:* This section has been revised to address many of the expressed concerns. For example, measuring devices will not be allowed in determining direct assessments.

**43 CFR 426.8 Operation and Maintenance**

*43 CFR 426.8(a) Districts with new or amended contracts.*

*Comment 1:* Five people commented that when districts amend contracts, they should also pay an appropriate share of capital costs in addition to full O&M costs. One person also said that accumulated O&M deficits should also be collected.

*Response:* Section 208 of the RRA provides that charges shall be at least sufficient to recover operation and maintenance charges. The 1983 rules and these rules reflect an interpretatively conservative approach to the statute. Nevertheless, some accommodation has been made to this comment in that any positive differential above O&M costs existing at the time a district amends its contract solely to become subject to the discretionary provisions will be maintained in the future. However, no attempt was made in these rules to get across-the-board increases in water charges to recover capital investments or O&M deficits.

*Comment 2:* One person commented that O&M cost increases should be tied to the value of agricultural commodities as a whole.

*Response:* O&M water charges are to recover costs actually incurred. These costs are not linked to the value or price of agricultural commodities or any farm production inputs.

*Comment 3:* Two people commented that the rules should acknowledge that existing contracts take precedence where there are conflicts with these rules.

*Response:* These provisions apply to new or amended contracts. Therefore, there is no question of precedence.

**43 CFR 426.9 Class 1 Equivalency**

*43 CFR 426.9(a) In general.*

*Comment:* Five people commented that class 1 equivalency should be applied on something other than a district-by-district basis. Some maintained that equivalency should be applied on a statewide or westwide basis. One of the commenters requested that the same class 1 equivalency determinations be applied to adjoining districts that have similar circumstances.

*Response:* The law provides for class 1 equivalency on a district basis. As an administrative matter, where the agricultural setting with respect to land quality, climate, and other productive factors is similar, districts can be combined into one equivalency study. However, there is too much variation in conditions to apply equivalency on a statewide or westside basis.

*43 CFR 426.9(c) Scheduling.*

*Comment:* One respondent commented that the Bureau has not been completing class 1 equivalency determinations in a timely manner.

*Response:* It is not appropriate to address this comment within the rules themselves; however, the comment has been noted and steps will be taken to ensure that future determinations are completed within reasonable timeframes.

**43 CFR 426.10 Certification and Reporting Requirements**

*43 CFR 426.10 General.*

*Comment 1:* Several respondents commented that the certification and reporting requirements are too extensive, complex, and burdensome to landholders and districts.

*Response:* The following modifications to the proposed rules have been made to reduce the paperwork burden to individuals and districts: (1) In conformance with the precise language of the RRA, we have eliminated the term "operator" and made it clear throughout section 426.10 that only landowners and lessees must certify or report. (2) We have provided that limited recipient entities must identify only those part owners who (i) own more than 4 percent of the limited recipient and (ii) such ownership interest would constitute an attribution of ownership to such participant or shareholder of more than 40 acres. (3) We have made a concerted effort to revise all certification and reporting forms and procedures in such a way as to minimize the burden to landholders and districts.

*Comment 2:* Because district personnel are familiar with all district landholders, several commenters stated that the burden of certification and reporting should be entirely with the district, not with the landholders.

*Response:* This comment was not accommodated. The RRA clearly places the responsibility for providing information to demonstrate compliance with Reclamation law upon both districts and landholders. Furthermore,

it would be unreasonable, if not impossible, to require district awareness on all details of any individual's or entity's status with respect to Reclamation law, particularly leasing.

*Comment 3:* One respondent commented that some of the terms used throughout this section are too general. As examples, the respondent cited the terms "changes in some way" and "pertinent information."

*Response:* This suggestion was not accommodated, as the existing language reflects our intended meaning. The phrase "information pertinent to" issued to cover all the various data elements needed to demonstrate a landholder's compliance with Reclamation law. It would be inappropriate to attempt to list all these items in the rules; the list is simply too long. The phrase "change in some way" correctly reflects our intention that any change in the ownership or leasing of irrigation land be reported to the appropriate district on the appropriate form.

*Comment 4:* Several respondents stated that land not receiving irrigation water should not need to be reported.

*Response:* This suggestion was not accommodated. All irrigable land, whether or not it is receiving irrigation water, (and any other land receiving irrigation water) must be monitored by the Bureau from an ownership standpoint so we will know if it has been transferred into or out of excess status. The fact that any particular parcel of irrigable land is not receiving irrigation water at one point in time does not mean that the owner, or a subsequent owner, will not want to irrigate that parcel sometime in the future. In order to be able to determine the eligibility of such land, the Bureau must monitor irrigable land that is not receiving water through the certification and reporting system.

*43 CFR 426.10(a) Certification.*

*Comment:* It was suggested by one person that the word "irrigation" should be changed to "irrigable" in this paragraph.

*Response:* The term "irrigation land" has been replaced by the following phrase: "irrigable and irrigation land."

*43 CFR 426.10(b) Reporting.*

*Comment:* One respondent commented that the law does not require prior law recipients to report as a condition for the receipt of irrigation water.

*Response:* Section 206 of the RRA specifically requires that landowners and lessees subject to the discretionary provisions of the RRA must certify as a condition to their receipt of irrigation water. Section 228 of the RRA gives the Secretary the authority to require reporting from all landholders subject to acreage limitation law. Prior law landholders must comply with various provisions of acreage limitation law, just as landholders subject to the discretionary provisions must comply with somewhat different provisions of law. Thus, it is appropriate that prior law landholders be required to provide information pertinent to their compliance in a manner similar to landholders subject to the discretionary provisions.

*43 CFR 426.10(c) Certification and reporting form data requirements.*

*Comment 1:* One commenter inquired as to the reason all members of a qualified recipient entity must be identified.

*Response:* The RRA provides no exceptions to the certification requirement. However, as a matter of administrative practicality we have exempted landholders holding 40 acres or less westwide from this requirement, and provided that holders of small interests (4 percent or less) in limited recipient entities need not be identified. This means many thousands of small landholders and stockholders are exempt from the certification and reporting system. Therefore, since the maximum number of members in a qualified recipient entity is only 25, and only those who hold over a 4 percent interest must be identified, this is not an overly burdensome requirement.

*Comment 2:* One respondent commented that the rules should state that a person holding an interest of 4 percent or less in a limited recipient entity should not be required to declare that part of his/her landholding.

*Response:* This suggestion was not accommodated, although it correctly reflects the Bureau's policy on this matter. This provision is one of many details of certification and reporting that are not specifically covered in the rules, but are fully explained in the certification and reporting forms themselves.

*Comment 3:* One person suggested that all references to "individuals" in this paragraph should be changed to "natural persons."

*Response:* This comment has been accommodated in the final rules by deleting all references to "individuals."

*43 CFR 426.10(d) Schedule for completing certification and reporting forms.*

*Comment 1:* We received comments from 20 persons requesting that the rules be revised so that certification/reporting forms are not required on a yearly basis. They believed that the yearly requirement is unnecessary because landholders are already required to report landholding changes when they occur.

*Response:* Section 228 of the RRA specifically requires district reporting on an annual basis. A landholder that has no changes in his/her landholding during the year is required under these rules to simply sign a statement to that effect. This provides the district with assurance that no landholding change has occurred when it reports to the Bureau, and serves as an annual reminder to landholders of the continuing certification/reporting requirement in the event of a landholding change.

*Comment 2:* The requirement to report landholding changes within 15 days is unreasonable and unenforceable.

*Response:* The requirement to report landholding changes without delay is necessary for the proper enforcement of acreage limitation law. Any landholding change brings with it the possibility of the land becoming ineligible for irrigation water, becoming subject to full O&M assessments, or becoming subject to full cost. Therefore districts must be immediately aware of such landholding changes.

*43 CFR 426.10(e) Short form availability.*

*Comment 1:* One respondent commented that districts should be allowed to verify on behalf of individuals whose landholdings have not changed from the previous year.

*Response:* This suggestion was not accommodated; only the landholder can be held responsible for knowing whether a landholding change has occurred. Therefore, the responsibility for verifying that no landholding changes have occurred appropriately rests with the landholder.

*43 CFR 426.10(f) Exemptions.*

*Comment 1:* We received 18 comments requesting that the exemption threshold be increased.

*Response:* The RRA establishes no exemption threshold for certification requirements. As a matter of administrative practicality, we proposed an exemption threshold of 5 acres when the draft rules were published in May of 1983; however, based on comments received from the public, we raised that threshold to 40 acres in the 1983 rules. We believe that the 40 acres is a reasonable threshold. Raising the threshold to 160 acres, or even 320 acres as some commenters have suggested,

would make it too easy for the unscrupulous few to evade ownership limitations and full-cost pricing provisions by simply not submitting certification or reporting forms.

*43 CFR 426.10(g) District participation.*

*Comment 1:* One respondent requested that the rules spell out whether it is a district or Bureau responsibility to verify the compliance status of landholders to banks for financing purposes.

*Response:* Districts can and should provide banks with requested information on land eligibility and inform them as to whether land is subject to full O&M or full cost. However, we think this topic can more appropriately be addressed outside the rules.

*Comment 2:* Several commenters stated that districts cannot be held responsible for enforcing Reclamation law or the manner in which landholders complete their forms. They believe the Bureau is making the districts act as policemen, pitting the district offices against the landholders.

*Response:* Districts, under their contracts with the United States, are responsible for collecting appropriate water charges, withholding water deliveries to ineligible land, and providing the Bureau with necessary data and reports. Although each landholder is ultimately responsible for the information contained on his/her form, it is not unreasonable to require districts to report known discrepancies or landholder forms to the Bureau. The Bureau has the added responsibility for investigating such discrepancies.

*43 CFR 426.10(j) Failure to report.*

*Comment 1:* A number of commenters addressed the penalty provision in this paragraph. Most comments were negative, some were favorable, and many wanted clarification.

*Response:* The sentence discussing landholder penalties for taking irrigation water in the absence of the required forms has been deleted.

*43 CFR 426.10(l) Application of Privacy Act of 1974.*

*Comment 1:* Several commenters asked for clarification of specific requirements of the Privacy Act of 1974 upon districts.

*Response:* This section has not been modified. However, we plan to develop guidelines for the districts to clarify the requirements of the Privacy Act.

**43 CFR 426.11 Excess Land**

*43 CFR 426.11(a) In general.*

*Comment 1:* One person suggested that excess land should include leased land as well as owned land.

*Response:* This comment could not be accommodated because excess land, as defined in the rules, is land *owned* in excess of an entitlement. Leasing is irrevelant to the definition of excess land.

*Comment 2:* One person suggested that a section should be added that spells out districts' responsibilities to withhold irrigation water from ineligible land and related penalties for noncompliance.

*Response:* Generally speaking, contracts between the United States and districts contain articles outlining such responsibilities. In addition, policy guidelines have been developed setting forth procedures that will be used when violations occur. Therefore, this comment was not addressed in the rules.

*43 CFR 426.11(b) Designation of nonexcess land.*

*Comment 1:* One person commented that some landowners do not want any land designated as nonexcess. To cover these cases, the commenter suggested that a statement be added to the rules allowing such landholders to notify the district in writing that they will not designate any land. Upon receipt of such notice, all lands would be considered excess and ineligible until a designation is completed.

*Response:* The language in the rules is the same as that provided in many existing contracts. Therefore, we did not accommodate this comment in the rules.

*Comment 2:* Three persons objected to the provision that states designations will be made in accordance with the instructions on the certification/reporting forms. They felt this was an attempt by the Bureau to disregard contract commitments, and they stated that they intend to continue to designate land as set forth in their contracts, as those proceduress have been historically administered.

*Response:* We do not believe this provision conflicts with designation procedures set forth in existing contracts. Such contract articles normally spell out, in general terms, the designation process. The certification/reporting forms provide the mechanism whereby the terms of the designation article can be achieved. Therefore, this comment has not been accommodated.

*43 CFR 426.11(b)(3) Status of nonexcess land and redesignation.*

*Comment 1:* Seven persons commented that there is no basis in the law for not allowing a person to buy himself into excess and then redesignate.

*Response:* Paragraphs (b) and (c) in this section have been revised to accommodate this suggestion.

*Comment 2:* One respondent commented that the sentence which provides that redesignations will not be approved if they are "being used for the purpose of achieving, through repeated redesignation, an effective farm size in excess of that permitted by Reclamation law" may be constitutionally invalid in that no criteria is provided by which a redesignation request will be measured. The respondent also commented that all redesignation requests must now be approved at the Denver or Washington level, rather than at the field or regional offices. He could not understand the need for such high-level involvement in what otherwise should be a routine matter, for this would inevitably result in additional delay and expense for the landholders.

*Response:* To protect the Bureau against potential abuse of redesignations, we have left in the sentence concerning repeated redesignations. The rules outline redesignations that do not require Secretarial approval; however, all redesignations outside of these must be submitted for approval to ensure conformance to the requirements of the law. The rules do not specify at what level redesignations will be approved. The Secretary may delegate the responsibility for approving redesignations to whatever office level he finds appropriate.

*43 CFR 426.11(b)(4) Acquisition of excess land.*

*Comment 1:* One person suggested that this paragraph be modified so that it is clear that a person buying excess land or land burdened by a deed covenant may buy several parcels at different times up to his entitlement and may sell such parcels in one or more sales at different times up to his ownership entitlement.

*Response:* This section has been so revised.

*Comment 2:* One person interpreted this provision to mean that once nonexcess land has been sold (up to a person's entitlement) the landowner can no longer receive irrigation water from Bureau projects anywhere. He objected to the provision, stating that it is unfair,

beyond the intent of the law, and hard to administer.

*Response:* This provision limits the amount of benefits a farmer can receive through land purchases at an excess value and subsequent sale at nonexcess value. However, it does not disallow the continued service of project water to nonexcess land bought at full market value.

*43 CFR 426.11(c) Treatment of land ineligible under prior law.*

*Comment 1:* Fourteen persons commented that the forgiveness provision in 426.11(c) of the 1983 rules should not be deleted. They believe that if the rules go into effect before April 12, 1987, this provision would not be available to landowners.

*Response:* As stated in section 426.2(a), these rules become effective on April 13, 1987, and not before. Therefore, this comment has not been accommodated.

*Comment 2:* Twelve persons suggested that the April 12, 1987, deadline specified in section 426.11(c) of the 1983 rules be deleted and substituted with the following phrase: "expiration of the district's present water service contract."

*Response:* There is no basis in Reclamation law for continuing the blanket forgiveness provisions contained in the 1983 rules. However, given changes that have been made to other provisions in the rules, opportunities exist for ineligible land to be made eligible through approved redesignation, except in the case of excess land purchased without price approval. In the latter case, the land can only become eligible if the sale is reformed or the land is sold to an eligible buyer at an approved price.

*43 CFR 426.11(c)(2)(i) Irrigation land acquired after the date of a district's first repayment or water service contract.*

*Comment 1:* Fourteen respondents suggested that the time limits for making land purchased into excess by prior law recipients were not needed. Some respondents stated that these limits could cause confusion with regards to certification and reporting requirements and that the irrigation season may not be defined in districts that irrigate year-round.

*Response:* The time limitations and references to "an irrigation season" have been deleted.

*Comment 2:* One person stated that this paragraph should be deleted in its entirety, since it was arbitrary and punitive to impose price restrictions on the resale of land purchased at full market value, especially if such land was acquired inadvertently.

*Response:* To permit such actions would be contrary to law. Further, through the annual certification and reporting process, it will be difficult for any landowner to acquire land into excess status inadvertently.

*Comment 3:* One individual referred to the provision that if land was acquired into excess before irrigation water was available, such land can be placed under recordable contract when the water supply becomes available. This individual questioned whether this provision would preclude a landowner from making an election to make his land eligible, rather than placing the land under recordable contract.

*Response:* This provision does not preclude a landowner from making the land eligible up to his entitlement, through an election. The sentence in question only refers to landowners who do not become subject to the discretionary provisions or to any land that remains in excess after the landowner becomes subject to the discretionary provisions.

*43 CFR 426.11(d) Irrigation land which becomes ineligible under the discretionary provisions.*

*Comment 1:* One individual suggested that landowners who purchase nonexcess land into excess status should be allowed to redesignate to make the newly purchased land nonexcess.

*Response:* This suggestion has been incorporated with the stipulation that the Secretary approve such redesignations.

*43 CFR 426.11(e) Recordable contracts.*

*Comment 1:* Two persons stated that the rules should explain if price approval is required when excess land in the Central Arizona Project is sold for nonirrigation purposes.

*Response:* The rules provide that excess land under recordable contract must be sold under the terms of that contract, regardless of the intended use. However, the appraisal will be on the basis of the assumed highest and best use. This land could have some purpose other than agriculture. Excess land not under recordable contract may be sold without price approval, but it remains ineligible for irrigation water unless the sale price is reformed and the new owner is an eligible owner.

*Comment 2:* One individual thought this section should specify that a lessee of 160 acres of land under recordable contract who owns no land should be able to receive irrigation water on that land at the contract rate.

*Response:* This statement is true, provided neither the owner nor the lessee is subject to the discretionary provisions. However, this statement has not been added to the rules because we believe the proposed language adequately covers this situation.

*43 CFR 426.11(f)(2) Water rights separated from land.*

*Comment:* One individual suggested that this provision should be deleted.

*Response:* This provision has been deleted.

*43 CFR 426.11(g) Recordable contracts in effect prior to October 12, 1982.*

*Comment 1:* One individual believed that the rules should be changed to reflect the fact that landowners are eligible to amend their recordable contracts if any district in which they own or lease land amends its contract.

*Response:* This provision has been included in the rules.

*Comment 2:* Four persons stated that we should delete the provision that prohibits post-October 12, 1982, recordable contracts from being amended to conform to the expanded ownership entitlements of the discretionary provisions.

*Response:* This provision has been deleted.

*43 CFR 426.11(h)(1) Deed covenant.*

*Comment:* One individual suggested new wording for the deed covenant recognizing the various exceptions as set forth in section 224e of the RRA should be added.

*Response:* This wording was incorporated in the deed covenant.

*43 CFR 426.11(h)(2) Operational loans for formerly excess land.*

*Comment:* Five persons wanted to know the Department's definition of an operational loan, while another individual wanted this provision deleted.

*Response:* This provision has been deleted. Therefore, a definition for an "operational loan" has not been established.

*43 CFR 426.11(i)(1), (2), (3) Extension of disposition periods for recordable contracts.*

*Comment 1:* One person suggested that subsections (1), (2), and (3) should be deleted since all moratoriums have been lifted.

*Response:* These subsections have been retained, but they have been modified to show the date the Secretary of the Interior resumed processing the sales of excess land.

*Comment 2:* One individual stated the date the processing of excess lands began should be placed in the rules and examples.

*Response:* Appropriate dates have been inserted.

*43 CFR 426.11(i)(4) Water rates for land under extended recordable contracts.*

*Comment:* Fourteen persons questioned the authority for requiring prior law recipients to pay at least the full O&M rate for land under extended recordable contract. They stated that section 205(c) of the RRA, which calls for full cost for all deliveries to land under extended recordable contract, does not apply to prior law recipients.

*Response:* Upon review, it was decided that prior law recipients should continue to receive irrigation water at the contract water rate for land under extended recordable contract. The rule has been altered to reflect this position.

*43 CFR 426.11(j)(2) Appraisals.*

*Comment:* One individual wanted the procedures for excess land appraisals spelled out in the rules.

*Response:* This recommendation has not been accommodated in the rules. These procedures are set forth in Bureau documents that are available to the public but are too technically detailed to include in the rules. 43 CFR 426.11(k) Land which becomes excess or ineligible because of westwide application or enforcement of other requirements of law.

*Comment:* One person stated that this section did not appear to be consistent with the ownership entitlements for legal entities established under State or Federal law found in section 426.6(b)(3).

*Response:* Changes have been made to both of these sections, thereby eliminating the inconsistencies.

**43 CFR 426.12 Excess Land Appraisals**

*43 CFR 426.12(a) In general.*

*Comment 1:* Fifteen persons commented that appraisals take too long. Some made suggestions on ways to speed up the process.

*Response:* It is Bureau policy to complete appraisals within 60 days. However, delays in receipt of necessary input from lending institutions and/or landholders, as well as the timely availability of qualified field appraisers, frequently remove the process from the Bureau's control. All suggestions for improvement are welcomed. The rules, as written, allow the Bureau to adopt suggestions to meet the needs and facilitate the process for individual cases. It should be noted that by allowing the removal of deed covenants through all transactions except direct sale it is unlikely in the future that appraisal of land under deed covenant will be a significant work item.

*Comment 2:* One person commented that the appraisal methods harmed his district and that they should not be required to use water trend data for appraisals because it would devalue the land to practically nothing. The Secretary should use this information as appropriate, not in all cases.

*Response:* The purpose of the appraisal procedure is to determine the fair market value of the land without benefit of the Federal project. Thus, if the preproject water supply was from groundwater, and the groundwater was being overtaxed, it is a necessary factor in determining the value of the land for agriculture. Clearly, the greater the groundwater overdraft over time, the lower the value of the land for agriculture.

**43 CFR 426.13 Exemptions**

*43 CFR 426.13(a)(2) Reclamation projects.*

*Comment 1:* One person, who represents a district that has completed repayment of its construction charge obligation, expressed the following concern: If the district's exemption status should ever be reversed in the future, (1) the district would not be able to take advantage of the 960-acre ownership entitlement because the April 12, 1987, deadline for becoming subject to the discretionary provisions would have expired; (2) nonresident aliens in the district would not be eligible to receive irrigation water; and (3) the district would be required to implement conservation measures that may be cost prohibitive to the district.

*Response:* In response to the first concern, a district's exemption status will not be reversed unless the district enters into a new contract to receive additional construction funds. Such a contract action would automatically subject the district to the discretionary provisions, even if the contract action took place after April 12, 1987. This means individual landowners would become qualified recipients and thereby entitled to the 960-acre ownership limitation. Secondly, the final rules have been revised so that nonresident aliens may receive irrigation water on 960 acres, provided the land is held through a legal entity(s) subject to the discretionary provisions. Lastly, all districts, including those that have paid out, are subject to the water conservation requirements in section 210 of the RRA if they continue to contract with the United States. Only the requirements for full-cost payment, reporting, and ownership limitations are eliminated with pay out. In almost all cases, the contract continues in effect with regard to all other provisions.

*Comment 2:* Two persons suggested that individuals should be able to prepay their construction charges, and by so doing, become exempt.

*Response:* Section 213 of the RRA clearly states that individual prepayment is permitted only if authorized in the district's contract. Furthermore, prepayment is expressly disallowed as a valid contract provision for contracts entered into after the date of the RRA.

*Comment 3:* One person commented that the rules should clearly state that the RRA no longer applies once a district has paid out.

*Response:* Section 213 of the RRA provides that, upon completion of its construction charge obligation, a district becomes exempt from the acreage limitation and full-cost pricing provisions of Reclamation law. This is not a blanket exception from the RRA, just the pricing and ownership provisions, and by logical extension, the reporting requirements. We believe the language in section 426.13(a)(2) clearly reflects the exemption and its limitations.

*Comment 4:* Do all of the nondiscretionary provisions apply to paid-out districts?

*Response:* As stated in the response to comment 1 in this section, the RRA exempts paid-out districts only from the acreage limitation and full-cost pricing provisions of Reclamation law. The rules further exempt paid-out districts from the certification and reporting requirements. These are the only provisions of Reclamation law from which such districts will be exempt.

*43 CFR 426.13(a)(3) Temporary supplies of water.*

*Comment 1:* Two persons commented that the rules should provide that water delivered under all temporary contracts not exceeding one year should be exempt from acreage limitation.

*Response:* Section 215 of the RRA specifies that the following two conditions must be met in order for land receiving water under a temporary contract to be considered exempt from the ownership limitations of Reclamation law: (1) the contract may not exceed 1 year and (2) the water supplies must not be storable for project purposes or must be infrequent and otherwise unmanaged flood flows of short duration. If *both* of these

conditions are not met, we have no authority for exempting land receiving temporary irrigation water supplies. Therefore, the rules have not been revised to accommodate this comment.

*43 CFR 426.13(a)(5) Rehabilitation and Betterment programs.*

*Comment 1:* Two persons requested that the last sentence in this section be reworded because it could be interpreted to mean that paid-out districts must become subject to the discretionary provisions if they receive a R&B loan.

*Resonse:* This was not the intended meaning of the last sentence. Rather, the sentence was intended to address those situations in which districts apply for an R&B loan for the purpose of rehabilitating facilities that are not part of a Reclamation project. However, the Department has decided that it is not appropriate to address this issue in the rules, so the last sentence has been deleted.

*Comment 2:* Three persons commented that the receipt of an R&B loan should not trigger the discretionary provisions in districts that have not completed payment of their construction cost obligation.

*Response:* After reviewing this matter, the Department has concluded that R&B loans provide operation and maintenance funds rather than construction funds. Therefore, an R&B loan contract is not a contract within the meaning of the RRA and, therefore, should not be considered an additional or supplemental benefit requiring a district to conform to the discretionary provisions. We have deleted this requirement from the rules.

*43 CFR 426.15 Religious and Charitable Organizations.*

*Comment:* One person commented that Congress did not intend to require all churches and charibable entities to operate in one specific manner in order to be eligible to receive water. Therefore, that person agreed with the proposed revision.

*Response:* The proposed revision which will allow religious and charitable organizations an option to lease land to others, within specified constraints, has been retained in the final rules and regulations.

**43 CFR 426.16 Involuntary Acquisition of Land**

*43 CFR 426.16 General.*

*Comment:* One commenter suggested that the rules should state that land acquired by a spouse through a divorce settlement should be considered an involuntary acquisition.

*Response:* This suggestion was not accommodated. A divorce settlement does not constitute an involuntary acquisition as defined in either section 216 or 224(e) of the RRA. The rights of a surviving spouse are covered in separate legislation, Pub. L. 86–684.

*43 CFR 426.16(a)(2) Land subject to deed covenant.*

*Comment 1:* One commenter suggested that land involuntary acquired into excess status should be required to pay water rates equal to what the previous owner had paid, and should not be subject to full-cost pricing through leasing.

*Response:* This suggestion was not adopted. Such a rule would permit lessees to exceed their non-full-cost entitlements if they were leasing land that the owner had involuntary acquired into excess status. There is no provision in law that would permit lessees to exceed their entitlements in such a manner.

*Comment 2:* Forty commenters suggested that parties who acquire land subject to a deed covenant by involuntary foreclosure, should not be required to abide by the terms of the deed covenant.

*Response:* This suggestion has been accommodated; §§ 426.11(h) and 426.16 have been modified accordingly. These sections now provide that the deed covenant can be removed when the land is acquired through involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, devise, or gift.

*Comment 3:* One commenter suggested that when ineligible land is involuntarily acquired by a prior law landholder, such land can be declared nonexcess up to the landholder's entitlement when the landholder conforms to the discretionary provisions, without subjecting the land to a deed covenant.

*Response:* This suggestion has been accommodated. The deed covenant will be removed if disposal is accomplished through any involuntary process as described in the response to comment 2 above.

**43 CFR 426.17 Land Held by Governmental Agencies**

*43 CFR 426.17(a) Acreage limitation.*

*Comment:* One person stated that the Bureau of Reclamation is intent on applying excess land provisions to State lands, while section 1 of Pub. L. 91–310 provides that lands held by public agencies are not to be deemed excess.

*Response:* Section 1 of Pub. L. 91–310 applies only to lands held by public agencies which are farmed for a non-revenue-producing public function. Further, section 2 of Pub. L. 91–310 states that other irrigable lands held by these agencies must be placed under recordable contract to receive water from a Federal reclamation project. In addition, as stated in section 3 of Pub. L. 91–310, lessees of lands held by public agencies are held to the same acreage limitation provisions as private landowners.

*43 CFR 426.17(b) Sales.*

*Comment:* Two persons suggested adding clarification on how the rules would apply to excess land acquired by a public agency.

*Response:* Excess land provisions apply to public agencies as well as individuals and legal entities. No additional clarification was added to this section because sufficient guidance is provided in §§ 426.6, 426.11, 426.12 and 426.16. Additional language here would be repetitive.

*43 CFR 426.17(c) Leasing.*

*Comment:* Twenty persons suggested that restrictions on the leasing of land owned by States or political subdivisions should be relaxed. Strict adherence to the proposed rules could have severe economic impacts, particularly in the Central Arizona Project.

*Response:* The RRA removes the provision in Public Law 91–310, dated July 7, 1970, which requires land leased from State or political subdivisions to eventually be placed under recordable contract and sold if it is to continue to receive water. All other provisions of the 1970 act continue in effect. The 1970 act provides that States or political subdivisions may lease land in no greater size parcels than can be owned by an individual subject to Reclamation law. This provision has consistently been interpreted to mean that a State or political subdivision cannot lease land to an individual if that individual's landholding exceeds the acreage limitations imposed by Reclamation law. The rules and regulations continue to reflect this requirment of law.

**43 CFR 426.18 Commingling**

*43 CFR 426.18(a) Existing commingling provisions in contracts.*

*Comment 1:* Ten persons commented that the proviso in the last sentence of this section should be deleted. The

proposed rule stated that the commingling provision of contracts entered into prior to October 1, 1981, would apply to renewed contracts, ". . . *provided they are consistent with the provisions in paragraph (b) of this section.*" (emphasis added). The reasons cited for eliminating the proviso were that it essentially eliminated the district's ability to continue commingling as provided for in existing contracts and that it would overrule provisions in the Sacramento River Contract which were valid under the Tulare formula.

*Response:* The proviso was deleted. Under the final rules, commingling provisions in existing contracts will also apply to renewed contracts.

*Comment 2:* One person commented that this section should be expanded to provide that present commingling practices are validated even if the existing contract does not contain commingling provisions, provided the planning documentation supports the fact that commingling was intended.

*Response:* Section 225 of the RRA only validates the provisions of *contracts* entered into prior to October 1, 1981. A blanket rule legitimizing undefined past commingling practices, which may or may not be consistent with Reclamation law, under the vague support of "planning documentation" is going well beyond the legislation. However, these situations will be considered on a case-by-case basis.

*43 CFR 426.18(b) Establishment of commingling provision in contracts.*

*Comment 1:* Several comments were received to the effect that this section should be clarified as to who is subject to these rules and Reclamation law. One person said that the RRA applies to only those individuals and canal companies that subscribe to project water. Another said they apply only to landowners who are willing to comply with Reclamation law and who receive project water. Fifteen people said that when commingling results in water/energy conservation and meets district's operational criteria, it should be permitted without charge or interference by Government and that if a landowner receives project water unavoidably by pumping groundwater, such water will not be considered project water.

*Response:* This section has been substantially revised and clarified as follows: (1) If irrigation water and nonproject water are commingled in facilities constructed *without* Federal Reclamation funds, these regulations apply only to landholders receiving irrigation water. (2) If commingling occurs in facilities constructed *with* Federal Reclamation funds, these regulations apply to landholders receiving nonproject water, *unless* the district collects and pays to the United States an incremental fee which reasonably reflects an appropriate share of the cost to the Federal government, including interest, of storing and/or conveying the nonproject water. Also, several examples have been added to illustrate how Reclamation law and these rules apply in the more common commingling situations.

One of these examples states that irrigation of ineligible excess lands with groundwater that is augmented as an unavoidable result of supplying surface water to eligible lands, shall not be a violation of Reclamation law.

*Comment 2:* Many comments were received about the application of this section to the Central Arizona Project (CAP). The people said the CAP should be permitted to commingle project and nonproject water without imposing acreage limitation. Two people asked what is the legal justification for changing "federally financed facilities" to "federally subsidized facilities" and five people said the rules should state exactly how the higher rate for conveying nonproject water will be determined.

*Response:* Congress did not grant an exemption to CAP in the RRA; therefore, these rules and Reclamation law do apply. However, this section was revised as previously noted to permit the conveyance of nonproject water in a federally financed distribution system absent compliance with acreage limitation provisions of Reclamation law provided an incremental fee is paid to the United States. This incremental fee should reasonably reflect: "an appropriate share of the cost to the Federal Government, including interest, of storing and/or conveying the nonproject water. Such fee shall be established by the Secretary and shall be in addition to the district's obligation to pay for capital, operation, maintenance and replacement costs associated with the facilities required to provide the service".

*43 CFR 426.18(b)(3) [renumbered (2)] Acquisition by exchange.*

*Comment:* One person commented: "The proposals also appear to be contrary to the established principle that Reclamation law goes where the water goes, *not* where the benefits go. Merely because a party *benefits* from an exchange, this is not sufficient reason to impose Reclamation law. The issue is whether the party receives additional irrigation water (i.e., water furnished by the federal government pursuant to a contract.)" Two persons suggested changes to define or amplify what would be considered as a material benefit.

*Response:* This rule is to protect the holders of pre-existing private water rights from becoming subject to Reclamation law by virtue of having agreed to exchange those rights to reduce costs and provide water to others. In the case of exchanges, Reclamation law does not follow the physical body of water flowing from or through the federally financed facility, but rather it applies to those who benefited from the federal facility by receiving an additional irrigation water supply, which is in accord with the last sentence of the first comment above.

**43 CFR 426.19 Water Conservation**

*43 CFR 426.19(b) Development of a plan.*

*Comment 1:* Three persons stated that the rules needed to be more specific and detailed with regard to minimum acceptable criteria, time tables, examples, etc.

*Response:* The water conservation provisions of these rules are required by section 210 of the RRA. They are general by intent since it is the districts which will develop and carry out the water conservation programs. However, the rule does emphasize that the Secretary of the Interior will encourage district water conservation initiatives, recognizing that the responsibility for these efforts is primarily that of the districts, not that of the Federal Government. This is in accord with the intent expressed by Congress in the water conservation provision of the RRA.

*Comment 2:* Three persons objected to the requirement of water conservation plans for municipal and industrial users.

*Response:* The inclusion of the phrase ". . . or the Water Supply Act of 1958 . . ." clearly indicates Congressional intent to require M&I water conservation plans under the RRA in some instances. It should be noted that the definition of the term "district" restricts this requirement to those districts who contract for or are eligible to contract for irrigation water.

*Comment 3:* One person stated that a district that takes water only once every two years should be relieved of the requirement.

*Response:* There is nothing in the law which authorizes such relief.

*Comment 4:* One person stated that if paid-out entities fall under the requirements for water conservation plans, this should be mentioned.

*Response:* This comment has not been accommodated because the rule clearly

states that it applies to "Districts that have entered into repayment contracts or water service contracts . . .". Also refer to the response to comment 4 in section 426.13.

**43 CFR 426.20 Public Participation**

*43 CFR 426.20(a) In general.*

*Comment:* One person commented that the following should be added after the first sentence: "Notice of proposed irrigation or amendatory contract actions will also be provided to any party requesting such notice in writing concerning a specific project or projects." The same person further commented that the fifth sentence should be modified to read: "The Secretary or the district *shall* (emphasis added) invite the public to observe any contract proceedings."

*Response:* The provisions within the rules adequately cover the requirements of the law; therefore, no revisions have been made to this section.

**43 CFR 426.21 Small Reclamation Projects**

*Comment 1:* One person suggested that this section should be revised to reflect the new interest threshold established by the recent legislation amending the Small Reclamation Projects Act.

*Response:* In the final rules, we have accommodated this suggestion by adding the amending legislation, Title III of Pub. L. 99–546, to paragraph (a) of this section. That language was not incorporated into the proposed rules because the law was enacted while those rules were in the process of being published.

*Comment 2:* Two persons were opposed to the provision in the rules which provides that a district with an outstanding construction cost obligation must become subject to the discretionary provisions as a condition for receipt of an SRPA loan.

*Response:* The Department has reviewed this issue and determined that a contract written under the SRPA is not a contract within the meaning of the RRA and does not, therefore, constitute an additional or supplemental benefit requiring conformance to the discretionary provisions. In keeping with this decision, we have deleted this requirement from the rules.

**43 CFR 426.22 Decisions and Appeals**

*Comments:* One person commented that the new statement pertaining to prior legal opinions remaining in force should be deleted because it may lead to confusion as to what opinions may or may not be used.

*Response:* The paragraph in question was deleted as it is unnecessary.

**43 CFR 426.23 Scheme or Device**

*Comment 1:* Thirty-six people said this section should be deleted. Some examples of the reasons given are: This provision allows administrators to act in an arbitrary and capricious manner. Ultimate insult. No criteria or standards are specified. No documentation of any significant violations to warrant such a provision. Provision is a slap in the face. Secretary's only penalty power is to terminate water services.

*Comment 2:* Two people commented favorably on this section to the effect that: (a) It would not affect those operating within the law and yet help the Bureau to administer the law since every conceivable operation cannot be addressed in the rules and (b) the purpose of the section is clear; i.e., to eliminate schemes or devices that might be used by large farm operators to avoid the goal of limiting subsidies to 960-acre operations.

*Response:* This section was deleted. A general statement was added to 43 CFR 426.10(a) as follows:

Districts, legal entities, and individuals shall provide the Secretary, upon request, such records and information as the Secretary may deem reasonably necessary to implement Pub. L. 97–293 and Federal Reclamation law.

The penalties for knowingly and willfully submitting false or fraudulent statements under 18 U.S.C. 1001 are cited in section 426.10(k).

**Miscellaneous**

*Comment:* Fifty-five persons commented that the rules should be revised only insofar as necessary to implement section 203(b). Further, they objected that the Bureau did a major overhaul of the rules; i.e., they changed meanings, and increased the paperwork for the districts.

*Response:* In reviewing the draft rules, we have placed emphasis on those changes required to implement 203(b) and those necessary to clarify other provisions of the new law.

*Comment:* Numerous persons requested that the comment period be extended 30 days.

*Response:* This suggestion was accommodated. The comment period was extended to February 5, 1987.

*Comment:* Many persons contend that the tone throughout the rules is overly regulative and inconsistent with the longstanding relationship between the Bureau and the water users.

*Response:* The comment has been accommodated to the extent possible within the law. The Bureau recognizes that the RRA represents the most extensive change in the history of Reclamation and that the impacts are far-reaching in respect to the water user community.

**Environmental Assessment of Regulatory Alternatives for Acreage Limitation Pursuant to the Reclamation Reform Act of 1982 (Environmental Assessment)**

*Comment 1:* Fourteen persons pointed out that the Environmental Assessment only addressed the impacts of section 203(b). Instead all changes should be addressed.

*Response:* Of the revisions made to the 1983 rules and regulations, most were for the purpose of incorporating or expanding on existing policy decisions as they had been set forth in memoranda. However, there were major revisions proposed for some sections, of which a few have been adopted. The Environmental Assessment has been expanded to address these major revisions.

*Comment 2:* Eighteen persons commented on various aspects of the Environmental Assessment's scope. Some felt that a westwide analysis was too broad, since most of the effects of section 203(b) were centered in California. Some believed too much emphasis was placed on large entities. The inclusion of Alternative 4 was questioned, as was the inclusion of section 202 as a nondiscretionary provision.

*Response:* The major portion of the Environmental Assessment was dedicated to impacts associated with California. The Environmental Assessment states that the major impacts will be realized in California and analyzes those impacts. The Environmental Assessment states why the brunt of the impacts will be felt by large landholders, rather than small landholders. Alternative 4 was included as the strictest and most literal interpretation of section 203(b) and is used for comparison purposes. The inclusion of section 202 as a nondiscretionary provision is open to legal interpretation, but has no bearing on the analysis within the Environmental Assessment.

*Comment 3:* Five persons had specific comments on the validity of certain data, the depth of analysis within some sections of the Environmental Assessment, the relevance of including certain paragraphs, and the correctness of some of the analysis.

*Response:* During the indepth revision of the Environmental Assessment to address the concerns expressed in

Comment 1, the entire document, including the data and analysis, was reviewed. Changes were made where necessary to ensure accuracy and objectivity.

### Distribution Table

The following distribution table is provided to show where provisions from the current rules are located in the final rules.

| Dec. 6, 1983 rules | Final rules |
|---|---|
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| 426.2 | 426.2 |
| 426.3 | 426.3 |
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| 426.4(b) | 426.4(b) |
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| 426.4(e) | 426.4(e) |
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| 426.4(j) | 426.4(j) |
| 426.4(k) | 426.4(k) |
| 426.4(l) | 426.4(l) |
| 426.4(m) | 426.4(m) |
| 426.4(n) | 426.4(n) |
| 426.4(o) | 426.4(o) |
| 426.4(p) | 426.4(p) |
| New provision | 426.4(g) |
| 426.4(q) | 426.4(r) |
| 426.4(r) | 426.4(s) |
| 426.4(s) | 426.4(t) |
| New provision | 426.4(u) |
| New provision | 426.4(v) |
| New provision | 426.4(w) |
| New provision | 426.4(x) |
| 426.4(t) | 426.4(y) |
| New provision | 426.4(z) |
| 426.4(u) | 426.4(aa) |
| 426.4(v) | 426.4(bb) |
| 426.4(w) | 426.4(cc) |
| 426.4(x) | 426.4(dd) |
| 426.4(y) | 426.4(ee) |
| 426.4(z) | 426.4(ff) |
| 426.4(aa) | 426.4(gg) |
| 426.4(bb) | 426.4(hh) |
| 426.5(a) | 426.5(a) |
| 426.5(b) through (e)(2) | 426.5 (b) through (e)(2) |
| 426.5(e)(3) | Deleted |
| 426.6 | 426.6 |
| 426.7(a) through (c)(2) | 426.7(a) through (c)(2) |
| New provision | 426.7(c)(3) |
| 426.7(d) and (e) | 426.7(c) |
| 426.7(f) | Deleted |
| 426.7(g) | 426.7(d) |
| 426.7(h) | 426.7(e) |
| 426.7(i) | 426.7(f) |
| 426.7(j) | 426.7(g) |
| 426.7(k) | 426.7(h) |
| 426.8 | 426.8 |
| 426.9 | 426.9 |
| New provision | 426.10(a) |
| 426.10(a) | 426.10(b) |
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| 426.10(j) | 426.10(k) |
| 426.10(k) | 426.10(l) |
| New provision | 426.10(m) |
| 426.11 (a) through (b)(3) | 426.11 (a) through (b)(3) |
| 426.11(b)(4) | 426.11 (c)(1) and (c)(2) |
| New provision | 426.11(b)(4) |
| 426.11(c) | Deleted |
| New provisions | 426.11 (c), (c)(1), and (c)(2) |
| 426.11(d) | 426.11(c) |
| New provisions | 426.11 (d), (d)(1), (d)(2), and (d)(3) |
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| New provision | 426.11(h)(2) |
| 426.11 (i) and (j) | 426.11(i) and (j) |
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| 426.14 | 426.14 |
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| 426.16(a) | 426.16(a) |
| New provision | 426.16(b) |
| 426.16(b) | 426.16(c) |
| 426.16(c) | 426.16(d) |
| New provision | 426.16(e) |
| 426.17 | 426.17 |
| 426.18 (a) and (b)(1) | 426.18 (a) and (b)(1) |
| 426.18(b)(2) | 426.18(b)(1) |
| 426.18(b)(3) | 426.18(b)(2) |
| 426.19 | 426.19 |
| 426.20 | 426.20 |
| 426.21 (a), (b), and (c) | 426.21 (a), (b), and (c) |
| New provision | 426.21(d) |
| New provision | 426.21(e) |
| 426.22 | 426.22 |
| 426.23 | 426.23 |

### List of Subjects in 43 CFR Part 426

Irrigation, Reclamation, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, Title 43, Chapter I, of the Code of Federal Regulations is amended by revising Part 426 to read as set forth below.

Dated: April 9, 1987.

**C. Dale Duvall,**

*Commissioner, Bureau of Reclamation.*

Part 426 is revised to read as follows:

## PART 426—RULES AND REGULATIONS FOR PROJECTS GOVERNED BY FEDERAL RECLAMATION LAW

Sec.

426.1 Objectives.
426.2 Applicability.
426.3 Authority.
426.4 Definitions.
426.5 Contracts.
426.6 Ownership entitlement.
426.7 Leasing and full-cost pricing.
426.8 Operation and Maintenance (O&M) charges.
426.9 Class 1 equivalency.
426.10 Information requirements.
426.11 Excess land.
426.12 Excess land appraisals.
426.13 Exemptions.
426.14 Residency.
426.15 Religious and charitable organizations.
426.16 Involuntary acquisition of land.
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426.18 Commingling.
426.19 Water conservation.
426.20 Public participation.
426.21 Small reclamation projects.
426.22 Decisions and appeals.
426.23 Severability.

**Authority:** Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Pub. L. 97–293, title II, 96 Stat. 1263; and the Reclamation Act of 1902, as amended and supplemented, 32 Stat. 388, (43 U.S.C. 371 et seq.).

### § 426.1 Objectives.

Reclamation law establishing terms and conditions pursuant to which project water may be supplied is designed:

(a) To provide viable farm opportunities on land receiving Reclamation project water.

(b) To distribute widely the benefits from the Reclamation program.

(c) To preclude the accrual of speculative gain in the disposition of excess land.

(d) To require reimbursement to the Federal Government of the full cost of providing irrigation water to landholdings which exceed established limits.

### § 426.2 Applicability.

(a) These regulations shall become effective on May 13, 1987. An election by a water district or a landowner or a lessee to come under the discretionary provisions of the Reclamation Reform Act made after April 12, 1987, but on or before the effective date of these final rules shall be considered if it were made on April 12, 1987.

(b) These regulations apply to all irrigation land subject to the acreage limitation and/or full-cost provisions of Reclamation law. (Included are excess lands, whether under recordable contract or not, and nonexcess land.)

(c) Sections 426.5 through 426.12 of these regulations apply variously to all districts subject to the acreage limitation and full-cost provisions of Reclamation law. The way in which they apply depends upon whether the district has (1) a contract which was in force on October 12, 1982, (2) a contract which was amended after October 12, 1982, or (3) a contract which was entered into after October 12, 1982.

Application of these sections will also vary depending upon whether an individual or entity subject to Reclamation law has made an irrevocable election to conform to the discretionary provisions of the Reclamation Reform Act of 1982.

(d) The remainder of these rules, §§ 426.13 through 426.23, may not apply to all districts, but if they do apply, they apply equally.

(e) In many cases, hypothetical examples illustrating the application of a specific rule have been provided. This approach is in direct response to the public's expressed need. The examples provided should not be construed, however, as being exclusive interpretations of a rule. They are provided only as an interpretative tool.

**§ 426.3 Authority.**

These rules and regulations are written under the authority vested in the Secretary by the Congress in the Administrative Procedure Act, 60 Stat. 237, 5 U.S.C. 552; the Reclamation Reform Act of 1982, Pub. L. 97–293, 96 Stat. 1263; and the Reclamation Act of 1902, as amended and supplemented, 32 Stat. 388 (43 U.S.C. 371, et seq.).

**§ 426.4 Definitions.**

As used in these rules:

(a) The term " arable land" means land which, when farmed in adequate size units for the prevailing climatic and economic setting and provided with essential on farm improvements, will generate sufficient income under irrigation to pay farm production expenses; provide a return to the farm operation, labor, management, and capital; and at least pay the operation, maintenance, and replacement costs of related project irrigation and drainage facilities.

(b) The term "contract" means any repayment or water service contract between the United States and a district providing for the payment of construction charges to the United States including normal operation, maintenance, and replacement costs pursuant to Federal Reclamation law. All water service and repayment contracts are considered contracts even if the contract does not specifically identify that portion of the payment which is to be attributed to operation and maintenance and that which is to be attributed to construction.

(c) The term "contract rate" means the repayment or water service rate that is set forth in a contract that is to be paid by a district to the United States.

(d) The term "dependent" means any natural person within the meaning of the term dependent in the Internal Revenue Code of 1954 (26 U.S.C. 152 as it may from time to time be amended.

(e) The term "discretionary provisions of title II" or "discretionary provisions" refers to sections 203 through 208 of Pub. L. 97–293.

(f) The term "district" means any individual or any legal entity established under State law which has entered into a contract or is eligible to contract with the Secretary for irrigation water. This definition includes entities which contract for construction or improvement of water storage and/or delivery facilities.

(g) The term "excess land" means irrigable land, other than exempt land, owned by any landowner in excess of the maximum ownership entitlement under the applicable provision of Reclamation law.

(h) The term "exempt land" means irrigation land in a district to which the acreage limitation and pricing provisions of Reclamation law do not apply.

(i) The term "full cost" means an annual rate as determined by the Secretary that shall amortize the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal Reclamation law or applicable contract provisions, with interest on both accruing from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982. When used in these regulations, the term "full-cost rate" means the full-cost charge plus actual operation, maintenance, and replacement costs required under Federal Reclamation law.

(j) The term "individual" means any natural person, including his or her spouse, and including other dependents within the meaning of the Internal Revenue Code of 1954 (26 U.S.C. 152,) as it may from time to time be amended; provided that, with respect to the ownership limitations established by prior law, the term individual does not include his or her spouse or dependents.

(k) The term "irrevocable election" means the legal instrument which a landowner or lessee uses to make his or her owned and/or leased irrigation land subject to the discretionary provisions of title II. The election is binding on the elector and the irrigation land in his or her holding, but will not be binding on a subsequent landholder of that land.

(l) The term "irrigable land" means arable land under a specific project plan for which irrigation water is, can be, or is planned to be provided, and for which facilities necessary for sustained irrigation are provided or are planned to be provided. For the purpose of determining the areas to which acreage limitations are applicable, it is that acreage possessing permanent irrigated crop production potential, after excluding areas occupied by and currently used for homesites, farmstead buildings, and corollary permanent structures such as feedlots, equipment storage yards, permanent roads, permanent ponds, and similar facilities, together with roads open for unrestricted use by the public. Areas used for field roads, farm ditches and drains, tailwater ponds, temporary equipment storage, and other improvements subject to change at will by the landowner, are included in the irrigable acreage.

(m) The term "irrigation land" means all irrigable land receiving irrigation water and other land receiving irrigation water.

(n) The term "irrigation water" means water made available for agricultural purposes from the operation of Reclamation project facilities pursuant to a contract with the Secretary.

(o) The term "landholder" means a qualified or limited recipient or a prior law recipient who owns and/or leases land subject to the acreage limitation and pricing provisions of Federal Reclamation law.

(p) The term "landholding" means total acreage of one or more tracts of land situated in one or more districts owned and/or operated under a lease which is served with irrigation water pursuant to a contract with the Secretary. In determining the extent of a landholding, the Secretary shall add to any landholding held directly by a qualified or limited recipient that portion of any landholding held indirectly by such qualified or limited recipient which benefits that qualified or limited recipient in proportion to that landholding.

(q) The term "lease" means a contract by which one party (the landlord or lessor) gives to another (the tenant or lessee):

(1) The use and possession of land (including, in some cases, associated buildings, machinery, etc.);

(2) For a specified time;

(3) For agreed upon payments (cash or other considerations); and

(4) By which the lessee assumes the economic interest in the operation and management of the leased land.

(r) The term "legal entity" means any business or property ownership arrangement established under State or Federal law, including, but not limited to, corporations, partnerships, associations, joint tenancies, and tenancies-in-common.

(s) The term "limited recipient" means any legal entity established under State or Federal law benefiting more than 25 natural persons. In these rules, the term "limited recipient" does not include legal entities which are prior law recipients.

(t) The term "nondiscretionary provisions of title II" or "nondiscretionary provisions" refers to sections 209 through 230 of Pub. L. 97–293. These provisions of the law are of general application and became effective immediately upon enactment. These provisions apply to all individuals and districts regardless of whether they are subject to the discretionary provisions of title II.

(u) The term "non-full-cost entitlement" means the maximum acreage a landholder may irrigate with less than full-cost irrigation water.

(v) The term "non-full-cost rate" means all water rates other than full-cost rates. Non-full-cost rates are paid for irrigation water made available to land in a landholder's non-full-cost entitlement.

(w) The term "nonresident alien" means any natural person who is neither a citizen nor a resident alien of the United States.

(x) The term "nonresident alien entitlement" refers to the amount of land on which a nonresident alien may receive irrigation water. Under the discretionary provisions, a nonresident alien may only receive irrigation water on an interest in land held through a legal entity as defined in § 426.4(r) and in no instance may a nonresident alien entitlement exceed that of an individual as defined in § 426.4(j).

(y) The term "prior law" means the Act of June 17, 1902, and acts supplementary thereto and amendatory thereto (32 Stat. 388) which were in effect prior to the enactment of the Reclamation Reform Act of 1982, Pub. L. 97–293 (96 Stat. 1263) as that law is amended or supplemented by the Reclamation Reform Act of 1982 (Pub. L. 97–293).

(z) The term "prior law recipient" means individuals or entities which have not become subject to the discretionary provisions.

(aa) The term "project" means any Reclamation or irrigation project, including incidental features thereof, authorized by Federal Reclamation law, or constructed by the United States pursuant to such law, or in connection with which there is a repayment or water service contract executed by the United States pursuant to such law, or any project constructed by the Secretary through the Bureau of Reclamation for the reclamation of lands.

(bb) The term "qualified recipient" means an individual who is a citizen of the United States or a resident alien thereof or any legal entity established under State or Federal law which benefits 25 natural persons or less. In these rules, the term "qualified recipient" does not include individuals or legal entities which are prior law recipients.

(cc) The term "Reclamation fund" means a special fund established by the Congress under the Reclamation Act of June 17, 1902, as amended, for the receipts from the sale of public lands and timber, proceeds from the Mineral Leasing Act, and certain other revenues. The Congress makes appropriations from this fund for the investigation, construction, operation, and administration of Bureau of Reclamation projects. Collections from water users for reimbursable costs of these projects are returned to the fund unless Congress has specified otherwise for specific projects.

(dd) The term "recordable contract" means a written contract between the Secretary and a landowner capable of being recorded under State law, providing for the sale or disposition of land held by that landowner in excess of the ownership limitations of Federal Reclamation law.

(ee) The term "resident alien" means any natural person within the meaning of the term as defined in the Internal Revenue Act of 1954 (26 U.S.C. 7701) as it may from time to time be amended.

(ff) The term "Secretary" means the Secretary of the Interior or his designee.

(gg) The term "title II" refers to sections 201 through 230 of Pub. L. 97–293, without differentiation between the discretionary and nondiscretionary provisions of that law.

(hh) The term "westwide" or "Reclamation wide" mean the 17 Western States in which Reclamation projects are located, namely: Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.

### § 426.5 Contracts

(a) *In general.* Title II of Pub. L. 97–293 will be applied to repayment and water service contracts (hereafter contracts) by the following rules:

(1) *Contracts in force on October 12, 1982.* Contracts in force on October 12, 1982, which have not been amended to conform to the discretionary provisions shall continue in effect, provided however, that full-cost rates for irrigation water may be applicable, as set forth in § 426.7(c)(3), to certain individuals and entities in these districts.

(2) *New contracts.* Contracts executed after October 12, 1982, shall be subject to all provisions of title II. Districts which have an existing contract(s) with the United States but enter into a new contract after October 12, 1982, shall be subject to all provisions of title II, except as provided in § 426.13(a)(3). The execution date of the new contract determines the date upon which the discretionary provisions apply to the contract. In these rules, individuals and entities subject to the provisions of new contracts are termed either "qualified recipients" or "limited recipients." *Note:* A district's action to execute a new contract as discussed in this paragraph makes the discretionary provisions binding on all individuals and legal entities with landholdings in that district but does not make the discretionary provisions binding on the members of the legal entity as to their landholding held outside the legal entity and outside of the district. Land held by a prior law member of a legal entity is counted toward the member's 160 acre entitlement.

(3) *Amended contracts.* (i) Contracts amended for conformance to the discretionary provisions. Contracts which are amended at the request of the district to conform with the discretionary provisions of title II need be amended only to the extent required for conformance with that title. A district shall be subject to the discretionary provisions from the date the district's request is submitted to the Secretary. The district's request to the Secretary must be accompanied by a duly adopted resolution dated and signed by the governing board of the district obligating the district to take, in a timely manner, the action required by applicable State law to amend its contract. In these rules, individuals and entities subject to the provisions of these contracts are termed either "qualified recipients" or "limited recipients."

(ii) Contracts amended to provide additional or supplemental benefits. All contracts which are amended after October 12, 1982, to provide a district supplemental or additional benefits, shall be amended at the same time to conform to the discretionary provisions. The date that the contract amendment is executed by the Secretary will establish the date for determining the application of the discretionary provisions. All contract amendments will be construed as providing supplemental or additional benefits except those amendments which do not require the United States to expend significant funds, to commit to significant additional water supplies, or to substantially modify contract payments due the United States. More specifically, amendments to existing contracts providing for the following

shall not be considered to provide additional or supplemental benefits:

(A) The construction of those facilities for conveyance of irrigation water that were contracted for by the district on or before October 12, 1982;

(B) Minor drainage and construction work contracted for under a preexisting repayment or water service contract;

(C) O&M (operation and maintenance) amendments, including Rehabilitation and Betterment loans that are considered loans for maintenance under § 426.13(a)(5).

(D) The deferral of payments, provided the deferral is for a period of 12 months or less;

(E) A temporary supply of irrigation water as set forth in § 426.13(a)(3);

(F) The transfer of water on an annual basis from one district to another, provided that (1) both districts have contracts with the United States, (2) the rate paid by the district receiving the transferred water is the higher of the applicable water rate for either district, and provided further that the rate paid does not result in any increased operating losses to the United States above those which would have existed in the absence of the transfer and the rate paid does not result in any decrease in capital repayment to the United States below that which would have existed in the absence of the transfer, and (3) the recipients of the transferred water pay a rate for the water which is at least equal to the actual O&M costs or the full-cost rate in those cases where, for whatever reason, the recipients would have been subject to such costs had the water not been considered transferred water; and

(G) Other contract amendments which the Secretary determines do not provide additional or supplemental benefits.

In these rules, individuals and entities subject to the provisions of contracts amended for the purpose of conforming to the discretionary provisions or for the receipt of new and supplemental benefits are termed either "qualified recipients" or "limited recipients." *Note:* A district's action to amend its contract as discussed in paragraphs (a)(3) (i) and (ii) of this section makes the discretionary provisions binding on all individuals and legal entities with landholdings in that district but does not make the discretionary provisions binding on the members of the legal entity as to their landholding held outside the legal entity and outside of the district. Land held by a prior law member of a legal entity is counted toward the member's 160-acre entitlement.

(b) *Standard article for contract amendments.* New contracts executed after October 12, 1982, or contracts which are amended to conform to the discretionary provisions of title II shall contain the following provision:

> The parties agree that the delivery of irrigation water or use of Federal facilities pursuant to this contract is subject to Reclamation law, as amended and supplemented, including but not limited to the Reclamation Reform Act of 1982 (Pub. L. 97-293).

(c) *Master contract-subcontract arrangements.* Where a district is a party to a contract which permits the district to distribute the irrigation water made available to the district to other districts pursuant to subcontracts, the applicable acreage limitation and pricing provisions of Reclamation law shall apply exclusively to those districts and landholders who are entitled to receive such irrigation water. In cases in which the United States is a party to a subcontract which conforms to prior law, the subcontract may be amended to conform to the discretionary provisions without affecting the terms of the master contract or any other subcontracts arising from the master contract and without subjecting the master contractor or any other subcontractor to the discretionary provisions. In cases in which the United States is not a party to a subcontract which conforms to prior law, such subcontract may not be amended to conform to the discretionary provisions absent it being further amended to make the United States an additional party to that subcontract.

(1) The application of this rule may be illustrated by the following:

*Example (1).* Districts A, B, and C are members of a water conservancy district which entered into a master contract with the United States prior to October 12, 1982. The water conservancy district has allocated all the irrigation water made available to it under the master contract to Districts A and B, pursuant to pre-October 12, 1982, subcontracts with the conservancy district to which the United States is a party. However, the irrigation water is not made available to District C or any other districts or landholders within the water conservancy district. Consequently, Districts A and B are subject to the acreage limitation and pricing provisions of prior law. Districts A and B may amend their subcontracts to conform to the discretionary provisions without making it necessary for the conservancy district or the other subcontracting entity with the conservancy district to so amend their contract or the subcontract.

*Example (2).* District XYZ has a pre-October 12, 1982, contract with the United States for the delivery of irrigation water. The district also has allocated that irrigation water pursuant to subcontracts with six subcontracting entities. However, the United States is not a party to these subcontracts. A subcontractor may choose to come under the discretionary provisions only if it makes the United States a party to the subcontract. Such action will not require the prior law master contractor or the other subcontractors to so amend.

*Example (3).* District A, a master contracting agency, executes a water service contract with the United States after October 12, 1982. The irrigation water is to be delivered to only two of the eight member agencies within District A. Subcontracts are executed between District A, the United States, and each of the two member agencies to provide irrigation water service to the two member agenices. In this instance, the discretionary provisions become applicable to only the two member agencies which execute subcontracts with District A and the United States.

(d) *Individual elections to conform to the discretionary provisions*—(1) *Individual election.* Landowners or lessees who meet the requirements for becoming either a qualified or limited recipient, as set forth in § 426.4, may elect to become subject to the discretionary provisions even if the district has not taken action to become subject to the discretionary provisions. The individual election is effected by executing an irrevocable election in a form provided by the Secretary. The landholder exercising the election shall be considered a qualified or limited recipient, as appropriate, and all irrigation land in the recipient's landholding shall be subject to the discretionary provisions. The election shall be binding on the elector and the irrigation land in his or her holding but will not be binding on a subsequent landholder of that land. The irrevocable election by a legal entity is binding only upon that entity and not on the members of that entity. Similarly, an irrevocable election by a member of a legal entity binds only that member making the election and not the entity.

(2) *Disposition of irrevocable election forms.* The recipient's original irrevocable election form shall be filed with the Bureau of Reclamation and shall be accompanied by a completed certification form, the contents of which are discussed in § 426.10. Copies of the irrevocable election and certification form(s) must be filed concurrently with each district. The Bureau shall prepare a letter advising the recipient of the approval or disapproval of the election. If approved, the letter of approval, with a copy of the irrevocable election form and the original certification form(s), will be sent to each district in which the elector owns or leases land. Such forms shall be retained by the district(s). If disapproved, the landowner and the district will be advised by letter along with the reasons for disapproval.

(3) *District reliance on election information.* The district shall be entitled to rely on the information contained in the election form without being required to make an independent investigation of the information.

(e) *Time limits*—(1) *District amendments.* There are no time limits on when a district may request its contract be amended to conform to the discretionary provisions, provided, should a district not amend its contract to conform to the discretionary provisions by April 12, 1987, the full-cost rate must be paid by prior law recipients for irrigation water to land in excess of their non-full-cost entitlement, as set forth in § 426.7(c)(3).

(2) *Individual elections.* There are also no time limits on when an individual landowner or lessee may make an irrevocable election.

**§ 426.6 Ownership entitlement.**

(a) *In general.* Ownership entitlement is determined by whether the landowner is a "qualified recipient," a "limited recipient," or a "prior law recipient." All irrigation land shall be considered in the ownership computations except as stipulated in paragraphs (e) and (f) of this section.

(b) *Qualified recipient entitlement.* Except as provided in paragraph (b)(4) of this section and in §§ 426.9, 426.11, and 426.16, a qualified recipient is entitled to irrigate a maximum of 960 acres of owned land with irrigation water. This entitlement applies on a westwide basis. All individual ownership and multiownership arrangements are qualified recipients provided they meet the following conditions:

(1) *Individual landowners.* All individual landowners are qualified recipients if they are citizens of the United States or resident aliens thereof and have met the contract requirements for a qualified recipient as set forth in § 426.5. As such, they are entitled to receive irrigation water for use on a maximum of 960 acres of land owned westwide in addition to land owned that is subject to a recordable contract and land acquired in the past 5 years through an involuntary process of law as described in § 426.16.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Farmer X is a citizen of the United States and receives irrigation water on 160 acres owned in District A. District A amends its contract to conform to the discretionary provisions. Farmer X automatically becomes a qualified recipient by virtue of the district decision and is entitled to receive irrigation water on a maximum of 960 acres of irrigation land in his ownership.

*Example (2).* Farmer Y is a citizen of Germany, but has taken up permanent residency in the United States. Farmer Y owns 160 acres in District A and desires to purchase an additional 800 acres. District A has not amended its contract to conform to the discretionary provisions. Farmer Y, however, decides to execute an irrevocable election. After the election, Farmer Y becomes eligible to receive irrigation water on 960 acres of owned land. This eligibility as a qualified recipient remains in force so long as Farmer Y, as a resident alien, maintains permanent residency in the United States. If Farmer Y were to become a United States citizen, his eligibility as a qualified recipient would, of course, remain in force.

*Example (3).* Farmer Z is a citizen and resident of Switzerland. Farmer Z owns 160 acres of irrigation land in District A. District A amends its contract to conform to the discretionary provisions. Because Farmer Z, as an individual nonresident alien, cannot meet the requirements of either a qualified recipient or limited recipient and because he owned the irrigation land prior to the district's contract amendment, Farmer Z may, as set forth in § 426.11(k), place the land under recordable contract and receive irrigation water at the non-full-cost rate for 5 years. (If the land were not placed under recordable contract or had Farmer Z not acquired the irrigation land prior to the district's contract amendment, the 160 acres owned would be ineligible for service until such time as it was sold or otherwise transferred to an eligible recipient or Farmer Z qualifies as a resident alien in the United States.)

(2) *Husband and wife.* A husband and wife, and all dependents, are considered as one qualified recipient and are entitled to irrigate a maximum of 960 acres of land owned on a westwide basis with irrigation water, provided, either husband or wife is a citizen of the United States or a resident alien thereof and the contract requirements as set forth in § 426.5 have been met. A qualified recipient may also hold and receive irrigation water on land under recordable contract and land acquired in the last 5 years through an involuntary process of law as described in § 426.16.

(i) The application of this rule may be illustrated by the following:

*Example (1)* Farmer X and her husband are a qualified recipient by virtue of an irrevocable election. They own in joint tenancy 960 acres of land eligible for irrigation water. They are in compliance with the ownership entitlement applicable to a qualified recipient.

*Example (2).* Farmer Y and Farmer Z are a married couple, and each owns 480 acres of irrigation land under separate title in District A. District A has amended its contract to conform to the discretionary provisions. Even though the land is held in separate title, Farmer Y and Farmer Z have reached the limits of eligibility to receive irrigation water as a qualified recipient.

(3) *Multiownership arrangement.* All multiownership legal entities are considered to be qualified recipients, provided that: the ownership is a legal entity established under State or Federal law, the entity does not benefit more than 25 natural persons, and the entity has met the contract requirements for a qualified recipient as set forth in § 426.5. As qualified recipients, they are eligible to receive irrigation water on a maximum of 960 acres of land owned westwide in addition to land subject to recordable contract and land received in the past 5 years through an involuntary process of law as described in § 426.16. In a corporate ownership, irrigation land held by a subsidiary entity is counted against the ownership of its parent entity. The requirement of U.S. residency for aliens does not apply to individual interests in multiownership legal entities. However, a nonresident alien may not receive irrigation water for a cumulative westwide ownership in excess of 960 acres through corporate or any other legal entity ownership arrangement.

(i) The application of this rule may be illustrated by the following:

*Example (1).* XYZ Farms is a general partnership comprised of four individuals who are qualified recipients who own equal and separable interest in the 960-acre partnership. All other requirements as set forth in § 426.6(b)(3) have also been met. Therefore, XYZ Farms satisfies the requirements for a qualified recipient and may receive irrigation water for all 960 acres in its ownership. Moreover, the members of the partnership, as qualified recipients, may each receive irrigation water on a maximum of 720 acres in some ownership or ownerships other than XYZ Farms.

*Example (2).* Six brothers who are citizens and residents of Canada form a family corporation with each holding equal shares in the corporation. They are able to satisfy all other conditions set forth in paragraph (b)(3) of this section; therefore, the corporation is a qualified recipient and as such is entitled to receive irrigation water on 960 acres or less of owned land. In this example, each brother may receive irrigation water on up to an additional 800 acres owned in legal entities other than the family corporation. Nonresident aliens may receive irrigation water only on lands held by legal entities and may not receive irrigation water on land they own directly. Under the discretionary provisions, the brothers cannot meet the requirements of a qualified recipient under individual ownership, as set forth in paragraph (b)(1) of this section, since none are citizens of the United States or residents aliens thereof.

*Example (3).* Corporation A is a qualified recipient receiving irrigation water on a landholding of 960 acres. Farmer Brown is

also a qualified recipient who owns 25 percent of Corporation A and farms 800 acres of owned land using irrigation water. In this instance, Farmer Brown exceeds his individual ownership entitlement by 80 acres and must either divest an appropriate share of his ownership in Corporation A or designate 80 acres owned as ineligible.

*Example (4).* Corporation W and Corporation X, subsidiaries of Corporation Z, each own 480 acres in District A which has amended its contract to conform to the discretionary provisions. The landholdings of Corporation W and X are counted against the entitlement of the parent corporation, Corporation Z. Since Corporation Z is a qualified recipient, all of the 960 acres are eligible to receive irrigation water.

(4) *Trusts.* An individual or corporate trustee holding land in a fiduciary capacity is not subject to the ownership or pricing limitations imposed by title II nor any other provisions of Federal Reclamation law; provided, the trust agreement: is in writing and is approved by the Secretary, identifies the beneficiaries, and describes the interests of the beneficiaries. However, the interest of each beneficiary (qualified or limited recipient) in trust land in combination with other land directly or indirectly owned by such beneficiary shall not exceed the ownership entitlement of title II unless the land is either under recordable contract or was acquired and is eligible under the involuntary acquisition process provided in § 426.16.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Bank X is the trustee for five trusts, each of which has more than one beneficiary. The trusts contain 1,280, 960, 640, 800, and 400 acres, respectively. The land in the trusts is in districts which have amended their contracts to conform to the discretionary provisions of title II. Since the ownership and pricing limitations of title II do not apply to Bank X as trustee for the trusts, all 4,080 acres in the five trusts are eligible to receive irrigation water at the contract rate. However, if a beneficiary owned directly or indirectly other irrigation land which, when combined with his beneficial interest in the subject trust, caused him to exceed the 960-acre ownership limitation, that beneficiary would be required to designate the nonexcess land for which irrigation water could be supplied.

*Example (2).* Farmer X, a qualified recipient, establishes a testamentary trust by placing 640 acres of his land receiving irrigation water in a trust for his minor child upon his death. Farmer X designates his brother as trustee for the trust. The land is located in a district which has amended its contract to come under the discretionary provisions of title II. The brother, who is designated as trustee for the trust, owns 800 acres in the same district which receives an irrigation water supply. Farmer X dies, and the testamentary trust he has established is activated. The brother, as trustee, is entitled to receive irrigation water for the land in trust as well as the land he owns.

Note.—The land placed in the testamentary trust by Farmer X would be counted against his entitlement during his lifetime as long as the land remained in his ownership.

*Example (3).* Farmer X, a qualified recipient, owns 960 acres eligible to receive irrigation water. He decides to place 160 acres of this land in a living trust with his daughter as the life tenant. The 160 acres of trusted land shall be attributed to the daughter's entitlement if she is independent. If she is a dependent, the 160 acres of trusted land shall be attributed to Farmer X or to the person upon whom she is dependent.

(c) *Limited recipient entitlement.* Except as provided in §§ 426.9, 426.11, and 426.16, a limited recipient is entitled to irrigate 640 acres of owned land with irrigation water. This entitlement applies on a westwide basis. All legal entities established under State or Federal law benefiting more than 25 persons are limited recipients provided they have met the contract requirements for a limited recipient as set forth in § 426.5. In a corporate ownership, irrigation land held by a subsidiary entity is counted against the ownership of its parent entity. The requirement of U.S. residency does not apply to aliens who have an interest in a limited recipient. However, a nonresident alien may not receive irrigation water for a cumulative westwide ownership in excess of 960 acres through corporate or any other legal entity ownership arrangement.

(1) The application of this rule may be illustrated by the following:

*Example (1).* ABC Fertilizer Company is a corporation registered in Nebraska and owns 640 acres in District A. District A has amended its contract to conform to the discretionary provisions of title II. ABC Fertilizer Company benefits more than 25 persons and therefore automatically becomes a limited recipient, with all 640 acres of owned land in the corporation eligible to receive irrigation water.

*Example (2).* XYZ Land Company, a corporation benefiting more than 25 persons and registered in the State of California, owns 320 acres in District A. In the absence of district action, the company makes an irrevocable election to conform to the discretionary provisions of title II. Thereby XYZ Land Company becomes a limited recipient and is entitled to receive irrigation water on 640 acres or less owned westwide.

*Example (3).* CDE Development Company is a corporation with more than 25 shareholders which chose to incorporate in the Greater Antilles. CDE Development Company buys 320 acres in a district which has amended its contract to conform to the discretionary provisons of title II. However, until such time as CDE Development Company establishes itself as a legal entity under State or Federal law, none of its land is eligible for irrigation water. Had CDE Development Company been receiving irrigation water on 160 acres prior to the district's amendment, it could have continued to receive irrigation water for 5 years under the conditions set forth in § 426.11.

*Example (4).* Corporation X owns 640 acres in District A as does Corporation Y. Both are subsidiaries of Corporation Z. District A has amended its contract to conform to the discretionary provisions of title II. The landholdings of Corporation X and Y, since they are subsidiaries of Corporation Z, are counted against the entitlement of the parent corporation, Corporation Z. Corporation Z is a limited recipient; therefore, only 640 acres of the 1,280 acres are eligible to receive irrigation water.

*Example (5).* Farmer X, a qualified recipient, owns 960 acres of land receiving an irrigation water supply. Farmer X is also a shareholder in the XYZ Corporation, a limited recipient, which receives irrigation water for 640 acres it owns. Farmer X's interest in the land in the XYZ Corporation is not counted against his entitlement because he holds less than 4 percent of the stock in the limited recipient corporation, § 426.10(D). Thus, Farmer X is entitled to receive irrigation water for the 960 acres he owns, and the XYZ Corporation is entitled to receive irrigation water for the 640 acres it owns.

(d) *Prior law recipients*—(1) *Individuals.* Individuals are entitled to receive irrigation water on a maximum of 160 acres owned in each district; provided, the land was acquired on or before December 6, 1979. The 160-acre entitlement for an individual applies on a westwide basis to all land acquired after December 6, 1979.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Farmer X owns 160 acres of irrigation land in each of four districts. None of the districts in which Farmer X owns land has amended its contract to conform to the discretionary provisions, and Farmer X held title to the land prior to December 6, 1979. Thus, Farmer X remains eligible to receive irrigation water on the 640 acres owned in the four different districts.

Note.—If title to the irrigated land changes hands, the 160-acre westwide entitlement will automatically apply to the transferred land.

*Example (2).* Farmer Y owns 160 acres in each of two nonamending districts, and all of the acreage is eligible for irrigation water by virtue of the fact Farmer Y owned the land prior to December 6, 1979. On January 1, 1983, Farmer Y purchases another 160 acres of Farmer Z's nonexcess land which is located in a third nonamending district. The land newly purchased in this district becomes ineligible for service until such time as it is either sold to an eligible buyer at a price approved by the Secretary, the sale is canceled, the land is redesignated with approval by the Secretary, or Farmer Y becomes subject to the provisions as set forth in § 426.11(c)(2)(i).

(2) *Husband and wife.* A husband and wife, or surviving spouse until remarriage, are entitled to receive irrigation water on a maximum of 320 acres of land jointly owned in each district; provided, each spouse holds an equal interest and provided further that the land was acquired on or before December 6, 1979. The 160-acre entitlement for an individual (320 acres for husband and wife) applies on a westwide basis to all land acquired after December 6, 1979.

(i) The application of this rule may be illustrated by the following:

*Example.* Farmer X and his wife own 320 acres of irrigation land in District A and also 320 acres in District B. The couple purchased both parcels of land in 1976. Districts A and B remain subject to prior law, and Farmer X and his wife have not made an irrevocable election. Since the land was purchased prior to December 6, 1979, Farmer X and his wife are entitled to receive irrigation water on all 320 acres in each district. The couple has reached the limit of their ownership entitlement for receiving irrigation water in these two districts.

(3) *Tenants-in-common and joint tenancies.* Each individual in a tenancy-in-common or a joint tenancy subject to prior law is entitled to receive irrigation water on a maximum of 160 acres owned through his or her interest in the tenancy. A prior law recipient may receive irrigation water, through this interest and any other ownership arrangements, on no more than 160 acres owned in each district; provided, the land was acquired on or before December 6, 1979. The 160-acre entitlement for an individual (320 acres for a married couple) applies on a westwide basis to all land acquired after December 6, 1979. An individual subject to the discretionary provisions, through his or her interest in a prior law tenancy and any other ownership arrangements, may receive irrigation water on no more than 960 acres westwide.

(i) The application of this rule may be illustrated by the following:

*Example.* Farmer X and Farmer Y have formed a tenancy-in-common in which each holds equal interest. The tenancy owns 320 acres of irrigation land in District A. District A has not amended its contract to become subject to the discretionary provisions. Both Farmers X and Y own irrigation land only through their interests in the tenancy; however, Farmer Y wishes to purchase additional land in the district so he makes an irrevocable election.

Since the tenancy remains subject to prior law, Farmers X and Y may each receive irrigation water on a maximum of 160 acres through their interests in the entity. Therefore, the tenancy's 320 acres remain eligible to receive irrigation water, but the tenancy and Farmer X have both reached the limits of their ownership entitlements under prior law. However, as a qualified recipient, Farmer Y may receive irrigation water on an additional 800 acres of land owned either as an individual or through other ownership arrangements.

(4) *Partnerships.* Each individual who is a partner in a partnership subject to prior law is entitled to receive irrigation water on a maximum of 160 acres owned through his or her interest in the partnership, provided each partner has a separable interest in the partnership and the right to alienate that interest. A prior law recipient may receive irrigation water, through this interest and any other ownership arrangements, on no more than 160 acres in each district, provided the land was acquired on or before December 6, 1979. A partner subject to the discretionary provisions, through his or her interest in the partnership and any other ownership arrangements, may receive irrigation water on no more than 960 acres westwide. A partnership in which each partner does not have a separable interest and the right to alienate that interest is entitled to receive irrigation water on a maximum of 160 acres of land owned by the partnership.

(i) The application of this rule may be illustrated by the following:

*Example.* XYZ Farms, a partnership composed of four individuals who hold equal and separable interests in the partnership, owns 960 acres of irrigation land located in District A. District A has not amended its contract to become subject to the discretionary provisions. XYZ Farms and two of the partners are subject to prior law; the other two partners have made irrevocable elections. Neither XYZ Farms nor any of the partners owns irrigation land outside the partnership. Based on these facts, each partner may own and receive irrigation water on a maximum of 160 acres through the partnership. Therefore, 640 of XYZ Farms' 960 acres are entitled to receive irrigation water. The two partners who have made irrevocable elections may each purchase and receive irrigation water on another 800 acres outside the partnership in order to complete their individual 960-acre ownership entitlement for qualified recipients.

(5) *Corporations.* All corporations are considered to be individual entities and as such are entitled to receive irrigation water on a maximum of 160 acres owned in each district; provided, the land was acquired on or before December 6, 1979. The 160-acre entitlement applies on a westwide basis for all land acquired after December 6, 1979. No shareholder in a corporation through his or her interest in the corporation and any other ownership arrangement shall receive irrigation water on land owned in excess of his or her individual entitlement under Reclamation law. Irrigation land held by a subsidiary entity is counted against the ownership entitlement of its parent entity.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Two brothers are the sole stockholders and hold equal shares in Corporation XYZ. The corporation owns 160 acres of irrigation land in District A. District A has not amended its contract to become subject to the discretionary provisions and neither the brothers nor the corporation has made an irrevocable election. Thus, the corporation has reached its ownership entitlement for receiving irrigation water under prior law. Based on their 50 percent interests in the corporation, 80 acres will be counted against each of the two brothers' individual entitlements. Each brother may also purchase and receive irrigation water on another 80 acres outside the corporation to complete his individual 160-acre ownership entitlement.

*Example (2).* Corporation ABC owns 320 acres in District A. Corporation ABC's two shareholders, Farmer X and Farmer Y, hold equal interests in the corporation. Both District A and Farmer X are subject to prior law; however, Farmer Y is a qualified recipient by virtue of having made an irrevocable election. As a corporation subject to prior law, only 160 of Corporation ABC's 320 acres are eligible to receive irrigation water. Eighty acres of the corporation's ownership is attributed to each shareholder. As a prior law recipient, Farmer X may receive irrigation water on another 80 acres of irrigation land through ownership arrangements outside the corporation in order to complete his individual 160-acre ownership entitlement. To complete his 960-acre ownership entitlement as a qualified recipient, Farmer Y may receive irrigation water on an additional 880 acres outside the corporation.

*Example (3).* Corporation P and Corporation S, which are established under Canadian law, each owns 160 acres of irrigation land in District A. Corporation S is a wholly owned subsidiary of Corporation P. District A has not amended its contract to become subject to the discretionary provisions. Since Corporation S is a subsidiary of Corporation P, its entitlement is counted against Corporation P. Therefore, only 160 acres of the 320 acres are eligible to receive irrigation water.

(6) *Trusts.* Land held by an individual or corporate trustee in a fiduciary capacity is not subject to the ownership limitations imposed by prior law. However, the interest of each beneficiary in the trust land in combination with other land he or she may own shall not exceed the ownership entitlement of prior law.

(e) *Exemptions from ownership limitation.* Irrigation land owned in districts which have been exempted, § 426.13(a) (1) and (2), will not be

counted against ownership entitlement. Neither will isolated tracts, § 426.13(a)(4), be counted against ownership entitlement.

(f) *How ownership entitlement is to be computed.* With the exception of land under recordable contract, § 426.11(e), all designated nonexcess land, § 426.11(b), and all acreage receiving irrigation water on other than a temporary or short-term basis, as defined in § 426.13(a)(3), from a Reclamation project in a district which is subject to acreage limitation shall be counted against the appropriate ownership entitlement; i.e., qualified recipient, limited recipient, etc.

(1) The principles of this rule may be illustrated by the following:

*Example (1).* Farmer X, a qualified recipient, owns 1,400 acres in District A and has designated 960 acres as nonexcess and eligible to receive irrigation water. Even though Farmer X may not irrigate all 960 acres every year, all of the designated acreage is counted against his entitlement.

*Example (2).* Farmer Y, a qualified recipient, owns 640 acres receiving irrigation water in District A. Farmer Y also owns 320 acres which are not in a district, but Farmer Y has entered into a 10-year contract with the United States for irrigation water for that land. All 960 acres receiving irrigation water must be counted for purposes of determining ownership entitlement.

*Example (3).* Farmer Z, a prior law recipient, owns 160 acres in District A. This acreage was classified as to its arability during project planning and only 120 acres were deemed irrigable and eligible to receive irrigation water. Some years subsequent to this determination, Farmer X installed a center pivot irrigation system and now irrigates 160 acres with the same amount of water as he once used to irrigate 120 acres. For purposes of entitlement, all 160 acres must be counted.

(g) *Multidistrict ownerships.* Landowners may own irrigable and/or irrigation land in more than one district (multidistrict ownerships). If any one of the districts in which a landowner owns irrigation land becomes subject to the discretionary provisions, the multidistrict landowner automatically becomes subject to the discretionary provisions. Thus, the irrigation land owned by that recipient in all districts becomes subject to the acreage entitlement of a qualified or limited recipient, provided the landowner can meet the requirement for being such a recipient. However, as set forth in § 426.5, a contract action which causes a district to be subject to the discretionary provisions is binding on individuals and legal entities with landholdings within that district but is not binding on the members of legal entities as to their landholdings outside the legal entity if the individual owns no irrigation land within the district. If a landowner with multidistrict ownership makes an irrevocable election in one district, the irrigation land he, she, or it owns in all districts becomes subject to the discretionary provisions. As stated in section 426.5(d), an irrevocable election by a multidistrict landowner which is a legal entity shall be binding on the legal entity but not on the members of that entity. If all districts in which a prior law recipient holds irrigation land remain subject to prior law, the 160-acre ownership entitlement shall apply on a district-by-district basis, provided the land was acquired prior to December 6, 1979. If any of the owned land was acquired after December 6, 1979, its eligibility will be determined on a westwide basis.

(1) The application of this rule may be illustrated by the following:

*Example (1).* Landowner X is a U.S. citizen and owns 160 acres in each of Districts A, B, C, and D. All of this land is receiving irrigation water. District A amends its contract to conform to title II. Thereby, Landowner X automatically becomes a qualified recipient by virtue of the fact he is a U.S. citizen and is entitled to receive irrigation water on 960 acres owned westwide. Since, in this case, Landowner X's total present ownership is 640 acres, he would be entitled to receive irrigation water on another 320 acres owned.

*Example (2).* Landowner Y is a citizen of the United States and owns 160 acres in each of Districts A, B, C, D, E, and F. All of his land is receiving irrigation water. In the absence of district action, Landowner Y makes an irrevocable election in District A. By this action Landowner Y automatically becomes a qualified recipient and all owned land receiving water in Districts B, C, D, E, and F must be included in his ownership entitlement considerations. Since in this case the landowner already owns 960 acres of irrigation land, he has reached his maximum ownership entitlement.

(h) *Loss of eligibility.* An owner who is receiving irrigation water, and acquires additional irrigable land, shall lose eligibility on any newly purchased land that exceeds the owner's entitlement unless:

(1) If irrigation facilities are available to land which is purchased from nonexcess status in excess of an owner's entitlement, eligibility shall be reestablished if the land is (i) redesignated as nonexcess, § 426.11(b), or (ii) sold at a price approved by the Secretary to an eligible buyer, (iii) the sale is canceled, or (iv) if the landowner is a prior law recipient, such land can regain eligibility if the landowner becomes subject to the discretionary provisions and redesignates such land up to his entitlement as nonexcess, as set forth in § 426.11(c)(2)(i).

(2) In the case of land for which irrigation water is not available because facilities have not been constructed to provide such water, the landholder may, in addition to the options available in the preceding paragraph, place the land under recordable contract.

(i) The principles of this rule are illustrated by the following:

*Example.* Farmer X meets all of the criteria for a qualified recipient as set forth in § 426.6(b)(1) but remains under prior law. Farmer X irrigates 160 acres of owned land in District A as he is entitled to do. Subsequent to his determination of eligibility, Farmer X buys, in District B, a 160-acre farm which is also receiving irrigation water. All land purchased by Farmer X in District B thereby becomes ineligible for service until such time as Farmer X either redesignates the land as nonexcess, cancels the sale, sells the farm in District B at a price approved by the Secretary, or he makes the land eligible by electing to come under the discretionary provisions. If the 160 acres which Farmer X purchased had never received irrigation water and were in an area for which water distribution facilities had not been constructed, Farmer X could, as provided for in § 426.11(e), place the 160 acres under recordable contract when the facilities became available to serve the land.

**§ 426.7 Leasing and full-cost pricing.**

(a) *What constitutes a lease.* A lease is a contract by which one party (the landlord or lessor) gives to another (the tenant or lessee):

(1) The use and possession of land (including, in some cases, associated buildings, machinery, etc.);

(2) For a specified time.

(3) For agreed upon payments (cash or other consideration); and

(4) The lessee assumes the economic risk in the operation and management of the leased land.

(1) *Exceptions.* (i) Management arrangements or consulting agreements in which (1) the manager or consultant performs a management or consulting service for the landowner for a fee but does not assume the economic risk in the farming operation, and (2) the landowner retains the right to the use and possession of the land, is responsible for payment of the operating expense, and is entitled to receive the profits from the farming operation, shall not be considered a lease. At the Secretary's request, the landowner shall be responsible for providing information concerning a farm management arrangement or a consulting arrangement.

(A) The application of this rule may be illustrated as follows:

*Example (1).* (a) Farmer W is a surviving spouse who has elected under the discretionary provisions and receives

irrigation water on 960 acres in District A. Her son, Farmer S, is subject to prior law and owns and receives water on 160 acres, also in District A. (b) In addition to farming his own 160 acres, Farmer S operates Farmer W's equipment in performance of all the physical farm work on his mother's 960 acres and receives compensation for such services, which does not consist of a share of the crop or is not based, in advance, on the degree of economic success or failure of the production or marketing of the crop. Farmer W retains at all times the economic risk associated with both crop production and marketing from her 960 acres. Such an arrangement between Farmer W and Farmer S constitutes a farm management arrangement and not a lease.

*Example (2).* Same facts as in example (1), part (a). In addition to farming his own 160 acres, Farmer S has use and possession of his mother's land and utilizes his farm equipment in the operation of his mother's farm in exchange for a fee. The fee received by Farmer S depends materially upon the degree of economic success or failure of the crop production or marketing of the crops grown on his mother's farm. This arrangement between Farmer W and Farmer S constitutes a lease and not a farm management arrangement or agreement.

(ii) Nonreclamation dependent activities. A contract arrangement for nonreclamation dependent activities which allow for limited use of the land shall also not be considered a lease. Examples of such activities are incidental grazing or use of crop residue from irrigated crops grown on the land.

(b) *The form and provisions of a lease*—(1) *Present leases.* All leases must be in writing and made available by the leaseholders to the Secretary for inspection at the Secretary's request. The term of the lease may not exceed 10 years, including any exercisable option, except in the case of a lease of land for the production of perennial crops having an average life of more than 10 years. In that case, the lease may be for a period of time equal to the average life of the perennial crop, as determined by the Secretary, provided the lease does not exceed 25 years.

(2) *Written leases in existence prior to October 12, 1982.* Land under written leases which were in existence prior to October 12, 1982, and which have a remaining term of longer than 10 years will become ineligible to receive irrigation water after October 12, 1992, unless the leased land is used for the production of perennial crops having an average life of more than 10 years. In that case, the leased land may be eligible for a period of time equal to the average life of the perennial crop, as determined by the Secretary, provided the lease does not exceed 25 years.

(c) *Full-cost acreage thresholds.* There is a limit on the amount of land for which a landholder may receive irrigation water at a non-full-cost rate. The maximum acreage a landholder may irrigate with less-than-full-cost irrigation water is called the landholder's non-full-cost entitlement. All owned or leased land receiving irrigation water counts against a landholder's non-full-cost entitlement, with the following exceptions: exempt land, except for isolated tracts, as provided in § 426.13(a)(4); and land acquired through involuntary processes, as provided in § 426.16. All land counted against a landholder's non-full-cost entitlement shall be counted on a cumulative basis during any one water year. A landholder in excess of the non-full-cost entitlement may select in each water year, from nonexempt eligible land in the holding, that land which will be subject to the full-cost rate. That selection may include owned land, leased land, land under recordable contract, or a combination of all three. However, land under recordable contract may not be selected as land subject to the full-cost rate if such land is already subject to full-cost pricing under an extended recordable contract as provided in § 426.11(i)(4). Once a landholder reaches the limits of his or her non-full-cost entitlement during a water year, the selection of non-full-cost land is binding for the remainder of that water year. Land subject to full-cost pricing due to the status of either the owner or the lessee can receive irrigation water only at full cost. Districts shall collect full-cost rates from those landholders to whom such costs are attributable rather than averaging the costs over the entire district. Land which is subleased (the lessee transfers his or her interest to a sublessee) will be attributed to the landholding of the sublessee.

(1) *Non-full-cost entitlement for qualified recipients.* The non-full-cost entitlement for qualified recipients is 960 acres, or the class 1 equivalent thereof, computed on a cumulative basis during any one water year. The full-cost rate must be paid for irrigation water delivered to all eligible land owned or leased in excess of a qualified recipient's non-full-cost entitlement, except for (i) land subject to a recordable contract unless as otherwise provided in §§ 426.11(e) and 426.11(i)(4); (ii) exempt land other than isolated tracts, as provided in § 426.13(a)(4); and (iii) land acquired through involuntary processes, as provided in § 426.16.

(i) The application of this rule may be illustrated as follows:

*Example (1).* Farmer X, a qualified recipient, receives irrigation water on 900 of the 960 acres of irrigable land in his ownership in District A. Farmer X leases and receives irrigation water on another 320 acres in District B. Since Farmer X receives water on 260 acres in excess of his non-full-cost entitlement, he must select 260 acres—whether owned land, leased land, or a combination of both, and pay the full-cost rate for water delivered to that land.

*Example (2).* Farmer Y, a qualified recipient, owns and receives irrigation water on 960 acres in District A. Farmer Y decides to lease all 960 acres to another qualified recipient, Farmer Z. Farmer Z, however, already farms 960 acres receiving irrigation water. Therefore, the full-cost rate would have to be paid for irrigation water delivered to 960 acres of Farmer Z's landholding.

*Example (3).* Landholder X, a qualified recipient, owns 500 acres of irrigation land in District A which he leases to another farmer. Landholder X also leases 960 acres of irrigation land from Landholder Y in District B. Thus, there are 500 acres in Landholder X's total landholding which receive irrigation water in excess of his 960-acre non-full-cost entitlement and for which a full-cost rate must be paid.

*Example (4).* Landholder Y, a qualified recipient, receives irrigation water on 960 acres owned in District A and 800 acres leased in District B. At the beginning of the water year, Landholder Y selects 360 owned acres plus 600 leased acres to receive irrigation water at the non-full-cost rate. He pays the full-cost rate for water delivered to the remaining 800 acres. In July, Landholder Y terminates the lease on the 600 acres of leased land which are part of his non-full-cost entitlement. However, since non-full-cost acreage is counted against one's entitlement on a cumulative basis during any one water year, Landholder Y has already reached the limits of his non-full-cost entitlement for this water year. Therefore, Landholder Y may not replace in that water year those 600 non-full-cost acres, even though they no longer receive irrigation water, with 600 acres from his full-cost land. Landholder Y must pay the full-cost rate for irrigation water delivered to any other land he irrigates during that water year.

*Example (5).* Landholder Z, a qualified recipient, owns and irrigates 1,120 acres, 160 of which are subject to a nonextended recordable contract. Landholder Z also irrigates 160 acres leased from another party. All of Landholder Z's landholding, a total of 1,280 acres, counts against his non-full-cost entitlement; therefore, he is in excess of his non-full-cost entitlement by 320 acres. However, the 160 acres under recordable contract are not subject to full-cost pricing, so Landholder Z need select only 160 acres from his total landholding for full-cost pricing.

(2) *Non-full-cost entitlement for limited recipients.* The non-full-cost entitlement for limited recipients that received irrigation water on or before October 1, 1981, is 320 acres or the class 1 equivalent thereof. The non-full-cost entitlement for limited recipients that did not receive irrigation water on or prior to October 1, 1981, is zero. The full-cost rate must be paid for irrigation water delivered to all eligible land owned or leased in excess of a limited

recipient's non-full-cost entitlement, except for (i) land subject to a recordable contract unless as otherwise provided in §§ 426.11(e) and 426.11(i)(4); (ii) exempt land other than isolated tracts, as provided in § 426.13(a)(4); and (iii) land acquired through involuntary processes, as provided in § 426.16.

(i) The application of this rule may be illustrated by the following:

*Example (1).* ABC Farms qualifies as a limited recipient but remains under prior law. It owns and was receiving irrigation water on 640 acres in District A prior to October 1, 1981. Of the total, 480 acres were and continue to be under a nonextended recordable contract. ABC Farms may continue to receive irrigation water at the non-full-cost rate on the 640 acres until the end of the recordable contract period. Upon electing, ABC Farms may amend the recordable contract to allow it to own and receive irrigation water on 640 acres owned. ABC Farms may receive irrigation water at the non-full-cost rate on 320 acres, but it must pay the full-cost rate on the additional 320 acres owned.

*Example (2).* XYZ Farms, a limited recipient, owns 640 acres of land eligible to receive irrigation water. The purchase of the land took place after October 1, 1981, and XYZ Farms was not receiving irrigation water on any other land on or before October 1, 1981. Therefore, in order for XYZ Farms to receive irrigation water for any eligible land, it must pay the full-cost rate for that water.

*Example (3).* FGH Fertilizer Company, a limited recipient, buys 160 acres of land receiving irrigation water in District A. The purchase of the land is made subsequent to October 1, 1981. However, the company was receiving irrigation water on 160 leased acres in District B prior to October 1, 1981. Therefore, the 160 acres recently purchased are eligible to receive irrigation water at the non-full-cost rate. If FGH Fertilizer Company buys or leases additional land, the company would have to select and pay the full-cost rate for any irrigation water delivered to land in excess of its 320-acre non-full-cost entitlement.

*Example (4).* The XYZ Corporation, a limited recipient, owns 640 acres of irrigation land in District A. Since the corporation was receiving irrigation water prior to October 1, 1981, it is entitled to irrigate 320 acres at the non-full-cost rate and 320 acres at the full-cost rate. If the corporation were to lease the owned land subject to full cost to another, the full-cost rate would still apply.

(3) *Non-full-cost entitlement for prior law recipients.* There is no full-cost pricing requirement until April 13, 1987, for prior law recipients, unless their land becomes subject to full-cost pricing through leasing to or from a party subject to the discretionary provisions. As of April 13, 1987, the full-cost rate must be paid for irrigation water delivered to all land leased in excess of a prior law recipient's maximum ownership entitlement as set forth in § 426.6(d); provided however, that for the purpose of computing the acreage subject to the full-cost rate, all owned and leased land receiving water westwide must be considered and further provided, that the full-cost rate will not apply to water delivered to land in excess of a prior law recipient's non-full-cost entitlement if the land is (i) subject to a recordable contract unless as otherwise provided in §§ 426.11(e) and 426.11(i)(4); (ii) exempt other than isolated tracts, as provided in § 426.13(a)(4); (iii) acquired through involuntary processes, as provided in § 426.16. A prior law recipient may select the land to be subject to full cost from any owned or leased land in his landholding, provided it is eligible and nonexempt.

(i) The application of this rule may be illustrated by the following:

*Example (1).* Farmer X and his wife receive irrigation water on 320 owned acres of irrigation land and on 40 leased acres in District A. District A has not amended its contract to become subject to the discretionary provisions and Farmer X and his wife have not made an irrevocable election. Since Farmer X and his wife receive irrigation water on 40 acres in excess of their 320-acre non-full-cost entitlement, the couple must select 40 acres in their landholding and, beginning April 13, 1987, pay the full-cost-rate for water delivered to that land. If Farmer X and his wife make an irrevocable election or if District A amends its contract to become subject to the discretionary provisions, the couple would thereby become a qualified recipient with a non-full-cost entitlement of 960 acres. Since their landholding is within that entitlement, Farmer X and his wife would be able to receive irrigation water at the non-full-cost rate on all 360 acres.

*Example (2).* Farmer X and his wife lease 640 acres of irrigation land in District A and another 640 acres of irrigation land in District B. Districts A and B have not amended their contracts to become subject to the discretionary provisions and Farmer X and his wife have not made an irrevocable election. Since there are 960 acres of land in excess of the couple's 320-acre non-full-cost entitlement, Farmer X and his wife must select 960 acres in their landholding and, beginning April 13, 1987, pay the full-cost rate for water delivered to that land.

*Example (3).* Four brothers hold equal and separable interests in a partnership they formed. The partnership owns 160 acres of irrigation land in District A and also leases another 320 acres from Farmer Y in District B. The partnership and Districts A and B remain subject to prior law. Since the partnership's landholding is within its 640-acre non-full-cost entitlement (160 x 4), no full-cost charges will be assessed to water delivered to any land in the holding.

*Example (4).* Farmer X, a prior law recipient, owns 5,000 acres of irrigation land in District A, 4,840 of which are under recordable contract. He receives irrigation water also on another 320 acres which he leases in this same district. Beginning on April 13, 1987, Farmer X will be receiving irrigation water on 5,160 acres (5,320–160) in excess of his non-full-cost entitlement. However, his recordable contract land is not subject to full-cost pricing; therefore, Farmer X must select 320 acres (5,160–4,840) for full-cost pricing. Although his recordable contract land is not subject to full-cost pricing, Farmer X may, at his option, select part or all of the 320 full-cost acres from the land under recordable contract in lieu of his nonexcess or leased land.

(d) *Multidistrict landholding.* If a landholder has multidistrict landholdings, only one of those districts in which he receives irrigation water needs to amend its contract for the landholder to automatically become a qualified or limited recipient and the landholder's owned and/or leased land receiving irrigation water in all districts to become subject to the discretionary provisions. Furthermore, a qualified or limited recipient remains such a recipient even after he disposes of his ownership or leasehold interest in land within a district subject to the discretionary provisions. An amendment by a district is also binding on legal entities with landholdings within a district but is not binding on the members of the legal entity as to their landholdings outside the legal entity and outside the district. In no case, however, shall a prior law recipient become a qualified or limited recipient by virtue of leasing irrigation land from a lessor who has made an irrevocable election.

(e) *Calculating full cost*—(1) *What constitutes full cost.* As set forth in § 426.4, the term "full cost" means an annual rate as determined by the Secretary that shall amortize the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal Reclamation law or applicable contract provisions, with interest on both accruing from October 12, 1982, on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to October 12, 1982. Operation, maintenance, and replacement charges required under Federal Reclamation law shall be collected in addition to the full-cost payment.

(i) *Amortization period.* The amortization period for calculating the full-cost rate shall be the remaining balance of the repayment period for the district as specified in its repayment contract. However, in those cases, such as in water service contracts, where payment by a district through its existing contract term will not fully discharge its obligation for repayment of

construction costs and where, in accordance with the project authorization the district must renew its water service contract, the district may extend the amortization period for the calculation of full costs by renegotiating its current water service contract at the time it amends its contract to conform to the discretionary provisions. The amortization period may extend up to the expiration date of the new contract, and the term of the new contract cannot exceed the payback period authorized by Congress. In cases where water services rates are designed to completely repay applicable Federal expenditures in a specific time period, that time period may be used as the amortization period for full-cost calculations related to these expenditures. Such an amortization period may not exceed the payback period authorized by Congress.

(ii) *Allocable construction expenditures.* For determining full cost, the construction costs properly allocable to irrigation are those Federal project costs which have been assigned to irrigation within the overall allocation of total project construction costs. Total project construction costs include all direct expenditures necessary to install or implement a project, such as planning, design, land, rights-of-way, water-rights acquisitions, construction expenditures, interest during construction, and when appropriate, transfer costs associated with services provided from other projects.

(iii) *Facilities in service (irrigation).* Facilities in service are those facilities which are in operation and providing irrigation services.

(iv) *Operation and maintenance deficits funded.* O&M deficits funded are the annual O&M costs including project-use pumping power allocated to irrigation which have been federally funded and which have not been paid by the irrigation contracting entity.

(v) *Payments.* In calculating the payments which have been received, all receipts and credits applied to repay or reduce allocated irrigation construction costs in accordance with Reclamation law, policy, and applicable contract provisions shall be considered. These may include: (A) direct repayment contract revenues, (B) net water service contract income, (C) contributions, (D) ad valorem taxes, and (E) other miscellaneous revenues and credits excluding power and M&I (municipal and industrial) revenues.

(vi) *Unpaid balance.* The unpaid balance is the irrigation allocated construction costs plus cumulative federally funded O&M deficits, less payments.

(2) *Calculating the full-cost rate.* The Secretary will calculate a district's full-cost rate using accepted accounting procedures. The definition of "full cost" contained in title II does not recover interest charges retroactively before October 12, 1982, but interest charges on the unpaid full cost do accrue from the date of the act. The full-cost rate for amended contracts will be determined as of the date of enactment. The full-cost rate for districts which enter into contracts after the date of enactment will be determined at the time the new contract is executed. For repayment contracts, the full-cost rate will fix equal annual payments over the amortization period. For water service contracts, the full-cost rate will fix equal payments per acre-foot of projected water deliveries over the amortization period. If there are additional construction expenditures or the cost allocated to irrigation changes, then a new full-cost rate will be determined. The Secretary will notify the respective districts of changes in the full-cost rate at the time he notifies the district of other payments due the United States.

(i) The application of this rule may be illustrated by the following:

*Example (1).* District A contains 90,000 irrigable acres. The construction costs allocated to irrigation for the project and to be repaid by District A amount to $240 milion. As of October 12, 1982, the district's accumulated repayments are $174 million, the unpaid obligation on District A's repayment contract is $66 million, and 11 years remain on its contract term. The established annual contract rate is $66.67 per acre. This amount repays the outstanding balance of the contractual obligation in 11 years. As of October 12, 1982, the unpaid balance for full cost is $66 million (allocated cost, less payments) or $733.33 per acre, and the applicable interestrate is determined to be 7½ percent. Therefore, the equal annual payments for full cost would be $100.24. This payment is calculated using standard amortization tables and is equivalent to the annual payment necessary to retire a debt of $733.33 at a 7½ percent rate of interest over 11 years. This rate will apply regardless of when District A amends its contract.

*Example (2).* District B has a water service contract which establishes a rate of $6.50 an acre-foot for 90,000 acre-feet of water delivered to the district, a rate which is fixed over the remaining 10 years of the contract term. Currently, $1.00 of the $6.50 rate is used to pay annual O&M charges. The remainder is credited to the repayment of irrigation construction costs, although inflation over the next 10 years is expected to leave a $5.00 per acre-foot payment to irrigation, averaged over the remaining 10 years. The construction costs to be repaid from irrigation revenues and assignable to be repaid by the land in District B are $24 million, and the district has paid $15.5 million of those costs to date.

As of October 12, 1982, the accumulated payments credited to repayment on construction are $15.5 million. The unpaid balance for full cost is $8.5 million ($24 million less $15.5 million), and the applicable interest rate is determined to be 7½ percent. Amortizing the unpaid balance over the remaining contract term of 10 years results in an annual full-cost rate of $1,384,016, or $15.38 per acre-foot. Normal O&M charges would be collected annually in addition to this rate.

Upon expiration of the current contract, the district expects to enter into a subsequent water service contract in order to expand its water deliveries. If District B desires to amortize its unpaid balance for full cost over a longer period than 10 years, it can choose to renegotiate its existing contract before the current contract expires to bring it into conformance with current Bureau policy. When the district renegotiates its contract, the unpaid balance for full cost could be reamortized, at the district's option, for any period up to the term of the new water service contract, which cannot exceed the repayment period authorized by Congress. For example, suppose the new water service contract runs for 18 years and is executed immediately. If the district chooses to amortize full cost over the longest permissible repayment period (18 years), then the full-cost rate would be $10.88 per acre-foot. If the district chooses to amortize over 15 years, the full-cost rate would be $11.96 per acre-foot, assuming the unpaid costs remain the same.

*Example (3).* District C contains 90,000 irrigable acres, and the construction costs allocated to irrigation for the project and assignable to be repaid amount to $240 million. As of October 12, 1982, the accumulated repayments of the district are $174 million. The district's repayment obligation is $200 million. (The $40 million difference between construction costs allocated to irrigation and the repayment obligation is scheduled to be paid from other project revenues.) The unpaid obligation on District C's repayment contract is $26 million, and 11 years remain on its contract term. The annual rate established by the contract is $26.26 per acre. This amount repays the outstanding balance of the contractual obligation in 11 years. As of October 12, 1982, the unpaid balance for full cost is $66 million (allocated cost, less payments) or $733.33 per acre, and the applicable interest rate is determined to be 7½ percent. Therefore, the equal annual payment for full cost would be $100.24 per acre.

*Example (4).* District D has a 40-year water service contract for 90,000 acre-feet of water per year. The District's current contract expires in 1997 and will be renewed for another 40-year term, resulting in an expiration date of 2036. Construction costs assigned to District D are $24 million, and such costs are to be repaid from irrigation water service revenues. As of October 12, 1982, the accumulated payments credited to construction costs are $15.5 million. The unpaid balance for full-cost is $8.5 million and the applicable interest rate is determined to be 7½ percent. Water service rates for this

project are designed to completely repay applicable expenditures by the end of the authorized repayment period, which occurs in 2030. Amortizing the unpaid balance over the remaining authorized repayment period of 48 years results in an annual full-cost charge of $657,945 or $7.31 per acre-foot. Normal O&M charges would be collected annually in addition to this rate. It should be noted that even though the contract renewal extends beyond 2030, the repayment period is limited to the authorized repayment period ending 2030, with full-cost rates calculated accordingly.

(f) *Interest rate calculations for full cost.* In determining full cost, the interest rates to be used will be determined by the Secretary of the Treasury as follows:

(1) *Qualified recipients and limited recipients receiving water on or before October 1, 1981.* (i) The interest rates for expenditures made on or before October 12, 1982, shall be the greater of 7½ percent per annum or the weighted average yield of all interest-bearing marketable issues sold by the Treasury during the fiscal year in which the expenditures were made by the United States.

(ii) The interest rate for expenditures made after October 12, 1982, shall be the arithmetic average of (A) the computed average interest rate payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for 15 years from the date of issuance at the beginning of the fiscal year in which the expenditures are made and (B) the weighted average yield on all interest-bearing marketable issues sold by the Treasury during the fiscal year preceding the fiscal year in which the expenditures are made.

(2) *Limited recipients not receiving irrigation water on or before October 1, 1981, and all recipients subject to prior law after April 12, 1987.* The interest rate shall be determined as of the fiscal year preceding the fiscal year in which expenditures are made except that the interest rate for expenditures made before October 12, 1982, shall be determined as of October 12, 1982. The interest rate shall be based on the arithmetic average of (i) the computed average interest payable by the Treasury upon its outstanding marketable public obligations which are neither due nor callable for redemption for 15 years from the date of issuance and (ii) the weighted average yield on all interest-bearing marketable issues sold by the Treasury.

**Note to Paragraph (f).**—Prior law recipients who become subject to the discretionary provisions after April 12, 1987, will then become eligible for the full-cost interest rate specified in paragraph (f)(1) of this section, unless they are limited recipients that did not receive irrigation water on or before October 11, 1981.

(g) *Proportional charges for full-cost water.* Methods for assessment of full-cost water charges. In situations where water delivery charges are contractually or customarily levied on a per-acre basis, full-cost charges shall also be assessed on a per-acre basis. In situations where water delivery charges are contractually or customarily levied on a per acre-foot basis, one of the following methods must be used to assess full-cost charges:

(1) *Direct assessment.* In situations where measuring devices are in use to reasonably determine the amounts of irrigation water being delivered to full-cost and non-full-cost land to the satisfaction of the Secretary, assessments shall be based on the actual amounts of water used.

(2) *Proportional charges.* In situations where, in the opinion of the Secretary, measuring devices are not a reliable method for determining the amounts of water being delivered to full-cost and non-full-cost land, then water charges must be based on the assumption that equal amounts of water per acre are being delivered to both types of land during periods when both types of land are actually being irrigated.

(i) The application of rules pertaining to the assessment of full-cost charges may be illustrated by the following:

*Example (1).* Farmer A, a qualified recipient, owns 960 acres receiving irrigation water in Alpha Irrigation District. Farmer A also leases 100 acres receiving irrigation water in Alpha Irrigation District from another party. Alpha Irrigation District's repayment contract specifies an annual assessment of $5.00 per irrigable acre. Alpha Irrigation District's annual full-cost rate is calculated to be $15.00 per irrigable acre. Therefore, Farmer A's total water charge for that year is (960 acres × $5.00) plus (100 acres × $15.00), for a total of $6,300.

*Example (2).* Farmer B and his wife own 320 acres receiving irrigation water in Beta Irrigation District and lease another 320 acres receiving irrigation water in the same district. Farmer B, his wife, and Beta Irrigation District all remain subject to prior law. Beta Irrigation District's water service contract specifies a rate of $10.00 per acre-foot, and its full-cost rate is calculated to be $25.00 per acre-foot. Farmer B has a turnout and measuring device to the 320 acres he has selected to pay full cost, and a separate turnout and measuring device to the 320 acres receiving water at the contract rate. At the end of the water year, district records show that Farmer B received 1,000 acre-feet of water on his full-cost land, and 1,050 acre-feet of water on his non-full-cost land. These measurements are judged to be accurate and reliable; therefore, Farmer B's water charges for that year are (1,000 acre-feet × $25.00) plus (1,050 acre-feet × $10.00) for a total of $35,500. If accurate records showing the amounts of water delivered to Farmer B's full-cost and non-full-cost land had not been maintained, it would have been necessary to assume that equal amounts of water per acre had been delivered to both types of land. Without accurate water delivery records, Farmer B's water charges for that year would have been (1,025 acre-feet × $25.00) plus (1,025 acre-feet × $10.00) or $35,875.

*Example (3).* Farmer C, a qualified recipient, leases 1,000 acres in Gamma Irrigation District where the contract rate is $5.00 per acre-foot, and the full-cost rate is $15.00 per acre-foot. Farmer C applies irrigation water to 960 acres and irrigates the remaining 40 acres from a private well. In one particular year, Farmer C applied water to the land six times during the irrigation season; but in the final two applications, his well failed, so he chose to apply irrigation water to his entire landholding. Because there were no separate measuring devices for the 40 full-cost acres, it was necessarily assumed that equal amounts of water per acre were applied to the full-cost and non-full-cost land during the final two applications of water. Gamma Irrigation District's record showed that 600 acre-feet were delivered to Farmer D during each of the first four applications, and 625 acre-feet during each of the last two applications. Farmer C's water charges for that year were calculated as follows: The first four applications did not include any full-cost water; therefore, the appropriate charge was (4 × 600 acre-feet × $5.00) or $12,000. The final two applications were 96 percent contract rate and 4 percent full cost. Thus, the appropriate charges were (2 × 625 acre-feet × .96 × $5.00) plus (2 × 625 × .04 × $15.00), or $6,750. Farmer D's total water charge for the year was $12,000 for the first four applications plus $6,750 for the last two applications, for a total of $18,750.

(h) *Disposition of revenues obtained through full-cost water pricing.* The interest and full-cost revenues, less the appropriate non-full-cost rate, shall be credited to the Reclamation fund unless otherwise provided by law. The portion of the full-cost rate, which would have been collected if the land has not been subject to full cost, shall be credited to the annual payments due under contractual obligation from the district.

**§ 426.8 Operation and Maintenance (O&M) charges.**

(a) *Districts with new or amended contracts.* A district which becomes subject to the discretionary provisions as set forth in § 426.5 (a)(2) and (a)(3), will be required to pay annually the actual O&M costs chargeable to the district. They are to be paid to the United States on a schedule that is acceptable to the Secretary. O&M costs shall include minor replacement costs for facilities funded during the year. Each year the Secretary shall estimate and advise the district of its O&M charges, and the price of irrigation water will be modified, if necessary, to reflect

any changes in O&M costs. The difference between the estimated and actual O&M costs, as determined at the end of the annual period, will be reflected through adjustment of the following year's O&M charges. One effect of this provision is that if a district's contract rate, less the O&M costs of delivering water, is positive at the time a district amends its contract solely for the purpose of becoming subject to the discretionary provisions, as set forth in 426.5(a)(3)(i), that positive difference will continue to be paid annually to the United States, in addition to any adjusted O&M costs, during the remaining term of the contract. Major replacement costs, such as those caused by disaster, obsolescence, or otherwise, will be capitalized under regular Bureau accounting practices.

(1) The principles of this rule may be illustrated by the following:

*Example (1).* A district amends its water service contract to conform to the discretionary provisions. Prior to its amendment, the water service contract obligated the district to pay a fixed rate of $3.50 per acre-foot for water for the remaining 10 years of its 30-year contract term. At the time of contract amendment, $3.00 of the contract rate are needed to pay current O&M costs. If the district's O&M costs increase by $0.50 per acre-foot from $3.00 to $3.50 per acre-foot in the year after the district's amendment, then the current $3.50 rate will be adjusted to $4.00 to reflect the $0.50 increase in O&M costs. If the district's O&M costs increase by $0.25 per acre-foot the following year, the district's rate would be $4.25 per acre-foot. Similar adjustments to O&M costs would continue throughout the remaining term of the district's contract. One effect of these adjustments is that, subsequent to amendment and continuing throughout the remaining contract term, the district's annual payments will be $0.50 per acre-foot higher than its actual O&M costs.

*Example (2).* A district amends its water service contract for the sole purpose of conforming to the discretionary provisions. Prior to its amendment, the district's contract obligated it to pay a rate of $3.00 per acre-foot of water for the remaining 10 years of its 30-year contract. At the time of the contract amendment, the district's actual O&M costs are $6.50 per acre-foot. Since the current contract rate of $3.00 does not cover these O&M costs, the district's rate will be increased to $6.50. If the district's O&M costs increase by $.50 per acre-foot the following year, the district's rate would then be adjusted to $7.00 per acre-foot.

*Example (3).* A district's repayment contract obligates it to pay $4.00 per acre for the remaining 5 years of its 40-year contract. It is also obligated under the terms of its contract to pay the full O&M costs due the United States on an annual basis in addition to its repayment obligation. If the district were to amend its contract to conform to the discretionary provisions, no change in its present repayment arrangement with the United States would be necessary since under the terms of its contract it is already paying its full O&M costs on an annual basis.

**Note.** Although the district's contract repayment rate would not change, it would be further obligated because of the amendment to conform to the discretionary provisions to collect full-cost payments from landholders whose holdings make them subject to such payments.

(b) *Landholders who make irrevocable elections.* Landholders who make an irrevocable election (thereby becoming limited or qualified recipients) must pay their portion of the full O&M costs annually for land in their landholding. The district(s) in which the recipient's landholding is situated shall be required to collect from the recipient his or her portion of the full O&M charges due and to forward such collections to the United States. If the district's contract rate, less the O&M costs of delivering water, is positive at the time of the election, that positive difference will continue to be paid annually to the United States, in addition to any adjusted O&M costs, during the remaining term of the contract.

(c) *Districts remaining under prior law.* Beginning April 13, 1987, districts remaining subject to prior law, in addition to collecting such revenues as defined in § 426.8(b), shall also collect and forward to the United States full-cost rates for water delivered to land subject to full cost as set forth in § 426.7(c).

**§ 426.9 Class 1 equivalency.**

(a) *In general.* Upon the request of any district having a contract which conforms to the discretionary provisions, or as provided in paragraph (g) of this section, the Bureau of Reclamation shall make a class 1 equivalency determination for that district. This determination will establish for the district the acreage of land with lower productive potential (classes 2, 3, and 4) that would be necessary to be equivalent in productive potential to the most suitable land in the local agricultural economic setting (class 1). Once these determinations have been made, individual landowners with classes 2, 3, and 4 land will have the right to an increased acreage entitlement equivalent in productive potential to 960 acres of class 1 land, in the case of a qualified recipient, or 640 acres of class 1 land, in the case of a limited recipient.

(b) *Data requirements and use.* Class 1 land and land in lower classes shall be identified on a district basis by the Bureau of Reclamation using a standard approach in which the land classification for the entire district is considered. Equivalency factors shall then be computed for the district and applied to specific tracts within individual landholdings. If adequate land classification data are not available, they shall be developed using standard procedures as set forth in Reclamation Instructions Series 110, Part 115, Land Resources Investigations; and Series 510, Land Classification Techniques and Standards. Economic data will be developed using procedures found in Reclamation Instructions Series 110, Part 116, Economic Investigations.

(1) *Definition of class 1 land.* Class 1 land is defined and will be classified as that irrigable land within a particular agricultural economic setting which: (i) most completely meets the various parameters and specifications established for irrigable land classes; (ii) has the relatively highest level of suitability for continuous, successful irrigation farming; and (iii) is estimated to have the highest relative productive potential measured in terms of net income per acre (reflecting both productivity and costs of production). The objective is to establish the acreage of each of the lower classes of land which is equal in productive potential (measured in terms of net farm income) to 1 acre of class 1 land. All land that has not been classified will be considered class 1 land for the purposes of determining acreage entitlement under these rules until such time as the land has actually been classified.

(2) *How land classes are determined.* The extent and location of class 1 land and land in lower land classes in a district have been, or will be, determined by the Bureau of Reclamation, taking into account the influence of economic and physical factors upon the productive potential of the land lying within the district. These factors include, but are not limited to: the physical and chemical characteristics of the soil, topography, drainage status, costs of production, land development costs, water quality and adequacy, elevation, crop adaptability, and length of growing season and their effect on agricultural practices.

(3) *Level of detail.* Acceptable levels of detail for land classification studies to be utilized in making class 1 equivalency determinations for a given district shall be evaluated on the basis of the physical and agricultural economic characteristics of the area. In areas for which no current classification exists or the existing classification is unacceptable, the level of detail of the land classification to be made will never be greater than that required to make

class 1 equivalency determinations where the sole purpose of the classification is such a determination.

(4) *Economic studies.* The economic studies related to class 1 equivalency determinations will measure net farm income by land classes within the district. Net farm income shall be determined by the disposable income accruing to the farm operator's labor, management, and equity from the sale of farm crops and livestock produced on irrigated land after all fixed and variable costs of production, including costs of irrigation service, are accounted for. Net farm income will be the measure of productivity to establish equivalency factors reflecting the acreage of each of the lower classes of land which is equal in productive potential to 1 acre of class 1 land.

(5) *Equivalency factors.* Equivalency factors shall be determined by comparing the weighted average farm size required to produce a given level of income on each of the lower classes of land with the farm size required to produce that income level on class 1 land.

(i) The principles of this rule may be illustrated by the following:

*Example.* Farmer X has a total landholding of 1,300 acres in District A. That acreage includes 800 acres of class 1 land, 300 acres of class 2 land, and 200 acres of class 3 land. The equivalency factors for the district have been determined to be: Class 1=1.0, class 2=1.20, and class 3=1.50. Using these equivalency factors, the following landholding in terms of class 1 equivalency would apply:

Class 1—800 acres divided by 1.0=800 acres class 1 equivalent
Class 2—300 acres divided by 1.2=250 acres class 1 equivalent
Class 3—200 acres divided by 1.5=133 acres class 1 equivalent

Thus, Farmer X's total landholding of 1,300 acres is equal to 1,183 acres of class 1 land in terms of productive capacity. It will be necessary for him to declare the equivalent of 223 acres of class 1 land (1,183 acres minus 960 acres), as excess and ineligible to receive irrigation water while in his landholding. This can be accomplished in any of several ways. If Farmer X desires to maximize his actual acreage, he declares 223 acres of class 1 land as excess and designates 577 acres of class 1, 300 acres (250 acres class 1 equivalent) of class 2, and 200 acres (133 acres class 1 equivalent) of class 3 as nonexcess and eligible to receive irrigation water. This would result in a total of 1,077 actual acres which would equal 960 acres of class 1 land in production capacity. Or, he could maximize his holding of class 1 and 2 lands by designating as nonexcess 800 acres of class 1 land and 192 acres (192 divided by 1.2=160 acres class 1 equivalent) of class 2 land. This total landholding of 992 acres would, again, be equal in productive capacity to 960 acres of class 1 land. In the latter case, all 200 acres of Farmer X's class 3 land and 108 acres of his class 2 land would be considered excess and ineligible to receive irrigation water in his landholding.

(6) *Special considerations.* For equivalency purposes, all irrigable land will be classified as either class 1, class 2, or class 3; no other classifications are permissible. Class 4 and special-use land classes will be allocated to one of these three classes on a case-by-case basis.

(c) *Scheduling.* District requests for equivalency determinations will be scheduled by region, with the Regional Director of each of the six regions of the Bureau of Reclamation having responsibility for such scheduling. Generally, requests will be honored on a first-come-first-served basis. However, if requests exceed the region's ability to fulfill them expeditiously, priority will be given on the basis of greatest immediate need.

(d) *Land classification costs.* The Bureau of Reclamation has provided basic land classification data as part of the project development process since 1924. Where the Secretary determines that acceptable land classification data are not available for making requested class 1 equivalency determinations and where the provision of these data was the responsibility of the Bureau of Reclamation during the project development process, such data will be made available at Bureau of Reclamation expense. Districts in projects authorized for construction prior to 1924 must pay one-half the costs of new land classification studies required to make accurate equivalency determinations.

(e) *Economic study cost.* The cost of performing new or additional economic studies and computations inherent in the equivalency process shall be the responsibility of the requesting district.

(f) *Appeals.* When basic land classification data are available for a district, but the district does not agree with its accuracy or assets that the data have become outdated, the district may request, and the Bureau of Reclamation may perform, a reclassification under the authority contained in the Reclamation Project Act of 1939 (Pub. L. 76–260). The requesting district shall pay for one-half of the cost of performing such reclassifications and the full cost of all other studies inherent in the equivalency process.

(g) *Individual requests.* Individual requests for class 1 equivalency determinations will be accepted if the individual landowner, in the absence of district action, has made an irrevocable election to come under the discretionary provisions and if the district agrees to pay for the determination for the entire district. (The arrangement between the landowner and the district to pay the cost of the equivalency determination does not involve or concern the United States.) Requests for equivalency must be made by or through the district. Equivalency will be applied only to that land which is the subject of an individual election for which equivalency has been requested.

(1) The application of this rule may be illustrated by the following:

*Example (1).* A district with an existing contract decides not to amend its contract to come under the discretionary provisions. However, an individual landowner within the district may make an irrevocable election to come under these provisions. The landowner can request equivalency through the district, and the district may request the Secretary to make the equivalency determination for the entire district. The district would be required to pay the United States for the cost of making the equivalency determination. The payment of the costs between the landowner and the district would be a district matter. The application of equivalency would be available only to the landowner(s) who exercise an irrevocable election.

*Example (2).* A district decides to amend its contract to come under the discretionary provisions, but it elects not to request equivalency. Thus, individual landholders within the district are not entitled to equivalency until after the district makes the equivalency request and the Bureau of Reclamation has acted upon that request.

(h) *Excess land.* Until a final determination has been made by the Bureau of Reclamation on the district's request for equivalency, all land exceeding the basic ownership entitlement for qualified or limited recipients must be under recordable contract in order to be eligible for irrigation water. Once the determination has been made, the qualified recipient may withdraw land from the recordable contract in order to reach an acreage equivalent to 960 acres of class 1 land, and the limited recipient may withdraw land from the recordable contract in order to reach an acreage equivalent to 640 acres of class 1 land. The requirement that land under recordable contract be sold at a price approved by the Secretary does not apply to land which is withdrawn from a recordable contract and included as part of a landowner's nonexcess land as a result of an equivalency determination.

(1) *Protection during classification.* The Bureau of Reclamation will protect the excess landowner's property interests by ensuring that equivalency determinations are completed in advance of maturity dates on recordable contracts, provided the district's request

for an equivalency determination was made at least 6 months prior to the maturity of the recordable contract and the district fulfills its obligations under § 426.9 of these rules.

(2) *Protection during appeal.* In cases of equivalency determination appeals, the Secretary will not undertake the sale of the reasonable increment of the excess land under material recordable contract which could be affected by a reclassification as long as the appeal is determined by the Secretary not to be an attempt to thwart the sale of excess land.

(i) *Full-cost charges.* Once the Bureau of Reclamation has acted upon the district's request and made a final equivalency determination, the full-cost water pricing structure would not come into effect until the total landholding westwide exceeds the qualified or limited recipient's non-full-cost entitlement with equivalency. During the time when the determinations were being made, however, the full-cost rate would be assessed on land receiving water in excess of the qualified or limited recipient's non-full-cost entitlement. If the qualified or limited recipient's basic entitlement is increased because of the equivalency determination, he or she shall be reimbursed any overcharges which were paid during the period between the time of the request for an equivalency determination and the Bureau of Reclamation's final determination.

(1) The principles of this paragraph may be illustrated by the following:

*Example (1).* Landholder X is a qualified recipient who owns no land, but leases 1,100 acres in a district which has requested equivalency. The land leased is a mix of classes 1, 2, and 3 land. During the time the equivalency determination was being made, Landholder X would be required to pay the full-cost water rate on 140 acres (1,100 acres leased minus the basic 960-acre non-full-cost entitlement) if he elected to continue to receive irrigation water on that land. Once the equivalency determinations had been completed, Landowner X would be entitled to lease the equivalent of 960 acres of class 1 land at the non-full-cost rate (something greater than 960 acres). Landowner X would also be reimbursed for full-cost payments made for land which became non-excess as a result of the equivalency determination.

*Example (2).* Landholder Y is a limited recipient who owns 600 acres of irrigation land and leases another 160 acres in District A. District A has requested and received an equivalency determination. However, Landholder Y was not receiving project water on or before October 1, 1981. Thus, even with equivalency, he would be required to pay the full-cost water rate for all land served in his landholding. (If Landholder Y had been receiving project water on or before October 1, 1981, he would have been entitled to receive water on the equivalent of 320 acres of class 1 land at the non-full-cost rate. Deliveries on the remaining 440 acres or less, would be at the full-cost rate.)

(j) *Multidistrict landholdings.* A landholder with holdings in more than one district is entitled to equivalency only in those districts which have requested equivalancy (or are already subject to equivalency). That part of the landholding in a district or districts not requesting equivalency will be counted as class 1 land for purposes of overall entitlement.

(1) The application of this rule may be illustrated by the following:

*Example (1).* Landholder X is a qualified recipient and owns 320 acres in each of three districts. One of those districts, District A, requests and receives an equivalency determination. From the equivalency determination, Landholder X is shown to own the equivalent of 240 acres of class 1 land in District A. Landholder X is therefore entitled to buy and receive irrigation water on an additional 80 acres of irrigation land in some other district or he could lease 80 acres in some other district and receive irrigation water for it at the non-full-cost rate. In District A itself, Landholder X could buy an addition 80 acres of class 1 land or something greater than 80 acres of class 2 or 3 land. If Landholder X preferred to lease in District A, he could lease 80 acres of class 1 land or something greater than 80 acres of class 2 or 3 land and receive irrigation water for that leased land at the non-full-cost rate.

*Example (2).* Landholder Y owns 1,200 acres in District A and 160 acres in District B. Landholder Y is a qualified recipient and has designated 800 acres in District A as nonexcess and put the 400 acres of excess land under recordable contract so that it can be irrigated while still in his ownership. Subsequent to this nonexcess land designation, District A requests and receives an equivalency determination. Landholder Y is then free to withdraw excess land from recordable contract to take advantage of the equivalency determination in District A. Landholder Y, when able to show good cause, may even redesignate the nonexcess land under recordable contract, § 426.11(b), if an appraisal of the excess land has not already been requested and performed. The maturity date as determined in the original contract, however, would not change.

(k) *Existing equivalency determinations.* In districts where equivalency was a provision of project authorization, those equivalency factor determinations will be honored as originally calculated unless the district request a reclassification.

**§ 426.10 Information requirements.**

(a) *In general.* District, legal entities, and individuals shall provide the Secretary upon request such records and information as the Secretary may deem reasonably necessary to implement Pub. L. 97–293 and Federal Reclamation law.

(b) *Certification.* Landowners and lessees within a district which has a contract that conforms to all provisions of title II shall furnish the district, in a form provided by the Bureau of Reclamation, a certificate declaring the irrigable and irrigation land that they own and lease and providing other information pertinent to their compliance with Reclamation law.

(1) *Irrevocable electors.* Landowners or lessees who, in the absence of a district amending its contract, have made an irrevocable election to be subject to title II must also certify through the nonamending district that they are in compliance.

(c) *Reporting.* Prior law landowners and lessees must report through the district the irrigable and irrigation land in their ownership and the extent and conditions of any leases. They must declare the irrigation land that they own and lease and provide other information pertinent to their compliance with Reclamation law. The reporting form will be provided to the district by the Bureau of Reclamation.

(d) *Certification and reporting form data requirements.* (1) Certification and reporting forms will require a full disclosure of irrigable and irrigation land owned and leased in all districts; the identification of the operator or operators of that land; the number of acres leased; the terms of any lease; and in the case of the certification forms, certification that the rent paid reflects the reasonable value of the irrigation water to the productivity of the land. The Secretary may require the parties to any lease to submit to him or her a complete copy of the leases.

(2) If requested by the Secretary, all members of a qualified recipient must be identified. Similarly, a limited recipient can be required to identify only those participants or shareholders who: (i) Own more than 4 percent of the limited recipient and (ii) such ownership interest would constitute an attribution of ownership to such participant or shareholder of more than 40 acres.

(e) *Schedule for completing certification and reporting forms.* Certification and reporting forms will be required annually as a condition for the receipt of irrigation water except as provided in paragraphs (f) and (g) of this section. If a landholder's ownership or leasing arrangements change in some way, the landholder shall notify the district office, either verbally or in writing, within 15 days of the change and submit new certification or reporting forms within 30 days of the change.

(f) *Short form availability.* If no change has occurred in a land ownership or leasing arrangement between annual certification and reporting dates, a short verification form will be available for completion to satisfy the certification or reporting requirement. This form will make it possible for the landowner or lessee to simply validate that the information contained on the last fully completed form is still accurate.

(g) *Exemptions.* Landowners and lessees whose total direct and indirect interest in a landholding on a westwide basis is 40 acres or less are exempt from the certification and reporting requirements.

(h) *District participation.* Each district shall be required to make the necessary blank certification and/or reporting forms available to district landholders and to keep the current certification and reporting forms on file and available for Bureau of Reclamation inspection. All superseded certificates and reports should be retained by the district for 3 years, and thereafter may be destroyed by the district, except that the last fully completed certification and reporting form (other than the verification form) must always be kept on file with the current verification form so that all the landowners' and lessees' land may be identified. Additionally, each district will be required to summarize the information contained on these documents and submit the summary to the Bureau of Reclamation annually. The summary form to be used by the district will be provided by the Bureau of Reclamation. The district shall notify the Bureau of Reclamation of any discrepancies in the certification and reporting forms.

(i) *Auditing.* The Secretary may conduct field audits, as necessary, to ensure compliance with Reclamation law and these regulations.

(j) *False statements.* The following statement will be included in all certification and reporting forms:

> Under the provisions of 18 U.S.C. 1001, it is a crime punishable by 5 years imprisonment or a fine of up to $10,000, or both, for any person knowingly and willfully to submit or cause to be submitted to any agency of the United States any false or fraudulent statement(s) as to any matter within the agency's jurisdiction.

False statements by the landowner or lessee will result also in loss of eligibility. Eligibility could only be regained upon the approval of the Secretary.

(k) *Failure to report.* Failure to submit the required certification or reporting form to the district will result in loss of eligibility to receive irrigation water by the individual landowner or lessee. Eligibility will be regained once the certification or reporting form is submitted to the district.

(l) *OMB approval.* The information collection requirements contained in this section have been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance Nos. 1006–0004, 1006–0005, 1006–0006. The information is being collected to comply with sections 206, 224(c), and 228 of Pub. L. 97–293. These sections require that, as a condition to the receipt of irrigation water, each landowner and lessee in a contracting entity which is subject to the acreage limitation provisions of Reclamation law, as amended and supplemented by Pub. L. 97–293, will furnish to his or her district annually a certificate/report which indicates that he or she is in compliance with the provisions of Reclamation law. The information collected on each landholding will be summarized by the district and submitted to the Bureau in a form prescribed by the Secretary. Completion of these forms is required to obtain the benefit of irrigation water.

(m) *Application of Privacy Act of 1974.* The information submitted in accordance with the certification and reporting requirement is subject to the provisions of the Privacy Act of 1974. As a condition to the execution of a contract, the Secretary shall require the inclusion of a standard contract article providing that the district agrees to comply with the Privacy Act of 1974 and 43 CFR Part 2, Subpart D, in maintaining the landholder certification and reporting forms.

### § 426.11 Excess land.

(a) *In general.* As set forth in § 426.4(g), "excess land" means irrigable land, other than exempt land, owned in excess of a landowner's ownership entitlement under Reclamation law. In determining excess land, all irrigable land in all districts held by any landowner shall be considered. Delivery of irrigation water to excess lands is allowed only if any one of the following conditions applies: (1) The excess land has been placed under recordable contract by the landowner, or (2) the land was involuntarily acquired into excess status through inheritance, foreclosure, or other similar involuntary process.

(b) *Designation of nonexcess land.* The owner of excess land shall designate that portion of his or her irrigable land that is to be considered nonexcess, in accordance with the instructions on the certification and reporting forms. If a landowner does not make a designation on these forms, designation shall be in accordance with provisions in the district's repayment or water service contract, provided designation procedures are specified in the contract and the entire landholding is in one district.

(1) *Designation procedures when not established by contract.* If designation provisions are not specified in the district contract, the landowner must designate that portion of the land in the ownership which is to constitute the nonexcess entitlement within 30 days of Secretarial notification to the district and that landowner. The designation will take into account all irrigable land owned by the landowner. If the landowner fails to make the nonexcess designation within 30 days, the district shall make the designation within 30 days thereafter. If the district does not make the required designation, the Secretary shall then make the designation.

(2) *Designation procedures if land is owned in more than one district.* If the land in the ownership is situated in more than one district, the landowner has 60 days from the date of notification to the district and the landowner to make the designation. The Secretary shall make the designation for the landowner if designation is not made within 60 days.

(3) *Status of nonexcess land and redesignation.* The nonexcess designation, whether made by the landowner, the district, or the Secretary, will be binding on the land and will be filed with the district and the Bureau of Reclamation. These regulations governing excess land will apply to the excess land resulting from that designation. A landowner may redesignate his or her nonexcess land from excess land in the ownership in accordance with the following procedures: Redesignations may be made without the approval of the Secretary in those cases where: (i) The excess land becomes eligible to receive irrigation water as a result of a landowner becoming subject to the discretionary provisions as set forth in paragraphs (c)(1) and (c)(2) of this section, (ii) recordable contracts are amended to conform to the expanded acreage limitations of the discretionary provisions as set forth in paragraph (g) of this section, or (iii) the excess land becomes eligible to receive irrigation water as a result of equivalency determinations, § 426.9.

All other situations involving redesignation of nonexcess land from excess land must be approved by the Secretary. A redesignation proposal will

not be approved if it is being used for the purpose of achieving, through repeated redesignation, an effective farm size in excess of that permitted by Reclamation Law. Furthermore, excess land in the ownership may not be designated as nonexcess once an owner sells some or all of the land in his or her current nonexcess designation. When a redesignation involves an exchange of nonexcess land for excess land, a landowner who is not eligible for equivalency must make an equal exchange of acreage through the redesignation. If the landowner is eligible for equivalency, the redesignation may be made on the basis of equivalent acres. The application of this rule may be illustrated by the following:

*Example (1).* Landowner X owns 1,200 acres of irrigable land in District A. He purchased this land before the district entered its first repayment contract with the United States after October 12, 1982. Landowner X, as a qualified recipient, designates 960 of his 1,200 acres as nonexcess. With the approval of the Secretary, Landowner X may designate the 240 acres, which are now excess, as nonexcess and eligible to receive irrigation water, provided he redesignates 240 acres of presently nonexcess land as excess.

*Example (2).* Landowner Y is a U.S. citizen and a qualified recipient by virtue of District A's contract amendment to conform to the discretionary provisions. Landowner Y purchased 1,400 acres of irrigable land in this district before the district entered a repayment contract to receive an irrigation water supply. After the district's amendment, Landowner X designates 960 acres of this land as nonexcess. Subsequent to this designation, the district requests and receives an equivalency determination. All 1,400 acres of Landowner Y's land is class 3 land, and in District A, 1 acre of class 1 land is equal to 1.4 acres of class 3 land. With equivalency, Landowner Y may irrigate 1,344 acres of class 3 land in District A. Thus, he may redesignate everything in his ownership as nonexcess except for 56 acres. In the future, if Landowner Y sells some of this 1,344 acres of nonexcess land, he may not designate any of the 56 excess acres as nonexcess.

(4) *Acquisition of excess land.* A landowner may purchase or otherwise acquire excess land and nonexcess land subject to a deed covenant as set forth in § 426.11(h) at a Secretarially approved price, to be held as nonexcess, up to his or her ownership entitlement and, upon expiration of the terms of the deed covenant, resell such land at fair market value only once. Once a landowner has reached this limit, any additional excess land or land subject to a deed covenant becomes ineligible to receive irrigation water until it is sold to an eligible buyer at a Secretarially approved price as set forth in § 426.12.

(i) The application of this rule may be illustrated by the following:

*Example.* Farmer Y, who owns irrigable land in excess of his ownership entitlement, sells 960 acres of his excess land to Farmer X, a qualified recipient, at a Secretarially approved price. Farmer X owns no other irrigable land and designates the 960 acres as nonexcess and eligible to recieve irrigation water in his ownership. After the 10-year period of the deed covenant expires, Farmer X sells the 960 acres at fair market value and purchases another 960 acres of irrigable land located in yet another district. Farmer X purchases the latter parcel at a Secretarially approved price because the land was excess in the seller's holding. However, since Farmer X has already reached his 960-acre limit for recapturing the fair market value of land purchased at a Secretarially approved price, the newly purchased land is not eligible to receive irrigation water while in his holding. In order to regain eligibility, the land must be sold to an eligible buyer at a Secretarially approved price. Farmer X may purchase and receive irrigation water on another 960 acres, provided it is bought from nonexcess status.

(c) *Treatment of land ineligible under prior law.* Irrigable land ineligible under prior law will be treated as follows:

(1) Irrigable land owned on the date of a district's first repayment or water service contract. Irrigable land owned on the date of the district's first water service or repayment contract and which becomes ineligible for service because it is in excess of the ownership limitations under prior law may be made eligible as follows: The landowner can become subject to the discretionary provisions through either an irrevocable election or a contract amendment by the district and may designate the excess land, up to his or her entitlement, as nonexcess. If the landowner does not become subject to the discretionary provisions, or if there is any excess land remaining after the landowner becomes subject to the discretionary provisions, the excess land can be made eligible by placing it under recordable contract, provided the period for executing recordable contracts under the district's contract has not expired. The excess land can also be sold to an eligible buyer at a Secretarially approved price, as set forth in § 426.12, or redesignated as nonexcess with the approval of the Secretary, as set forth in paragraph (b)(3) of this section.

(i) The principles of this rule may be illustrated by the following:

*Example (1).* Landowner Z is a resident alien and owns 480 acres of irrigable land in District A. Landowner Z has designated 160 acres as nonexcess, and it is receiving irrigation water. Following this designation, District A amends its contract to conform to the discretionary provisions. As a result of the district amendment, Landowner Z satisfies the requirements for a qualified recipient and may designate all 480 acres owned as nonexcess.

*Example (2).* Landowner Y and his wife own 1,200 acres of irrigable land in District B which is subject to prior law. They owned this land even before District B entered into a repayment contract with the United States. Landowner Y and his wife have designated 320 acres as nonexcess and eligible to receive irrigation water. The remaining 880 acres are excess and ineligible to receive irrigation water. This excess land cannot be placed under recordable contract because the 10-year grace period for executing recordable contracts, as provided in the district's contract, has expired.

Landowner Y makes an irrevocable election to conform to the discretionary provisions. By that election, Landowner Y becomes a qualified recipient, and is entitled to own and receive irrigation water on 960 acres. Landowner Y's remaining 240 acres can become eligible if he sells it to an eligible buyer at an approved price or redesignates it, with the approval of the Secretary, as nonexcess.

(2) Irrigable land acquired after the date of a district's first repayment or water service contract. Irrigable land acquired by a landowner after the date of a district's first repayment or water service contract and which is ineligible for service under prior law may become eligible as follows:

(i) Nonexcess land purchased into excess. Land which is ineligible because it was purchased from nonexcess status into excess status may become eligible to receive irrigation water if the landowner becomes subject to the discretionary provisions and redesignates the land, up to his entitlement, as nonexcess. If the landowner does not become subject to the discretionary provisions in accordance with these procedures, or if there is any excess land remaining after the landowner becomes subject to the discretionary provisions, the excess land can regain eligibility as follows: Irrigation land acquired from nonexcess status into excess status after irrigation water was available to the land can regain eligibility if either the sale is canceled or the land is sold to an eligible buyer in a sale or transfer at a price and on terms approved by the Secretary or if redesignation of the land is approved by the Secretary. In addition, if the land was acquired into excess before irrigation water was available to it, the land can be placed under recordable contract when the water supply becomes available.

(ii) Excess land acquired without price approval and other ineligible land. Land which is ineligible because it was acquired from excess status without Secretarial price approval or because the landowner did not comply with

some other requirements of law as determined by the Secretary can regain eligibility if it is sold to an eligible buyer at a price approved by the Secretary. Land purchased without Secretarial price approval can also regain eligibility if the sale price is reformed to conform to the excess land value.

(A) The principle of this rule may be illustrated by the following:

*Example (1).* Landowner Z is a resident alien and owns 160 acres of irrigation land in District A. District A is subject to prior law. Landowner Z purchases an additional 160 acres which had been designated nonexcess while in the landholding of the seller. Since Landowner Z has purchased himself into excess status, the newly purchased land becomes ineligible to receive irrigation water in his holding. However, 3 weeks later, Landowner Z makes an irrevocable election. Since he meets the requirements of a qualified recipient and since he has become subject to the discretionary provisions, Landowner Z may designate the newly purchased 160 acres as nonexcess. As a qualified recipient, he may also purchase and receive irrigation water on another 640 acres of eligible land.

*Example (2).* In 1986, Landowner X bought 160 acres of irrigable land from excess status in District A. Landowner X, however, failed to get sale price approval from the Secretary. This land is ineligible for service in his holding unless the seller is willing to reform the sale price to conform to the excess land value. If the price is not reformed, the 160 acres must be sold to an eligible buyer at a Secretarially approved price in order to be eligible for irrigation water.

*(d) Irrigable land which becomes ineligible under the discretionary provisions.* Irrigable land which becomes ineligible under the discretionary provisions shall be treated as follows:

(1) In a district which first becomes subject to Reclamation law because it enters a repayment or water service contract after October 12, 1982, irrigable land owned on the date of the district's contract and which is in excess of the ownership limitations under the discretionary provisions can be made eligible if it is: (i) Placed under recordable contract, provided the period for executing recordable contracts under the district's contract has not expired; (ii) sold to an eligible buyer in a sale or transfer at a price and on terms approved by the Secretary; or (iii) redesignated as nonexcess with the approval of the Secretary as set forth in paragraph (b)(3) of this section.

(2) In a district which first becomes subject to the ownership limitations of Reclamation law after October 12, 1982, if irrigable land for which irrigation water is available is acquired from nonexcess status into excess status after the date of the district's contract, it shall remain ineligible until the sale is canceled, or the land is sold to an eligible buyer at a price and on terms approved by the Secretary, or redesignated with approval by the Secretary. If irrigation water was not available to such land at the time of purchase, the land can be placed under recordable contract when the water becomes available. In such districts, if land is ineligible because it was purchased from excess status without price approval, eligibility can be regained if the sale price is reformed to conform to a Secretarially approved price or if the land is sold to an eligible buyer at a price approved by the Secretary.

(3) In a district which was once subject to prior law but which has become subject to the discretionary provisions, irrigable land which becomes ineligible after the discretionary provisions are applicable, can be made eligible in the same ways described in the preceding paragraph, § 426.11(d)(2).

(i) The principle of these rules may be illustrated by the following:

*Example.* In 1980, Landowner X, a U.S. citizen, buys 1,920 acres of land in District A. In addition to its own water supply, District A wishes to receive supplemental irrigation water. Therefore, it enters into a water service contract with the United States on May 14, 1984. Thereby, the landowners in the district become subject to the discretionary provisions. As a qualified recipient, Landowner X may receive irrigation water on any 960 acres which he designates as nonexcess. The remaining 960 acres are excess and ineligible for service until Landowner X places the land under recordable contract, sells it to an eligible buyer at a price approved by the Secretary, or receives Secretarial approval to redesignate the land as nonexcess.

If Landowner X had purchased the 1,920 acres from nonexcess status in 1985, rather than before the date of the district's contract, he still would have been able to designate 960 acres as nonexcess and eligible to receive irrigation water. However, the remaining 960 acres of excess land would not have been eligible until sold to an eligible buyer at a Secretarially approved price, the sale is canceled, or he receives Secretarial approval to redesignate the land as nonexcess. The excess acres could not have been placed under recordable contract unless irrigation water had not been available when the land was purchased.

(e) *Recordable contracts.* Excess land may become eligible to receive irrigation water if the owner enters into a recordable contract with the Secretary, provided such excess land is eligible to be placed under recordable contract. The excess owner must agree to dispose of the excess land, excluding mineral rights and easements, to an eligible owner under terms and conditions and at a sale price approved by the Secretary in accordance with § 426.12. The period allowed for the disposition of excess land under recordable contracts executed after October 12, 1982, may not exceed 5 years from the date the recordable contract is executed by the Secretary (except for the Central Arizona Project where the disposition period provided will be 10 years from the date water becomes available to the land). Water deliveries may begin on the date the Secretary receives a written request from the landowner to execute a recordable contract. The landowner has 20 working days from the date to execute the recordable contract unless the Secretary waives the 20-day limitation. Land placed under recordable contract may receive irrigation water at the rate specified in the contract of the district so long as it is in the landholding of a prior law recipient. In the case of qualified and limited recipients, the rate must cover at least the annual O&M costs. However, land under recordable contract which is leased to another may become subject to the full-cost provisions if the lessee's landholding exceeds the specified non-full-cost entitlement. Furthermore, if a landowner with land under recordable contract exceeds his or her non-full-cost entitlement, nothing precludes the landowner from selecting land under recordable contract as the land for which the full-cost rate must be paid, unless such land is already subject to full-cost pricing under an extended recordable contract as set forth in § 426.11(i)(4).

(1) The principles of this rule may be illustrated by the following:

*Example (1).* Landowner X is a qualified recipient and owns 1,400 acres of irrigable land in District A. The landowner places 440 acres under recordable contract so that he may receive irrigation water at the non-full-cost rate on all owned land in the district. Subsequently, Landowner X leases the 440 acres under recordable contract to Landowner Y who is a limited recipient that did not receive irrigation water prior to October 1, 1981. Therefore, the full-cost rate must be paid for irrigation water delivered to the 440 leased acres. Leasing the land to Landholder Y does not affect other terms of the recordable contract.

*Example (2).* Farmer X owns 1,280 acres of irrigable land in District A. District A, which is subject to prior law, has a fixed-rate water service contract which no longer covers actual O&M costs. Farmer X has designated 160 acres of his land as nonexcess and has placed the remaining 1,120 acres under recordable contract. This means that Farmer X is able to receive irrigation water at the contract rate on all his owned land. Subsequently, District A amends its contract

to become subject to the discretionary provisions. As provided in § 426.11(g), Farmer X withdraws 800 acres from under recordable contract and redesignates that land as part of his 960-acre entitlement as a qualified recipient. Since Farmer X is now a qualified recipient, the higher of the contract rate or full O&M costs must be paid for all land in his landholding, including the 320 acres remaining under recordable contract.

(f) *Restriction on placing excess land under recordable contract.* Except as provided in § 426.6(h), if a landowner acquires irrigation land for which irrigation water is available and by so doing places himself or herself in excess status, the landowner shall not be permitted to place the land so acquired under recordable contract. Such excess land can only regain eligible status as described in paragraphs (c)(2) and (d)(2) and (3) of this section.

(g) *Recordable contracts in effect prior to October 12, 1982.* Recordable contracts executed prior to October 12, 1982, will continue in effect. However, landowners with such existing recordable contracts may request that their contracts be amended to conform to the expanded ownership limitations contained in title II. The Secretary shall amend those contracts when requested by a landowner if: (1) Any district where the landholder holds land, enters into a new or amended contract which conforms to the discretionary provisions or (2) the excess landowner makes an individual election.

The disposition period for such amended recordable contracts shall not be extended as provided in paragraph (i) of this section. If a landowner becomes subject to the discretionary provisions and amends his or her nonexcess designation to include land that had been under recordable contract, such land shall not be subject to the 10-year deed covenant requiring Secretarial sale price approval as set forth in paragraph (h) of this section.

(h) *Price approval on excess land—(1) Deed covenant.* In order for land acquired from excess status after October 12, 1982, whether under recordable contract or not, to be eligible to receive irrigation water, the following covenant controlling the sale price of such land must be placed in the deed transferring the land to the purchase, except as provided in paragraphs (j) and (k) of this section.

This covenant is to satisfy the requirements in § 209(f)(2) of Pub. L. 97-293. This covenant expires on ———. Until the expiration date specified herein, sale price approval is required on this land. Sale by the landowner and his or her assigns of these lands for any value that exceeds the sum of the value of newly added improvements plus the value of the land as increased by the market appreciation unrelated to the delivery of irrigation water will result in the ineligibility of this land to receive Federal project water, *provided however:*

(i) The terms of this covenant requiring price approval shall not apply to this land if it is acquired into excess status pursuant to a *bona fide* involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, or devise, (hereinafter Involuntary Conveyance). Thereafter, this land may be sold to a landholder at its fair market value without regard to any other provision of the Reclamation Reform Act of 1982 approved October 12, 1982, (43 U.S.C. 390aa, et seq.), or to Section 46 of the Act entitled "An Act to adjust water rights charges, to grant certain relief on the Federal irrigation projects, and for other purposes", approved May 25, 1926 (43 U.S.C. 423e);

(ii) If the status of this land changes from nonexcess into excess land after a mortgage or deed of trust in favor of a lender is recorded and this land is subsequently acquired by a *bona fide* Involuntary Conveyance by reason of a default under that loan, this land may thereupon or thereafter be sold to a landholder at its fair market value;

(iii) The terms of this covenant requiring price approval shall not apply to the sale price obtained at the time of the Involuntary Conveyances described in subparagraphs (i) and (ii), nor to any subsequent voluntary sales by a landholder of this land after the Involuntary Conveyances or any subsequent Involuntary Conveyance;

(iv) Upon the completion of an Involuntary Conveyance, the Secretary of the Interior shall reconvey or otherwise terminate this covenant of record.

Note.—The date to be included shall be 10 years from the date the land was first transferred from excess to nonexcess status.

(2) *Involuntarily acquired land.* Upon acquisition of land burdened by such a deed covenant through involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, device, or gift, the deed covenant shall be removed by the Secretary at the request of the acquiring party, by a release of equitable servitude or other appropriate legal instrument.

(i) *Extension of disposition periods for recordable contracts.* Owners of excess land under recordable contract who were prevented from selling their excess land because of Secretarial moratorium or court order shall be allowed an additional period of time to sell their excess land under recordable contract in the manner described in subparagraphs 1, 2, and 3 of this paragraph.

(1) *Westlands Water District, California.* Beginning July 10, 1984, the Secretary again commenced processing the sales of excess land under recordable contract in the Westlands Water District, California. Such land will be allowed a period of time equal to the time remaining on that recordable contract on August 13, 1976, to sell land under recordable contract. The Secretary will notify the affected landowners as to applicable dates.

(i) The principles of this rule may be illustrated by the following:

*Example.* A landowner in the Westlands Water District entered into a recordable contract on October 13, 1972. The recordable contract provided for a 10-year disposition period which would end on October 13, 1982. On August 13, 1976 (the date of the court-ordered moratorium on processing sales of excess land in the Westlands District), there were 6 years and 2 months remaining in the disposition period. The court-ordered moratorium was lifted and the Secretary commenced processing sales of excess land in the Westlands Water District on July 10, 1984, the disposition period for the recordable contract will be extended for 6 years and 2 months from that date or to September 10, 1990. The contract will mature at that time and the Secretary's power-of-attorney to sell the land will vest.

(2) *All other districts.* A moratorium on processing sales of excess land was issued by the Secretry on June 27, 1977. This moratorium applied to all landowners with recordable contracts in all districts other than the Westlands Water District. The Commissioner of Reclamation delayed sales by other directives. Landowners affected by these actions were given an additional period of time to dispose of their land. The extension was calculated from the May 21, 1984, date that processing sales of excess land was resumed and was equal to the time remaining on the recordable contract when the moratorium was imposed. The resumption date was determined by the Secretary, and he notified all affected landowners.

(i) The principles of this rule may be illustrated by the following:

*Example.* A landowner in District A entered into a recordable contract on June 27, 1975. The recordable contract provided for a 10-year disposition period which would end June 27, 1985. The landowner was prevented from selling the land under recordable contract by the Secretarial moratorium of June 27, 1977. At that date, the recordable contract had a remaining disposition period of 8 years. The disposition period for the recordable contract will be extended 8 years from the date processing sales is resumed. The resumption date of May 21, 1984, was determined by the Secretary.

(3) *How extensions of recordable contracts are to be accomplished.* The

Secretary shall prepare and execute amendatory agreements to extend recordable contracts for the appropriate period of time. The amendatory agreement will establish the new maturity date for the recordable contract and will be recorded by the Secretary in the official records of the county in which the land covered by the recordable contract is located. A copy of the amendatory agreement will also be sent to the affected landowner by the Secretary.

(4) *Water rates for land under extended recordable contracts.* Land under recordable contract which is held by a water user not subject to the discretionary provisions may continue to receive irrigation water at the contract water rate for the extended term of the contract, except as provided in § 426.11(e). Land under recordable contract which is held by a qualified or limited recipient may continue to receive irrigation water deliveries at the non-full-cost rate for the original disposition period of the recordable contract. The water rate for land under recordable contract held by a qualified or limited recipient during an extended contract period shall be determined as follows: The non-full-cost rate shall apply until the date 18 months after the date the Secretary resumes the processing of excess land sales, or until the extended contract period expires, whichever occurs first, and after the date 18 months from the date the Secretary resumes the processing of excess lands sales, water deliveries shall be made at the full-cost rate for the duration of the extended contract period.

(i) The principles of this rule may be illustrated by the following:

*Example* (1). Landowner X entered into a recordable contract on June 27, 1972. The recordable contract provided for a 10-year disposition period which ended on June 27, 1982. However, Landowner X was prevented from selling the land by the Secretarial moratorium of June 27, 1977. The district in which the land is located amended its contract to conform to the discretionary provisions on January 1, 1983. Since Landowner X had 5 years remaining on the original recordable contract when the moratorium was imposed, the contract will be extended for 5 years from the date the processing of the sale is resumed. The resumption date will be determined by the Secretary. Landowner X must pay the full-cost rate, however, for any irrigation water delivered to the land under recordable contract beginning 18 months from the date the moratorium is lifted.

*Example (2).* Landowner Y entered into a recordable contract with a 10-year disposition period on June 27, 1976. Landowner Y was prevented from selling the land by the Secretarial moratorium of June 27, 1977. At that time, 9 years remained in the disposition period of the recordable contract. The district in which the land is located amended its contract to conform with the discretionary provisions of title II on January 1, 1983. The Secretary resumes the processing of the excess land sale on May 21, 1984. The original disposition period of the recordable contract expires on June 27, 1986, which is more than 18 months after the Secretary resumed the processing of the excess land sale. Therefore, Landowner Y must pay the full-cost rate for water deliveries to that land beginning June 27, 1986, for the duration of the extended contract period. The extended contract period will expire on May 21, 1993, 9 years after the Secretary resumed the processing of the excess land sale.

(j) *Sale of excess land under recordable contract by the Secretary.* All recordable contracts shall provide that a power-of-attorney shall vest in the Secretary to sell the land under recordable contract if the landowner does not dispose of the excess land within the period specified. The land shall be deemed "disposed of" for this purpose if the landowner has complied with all requirements for the sale of excess land under these rules within the period specified whether the Secretary gives his final approval of the sale within that period or thereafter. The Secretary shall conduct such excess land sales, once the power-of-attorney has vested. The Secretary shall use the following procedures:

(1) *Surveys.* A qualified surveyor shall make a land survey when determined necessary by the Secretary. The cost of the survey initially will be paid by the United States and added to the sale price for the land. The cost shall be reimbursed to the United States from the proceeds of the sale.

(2) *Appraisals.* The Secretary shall appraise the excess land to determine the approvable sale price. The cost of the appraisal shall be paid by the United States. Such cost shall be added to the approved sale price and shall be reimbursed to the United States out of the proceeds of the sale.

(3) *Advertising.* The Secretary shall advertise the sale of the property in the newspapers within the county in which the land lies, in farm journals, in other similar publications, and by other public notices he determines advisable. The notices shall state (i) the minimum acceptable sale price for the property (which equals the appraised value plus the cost of the appraisal, survey, and advertising), (ii) that the land will be sold by auction for cash or on terms acceptable to the landowner to the highest bidder whose bid equals or exceeds the minimum acceptable sale price, and (iii) the date for such sale (which shall not exceed 90 days from date of the advertisement).

The advertisement costs for the sale will be added to the sale price for the land and reimbursed to the United States from the sale proceeds.

(4) *Distribution of proceeds.* The proceeds from the sale of the land shall be paid first, to the landowner in the amount of appraised value; second, to costs due the United States for costs of the survey, appraisal, advertising, etc.; and third, to the United States any remaining proceeds, which will be credited to the Reclamation fund or other funds as prescribed by law.

(5) *Closing.* The sale of the excess land shall be closed by the Secretary when all sale arrangements have been completed. The Secretary shall execute a deed conveying the land to the purchaser. There shall be no requirement for a covenant in the deed, paragraph (h) of this section, restricting the resale of the land.

(6) *Water deliveries.* Excess land under matured recordable contracts will be eligible to continue to receive irrigation water at the current applicable rate until the land is sold by the Secretary.

(k) *Land which becomes excess because of westwide application or enforcement of other requirements of law*—(1) *Land previously subject to prior law.* Irrigable land and other land which was subject to prior law and which was nonexcess and receiving or eligible to receive irrigation water under that law may become either (i) excess because of the westwide application of acreage limitation for qualified or limited recipients or (ii) ineligible because of the restriction on delivery of water to nonresident aliens and entities not established under State or Federal law.

To remain eligible for water, such land, up to the amount which was nonexcess and eligible under prior law, must be placed under recordable contract as provided in paragraph (e) of this section. The recordable contract in such situations shall be modified to permit the landowner to sell the land to an eligible purchaser without price approval by the Secretary. The deed conveying the excess land shall not contain the standard covenant, as set forth in paragraph (h) of this section, requiring sale price approval by the Secretary for a period of 10 years following initial sale. The land shall be sold in accordance with the procedures established in paragraph (j) of this section if the Secretary's power-of-attorney to sell the land vests. In these

situations, the excess or ineligible land shall also become eligible to receive irrigation water if it is sold to an eligible buyer. Those acres which were held as nonexcess and eligible under prior law may be sold at fair market value.

(2) *Land not previously subject to prior law.* The provisions in paragraph (1) do not apply to land in districts which first entered a contract with the United States after October 12, 1982. In such districts, excess land can only gain eligibility as described in paragraphs (d)(1) and (d)(2) of this section. Land that becomes ineligible in these districts because it is owned by nonresident aliens or by an entity not established under State or Federal law can be placed under a recordable contract requiring Secretarial sale price approval, as set forth in paragraph (e) of this section, only if the land was acquired before the date of the district's contract. If the land was acquired after the date of the district's contract, it must be sold to an eligible buyer at an approved price in order to regain eligibility.

(l) This rule may be illustrated by the following:

*Example (1).* Landowner X and his wife are U.S. citizens and own 320 acres of irrigation land designated as nonexcess in each of Districts A, B, C, and D. In June of 1980, Landowner X purchased an additional 280 acres in District E. District A amends its contract to conform to title II. Landowner X and his wife automatically and without benefit of choice become a qualified recipent and as such are entitled to irrigate no more than 960 acres westwide with irrigation water. Their present ownership exceeds their 960-acre ownership entitlement by 600 acres. Since the 280 acres in District E were purchased after December 6, 1979, that land was ineligible to receive irrigation water even under prior law. Therefore, no part of that parcel can be placed under recordable contract and the land remains ineligible until sold to an eligible buyer at an approved price or the sale is cancelled, or the land is redesignated with Secretarial approval. The remaining 320 excess acres, however, had been eligible under prior law. Therefore, that land can continue to receive irrigation water if Landowner X either sells it to an eligible buyer or places the land under a 5-year recordable contract. In either case, Landowner X could sell the land at fair market value.

*Example (2).* Corporation X, which was established under the laws of Switzerland, is owned by two shareholders who are citizens and residents of Switzerland. The corporation owns 480 acres of irrigation land in District A and has designated 160 acres as nonexcess and eligible to receive irrigation water. District A amends its contract to conform to the discretionary provisions. Thereby, Corporation X becomes ineligible to receive irrigation water as a qualified recipient because it is not established under State or Federal law. However, since 160 acres of its land were eligible to receive irrigation water under prior law, this land will continue to be eligible if it is placed under a recordable contract or sold to an eligible buyer. The 160 acres, whether or not under recordable contract, may be sold at fair market value; however, the 320 acres which were excess under prior law remain ineligible until sold to an eligible buyer at an approved price.

*Example (3).* Corporation W, a foreign corporation owned by two shareholders who are citizens and residents of Norway, purchased 480 acres of irrigation land in District A. Subsequent to the purchase, District A entered its first contract with the United States, thereby becoming subject to the discretionary provisions. Corporation W, however, is not eligible to receive irrigation water as a qualified recipient because it was not established under State or Federal law. Since Corporation W's land had never been subject to prior law, it does not come under the purview of paragraph (k)(1) of this section. However, since the land was purchased before the date of the district's contract, the corporation can receive irrigation water by placing the land under a recordable contract requiring Secretarial sale price approval.

**§ 426.12 Excess land appraisals.**

(a) *In general.* The following regulations shall apply to all appraisals of excess land and land burdened by a deed covenant except when the land is subject to a recordable contract and/or a contract which was in force on October 12, 1982, and these regulations are inconsistent with the provisions of those contracts.

(1) All appraisals of excess land and land burdened by a deed covenant will be based on the fair market value of the land at the time of appraisal without reference to the construction of the irrigation works. Standard appraisal procedures including the income, comparable sales, and cost methods shall be used as applicable. Nonproject water supply factors as provided in paragraph (a)(3) of this section shall be considered as appropriate.

(2) Improvements shall be appraised on the basis of their contributory fair market value as of the date of appraisal, using standard appraisal procedures.

(3) The nonproject water supply factors of: (i) Ground-water pumping lift, (ii) surface water supply, (iii) water quality, and (iv) trends associated with paragraph (a)(3) (i), (ii), and (iii) of this section shall be considered by the appraiser where appropriate.

The Bureau of Reclamation, in conjunction with the district, if the district desires to participate, shall develop the nonproject water supply and trend information. Landowners of excess land or land burdened by a deed covenant and prospective buyers may submit information relevant to these determinations to the district or the Bureau of Reclamation. The Bureau of Reclamation may also conduct public meetings and forums and solicit input from other sources to obtain data that may be considered in developing the ground-water trend information. Data submitted may include historic geological data, changing crops and cropping patterns, and other factors associated with the nonproject water supply. If the Bureau of Reclamation and the district cannot reach agreement on the data within 60 days, the Secretary shall review and update the trend information as he deems necessary and make all final determinations considering the data provided by the Bureau of Reclamation and the district. These data will be provided to appraisers and shall be considered in the appraisal process. Each appraisal will clearly explain how the data were used in the valuation of the lands.

(4) The date of appraisal shall be the date of last inspection by the appraiser(s) unless there is an existing signed instrument such as an option, contract for sale, agreement for sale, etc., affecting the property, in which case the date of appraisal will be the date of such instrument.

(b) *When appraisals are to be made.* Appraisals of excess land or land burdened by a deed covenant shall be made upon request of the landowner(s) or when required by the Secretary. If a request for an appraisal is not received from the landowner(s) within 6 months of the maturity date of the recordable contract, the Secretary may initiate the appraisal.

(c) *Appraiser slection and appraisal cost.* Each appraisal of excess land or land burdened by a deed covenant shall be made by a qualified appraiser selected by the Secretary except as provided in paragraph (d) of this section. The cost of the first appraisal of any excess land shall be paid by the United States. When the excess land or land burdened by a deed covenant is sold, the cost of the first appraisal shall be added to the sale price and reimbursed to the United States by the excess land purchaser. Any costs associated with additional appraisals requested by the landower shall be paid by that landowner provided the value of the land established by a reappraisal does not exceed the value established in the first appraisal by more than 10 percent. However, if the difference in the appraisal values exceeds 10 percent, the United States will pay for the reappraisal.

(d) *Appeals.* The owner of excess land or land burdened by a deed covenant who requested the appraisal, may

request a second appraisal if such landowner disagrees with the first appraisal. The second appraisal shall be prepared by a panel of three qualified appraisers, one designated by the United States, one designated by the district, and the third designated jointly by the first two. This appraisal shall be binding on both parties after review and approval as provided in paragraph (e) of this section. As such, it fixes the maximum vaue of the excess land.

(e) *Review process.* All appraisals of excess land or land burdened by a deed covenant shall be reviewed by the Bureau of Reclamation for technical accuracy and compliance with these rules and regulations, applicable portions of Uniform Appraisal Standards for Federal Land Acquisition-Interagency Land Acquisition Conference 1973, Reclamation Instructions, and any detailed instructions provided by the Secretary setting conditions applicable to an individual appraisal.

**§ 426.13 Exemptions.**

(a) *In general.* The following are exempt from acreage limitation, pricing, and other provisions of Federal Reclamation law as indicated:

(1) *Corps of Engineers project.* Land receiving an agricultural water supply from Corps of Engineers projects is exempt from title II and other provisions of Reclamation law unless it has, by Federal statute, explicitly been designated, made a part of, or integrated with a Federal Reclamation project or the Secretary has provided project works for the control or conveyance of an agricultural water supply from the Corps project to the subject land. This exemption does not relieve district agricultural water users from obligations, pursuant to contracts with the Secretary, to repay their share of construction, O&M, and contract administration costs of the Corps project allocated to conservation or irrigation storage. The Secretary shall determine the exemption status for land receiving an agricultural water supply from Corps of Engineers projects. He shall notify affected districts of the exemption status of that land. District repayment or water service contracts containing provisions imposing acreage limitation for those lands served from Corps projects which are exempt will be amended to delete those provisions at the request of the district.

(2) *Reclamation projects.* Land in districts shall be exempt from the ownership and full-cost pricing provisions of Reclamation law when the district has repaid all obligated construction costs for project facilities for that land in accordance with the terms of the district's contract with the United States. Payments by periodic installments over the contract repayment term, as well as lump-sum and accelerated payment allowed in the district's contract shall qualify the district or individual for exemption. An individual landowner will be exempt upon repayment of construction charges allocated to that owner's land, if provided for in a contract with the United States. When a district has discharged its obligation to repay construction costs for project facilities, the Secretary shall notify the district that it is exempt from acreage limitation and the full-cost provisions of law; however, such an exemption shall not relieve a district or individual from paying, on an annual basis, the O&M costs chargeable to that district or individual. At the request of an owner of a landholding for which repayment has occurred, the Secretary shall provide a certificate to that owner acknowledging the landholding is free of the ownership and full-cost pricing limitations of Federal Reclamation law. The certification and reporting requirements for acreage limitation and full-cost pricing will no longer apply to districts or landholders for exempt land. The continuation of the exemption will be considered on a case-by-case basis if additional construction funds for the project are requested.

(3) *Temporary supplies of water.* Supplies of water made possible as a result of an unusually large water supply not otherwise storable for project purposes or infrequent and otherwise unmanaged floodflows of short duration can be made available to land without regard to the acreage limitation and full-cost provisions of Federal Reclamation law for a temporary period not to exceed 1 year. Such water supplies can be made available by the Secretary as temporary supplies to excess land. The Secretary shall announce the availability of such temporary supplies to districts. Districts desiring deliveries of such temporary water supplies to excess land shall request the Secretary to make such deliveries. Upon approval by the Secretary, the district shall be notified of the availability of the temporary supply and the conditions for its use. The temporary supply of water shall be delivered under contracts not to exceed 1 year in accordance with existing policies and priorities. Such deliveries must not have any adverse effect on other authorized project purposes. The Secretary shall determine the price, if any, a district is to be charged and other conditions that may apply to such temporary water deliveries.

(4) *Isolated tracts.* Isolated tracts which can be farmed economically only if included in a larger farming operation shall not be subject to the ownership limitations of Federal Reclamation law. However, the full-cost rate shall apply to water deliveries to isolated tracts that are in excess of the landowner's non-full-cost entitlement. Isolated tract determinations shall be made by the Secretary at the request of the landowner.

(5) *Rehabilitation and Betterment Programs.* R&B (Rehabilitation and Betterment) loans, pursuant to the R&B Act of October 7, 1949, as amended, are not considered loans for construction, but rather loans for maintenance, including replacements which cannot be financed currently; provided, that the project for which the loan is requested or made is a project authorized under Federal Reclamation law prior to the submittal of the request for an R&B loan to the Bureau of Reclamation by or for the district. Because funds advanced for R&B loans do not constitute construction charges, they are not to be considered in determining whether the obligation of a district for the repayment of the construction costs of project facilities used to make project water available for delivery to such land has been discharged by the district. A loan for an R&B program shall not be the basis for reinstating acreage limitation in a district which has completed payment of its construction obligation nor for increasing the construction obligation of the district and extending the period during which acreage limitation will apply to that district.

**§ 426.14 Residency.**

Residency is not a requirement for the delivery of irrigation water from Reclamation project facilities. Existing recordable contracts and certificates containing provisions requiring the purchaser of excess land to be a resident or agree to become a resident within a specified time period shall be revised to delete this requirement.

**§ 426.15 Religious and charitable organizations.**

(a) *Ownership entitlement under the discretionary provisions.* Each parish, congregation, school, ward, or similar organization of a religious or charitable organization which is exempt from taxation under § 501 of the Internal Revenue Code of 1954, and owns or operates landholdings in Federal Reclamation projects, will be treated as a qualified recipient: Provided, (1) that

either the district in which the land is situated enters into a new or amended contract, or the religious or charitable organization or its subdivision owning or operating land in the district elects to come under the discretionary provisions; (2) that the agricultural produce and the proceeds of sales of such produce are used only for charitable purposes; (3) that the land is operated by the individual religious or charitable entity or organization (or subdivision); and (4) that no part of the net earnings of the religious or charitable entity or organization (or subdivision) shall accrue to the benefit of any private shareholder or individual.

If a religious or charitable organization subject to the discretionary provisions does not meet the last three criteria in this paragraph, the entire organization, including all of its subdivisions, will be treated as one limited recipient as set forth in § 426.6(c).

(b) *Ownership entitlement under prior law.* The provisions of the prior law will apply if neither the district nor the religious or charitable organization or its subdivision elects to conform to the discretionary provisions. Each parish, ward, congregation, or other subdivision of the organization shall be considered an individual under prior law, provided it meets the last three criteria set forth in paragraph (a) of this section. If the organization does not meet those three criteria, the entire organization, including all of its subdivisions, will be treated as one corporation subject to prior law as set forth in § 426.6(d)(5).

(1) The principles of this rule may be illustrated by the following:

*Example (1).* A charitable organization which meets the requirements of title II has subdivisions in each of five different districts. Each of these districts amends its contract to conform to the discretionary provisions. Therefore, each subdivision is entitled to own and farm 960 acres of irrigation land.

*Example (2).* A religious organization which meets the requirements of title II has subdivisions in each of Districts A, B, C, and D. Each subdivision operates 800 acres of irrigation land. Districts A and B amend their respective contracts to conform to the discretionary provisions; therefore, the subdivisions in Districts A and B are entitled to own or operate 960 acres of irrigation land. Districts C and D do not amend their contracts to conform to the discretionary provisions and remain subject to the acreage restrictions contained in the prior law. The subdivisions in Districts C and D, however, make individual elections to conform to the discretionary provisions and are therefore entitled to own or operate 960 acres of irrigation land.

(c) *Affiliated farm management.* A religious or charitable organization or its subdivision which elects to conform to the discretionary provisions or owns or operates land in a district which enters into a new or amended contract may retain its status as a qualified recipient and still affiliate with a more central organization of the same faith in farm operation and management. Affiliated farm management shall be permitted regardless of whether the subdivision is the owner of record of the land being operated.

(1) The principles of this rule may be illustrated by the following:

*Example.* A religious organization holds title to 1,280 acres in District A and 1,280 acres in District B. The acreage in District A is operated jointly by two subdivisions and the acreage in District B is operated by three subdivisions in separate farms of 300, 300, and 680 acres. Farm operations are coordinated by the religious organization through managers at each farm. Each subdivision is a qualified recipient and entitled to operate 360 acres of irrigation land. The religious organization is entitled to own the acreage being operated by its affiliated subdivisions in each district.

(d) *Leasing.* The full-cost provisions dealing with leased land shall apply to religious or charitable organizations or their subdivisions.

(1) The principles of this rule may be illustrated by the following:

*Example.* A charitable organization has subdivisions in each of Districts A, B, C, and D. Each of these districts has amended its contract to conform to the discretionary provisions. Each subdivision in Districts A, B, and C owns and operates 800 acres of irrigation land. The subdivision in District D owns and operates 960 acres and leases another 160 acres, all of which are receiving irrigation water. The subdivision in District D is obligated to pay the full-cost rate for irrigation water delivered to the 160 acres in its landholding.

**§ 426.16 Involuntary acquisition of land.**

(a) *Nonexcess land.* Nonexcess land, irrespective of whether it is subject to a 10-year deed covenant requiring Secretarial sale price approval, and which becomes excess because it is acquired through involuntary foreclosure or similar involuntary process of law, conveyance in satisfaction of a debt (including, but not limited to, a mortgage, real estate contract, or deed of trust), inheritance, devise, or gift is eligible to receive irrigation water in the new ownership for a period of 5 years. Such land may not be placed under recordable contract by the new owner. The new owner will be required during the 5-year period to pay a rate for the water which is equal to the rate paid by the former owner, unless the land becomes subject to full-cost pricing through leasing. Acquisition of land from nonexcess status in any of the manners noted in this paragraph will allow removal of the deed covenant (if present) as provided in § 426.11(h)(2); and the land may be sold at any time by the new owner without price approval and without the deed covenant required in § 426.11(h)(1). However, it will become ineligible to receive irrigation water 5 years after it was acquired and will remain ineligible until it has been sold to an eligible owner.

(1) The application of this rule can be illustrated by the following:

*Example (1).* Farmer X owns 160 acres of irrigation land in District A. District A has not amended its contract to become subject to the discretionary provisions. Farmer X inherits another 480 acres of irrigation land in District B through settlement of his uncle's estate. District B has amended its contract to become subject to the discretionary provisions. Even though Farmer X has reached the limits of his individual ownership entitlement under prior law, since the 480 inherited acres had been designated nonexcess and eligible in his uncle's ownership, the land continues to be eligible to receive irrigation water for a period of 5 years in Farmer X's ownership. However, since this land is located in a district subject to the discretionary provisions, the price of water delivered to this land must include at least full O&M costs and, if the land is leased to another landholder, the full-cost rate may apply, depending on whether the lessee has exceeded his non-full-cost entitlement. Farmer X also has the option of selling the 480 acres at any time at full market value. As explained in paragraph (e) of this section, Farmer X would not become subject to the discretionary provisions by virtue of the fact that he involuntarily acquired land from a landowner subject ot the discretionary provisions. However, Farmer X has the option of becoming subject to the discretionary provisions through an irrevocable election. If he chooses this option, he can then include the 480 acres as part of his 960-acre ownership entitlement as a qualified recipient.

*Example (2).* Farmer A, a qualified recipient who owns 500 acres of irrigation land, purchases 160 acres of excess land from Farmer B. Farmer A designates this 160 acres as nonexcess, eligible to receive irrigation water. The deed transferring the land contains the 10-year deed covenant requiring Secretarial sale price approval. Farmer A finances this purchase through Bank ABC. Subsequently, Bank ABC forecloses on Farmer A's 160 acres. The bank may receive irrigation water on this land for a period of 5 years at the same price which was paid by Farmer A, unless the land becomes subject to full-cost pricing through leasing. In addition, the bank may sell the land at fair market value without affecting the land's eligibility to receive irrigation water. The deed covenant shall be removed by the Secretary at the bank's request.

*Example (3).* Farmer X owns 160 acres of excess irrigation land in District A. He decides to sell this land to his neighbor.

Farmer Y, an eligible buyer. Farmer X provides Farmer Y with the financing necessary for the purchase. The deed transferring the land to Farmer Y contains the 10-year covenant requiring sale price approval. The 160 acres of land burdened by a deed covenant becomes eligible to receive irrigation water in Farmer Y's ownership. Subsequent to the purchase, Farmer Y fails to meet his financial obligation to Farmer X. Consequently, the land once again becomes part of Farmer X's ownership by foreclosure. Since this land was involuntarily acquired into excess status by Farmer X, he may receive water on the land at the contract rate for 5 years following the date of foreclosure, and may resell the land at fair market value without affecting the land's eligibility. At Farmer X's request, the Secretary shall remove the deed covenant in accordance with § 426.11(h)(2).

(b) *Ineligible land.* Irrigable land which is involuntarily acquired and which was ineligible in the holding of the former owner remains ineligible to receive irrigation water in the holding of the new owner, unless (i) the land becomes nonexcess in the new ownership, and (ii) the deed to the land contains the 10-year covenant requiring Secretarial price approval, commencing when the land becomes eligible to receive irrigation water. If either of these conditions is not met, the land remains ineligible until sold to an eligible buyer at an approved price and the 10-year covenant requiring Secretarial price approval must be placed in the deed transferring the land to the buyer.

(c) *Excess land under recordable contract.* Excess land which is under recordable contract and which is acquired by involuntary foreclosure or other involuntary process may continue to receive irrigation water under the terms of the recordable contract. However, the new owner must agree, to the extent the land continues to be excess in his landholding, to assume the recordable contract and execute an assumption agreement provided by the Secretary. Such excess land will be eligible to receive irrigation water for 5 years from the date it was acquired involuntarily or for the remainder of the recordable contract period, whichever is longer. The sale of such land shall be under terms and conditions set forth in the recordable contract and must be satisfactory to and at a price approved by the Secretary.

(1) The application of this rule can be illustrated by the following:

*Example.* Landowner X, a qualified recipient, owns 800 acres of irrigation land in District A. Landowner X inherits 640 acres of land in District B from his grandfather. The inherited land was placed under a 10-year recordable contract by his grandfather 7 years ago. Landowner X signs an agreement to assume his grandfather's recordable contract to the 480 acres that remain excess in his landholding; however, even though the original recordable contract term expires in 3 years, since the excess land was involuntarily acquired, it remains eligible to receive irrigation water for an additional 2 years in Landowner X's ownership. Within that 5-year period, however, Landowner X must sell the excess land at a Secretarially approved price.

(d) *Mortgaged land.* Mortgaged land which changes from nonexcess into excess after the mortgage is recorded and is subsequently acquired by the lender by involuntary foreclosure or similar involuntary process of law or by bona fide conveyance in satisfaction of the mortgage, (1) is eligible to receive irrigation water in the new ownership for a period of 5 years or until transferred to an eligible landower, whichever occurs first, and (2) may be sold at its fair market value. During the 5-year period the water rate will be the same as it was for the former owner, unless the land becomes subject to full-cost pricing through leasing.

(e) *Other.* A party acquiring irrigation land involuntarily shall not become subject to the discretionary provisions by virtue of the fact that the former owner had been subject to the discretionary provisions. When irrigation land is involuntarily acquired through inheritance, the 5-year eligibility period for receiving irrigation water on the newly acquired land begins on the date of the devisor's death.

**§ 426.17 Land held by governmental agencies.**

(a) *Acreage limitation.* Irrigable and irrigation land held by States, political subdivisions or agencies thereof, and agencies of the Federal Government, which are farmed primarily for a nonrevenue producing function, as determined by the Secretary, shall not be subject to the acreage limitation and full-cost provisions of Federal Reclamation law.

(b) *Sales.* Irrigable and irrigation land held by States, political subdivisions or agencies thereof, and agencies of the Federal Government, may be sold without price approval. Once sold, such land will be eligible to receive irrigation water provided the purchaser meets the eligibility requirements to own land and receive irrigation water.

(c) *Leasing.* States, political subdivisions or agencies thereof, and agencies of the Federal Government may lease irrigation land they own or control to an eligible landholder, provided that the irrigation land leased from such entities plus any irrigation land owned by the landholder does not exceed the landholder's basic entitlement under Federal Reclamation law (960 acres for a qualified recipient, 640 acres for a limited recipient, or 160 acres for a prior law recipient, unless otherwise provided by law).

(1) The principles of this rule may be illustrated by the following:

*Example (1).* Farmer X is a qualified recipient in the State of Colorado and owns and irrigates 160 acres of land with irrigation water. The State of Colorado may lease Farmer X an additional 800 acres of State-owned land which will make up the balance of Farmers X's basic entitlement. Farmer X is still entitled, however, to lease additional acreage which may be irrigated at the full-cost rate provided that additional acreage is not owned by a government agency.

*Example (2).* In 1976, Farmer X purchased 100 acres of irrigation land in District A and 100 acres in District B. Districts A and B remain subject to prior law and Farmer X has not made an irrevocable election. Since Farmer X purchased the land prior to December 6, 1979, all 200 acres are eligible to receive irrigation water. In addition, Farmer X wants to lease 60 acres of irrigation land from the State of Colorado. If he does so, the leased land will be ineligible to receive irrigation water because Farmer X already owns in excess of the basic 160-acre entitlement for prior law recipients. However, if Farmer X becomes a qualified recipient through either a contract amendment by the district or an irrevocable election, he will be entitled to receive irrigation water on not only the 60 acres he wishes to lease from the State, but also on another 700 acres of irrigation land, whether in his ownership or leased from another party, including a governmental agency.

**§ 426.18 Commingling.**

(a) *Existing commingling provisions in contracts.* Provisions in contracts entered into prior to October 1, 1981, which define irrigation and agricultural water from other sources (nonproject water) or describe the delivery of irrigation water through nonproject facilities or nonproject water through project facilities, shall continue in effect. They shall apply to renewed contracts the district enters into with the United States as well.

(b) *Establishment of commingling provisions in contracts.*

(1) New, amended, or renewed contracts may provide that irrigation water may be commingled with nonproject water as provided in subparagraphs (i) and (ii) of this paragraph:

(i) Where the facilities utilized for commingling irrigation water and nonproject water are constructed without funds made available pursuant to Federal Reclamation law, the provisions of Federal Reclamation law and these regulations will be applicable only to the landholders who receive

irrigation water, *provided*, that the water requirements for eligible lands can be established and the quality of irrigation water to be utilized is less than or equal to the quantity necessary to irrigate eligible lands; or

(ii) Where the facilities utilized for commingling irrigation water and nonproject water are constructed with funds made available pursuant to Federal Reclamation law, nonproject water will be subject to Federal Reclamation law and these regulations *unless* the district collects and pays to the United States an incremental fee which reasonably reflects an appropriate share of the cost to the Federal Government, including interest, of storing and/or covering the nonproject water. Such fee shall be established by the Secretary and shall be in addition to the district's obligation to pay for capital, operation, maintenance, and replacement costs associated with the facilities required to provide the service. The provisions of Federal Reclamation law and these regulations will be applicable to all landholders who receive irrigation water and, in the case of a district which does not pay the incremental fee specified in this paragraph (b)(i)(ii), to all landholders who receive nonproject water delivered through Reclamation program funded facilities.

(iii) (A) The principles of this rule as they relate to irrigation water commingled in facilities constructed without funds made available pursuant to Federal Reclamation law may be illustrated by the following:

*Example (1).* District A has a distribution system constructed without funds made available pursuant to Federal Reclamation law and irrigates land therein with nonproject surface supplies and groundwater distributed to users within the district through its distribution system. The district enters into a contract with the United States for a supplemental irrigation water supply and intends to distribute that supplemental water through its distribution system. Only the landholders within the district who are eligible to receive a supply of irrigation water are subject to Reclamation law. The district is not restricted in its use of the nonproject surface water or groundwater, and will be in compliance with the provisions of its contract so long as there is sufficient eligible land to receive the irrigation water supply.

*Example (2).* District A has a contract with the Bureau for a supply of irrigation water. Within the boundary of the district there are several parcels of ineligible excess lands which are not supplied with irrigation water. Those lands are irrigated from the groundwater resources under them. If irrigation water furnished to the district pursuant to the contract reaches the underground strata of these ineligible lands as an unavoidable result of the furnishing of the irrigation water by the district to eligible lands, the continued irrigation of the ineligible excess lands with that groundwater shall not be deemed to be in violation of the Reclamation law.

**Note.**—Example 2 also is applicable to the issue of unavoidable groundwater recharge and can also serve as an example in § 426.13.

(B) The principles of this rule as they relate to commingling in one or more Federal Reclamation program funded facilities or jointly financed facilities may be illustrated by the following:

*Example (1).* A district has nonproject water available to deliver to lands considered not eligible (ineligible) for irrigation water under provisions of Federal Reclamation law and these regulations. To eliminate the need to build a duplicate private conveyance system to transport nonproject water, the district would like to transport such water through facilities constructed with finds made available pursuant to Federal Reclamation law without the nonproject water being subject to Federal Reclamation law and these regulations. If the district agrees, with prior approval of the Secretary, the nonproject water may be commingled in federally financed facilities and delivered to ineligible lands if the district pays the incremental fee, as determined by the Secretary, for the use of the federally financed facilities required to deliver the nonproject water. The fee will be in addition to the capital, operation, maintenance, and replacement costs the district is obligated to pay and will be based on a methodology designed to reasonably reflect an approprite share of the cost to the Federal Government, including interest, of providing the service.

*Example (2).* The State of Euphoria has a water supply it wishes to transport in the same direction and at the elevation as planned in the Federal Reclamation project. If the Bureau of Reclamation and the State each finance their share of the costs to construct and operate the project, the water supply of the State will not be subject to Federal Reclamation law and these regulations.

(2) Acquisition of irrigation water from federally financed facilities by exchange shall not subject the users of such water to Federal Reclamation law and these regulations if no material benefit results from the exchange to the recipient of water from the federally financed facilities.

(i) The principles of this rule may be illustrated by the following:

*Example.* District A has water rights to divert water from a river. These water rights are adequate to meet its requirements. It is located immediately adjacent to a federally subsidized facility. District B is located immediately adjacent to the river but several miles from the Federal facility. District B contracts with the United States for a supply of irrigation water, but rather than construct several miles of conveyance facility, District B, with the approval of the United States, contracts with District A to allow District A's water rights water to flow down the river for use by District B and the irrigation water is in turn delivered to District A. District A is not subject to Federal Reclamation law and these regulations by virtue of this exchange, provided it does not materially benefit from that exchange. District B, however, is subject to Federal Reclamation law and these regulations since it is the beneficiary of the exchange; i.e. a water supply.

**§ 426.19 Water conservation.**

(a) *In general.* The Secretary shall encourage the full consideration and incorporation of prudent and responsible water conservation measures in all districts and for the operations by non-Federal recipients of irrigation and M&I (municipal and industrial) water from Federal Reclamation projects.

(b) *Development of a plan.* Districts that have entered into repayment contracts or water service contracts according to Federal Reclamation law or the Water Supply Act of 1958, as amended (43 U.S.C. 390b), shall develop and submit to the Bureau of Reclamation a water conservation plan which contains definite objectives which are economically feasible and a time schedule for meeting those objectives. In the event the contractor also has provisions for the supply of M&I water under the authority of the Water Supply Act of 1958 or has invoked a provision of that act, the water conservation plan shall address both the irrigation and M&I water supply activities.

(c) *Federal assistance.* The Bureau of Reclamation will cooperate with the district, to the extent possible, in studies to identify opportunities to augment, utilize, or conserve the available water supply.

**§ 426.20 Public participation.**

(a) *In general.* The Bureau of Reclamation will publish notice of proposed irrigation or amendatory irrigation contract actions in newspapers of general circulation in the affected area at least 60 days prior to contract execution. The Bureau of Reclamation announcements of irrigation contract actions will be published in newspapers of general circulation in the areas determined by the Bureau of Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation requirements do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. The Secretary or the district may invite the

public to observe any contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act if the Bureau determines that the contract action may or will have "significant" environmental effects.

(1) Each public notice or news release shall include, as appropriate, (i) a brief description of the proposed contract terms and conditions being negotiated; (ii) date, time, and place of meeting or hearings; (iii) the address and telephone number of a Bureau employee to address inquiries and comments; and (iv) the period of time in which comments will be accepted.

(2) Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

(3) Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of the Bureau of Reclamation.

(4) All written correspondence regarding proposed contracts will be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act [80 Stat. 383], as amended.

(5) Written comments on a proposed contract or contract action must be submitted to the appropriate Bureau of Reclamation officials at locations and within time limits set forth in the advance public notices.

(6) All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

(7) Copies of specified proposed contracts may be obtained from the appropriate Regional Director or his designated public contact as they become available for review and comment.

(8) In the event modifications are made in the form of proposed contract, the appropriate Regional Director shall determine whether republication of the notice and/or extension of the 60-day comment period is necessary. Factors which shall be considered in making such a determination shall include, but are not limited to: (i) The significance of the impact(s) of the modification and (ii) the public interest which has been expressed over the course of the negotiations. As a minimum, the Regional Director shall furnish revised contracts to all parties which requested the contract in response to the initial public notice.

**§ 426.21 Small reclamation projects.**

(a) Small Reclamation Project Acts (SRPA) loan contracts entered into after October 12, 1982, shall be subject to the provisions of the Act of August 6, 1956 (43 U.S.C. 422e), as amended by § 223 of Pub. L. 97–293 and as amended by Title III of Pub. L. 99–546.

(b) SRPA loan contracts which were entered into prior to October 12, 1982, shall continue to be subject to the provisions of those loan contracts, provided however that those contracts that are amended to conform to the Act of August 6, 1956, as amended by § 223 of Pub. L. 97–293, shall also be subject to the increased acreage provisions in § 223 of Pub. L. 97–293. It is provided further that no other provisions of the loan contract shall be altered, modified, or amended without the consent of the non-Federal party.

(c) No other section of these regulations shall be deemed applicable to SRPA loans.

(d) In districts which have a water service or repayment contract in addition to an SRPA contract, the SRPA loan is not to be considered in determining whether the district has discharged its construction cost obligation for the project facilities. Neither shall an SRPA loan be the basis for reinstating acreage limitation in a district which has completed payment of its construction cost obligation nor for increasing the construction obligation of the district and extending the period during which acreage limitation will apply to that district.

(e) In a district which has both an SRPA loan contract and a contract as defined in § 426.5(b), [for example, a repayment contract, a water service contract, or a distribution system loan contract (Pub. L. 84–130)], the requirements applicable to such contracts are not superseded by the SRPA contract.

(1) The application of this rule can be illustrated by the following:

*Example.* District A has entered into both a repayment contract and an SRPA loan contract. In 1983, District A amended its SRPA loan contract pursuant to § 223 of title II in order to increase the interest threshold for its owners to 960 acres for a qualified recipient and 320 acres for a limited recipient. However, District A has not amended its repayment contract to become subject to the discretionary provisions, and is, therefore, still subject to the acreage limitations of prior law. Even though this SRPA contract permits an increased threshold for interest payments, until District A becomes subject to the discretionary provisions, it may not deliver irrigation water to land in excess of 160 acres (320 acres for a married couple), except in those cases where such land is under recordable contract, is owned by an individual who has made an irrevocable election, or commingling provisions in the district's contract allow nonprofit water to be delivered to excess land, see § 426.18.

**§426.22 Decisions and appeals.**

Unless otherwise provided by the Secretary, the Regional Director shall make any determination required under these rules and regulations. A party directly affected by such determination may appeal in writing to the Commissioner of the Bureau of Reclamation within 30 days of receipt of the Regional Director's determination. The time for appeal may be extended by the Secretary. The affected party shall have an additional 30 days thereafter within which to submit a supporting brief or memorandum to the Commissioner. The Regional Director's determination will be held in abeyance until the Commissioner has reviewed the matter and rendered a decision.

Pertinent addresses are shown below:

Commissioner, Bureau of Reclamation, Department of the Interior, 18th and C Streets, NW, Washington DC 20240

Regional Director, Pacific Northwest Regional, Bureau of Reclamation, 550 West Fort Street, PO Box 043, Boise ID 83724

Regional Director, Mid-Pacific Region, Bureau of Reclamation, Federal Office Building, 2800 Cottage Way, Sacramento CA 95825

Regional Director, Lower Colorado Region, Bureau of Reclamation, Nevada Highway and Park Street, PO Box 427, Boulder City NV 89005

Regional Director, Upper Colorado Region, Bureau of Reclamation, 125 South State Street, PO Box 11568, Salt Lake City UT 84147

Regional Director, Southwest Region, Bureau of Reclamation, 714 South Tyler, Amarillo TX 79101

Regional Director, Missouri Basin Region, Bureau of Reclamation, 316 North 26th Street, PO Box 2553, Billings MT 59103

**§426.23 Severability.**

If any provision of these rules or the applicability thereof to any person or circumstances is held invalid, the remainder of these rules and the application of such provisions to other persons or circumstances shall not be affected thereby.

[FR Doc. 87–8222 Filed 4–10–87; 8:45 am]

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| 200-699 | 8.50 | July 1, 1986 |
| 700-End | 17.00 | July 1, 1986 |
| **31 Parts:** | | |
| 0-199 | 11.00 | July 1, 1986 |
| 200-End | 16.00 | July 1, 1986 |

| Title | Price | Revision Date |
|---|---|---|
| **32 Parts:** | | |
| 1-39, Vol. I | 15.00 | [5] July 1, 1984 |
| 1-39, Vol. II | 19.00 | [5] July 1, 1984 |
| 1-39, Vol. III | 18.00 | [5] July 1, 1984 |
| 1-189 | 17.00 | July 1, 1986 |
| 190-399 | 23.00 | July 1, 1986 |
| 400-629 | 21.00 | July 1, 1986 |
| 630-699 | 13.00 | July 1, 1986 |
| 700-799 | 15.00 | July 1, 1986 |
| 800-End | 16.00 | July 1, 1986 |
| **33 Parts:** | | |
| 1-199 | 27.00 | July 1, 1986 |
| 200-End | 18.00 | July 1, 1986 |
| **34 Parts:** | | |
| 1-299 | 20.00 | July 1, 1986 |
| 300-399 | 11.00 | July 1, 1986 |
| 400-End | 25.00 | July 1, 1986 |
| **35** | 9.50 | July 1, 1986 |
| **36 Parts:** | | |
| 1-199 | 12.00 | July 1, 1986 |
| 200-End | 19.00 | July 1, 1986 |
| **37** | 12.00 | July 1, 1986 |
| **38 Parts:** | | |
| 0-17 | 21.00 | July 1, 1986 |
| 18-End | 15.00 | July 1, 1986 |
| **39** | 12.00 | July 1, 1986 |
| **40 Parts:** | | |
| 1-51 | 21.00 | July 1, 1986 |
| 52 | 27.00 | July 1, 1986 |
| 53-60 | 23.00 | July 1, 1986 |
| 61-80 | 10.00 | July 1, 1986 |
| 81-99 | 25.00 | July 1, 1986 |
| 100-149 | 23.00 | July 1, 1986 |
| 150-189 | 21.00 | July 1, 1986 |
| 190-399 | 27.00 | July 1, 1986 |
| 400-424 | 22.00 | July 1, 1986 |
| 425-699 | 24.00 | July 1, 1986 |
| 700-End | 24.00 | July 1, 1986 |
| **41 Chapters:** | | |
| 1, 1-1 to 1-10 | 13.00 | [6] July 1, 1984 |
| 1, 1-11 to Appendix, 2 (2 Reserved) | 13.00 | [6] July 1, 1984 |
| 3-6 | 14.00 | [6] July 1, 1984 |
| 7 | 6.00 | [6] July 1, 1984 |
| 8 | 4.50 | [6] July 1, 1984 |
| 9 | 13.00 | [6] July 1, 1984 |
| 10-17 | 9.50 | [6] July 1, 1984 |
| 18, Vol. I, Parts 1-5 | 13.00 | [6] July 1, 1984 |
| 18, Vol. II, Parts 6-19 | 13.00 | [6] July 1, 1984 |
| 18, Vol. III, Parts 20-52 | 13.00 | [6] July 1, 1984 |
| 19-100 | 13.00 | [6] July 1, 1984 |
| 1-100 | 9.50 | July 1, 1986 |
| 101 | 23.00 | July 1, 1986 |
| 102-200 | 12.00 | July 1, 1986 |
| 201-End | 7.50 | July 1, 1986 |
| **42 Parts:** | | |
| 1-60 | 15.00 | Oct. 1, 1986 |
| 61-399 | 10.00 | Oct. 1, 1986 |
| 400-429 | 20.00 | Oct. 1, 1986 |
| 430-End | 15.00 | Oct. 1, 1986 |
| **43 Parts:** | | |
| 1-999 | 14.00 | Oct. 1, 1986 |
| 1000-3999 | 24.00 | Oct. 1, 1986 |
| 4000-End | 11.00 | Oct. 1, 1986 |
| **44** | 17.00 | Oct. 1, 1986 |
| **45 Parts:** | | |
| 1-199 | 13.00 | Oct. 1, 1986 |
| 200-499 | 9.00 | Oct. 1, 1986 |
| 500-1199 | 18.00 | Oct. 1, 1986 |
| 1200-End | 13.00 | Oct. 1, 1986 |
| **46 Parts:** | | |
| 1-40 | 13.00 | Oct. 1, 1986 |
| 41-69 | 13.00 | Oct. 1, 1986 |
| 70-89 | 7.00 | Oct. 1, 1986 |
| 90-139 | 11.00 | Oct. 1, 1986 |
| 140-155 | 8.50 | [7] Oct. 1, 1985 |
| 156-165 | 14.00 | Oct. 1, 1986 |
| 166-199 | 13.00 | Oct. 1, 1986 |
| 200-499 | 19.00 | Oct. 1, 1986 |
| 500-End | 9.50 | Oct. 1, 1986 |
| **47 Parts:** | | |
| 0-19 | 17.00 | Oct. 1, 1986 |
| 20-39 | 18.00 | Oct. 1, 1986 |
| 40-69 | 11.00 | Oct. 1, 1986 |
| 70-79 | 17.00 | Oct. 1, 1986 |
| 80-End | 20.00 | Oct. 1, 1986 |
| **48 Chapters:** | | |
| 1 (Parts 1-51) | 21.00 | Oct. 1, 1986 |
| 1 (Parts 52-99) | 16.00 | Oct. 1, 1986 |
| 2 | 15.00 | Oct. 1, 1985 |
| 3-6 | 17.00 | Oct. 1, 1986 |
| 7-14 | 23.00 | Oct. 1, 1986 |
| 15-End | 22.00 | Oct. 1, 1986 |
| **49 Parts:** | | |
| 1-99 | 10.00 | Oct. 1, 1986 |
| 100-177 | 24.00 | Oct. 1, 1986 |
| 178-199 | 19.00 | Oct. 1, 1986 |
| 200-399 | 17.00 | Oct. 1, 1986 |
| 400-999 | 21.00 | Oct. 1, 1986 |
| 1000-1199 | 17.00 | Oct. 1, 1986 |
| 1200-End | 17.00 | Oct. 1, 1986 |
| **50 Parts:** | | |
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| 200-End | 25.00 | Oct. 1, 1986 |
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1986. The CFR volume issued as of Apr. 1, 1980, should be retained.

[3] No amendments to this volume were promulgated during the period July 1, 1984 to June 30, 1986. The CFR volume issued as of July 1, 1984, should be retained.

[4] No amendments to this volume were promulgated during the period July 1, 1985 to June 30, 1986. The CFR volume issued as of July 1, 1985 should be retained.

[5] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[6] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[7] No amendments to this volume were promulgated during the period Oct. 1, 1985 to Sept. 30, 1986. The CFR volume issued as of Oct. 1, 1985 should be retained.