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Presidential Documents

Title 3—

The President

Proclamation 5740 of November 10, 1987

National Food Bank Week, 1987

By the President of the United States of America

A Proclamation

This harvest season, as Thanksgiving approaches, we are grateful that our country is rich in caring citizens who establish and maintain food banks to serve people in time of need. These devoted Americans daily offer their talents and material resources to help their neighbors.

Individuals, the food industry, other businesses, churches, government agencies, schools, and other groups combine to make food banks work. Social service agencies often refer clients to food banks pending the processing of the clients' benefit applications; this ensures that families' temporary needs are met while long-term assistance is being arranged. The food industry donates surplus food to regional food banks that help supply local pantries and private local food programs. Private businesses provide support services ranging from transportation and cold storage to accounting and legal help.

Our Nation's food banks and those who staff them truly deserve the thanks and the cooperation of all Americans.

In recognition of food banks and of the many Americans who help organize and operate them, the Congress, by House Joint Resolution 368, has designated the week of November 8 through November 14, 1987, as "National Food Bank Week" 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 the week of November 8 through November 14, 1987, as National Food Bank Week. I call upon all Americans to observe this week with appropriate activities to learn about food banks and how they are helping or could help people in their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of November, 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 twelfth.

Ronald Reagan

[FR Doc. 87-26401
Filed 11-10-87; 4:16 pm]
Billing code 3195-01-M

Presidential Documents

Notice of November 10, 1987

Continuation of Iran Emergency

On November 14, 1979, by Executive Order No. 12170, the President declared a national emergency to deal with the threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Notices of the continuation of this national emergency were transmitted by the President to the Congress and the **Federal Register** on November 12, 1980, November 12, 1981, November 8, 1982, November 4, 1983, November 7, 1984, November 1, 1985, and November 12, 1986. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 1987. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Iran. This shall be published in the **Federal Register** and transmitted to the Congress.

Ronald Reagan

THE WHITE HOUSE,
November 10, 1987.

[FR Doc. 87-26402
Filed 11-10-87; 4:17 pm]
Billing code 3195-01-M

Editorial note: For the text of the President's letter to the Congress, dated Nov. 10, on the continuation of the Iran emergency, see the *Weekly Compilation of Presidential Documents* (vol. 23, no. 45).

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

7 CFR Part 1610

Rural Telephone Bank Loan Policies

AGENCY: Rural Telephone Bank, USDA.
ACTION: Final Rule.

SUMMARY: The Rural Telephone Bank (RTB) hereby provides that each advance of funds on RTB loans approved after this date shall bear interest, as determined by the Governor of the RTB, at the cost of money rate prevailing at the time of such advance, but not less than 5 percent.

The amendment will reduce risk to borrowers and the RTB caused by fluctuating interest rates. The amendment will affect all future RTB loans.

EFFECTIVE DATE: December 1, 1987 for all loans made on or after this date.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2823-South Building, U.S. Department of Agriculture, Washington, DC, 20250, telephone number (202) 382–9550.

SUPPLEMENTARY INFORMATION: The Draft Regulatory Impact Analysis describing the options considered in developing this rule amendment is available on request from the above named individual. This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies; or (3) result in significant adverse effects on competition, employment, investment or productivity. Therefore, this rule has been determined to be "not major."

This program is listed in the Catalog of Federal Domestic Assistance as 10.851—Rural Telephone Loans and Loan Guarantees, and 10.852—Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015 Subpart V in 50 FR 47034, November 14, 1985, this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq. 1976) and, therefore, does not require an environmental impact statement or an environmental assessment.

This rule amendment contains no information or recordkeeping requirements which would require approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 et. seq.).

Background

The Board of Directors of the Rural Telephone Bank at its meeting held on September 18, 1986, adopted Resolution 86–8 calling for the above rule change. The resolution also called for applying the same provision to unadvanced funds on existing RTB loans. The Secretary of Agriculture advised the RTB Board on January 30, 1987 that application of the rule to unadvanced funds on existing loans was not in the interests of the RTB or the United States of America, and he directed this provision be deleted from the proposed rule. On February 5, 1987 the RTB Board voted to publish the rule applicable to new loans only. A proposed rule applicable only to new loans was published on February 26, 1987 (52 FR 5779).

On August 28, 1987, the six elected members of the RTB Board reiterated their arguments that the rule should also apply to existing unadvanced loan funds and recommended that the final rule not be published until it could be considered at the November 5, 1987 Board of Directors meeting. At this meeting, a resolution to publish a final rule including the provision covering unadvanced funds on existing loans was defeated.

Current RTB policies and procedures establish a fixed rate for a loan, and all subsequent advances under the loan, at the time the loan is approved. The fixed rate is based on a projection of the anticipated cost of money rate to the RTB approximately one year after the loan is approved. The draw down of loan funds often extends over a period of five years or more, with about half the funds typically advanced in the first two years.

Public Law 93–32, approved May 11, 1973, amended the Rural Electrification Act to provide that Bank loans bear interest at the "cost of money rate." This rate is defined as the average cost of money to the Bank, as determined by the Governor, but not less than 5 percent a year.

Principal sources of funds are Class A stock; repayments of loan principal, including Class B stock; the Bank's margins or income; and debentures purchased by Treasury. Under section 407(b) of the RE Act, each purchase of debentures by the Treasury shall be on such terms as to yield a rate of return not less than a rate determined by the Secretary of Treasury taking into consideration marketable obligations of the U.S. of comparable maturity.

Treasury furnishes RTB with an interest rate monthly which is the 50-year rate RTB pays Treasury for any funds it borrows. This rate on Treasury borrowing is then projected approximately a year into the future. This projected rate together with the 2 percent interest rate on Class A stock, and an imputed cost of the Bank's margins and principal repayments are used to determine the composite cost of money rate. The projected cost of Treasury funds approximately one year in the future is used because experience shows that borrowers draw down a substantial portion of their loans in the fiscal year following loan approval. Interest rates are determined quarterly.

The current procedure of fixing the interest rate at time of loan approval places both the Bank and the borrower at considerable risk due to fluctuating interest rates, with the Bank bearing the greater proportion, since the borrower may avoid drawing down the loan funds if that is advantageous to the borrower, whereas the Bank has committed itself

to lend the funds for a period of years at a specified rate of interest whenever the borrower decides to draw funds. The proposed final rule gives greater recognition to the substantial lag that often occurs between the time of loan approval and advance of funds, and therefore proposes that the interest rate be set at the RTB's average cost of money at the time of each advance of loan funds. The Governor intends to establish the average cost of money on a monthly basis so that the RTB interest rate will more closely mirror current money costs.

Both the House Committee On Government Operations Report 100–357 dated October 7, 1987 and GAO Report B–159292, Financial Audit, Rural Telephone Bank's Financial Statements for 1986, dated September 30, 1987, recommended that interest rates on all new RTB loans should be set at the time of loan advance as provided for in this rule. Both reports also recommended that interest rates for unadvanced funds on existing loans should also be set at the time of advance. The RTB disagrees with this latter proposal. Both reports contain various other recommendations outside the scope of this rule.

Comments

In the Notice of Proposed Rulemaking (NPR), the Rural Telephone Bank invited interested parties to file comments on or before March 30, 1987. Seventeen different organizations or individuals submitted comments on the proposed rule. They are:

(1) Steelville Telephone Exchange, Inc.
(2) Moapa Valley Telephone Company, Inc.
(3) Berkshire Telephone Corporation
(4) Union Telephone Company
(5) Congressman Harold Rogers
(6) Century Telephone Enterprises, Inc.
(7) National Telephone Cooperative Association
(8) United States Senate Committee on Agriculture, Nutrition, and Forestry; with eighteen members co-signing.
(9) Garden Valley Telephone Company
(10) Congressman Bill Emerson
(11) Citizens Utilities Rural Company, Inc.
(12) Senator Bob Dole
(13) Senator Patrick Leahy
(14) United States Telephone Association and National Rural Telecom Association
(15) United States House of Representatives Committee on Agriculture, Subcommittee on Conservation, Credit, and Rural Development; with fifty-seven members co-signing.
(16) Congressman James Bilbray
(17) Congresswoman Barbara Vucanovich

There were no comments opposing the proposed rule as to its application to new loans.

Many respondents supported expanding the proposed rule to cover loans approved but for which funds remain unadvanced. Many of these loans were approved when interest rates were rising. The Bank assumed considerable risk in making these loans. To apply the rule to existing loans would deny the Bank income to help offset the risk and costs incurred when the Bank's cost of money was rising relative to the fixed interest rate the Bank committed to on loans advanced during that period.

The interest rate on these loans was favorable at the time of approval and borrowers freely entered into the loan contracts. A number of these loans were concurrent loans in which REA funds were blended with RTB funds to create an even more favorable interest rate.

The loans were determined to be feasible at the interest rates in effect at time of approval. Unless a borrower's economic situation has changed markedly, the loans remain feasible.

Moreover, to change the interest rate on existing loans would establish a bad precedent leading to expectations and pressures for renegotiation of the interest rate and other provisions of valid loan contracts that would be detrimental to the orderly and effective administration of the RTB loan program.

The sole intent of this rule is to change the time at which interest rates are determined for RTB loans. The following comments address issues unrelated to this provision.

Comments from two trade associations assert that the current method of setting the interest rate does not comply with the statutory obligation of the Government, set forth in section 408(b)(3) of the RE Act, to set the interest rate at "the cost of money." The comments cite language in the preface to the proposed rule which suggests that there is a "serious question" concerning compliance with the RE Act. The language in the preface was taken without modification from a resolution adopted by the RTB Board on July 23, 1986 which directed that a proposed rule be drafted. The language does not reflect the view of the Governor of the RTB. It is the view of the Governor that the RE Act grants broad discretion to the Governor in the setting of interest rates, that there are many different methods of reflecting the cost of money, and that the existing method is entirely consistent with the statutory obligations. It is also the view of the Governor that adoption of the proposed method will, for reasons given earlier, be in the interest of both the RTB and the borrowers.

That the existing method complies with the statutory obligations is also supported by an audit performed by the Office of Inspector General (OIG) of the Department of Agriculture. In an audit of the method used by the RTB in establishing and adjusting interest rates charged to borrowers, OIG reported in its letter to REA dated July 2, 1981, that "by using several classes of stock and borrowing from the U.S. Treasury, RTB is able to minimize the rate of interest charged to its borrowers and also cover the cost of the funds." This OIG audit concluded: "it appears that the RTB is in compliance with Pub. L. 93–32, relative to interest rates as determined by the RTB Governor." While the recently issued GAO Audit, B–159292, expressed some criticism of the RTB's level of net income and accumulated reserves resulting from the method of calculating interest rates, the audit did not suggest that the current method was not in accordance with the existing legislation, and indeed acknowledged that "the bank's authorizing legislation provides considerable latitude in establishing interest rates * * *" (p. 2).

One respondent proposed that the rate of interest be fixed for one year after loan approval. Thereafter, the rate of interest would be determined at the time of advance. The Rural Telephone Bank does not believe that this suggestion will help to meet the objectives of the proposed rule.

Another respondent contended that the rule would have an effect on the economy of $100 million or more and was not, therefore, in conformance with Executive Order 12291, Federal Regulation. The Rural Telephone Bank made its determination that the proposed rule was "not major", because, given an annual lending level of $140–160 million, the difference between interest expense at a maximum of 11.5% and interest expense at the then current 6.5% would be far less than $100 million. The current RTB interest rate is 7.5 percent.

Since there were no substantive objections to the proposed rule in its application to new loans, the Governor of the Rural Telephone Bank, as authorized by the RTB Board of Directors, has determined that it is in the best interest of borrowers to publish this amendment to 7 CFR Part 1610 as a final rule immediately.

List of Subjects in 7 CFR Part 1610

Loan programs—communications, Telecommunications, Telephone.

In view of the above, 7 CFR Part 1610 is hereby amended as follows:

PART 1610—[AMENDED]

1. The authority citation for 7 CFR 1610 continues to read:

Authority: 85 Stat. 29 et seq.; 7 U.S.C. 931 et seq.; as amended at Pub. L 93–32, 87 Stat 65 et seq.

2. The text of § 1610.5 is designated as paragraph (a) and new paragraph (b) is added to read as follows:

§ 1610.5 Concurrent REA and Bank loans.

(a) * * *

(b) Except as provided below, notes for loans approved by the Governor on or after December 1, 1987, shall provide that each advance thereunder shall bear interest at the cost of money rate determined by the Governor, prevailing at the time of such advance. The interest rate will be determined monthly by the Governor. Existing unprocessed loan applications that have progressed to the stage that the applicant has been notified in writing of the characteristics of the loan by the publication date of this rule, will be processed in accordance with the previous rule at the option of the applicant. The fixed interest rate for these loans will be the current RTB rate of seven and one half (7.5) percent. Such applicants must notify the Governor in writing of the exercise of such option by December 18, 1987 or such loans shall be processed in accordance with the above rule. The RTB can not assure that requisitions for advance received after the 16th of the month will be advanced in that month.

Dated: November 9, 1987.

Jack Van Mark,

Acting Governor, Rural Telephone Bank.

[FR Doc. 87–26309 Filed 11–12–87; 8:45 am]

BILLING CODE 3410–15–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

Uranium Mill Tailings Regulations; Ground-Water Protection and Other Issues

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing the disposal of uranium mill tailings. The changes incorporate into existing NRC regulations the ground-water protection regulations published by the Environmental Protection Agency (EPA) for these wastes. This action is being taken to comply with the mandate in the Uranium Mill Tailings Radiation Control Act and the NRC Authorization Act for FY 1983 to conform the NRC regulations to the standards promulgated by the EPA.

EFFECTIVE DATE: December 14, 1987.

ADDRESS: Comments received on the advance notice of proposed rulemaking and proposed rule may be examined at the Commission's Public Docket Room, 1717 H Street NW., Washington, DC between 7:30 am and 4:15 pm weekdays.

FOR FURTHER INFORMATION CONTACT: Robert Fonner, Office of the General Counsel, telephone (301) 492–8692, or Kitty S. Dragonette, Division of Low-Level Waste Management and Decommissioning, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427–4763.

SUPPLEMENTARY INFORMATION:

I. Background

The Nuclear Regulatory Commission (NRC or Commission) is issuing additional modifications to its regulations for the purpose of conforming them to generally applicable requirements promulgated by the Environmental Protection Agency (EPA). The EPA requirements contained in Subparts D and E of 40 CFR Part 192 (48 FR 45926; October 7, 1983) apply to the management of uranium and thorium byproduct material and became effective for NRC and Agreement State licensees and license applicants on December 6, 1983. This action modifies existing regulations of the Commission to incorporate the EPA ground-water protection requirements found in 40 CFR Part 192. The affected Commission regulations are contained in Appendix A to 10 CFR Part 40, which was promulgated in final form on October 3, 1980 (45 FR 65521) and amended on October 16, 1985 (50 FR 41852) to conform to the provisions of the EPA standards affecting matters other than ground-water protection.

EPA developed and issued its regulations pursuant to section 275b. of the Atomic Energy Act of 1954, as amended (AEA) (42 U.S.C. 2022); section 275b was added by section 206 of Pub. L. 95–604, the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA). These EPA regulations included, by cross-reference, certain regulations issued by EPA under the Solid Waste Disposal Act (SWDA). Under section 18(a) of Pub. L. 97–415, the Nuclear Regulatory Commission Authorization Act for fiscal years 1982 and 1983, the Commission was directed to conform its regulations to EPA's with notice and opportunity for public comment.

The additional action that the Commission might take to amend its mill tailings regulations for ground-water protection was the subject of an advance notice of proposed rulemaking (ANPRM) published for comment on November 26, 1984 (49 FR 46425). The NRC issued a notice of proposed rulemaking on ground-water protection on July 8, 1986 (51 FR 24697).

II. Description of Proposed Amendments

The EPA requirements in 40 CFR Part 192 (48 FR 45926) included, by cross-reference, ground-water protection standards in 40 CFR Part 264. Part 264 was promulgated by the EPA pursuant to authority provided by the Resource Conservation and Recovery Act (RCRA), which amended the SWDA. Part 264 itself contains references to other EPA rules and a number of internal cross references. The proposed modifications were intended to conform the NRC rules to the provisions of 40 CFR Part 192 not addressed in the earlier conforming action (50 FR 41852; October 16, 1985). The following specific sections of 40 CFR Part 264 were proposed for incorporation in modified text form into Appendix A. (Note that 40 CFR Part 192 incorporated SWDA rules as codified on January 1, 1983.) EPA imposed these sections in its final standards published October 7, 1983 (48 FR 45942).

Subpart F:

- 40 CFR 264.92 Ground-water protection standard.
- 40 CFR 264.93 Hazardous constituents.
- 40 CFR 264.94 Concentration limits.
- 40 CFR 264.100 Corrective action program.

Subpart G:

- 40 CFR 264.111 Closure performance standard.

Subpart K:

- 40 CFR 264.221 Design and operating requirements for surface impoundments.

EPA suggested that NRC address the following specific sections in implementing the listed imposed sections. However, EPA did not make them legally binding requirements on NRC and Agreement States mill licensees and they were not included in the proposed rule. NRC will review these and other SWDA regulations intensively for their potential application to mill tailings disposal in complying with section 84a(3). This provision of the Atomic Energy Act requires the NRC to review the full suite of SWDA requirements for comparable hazardous materials in order to ascertain which, if any, should be applied to mill tailings, in addition to the specific SWDA rules referenced in 40 CFR Part 192. These later are subject to conformance pursuant to sections 84a(2) and 275f(3) of the Atomic Energy Act. Some of the additional matters to be reviewed are found in the following EPA rules:

Subpart F:

40 CFR 264.91 Required programs.
40 CFR 264.95 Point of compliance.
40 CFR 264.96 Compliance period.
40 CFR 264.97 General ground-water monitoring requirements.
40 CFR 264.98 Detection monitoring program.
40 CFR 264.99 Compliance monitoring program.

Subpart G:

40 CFR 264.117 Post-closure care and use of property.

Subpart K:

40 CFR 264.226 Monitoring and inspection.
40 CFR 264.228 Closure and post-closure care.

The information set out in Table 1 shows the status of the specific ground-water provisions imposed by EPA regulations and indicates the location of the provision in the changes to NRC's rules. (Note that the clarifying changes to the final rule do not affect the information provided in the table.)

TABLE 1.—RELATIONSHIP OF 40 CFR AND 10 CFR PROVISIONS

EPA designation	Subject	NRC designation in appendix A to 10 CFR Part 40
Subpart D (Uranium)		
40 CFR 192.30	Applicability	Introduction.
40 CFR 192.31	Definitions and cross-references	Introduction.
40 CFR 192.32(a)(1)	Impoundment design (primary ground-water standard)	5A(1).
40 CFR 192.32	Secondary ground-water standard	5B(1).
(a)(2):		
(i)	Mo and U added	Criterion 13.
(ii)	Radioactivity limits	5C.
(iii)	Detection monitoring	7A.
(iv)	ACL conditions	Deleted.
(v)	EPA concurrences	Deleted.
40 CFR 192.32(a) (3) and (4)	(Non ground-water)	Criterion 8.
40 CFR 192.32 (b) (1) and (2)	Closure standard	Criterion 6.
40 CFR 192.33	Corrective actions	5D.
40 CFR 192.34	Effective date	
Subpart E (Thorium)		
40 CFR 192.40	Applicability	Introduction.
40 CFR 192.41:		
(a)	Thorium same as uranium	Factored into text.
(b)	(Non ground-water)	Criterion 6.
(c)	Radium 226 same as 226	Factored into text.
(d)	(Non ground-water)	Criterion 8.
40 CFR 192.42	Procedure for alternate standards	Deleted.
40 CFR 192.43	Effective date	
Referenced Regulations		
40 CFR 264.92	Ground-water standard	5B(1).
40 CFR 264.93:		
(a)	Hazardous constituents and Appendix VIII of 40 CFR 261	5B(2)(a)–(c), Criterion 13.
(b)	Excluding hazardous constituents	5B(3).
(1)(i)–(ix)	Ground-water factors	5B(3)(a)(i)–(ix).
(2)(i)–(x)	Surface water factors	5B(3)(b)(i)–(x).
(c)	Aquifer status	5B(4).
40 CFR 264.94:		
(a)(1)–(3)	Concentration limits	5B(5)(a)–(c), 5C.
(b)	Alternate concentration limits	5B(6).
(1)(i)–(ix)	Ground-water factors	5B(6)(a)(i)–(ix).
(2)(i)–(x)	Surface water factors	5B(6)(b)(i)–(x).
(c)	Aquifer status	5B(4).
40 CFR 264.100:		
(a)	Corrective action	5D.
(1)–(4)	Procedural	Deleted.
(b)	Remove or treat	5D.
(c)	Procedural	Deleted.
(d)	Monitoring program	7A.
(e)	Action to site boundary	5D.
(1)	Procedural	Deleted.
(2)	Terminating program	5D.
(f)	Terminating program	5D.
(g)	Procedural	Deleted.
(h)	Procedural	Deleted.
40 CFR 264.111 (a) & (b)	Closure standard	Criterion 6.
40 CFR 264.221:		
(a)	Liner designs	5A(1).
(1)	Liner properties	5A(2)(a).
(2)	Liner foundation	5A(2)(b).
(3)	Liner area	5A(2)(c).
(b)	Exemption from 264.221(a)	5A(3).
(1)–(4)	Factors in exemption	5A(3)(a)–(d).
(c)	Impoundment overtopping	5A(4).
(d)	Dike design	5A(5).
(e)	Procedural	Deleted.

III. Overview of Comments in Response to the Proposed Rule

The NRC issued a notice of proposed rulemaking on ground-water protection for uranium mills on July 8, 1986 (51 FR 24697). The comment period on the proposed rule originally expired on September 8, 1986 but was extended until November 7, 1986 (51 FR 32217; September 10, 1986). Twelve commenters responded with thirteen sets of comments. Respondents included three environmental or public interest groups, four industrial representatives, three states, the EPA, and the Department of the Interior.

Comments were offered on both general issues and the specific changes in the proposed rule and reflected diverse views. The general issues included the scope of the rulemaking, the EPA standards, implementation and enforcement of the standards, and other miscellaneous topics. Most of the general issue comments were restatements of earlier views on the same issue. No major new issues were raised that had not been aired in one or more of the previous rulemaking actions associated with NRC's conformance to the EPA standards.

The scope of the proposed rule was limited to incorporating requirements legally imposed by 40 CFR Part 192 into NRC rules. General requirements to address section 84a(3) of the AEA requirements for comparability with EPA requirements for similar materials under SWDA were not proposed. Some commenters urged NRC to expand the scope of the rulemaking and others agreed with NRC's proposed rule. Commenters offered both supportive and opposing comments on the overall strategy reflected by the EPA regulations and on specific provisions of those regulations. Implementation and enforcement issues included concern about the dual regulation resulting from recent EPA rulemaking in 40 CFR Part 61 on mill operations.

The proposed rule included changes to the Introduction and Criteria 5, 6, and 7 of Appendix A and the addition of new Criterion 13. Comments were offered on each. Comments addressed four of the 14 proposed definitions in the Introduction. Industry was concerned about the consequences of defining the saturated zones from leaking impoundments as aquifers. Environmental commenters urged a point of compliance closer to the impoundments. Comments on the primary design standard were extensive and divergent. For example, environmental groups objected to flexibility for alternatives to synthetic liners and industry opposed the use of synthetic liners. Comments on the secondary standard were also extensive. Industry commented that the focus of the standard is ground water naturally present before operations began. The provisions dealing with how to establish which constituents to monitor were particularly confusing to commenters. The exclusion of EPA site-specific concurrences on alternate concentration limits and delisting of hazardous constituents was opposed by EPA and environmental groups and supported by industry. NRC's interpretation of the flexibility afforded by section 84c of the AEA continues to be controversial. Environmental commenters opposed the option for alternate concentrations and expressed concern over delays in implementing corrective action programs. The only area where consensus appeared was that the list of constituents in proposed Criterion 13 should be shortened to focus on constituents of concern at mill tailings sites.

A staff analysis of all the comments received is available in the NRC's Public Document Room. The following discussion summarizes and responds to all comments of major or generic significance and to all comments that prompted additional rule changes.

IV. General Issues

Scope of Rulemaking

Comments: An environmental group urged NRC not to defer development of detailed prescriptive RCRA comparable requirements under section 84a(3) of the AEA. EPA urged NRC to promptly schedule a third rulemaking or other action requiring EPA concurrence to comply with section 84a(3) if the proposed rule is not expanded. The Department of the Interior suggested that a five-year delay in re-examining the need for comparable rulemaking may be too long in view of the rapid changes occurring in the field and suggested re-examination in two years. Industry commenters supported deferring discretionary rulemaking to add additional RCRA requirements.

Arguments in support of expanded scope included the existing and potential ground-water contamination at mill sites, the view that licensees will contest site specific decisions and guidance documents and delay implementation, and expectation that the industry will recover from its depressed state based on Department of Energy (DOE) actions. EPA commented that the proposed rule does not fulfill NRC's responsibilities under section 84a(3) of the AEA. EPA restated the view that NRC should incorporate those additional provisions of the SWDA rules listed as appropriate for NRC to address in EPA's October 7, 1983 final rule notice (see 48 FR 45942). EPA objected to NRC's reliance on policies or license conditions to fulfill SWDA comparability until additional rulemaking is undertaken because of lack of opportunity for EPA concurrence as required by section 84a(3). EPA also commented that none of EPA's regulatory decisions concerning other mining or milling wastes have any relevance to NRC's decisions on scope and industry commented that these EPA decisions are relevant and support deferring discretionary rulemaking by NRC.

Response: The Commission agrees that this conforming action does not fully satisfy section 84a(3) and that a third round of rulemaking will probably be necessary to comply fully. The Commission also agrees that regulation of ground-water contamination from mill tailings impoundments is warranted but considers the real issue to be best use of resources and the level of detail needed to accomplish effective regulation. The Commission considers that the most responsible use of limited resources is to: (1) Complete conformance, (2) not duplicate major work EPA is doing, (3) focus on site-specific implementation and enforcement of the basic standards at existing sites, and (4) use the collective NRC and Agreement State implementation experience to provide a more sound basis for future section 84a(3) rulemaking.

Detailed regulations would not eliminate the licensee's right to propose alternative implementation requirements under section 84c and use this means to contest and delay implementation. The Commission agrees with commenters that detailed regulations could provide licensees with a better understanding of what is expected and could reduce the burden on licensees to develop alternatives. However, the site specific and technical problems described by commenters emphasize the difficulty of addressing these matters in regulations.

The view that the nonviability of the industry is a temporary matter is not reflected in the Secretary of Energy's latest finding on viability or with the State of Wyoming's assessment of the future of the industry in that State. In Secretary John S. Herrington's letter to the President dated December 19, 1986, he stated that "I have determined that for the calendar year 1985, the domestic uranium mining and milling industry was not viable." In a November 1986 report, Wyoming stated "* * * it seems

unlikely that the uranium mining and milling industry will ever again play a significant role in Wyoming's mineral economy. The reserves are here, but market and competition factors make the future appear bleak, to say the least."

The additional regulations that EPA and others suggested NRC address are undergoing major revision by EPA. 40 CFR 264.98 and 264.99 are two sections suggested for incorporation into NRC rules to address section 84a(3) SWDA comparability. However, a final EPA rule (July 8, 1987; 52 FR 25942) significantly changed these provisions. They did require analyses of all 40 CFR Part 261, Appendix VIII constituents (i.e., the list in Criterion 13 of this rulemaking without the 40 CFR 192 additions). In the proposed rule (July 24, 1986; 51 FR 26632) EPA acknowledged major practical and technical problems with these analyses. The final rule notes the evolving nature of these specific provisions. An advance notice of proposed rulemaking published by EPA August 20, 1986 (51 FR 29812) addresses technical difficulties with the prescriptive statistical test included in 40 CFR Part 264. This test is included in the regulations EPA indicated NRC should address. A proposed EPA rule addressing some of the difficulties was published August 24, 1987 (52 FR 31948) for public comment. The Commission views the acknowledged technical difficulties with these provisions of 40 CFR Part 264 to be sufficient reason to delay conformance to them. NRC should not duplicate the EPA effort by trying to develop the technical, environmental, and cost/benefit analyses to support similar rulemakings.

Prior to NRC's establishment of "general requirements," NRC can monitor EPA's rulemaking and consult on specific issues as necessary.

EPA has issued two notices on regulation of other mining and milling wastes: (1) 51 FR 24496; July 3, 1986 and (2) 51 FR 36233; October 9, 1986. EPA is correct that these notices have no direct legal bearing on NRC and Agreement State licensees. EPA is addressing how it plans to regulate mining and milling wastes other than uranium and thorium mill tailings. Based on technical considerations, however, the Commission continues to anticipate that EPA's developments in this area may be relevant to implementation of 40 CFR Part 192 and to additional requirements that the Commission may establish under section 84a(3) of the AEA. Common technical aspects apparent from these 1986 notices concern volumes, impoundment size, climate, remote location, deep ground water, and backfitting to existing sites.

When NRC should initiate a third rulemaking is difficult to specify. For example, EPA hopes to propose regulations for other mining and milling wastes by mid-1988. The timing for a final EPA rule statistical tests is uncertain. EPA may also initiate additional rulemaking on monitoring on other relevant topics as these standards are implemented. Recovery of the industry remains uncertain. The recommendation to reassess in two years instead of five has merit. The Commission will periodically reassess (e.g., about every two years) the question of when a third rulemaking should be initiated.

Comments on 40 CFR Part 192

Comments: Comments on the basic value, validity, lawfulness, or appropriateness of EPA's regulations were explicitly not requested. However, commenters offered comments on the overall strategy reflected by the EPA regulations and on specific parts of the regulations imposed. The latters are discussed later under the specific proposed modifications. A public interest group commented that a more clearly defined and protective purpose is needed based on protection of all ground water regardless of quality with no provisions for any flexibility.

Response: Such a change in strategy would require EPA to change 40 CFR Part 192 and referenced regulations and is therefore outside the scope of this action.

Implementation and Enforcement

Comments: An environmental group urged the NRC to reiterate that 40 CFR Part 192 is directly in force on NRC and Agreement State licensees and to aggressively enforce those standards. Industry urged more responsiveness to site specific alternatives proposed by licensees. Industry identified the overlap between recent EPA Clean Air Act work practice standards for mills added to 40 CFR Part 61 (51 FR 34056; September 24, 1986) and NRC's implementation and enforcement of 40 CFR Part 192 and expressed concern about NRC's continued ability to consider site specific alternatives.

Response: The Commission is implementing and enforcing the EPA standards as required by law. The language in section 84c of the AEA was incorporated into the Introduction of Appendix A to 10 CFR Part 40. The NRC is thus obligated to consider site-specific alternatives proposed by licensees by law and agency rules. If a licensee disagrees with the site specific decision on the proposed alternative, agency procedures provide an avenue for review.

Industry is correct that EPA's Clean Air Act standards in 40 CFR Part 61 require site-specific EPA actions, e.g., EPA approval to construct a new impoundment. The EPA 40 CFR Part 61 standards incorporate the ground-water protection standards in 40 CFR 192.32(a); thus, both EPA and NRC will be implementing and enforcing these standards. NRC has no legal basis to challenge this dual regulation. NRC jurisdictional arguments rejecting EPA site specific actions are based on EPA actions under the Atomic Energy Act and have no applicability to EPA Clean Air Act actions.

Other

Comments: A State commented that NRC should view the requirement for compatible Agreement State regulation, to the extent practicable, as giving Agreement States rulemaking latitude when warranted by the economic burden on State agencies. Another State commented that "it should be clear that where States standards are more stringent than Federal standards then the State standards should apply."

Response: The first State appears to be suggesting that the resource burden of issuing regulations that are compatible with the Commission's should be considered and might be sufficient grounds for the State not to adopt compatible regulations. The Commission does not read section 274o of the AEA as providing this consideration. Agreement States will need to amend their regulations. However, as reflected in 10 CFR 150.31(d), States may adopt alternative generic or site-specific standards with Commission approval and public notice. The second State seems to be addressing the circumstance when NRC and a non-Agreement State are regulating the same constituent under concurrent jurisdiction but have different numerical limits and legal bases. NRC would have no authority to implement and enforce the more stringent State limit. NRC has not asserted Federal preemption that would preclude the State from implementing and enforcing its ground-water protection requirements at mill sites for non-radiological contaminants. State standards would be preempted only if in direct conflict with the Federal standards.

Comment: Only one commenter addressed the cost/benefit information in the notice and that comment was

limited to a legal view that the analysis was not required.

Response: The Commission agrees that no analysis was required and so stated in the proposed rule.

V. Comments on Specific Proposed Modifications to Appendix A of 10 CFR Part 40

Introduction

Definitions of 14 terms were proposed as additions to the Introduction. Comments were received on four of the definitions: Aquifer, existing portion, ground water, and point of compliance.

Comments: Industry comments urged changes to clarify that temporary aquifers from impoundment seepage should not be considered "aquifers" and that a beneficial use criterion be applied to "ground water."

Response: The proposed definitions of "aquifer" and "ground water" were quoted verbatim from 40 CFR 260.10. The comments on "aquifer" and "ground water" are addressing the same concepts because aquifers contain ground water.

The Commission agrees that a reasonable reading of the EPA secondary standard would allow flexibility in how the saturated zone from operations at existing sites is considered. The Commission agrees with commenters that the fundamental role of background levels of constituents (i.e., background is a baseline level that triggers action and background is one of the options for setting protective concentration limits for constituents) in the EPA standards contributes to a view that operationally created zones are not the aquifers of primary concern. This view is further supported by the prescriptive requirements EPA has adopted for its own implementation of the standards. For example, the EPA rules address how to obtain upgradient values and how to determine statistical increases over background. For new facilities or impoundments, the situation is clear that the uppermost aquifer of concern is the naturally occurring one.

The Commission does not agree with the commenters that the saturated zones can be dismissed generically. Decisions will be site specific and the Commission notes that there may be circumstances where corrective actions involving these zones may be required under the provisions of paragraph 5D whether or not the zones are defined as aquifers. The Commission is adding a sentence to the EPA definition of aquifer to address when the saturated zones are of sufficient direct concern to be designated as aquifers. The clarification is based on present and potential impacts from the zones and is consistent with EPA's consideration of the system of aquifers at the site in the definition of uppermost aquifer and EPA's "Groundwater Protection Strategy," August 1984 provided by EPA in the agency's comments on the ANPRM. It is also consistent with the EPA discussion of comments on the term "aquifer" in the July 26, 1982 rulemaking on 40 CFR Parts 123, 260, 264, and 265 (47 FR 32289) in that near-surface soils saturated only as a result of disposal activity may not be the uppermost aquifer of concern.

Licensees would be expected to show that the zones are not and will not be interconnected to natural aquifers, that the zones do not and will not discharge to surface waters, and that the zone will remain confined to land under long-term government ownership and control. For example, licensees may be able to demonstrate that once the hydraulic head from the impoundment is gone, the zone will remain potentially yielding for only a short period of time and that the additional movement after closure will be limited. Under the regulatory scheme already in place for tailings (e.g., see Criterion 11 of Appendix A to 10 CFR Part 40), long term government ownership and control is authorized and expected. Institutional control of access to the area directly beneath the impoundments and associated features necessary to comply with the long-term stability portions of the standard could be reasonably expected to prevent access and use of water from these zones.

The Commission notes that this view of the saturated zones is related to the secondary standard and has no bearing on decisions concerning the primary standard. The primary standard (use of impermeable liners) is intended to prevent the occurrence of such saturated zones.

Commenters also addressed the qualitative test of an aquifer yielding a "significant amount" of water, but the Commission has concluded, as did EPA (e.g., see 47 FR 32289; July 26, 1982), that a quantitative definition is a regional decision and sometimes even a site specific decision. This aspect of the definition remains unchanged. The Commission is also adding a cross reference to the definition of aquifer in the definition of "ground water."

Comment: An industry commenter objected to the September 30, 1983 date in the definition of "existing portion" based on the legal view that NRC could not include a retroactive date.

Response: The Commission has consistently held that the standards in 40 CFR Part 192 were effective for NRC and Agreement State licensees on their effective date of December 6, 1983. Thus licensees were bound by the September date whether so stated in NRC's regulations or not; therefore, the date is not retroactive.

Comment: One commenter suggested that NRC develop more stringent requirements for "point of compliance" than those imposed by EPA's full suite of SWDA regulations. For example, designation of a horizontal plane in the unsaturated zone under the impoundment rather than EPA's uppermost aquifer and a location that provides at least two years of plume travel time before the plume would reach the site boundary were suggested.

Response: No definition for "point of compliance" was imposed by 40 CFR Part 192. The proposed definition was intended to be procedural and was included in order to fully reflect 40 CFR 264.92, which was imposed. The objective of the point of compliance is described in paragraph 5B(1) being added to Appendix A of 10 CFR Part 40. The Commission considers any additional requirements to be outside the scope of this nondiscretionary rulemaking. The Commission notes that an existing provision in NRC rules in 10 CFR Part 40 is related to the commenter's concern. This existing provision that requires a leakage detection system under synthetic liners to detect major failures is being designated as 5E(1) by this action.

Criterion 5

Paragraph 5A

Comments: Comments were received only on paragraphs 5A (1) and (3). One commenter objected to the exemption from an impermeable liner because contaminated soils would be allowed and the contamination would eventually migrate. A general recommendation was made that impoundments be designed with treatment systems to deal with liner failure. Industry repeated views that the EPA primary design standard does not reflect a reasonable balancing of costs and benefits or provide sufficient site specific flexibility to meet Congressional intent and it exceeds EPA's authority.

Industry argued the merits of clay liners over synthetic ones and urged the addition of realistic flexibility to approve clay liners. One commenter suggested that the Commission use its authority to establish levels below which regulation is required (i.e., de minimis levels) to accommodate clay liners and provide relief from the absolute language for alternatives findings. Addition of a liner exemption if

wastes will not enter an aquifer or reach surface water because of local site conditions and revisions of the primary standard to a goal aimed at preventing only "significant" migration were suggested. One commenter suggested an editorial reference in 5A(1) to the exemption in 5A(3).

Response: The language in paragraphs 5A (1)–(5) incorporate the text imposed by 40 CFR Part 192 virtually without change. Thus most of the comments are actually directed at 40 CFR Part 192, not NRC's action.

The Commission agrees that a finding that residual contamination will not migrate to ground or surface water at any future time will be very difficult but has no basis to conclude that such a finding could not be made and defended. Addition of treatment system requirements for leaks would be discretionary and outside the scope of this action. As noted earlier, Appendix A already requires a leakage detection system under new synthetic liners.

Industry arguments on the merits of clay liners repeated comments made on the proposed EPA standards and rejected by EPA in its final rule. EPA acknowledged and discussed the pros and cons of synthetic liners and liners of natural materials (e.g., 48 FR 45931; October 7, 1983) and concluded that the disadvantages of synthetic liners were not sufficient to deviate from the SWDA requirements.

Use of de minimis findings to modify the text being incorporated would lead to substantive changes. The Commission considers that it has legal flexibility in implementation and enforcement of the standards to consider de minimis quantities but cannot substantively alter the standards themselves. This view is supported by EPA's indication that synthetic liners meet the intent of the standard of no migration into the liner even though migration into properly functioning liners made of these materials will occur at very slow rates during the operation and closure phases.

A generic exemption from liners if wastes will not enter an aquifer or reach surface water is not completely consistent with the EPA standards. NRC must find that the basic standard for granting exemptions is met on a site specific basis and consider the prescribed factors in making that finding. The suggested language is a simplified paraphrase of the basic EPA standard and unnecessary.

The suggested editorial cross reference is being made.

Paragraph 5B

Paragraph 5B consists of Paragraphs 5B (1)–(6) and comments were received on all paragraphs except 5B(4).

Comments: Industry commenters suggested editorial changes to Paragraph 5B(1) to clarify that the focus of protection is ground water that was naturally present before operations began.

Response: The editorial comments are in the nature of reinforcement of earlier comments on the definitions of "ground water" and "aquifer." The clarifying sentences being added to the definitions of these terms address the issue of when the seepage from an impoundment would be considered an aquifer for purposes of Appendix A of 10 CFR Part 40 and no additional changes are needed. On its own volition, the Commission is also clarifying the last sentence of 5B(1) to indicate that the intended purpose of adjusting the point of compliance is to locate the point of compliance in the center of the flow of contaminated ground water based upon developed data and site information as to the flow of ground water or contaminants.

Comments: Paragraph 5B(2) outlines the three definitional tests from 40 CFR Part 264 that a constituent must meet in order to qualify as a hazardous constituent for which protective concentration limits must be set. One commenter emphasized that efficient implementation of the definitional scheme in 5B(2) requires serious consideration of the test to determine what is reasonably expected to be in or derived from the byproduct material and that licensees should not have to monitor for all the constituents listed in proposed Criterion 13.

Response: The Commission agrees that reasonable implementation of 5B(2) requires serious consideration of what is reasonably expected to be in or derived from the tailings. The proposed rule was not intended to require that licensees monitor for the full list. Monitoring for the full list is contained in 40 CFR 264.97–264.99, sections not imposed by EPA. The Commission is clarifying 5B(2) to emphasize that all three tests must be met before a concentration limit must be set for a constituent.

Specifying which constituents a licensee will monitor for will be a site-specific decision. A reasonable approach to developing a site-specific list for monitoring at an existing site might involve the following steps:

(1) Use information on the constituents such as that contained in EPA's proposed rule (51 FR 26632; July 24, 1986) and final rule (52 FR 25942; July 9, 1987) to eliminate constituents that are unstable in water or not amenable to standard assay.

(2) Consider indicators for families or groups of compounds on the list.

(3) Carefully review administrative records and data to determine how defensible this information is in defining which constituents may and may not be present and where the uncertainties are and,

(4) Sample existing tailings to establish which constituents are present.

The Commission recognizes that for new impoundments, administrative controls coupled with analyses of the ore can provide an effective means of controlling and identifying which constituents are being added to the new impoundment.

NRC is conducting an impoundment liquids sampling program. Results to date confirm the general consensus that many of the listed constituents are not present in the sampled impoundments. NRC's experience may be useful to licensees in developing sampling programs and it will facilitate review of licensee programs and results. NRC's program suggests that impoundment sampling is a feasible option for a licensee to pursue to help address which constituents could be expected to be in or derived from existing impoundments.

Comments: Two commenters suggested deleting Paragraph 5B(3) which incorporates the provision to exclude detected constituents if they will not pose a significant present or potential hazard to human health or the environment. One objected to any unregulated pollution by a known hazardous material and one read the incorporated language as giving NRC authority exceeding that EPA intended for itself. The commenter stated that EPA use of this exemption is limited to exclusion from monitoring only. An environmental commenter disagreed with NRC's legal view that EPA exceeded its jurisdiction in 40 CFR Part 192 by requiring site-specific concurrences before any exemption of constituents is final. Industry commenters supported NRC's view. Both positions claimed support in the legislative history and statutory language. One commenter disagreed with the Commission's view that EPA concurrence is a procedural rather than substantive matter. Industry commenters suggested consideration of natural geochemical processes in exempting constituents and establishing background values for constituents.

Response: The imposed standards include the provision to exclude detected constituents and NRC must

include it for completeness. The second commenter's reading of the provision is flawed. Being absent from the tailings leachate is sufficient basis to exclude the constituent from any further consideration. Evaluation of factors such as ground-water flow or health risks would not be needed if the constituent is not present. In the Commission's view, paragraph 5B(3) is a health and safety finding based on a pathway analysis that a constituent known to be in the wastes will not pose a short or long term hazard even though it has been released to the uppermost aquifer and therefore no restrictions on its concentration are needed. The Commission is clarifying this point.

Commenters offered no substantive new legal arguments or considerations that were not considered in the Commission's earlier decision on the matter of EPA site-specific concurrences. See the final rule notice for the first step conformance published October 16, 1985 (50 FR 41853 and 41861). As the Commission said in the prior rulemaking:

> The Commission historically has had the authority and responsibility to regulate the activities of persons licensed under the Atomic Energy Act of 1954, as amended. Consistent with that authority and in accordance with Section 84c of that Act, the Commission has the discretion to review and approve site specific alternatives to standards promulgated by the Commission and by the Administrator of the Environmental Protection Agency. In the exercise of this authority, Section 84c does not require the Commission to obtain the concurrence of the Administrator in any site specific alternative which satisfies Commission requirements for the level of protection for public health, safety, and the environment from radiological and nonradiological hazards at uranium mill tailings sites. As an example, the Commission need not seek concurrence of the Administrator in case-by-case determinations of alternative concentration limits and delisting of hazardous constituents for specific sites.

In the October rulemaking, the Commission also noted that site specific concurrences contradict the procedural prohibition on EPA's issuance of a permit in section 275b(2) of the Atomic Energy Act.

For both delisting or excluding constituents under paragraph 5B(3) and approving alternate concentration limits under paragraph 5B(6), the Commission is bound by the basic EPA standard that no substantial present or potential hazard to the public health or the environment be posed. The Commission is also required to consider a comprehensive list of factors relating to protection of ground and surface water as part of the secondary standard. 40 CFR Part 192 also added requirements for constituent levels to be as low as is reasonably achievable and for all practicable corrective action to be taken. Delisting and approval of alternate concentration limits are a normal and integral part of the implementation and enforcement of the substantive EPA secondary standard. EPA concurrences would merely be a review of the adequacy of NRC's site specific implementation of the overall secondary standard in licensing decisions.

Commenters' concerns over NRC's application of section 84c of the AEA and independent action on delisting constituents and alternate concentration limits may stem from a misconception of what the Commission understands alternative site specific standards to be. The Commission would expect a licensee, first, to attempt to meet all regulations and standards as issued. If site-specific circumstances would make compliance physically impossible, technically impracticable, or excessively costly in relation to the benefits to be gained from the reduction of risks, then alternatives should be considered. The alternatives proposed should meet the objectives of the established standards so that NRC can find that the alternatives provide a level of health and environmental protection equivalent, to the extent practicable, to promulgated standards. The Commission does not view the provision as an open invitation to disregard the standards and set new goals, and believes that the language in section 84c requiring an equivalency or more stringent finding precludes such a view. To illustrate, assume the standard has a numerical value of X but meeting X instead of Y would require extraordinary expense or might compromise the soundness of the impoundment structure or safety monitoring features. The alternative limit to be proposed may be Y for the specific circumstances. NRC must find that Y provides equivalent protection, to the extent practicable, to X.

The commenters rejected the Commission's position that site specific concurrences detract from the Commission's statutory discretion under section 84c of the AEA and that the matter is primarily a procedural one. Nevertheless, the Commission continues to believe that rejection of EPA site specific concurrences is the correct legal position. Therefore, the Commission is issuing the final rule without any provision for EPA concurrence in delisting constituents or alternate concentration limits.

The Commission agrees that determining background is difficult at many existing sites. However, it is not completely clear what the difficulties have to do with excluding constituents and how natural geochemical processes are to be considered. In the Commission's view, background measurement problems are not a sufficient basis to exclude constituents when the levels present are clearly higher than background in the area and may pose a significant hazard.

Comments: Two commenters objected to the flexibility provided in paragraph 5B(5) for unspecified site-specific alternate concentration limits that may exceed background or drinking water levels. Views on the legality of deleting the provision for EPA concurrences were repeated. Industry expressed concern about the lack of definition of "background." The Department of Interior commented that neither the preamble nor the text make it clear when alternate concentrations are to be applied (e.g., only when background levels are not available).

Response: Suggestions to delete the provision for alternate concentration limits are comments on 40 CFR Part 192. The option for alternate concentration limits was legally imposed and NRC must include this substantive provision. From a technical point of view, the alternate concentration limit option is crucial to practical implementation. As stated earlier, the Commission agrees that determining background may be difficult but commenters offered no generic solutions to the difficulty. Decisions on background values will have to be made on a site specific basis.

The EPA secondary standard in 5B(5) is a site-specific choice of three equal options: Background, referenced drinking water limits (see 5C), or alternate concentration limits. However, if the licensee chooses to pursue the alternate concentration limit option, then the licensee must expend the resources to collect the information and do the analyses to support an alternate concentration. The licensee may choose the basic background or drinking water options as the more economic or timely. The licensee would not have to address health and environmental risks with the basic choices because these are conceded to involve acceptable risks. The Commission would be required to independently review the proposed alternate limit and the supporting rationale and agree or set a different limit based on the information available. Alternate concentration limits may be requested without regard to the

availability of background values. The Commission is clarifying this point.

Comments: Comments were divided on the language in paragraph 5B(6) referring to contaminate levels being as low as reasonably achievable (ALARA). One commenter objected to ALARA based on a view that ALARA levels might still pose significant hazards. The provision was considered unnecessary and inappropriately applying ALARA to nonradiological constituents. EPA expressed a contrary view that ALARA was not clearly applied to the nonradiological constituents as EPA intended. EPA also viewed the proposed language as giving the ALARA finding primacy over the listed factors to be considered.

Response: The issue of how and when ALARA was intended to apply is not completely clear from the preamble to EPA's final rules (48 FR 45941–2; October 7, 1983) or from the text of the rule itself. However, there is no apparent reason to conclude that any distinction was being made between radioactive and nonradioactive constituents and the Commission accepts EPA's views. The Commission's proposed rule included ALARA for emphasis but there was no intent to have ALARA dominate the factors to be considered or the fundamental standard that the "constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration is not exceeded." The Commission is clarifying these points.

Comments: Industry and EPA addressed the development of a generic methodology for evaluating alternate concentration limits. Industry asked for comment opportunity. EPA noted that the two agencies had agreed that the development and use of such guidance would provide a means of addressing the differing agency views on the legality of EPA site specific concurrences and suggested that the final regulations recognize that the agencies are committed to such a course of action.

Response: Industry's request to review any guidance documents or joint methodologies before they are finalized has merit and NRC usually issues guidance documents for public comment.

When the proposed rule was published, both agencies expected that publication of a comprehensive EPA SWDA guidance document on alternate concentration limits was imminent and staffs were optimistic that the methodology approach would work. However, completion and publication of the SWDA document was delayed until July 1987. (See 52 FR 27579; July 22, 1987.) Major changes were made to the earlier draft which formed the basis for NRC's expectations. The major changes flowed in part from additional legislation (e.g., 1984 amendments to RCRA and Section 121 of the Superfund Amendments and Reauthorization Act of 1986) and other Congressional direction (e.g., a letter to EPA Administrator Lee M. Thomas dated March 4, 1986 from John Dingell and 10 other members of Congress). The changes appear to make the SWDA guidance impracticable for uranium recovery and inconsistent with the SWDA standards as they stood when EPA incorporated them into 40 CFR Part 192 (EPA incorporated the SWDA standards as codified on January 1, 1983). For the reasons given above, NRC may well need to develop a new methodology clearly unique for tailings. Nonetheless, the Commission will continue to consult with EPA on any methodology developed and still favors resolving the EPA concurrence role called for in 40 CFR Part 192 by adoption of a mutually acceptable generic methodology. As discussed earlier, the Commission is issuing the final rule without any provision for EPA concurrence in delisting constituents or alternate concentration limits.

Paragraph 5C

Comment: The only comment on this paragraph, which incorporated the drinking water values imposed with supplemental radioactivity limits added, was a suggestion to develop numerical limits for the constituents of concern at tailings sites.

Response: As the commenter conceded, the proposed action fulfilled the conformance requirement. Development of limits is outside the scope of this action.

Paragraph 5D

Comments: Two commenters recommended that corrective action begin before hazardous constituents reach the point of compliance and objected to the potential for an 18-month delay before action begins. One commenter suggested that licensees be required to submit corrective action plans in advance for automatic activation to reduce delays. A two year time limit for corrective actions was also suggested. Industry suggested clarifying that licensees do not have to cleanup naturally occurring contamination or contamination from someone else's operations. Industry views the corrective action programs to be aimed at cleaning up the preoperational aquifers, not the seepage zones from leaking impoundments.

Response: The concerns for corrective action before reaching the aquifer are similar to concerns discussed earlier on the definition of "point of compliance." The comments on allowing up to 18 months to begin corrective action programs is a rejection of EPA's change from a 12 month limit in the proposed 40 CFR Part 192 to 18 months in the final rule. The Commission has no basis to overrule this EPA decision. Commenter concerns may stem from a misconception that no actions have been taken or will be taken except in response to the EPA standards. However, NRC licensees had extensive monitoring programs in place and many licensees were conducting mitigative actions prior to the EPA standards.

The comment that corrective action plans be submitted in advance does have merit, particularly for new sites. However, advance plans would be conceptual and may need modification to adequately address the actual circumstances of the failure event. Decisions on this matter will be made on a site-specific basis. The suggestion to impose a two year time limit for corrective action programs before requiring removal to new impoundments presumes that short-term solutions would always be the best choice. The Commission views the nature and duration of corrective action programs to be a very site specific matter and is unable to defend a discretionary requirement for a two year limit.

Concern that licensees not have to cleanup natural or third party contamination is valid if this type of distinction can be made. The difficulty in establishing background would appear to be partially responsible for this comment. The Commission is concerned that arguments over mining seepage versus tailings seepage or similar uncertainties not prevent an orderly implementation of the EPA standards. The concern that the corrective action program be directed at the natural aquifers is addressed in part by the clarifying addition to the definition of "aquifer." Because these decisions are so site specific, the Commission is concerned that attempts to further clarify the matter in the rule may create more problems than they would solve.

Paragraphs 5E–H

Comments: The only purpose in including these paragraphs in the proposed rule was to designate them as 5E–H for consistency. Industry commenters suggested that 5H be

deleted based on the legal view that NRC does not have regulatory authority over ore storage at mills.

Response: Since paragraph 5H was unaffected by the EPA standards being incorporated, substantive change to delete is outside the scope of this action. However, the Commission views the provision as valid.

Criterion 6

Comments: The proposed addition to Criterion 6 incorporated the imposed nonradiological hazard closure requirement. One commenter suggested application of the closure requirement to radioactive constituents and properties. One noted that the closure standard and the design and operational liner standards may conflict and suggested that the closure requirements have priority. Editorial suggestions addressed the lack of definition or quantification of the term "threat" and the lack of clarity resulting from the use of the three parallel terms "control, minimize or eliminate."

Response: The language in 40 CFR Part 192(b)(1) clearly identifies 40 CFR 264.111 as the closure standard for nonradiological hazards. The addition of the radiological constituents and properties to Criteria 5C and 13 assures that these aspects must be addressed in corrective action plans when they are of concern. No additional changes are needed. The comment on potential conflicts is more of an observation and reflects concerns with the primary design standard.

The editorial suggestions are not consistent with the language imposed. The suggested changes appear to be less protective and do not provide quantification or use alternate terms that are defined in EPA's standards. Consequently they are not being made.

Criterion 7

Comments: The proposed addition to Criterion 7 incorporated the requirements for a detection monitoring program and other information requirements needed to comply with the secondary ground-water standard. One commenter viewed 40 CFR 264.98 as legally imposed and suggested the addition of detailed prescriptive monitoring requirements. An industry commenter urged the Commission to direct staff to consider site specific alternatives for monitoring proposed by licensees.

Response: The sentence viewed as imposing 40 CFR 264.98 is: "Detection monitoring programs required under § 264.92 shall be completed within one (1) year of promulgation." While imposition of § 264.98 is one way this language could be read, the Commission believes that a better reading is that detection monitoring should be established within one year. This view is supported by the fact that the imposed standards in § 264.92 are dependant on site specific data, except for the drinking water values, so that the reference to § 264.98 only serves to illustrate that a monitoring program is necessary to implement § 264.92. This view is also supported by EPA's listing in the preamble to the October 7, 1983 rule of § 264.98 as a section NRC is to address, but not one EPA expressly incorporated in whole or in part. The issue of discretionary rules has already been discussed a number of times.

The comment addressing staff consideration of alternatives does not require any change in the proposed rule. The provision to consider licensee alternatives in accordance with section 84c of the AEA was incorporated in NRC's October 16, 1985 final rule.

A pervasive theme in the comments is the erroneous view that routine monitoring of all Criterion 13 constituents is required. The Commission is clarifying that monitoring for constituents will be determined on a site specific basis.

Criterion 13

Comments: Commenters agreed that the proposed Criterion 13 contains many constituents that will not be of concern at tailings sites and urged NRC to tailor the list for application to tailings. One commenter suggested adding additional constituents such as sulfates, chlorides, total dissolved solids, and pH because they degrade water quality.

Response: Although the Commission agrees that the list in Criterion 13 includes many constituents that will likely never be of concern, shortening the list is outside the scope of this action. If the list is shortened, it would have to be based on one of two findings. One is that the constituent is not inherently hazardous which is not at issue here. The second is that the constituent would never be present in uranium and thorium byproduct material and wastes or the impoundments. Making the second finding would include uncertainties that presently available information does not address (e.g., that ore bodies would not contain new constituents, that new solvents will not be introduced, and that operational or decommissioning wastes will not introduce new constituents). The clarifying language being added to emphasize that licensees are not expected to routinely monitor for all the constituents should reduce concerns that prompted the comments.

The Commission does not believe that the addition of the suggested parameters is technically appropriate. These parameters may only affect the potability of ground water and not qualify as hazardous. Although the list imposed by EPA does not include nitrates, the EPA drinking water regulations for community water supplies include a limit for nitrates. The Commission considers it prudent to add a reference to NRC's authority to add constituents on a site specific basis to allow for a more aggressive approach for contaminants such as nitrates and is doing so. Also, the indicator parameters suggested for addition are likely candidates for NRC attention under the National Environmental Policy Act (NEPA) and many State ground-water programs address these parameters.

VI. Agency Concurrences

The action covered in this notice is undertaken pursuant to sections 84a(2) and 275f(3) of the AEA and reflects requirements already imposed by EPA, and already subject to implementation and enforcement by NRC under section 275d of the AEA. The Commission considers it inappropriate to consider this rulemaking as requiring EPA concurrence under section 84a(3) of the AEA. Section 84a(3) of the AEA requires NRC to assure that by-product material is managed in a manner that "conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended." No discretionary general requirements pursuant to section 84a(3) are being issued.

VII. Impact of the Amendments

A. Finding of No Significant Environmental Impact

The Commission has determined under NEPA and the Commission's regulations in 10 CFR Part 51 that NRC's incorporation of the EPA standards by this action is not a major Federal action significantly affecting the quality of the environment and therefore an environmental impact statement is not required. The significant Federal action was the promulgation by EPA of its regulations on September 30, 1983.

In issuing these additional modifications to its regulations in Appendix A to 10 CFR Part 40, the Commission is completing the action to

conform them to the EPA standards. The purpose of these changes is to clarify previously existing language in promulgated EPA standards and incorporate mandatory requirements into NRC's regulations. This action by the Commission is a consequence of previous actions taken by the Congress and the EPA, and is legally required by sections 84a(2) and 275f(3) of the Atomic Energy Act of 1954, as amended.

Commission action in this case is essentially nondiscretionary in nature, and EPA is viewed as the lead agency. For purposes of environmental analysis, this action rests upon existing environmental and other impact evaluations prepared by EPA in the following documents: (1) "Final Environmental Impact Statement for Standards for the Control of Byproduct Materials from Uranium Ore Processing (40 CFR Part 192)," Volumes 1 and 2, EPA 520/1–83–008–1 and 2, September 1983,[1] (2) "Regulatory Impact Analysis of Final Environmental Standards for Uranium Mill Tailings at Active Sites," EPA 520/1–83–010, September 1983, and (3) Supplementary Information, Interim Final Rulemaking for 40 CFR Parts 122, 260, 264 and 265, "Hazardous Waste Management System; Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; and EPA Administered Permit Programs?" published July 26, 1982 (47 FR 32274). NRC also prepared an overview of the potential actions that might be required of NRC and Agreement state licensees by the EPA standards entitled, "Summary of the Waste Management Programs at Uranium Recovery Facilities as They Relate to the 40 CFR Part 192 Standards," NUREG/CR–4403.[2]

B. Impacts Presented in Proposed Rule

The Commission published an overview and update of the impacts on the environment and uranium and thorium milling industry associated with the ground-water protection standards when they were proposed for incorporation (51 FR 24703–24709; July 8, 1986). The discussion also addressed in general terms the economic and other factors that would be addressed in a comprehensive Regulatory Flexibility Analysis if one was required by this action to meet the requirements of the Regulatory Flexibility Act. The summary information was not intended to be a strict cost/benefit analysis or a technical justification for the standards. It generally related economic cost to the benefit expected from compliance with the standard. The summary information was also intended to help the reader more fully understand the nature and potential impacts of the proposed action.

VIII. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget under approval number 3150–0020.

IX. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule will not have a significant economic impact upon a substantial number of small entities. Therefore, a Regulatory Flexibility Analysis has not been prepared. The basis for this finding includes the nature of the licensees as well as the nondiscretionary nature of this action. Of the 27 licensed uranium mills that have produced tailings, only one qualifies as small entity.

List of Subjects in 10 CFR Part 40

Government contracts, Hazardous materials-transportation, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Source material, and Uranium.

X. Modifications

Under the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 553, and the Uranium Mill Tailings Radiation Control Act of 1978, as amended, the NRC is issuing the following amendments to 10 CFR Part 40.

PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

1. The authority citation for Part 40 continues to read as follows:

Authority: Secs. 62, 63, 64, 65, 81, 161, 182, 183, 186, 68 Stat. 932, 933, 935, 948, 953, 954, 955, as amended, secs. 11e(2), 83, 84, Pub. L. 95–604, 92 Stat. 3033, as amended, 3039, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2014(e)(2), 2092, 2093, 2094, 2095, 2111, 2113, 2114, 2201, 2232, 2233, 2236, 2282); secs. 274, Pub. L. 86–373, 73 Stat. 688 (42 U.S.C. 2021); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846). Sec. 275, 92 Stat. 3021, as amended by Pub L. 97–415, 96 Stat. 2067 (42 U.S.C. 2022).

Section 40.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 40.31(g) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Section 40.46 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 40.71 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 40.3, 40.25(d)(1)–(3), 40.35 (a)–(d), 40.41 (b) and (c), 40.46, 40.51 (a) and (c), and 40.63 are issued under sec. 161b, 68 Stat. 948, as amended, (42 U.S.C. 2201(b)); and §§ 40.25 (c) and (d)(3) and (4), 40.26(c)(2), 40.35(e), 40.42, 40.61, 40.62, 40.64 and 40.65 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

Appendix A to Part 40 is amended as follows:

Appendix A to Part 40—Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content

2. Introduction to Appendix A is amended by adding the following text at the end of the Introduction:

Introduction.* * *

The following definitions apply to the specified terms as used in this Appendix:

"Aquifer" means a geologic formation, group of formations, or part of a formation capable of yielding a significant amount of ground water to wells or springs. Any saturated zone created by uranium or thorium recovery operations would not be considered an aquifer unless the zone is or potentially is (1) hydraulically interconnected to a natural aquifer, (2) capable of discharge to surface water, or (3) reasonably accessible because of migration beyond the vertical projection of the boundary of the land transferred for long-term government ownership and care in accordance with Criterion 11 of this appendix.

"Closure" means the activities following operations to decontaminate and decommission the buildings and site used to produce byproduct materials and reclaim the tailings and/or waste disposal area.

"Closure plan" means the Commission approved plan to accomplish closure.

"Compliance period" begins when the Commission sets secondary ground-water protection standards and ends when the owner or operator's license is terminated and the site is transferred to the State or Federal agency for long-term care.

"Dike" means an embankment or ridge of either natural or man-made materials used to

[1] Single copies of the Final Environmental Impact and the Regulatory Impact Analysis may be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. A copy of each document is also available for inspection and/or copying in NRC's Public Document Room, 1717 H Street NW., Washington, DC 20555.

[2] Copies of NUREG/CR–4403 and NUREG 0706 may be purchased through the U.S. Government Printing Office by calling (202) 275–2060 or by writing to the U.S. Government Printing Office P.O. Box 37082, Washington, DC 20013–7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. Copies are available for inspection and/or copying for a fee in the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

prevent the movement of liquids, sludges, solids or other materials.

"Disposal area" means the area containing byproduct materials to which the requirements of Criterion 6 apply.

"Existing portion" means that land surface area of an existing surface impoundment on which significant quantities of uranium or thorium byproduct materials had been placed prior to September 30, 1983.

"Ground water" means water below the land surface in a zone of saturation. For purposes of this appendix, ground water is the water contained within an aquifer as defined above.

"Leachate" means any liquid, including any suspended or dissolved components in the liquid, that has percolated through or drained from the byproduct material.

"Licensed site" means the area contained within the boundary of a location under the control of persons generating or storing byproduct materials under a Commission license.

"Liner" means a continuous layer of natural or man-made materials, beneath or on the sides of a surface impoundment which restricts the downward or lateral escape of byproduct material, hazardous constituents, or leachate.

"Point of compliance" is the site specific location in the uppermost aquifer where the ground-water protection standard must be met.

"Surface impoundment" means a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

3. Criterion 5 is revised to read as follows:

Criterion 5—Criteria 5A–5D and new Criterion 13 incorporate the basic ground-water protection standards imposed by the Environmental Protection Agency in 40 CFR Part 192, Subparts D and E (48 FR 45926; October 7, 1983) which apply during operations and prior to the end of closure. Ground-water monitoring to comply with these standards is required by Criterion 7A.

5A(1)—The primary ground-water protection standard is a design standard for surface impoundments used to manage uranium and thorium byproduct material. Unless exempted under paragraph 5A(3) of this criterion, surface impoundments (except for an existing portion) must have a liner that is designed, constructed, and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil, ground water, or surface water at any time during the active life (including the closure period) of the impoundment. The liner may be constructed of materials that may allow wastes to migrate into the liner (but not into the adjacent subsurface soil, ground water, or surface water) during the active life of the facility, provided that impoundment closure includes removal or decontamination of all waste residues, contaminated containment system components (liners, etc.), contaminated subsoils, and structures and equipment contaminated with waste and leachate. For impoundments that will be closed with the liner material left in place, the liner must be constructed of materials that can prevent wastes from migrating into the liner during the active life of the facility.

5A(2)—The liner required by paragraph 5A(1) above must be—

(a) Constructed of materials that have appropriate chemical properties and sufficient strength and thickness to prevent failure due to pressure gradients (including static head and external hydrogeologic forces), physical contact with the waste or leachate to which they are exposed, climatic conditions, the stress of installation, and the stress of daily operation;

(b) Placed upon a foundation or base capable of providing support to the liner and resistance to pressure gradients above and below the liner to prevent failure of the liner due to settlement, compression, or uplift; and

(c) Installed to cover all surrounding earth likely to be in contact with the wastes or leachate.

5A(3)—The applicant or licensee will be exempted from the requirements of paragraph 5A(1) of this criterion if the Commission finds, based on a demonstration by the applicant or licensee, that alternate design and operating practices, including the closure plan, together with site characteristics will prevent the migration of any hazardous constituents into ground water or surface water at any future time. In deciding whether to grant an exemption, the Commission will consider—

(a) The nature and quantity of the wastes;

(b) The proposed alternate design and operation;

(c) The hydrogeologic setting of the facility, including the attenuative capacity and thickness of the liners and soils present between the impoundment and ground water or surface water; and

(d) All other factors which would influence the quality and mobility of the leachate produced and the potential for it to migrate to ground water or surface water.

5A(4)—A surface impoundment must be designed, constructed, maintained, and operated to prevent overtopping resulting from normal or abnormal operations, overfilling, wind and wave actions, rainfall, or run-on; from malfunctions of level controllers, alarms, and other equipment; and from human error.

5A(5)—When dikes are used to form the surface impoundment, the dikes must be designed, constructed, and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the impoundment.

5B(1)—Uranium and thorium byproduct materials must be managed to conform to the following secondary ground-water protection standard: Hazardous constituents entering the ground water from a licensed site must not exceed the specified concentration limits in the uppermost aquifer beyond the point of compliance during the compliance period. Hazardous constituents are those constituents identified by the Commission pursuant to paragraph 5B(2) of this criterion. Specified concentration limits are those limits established by the Commission as indicated in paragraph 5B(5) of this criterion. The Commission will also establish the point of compliance and compliance period on a site specific basis through license conditions and orders. The objective in selecting the point of compliance is to provide the earliest practicable warning that the impoundment is releasing hazardous constituents to the ground water. The point of compliance must be selected to provide prompt indication of ground-water contamination on the hydraulically downgradient edge of the disposal area. The Commission shall identify hazardous constituents, establish concentration limits, set the compliance period, and may adjust the point of compliance if needed to accord with developed data and site information as to the flow of ground water or contaminants, when the detection monitoring established under Criterion 7A indicates leakage of hazardous constituents from the disposal area.

5B(2)—A constituent becomes a hazardous constituent subject to paragraph 5B(5) only when the constituent meets all three of the following tests:

(a) The constituent is reasonably expected to be in or derived from the byproduct material in the disposal area;

(b) The constituent has been detected in the ground water in the uppermost aquifer; and

(c) The constituent is listed in Criterion 13 of this appendix.

5B(3)—Even when constituents meet all three tests in paragraph 5B(2) of this criterion, the Commission may exclude a detected constituent from the set of hazardous constituents on a site specific basis if it finds that the constituent is not capable of posing a substantial present or potential hazard to human health or the environment. In deciding whether to exclude constituents, the Commission will consider the following:

(a) Potential adverse effects on ground-water quality, considering—

(i) The physical and chemical characteristics of the waste in the licensed site, including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of ground water and the direction of ground-water flow;

(iv) The proximity and withdrawal rates of ground-water users;

(v) The current and future uses of ground water in the area;

(vi) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground-water quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential adverse effects.

(b) Potential adverse effects on hydraulically-connected surface water quality, considering—

(i) The volume and physical and chemical characteristics of the waste in the licensed site;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of ground water, and the direction of ground-water flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the licensed site to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water, including other sources of contamination and the cumulative impact on surface-water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(x) The persistence and permanence of the potential adverse effects.

5B(4)—In making any determinations under paragraphs 5B(3) and 5B(6) of this criterion about the use of ground water in the area around the facility, the Commission will consider any identification of underground sources of drinking water and exempted aquifers made by the Environmental Protection Agency.

5B(5)—At the point of compliance, the concentration of a hazardous constituent must not exceed—

(a) The Commission approved background concentration of that constituent in the ground water;

(b) The respective value given in the table in paragraph 5C if the constituent is listed in the table and if the background level of the constituent is below the value listed; or

(c) An alternate concentration limit established by the Commission.

5B(6)—Conceptually, background concentrations pose no incremental hazards and the drinking water limits in paragraph 5C state acceptable hazards but these two options may not be practically achievable at a specific site. Alternate concentration limits that present no significant hazard may be proposed by licensees for Commission consideration. Licensees must provide the basis for any proposed limits including consideration of practicable corrective actions, that limits are as low as reasonably achievable, and information on the factors the Commission must consider. The Commission will establish a site specific alternate concentration limit for a hazardous constituent as provided in paragraph 5B(5) of this criterion if it finds that the proposed limit is as low as reasonably achievable, after considering practicable corrective actions, and that the constituent will not pose a substantial present or potential hazard to human health or the environment as long as the alternate concentration limit is not exceeded. In making the present and potential hazard finding, the Commission will consider the following factors:

(a) Potential adverse effects on ground-water quality, considering—

(i) The physical and chemical characteristics of the waste in the licensed site including its potential for migration;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity of ground water and the direction of ground-water flow;

(iv) The proximity and withdrawal rates of ground-water users;

(v) The current and future uses of ground water in the area;

(vi) The existing quality of ground water, including other sources of contamination and their cumulative impact on the ground-water quality;

(vii) The potential for health risks caused by human exposure to waste constituents;

(viii) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

(ix) The persistence and permanence of the potential adverse effects.

(b) Potential adverse effects on hydraulically-connected surface water quality, considering—

(i) The volume and physical and chemical characteristics of the waste in the licensed site;

(ii) The hydrogeological characteristics of the facility and surrounding land;

(iii) The quantity and quality of ground water, and the direction of ground-water flow;

(iv) The patterns of rainfall in the region;

(v) The proximity of the licensed site to surface waters;

(vi) The current and future uses of surface waters in the area and any water quality standards established for those surface waters;

(vii) The existing quality of surface water including other sources of contamination and the cumulative impact on surface water quality;

(viii) The potential for health risks caused by human exposure to waste constituents;

(ix) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents; and

(x) The persistence and permanence of the potential adverse effects.

5C—Maximum Values for Ground-Water Protection

Constituent or property	Maximum concentration
Milligrams per liter:	
Arsenic	0.05
Barium	1.0
Cadmium	0.01
Chromium	0.05
Lead	0.05
Mercury	0.002
Selenium	0.01
Silver	0.05
Endrin (1,2,3,4,10,10-hexachloro-1,7 -expoxy-1,4,4a,5,6,7,8,9a-octahydro-1, 4-endo, endo-5,8-dimethano naphthalene)	0.0002
Lindane (1,2,3,4,5,6-hexachlorocyclohexane, gamma isomer)	0.004
Methoxychlor (1,1,1-Trichloro-2,2-bis (p-methoxyphenylethane)	0.1
Toxaphene ($C_{10}H_{10}C1_6$, Technical chlorinated camphene, 67–69 percent chlorine)	0.005
2,4-D (2,4-Dichlorophenoxyacetic acid)	0.1
2,4,5-TP Silvex (2,4,5-Trichlorophenoxypropionic acid)	0.01
Picocuries per liter:	
Combined radium-226 and radium -228	5
Gross alpha—particle activity (excluding radon and uranium when producing uranium byproduct material or radon and thorium when producing thorium byproduct material)	15

5D—If the ground-water protection standards established under paragraph 5B(1) of this criterion are exceeded at a licensed site, a corrective action program must be put into operation as soon as is practicable, and in no event later than eighteen (18) months after the Commission finds that the standards have been exceeded. The licensee shall submit the proposed corrective action program and supporting rationale for Commission approval prior to putting the program into operation, unless otherwise directed by the Commission. The objective of the program is to return hazardous constituent concentration levels in ground water to the concentration limits set as standards. The licensee's proposed program must address removing the hazardous constituents that have entered the ground water at the point of compliance or treating them in place. The program must also address removing or treating in place any hazardous constituents that exceed concentration limits in ground water between the point of compliance and the downgradient facility property boundary. The licensee shall continue corrective action measures to the extent necessary to achieve and maintain compliance with the ground-water protection standard. The Commission will determine when the licensee may terminate corrective action measures based on data from the ground-water monitoring program and other information that provide reasonable assurance that the ground-water protection standard will not be exceeded.

5E—In developing and conducting ground-water protection programs, applicants and licensees shall also consider the following:

(1) Installation of bottom liners (Where synthetic liners are used, a leakage detection system must be installed immediately below the liner to ensure major failures are detected

if they occur. This is in addition to the ground-water monitoring program conducted as provided in Criterion 7. Where clay liners are proposed or relatively thin, in-situ clay soils are to be relied upon for seepage control, tests must be conducted with representative tailings solutions and clay materials to confirm that no significant deterioration of permeability or stability properties will occur with continuous exposure of clay to tailings solutions. Tests must be run for a sufficient period of time to reveal any effects if they are going to occur (in some cases deterioration has been observed to occur rather rapidly after about nine months of exposure)).

(2) Mill process designs which provide the maximum practicable recycle of solutions and conservation of water to reduce the net input of liquid to the tailings impoundment.

(3) Dewatering of tailings by process devices and/or in-situ drainage systems (At new sites, tailings must be dewatered by a drainage system installed at the bottom of the impoundment to lower the phreatic surface and reduce the driving head of seepage, unless tests show tailings are not amenable to such a system. Where in-situ dewatering is to be conducted, the impoundment bottom must be graded to assure that the drains are at a low point. The drains must be protected by suitable filter materials to assure that drains remain free running. The drainage system must also be adequately sized to assure good drainage).

(4) Neutralization to promote immobilization of hazardous constituents.

5F—Where ground-water impacts are occurring at an existing site due to seepage, action must be taken to alleviate conditions that lead to excessive seepage impacts and restore ground-water quality. The specific seepage control and ground-water protection method, or combination of methods, to be used must be worked out on a site-specific basis. Technical specifications must be prepared to control installation of seepage control systems. A quality assurance, testing, and inspection program, which includes supervision by a qualified engineer or scientist, must be established to assure the specifications are met.

5G—In support of a tailings disposal system proposal, the applicant/operator shall supply information concerning the following:

(1) The chemical and radioactive characteristics of the waste solutions.

(2) The characteristics of the underlying soil and geologic formations particularly as they will control transport of contaminants and solutions. This includes detailed information concerning extent, thickness, uniformity, shape, and orientation of underlying strata. Hydraulic gradients and conductivities of the various formations must be determined. This information must be gathered from borings and field survey methods taken within the proposed impoundment area and in surrounding areas where contaminants might migrate to ground water. The information gathered on boreholes must include both geologic and geophysical logs in sufficient number and degree of sophistication to allow determining significant discontinuities, fractures, and channeled deposits of high hydraulic conductivity. If field survey methods are used, they should be in addition to and calibrated with borehole logging. Hydrologic parameters such as permeability may not be determined on the basis of laboratory analysis of samples alone; a sufficient amount of field testing (e.g., pump tests) must be conducted to assure actual field properties are adequately understood. Testing must be conducted to allow estimating chemi-sorption attenuation properties of underlying soil and rock.

(3) Location, extent, quality, capacity and current uses of any ground water at and near the site.

5H—Steps must be taken during stockpiling of ore to minimize penetration of radionuclides into underlying soils; suitable methods include lining and/or compaction of ore storage areas.

4. Criterion 6 is amended by adding the following new paragraph at the end of Criterion 6:

Criterion 6—* * *

The licensee shall also address the nonradiological hazards associated with the wastes in planning and implementing closure. The licensee shall ensure that disposal areas are closed in a manner that minimizes the need for further maintenance. To the extent necessary to prevent threats to human health and the environment, the licensee shall control, minimize, or eliminate post-closure escape of nonradiological hazardous constituents, leachate, contaminated rainwater, or waste decomposition products to the ground or surface waters or to the atmosphere.

5. Criterion 7 is amended by adding the following new paragraph at the end of Criterion 7:

Criterion 7—* * *

7A—The licensee shall establish a detection monitoring program needed for the Commission to set the site-specific ground-water protection standards in paragraph 5B(1) of this appendix. For all monitoring under this paragraph the licensee or applicant will propose for Commission approval as license conditions which constituents are to be monitored on a site specific basis. A detection monitoring program has two purposes.The initial purpose of the program is to detect leakage of hazardous constituents from the disposal area so that the need to set ground-water protection standards is monitored. If leakage is detected, the second purpose of the program is to generate data and information needed for the Commission to establish the standards under Criterion 5B. The data and information must provide a sufficient basis to identify those hazardous constituents which require concentration limit standards and to enable the Commission to set the limits for those constituents and the compliance period. They may also need to provide the basis for adjustments to the point of compliance. For licenses in effect September 30, 1983, the detection monitoring programs must have been in place by October 1, 1984. For licenses issued after September 30, 1983, the detection monitoring programs must be in place when specified by the Commission in orders or license conditions. Once ground-water protection standards have been established pursuant to paragraph 5B(1), the licensee shall establish and implement a compliance monitoring program. The purpose of the compliance monitoring program is to determine that the hazardous constituent concentrations in ground water continue to comply with the standards set by the Commission. In conjunction with a corrective action program, the licensee shall establish and implement a corrective action monitoring program. The purpose of the corrective action monitoring program is to demonstrate the effectiveness of the corrective actions. Any monitoring program required by tg his paragraph may be based on existing monitoring programs to the extent the existing programs can meet the stated objective for the program.

6. Add the following new heading and a new Criterion 13 at the end of Appendix A to read as follows:

V. Hazardous Constituents

Criterion 13—Secondary ground-water protection standards required by Criterion 5 of this appendix are concentration limits for individual hazardous constituents. The following list of constituents identifies the constituents for which standards must be set and complied with if the specific constituent is reasonably expected to be in or derived from the byproduct material and has been detected in ground water. For purposes of this Appendix, the property of gross alpha activity will be treated as if it is a hazardous constituent. Thus, when setting standards under paragraph 5B(5) of Criterion 5, the Commission will also set a limit for gross alpha activity. The Commission does not consider the following list imposed by 40 CFR Part 192 to be exhaustive and may determine other constituents to be hazardous on a case-by-case basis, independent of those specified by the U.S. Environmental Protection Agency in Part 192.

Hazardous Constituents

Acetonitrile (Ethanenitrile)
Acetophenone (Ethanone, 1-phenyl)
3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin and salts (Warfarin)
2-Acetylaminofluorene (Acetamide, N-(9H-fluoren-2-yl)-)
Acetyl chloride (Ethanoyl chloride)
1-Acetyl-2-thiourea (Acetamide, N-(aminothioxomethyl)-)
Acrolein (2-Propenal)
Acrylamide (2-Propenamide)
Acrylonitrile (2-Propenenitrile)
Aflatoxins
Aldrin (1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a,8b-hexahydro-endo, exo-1,4:5,8-Dimethanonaphthalene)
Allyl alcohol (2-Propen-1-ol)
Aluminum phosphide
4-Aminobiphenyl ([1,1'-Biphenyl]-4-amine)
6-Amino-1,1a,2,8,8a,8b-hexahydro-8-(hydroxymethyl)-8a-methoxy-5-methyl-carbamate azirino[2',3':3,4]pyrrolo[1,2-a]indole-4,7-dione, (ester) (Mitomycin C)
(Azirino[2'3':3,4]pyrrolo(1,2-a)indole-4,7-dione, 6-amino-8-[[(amino-

cabonyl)oxy)methyl]-1,1a,2,8,8a,8b-hexahydro-8a methoxy-5-methy-)
5-(Aminomethyl)-3-isoxazolol (3(2H)-Isoxazolone, 5-(aminomethyl)-) 4-Aminopyridine (4-Pyridinamine)
Amitrole (1H-1,2,4-Triazol-3-amine)
Aniline (Benzenamine)
Antimony and compounds, N.O.S.[3]
Aramite (Sulfurous acid, 2-chloroethyl-, 2-[4-(1,1-dimethylethyl) phenoxy]-1-methylethyl ester)
Arsenic and compounds, N.O.S.[3]
Arsenic acid (Orthoarsenic acid)
Arsenic pentoxide (Arsenic (V) oxide)
Arsenic trioxide (Arsenic (III) oxide)
Auramine (Benzenamine, 4,4'-carbonimidoylbis[N,N-Dimethyl-, monohydrochloride)
Azaserine (L-Serine, diazoacetate (ester))
Barium and compounds, N.O.S.[3]
Barium cyanide
Benz[c]acridine (3,4-Benzacridine)
Benz[a]anthracene (1,2-Benzanthracene)
Benzene (Cyclohexatriene)
Benzenearsonic acid (Arsonic acid, phenyl-)
Benzene, dichloromethyl- (Benzal chloride)
Benzenethiol (Thiophenol)
Benzidine ([1,1'-Biphenyl]-4,4'diamine)
Benzo[b]fluoranthene (2,3-Benzofluoranthene)
Benzo[j]fluoranthene (7,8-Benzofluoranthene)
Benzo[a]pyrene (3,4-Benzopyrene)
p-Benzoquinone (1,4-Cyclohexadienedione)
Benzotrichloride (Benzene, trichloromethyl)
Benzyl chloride (Benzene, (chloromethyl)-)
Beryllium and compounds, N.O.S.[3]
Bis(2-chloroethoxy)methane (Ethane, 1,1'-[methylenebis(oxy)]bis[2-chloro-])
Bis(2-chloroethyl) ether (Ethane, 1,1'-oxybis[2-chloro-])
N,N-Bis(2-chloroethyl)-2-naphthylamine (Chlornaphazine)
Bis(2-chloroisopropyl) ether (Propane, 2,2'-oxybis[2-chloro-])
Bis(chloromethyl) ether (Methane, oxybis[chloro-])
Bis(2-ethylhexyl) phthalate (1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester)
Bromoacetone (2-Propanone, 1-bromo-)
Bromomethane (Methyl bromide)
4-Bromophenyl phenyl ether (Benzene, 1-bromo-4-phenoxy-)
Brucine (Strychnidin-10-one, 2,3-dimethoxy-)
2-Butanone peroxide (Methyl ethyl ketone, peroxide)
Butyl benzyl phthalate (1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester)
2-sec-Butyl-4,6-dinitrophenol (DNBP) (Phenol, 2,4-dinitro-6-(1-methylpropyl)-)
Cadmium and compounds, N.O.S.[3]
Calcium chromate (Chromic acid, calcium salt)
Calcium cyanide
Carbon disulfide (Carbon bisulfide)
Carbon oxyfluoride (Carbonyl fluoride)
Chloral (Acetaldehyde, trichloro-)
Chlorambucil (Butanoic acid, 4-[bis(2-chloroethyl)amino]benzene-)
Chlordane (alpha and gamma isomers) (4,7-Methanoindan, 1,2,4,5,6,7,8,8-octachloro-3,4,7,7a-tetrahydro-) (alpha and gamma isomers)
Chlorinated benzenes, N.O.S.[3]
Chlorinated ethane, N.O.S.[3]
Chlorinated fluorocarbons, N.O.S.[3]
Chlorinated naphthalene, N.O.S.[3]
Chlorinated phenol, N.O.S.[3]
Chloroacetaldehyde (Acetaldehyde, chloro-)
Chloroalkyl ethers, N.O.S.[3]
p-Chloroaniline (Benzenamine, 4-chloro-)
Chlorobenzene (Benzene, chloro-)
Chlorobenzilate (Benzeneacetic acid, 4-chloro-alpha-(4-chlorophenyl)-alpha-hydroxy-,ethyl ester)
p-Chloro-m-cresol (Phenol, 4-chloro-3-methyl)
1-Chloro-2,3-epoxypropane (Oxirane, 2-(chloromethyl)-)
2-Chloroethyl vinyl ether (Ethene, (2-chloroethoxy)-)
Chloroform (Methane, trichloro-)
Chloromethane (Methyl chloride)
Chloromethyl methyl ether (Methane, chloromethoxy-)
2-Chloronaphthalene (Naphthalene, betachloro-)
2-Chlorophenol (Phenol, o-chloro-)
1-(o-Chlorophenyl)thiourea (Thiourea, (2-chlorophenyl)-)
3-Chloropropionitrile (Propanenitrile, 3-chloro-)
Chromium and compounds, N.O.S.[3]
Chrysene (1,2-Benzphenanthrene)
Citrus red No. 2 (2-Naphthol, 1-[(2,5-dimethoxyphenyl)azo]-)
Coal tars
Copper cyanide
Creosote (Creosote, wood)
Cresols (Cresylic acid) (Phenol, methyl-)
Crotonaldehyde (2-Butenal)
Cyanides (soluble salts and complexes), N.O.S.[3]
Cyanogen (Ethanedinitrile)
Cyanogen bromide (Bromine cyanide)
Cyanogen chloride (Chlorine cyanide)
Cycasin (beta-D-Glucopyranoside, (methyl-ONN-azoxy)methyl-)
2-Cyclohexyl-4,6-dinitrophenol (Phenol, 2-cyclohexyl-4,6-dinitro-)
Cyclophosphamide (2H-1,3,2,-Oxazaphosphorine, [bis(2-chloroethyl) amino]-tetrahydro-,2-oxide)
Daunomycin (5,12-Naphthacenedione, (8S-cis)-8-acetyl-10-[(3-amino-2,3,6-trideoxy)-alpha-L-lyxo-hexopyranosyl)oxy]-7,8,9,10-tetrahydro-6,8,11-trihydroxy-1-methoxy-)
DDD (Dichlorodiphenyldichloroethane) (Ethane, 1,1-dichloro-2,2-bis(p-chlorophenyl)-)
DDE (Ethylene, 1,1-dichloro-2,2-bis(4-chlorophenyl)-)
DDT (Dichlorodiphenyltrichloroethane) (Ethane, 1,1,1-trichloro-2,2-bis (p-chlorophenyl)-)
Diallate (S-(2,3-dichloroallyl) diisopropylthiocarbamate)
Dibenz[a,h]acridine (1,2,5,6-Dibenzacridine)
Dibenz[a,j]acridine (1,2,7,8-Dibenzacridine)
Dibenz[a,h]anthracene (1,2,5,6-Dibenzanthracene)
7H-Dibenzo[c,g]carbazole (3,4,5,6-Dibenzcarbazole)
Dibenzo[a,e]pyrene (1,2,4,5-Dibenzpyrene)
Dibenzo[a,h]pyrene (1,2,5,6-Dibenzpyrene)
Dibenzo[a,i]pyrene (1,2,7,8-Dibenzpyrene)
1,2-Dibromo-3-chloropropane (Propane, 1,2-dibromo-3-chloro-)
1,2-Dibromoethane (Ethylene dibromide)
Dibromomethane (Methylene bromide)
Di-n-butyl phthalate (1,2-Benzenedicarboxylic acid, dibutyl ester)
o-Dichlorobenzene (Benzene, 1,2-dichloro-)
m-Dichlorobenzene (Benzene, 1,3-dichloro-)
p-Dichlorobenzene (Benzene, 1,4-dichlor-)
Dichlorobenzene, N.O.S.[3] (Benzene, dichloro-, N.O.S.[3])
3,3'-Dichlorobenzidine ([1,1'-Biphenyl]-4,4'-diamine, 3,3'-dichloro-)
1,4-Dichloro-2-butene (2-Butene, 1,4-dichloro-)
Dichlorodifluoromethane (Methane, dichlorodifluoro-)
1,1-Dichloroethane (Ethylidene dichloride)
1,2-Dichloroethane (Ethylene dichloride)
trans-1,2-Dichloroethene (1,2-Dichloroethylene)
Dichloroethylene, N.O.S.[3] (Ethene, dichloro-, N.O.S.[3])
1,1-Dichloroethylene (Ethene, 1,1-dichloro-)
Dichloromethane (Methylene chloride)
2,4-Dichlorophenol (Phenol, 2,4-dichloro-)
2,6-Dichlorophenol (Phenol, 2,6-dichloro-)
2,4-Dichlorophenoxyacetic acid (2,4-D), salts and esters (Acetic acid, 2,4-dichlorophenoxy-, salts and esters)
Dichlorophenylarsine (Phenyl dichloroarsine)
Dichloropropane, N.O.S.[3] (Propane, dichloro-, N.O.S.[3])
1,2-Dichloropropane (Propylene dichloride)
Dichloropropanol, N.O.S.[3] (Propanol, dichloro-, N.O.S.[3])
Dichloropropene, N.O.S.[3] (Propene, dichloro-, N.O.S.[3])
1,3-Dichloropropene (1-Propene, 1,3-dichloro-)
Dieldin (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octa-hydro-endo, exo-1,4:5,8-Dimethanonaphthalene)
1,2:3,4-Diepoxybutane (2,2'-Bioxirane)
Diethylarsine (Arsine, diethyl-)
N,N-Diethylhydrazine (Hydrazine, 1,2-diethyl)
O,O-Diethyl S-methyl ester of phosphorodithioic acid (Phosphorodithioic acid, O,O-diethyl S-methyl ester)
O,O-Diethylphosphoric acid, O-p-nitrophenyl ester (Phosphoric acid, diethyl p-nitrophenyl ester)
Diethyl phthalate (1,2-Benzenedicarboxylic acid, diethyl ester)
O,O-Diethyl O-2-pyrazinyl phosphorothioate (Phosphorothioic acid, O,O-diethyl O-pyrazinyl ester)
Diethylstilbesterol (4,4'-Stilbenediol,alpha,alpha-diethyl, bis(dihydrogen phosphate, (E)-)
Dihydrosafrole (Benzene, 1,2-methylenedioxy-4-propyl-)
3,4-Dihydroxy-alpha-(methylamino)methyl benzyl alcohol (1,2-Benzenediol, 4-[1-hydroxy-2-(methylamino)ethyl]-)
Dilsopropylfluorophosphate (DFP) (Phosphorofluoridic acid, bis(1-methylethyl) ester)
Dimethoate (Phosphorodithioic acid, O,O-dimethyl S-[2-(methylamino)-2-oxoethyl] ester)
3,3'-Dimethoxybenzidine ([1,1'-Biphenyl]-4,4'-diamine, 3-3'-dimethoxy-)
p-Dimethylaminoazobenzene (Benzenamine, N,N-dimethyl-4-(phenylazo)-)
7,12-Dimethylbenz[a]anthracene (1,2-Benzanthracene, 7,12-dimethyl-)

[3] The abbreviation N.O.S. (not otherwise specified) signifies those members of the general class not specifically listed by name in this list.

3,3'-Dimethylbenzidine ([1,1'-Biphenyl]-4,4'-diamine, 3,3'-dimethyl-)
Dimethylcarbamoyl chloride (Carbamoyl chloride, dimethyl-)
1,1-Dimethylhydrazine (Hydrazine, 1,1-dimethyl-)
1,2-Dimethylhydrazine (Hydrazine, 1,2-dimethyl-)
3,3-Dimethyl-1-(methylthio)-2-butanone, O-[(methylamino) carbonyl] oxime (Thiofanox)
alpha,alpha-Dimethylphenethylamine (Ethanamine, 1,1-dimethyl-2-phenyl-)
2,4-Dimethylphenol (Phenol, 2,4-dimethyl-)
Dimethyl phthalate (1,2-Benzenedicarboxylic acid, dimethyl ester)
Dimethyl sulfate (Sulfuric acid, dimethyl ester)
Dinitrobenzene, N.O.S.[3] (Benzene, dinitro-, N.O.S.[3])
4,6-Dinitro-o-cresol and salts (Phenol, 2,4-dinitro-6-methyl-, and salts)
2,4-Dinitrophenol (Phenol, 2,4-dinitro-)
2,4-Dinitrotoluene (Benzene, 1-methyl-2,4-dinitro-)
2,6-Dinitrotoluene (Benzene, 1-methyl-2,6-dinitro-)
Di-n-octyl phthalate (1,2-Benzenedicarboxylic acid, dioctyl ester)
1,4-Dioxane (1,4-Diethylene oxide)
Diphenylamine (Benzenamine, N-phenyl-)
1,2-Diphenylhydrazine (Hydrazine, 1,2-diphenyl-)
Di-n-propylnitrosamine (N-Nitroso-di-n-propylamine)
Disulfoton (O,O-diethyl S-[2-(ethylthio)ethyl] phosphorodithioate)
2,4-Dithiobiuret (Thioimidodicarbonic diamide)
Endosulfan (5-Norbornene, 2,3-dimethanol, 1,4,5,6,7,7-hexachloro-, cyclic sulfite)
Endrin and metabolites (1,2,3,4,10,10-hexachloro-6,7-epoxy-1,4,4a,5,6,7,8,8a-octahydro-endo,endo-1,4:5,8-dimethanonaphthalene, and metabolites)
Ethyl carbamate (Urethan) (Carbamic acid, ethyl ester)
Ethyl cyanide (propanenitrile)
Ethylenebisdithiocarbamic acid, salts and esters (1,2-Ethanediyl-biscarbamodithioic acid, salts and esters)
Ethyleneimine (Aziridine)
Ethylene oxide (Oxirane)
Ethylenethiourea (2-Imidazolidinethione)
Ethyl methacrylate (2-Propenoic acid, 2-methyl-, ethyl ester)
Ethyl methanesulfonate (Methanesulfonic acid, ethyl ester)
Fluoranthene (Benzo[j,k]fluorene)
Fluorine
2-Fluoroacetamide (Acetamide, 2-fluoro-)
Fluoroacetic acid, sodium salt (Acetic acid, fluoro-, sodium salt)
Formaldehyde (Methylene oxide)
Formic acid (Methanoic acid)
Glycidylaldehyde (1-Propanol-2,3-epoxy)
Halomethane, N.O.S.[3]
Heptachlor (4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-)
Heptachlor epoxide (alpha, beta, and gamma isomers) (4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-2,3-epoxy-3a,4,7,7-tetrahydro-, alpha, beta, and gamma isomers)
Hexachlorobenzene (Benzene, hexachloro-)
Hexachlorobutadiene (1,3-Butadiene, 1,1,2,3,4,4-hexachloro-)
Hexachlorocyclohexane (all isomers) (Lindane and isomers)
Hexachlorocyclopentadiene (1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-)
Hexachloroethane (Ethane, 1,1,1,2,2,2-hexachloro-)
1,2,3,4,10,10-Hexachloro-1,4,4a,5,8,8a-hexahydro-1,4:5,8-endo,endo-dimethanonaphthalene (Hexachlorohexahydro-endo,endo-dimethanonaphthalene)
Hexachlorophene (2,2'-Methylenebis(3,4,6-trichlorophenol)
Hexachloropropene (1-Propene, 1,1,2,3,3,3-hexachloro-)
Hexaethyl tetraphosphate (Tetraphosphoric acid, hexaethyl ester)
Hydrazine (Diamine)
Hydrocyanic acid (Hydrogen cyanide)
Hydrofluoric acid (Hydrogen fluoride)
Hydrogen sulfide (Sulfur hydride)
Hydroxydimethylarsine oxide (Cacodylic acid)
Indeno (1,2,3-cd)pyrene (1,10-(1,2-phenylene)pyrene)
Iodomethane (Methyl iodide)
Iron dextran (Ferric dextran)
Isocyanic acid, methyl ester (Methyl isocyanate)
Isobutyl alcohol (1-Propanol, 2-methyl-)
Isosafrole (Benzene, 1,2-methylenedioxy-4-allyl-)
Kepone (Decachlorooctahydro-1,3,4-Methano-2H-cyclobuta[cd]pentalen-2-one)
Lasiocarpine (2-Butenoic acid, 2-methyl-, 7-[(2,3-dihydroxy-2-(1-methoxyethyl)-3-methyl-1-oxobutoxy)methyl]-2,3,5,7a-tetrahydro-1H-pyrrolizin-1-yl ester)
Lead and compounds, N.O.S.[3]
Lead acetate (Acetic acid, lead salt)
Lead phosphate (Phosphoric acid, lead salt)
Lead subacetate (Lead, bis(acetato-O)tetrahydroxytri-)
Maleic anhydride (2,5-Furandione)
Maleic hydrazide (1,2-Dihydro-3,6-pyridazinedione)
Malononitrile (Propanedinitrile)
Melphalan (Alanine, 3-[p-bis(2-chloroethyl)amino]phenyl-,L-)
Mercury fulminate (Fulminic acid, mercury salt)
Mercury and compounds, N.O.S.[3]
Methacrylonitrile (2-Propenenitrile, 2-methyl-)
Methanethiol (Thiomethanol)
Methapyrilene (Pyridine, 2-[(2-dimethylamino)ethyl]-2-thenylamino-)
Metholmyl (Acetimidic acid, N-[(methylcarbamoyl)oxy]thio-, methyl ester)
Methoxychlor (Ethane, 1,1,1-trichloro-2,2'-bis(p-methoxyphenyl)-)
2-Methylaziridine (1,2-Propylenimine)
3-Methylcholanthrene (Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-)
Methyl chlorocarbonate (Carbonochloridic acid, methyl ester)
4,4'-Methylenebis(2-chloroaniline) (Benzenamine, 4,4'-methylenebis- (2-chloro-)
Methyl ethyl ketone (MEK) (2-Butanone)
Methyl hydrazine (Hydrazine, methyl-)
2-Methyllactonitrile (Propanenitrile, 2-hydroxy-2-methyl-)
Methyl methacrylate (2-Propenoic acid, 2-methyl-, methyl ester)
Methyl methanesulfonate (Methanesulfonic acid, methyl ester)
2-Methyl-2-(methylthio)propionaldehyde-o-(methylcarbonyl) oxime (Propanal, 2-methyl-2-(methylthio)-, 0-[(methylamino)carbonyl]oxime)
N-Methyl-N'-nitro-N-nitrosoguanidine (Guanidine, N-nitroso-N-methyl-N'- nitro-)
Methyl parathion (0,0-dimethyl 0-(4-nitrophenyl) phosphorothioate)
Methylthiouracil (4-IH-Pyrimidinone, 2,3-dihydro-6-methyl-2-thioxo-)
Molybdenum and compounds, N.O.S.[3]
Mustard gas (Sulfide, bis(2-chloroethyl)-)
Naphthalene
1,4-Naphthoquinone (1,4-Naphthalenedione)
1-Naphthylamine (alpha-Naphthylamine)
2-Naphthylamine (beta-Naphthylamine)
1-Naphthyl-2-thiourea (Thiourea, 1-naphthalenyl-)
Nickel and compounds, N.O.S.[3]
Nickel carbonyl (Nickel tetracarbonyl)
Nickel cyanide (Nickel (II) cyanide)
Nicotine and salts (Pyridine, (S)-3-(1-methyl-2-pyrrolidinyl)-, and salts)
Nitric oxide (Nitrogen (II) oxide)
p-Nitroaniline (Benzenamine, 4-nitro-)
Nitrobenzine (Benzene, nitro-)
Nitrogen dioxide (Nitrogen (IV) oxide)
Nitrogen mustard and hydrochloride salt (Ethanamine, 2-chloro-, N-(2-chloroethyl)-N-methyl-, and hydrochloride salt)
Nitrogen mustard N-Oxide and hydrochloride salt (Ethanamine, 2-chloro-, N-(2-chloroethyl)-N-methyl-, and hydrochloride salt)
Nitroglycerine (1,2,3-Propanetriol, trinitrate)
4-Nitrophenol (Phenol, 4-nitro-)
4-Nitroquinoline-1-oxide (Quinoline, 4-nitro-1-oxide-)
Nitrosamine, N.O.S.[3]
N-Nitrosodi-n-butylamine (1-Butanamine, N-butyl-N-nitroso-)
N-Nitrosodiethanolamine (Ethanol, 2,2'-(nitrosoimino)bis-)
N-Nitrosodiethylamine (Ethanamine, N-ethyl-N-nitroso-)
N-Nitrosodimethylamine (Dimethylnitrosamine)
N-Nitroso-N-ethylurea (Carbamide, N-ethyl-N-nitroso-)
N-Nitrosomethylethylamine (Ethanamine, N-methyl-N-nitroso-)
N-Nitroso-N-methylurea (Carbamide, N-methyl-N-nitroso-)
N-Nitroso-N-methylurethane (Carbamic acid, methylnitroso-, ethyl ester)
N-Nitrosomethylvinylamine (Ethenamine, N-methyl-N-nitroso-)
N-Nitrosomorpholine (Morpholine, N-nitroso-)
N-Nitrosonornicotine (Nornicotine, N-nitroso-)
N-Nitrosopiperidine (Pyridine, hexahydro-, N-nitroso-)
Nitrosopyrrolidine (Pyrrole, tetrahydro-, N-nitroso-)
N-Nitrososarcosine (Sarcosine, N-nitroso-)
5-Nitro-o-toluidine (Benzenamine, 2-methyl-5-nitro-)
Octamethylpyrophosphoramide (Diphosphoramide, octamethyl-)
Osmium tetroxide (Osmium (VIII) oxide)
7-Oxabicyclo[2.2.1]heptane-2,3-dicarboxylic acid (Endothal)

Paraldehyde (1,3,5-Trioxane, 2,4,6-trimethyl-)
Parathion (Phosphorothioic acid, O,O-diethyl O-(p-nitrophenyl)ester)
Pentachlorobenzene (Benzene, pentachloro-)
Pentachloroethane (Ethane, pentachloro-)
Pentachloronitrobenzene (PCNB) (Benzene, pentachloronitro-)
Pentachlorophenol (Phenol, pentachloro-)
Phenacetin (Acetamide, N-(4-ethoxyphenyl)-)
Phenol (Benzene, hydroxy-)
Phenylenediamine (Benzenediamine)
Phenylmercury acetate (Mercury, acetatophenyl-)
N-Phenylthiourea (Thiourea, phenyl-)
Phosgene (Carbonyl chloride)
Phosphine (Hydrogen phosphide)
Phosphorodithioic acid, O,O-diethyl S-[(ethylthio)methyl] ester (Phorate)
Phosphorothioic acid, O,O-dimethyl O-[p-[(dimethylamino)sulfonyl]phenyl] ester (Famphur)
Phthalic acid esters, N.O.S.[3] (Benzene, 1,2-dicarboxylic acid, esters, N.O.S.[3])
Phthalic anhydride (1,2-Benzenedicarboxylic acid anhydride)
2-Picoline (Pyridine, 2-methyl-)
Polychlorinated biphenyl, N.O.S.[3]
Potassium cyanide
Potassium silver cyanide (Argentate(1-), dicyano-, potassium)
Pronamide (3,5-Dichloro-N-(1,1-dimethyl-2-propynyl)benzamide)
1,3-Propane sultone (1,2-Oxathiolane, 2,2-dioxide)
n-Propylamine (1-Propanamine)
Propylthiouracil (Undecamethylenediamine, N,N'-bis(2-chlorobenzyl-), dihydrochloride)
2-Propyn-1-ol (Propargyl alcohol)
Pyridine
Radium -226 and -228
Reserpine (Yohimban-16-carboxylic acid, 11,17-dimethoxy-18-[3,4,5-trimethoxybenzoyl)oxy]-, methyl ester)
Resorcinol (1,3-Benzenediol)
Saccharin and salts (1,2-Benzoisothiazolin-3-one, 1,1-dioxide, and salts)
Safrole (Benzene, 1,2-methylenedioxy-4-allyl-)
Selenious acid (Selenium dioxide)
Selenium and compounds, N.O.S.[3]
Selenium sulfide (Sulfur selenide)
Selenourea (Carbamimidoselenoic acid)
Silver and compounds, N.O.S.[3]
Silver cyanide
Sodium cyanide
Streptozotocin (D-Glucopyranose, 2-deoxy-2-(3-methyl-3-nitrosoureido)-)
Strontium sulfide
Strychnine and salts (Strychnidin-10-one, and salts)
1,2,4,5-Tetrachlorobenzene (Benzene, 1,2,4,5-tetrachloro-)
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD) (Dibenzo-p-dioxin, 2,3,7,8-tetrachloro-)
Tetrachloroethane, N.O.S.[3] (Ethane, tetrachloro-, N.O.S.[3])
1,1,1,2-Tetrachlorethane (Ethane, 1,1,1,2-tetrachloro-)
1,1,2,2-Tetrachlorethane (Ethane, 1,1,2,2-tetrachloro-)
Tetrachloroethane (Ethene, 1,1,2,2-tetrachloro-)
Tetrachloromethane (Carbon tetrachloride)
2,3,4,6,-Tetrachlorophenol (Phenol, 2,3,4,6-tetrachloro-)
Tetraethyldithiopyrophosphate (Dithiopyrophosphoric acid, tetraethyl-ester)
Tetraethyl lead (Plumbane, tetraethyl-)
Tetraethylpyrophosphate (Pyrophosphoric acide, tetraethyl ester)
Tetranitromethane (Methane, tetranitro-)
Thallium and compounds, N.O.S.[3]
Thallic oxide (Thallium (III) oxide)
Thallium (I) acetate (Acetic acid, thallium (I) salt)
Thallium (I) carbonate (Carbonic acid, dithallium (I) salt)
Thallium (I) chloride
Thallium (I) nitrate (Nitric acid, thallium (I) salt)
Thallium selenite
Thallium (I) sulfate (Sulfuric acid, thallium (I) salt)
Thioacetamide (Ethanethioamide)
Thiosemicarbazide (Hydrazinecarbothioamide)
Thiourea (Carbamide thio-)
Thiuram (Bis(dimethylthiocarbamoyl) disulfide)
Thorium and compounds, N.O.S.,[3] when producing thorium byproduct material
Toluene (Benzene, methyl-)
Toluenediamine (Diaminotoluene)
o-Toluidine hydrochloride (Benzenamine, 2-methyl-, hydrochloride)
Tolylene diisocyanate (Benzene, 1,3-diisocyanatomethyl-)
Toxaphene (Camphene, octachloro-)
Tribromomethane (Bromoform)
1,2,4-Trichlorobenzene (Benzene, 1,2,4-trichloro-)
1,1,1-Trichloroethane (Methyl chloroform)
1,1,2-Trichloroethane (Ethane, 1,1,2-trichloro-)
Trichloroethene (Trichloroethylene)
Trichloromethanethiol (Methanethiol, trichloro-)
Trichloromonofluoromethane (Methane, trichlorofluoro-)
2,4,5-Trichlorophenol (Phenol, 2,4,5-trichloro-)
2,4,6-Trichlorophenol (Phenol, 2,4,6-trichloro-)
2,4,5-Trichlorophenoxyacetic acid (2,4,5-T) (Acetic acid, 2,4,5-trichlorophenoxy-)
2,4,5-Trichlorophenoxypropionic acid (2,4,5-TP) (Silvex) (Propionoic acid, 2-(2,4,5-trichlorophenoxy)-)
Trichloropropane, N.O.S.[3] (Propane, trichloro-, N.O.S.[3])
1,2,3-Trichloropropane (Propane, 1,2,3-trichloro-)
O,O,O-Triethyl phosphorothioate (Phosphorothioic acid, O,O,O-triethyl ester)
sym-Trinitrobenzene (Benzene, 1,3,5-trinitro-)
Tris(1-azridinyl) phosphine sulfide (Phosphine sulfide, tris(1-aziridinyl-)
Tris(2,3-dibromopropyl) phosphate (1-Propanol, 2,3-dibromo-, phosphate)
Trypan blue (2,7-Naphthalenedisulfonic acid, 3,3'-[(3,3'-dimethyl (1,1'-biphenyl)- 4,4'-diyl)bis(azo)]bis(5-amino-4-hydroxy-, tetrasodium salt)
Uracil mustard (Uracil 5-[bis(2-chloroethyl)amino]-)
Uranium and compounds, N.O.S.[3]
Vanadic acid, ammonium salt (ammonium vanadate)
Vanadium pentoxide (Vanadium (V) oxide)
Vinyl chloride (Ethene, chloro-)
Zinc cyanide
Zinc phosphide

Dated at Washington, DC this 6th day of November, 1987.

For the Nuclear Regulatory Commission.
Samuel J. Chilk,
Secretary of the Commission.
[FR Doc. 87-26169 Filed 11-12-87; 8:45 am]
BILLING CODE 7590-01-M

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 703, and 721

Organization and Operations of Federal Credit Unions; Investment and Deposit Activities; and Federal Credit Union Insurance and Group Purchasing Activities

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board is amending its regulations on Investments in and Loans to Credit Union Service Organizations (12 CFR 701.27), FCU Ownership of Fixed Assets (12 CFR 701.36), Investment and Deposit Activities (12 CFR Part 703), and Federal Credit Union Insurance and Group Purchasing Activities (12 CFR Part 721) by revising the definition of the term "immediate family members" as used therein and by adding a new definition, "senior management employee," to those provisions of its regulations. The purpose of these changes is to narrow the scope of the rules as they relate to potential conflicts of interest by credit union directors, committee members, employees, and their immediate family members. This will provide consistency between these regulations and the final rule on member business loans issued by the NCUA Board on April 9, 1987.

EFFECTIVE DATE: December 16, 1987.

ADDRESS: National Credit Union Administration, 1776 G Street NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: James J. Engel, Deputy General Counsel, at the above address or telephone: (202) 357-1030.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1987, the NCUA Board issued proposed rules relating to conflicts of interest by credit union directors, committee members, employees, and their immediate family members. *See*, 52 FR 28274 (July 29, 1987). The rules were proposed to provide consistency between the final rule on member business loans (April 9, 1987) and NCUA's rules for Federal credit unions on credit union service organizations (CUSO's); ownership of

fixed assets; investment and deposit activities; and insurance and group purchasing activities. Consistency would be accomplished by redefining the term "immediate family member", and by adding a new definition, "senior management employee", and substituting that term for the word "employee". These changes would narrow the scope of the various conflicts of interest provisions.

These final rules define the phrase "immediate family member" to mean "a spouse or other family member living in the same household" as a credit union official or senior management employee of a credit union. The phrase "senior management employees" is defined to mean a credit union's chief executive officer, any assistant chief executive officers, and the chief financial officer. The use of these definitions narrows the application of the conflicts of interest provisions in order to avoid unnecessarily interfering with the ability of family members of credit union officials to do business with and provide services to a credit union. These final rules should still effectively eliminate conflicts of interest by those officials that have the authority to make or influence decisions that affect their pecuniary interest.

Public Comment

A total of 19 comment letters were received on the proposed amendments. Comments were received from: Two national trade associations; three credit union leagues; 13 Federal credit unions; and one federally-insured state-chartered credit union. Twelve commenters favored the amendments, five were against any changes, one favored use of the term "senior management employee" but was opposed to changing the definition of "immediate family member", and one favored the new definition of "immediate family member" but felt the term "employee", with its broader applicability, should be retained.

In its proposal, the Board specifically requested comments on two matters not addressed in the proposed amendments themselves.

First, should the amendments include requirements regarding the arm's-length nature of transactions between a credit union and family members who would be excluded from the new definitions. The seven commenters who addressed this issue supported such a requirement. The second issue was whether the individual amendments should also specify any employee positions that are related to the credit union activity covered by each particular regulation. Nine commenters responded: Seven were in favor of specifying additional positions, while two felt it was unnecessary.

Based on the comments received and its desire to reduce restrictions on credit unions, the Board has adopted the amendments as proposed with the modifications discussed below.

Discussion

All of the final rules relate to potential conflicts of interest by credit union directors, committee members, employees, and their immediate family members. Section 701.27(d)(6) involves the prohibition on the receipt by such individuals of any salary, commission, investment income, or other income or compensation from a CUSO, either directly or indirectly, or from any person being served through the CUSO. Section 701.36(e) concerns the prohibition (except if prior written NCUA approval is obtained) on the acquisition or lease of the credit union's premises from such individual directly or from corporations or partnerships in which they have a 10 percent or more ownership interest. Section 703.4(e) prohibits the receipt by such individuals of pecuniary consideration in connection with the making of an investment or deposit by the credit union. And, lastly, § 721.2(c) precludes such individuals from receiving any compensation or benefit, directly or indirectly, in conjunction with any insurance or group purchasing activity.

In each instance, the conflict of interest sought to be eliminated exists where the individuals involved are in positions of authority in the credit union so as to influence or make decisions that can affect their pecuniary interest. The risk that a decision will be based on self-interest instead of the interest of the credit union is not readily present with lower level employees. Usually, only senior management, i.e., the manager, assistant manager, or comptroller, are in positions to make decisions or to influence decisions. The NCUA Board is thus amending §§ 701.27(d)(6), 701.36(e), 703.4(e), and 721.2(c) by substituting "senior management employee" for "employees" wherever the term appears. The term "senior management employee" will be defined in each of these sections consistent with the definition in the recently amended lending rule (§ 701.2(c)(8)). Additionally, the Board has added to each of these sections language to indicate that other employees involved in the particular area are also subject to the restrictions that apply to senior management employees. See new §§ 701.27(d)(6)(ii), 701.36(e)(2), 703.4(f), and 721.2(d). As mentioned, several commenters supported this approach. As modified, however, the restrictions will not apply to these other employees if a board of directors determines that an employee position does not pose a conflict of interest. While this modification provides for broader applicability than the language in the proposed rules, it still narrows the scope of the rules compared to the current regulations.

These rules will also revise the definition of "immediate family member" in §§ 701.27(b)(3), 701.36(b)(6), 703.2(i), and 721.2(c), to include only a spouse and other relatives living in the same household. The list of relatives presently included in the definitions (e.g., spouse, child, parent, grandchild, grandparent, brother or sister, or spouse of any such individual regardless of residence) is believed to be overly broad. However, as one commenter pointed out, a relative's residence may not be a significant factor. Another commenter noted that business relationships may be more significant than family ties. As previously mentioned, seven commenters supported a requirement regarding the arm's-length nature of transactions between a credit union and family members. The Board agrees with these comments and believes that it is safe and sound business management that is really at issue. Therefore, language has been added requiring that all transactions between a credit union and business associates or family members of officials and employees be conducted at arm's length and in the best interests of the credit union. See new §§ 701.27(d)(6)(iii), 701.36(e)(3), 703.4(g), and 721.2(e).

The two new areas covered in these amendments, i.e., the additional employee positions subject to the conflicts of interest restrictions and the requirement on arm's-length transactions, do not pertain to the member business lending rule. The Board, however, will consider whether similar modifications to that rule are necessary. If so, the Board will issue a proposed rule for public comment.

Regulatory Procedures

Regulatory Flexibility Act

The NCUA Board has determined and certifies that the amendments will not have a significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets). Further, these rules relax certain prohibitions and limitations. Accordingly, the Board has determined that a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The changes do not impose any additional paperwork requirements.

List of Subjects in 12 CFR Parts 701, 703, and 721

Credit unions, Senior management employees, Immediate family members.

By the National Credit Union Administration Board on November 4, 1987.

Becky Baker,

Secretary of the Board.

Accordingly, NCUA amends its regulations as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

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

Authority: 12 U.S.C. 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789, and 1796.

2. Section 701.27 is amended by revising paragraph (c)(3) and by adding paragraph (c)(5) to read as follows:

§ 701.27 Investments in and loans to credit union service organizations.

* * * * *

(c) * * *

(3) *Immediate family member* means a spouse or other family members living in the same household.

* * * * *

(5) *Senior management employee* means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

3. Section 701.27(d)(6) is amended by designating the existing text as (d)(6)(i) and by removing, in the first sentence after the words "officials of, or", the words "are employed by" and by inserting in lieu thereof the words "senior management employees of." The second sentence is amended by deleting the word "employee" after the words "official or" and by inserting in lieu thereof the words "senior management employee."

4. Section 701.27 is further amended by adding two new paragraphs (d)(6)(ii) and (d)(6)(ii) to read as follows:

§ 701.27 [Amended]

* * * * *

(d) * * *

(6) * * *

(ii) The prohibition contained in paragraph (d)(6)(i) also applies to any employee not otherwise covered if the employee is directly involved in dealing with the credit union service organization unless the board of directors determines that the employee's position does not present a conflict of interest.

(iii) All transactions with business associates or family members not specifically prohibited by this paragraph (d)(6) must be conducted at arm's length and in the interest of the credit union.

* * * * *

5. Section 701.36 is amended by revising paragraph (b)(6), revising and redesignating (e)(1) through (3) as (e)(1)(i) through (iii) and by adding new paragraphs (b)(8) and (e) (2) and (3) to read as follows:

§ 701.36 FCU ownership of fixed assets.

* * * * *

(b) * * *

(6) *Immediate family member* means a spouse or other family members living in the same household.

* * * * *

(8) *Senior management employee* means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

* * * * *

(e) *Prohibited transactions.*

* * * * *

(1)(i) A director, member of the credit committee or supervisory committee, official, or senior management employee of the Federal credit union, or immediate family member of any such individual.

(ii) A corporation in which any director, member of the credit union committee or supervisory committee, official, or senior management employee, or immediate family members of any such individual, is an officer or director, or has a stock interest of 10 percent or more.

(iii) A partnership in which any director, member of the credit union committee or supervisory committee, official, or senior management employee, or immediate family members of any such individual, is a general partner, or a limited partner with an interest of 10 percent or more.

(2) The prohibition contained in paragraph (e)(1) of this section also applies to any employee not otherwise covered if the employee is directly involved in investments in fixed assets unless the board of directors determines that the employee's involvement does not present a conflict of interest.

(3) All transactions with business associates or family members not specifically prohibited by this paragraph (e) must be conducted at arm's length and in the interest of the credit union.

PART 703—INVESTMENT AND DEPOSIT ACTIVITIES

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

Authority: 12 U.S.C. 1757(7), 1757(8), 1766(a), and 1789(a)(11).

7. Section 703.2 is amended by revising paragraph (i), redesignating paragraphs (p), (q), (r), (s) and (t) as paragraphs (q), (r), (s), (t), and (u) and by adding a new paragraph (p) as follows:

§ 703.2 Definitions.

* * * * *

(i) *Immediate family member* means a spouse or other family members living in the same household.

* * * * *

(p) *Senior management employee* means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

* * * * *

8. Section 703.4 is amended by adding after the words "committee members and" in paragraph (e), the words "senior management" and by adding two new paragraphs (f) and (g) to read as follows:

§ 703.4 [Amended]

* * * * *

(f) The prohibition contained in paragraph (e) also applies to any employee not otherwise covered if the employee is directly involved in investments or deposits unless the board of directors determines that the employee's involvement does "not present a conflict of interest.

(g) All transactions with business associates or family members not specifically prohibited by paragraph (e) must be conducted at arm's length and in the interest of the credit union.

PART 721—FEDERAL CREDIT UNION INSURANCE AND GROUP PURCHASING ACTIVITIES

9. The authority citation for Part 721 is revised to read as follows:

Authority: 12 U.S.C. 1757(16), 1766 and 1789.

10. Section 721.2 is amended by revising paragraph (c) and by adding two new paragraphs (d) and (e) to read as follows:

§ 721.2 Reimbursement.

* * * * *

(c) No director, committee member, or senior management employee of a Federal credit union or any immediate family member of any such individual may receive any compensation or benefit, directly or indirectly, in conjunction with any activity under this Part. For purposes of this Section, "immediate family member" means a spouse or other family member living in the same household; and "senior management employee" means the credit union's chief executive officer (typically this individual holds the title of President or Treasurer/Manager), any assistant chief executive officers (e.g., Assistant President, Vice President or Assistant Treasurer/Manager) and the chief financial officer (Comptroller).

(d) The prohibition contained in paragraph (c) of this section also applies to any employee not otherwise covered if the employee is directly involved in insurance or group purchasing activities unless the board of directors determines that the employee's involvement does not present a conflict of interest.

(e) All transactions with business associates or family members not specifically prohibited by paragraph (c) of this section must be conducted at arm's length and in the interest of the credit union.

[FR Doc. 87-26108 Filed 11-12-87; 8:45 am]

BILLING CODE 7535-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of December 1987.

EFFECTIVE DATE: December 1, 1987.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8850 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (*See* 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, CFR, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest.

* * * * *

(c) *Interest rates.*

For valuation dates occurring in the month:	The values of i_t are:—															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}
*	*		*		*		*		*			*				
December 1987	.10125	.0975	.0925	.0875	.0825	.07625	.07625	.07625	.07625	.07625	.07	.07	.07	.07	.07	.06

Issued at Washington, DC, on this 5th day of November 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87-26276 Filed 11-12-87; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Virginia Abandoned Mine Land Reclamation Program Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule.

SUMMARY: On February 3, 1987, the Commonwealth of Virginia submitted to OSMRE a proposed amendment to its Abandoned Mine Land Reclamation (AMLR) plan. After opportunity for public comment and review of the amendment, the Deputy Director for Operations and Technical Services (OTS) of OSMRE has determined that the Virginia amendment meets the requirements of the Surface Mining Control and Reclamation Act (SMCRA) and the Secretary's regulations at 30 CFR Part 884. Accordingly, the Deputy Director for OTS has approved the Virginia amendment.

EFFECTIVE DATE: The rule is effective November 13, 1987.

ADDRESSES: Copies of the full text of the amendment are available for review during regular business hours at the following locations:

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Big Stone Gap, Virginia 24219

Office of Surface Mining Reclamation and Enforcement, Administrative Records Office, 1100 L St. NW., Room 5205, Washington, DC 20240

FOR FURTHER INFORMATION CONTACT: Frederick C. Sherfy, Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Big Stone Gap, Virginia 24219

SUPPLEMENTARY INFORMATION: Title IV of SMCRA, Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, establishes an AMLR program for the purposes of reclaiming and restoring lands and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and waters eligible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or Federal law. Title IV provides that a State with an approved AMLR program has the responsibility and primary authority to implement the program.

The Virginia AMLR plan was approved on December 15, 1981. On February 3, 1987, Virginia submitted a proposed amendment to the plan. An approved State AMLR plan can be amended under the provisions of 30 CFR 884.15. Under these provisions, if the amendment or revision changes the objectives, scope, or major policies followed by the State in the conduct of its reclamation program, the Deputy Director for OTS of OSMRE must follow the procedures set out in 30 CFR 884.14 in approving the amendment or revision of a State reclamation plan. The Deputy Director for OTS has followed these procedures and effective November 13, 1987, has approved the Virginia amendment.

OSMRE published a notice of proposed rulemaking on the Virginia amendment and requested public comment on May 11, 1987 (52 FR 17604-17605). Since no public hearings were requested by the public, none was held.

The proposed Virginia reclamation plan amendment (Administrative Record No. VA 593) consists of revised narratives to replace several sections of the approved Virginia plan as provided for by 30 CFR 884.13. Specifically, the following areas of the plan are being revised:

(1) Organization (30 CFR 884.13(d)(1) & (2));

(2) Project selection (30 CFR 884.13(c)(2));

(3) Reclamation on private land (30 CFR 884.13(c)(5));

(4) Rights of entry (30 CFR 884.13(c)(6));

(5) Public participation (30 CFR 884.13(c)(7)); and

(6) Establishment of State emergency reclamation program.

OSMRE published a notice of proposed rulemaking on the Virginia amendment on May 11, 1987 (52 FR 17604-17605). While no substantive public comments were received, the Department of the Interior's Office of the Solicitor commented regarding the proposed procedures relative to lien waivers (section 408 SMCRA).

The Office of the Solicitor suggested that the Director of Virginia's Division of Mined Land Reclamation review and surname all lien waivers without exception. By letter dated July 10, 1987, OSMRE contacted Virginia and suggested that the Virginia Director should execute a lien waiver in all cases where liens are not placed against properties not specifically exempted by statute. A letter dated July 27, 1987, from the Assistant Director for Mining of the Virginia Department of Mines, Minerals and Energy, to the Field Office Director of the Big Stone Gap Office, advised that OSMRE's recommendation had been accepted and submitted a revised narrative of the appropriate section of the reclamation plan. The Deputy Director has determined that these revisions are insignificant in nature and accordingly require no further public comment. All the documents mentioned above are available for public inspection at the offices listed under **"ADDRESSES."**

Under SMCRA, OSMRE codifies the approved requirements of individual States, including decisions on State reclamation plans and amendments, under Parts 900 to 950 of 30 CFR Subchapter T. Provisions relating to Virginia are found in 30 CFR Part 946.

Deputy Director's Findings

In accordance with section 405 of SMCRA, the Deputy Director for OTS finds that Virginia has submitted an amendment to its Abandoned Mine Land Reclamation plan and has determined, pursuant to 30 CFR 884.15, that:

1. The State provided adequate notice and opportunity for public comment in the development of the plan and that the record does not reflect major unresolved controversies.

2. Views of other Federal agencies having an interest in the plan have been solicited and considered.

3. The State has the legal authority, policies and administrative structure necessary to implement the amendment.

4. The proposed plan amendment meets all requirements of the OSMRE AMLR program provisions.

5. The State has an approved Surface Mining Regulatory Program.

6. The proposed plan amendment is in compliance with all applicable State and Federal laws and regulations.

Additional Findings

This rulemaking has been examined pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and the Department of the Interior has determined that the rule will not have significant economic effect on a substantial number of small entities. No

burden will be imposed upon entities operating in compliance with the Act.

Furthermore, the Office of Surface Mining Reclamation and Enforcement has determined that the approval of State AMLR plans and amendments are categorically excluded from compliance with the National Environmental Policy Act by the Department of the Interior's Manual, 516 DM 2, p. B–1.

Effective Date

The final rule is effective upon date of publication. Under 5 U.S.C. 553(d), a rule may not be made effective less than 30 days after publication, unless, among other things, good cause exists and is published with the rule. Good cause exists to make the final rule effective upon publication because: (1) Virginia's Division of Mined Land Reclamation is fully staffed and prepared to administer the emergency reclamation program, and (2) OSMRE wishes to expedite grant assistance to the State to initiate emergency reclamation work.

List of Subjects in 30 CFR Part 946

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

(Pub. L. 95–87, 30 U.S.C. 1201 *et seq)*

Date: November 2, 1987.

James W. Workman,

Deputy Director, Operations and Technical Services, Office of Surface Mining Reclamation and Enforcement.

PART 946—VIRGINIA

1. The authority citation for Part 946 is revised to read as follows:

Authority: Pub. L. 95–87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.).*

2. Section 946.25 is revised to read as follows:

§ 946.25 Amendments to approved Virginia abandoned mine land reclamation plan.

The Virginia AMLR Amendment, as submitted on February 3, 1987, and modified on July 27, 1987, is approved effective November 13, 1987. Copies of the approved amendment are available at:

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Big Stone Gap, Virginia 24219

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, P.O. Box 626, Big Stone Gap, Virginia 24219

Office of Surface Mining Reclamation and Enforcement, Administrative Records Office, 1100 L St. NW., Room 5205, Washington, DC 20240

[FR Doc. 87–26243 Filed 11–12–87; 8:45 am]

BILLING CODE 4310–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CCGD7 61–87]

Special Local Regulations; 1987 APBA/UIM World Championship Race

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the CROPBRA of the Florida Keys, APBA/UIM World Championship Race. This event will be held on November 10, 12, 14, and 15, 1987, between 0900 and 1400 local time each day. The regulations are needed to promote the safety of life on nagivable waters.

EFFECTIVE DATES: These regulations become effective at 0900 local time on November 10, 12, 14, and 15, 1987 and terminate at 1600 local time each day.

FOR FURTHER INFORMATION CONTACT: QMC C. Kemnitz, (305) 292–8727.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553 a notice of proposed rule making has not been published for these regulations; good cause exists for making them effective in less than 30 days from the date of publication. Following normal rule making procedures would have been impracticable. The application to hold the event was not received until 01 September 1987, and there was insufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Drafting Information

The drafters of this regulation are QMC C.R. Kemnitz, project officer, USCG Group Key West, and LCDR S.T. Fuger, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

The 1987 APBA/UIM World Championship Race will be held from the milling area NE of Wisteria Island in Key West Harbor to 24–28'53" N 81–51'50" W to 24–29'23" N 81–44'72" W to 24–32'48" N 81–44'00" W to 24–32'16" N 81–48'26" W dog leg around Fort Taylor thru Key West Harbor to 24–34'00" N 81–48'12" W to 24–48'32" N 81–34'03" W. Approximately 85 power boats are expected to participate. Regulations are issued by Commander, U.S. Coast Guard Group Key West to promote the safety of life on the navigable waters.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T07–61 is added to read as follows:

§ 100.35–T07–61 1987 APBA/UIM World Championship Race.

(a) *Regulated area.* All navigable waters in an area bounded by:

(1) 24–32–42N, 81–48–64W; SW of Ft Taylor, Key West
(2) 24–32–54N, 81–48–57W; Key West Main Channel Buoy 15
(3) 24–33–30N, 81–48–55; Key West Main Channel Buoy 17
(4) 24–33–33N, 81–48–44W; Key West Main Channel Buoy 19
(5) 24–34–00N, 81–48–29W; Key West Harbor Turning Basin Lt 27
(6) 24–34–06N, 81–48–33W; NW Point Wisteria Island
(7) 24–34–30N, 81–47–48W; Fleming Key Front Range Lt
(8) 24–34–18N, 81–48–02W; SW Point Fleming Key
(9) 24–34–03N, 81–48–06W; NW Corner Pier D3
(10) 24–33–41N, 81–48–27W; Pier House Restaurant
(11) 24–32–42N, 84–48–46W; Origin

(b) *Special local regulations.* (1) Entry into restricted area is prohibited unless authorized by the patrol commander.

(2) Spectator boats may observe the race in the designated spectator area West of the following positions:

(i) 24–33–30N, 81–48–55W; Key West Main Channel Buoy 17
(ii) 24–33–33N, 81–48–44W; Key West Main Channel Buoy 19
(iii) 24–34–00N, 81–48–29N; Key West Harbor Turning Basin Lt 27
(iv) 24–34–06N, 81–48–33W; NW Pt Wisteria Is

(3) A succession of not less than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of a red

distress flare from a patrol vessel will be a signal for any and all vessels to stop immediately.

Dated: November 2, 1987.

M.J. O'Brien, Capt, USCG,

Acting Commander, Seventh Coast Guard District.

[FR Doc. 87-26282 Filed 11-12-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3290-8]

Approval and Promulgation of Implementation Plans; Commonwealth of the Northern Mariana Islands; New Source Review for Lead

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice takes final action under section 110 of the Clean Air Act to approve regulatory portions of the "State" Implementation Plan (SIP) for the Commonwealth of the Northern Mariana Islands (CNMI) affecting the preconstruction review of new and modified major stationary sources of lead (Pb). Generic and Pb specific new source review (NSR) rules were officially submitted by CNMI as a SIP revision on February 19, 1987. The subject rules are identical to those which EPA proposed to approve and offered for public inspection on March 20, 1986. No public comments were received by EPA on the proposal. This approval, together with the approval of the Pb negative declaration letter published on November 10, 1986, result in a Pb SIP that is completely approved with respect to the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). The action makes specific CNMI rules federally enforceable.

DATES: This action is effective December 14, 1987.

ADDRESSES: Copies of the regulations approved through this notice and of the EPA Evaluation Report are available for public inspection during normal business hours at the EPA Region 9 office in San Francisco (see address below) and at EPA's Public Information Reference Unit at 401 "M" Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Morris I. Goldberg, SIP Section (A-2-3), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, 1st Floor, San Francisco, CA 94105, Telephone: (415) 974-8213, (FTS) 454-8213.

SUPPLEMENTARY INFORMATION:

Background

On February 19, 1986 CNMI officially submitted its first SIP. It contained both adopted regulations and proposed revisions to those regulations. The adopted rules addressed NSR, but did not address Pb. The proposed rules addressed Pb, but were not legally adopted. EPA Region 9 provided comments to the CNMI agency with regard to all aspects of the plan and its regulations. CNMI readopted the entire set of regulations, with revisions and sent EPA a copy, but failed to ask that the revised rules be considered as a SIP revision. Based upon the unofficially submitted, adopted rules; EPA proposed to approve the CNMI Pb NSR rules on March 20, 1987 (52 FR 8932) with the provision that officially submitted rules be found to be substantively similar to those already evaluated.

Meanwhile, on November 10, 1986 (51 FR 40798) EPA approved a negative declaration letter from the CNMI Governor which indicated that CNMI had no major stationary sources of Pb and that attainment of the NAAQS for Pb was expected to continue.

The Official SIP Revision

The CNMI rules were officially submitted by the Governor's designee as a SIP revision on February 19, 1987. Since the submittal was received prior to the publication date, but after the signature date of the proposal, the notice was not revised to indicate that the rules had been officially submitted. EPA concluded that a revised proposal would slow the publication process and would serve no useful purpose.

The Proposal

The March 20, 1987 proposal indicated two areas of potential concern. The regulations did not quantitatively specify a Pb emission increase which would define a major stationary source modification. Considering the probability of a new major stationary source of lead in the CNMI, EPA proposed that a regulatory limit to define a major Pb source modification could be required through a section 110(a)(2)(H) "SIP Call", if a major Pb source were granted authorization to construct. In addition EPA noted that approval of the CNMI rules was not to be construed as indicating satisfaction of the requirements for the prevention of significant deterioration. Thus, it was noted that CNMI needed only approved NSR rules to have a fully approved SIP, for attainment and maintenance of the NAAQS for Pb. As mentioned above, no public comments were received.

EPA Action

The CNMI regulations, submitted as a SIP revision on February 19, 1987, affecting the preconstruction review of new and modified major stationary sources of Pb, are approved since they are consistent with EPA policy and in conformance with the EPA requirements at 40 CFR Part 51.

Regulatory Process

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

Under section 307(b)(1), of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 12, 1988.

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

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

List of Subjects in 40 CFR Part 52

Air pollution control, Lead, Incorporation by reference

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of the Northern Mariana Islands was approved by the Director of the Federal Register on July 1, 1982.

Date: October 30, 1987.

Lee M. Thomas,

Administrator.

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

PART 52—[AMENDED]

Subpart FFF—Commonwealth of the Northern Mariana Islands

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

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

2. Subpart FFF of 40 CFR Part 52 is amended by adding § 52.2920 to read as follows:

§ 52.2920 Identification of plan.

(a) Title of plan: "Air Pollution Implementation Plan for the Commonwealth of the Northern Mariana Islands.

(b) [Reserved]

(c) The plan revisions described below were officially submitted on the dates specified.

(1) On February 19, 1987 the Governor's representative submitted regulations adopted as signed on December 15, 1986 and published in the *Commonwealth Register*, Volume 9, Number 1, pages 4862–94, on January 19, 1987, as follows:

(i) Incorporation by Reference.

(A) "CNMI AIR POLLUTION CONTROL REGULATIONS" pertaining to the preconstruction review of new and modified major sources of lead, as follows.

Part I—Authority
Part II—Purpose and Policy
Part III—Policy
Part IV—Definitions
Part V—Permitting of New Sources and Modifications
Part VI—Registration of Existing Sources
Part VII—Sampling, Testing and Reporting Methods
Part IX—Fees
Part X—Public Participation
Part XI—Enforcement
Part XII—Severability
Part XIII—Effective Date
Part XIV—Certification

[FR Doc. 87–26266 Filed 11–12–87; 8:45 am]
BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 5

Freedom of Information Act Regulations

AGENCY: Office of the Secretary, Health and Human Services.

ACTION: Final rule except for certain provisions that are being published as an interim final rule with request for comments.

SUMMARY: This regulation revises the Department's regulation implementing the FOIA, 5 U.S.C. 552. It is based on the proposed regulation published on April 18, 1986. It also conforms to the amendments recently enacted by the Freedom of Information Reform Act of 1986 (concerning law enforcement records and fees for processing requests) and to the recently-promulgated Executive Order No. 12600 (concerning predisclosure notification for business records). This regulation is an interim final rule with respect to the sections on fees and predisclosure notification, and we are soliciting comments on those sections. It is a final rule with respect to all other sections.

DATES: This regulation takes effect November 13, 1987.

The Department will accept comments until December 14, 1987.

ADDRESS: Written comments to the Freedom of Information Officer, U.S. Department of Health and Human Services, Room 410–B, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, telephone (202) 472–7453. Comments received may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Russell M. Roberts, Freedom of Information Officer, (202) 472–7453.

SUPPLEMENTARY INFORMATION: The Department of Health and Human Services (HHS) published a Notice of Proposed Rulemaking to revise its FOIA regulations on April 18, 1986 (51 FR 13250). Pursuant to that notice, HHS received comments on its proposal from 15 members of the public (including lawyers, health care corporations, public interest groups, trade and professional associations, a state agency, and a member of Congress). We have considered those comments carefully in revising the proposed rule, and our responses to those comments are presented below. In the interim, Congress enacted the Freedom of Information Reform Act of 1986, Pub. L. 99–570, §§ 1801–1804. This act amended the FOIA's provisions on law enforcement records and on search fees and fee waivers. Also in the interim, the President promulgated Executive Order No. 12600 requiring agencies to establish procedures for notifying submitters of business records when the agency is considering release of those records in response to an FOIA request.

The final rule is based on the proposed rule and its preamble, on the comments we received, on the FOI Reform Act, on guidelines issued by the Office of Management and Budget and by the Department of Justice pursuant to that act, and on the responses and discussion below.

The regulation below is an interim final rule with respect to § 5.5 (definitions of "commercial use," "duplication," "educational institution," "non-commercial scientific institution," "representative of the news media," "review," and "search" only), §§ 5.41–.45, and § 5.65(c)–(e). It is a final rule with respect to all other portions.

Analysis of Comments and of Changes

We have added 42 U.S.C. 1306(c), 31 U.S.C. 9701, and Executive Order No. 12600 to the citation of authority for the regulation.

Basic Policy (Subpart A)

One comment stated that the FOIA regulations for the Department are inconsistent with those of the Social Security Administration (SSA), and suggested either that SSA should be bound by its own regulations if they conflict with the Department's or that SSA's regulations should be largely or entirely removed. We believe this subject was adequately treated in § 5.3 of the proposed rule, and we are including that section unchanged in the final rule. Some aspects of the FOIA have special applications in one or another component of HHS, so it is appropriate to provide for supplemental regulations to be issued by the components. The requirement that such supplemental regulations be consistent with this regulation (in effect, a provision that the Departmental rule governs in case of any conflict) and the requirement for concurrence of the Assistant Secretary for Public Affairs are reasonable means for managing and controlling this provision for supplemental regulations.

We have expanded and clarified § 5.4 on the relationship between the FOIA and the Privacy Act.

We have condensed and revised the "Definitions" portion of the regulation, §§ 5.11–.20 in the proposal. All the definitions are now combined in a single section, § 5.5. (As a result, the subparts designated C–G in the proposed rule have been redesignated B–F in this final rule.) In the definition of "agency," we have added language to clarify that program records in the possession of State disability determination agencies are covered by the rule along with program records in the possession of health insurance carriers and intermediaries, but that neither these entities nor federal grantees and contractors are treated as agencies. In the definition of "Department," we have added language to make clear that the FOIA and this rule cover certain records of carriers and intermediaries under Medicare. We have determined that defining the organizational terms "operating division" and "staff division" is unnecessary and can also be confusing, since the organizational structure and terminology of the Department changes from time to time, so we have eliminated those definitions and simplified the definition of "Department." We have eliminated the definition of "information" as unnecessary.

In the definition of "records," we have included books and brochures as within this term. Also in this definition, the

proposal stated that "model equipment" was excluded, and we have corrected this to read "models [and] equipment". This definition no longer states that certain materials available through other sources are excluded from the category of records, although it does exclude books and other materials in formal HHS libraries, an exclusion that is part of the current HHS regulation, 45 CFR 5.5(b). Instead, we have stated in the new § 5.22 that requests for materials distributed by the Government Printing Office (GPO) or National Technical Information Services (NTIS) and requests for materials distributed by HHS program offices as part of their program activity, will not be processed under the FOIA, and we have also revised § 5.65 to make clear that certain copyrighted material is exempt from disclosure.

One commenter questioned § 5.18(b) of the proposed rule, arguing that there is no authority for excluding materials prepared or sold by, or available through, libraries, GPO, NTIS, government agencies, or private organizations. As noted above, we are revising the regulation so that these materials are not excluded from the definition of "record," but also so that § 5.22 provides for handling requests for some of these kinds of materials through other than FOIA channels. Such a rule for materials sold by or made available through GPO and NTIS is supported by case law under the FOIA as it stood before the FOI Reform Act (*see SDC Development Corp.* v. *Mathews*, 542 F.2d 1116 (9th Cir. 1976)), and this principle was codified by § 1803 of that statute, in the new 5 U.S.C. 552(a)(4)(A)(vi).

Obtaining a Record (Subpart B, formerly Subpart C)

We have revised §§ 5.21–.22 to clarify them. In § 5.21(a), we have made clear that, while our policy is to answer all requests, a requester must make his/her request either in writing or directly to an FOI Officer (or the Officer's staff) in order to invoke the rights granted by the FOIA. A new § 5.22 explains certain situations where we will not handle requests under the FOIA. These provisions are elaborations of some of the categories treated in § 5.18 of the proposed rule as exclusions from the definition of "record." We have renumbered § 5.22 of the proposed rule as § 5.23, placing it immediately after this new provision on requests not handled under the FOIA. In this section, which is discussed immediately below, we have also added language to make clear that when we refer a request to the agency that originated or provided the record, that referral amounts to the filing of a request with that agency, and the requester need not submit a separate request to that agency. Finally, we have taken § 5.21(d)–(e) of the proposal, which address how we respond to requests, and made them into a new § 5.24.

Several commenters objected to the provision, in § 5.22 of the proposed rule (now § 5.23 of the final rule), for referring an FOI request to another agency where the request concerns a record that is in our possession but that was provided by the other agency, and where the other agency asserts control of the record. This procedure is permissible where we notify the requester of the referral. *See McGeehee* v. *CIA*, 697 F.2d 1095 (D.C. Cir. 1983), *aff'd in pertinent part on rehearing*, 711 F.2d 1076 (D.C. Cir. 1983). Section 5.22 requires such notification. We believe the provision is an appropriate balance of the needs to consider the originating agency's interests, to process requests efficiently and quickly, and to keep the requester informed. This section does not say HHS will refuse to take any action with respect to such records; it merely provides for a public referral of the request to the other agency.

Release and Denial of Records (Subpart C, formerly Subpart D)

In § 5.31, we have added delegations to the Freedom of Information Officers for the Health Resources and Services Administration (HRSA) and the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA). We have eliminated the delegation for the Office of Human Development Services (OHDS). Requests for records of OHDS or records of the new Family Services Administration (FSA) will be handled by the HHS Freedom of Information Officer. Thus we have revised § 5.31(a)(1) to add references to OHDS and FSA and to eliminate the references to the Office of Child Support Enforcement and the Office of Community Services, both of which are now parts of FSA. The revision also clarifies the jurisdiction of the HHS FOI Officer. We have also updated the designation of the Public Health Service FOI Officer and the addresses of the Social Security Administration and Health Care Financing Administration FOI Officers. Finally, we have revised § 5.31(b) to clarify it.

Several commenters objected to the statement in § 5.32(a) that we do not ordinarily provide pleadings filed in court or in administrative pleadings. We have eliminated that statement, and we will treat such documents in litigation files as agency records subject to the FOIA. Except to the extent that the documents, or any marginal notes on them, are exempt from mandatory disclosure, we will provide them to requesters.

We have also revised § 5.32 (a)–(b) to clarify several points. First, the example given in the proposed rule may have been misleading. When the Government is not a party to litigation, we do not ordinarily disclose one party's health records to the other party under the FOIA, since we do not ordinarily consider a party to such private litigation to represent a public interest in disclosure. Second, we wanted to state that the oridinary practice of disclosing previously-released records does not override a statutory prohibition on disclosure, and does not necessarily apply when an exemption operates differently in the new situation. Third, we have revised paragraph (b) to avoid implying that paragraph (a) states a requirement; that paragraph merely describes our ordinary practice.

One commenter disagreed with the statement in § 5.33(b) that when we inform a requester that we have not been able to find any records sought by the request, this response does not constitute a denial of that request. We believe this statement is in accord with the FOIA, and have decided to retain it. Where the initial search produces no records, there is no need to have an administrative appeal process to review that finding, and the response will not advise the requester about the appeal procedures. Where no records exist, none are being "withheld." Thus, while a court can review the adequacy of the search, it it confirms our finding, it should dismiss the case for lack of jurisdiction. *See, e.g., Anderson* v. *Federal Bureau of Prisons*, Civ. No. 85–2596 (D.D.C. Feb. 7, 1986).

One commenter stated that § 5.35 was inadequate because the Department presently does not make its determinations on FOI requests and appeals within the respective time limits (10 days for requests and 20 days for appeals, plus possible extension) stated in that section. These limits are set by the statute, and we cannot lengthen this. We can only make our best efforts to comply.

Another commenter objected to § 5.35(c)(4), which allows an extension of the time limits in order to negotiate with submitters and requesters of possibly proprietary records. We have left this provision in, since it is necessary in order to conduct the predisclosure notification procedures prescribed by § 5.65 (c)–(e), which are mandated by Executive Order No. 12600.

Fees (Subpart D, formerly Subpart E)

Since we published our proposed rule in April 1986, Congress enacted the Freedom of Information Reform Act of 1986, Pub. L. 99–570, sections 1801–1804. Section 1803 of that act substantially revised the law on fees. Its primary effect was to establish three categories of requests and to prescribe which types of fees could be charged for each. For commercial use requests, agencies may charge for search, duplication, and review; for non-commercial requests from educational and scientific institutions and from news media representatives, agencies may charge for duplication only; and for other requests, agencies may charge search and duplication only. The statute also grants two free hours of search time and 100 free pages of duplication for the latter two categories, and its bars charging fees where the costs of collecting the fee exceed the fee to be collected. The statute also revised the standard for fee waivers.

The statute instructed the Office of Management and Budget (OMB) to issue guidelines on fees, including a uniform schedule of fees for agencies, and it required each agency to issue a fee schedule conforming to the schedule in OMB's guidelines. Pursuant to the statute, OMB published proposed guidelines on January 16, 1987 (52 FR 1992), and final guidelines March 27, 1987 (52 FR 10012). Those guidelines did not include a uniform fee schedule, but did include instructions on how particular kinds of charges should be calculated and set.

We have substantially revised our proposed rule to conform with the statute and with OMB's instructions on calculating particular kinds of charges. Certain of the fee changes are imposed in reliance on 31 U.S.C. 9701 as well as on the FOIA, and we have added the former statute in our citations of authority. We explain here the changes we have made, and we respond to the public comments on this subpart, although many of those comments were rendered moot by the statute. We are publishing this subpart in interim final form, and are requesting comments on it.

One comment objected to charging the regular copying fees, or any fee at all, for supplying already-printed copies of requested records. Even when a request can be filled using already-available copies, there may still be a direct cost. In some cases, the extra copies were originally made because of anticipated future program needs; using those copies to answer FOI requests may eventually require making new copies for the program purposes. In such a situation it is appropriate to charge the FOI requester the normal copying fees. However, we have amended § 5.43(c) of the rule to provide for reduced fees where using existing stocks to fill FOI requests will not interfere with program needs and where the reduced charge is still sufficient to cover the prorated share of the original printing cost. This codifies a practice that has already been followed by the Social Security Administration.

Two commenters addressed § 5.42(a)(1), which would have set up a three-tiered fee structure for manual searches, with the hourly rate depending on the grade level of the employee doing the search. One commenter said it could support this structure only if it would speed up our responses to requests. We have decided to retain this structure, and it is in § 5.43(a) of the final rule. We hope this differentiated fee structure will increase our flexibility in assigning personnel to perform searches and thereby speed up our responses. In any case, the OMB guidelines (§ 7.a) provide for such a structure. The second commenter said the hourly rates were too high. We disagree. The statute allows us to charge the "direct costs" of employees' search time, and, as OMB's guidelines advise, direct cost should be calculated as the employee's hourly salary plus 16 percent to cover benefits. We have decided to specify the rates in terms of particular grade and step levels to avoid having to amend the regulation whenever Federal salaries are adjusted. Thus, we have specified hourly rates based on salaries for GS–5, step 7; GS–12, step 4, and GS–15, step 7. These are reasonable approximations of the average rates for the grade ranges GS–1 through GS–8, GS–9 through GS–14, and GS–15 and above, respectively.

Another commenter recommended that we include a provision requiring that when we contract for data processing services to respond to a FOI request, the contract price be reasonable. We do not believe such a provision is necessary. There are already enough legal provisions requiring agencies not to waste appropriated funds, so adding one here would be superfluous. Also, in the FOI context, there are practical incentives against our agreeing to excessive contract prices—agencies must use their budgeted funds to pay contractors, and they cannot recoup that money from FOI requesters since FOI fees go to the Treasury.

In § 5.43(c) of the proposd regulation (§ 5.44(c) of the final), we have modified the first condition for requiring advance payment, to speak of failure to pay previous bills "in a timely fashion." In the second condition, we have amended the floor for fees for the current request from $50 to $250. And in the same condition, we have changed the quantity being measured from "search and duplication costs" to "fees" that will be charged. All of these changes comport with the new 5 U.S.C. 552(a)(4)(A)(v), as amended by the FOI Reform Act.

There were in particular a number of comments about § 5.44 of the proposed rule, on fee waivers. That section was based on a statutory provision that was revised by the FOI Reform Act, so some of those comments were rendered moot. The fee waiver provision in the final rule, § 5.45, is based on the new statutory language. In preparing it, we have considered the treatment of that new provision in a memorandum of guidance issued on April 2, 1987, by the Assistant Attorney General, Office of Legal Policy. That memorandum was intended as guidance and was not intended to be binding on agencies, and we have treated it in this way.

Some commenters criticized § 5.44 of the proposed rule in general terms as adoption of certain guidance issued by the Department of Justice in 1983. Since the statute has been amended, the 1983 guidance superseded, and our proposed rule thoroughly revised, these general criticisms are moot.

Two commenters objected to the statement in the proposed § 5.44(b)(1) that the requester's indigency did not justify fee waiver. They argued that this statement conflicted with the legislative history of the old statutory provision. The final rule does not mention indigency, but it is clear under the final rule that indigency by itself does not support a fee waiver. That result is clearly correct under the amended statute. The statute gives a clearer definition of the kind of public interest that does support waiver, and indigency is irrelevant to that public interest. In any event, the practical significance of the question is substantially reduced by the new statutory requirement that we not charge requesters (except in commercial requests) for the first two hours of search and for the first 100 pages of copying.

Several commenters objected to the subjectivity of the "public interest" standard in proposed § 5.44(b)(1), and argued that leaving the subjective determination in the agency's hands allowed the agency to second-guess determinations made by the news media as to interest and importance. Under the amended statute and the final rule, the public interest is defined more closely, and our analysis is more structured.

Thus, any possibility of arbitrary denials of waivers to news media representatives should be significantly reduced. The statute does not support automatic waivers for news media representatives—such automatic waivers would render superfluous the explicit statutory inclusion of those persons in the category of requesters that, while exempt from search and review costs, does normally have to pay duplicating costs. However, we expect that such waivers will frequently be found appropriate, and the explicit provisions regarding the news media in the final rule (§ 5.45 (b)(3), (c)(1)) should help make clear that news media representatives will be granted waivers when appropriate.

One commenter objected to the language in proposed § 5.44(b)(2) denying a waiver when the requested records are not "in fact informative." Although this particular phrase is not in the final rule, the result is clearly correct under the new statute—if the records are not in fact informative, the disclosure does not contribute to public understanding.

One commenter objected to the statement in proposed § 5.44(b)(4) that dissemination of the information to the general public would be a factor. There is similar language in § 5.45(b)(3) of the final rule. We believe this language is proper under the new statutory requirement that the records contribute to public understanding.

Two commenters addressed proposed § 5.44(b)(5), regarding personal interest. One suggested that where both a public interest and a private interest exist, we should reduce the fees rather than deny the request entirely. Under the amended statute, if a commercial interest outweighs the public interest, we may neither waive nor reduce fees. Where a commercial interest exists but is outweighed by the public interest, we will normally grant a waiver, but in some cases a reduction may be appropriate, as suggested in § 5.45(d) of the final rule. The other commenter suggested that we specify that the news media do not represent a private interest. We have substantially adopted this suggestion in § 5.45(c)(1).

Records Available for Public Inspection (Subpart E, formerly Subpart F)

One commenter remarked on § 5.51(a)(3), which says we will not disclose certain investigatory manuals. The commenter did not recommend any change in this language. We have reexamined the language and have determined that this exclusion is consistent with the case law prior to the FOI Reform Act and is strengthened by section 1804 of that Act, amending 5 U.S.C. 552(b)(7)(E). We have left the language unchanged.

Reasons for Withholding Some Records (Subpart F, formerly Subpart C)

We have amended § 5.61 to make clear that our commitment to withhold information furnished in reliance on a confidentiality provision extends only as far as the exemptions permit.

We have revised § 5.63 to clarify the different kinds of records exempt under Exemption 2.

We have revised § 5.64 to more closely paraphrase the statutory language. The language in the proposed rule might have supported an inference that disclosure of Exemption 3 records was prohibited, or that Exemption 3 applied only to records that we had promised to keep confidential. The revised language precludes such inferences.

We have substantially revised the explanation of Exemption 4, in proposed § 5.65(a)–(c), now § 5.65(a)–(b). The new language follows more closely the analysis that is now standard under the case law, especially for the category of "confidential" information. *See National Parks and Conservation Ass'n* v. *Morton*, 498 F.2d 765 (D.C. Cir. 1974). It narrows the definition of "trade secret" in accord with recent authoritative case law. *See Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280 (D.C. Cir. 1983). It revises the definitions of "obtained from a person" to cover information provided from within the agency where the provider retains his or her own commercial or financial interest in the information, such as certain information on inventions by agency employees, where the employee retains an interest under section 7 or section 8 of the Federal Technology Transfer Act of 1986, Pub. L. 99–502, 15 U.S.C. 3710, c, 3710d. It adds an explanation of "privileged" information, which was lacking in the proposal. One commenter suggested that one of the subcategories of "confidential" information—information whose disclosure may impair the government's ability to obtain necessary information in the future—was too broad. We have retained this category, since it is clearly established in the case law.

Two commenters recommended amending § 5.65(d) in the proposed rule to state that certain grant-related records would ordinarily be considered exempt. We have not adopted this suggestion. Decisions as to whether documents are exempt under Exemption 4 are generally made on a case-by-case basis, and we decided not to try to set forth in this regulation categories of records that would or would not fall within that exemption. However, as noted below, we have made the provisions for designation and predisclosure notification applicable to records other than contract records, and these provisions would apply to grant records.

We have revised § 5.65(d) through (g) of the proposed rule, regarding requests for business data in contract files and predisclosure notification to the offeror who provided the record. The revised provisions, at § 5.65(c) through (e), generally follow the requirements of Executive Order No. 12600. They define more thoroughly and clearly how to designate records as exempt and how the predisclosure notification process works. They are no longer limited to records provided in connection with a contract. They also include several new elements. Designations of exempt records will expire after ten years. The notice requirements will not apply if we decide to withhold the record, if we decide that the designation is frivolous, or if a statute (other than the FOIA) or a narrowly-drawn regulation requires release. The provider will be entitled to a written statement of our reasons for overruling its objections to disclosure. Finally, we will notify the requester when we give a provider a notice and opportunity to act.

We received many comments about the predisclosure notification provisions in the proposed rule. Several commenters objected to the requirements in § 5.65(g) that the offeror intervene in any suite brought by the requester under the FOIA. We have eliminated this provision.

One commenter recommended that we not require predisclosure notification where material is plainly non-exempt. Another commenter recommended eliminating any such requirement and making predisclosure notification entirely discretionary. As noted above, the final rule lists situations where the notification requirements will not apply, including certain situations where the records are obviously non-exempt. However, in other situations, we believe it appropriate to guarantee submitters the procedural rights established by these provisions; moreover, such guarantees are required by the above-cited Executive Order.

One commenter recommended giving notice to the requester when these procedures are used. As noted above, the final rule does this, in § 5.65(d)(5).

Two commenters discussed the timing of the process. One recommended that we use telephone, overnight mail, and other methods to expedite this process.

and the other recommended that the five-working-days time limits be reduced to five calendar days. We have not adopted these recommendations. Reliance on telephone notification would preclude giving the submitter a copy of the request or a copy of the records as we propose to disclose them. Written communications are more likely to be clear and complete, and they will make possible a reliable record of the process that occurred. Using overnight mail or a similar service would make the procedure excessively expensive. The five-day limits will remain five working days, since most legal time limits of that length are calculated in that way, including the response time limits of the FOIA itself.

One commenter recommended that the rule state that records designated by the provider "will generally" be withheld. We did not do this, since the designation by the provider does not logically support a presumption that the material is exempt.

We have revised § 5.66 to explain more precisely the operation of Exemption 5. The introductory language now explains the role and scope of the threshold test in the exemption, and it also now specifies that all generally-recognized privileges are incorporated in the exemption. The description of the deliberative process privilege now defines that privilege more precisely, following the case law, and makes clear that predecisional documents do not lose their privilege once a decision is made. It also makes clear that the release of otherwise non-exempt purely factual information is mandatory. We have revised the description of the work product and attorney-client privileges to state somewhat more completely the bases and scopes of these privileges.

One comment expressed concern that, under the deliberative process privilege as described in the rule (§ 5.66(a)), state agencies might not be able to obtain correspondence between the headquarters office and the regional office of an HHS component on interpretations of policy. We have not changed the language of this paragraph based on this comment. In both the proposed rule and this final rule, our intent was to avail ourselves of the full scope of this privilege. To the extent the documents of concern to the commenter contain policy decisions by a headquarters office, they are not within this privilege and would (unless otherwise exempt) be disclosed. Likewise, to the extent the communications contain segregable purely factual material, such material would be outside this privilege.

Two comments mentioned the discussion in § 5.66(a) of segregable purely factual material. One of them said that the proposed rule did not state clearly enough that segregable purely factual material will be released. As noted above, we have revised the proposed rule to make clear that release of segregable factual material not otherwise exempt is mandatory, and to describe the scope of the privilege more fully. However, we do not think that the proposed rule described the category of segregable purely factual material more restrictively than the case law, so the final rule does not represent a decision to broaden that category.

One commenter recommended deleting § 5.66(c). The commenter questioned whether the attorney-client privilege applied at all in a federal agency context and argued further that the provision was overbroad and vague. We have retained the provision, and have revised it to clarify its scope. The case law clearly establishes that the privilege does apply in the federal agency context. Part of the commenter's concern was that a pre-existing document could be made exempt merely by being sent to the agency's attorney. The rule does not purport to have this result. A pre-existing document that is otherwise not exempt does not become privileged in this way, although the privilege may protect the copy of the document that is included in the communication to the attorney.

We have amended § 5.67(c) to add a reference to some normally-exempt records of the Public Health Service. The types of records listed in this paragraph are not meant to be exhaustive, or even necessarily typical, of the kinds of records normally exempt under Exemption 6.

We have revised § 5.68 to follow the changes in Exemption 7 effected by the FOI Reform Act.

This rule will take effect immediately, rather than after 30 days. Many of its provisions are interpretative rules and statements of policy. Also, the Secretary finds that there is good cause to make the rule effective immediately. The fees provisions conform to statutory changes that were effected by the FOI Reform Act and that have already taken effect. Also, section 1804(b)(1) of that act mandated that agencies promulgate their implementing fee regulations by April 25, 1987. An immediate effective date is necessary to minimize the extent to which the Department is out of compliance with this requirement. Other than the fees provision, the greatest change effected by this rule is the predisclosure notification provisions. Since those afford submitters of commercial records a procedural safeguard to protect their statutorily-recognized interests in these records, making the rule effective immediately will further protect those interests.

The Secretary has determined that this regulation is not a major rule within the meaning of E.O. 12291 because it will not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria. Therefore, the preparation of a regulatory impact analysis is not required.

The Secretary certifies that this regulation will not have a significant economic impact on any substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354.

This regulation does not require use of a form, nor does it otherwise involve a collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501-3520.

List of Subjects in 45 CFR Part 5

Freedom of information.

For the reasons set out in the preamble, 45 CFR Part 5 is revised as follows:

PART 5—FREEDOM OF INFORMATION ACT REGULATIONS

Subpart A—Basic Policy

Sec.

Subpart B—Obtaining a Record

Subpart C—Release and Denial of Records

Subpart D—Fees

Subpart E—Records Available for Public Inspection

Subpart F—Reasons for Withholding Some Records

Authority: 5 U.S.C. 552, 31 U.S.C. 9701, 42 U.S.C. 1306(c), Executive Order No. 12600.

Subpart A—Basic Policy

§ 5.1 Purposes.

This part contains the rules that the Department of Health and Human Services (HHS) follows in handling requests for records under the Freedom of Information Act (FOIA). It describes how to make a FOIA request; who can release records and who can decide not to release; how much time it should take to make a determination regarding release; what fees may be charged; what records are available for public inspection; why some records are not released; and your right to appeal and then go to court if we refuse to release records.

§ 5.2 Policy.

As a general policy, HHS follows a balanced approach in administering FOIA. We not only recognize the right of public access to information in the possession of the Department, but also protect the integrity of internal processes. In addition, we recognize the legitimate interests of organizations or persons who have submitted records to the Department or who would otherwise be affected by release of record. For example, we have no discretion to release certain records, such as trade secrets and confidential commercial information, prohibited from release by law. This policy calls for the fullest responsible disclosure consistent with those requirements of administrative necessity and confidentiality which are recognized in the Freedom of Information Act.

§ 5.3 Scope.

These rules apply to all components of the Department. Some units may establish additional rules because of unique program requirements, but such rules must be consistent with these rules and must have the concurrence of the Assistant Secretary for Public Affairs. Existing implementing rules remain in effect to the extent that they are consistent with the new Departmental regulation. If additional rules are issued, they will be published in the **Federal Register**, and you may get copies from our Freedom of Information Officers.

§ 5.4 Relationship between the FOIA and the Privacy Act of 1974.

(a) *Coverage.* The FOIA and this rule apply to all HHS records. The Privacy Act, 5 U.S.C. 552a, applies to records that are about individuals, but only if the records are in a system of records. "Individuals" and "system of records" are defined in the Privacy Act and in our Privacy Act regulation, Part 5b of this title

(b) *Requesting your own records.* If you are an individual and request records, then to the extent you are requesting your own records in a system of records, we will handle your request under the Privacy Act and Part 5b. If there is any record that we need not release to you under those provisions, we will also consider your request under the FOIA and this rule, and we will release the record to you if the FOIA requires it.

(c) *Requesting another individual's record.* Whether or not you are an individual, if you request records that are about an individual (other than yourself) and that are in a system of records, we will handle your request under the FOIA and this rule. (However, if our disclosure in response to your request would be permitted by the Privacy Act's disclosure provision, 5 U.S.C. 552a(b), for reasons other than the requirements of the FOIA, and if we decide to make the disclosure, then we will not handle your request under the FOIA and this rule. For example, when we make routine use disclosures pursuant to requests, we do not handle them under the FOIA and this rule. "Routine use" is defined in the Privacy Act and in Part 5b.) If we handle your request under the FOIA and this rule and the FOIA does not require releasing the record to you, then the Privacy Act may prohibit the release and remove our discretion to release.

§ 5.5 Definitions.

As used in this part,

"Agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the Federal Government, or any independent regulatory agency. Thus, HHS is an agency. A private organization is not an agency even if it is performing work under contract with the Government or is receiving Federal financial assistance. Grantee and contractor records are not subject to the FOIA unless they are in the possession or under the control of HHS or its agents, such as health insurance carriers and intermediaries.

"Commercial use" means, when referring to a request, that the request is from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put; the identity of the requester (individual, non-profit corporation, for-profit corporation), or the nature of the records, while in some cases indicative of that purpose or use, is not necessarily determinative. When a request is from a representative of the news media, a purpose or use supporting the requester's news dissemination function is not a commercial use.

"Department" or "HHS" means the Department of Health and Human Services. It includes health insurance carriers and intermediaries to the extent they are performing functions under agreements entered into under sections 1816 and 1842 of the Social Security Act, 42 U.S.C. 1395h, 1395u.

"Duplication" means the process of making a copy of a record and sending it to the requester, to the extent necessary to respond to the request. Such copies include paper copy, microform, audio-visual materials, and magnetic tapes, cards, and discs.

"Educational institution" means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education.

"Freedom of Information Act" or "FOIA" means Section 552 of Title 5, United States Code, as amended.

"Freedom of Information Officer" means an HHS official who has been delegated the authority to release or withhold records and assess, waive, or reduce fees in response to FOIA requests.

"Non-commercial scientific institution" means an institution that is not operated substantially for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research whose results are not intended to promote any particular product or industry.

"Records" means any handwritten, typed, or printed documents (such as memoranda, books, brochures, studies,

writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as punchcards; magnetic tapes, cards, or discs; paper tapes; audio or video recordings; maps; photographs; slides; microfilm; and motion pictures). It does not include objects or articles such as exhibits, models, equipment, and duplication machines or audiovisual processing materials. Nor does it include books, magazines, pamphlets, or other reference material in formally organized and officially designated HHS libraries, where such materials are available under the rules of the particular library.

"Representative of the news media" means a person actively gathering news for an entity organized and operated to publish or broadcast news to the public. "News" means information that is about current events or that would be of current interest to the public. News media entities include television and radio broadcasters, publishers of periodicals (to the extent they publish "news") who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media (e.g., electronic dissemination of text). We will treat freelance journalists as representatives of a news media entity if they can show a solid basis for expecting publication through such an entity. A publication contract is such a basis, and the requester's past publication record may show such a basis.

"Request" means asking for records, whether or not you refer specifically to the Freedom of Information Act. Requests from Federal agencies and court orders for documents are not included within this definition.

"Review" means, when used in connection with processing records for a commercial use request, examining the records to determine what portions, if any, may be withheld, and any other processing that is necessary to prepare the records for release. It includes only the examining and processing that are done the first time we analyze whether a specific exemption applies to a particular record or portion of a record. It does not include examination done in the appeal stage with respect to an exemption that was applied at the initial request stage. However, if we initially withhold a record under one exemption, and on appeal we determine that that exemption does not apply, then examining the record in the appeal stage for the purpose of determining whether a different exemption applies is included in "review." It does not include the process of researching or resolving general legal or policy issues regarding exemptions.

"Search" means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also page-by-page and line-by-line examination to identify responsive portions of a document. However, it does not include line-by-line examination where merely duplicating the entire page would be a less expensive and quicker way to comply with the request.

Subpart B—Obtaining a Record

§ 5.21 How to request records.

(a) *General.* Our policy is to answer all requests, both oral and written, for records. However, in order to have the rights given you by the FOIA and by this regulation (for example, the right to appeal if we deny your request and the right to have our decisions reviewed in court), you must either make your request in writing or make it orally to an Freedom of Information Officer. Freedom of Information Officers and their staffs will put in writing any oral requests they receive directly.

(b) *Addressing requests.* It will help us to handle your request sooner if you address it to the Freedom of Information Officer in the HHS unit that is most likely to have the records you want. (See § 5.31 below for a list of Freedom of Information Officers.) If you cannot determine this, send the request to: HHS Freedom of Information Officer, 410–B, Hubert H. Humphrey Building, Department of Health and Human Services, 200 Independence Avenue SW., Washington, DC 20201. Write the words "Freedom of Information Act Request" on the envelope and letter.

(c) *Details in the letter.* You should provide details that will help us identify and find the records you are requesting. If there is insufficient information, we will ask you for more. Include your telephone number(s) to help us reach you if we have questions. If you are not sure how to write your request or what details to include, communicate with a Freedom of Information Officer.

§ 5.22 Requests not handled under the FOIA.

(a) We will not handle your request under the FOIA and this regulation to the extent it asks for records that are currently available, either from HHS or from another part of the Federal Government, under a statute that provides for charging fees for those records. For example, we will not handle your request under the FOIA and this regulation to the extent it asks for records currently available from the Government Printing Office or the National Technical Information Service.

(b) We will not handle your request under the FOIA and this regulation to the extent it asks for records that are distributed by an HHS program office as part of its regular program activity, for example, health education brochures distributed by the Public Health Service or public information leaflets distributed by the Social Security Administration.

§ 5.23 Referral of requests outside the Department.

If you request records that were created by, or provided to us by, another federal agency, and if that agency asserts control over the records, we may refer the records and your request to that agency. We may likewise refer requests for classified records to the agency that classified them. In these cases, the other agency will process and respond to your request, to the extent it concerns those records, under that agency's regulation, and you need not make a separate request to that agency. We will notify you when we refer your request to another agency.

§ 5.24 Responding to your request.

(a) *Retrieving records.* The Department is required to furnish copies of records only when they are in our possession or we can retrieve them from storage. If we have stored the records you want in the National Archives or another storage center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes it is impossible to fill requests. Various laws, regulations, and manuals give the time periods for keeping records before they may be destroyed. For example, there is information about retention of records in the Records Disposal Act of 1944, 44 U.S.C. 3301–3314; the Federal Property Management Regulations, 41 CFR 101–11.4; the General Records Schedules of the National Archives and Records Administration; and in the HHS Handbook: *Files Maintenance and Records Disposition.*

(b) *Furnishing records.* The requirement is that we furnish copies only of records that we have or can retrieve. We are not compelled to create new records. For example, we are not required to write a new program so that a computer will print information in the format you prefer. However, if the requested information is maintained in computerized form, but we can, with minimal computer instructions, produce the information on paper, we will do this if it is the only way to respond to a

request. Nor are we required to perform research for you. On the other hand, we may decide to conserve government resources and at the same time supply the records you need by consolidating information from various records rather than copying them all. Moreover, we are required to furnish only one copy of a record and usually impose that limit. If information exists in different forms, we will provide the record in the form that best conserves government resources. For example, if it requires less time and expense to provide a computer record as a paper printout rather than on tape, we will provide the printout.

Subpart C—Release and Denial of Records

§ 5.31 Designation of authorized officials.

(a) *Freedom of Information Officers.* To provide coordination and consistency in responding to FOIA requests, only Freedom of Information Officers have the authority to release or deny records. These same officials determine fees.

(1) *HHS Freedom of Information Officer.* Only the HHS Freedom of Information Officer may determine whether to release or deny records in any of the following situations:

(i) The records you seek include records addressed to or sent from an official or office of the Office of the Secretary, including its staff offices, or of any Regional Director's Office;

(ii) The records you seek include any records of the Office of Human Development Services, the Family Services Administration, or any organizational unit of HHS not specifically identified below; or

(iii) The records include records of more than one of the major units identified below (PHS, HCFA, and SSA) either at headquarters or in a Regional Office.

(2) *PHS Freedom of Information Officer.* If the records you seek are exclusively records of the Public Health Service or if the records you seek involve more than one health agency of the Public Health Service, including its records in the regions, only the Deputy Assistant Secretary for Health (Communications), who also is the PHS Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records, except as follows:

(i) *CDC Freedom of Information Officer.* If the records you seek are exclusively records of the Centers for Disease Control, only the Director, Office of Public Affairs, CDC, who also is the CDC Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(ii) *FDA Freedom of Information Officer.* If the records you seek are exclusively records of the Food and Drug Administration, only the Associate Commissioner for Public Affairs, FDA, who also is the FDA Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(iii) *NIH Freedom of Information Officer.* If the records you seek are exclusively records of the National Institutes of Health, only the Associate Director of Communications, NIH, who also is the NIH Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(iv) *HRSA Freedom of Information Officer.* If the records you seek are exclusively records of the Health Resources and Services Administration, only the Associate Administrator for Communications, HRSA, who also is the HRSA Freedom of Information Officer, may determine whether to release or deny the records.

(v) *ADAMHA Freedom of Information Officer.* If the records you seek are exclusively records of the Alcohol, Drug Abuse and Mental Health Administration, only the Associate Administrator for Communications and Public Affairs, ADAMHA, who is also the ADAMHA Freedom of Information Officer, may determine whether to release or deny the records.

(3) *SSA Freedom of Information Officer.* If the records you seek are exclusively records of the Social Security Administration, including its records in the regions, only the Director, Office of Information, SSA, who also is the SSA Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(4) *HFCA Freedom of Information Officer.* If the records you seek are exclusively records of the Health Care Financing Administration, including its records in the regions, only the Director, Officer of Public Affairs, HCFA, who also is the HCFA Freedom of Information Officer, or his or her designee, may determine whether to release or deny the records.

(b) *Delegations.* Any of the above Freedom of Information Officers may delegate his or her authority to release or deny records and to determine fees. Any such delegation requires the concurrence of the Assistant Secretary for Public Affairs.

(c) *Addresses and telephone numbers.* The addresses and telephone numbers of the Freedom of Information Officers are listed below.

Freedom of Information Officers

HHS Freedom of Information Officer, Room 410–B, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Tel: (202) 472–7453

SSA Freedom of Information Officer, Room 4–J–9, West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, Tel: (301) 594–2823

HCFA Freedom of Information Officer, Room 100, Professional Building, Office of Public Affairs, 6660 Security Boulevard, Baltimore, Maryland 21207, Tel: (301) 594–4323

PHS Freedom of Information Officer, Room 721–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Tel: (202) 245–7686

FDA Freedom of Information Officer, HFW-35, Room 12A16, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Tel: (301) 443–1813

NIH Freedom of Information Officer, National Institutes of Health, Building 31, Room 2B43, 9000 Rockville Pike, Bethesda, Maryland 20205, Tel: (301) 496–5633

CDC Freedom of Information Officer, Centers for Disease Control, 1600 Clifton Road, NE., Atlanta, Georgia 30333, Tel: (404) 329–3286

HRSA Freedom of Information Officer, Room 14–43, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Tel: (301) 443–2086

ADAMHA Freedom of Information Officer, Room 12–C–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Tel: (301) 443–3783

§ 5.32 Release of records.

(a) *Records previously released.* If we have released a record, or a part of a record, to others in the past, we will ordinarily release it to you also. However, we will not release it to you if a statute forbids this disclosure, and we will not necessarily release it to you if an exemption applies in your situation and did not apply, or applied differently, in the previous situations.

(b) *Unauthorized disclosure.* The principle stated in paragraph (a) above, does not apply if the previous release was unauthorized.

(c) *Poor copy.* If we cannot make a legible copy of a record to be released, we do not attempt to reconstruct it. Instead, we furnish the best copy possible and note its poor quality in our reply.

§ 5.33 Denial of requests.

(a) *Information furnished.* All denials are in writing and describe in general terms the material withheld; state the

reasons for the denial, including, as applicable, a reference to the specific exemption of the FOIA authorizing the withholding or deletion; explain your right to appeal the decision and identify the official to whom you should send the appeal; and are signed by the person who made the decision to deny all or part of the request.

(b) *Unproductive searches.* We make a diligent search for records to satisfy your request. Nevertheless, we may not be able always to find the records you want using the information you provided, or they may not exist. If we advise you that we have been unable to find the records despite a diligent search, this does not constitute a denial of your request.

§ 5.34 Appeal of denials.

(a) *Right of appeal.* You have the right to appeal a partial or full denial of your FOIA request. To do so, you must put your appeal in writing and send it to the review official identified in the denial letter. You must send your appeal within 30 days from the date you receive that letter or from the date you receive the records released as a partial grant of your request, whichever is later.

(b) *Letter of appeal.* The appeal letter should state reasons why you believe that the FOIA exemption(s) we cited do not apply to the records that you requested, or give reasons why they should be released regardless of whether the exemption(s) apply. Because we have some discretionary authority in deciding whether to release or withhold records, you may strengthen your request by explaining your reasons for wanting the records. However, you are not required to give any explanation.

(c) *Review process.* Before making a decision on an appeal of a denial, the designated review official will consult with the General Counsel to ensure that the rights and interests of all parties affected by the request are protected. Also, the concurrence of the Assistant Secretary for Public Affairs is required in all appeal decisions, including those on fees. When the review official responds to an appeal, that constitutes the Department's final action on the request. If the review official grants your appeal, we will send the records to you promptly or let you inspect them, or else we will explain the reason for any delay and the approximate date you will receive copies or be allowed to inspect the records. If the decision is to deny your appeal, the official will state the reasons for the decision in writing and inform you of the FOIA provision for judicial review.

§ 5.35 Time limits.

(a) *General.* FOIA sets certain time limits for us to decide whether to disclose the records you requested, and to decide appeals. If we fail to meet the deadlines, you may proceed as if we had denied your request or your appeal. We will try diligently to comply with the time limits, but if it appears that processing your request may take longer than we would wish, we will acknowledge your request and tell you its status. Since requests may be misaddressed or misrouted, you should call or write to confirm that we have the request and to learn its status if you have not heard from us in a reasonable time.

(b) *Time allowed.* (1) We will decide whether to release records within 10 working days after your request reaches the appropriate FOI office, as identified in § 5.31. When we decide to release records, we will actually provide the records, or let you inspect them, as soon as possible after that decision.

(2) We will decide an appeal within 20 working days after the appeal reaches the appropriate review official.

(c) *Extension of time limits.* FOI Officers or review officials may extend the time limits in unusual circumstances. Extension at the request stage and at the appeal stage may total up to 10 working days. We will notify you in writing of any extension. "Unusual circumstances" include situations when we:

(1) Search for and collect records from field facilities, archives, or locations other than the office processing the request.

(2) Search for, collect, or examine a great many records in response to a single request.

(3) Consult with another office or agency that has substantial interest in the determination of the request.

(4) Conduct negotiations with submitters and requesters of information to determine the nature and extent of non-disclosable proprietary materials.

Subpart D—Fees

§ 5.41 Fees to be charged—categories of requests.

The paragraphs below state, for each category of request, the type of fees that we will generally charge. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given in §§ 5.42 through 5.45 or for other reasons.

(a) *Commercial use request.* If your request is for a commercial use, HHS will charge you the costs of search, review, and duplication.

(b) *Educational and scientific institutions and news media.* If you are an educational institution or a non-commercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and your request is not for a commercial use, HHS will charge you only for the duplication of documents. Also, HHS will not charge you the copying costs for the first 100 pages of duplication.

(c) *Other requesters.* If your request is not the kind described by paragraph (a) of this section or paragraph (b) of this section, then HHS will charge you only for the search and the duplication. Also, we will not charge you for the first two hours of search time or for the copying costs of the first 100 pages of duplication.

§ 5.42 Fees to be charged—general provisions.

(a) We may charge search fees even if the records we find are exempt from disclosure, or even if we do not find any records at all.

(b) If we are not charging you for the first two hours of search time, under § 5.41(c), and those two hours are spent on a computer search, then the two free hours are the first two hours of the operator's own operation. If the operator spends less than two hours on the search, we will reduce the total search fees by the average hourly rate for the operator's time, multiplied by two.

(c) If we are not charging you for the first 100 pages of duplication, under § 5.41 (b) or (c), then those 100 pages are the first 100 pages of photocopies of standard size pages, or the first 100 pages of computer printout. If we cannot use this method to calculate the fee reduction, then we will reduce your total duplication fee by the normal charge for photocopying a standard size page, multiplied by 100.

(d) We will not charge you any fee at all if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. As of May 1987, such costs among the units of HHS ranged between $6.00 and $12.50.

(e) If we determine that you (acting either alone or together with others) are breaking down a single request into a series of requests in order to avoid (or reduce) the fees charged, we may aggregate all these requests for purposes of calculating the fees charged.

(f) We will charge interest on unpaid bills beginning on the 31st day following the day the bill was sent. We will use the provisions of Part 30 of this Title in assessing interest, administrative costs, and penalties and in taking actions to encourage payment.

(g) The subpart does not apply to requests for Social Security program records on Social Security number holders, wage earners, employees, and claimants, where the requests are governed by section 1106 of the Social Security Act, 42 U.S.C. 1306(c), and by 20 CFR 442.441.

§ 5.43 Fee Schedule.

HHS charges the following fees: (a) Manual searching for or reviewing of records—when the search or review is performed by employees at grade GS–1 through GS–8, an hourly rate based on the salary of a GS–5, step 7, employee; when done by a GS–9 through GS–14, an hourly rate based on the salary of a GS–12, step 4, employee; and when done by a GS–15 or above, an hourly rate based on the salary of a GS–15, step 7, employee. In each case, the hourly rate will be computed by taking the current hourly rate for the specified grade and step, adding 16% of that rate to cover benefits, and rounding to the nearest whole dollar. As of November 13, 1987, these rates were $10, $20, and $36 respectively. When a search involves employees at more than one of these levels, we will charge the rate appropriate for each.

(b) Computer searching and printing—the actual cost of operating the computer plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.

(c) Photocopying standard size pages—$0.10 per page. FOI Officers may charge lower fees for particular documents where—

(1) The document has already been printed in large numbers,

(2) The program office determines that using existing stock to answer this request, and any other anticipated FOI requests, will not interfere with program requirements, and

(3) The FOI Officer determines that the lower fee is adequate to recover the prorated share of the original printing costs.

(d) Photocopying odd-size documents (such as punchcards or blueprints), or reproducing other records (such as tapes)—the actual cost of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in paragraph (a) of this section.

(e) Certifying that records are true copies. This service is not required by the FOIA. If we agree to provide it, we will charge $10 per certification.

(f) Sending records by express mail, certified mail, or other special methods. This service is not required by the FOIA. If we agree to provide it, we will charge our actual cost.

(g) Performing any other special service that you request and we agree to—actual cost of operating any machinery, plus actual cost of any materials used, plus charges for the time of our employees, at the rates given in paragraph (a) of this section.

§ 5.44 Procedures for assessing and collecting fees.

(a) *Agreement to pay.* We generally assume that when you request records you are willing to pay the fees we charge for services associated with your request. You may specify a limit on the amount you are willing to spend. We will notify you if it appears that the fees will exceed the limit and ask whether you nevertheless want us to proceed with the search.

(b) *Billing.* Usually we will send you a bill along with or following the delivery of the records you asked for. However, in order to avoid sending numerous small bills to frequent requesters, or to businesses or agents representing requesters, we may aggregate the charges for certain time periods. For example, we might send a bill to such a requester once a month. Fees should be paid by check or money order in accordance with the instructions furnished by the person who responds to your request.

(c) *Advance payment.* If you have failed to pay previous bills in a timely fashion, or if our initial review of your request indicates that we will charge you fees exceeding $250, we will require you to pay your past due fees and/or the estimated fees, or a deposit, before we start searching for the records you want, or before we send them to you. If so, we will let you know promptly upon receiving your request. In such cases, the administrative time limits prescribed in § 5.35 (i.e., ten working days from receipt of initial requests and 20 working days from receipt of appeals from initial denials, plus permissible extensions of these time limits) will begin only after we come to an agreement with you over payment of fees, or decide that fee waiver or reduction is appropriate.

§ 5.45 Waiver or reduction of fees.

(a) *Standard.* We will waive or reduce the fees we would otherwise charge if disclosure of the information meets both of the following tests:

(1) It is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, and

(2) It is not primarily in the commercial interest of the requester. These two tests are explained in paragraphs (b) and (c) of this section.

(b) *Public interest.* The disclosure passes the first test only if it furthers the specific public interest of being likely to contribute significantly to public understanding of government operations or activities, regardless of any other public interest it may further. In analyzing this question, we will consider the following factors.

(1) How, if at all, do the records to be disclosed pertain to the operations or activities of the Federal Government?

(2) Would disclosure of the records reveal any meaningful information about government operations or activities? Can one learn from these records anything about such operations that is not already public knowledge?

(3) Will the disclosure advance the understanding of the general public as distinguished from a segment of interested persons? Under this factor, we may consider whether the requester is in a position to contribute to public understanding. For example, we may consider whether the requester has such knowledge or expertise as may be necessary to understand the information, and whether the requester's intended use of the information would be likely to disseminate the information among the public. As unsupported claim to be doing research for a book or article does not demonstrate that likelihood, while such a claim by a representative of the news media is better evidence.

(4) Will the contribution to public understanding be a significant one? Will the public's understanding of the government's operations be substantially greater as a result of the disclosure?

(c) *Not primarily in the requester's commercial interest.* If the disclosure passes the test of furthering the specific public interest describe in paragraph (b) of this section, we will determine whether it also furthers the requester's commercial interest and, if so, whether this effect outweighs the advancement of that public interest. In applying this second test, we will consider the following factors.

(1) Would the disclosure further a commercial interest of the requester, or of someone on whose behalf the requester is acting? "Commercial interests" include interests relating to business, trade, and profit. Not only profit-making corporations have commercial interests—so do nonprofit corporations, individuals, unions, and other associations. The interest of a representative of the news media in using the information for news dissemination purposes will not be considered a commercial interest.

(2) If disclosure would further a commercial interest of the requester, would that effect outweigh the advancement of the public interest defined in paragraph (b) of this section? Which effect is primary?

(d) *Deciding between waiver and reduction.* If the disclosure passes both tests, we will normally waive fees. However, in some cases we may decide only to reduce the fees. For example, we may do this if the disclosure passes one of the tests only narrowly, or when disclosures of some but not all of the requested records passes the tests.

(e) *Procedure for requesting a waiver or reduction.* You must make your request for a waiver or reduction at the same time you make your request for records. You should explain why you believe a waiver or reduction is proper under the analysis in paragraphs (a) through (d) of this section. Only FOI Officers may make the decision whether to waive, or reduce, the fees. If we do not completely grant your request for a waiver or reduction, the denial letter will designate a review official. You may appeal the denial to that official. In your appeal letter, you should discuss whatever reasons are given in our denial letter.

Subpart E—Records Available for Public Inspection

§ 5.51 Records available.

(a) *Records of general interest.* We will make the following records of general interest available for your inspection and copying. Before releasing them, however, we may delete the names of people, or information that would identify them, if release would invade their personal privacy to a clearly unwarranted degree. (See § 5.67 of this part.)

(1) Orders and final opinions, including concurring and dissenting opinions in adjudications, such as Letters of Finding issued by the Office for Civil Rights in civil rights complaints, and Social Security Rulings. (See § 5.66 of this part for availability of internal memoranda, including attorney opinions and advice.)

(2) Statements of policy and interpretations that we have adopted but have not published in the Federal Register.

(3) Administrative staff manuals and instructions to staff that affect the public. (We will not make available, however, manuals or instructions that reveal investigative or audit procedures as described in §§ 5.63 and 5.68 of this part.)

(b) *Other records.* In addition to such records as those described in paragraph (a) of this section, we will make available to any person a copy of all other agency records, unless we determine that such records should be withheld from disclosure under subsection (b) of the Act and Subpart F of this regulation.

§ 5.52 Indexes of records.

(a) *Inspection and copying.* We will maintain and provide for your inspection and copying current indexes of the records described in § 5.51(a). We will also publish and distribute copies of the indexes unless we announce in the Federal Register that it is unnecessary or impracticable to do so. For assistance in locating indexes maintained in the Department, you may contact the HHS Freedom of Information Officer at the address and telephone number in § 5.31(c).

(b) *Record citation as precedent.* We will not use or cite any record described in § 5.51(a) as a precedent for an action against a person unless we have indexed the record and published it or made it available, or unless the person has timely notice of the record.

Subpart F—Reasons for Withholding Some Records

§ 5.61 General.

Section 552(b) of the Freedom of Information Act contains nine exemptions to the mandatory disclosure of records. We describe these exemptions below and explain how this Department applies them to disclosure determinations. (In some cases more than one exemption may apply to the same document.) Information obtained by the Department from any individual or organization, furnished in reliance on a provision for confidentiality authorized by applicable statute or regulation, will not be disclosed, to the extent it can be withheld under one of these exemptions. This section does not itself authorize the giving of any pledge of confidentiality by any officer or employee of the Department.

§ 5.62 Exemption one: National defense and foreign policy.

We are not required to release records that, as provided by FOIA, are "(a) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (b) are in fact properly classified pursuant to such Executive Order." Executive Order No. 12356 (1982) provides for such classification. When the release of certain records may adversely affect U.S. relations with foreign countries, we usually consult with officials of those countries or officials of the Department of State. Also, we may on occasion have in our possession records classified by some other agency. We may refer your request for such records to the agency that classified them and notify you that we have done so, as explained in § 5.23.

§ 5.63 Exemption two: Internal personnel rules and practices.

We are not required to release records that are "related solely to the internal personnel rules and practices of an agency." Under this exemption, we may withhold routine internal agency practices and procedures. For example, we may withhold guard schedules and rules governing parking facilities or lunch periods. Also under this exemption, we may withhold internal records whose release would help some persons circumvent the law or agency regulations. For example, we ordinarily do not disclose manuals that instruct our investigators or auditors how to investigate possible violations of law, to the extent that this release would help some persons circumvent the law.

§ 5.64 Exemption three: Records exempted by other statutes.

We are not required to release records if another statute specifically allows us to withhold them. We may use another statute to justify withholding only if it absolutely prohibits disclosure or if it sets forth criteria to guide our decision on releasing or identifies particular types of material to be withheld.

§ 5.65 Exemption four: Trade secrets and confidential commercial or financial information.

We will withhold trade secrets and commercial or financial information that is obtained from a person and privileged or confidential.

(a) *Trade secrets.* A trade secret is a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process.

(b) *Commercial or financial information.* We will not disclose records whose information is "commercial or financial," is obtained from a person, and is "privileged or confidential."

(1) Information is "commercial or financial" if it relates to businesses, commerce, trade, employment, profits, or finances (including personal finances). We interpret this category broadly.

(2) Information is "obtained from a person" if HHS or another agency has obtained it from someone outside the Federal Government or from someone within the Government who has a commercial or financial interest in the information. "Person" includes an individual, partnership, corporation, association, state or foreign government, or other organization. Information is not "obtained from a person" if it is generated by HHS or another federal agency. However, information is "obtained from a person" if it is provided by someone, including but not limited to an agency employee, who retains a commercial or financial interest in the information.

(3) Information is "privileged" if it would ordinarily be protected from disclosure in civil discovery by a recognized evidentiary privilege, such as the attorney-client privilege or the work product privilege. Information may be privileged for this purpose under a privilege belonging to a person outside the government, unless the providing of the information to the government rendered the information no longer protectible in civil discovery.

(4) Information is "confidential" if it meets one of the following tests:

(i) Disclosure may impair the government's ability to obtain necessary information in the future;

(ii) Disclosure would substantially harm the competitive position of the person who submitted the information;

(iii) Disclosure would impair other government interests, such as program effectiveness and compliance; or

(iv) Disclosure would impair other private interests, such as an interest in controlling availability of intrinsically valuable records, which are sold in the market by their owner.

The following questions may be relevant in analyzing whether a record meets one or more of the above tests: Is the information of a type customarily held in strict confidence and not disclosed to the public by the person to whom it belongs? What is the general custom or usage with respect to such information in the relevant occupation or business? How many, and what types of, individuals have access to the information? What kind and degree of financial injury can be expected if the information is disclosed?

(c) *Designation of certain confidential information.* A person who submits records to the government may designate part or all of the information in such records as exempt from disclosure under Exemption 4 of the FOIA. The person may make this designation either at the time the records are submitted to the government or within a reasonable time thereafter. The designation must be in writing. The legend prescribed by a request for proposal or request for quotations, pursuant to 48 CFR 52.215–12 (or pursuant to any agency regulation establishing a substitute for the language at 48 CFR 52.215–12), is sufficient but not necessary for this purpose. Any such designation will expire ten years after the records were submitted to the government.

(d) *Predisclosure notification.* The procedures in this paragraph apply to records on which the submitter has designated information as provided in paragraph (c) of this section. They also apply to records that were submitted to the government where we have substantial reason to believe that information in the records could reasonably be considered exempt under Exemption 4. Certain exceptions to these procedures are stated in paragraph (e) of this section.

(1) When we receive a request for such records, and we determine that we may be required to disclose them, we will make reasonable efforts to notify the submitter about these facts. The notice will include a copy of the request, and it will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If we must notify a large number of submitters, we may do this by posting or publishing a notice in a place where the submitters are reasonably likely to become aware of it.

(2) The submitter has five working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for its objections.

(3) We will give consideration to all bases that have been timely stated by the submitter. If we decide to disclose the records, we will notify the submitter in writing. This notice will briefly explain why we did not sustain its objections. We will include with the notice a copy of the records about which the submitter objected, as we propose to disclose them. The notice will state that we intend to disclose the records five working days after the submitter receives the notice unless we are ordered by a United States District Court not to release them.

(4) When a requester files suit under the FOIA to obtain records covered by this paragraph, we will promptly notify the submitter.

(5) Whenever we send a notice to a submitter under paragraph (d)(1) of this section, we will notify the requester that we are giving the submitter a notice and an opportunity to object. Whenever we send a notice to a submitter under paragraph (d)(3) of this section, we will notify the requester of this fact.

(e) *Exceptions to predisclosure notification.* The notice requirements in paragraph (d) of this section do not apply in the following situations:

(1) We decide not to disclose the records;

(2) The information has previously been published or made generally available;

(3) Disclosure is required by a statute other than the FOIA;

(4) Disclosure is required by a regulation, issued after notice and opportunity for public comment, that specifies narrow categories of records that are to be disclosed under the FOIA, but in this case a submitter may still designate records as described in paragraph (c) of this section, and in exceptional cases, we may, at our discretion, follow the notice procedures in paragraph (d) of this section; or

(5) The designation appears to be obviously frivolous, but in this case we will still give the submitter the written notice required by paragraph (d)(3) of this section (although this notice need not explain our decision or include a copy of the records), and we will notify the requester as described in paragraph (d)(5) of this section.

§ 5.66 Exemption five: Internal memoranda.

This exemption covers internal government communications and notes that fall within a generally recognized evidentiary privilege. Internal government communications include an agency's communications with an outside consultant or other outside person, with a court, or with Congress, when those communications are for a purpose similar to the purpose of privileged intra-agency communications. Some of the most-commonly applicable privileges are described in the following paragraphs.

(a) *Deliberative process privilege.* This privilege protects predecisional deliberative communications. A communication is protected under this privilege if it was made before a final decision was reached on some question of policy and if it expressed recommendations or opinions on that question. The purpose of the privilege is to prevent injury to the quality of the agency decisionmaking process by encouraging open and frank internal policy discussions, by avoiding premature disclosure of policies not yet adopted, and by avoiding the public confusion that might result from disclosing reasons that were not in fact

the ultimate grounds for an agency's decision. Purely factual material in a deliberative document is within this privilege only if it is inextricably intertwined with the deliberative portions so that it cannot reasonably be segregrated, if it would reveal the nature of the deliberative portions, or if its disclosure would in some other way make possible an intrusion into the decisionmaking process. We will release purely factual material in a deliberative document unless that material is otherwise exempt. The privilege continues to protect predecisional documents even after a decision is made.

(b) *Attorney work product privilege.* This privilege protects documents prepared by or for an agency, or by or for its representative (typically, HHS attorneys) in anticipation of litigation or for trial. It includes documents prepared for purposes of administrative adjudications as well as court litigation. It includes documents prepared by program offices as well as by attorneys. It includes factual material in such documents as well as material revealing opinions and tactics. Finally, the privilege continues to protect the documents even after the litigation is closed.

(c) *Attorney-client communication privilege.* This privilege protects confidential communications between a lawyer and an employee or agent of the government where there is an attorney-client relationship between them (typically, where the lawyer is acting as attorney for the agency and the employee is communicating on behalf of the agency) and where the employee has communicated information to the attorney in confidence in order to obtain legal advice or assistance.

§ 5.67 Exemption six: Clearly unwarranted invasion of personal privacy.

(a) *Documents affected.* We may withhold records about individuals if disclosure would constitute a clearly unwarranted invasion of their personal privacy.

(b) *Balancing test.* In deciding whether to release records to you that contain personal or private information about someone else, we weigh the foreseeable harm of invading that person's privacy against the public benefit that would result from the release. If you were seeking information for a purely commercial venture, for example, we might not think that disclosure would primarily benefit the public and we would deny your request. On the other hand, we would be more inclined to release information if you were working on a research project that gave promise of providing valuable information to a wide audience. However, in our evaluation of requests for records we attempt to guard against the release of information that might involve a violation of personal privacy because of a requester being able to "read between the lines" or piece together items that would constitute information that normally would be exempt from mandatory disclosure under Exemption Six.

(c) *Examples.* Some of the information that we frequently withhold under Exemption Six is: Home addresses, ages, and minority group status of our employees or former employees; social security numbers; medical information about individuals participating in clinical research studies; names and addresses of individual beneficiaries of our programs, or benefits such individuals receive; earning records, claim files, and other personal information maintained by the Social Security Administration, the Public Health Service, and the Health Care Financing Administration.

§ 5.68 Exemption seven: Law enforcement.

We are not required to disclose information or records that the government has compiled for law enforcement purposes. The records may apply to actual or potential violations of either criminal or civil laws or regulations. We can withhold these records only to the extent that releasing them would cause harm in at least one of the following situations:

(a) *Enforcement proceedings.* We may withhold information whose release could reasonably be expected to interfere with prospective or ongoing law enforcement proceedings. Investigations of fraud and mismanagement, employee misconduct, and civil rights violations may fall into this category. In certain cases—such as when a fraud investigation is likely—we may refuse to confirm or deny the existence of records that relate to the violations in order not to disclose that an investigation is in progress, or may be conducted.

(b) *Fair trial or impartial adjudication.* We may withhold records whose release would deprive a person of a fair trial or an impartial adjudication because of prejudicial publicity.

(c) *Personal privacy.* We are careful not to disclose information that could reasonably be expected to constitute an unwarranted invasion of personal privacy. When a name surfaces in an investigation, that person is likely to be vulnerable to innuendo, rumor, harassment, and retaliation.

(d) *Confidential sources and information.* We may withhold records whose release could reasonably be expected to disclose the identity of a confidential source of information. A confidential source may be an individual; a state, local, or foreign government agency; or any private organization. The exemption applies whether the source provides information under an express promise of confidentiality or under circumstances from which such an assurance could be reasonably inferred. Also, where the record, or information in it, has been compiled by a criminal law enforcement authority conducting a criminal investigation, or by an agency conducting a lawful national security investigation, the exemption also protects all information supplied by a confidential source. Also protected from mandatory disclosure is any information which, if disclosed, could reasonably be expected to jeopardize the system of confidentiality that assures a flow of information from sources to investigatory agencies.

(e) *Techniques and procedures.* We may withhold records reflecting special techniques or procedures of investigation or prosecution, not otherwise generally known to the public. In some cases, it is not possible to describe even in general terms those techniques without disclosing the very material to be withheld. We may also withhold records whose release would disclose guidelines for law enforcement investigations or prosecutions if this disclosure could reasonably be expected to create a risk that someone could circumvent requirements of law or of regulation.

(f) *Life and physical safety.* We may withhold records whose disclosure could reasonably be expected to endanger the life or physical safety of any individual. This protection extends to threats and harrassment as well as to physical violence.

§ 5.69 Exemptions eight and nine: records on financial institutions; records on wells.

Exemption eight permits us to withhold records about regulation or supervision of financial institutions. Exemption nine permits the withholding of geological and geophysical information and data, including maps, concerning wells.

Don M. Newman,

Acting Secretary.

Date: September 28, 1987.

[FR Doc. 87-26264 Filed 11-12-87; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21, 74, 78, and 94

[Gen. Docket No. 82-334; FCC 87-340]

Spectrum Utilization Policy for Fixed and Mobile Services' Use of Certain Bands Between 947 MHz and 40 GHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Action responds to seven Petitions for Reconsideration that were filed by National Association of Broadcasters (NAB), Schwartz, Woods and Miller (Schwartz), Scripps Howard Broadcasting Company (SHBC), Centel Videopath (Videopath), Communications Transmission, Inc. (CTI), Pacific Bell (Pacific), and County of Los Angeles Facilities Management Department (County) seeking reconsideration of the Commission's *Third Report and Order*,[1] in General Docket 82-334. In the *Third Report and Order* the Commission expanded eligibility in several bands between 1880 and 7125 MHz, established new minimum path length requirements for certain broadcast and private users and provided protections for satellites in the geostationary orbit consistent with Article 27 of the international *Radio Regulations*. The petitioners raise several issues which are discussed below. This action denies the petitions but clarifies certain points at the request of petitioners.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Raymond LaForge, telephone (202) 653-8155.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, Adopted October 22, 1987, Released November 4, 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 contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Order

1. Although NAB, Schwartz and SHBC object to the expanded eligibility in the 1.9 (1990-2110 MHz) and 6.8 GHz (6875-7125 MHz) bands which permitted cable operators to use these bands, the Commission continues to be convinced that cable system operators need to use these frequencies, for mobile television pick-up in much the same way as broadcasters and that the existing provisions in the Cable Television Relay Service (CARS) are inadequate to satisfy these needs. The Commission feels that broadcast and cable users will find it in their mutual interest to coordinate frequency usage to avoid interference to their respective services.

2. In the *Third Report and Order* the Commission restricted use of the 6.4 GHz (6425-6525 MHz) for the direct delivery of video programs to the general public. Videopath has requested that we clarify this point. The changes that were made by the *Third Report and Order* did not affect the services that may be offered by common carriers. Regarding the selling of services, broadcasters, cable operators, networks and private entities are eligible to utilize the 6.4 GHz band in their own right, but may not offer service to others. The one exception is that private carriers may offer service to private users eligible under Part 94.

3. CTI has requested that the Commission allocate the 6.4 GHz band and the 50 MHz just above the band to the Interexchange Common Carriers. CTI feels that this allocation is necessary to alleviate the competitive disadvantage that Interexchange Common Carriers suffer, in that most frequencies that are already allocated are used by AT&T. We continue to feel that the proposal presented by CTI is beyond the scope of this proceeding. We believe a Rule Making Petition is the proper forum for resolving this issue. We note CTI has recently filed a Petition for Rule Making in this regard; therefore we defer judgment on this matter.

4. Videopath and Pacific requested that an improved frequency coordination procedure be developed at the Commission for the 6.4 GHz band. We feel the frequency coordination process will have to be developed separately from this proceeding. We are convinced that the present frequency coordination procedures are workable and we are hopeful that the voluntary procedures will improve the process. We all feel the benefits of expanded eligibility outweigh any temporary inconveniences of the interim frequency coordination procedures.

5. NAB, Schwartz and County request reconsideration of the minimum path length requirements established in the *Third Report and Order*. NAB states that no provision was made for existing links such that minior modifications could be accomplished without loss of grandfathered status and Schwartz suggested that public broadcast stations be exempt from the grandfathered requirement which mandates compliance with new EIRP limits after April 1, 1992. We believe the minimum path length requirements established by the Commission in the *Third Report and Order* are important in promoting better spectrum efficiency. We have not been presented with any information that supports a conclusion that the requirements is burdensome. Generally, compliance can be accomplished by simply reducing the output power of the transmitter. Since the rule facilitates improved spectrum utilization, we are inclined to retain the requirement as adopted.

6. County disputes the formula that the Commission used in calculating minimum path length and also expresses concern that public safety groups will be unfairly impacted by the new path length requirements. Waivers of the minimum path length requirements will therefore have to be done on a case-by-case basis. We believe County has misinterpreted the *Third Report and Order*. Only users of the 1.9 and 6.8 GHz broadcast auxiliary bands will be required to demonstrate compliance with the new EIRP limits after April 1, 1992, when an existing link would preclude the establishment of a new link. This requirement does not apply to users authorized under Part 94 of the Commission Rules.

7. In summary, we do not believe that petitioners have brought forth any new information to convince us that we should reverse our decision in the *Third Report and Order*, General Docket 82-334. However, we take the opportunity to clarify certain aspects of our decision as stated in the above paragraphs.

8. For the reasons given in the foregoing discussion, the Petitions for Reconsideration of the Commission's decision to expand eligibility in certain bands between 1880 and 7125 MHz and to establish path length limits for certain users in these bands are denied.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-26213 Filed 11-12-87; 8:45 am]

BILLING CODE 6712-01-M

[1] Editorial Note: See 52 FR 7136, March 9, 1987

47 CFR Part 73

[MM Docket No. 86-411; RM-5462, RM-5668]

Radio Broadcasting Services; Liberty and Jasper, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260C2 to Liberty, Texas; and substitues Channel 264C2 for Channel 265A at Jasper, Texas, and modifies the construction permit for Station KJAS(FM) to specify operation on the new frequency. This action is taken at the request of Trinity River Valley Broadcasting Company, licensee of daytime-only AM Station KPXE, Liberty, and Jasper County Broadcasting Company, respectively. A first FM service could be provided to Liberty and a first wide coverage area FM station at Jasper. Channel 260C2 requires a site restriction of 18.1 kilometers (11.2 miles) west of Liberty. The upgrade at Jasper can be effectuated from the current transmitter site of Station KJAS(FM). With this action, this proceeding is terminated.

DATES: Effective December 24, 1987; the window period for filing applications on Channel 260C2 at Liberty, Texas, will open on December 28, 1987, and close on January 27, 1988.

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

SUPPLEMENTARY INFORMATION: This a summary of the Commission's Report and Order, MM Docket No. 86-411, adopted October 19, 1987, and released November 6, 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 adding Channel 260C2 to Liberty; and by removing Channel 265A and adding Channel 264C2 at Jasper.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-26210 Filed 11-12-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-222; RM-5278]

Television Broadcasting Services; Phoenix, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots UHF television Channel 61 to Phoenix, AZ, as that community's eighth commercial television broadcast service, in response to a petition for rule making filed on behalf of Edward Walson.

Although the Commission has imposed a freeze on TV allotments, or applications therefor in specified metropolitan areas pending the outcome of an inquiry into the uses of advanced television systems (ATV) in broadcasting, this proposal is not affected thereby. With this action, this proceeding is terminated

EFFECTIVE DATE: December 24, 1987.

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-222, adopted October 19, 1987, and released November 6, 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

Television broadcasting.

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

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

§ 73.606 [Amended]

2. Section 73.606(b), the Television Table of Allotments, is amended by adding Channel 61 to the entry for Phoenix, Arizona.

Federal Communications Commission.

Mark N. Lipp,

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

[FR Doc. 87-26206 Filed 11-12-87; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 52, No. 219
Friday, November 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

Agricultural Marketing Service

7 CFR Part 1032

[Docket No. A0-313-A36]

Milk In Southern Illinois Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision would expand the Southern Illinois marketing area to include the City of St. Louis, 12 eastern Missouri counties, and part of St. Clair County, Illinois. Expansion to include this territory, which represents the St. Louis portion of the former St. Louis-Ozarks marketing area, reflects structural changes in the market that occurred as a result of the termination of the St. Louis-Ozarks order and is necessary to recognize the primary sales area of currently regulated plants. Other major changes to the order pertain to the pricing of milk in the vicinity of Quincy, Illinois, the standards for regulating plants under the order, and the amount and manner in which milk of dairy farmers may be shipped to manufacturing plants and still be priced under the order. Such changes are necessary to promote the orderly and efficient marketing of milk by producers and handlers and are based on the record of a public hearing held on December 9–11, 1986, at Bridgeton, Missouri.

DATE: Comments are due on or before December 3, 1987.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 447–2089.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amendments are necessary to recognize the sales area of currently regulated plants and to promote orderly and efficient marketing of milk by producers and regulated handlers. The amendments would not change the regulatory status of any handler.

Prior documents in this proceeding

Notice of Hearing: Issued November 18, 1986; published November 21, 1986 (51 FR 42109).

Emergency Partial Decision: Issued January 20, 1987; published January 23, 1987 (52 FR 2537).

Order Amending Order: Issued January 28, 1987; published February 3, 1987 (52 FR 3215).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and the order regulating the handling of milk in the Southern Illinois marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, DC 20250, by the 20th day after publication of this decision in the Federal Register. Four copies of the exceptions should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposed amendments set forth below are based on the record of a public hearing held at Bridgeton, Missouri, on December 9–11, 1986, pursuant to a notice of hearing issued on November 18, 1986 and published on November 21, 1986 (51 FR 42109).

The material issues on the record of hearing relate to:

1. Expansion of the marketing area.
2. Performance standards for pool plants.
3. Regulation of distributing plants that qualify as pool plants under more than one order.
4. Definition of producer milk.
5. Classification of certain fluid milk products and biscuit mix.
6. Shrinkage and loss product allowance.
7. Location adjustments.
8. Seasonal payment plan for procedures.
9. Definition of inventory.
10. Miscellaneous and conforming changes.
11. Omission of a recommended decision and the opportunity to file written exceptions thereto with respect to material issue number 3.

This decision deals with issues 1 through 10. Issues 3 and 11 were previously considered in an emergency partial decision and the order was amended effective February 1, 1987. However, issue 3 is reevaluated herein in view of the expansion of the marketing area considered in issue 1.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Expansion of the Marketing Area

The Southern Illinois marketing area should be expanded to include adjacent territory in Illinois and Missouri that was included within the marketing area of the St. Louis-Ozarks order that was terminated effective April 1, 1985. This territory includes the city of St. Louis, 12 Missouri counties (Bollinger, Cape Girardeau, Crawford, Franklin, Jefferson, Perry, St. Charles, St. Louis, St. Francois, Ste. Genevieve, Warren,

and Washington) and the portion of St. Clair County, Illinois (the city of Belleview, Scott Air Force Base, and Canteen, Centreville, East St. Louis, and Stites Townships) that is not now included in the Southern Illinois marketing area. A proposal to further expand the Southern Illinois marketing area to include additional territory in central Missouri should not be adopted at this time.

The new territory, which has a population in excess of 2.1 million, should be added to the Southern Illinois marketing area since it is a primary sales area of handlers who are currently regulated under the Southern Illinois order and who operate plants located in Illinois and Missouri. Such territory should be included in the Southern Zone of the marketing area for pricing purposes to maintain the current level of pricing that applies at distributing plants in the area under the Southern Illinois order. As a result of the marketing area expansion, the Southern Illinois marketing area should be redesignated as the Southern Illinois-Eastern Missouri marketing area.

Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that represents about one-half of the dairy farmers who supply the Southern Illinois market, proposed the marketing area expansion that is adopted herein. Mid-Am testified that the territory should be included in the marketing area since it is a major population center that is a primary sales area of plants that are currently regulated under the order. Mid-Am testified that when the St. Louis-Ozarks order was terminated, five distributing plants in the St. Louis metropolitan area became regulated under the Southern Illinois order. However, because the vast majority of the fluid milk sales of such handlers is in the now unregulated St. Louis area, Mid-Am contends that the potential exists for one or more of these plants to become unregulated or regulated under another order. If any of the plants were to become unregulated, Mid-Am contends that disorderly marketing conditions would result since any unregulated plant would have a competitive advantage over regulated plants that are subject to classified pricing. To the extent that any of the plants were to become regulated under another order, Mid-Am contends that Class I prices to handlers and blend prices payable to producers would vary significantly among competing plants and jeopardize the ability of certain plants to obtain adequate supplies of milk. (This latter issue of determining where a plant should be regulated if it meets the regulatory standards of more than one order was dealt with on a preliminary basis in an emergency partial decision issued on the record of this proceeding. The issue is reevaluated under issue number 3 in view of the marketing area expansion recommended in this decision.)

Mid-Am testified that virtually all of the fluid milk sales in its proposed expansion area are made by plants that are regulated under the Southern Illinois order, and that the remaining minor proportion of sales are made by one plant regulated under the Southwest Plains order and one plant regulated under the Paducah, Kentucky order. Thus, Mid-Am testified that all of the sales in the area are made by currently regulated plants and that no additional plants would become regulated under the Southern Illinois order as a result of the adoption of its proposal.

Mid-Am's proposal was generally supported by Associated Milk Producers, Inc. (AMPI), and the National Farmers Organization (NFO), two cooperative associations that also represent producers who supply the market. There was no opposition by any interested party to Mid-Am's proposal.

Packet Dairy, Inc. (Packet), a handler who operates a distributing plant that is regulated under the Southern Illinois order, also supported Mid-Am's proposal. Packet also proposed that the Southern Illinois marketing area be further expanded to include an additional 12 Missouri counties (Audrain, Boone, Callaway, Cole, Gasconade, Lincoln, Maries, Miller, Montgomery, Osage, Phelps, and Pulaski). Packet testified that this area, which has a population of about 400,000, contains the fastest growing population centers in the State. In this regard Packet testified that Boone (Columbia) and Cole (Jefferson City) counties, which represent about 42 percent of the total 12-county area population, experienced a population growth of about 24 percent between 1970 and 1980.

Packet testified that the fluid milk needs of the area are supplied by handlers who are regulated under the Southern Illinois, Southwest Plains and Greater Kansas City orders and by the Central Dairy Co., an unregulated handler who operates a plant at Jefferson City. Packet estimated that 31 to 51 percent of total fluid milk sales in Boone County are supplied by Southern Illinois order handlers; 18 to 33 percent by Kansas City order handlers; and the remainder by Central Dairy. In Cole county, Packet estimated that the proportion of total fluid milk sales by handlers are as follows: Southern Illinois, 22–34 percent; Kansas City, 17–28 percent; Southwest Plains, 3–5 percent; and Central Dairy the remainder. In addition, Packet testified that about 10 percent of its total fluid milk sales are made in the 12-county area.

Packet testified that its marketing area expansion proposal should be adopted in order to fully regulate Central Dairy. Packet contends that Central Dairy, who is not required to pay the Class I price for milk in fluid uses, has a competitive advantage over regulated handlers who are required to pay for milk on the basis of how it is used. Packet contends that, in order to procure a supply of milk, Central Dairy would have to pay dairy farmers prices that are comparable to the Federal order blend price that is applicable to producers who supply the Southern Illinois market. Thus, Packet concludes that Central Dairy's price advantage for milk in Class I (fluid) uses is at least the difference between the Southern Illinois order minimum Class I and blend prices. Assuming an average difference of 60 cents per hundred weight, Packet concludes that Central Dairy's advantage over regulated handlers is between 250 and 290 thousand dollars per year. In addition, Packet notes that such advantage is the amount that would accrue to all dairy farmers who supply the Southern Illinois market if Central Dairy were regulated.

In its brief, Packet contends that Central Dairy's price advantage over regulated handlers averaged $1.11 per hundredweight and ranged from 92 cents to $1.45 over the period from May 1985 to October 1986. According to Packet, such price advantage is a function of both classified pricing and the prices for milk that are charged by Mid-Am in excess of minimum order prices.

Packet also testified that milk that is produced in the 12-county area is used to supply the fluid milk needs of Central Dairy and handlers that are regulated under the Southern Illinois and Southwest Plains orders. Thus, Packet concludes that the 12-county area is further related to the Southern Illinois market because of the overlapping of milk procuremnt in the area. In addition, Packet contends that the reserve milk supplies that are necessary to balance Central Dairy's fluid milk needs are regulated under the Southern Illinois or Southwest Plains orders. Consequently, Packet contends that Federal order producers carry the burden of balancing Central Dairy's fluid milk needs without sharing fully in the benefits that accrue from Central Dairy's fluid milk sales.

NFO supported Packet's proposal on the basis that adoption of the proposal would promote equity among handlers and producers. NFO's primary concern is that Federal order producers balance the fluid milk needs of Central Dairy without receiving the benefit of Central Dairy's fluid milk sales. AMPI testified that it would support the proposal if Central Dairy's Class I utilization was in excess of the market's Class I utilization. In its brief, Safeway Stores, Inc., a handler regulated under the Greater Kansas City order who has sales in the proposed area, supported Packet's proposal. Safeway concludes that Central Dairy has a competitive advantage over other handlers because of its procurement cost of milk relative to that of regulated handlers and because the Southern Illinois and Southwest Plains Federal order markets carry the reserve supplies of milk for Central Dairy.

Mid-Am testified that it has no position on Packet's marketing area proposal and that Mid-Am was not convinced that there was any marketing problem associated with Central Dairy's unregulated status. Mid-Am testified that competitive and equity problems are inherently present when competition for fluid milk sales occurs between regulated and unregulated plant. However, Mid-Am testified that since Central Dairy's Class I utilization was not known, the extent to which Central Dairy may have a competitive advantage over regulated handlers cannot be determined. Mid-Am also testified that it supplies the total milk needs of Central Dairy and that it charges Central Dairy the Southern Illinois blend price applicable at St. Louis plus the over-order charge that is applicable to St. Louis area handlers for milk in Class I use. Mid-Am also testified that during the fall months supplemental shipments of milk are made to Central Dairy from Mid-Am plants that are regulated under either the Southern Illinois or Southwest Plains order.

In its brief, Mid-Am supported Packet's marketing area proposal that would result in fully regulating Central Dairy. Mid-Am concludes that Central Dairy has a pricing advantage as a result of information contained in the record relative to Central Dairy's Class I utilization. In addition, Mid-Am notes that a second high-Class-I-use unregulated handler (Deters All-Star Dairy, Inc., at Quincy, Illinois) that purchases milk on the basis of the Southern Illinois blend price has sales in part of the 12-county area. Furthermore, Mid-Am notes that a third unregulated handler (Temple Stevens) is in the process of opening a bottling plant at Columbia, Missouri. Under these circumstances, Mid-Am contends that the only method of providing equity in pricing among competing handlers is to extend Federal regulation to the central Missouri area by adopting Packet's proposal.

Central Dairy testified in opposition to Packet's proposal. Central testified that 85 percent of its total milk sales are in 11 of the 12 countries proposed to be included in the marketing area (Central has no sales in Lincoln county) while 15 percent of the sales are in five other adjacent counties that are not involved in this proceeding. Central estimated that its sales in the 11 countries represent about 53 percent of the total sales of fluid milk products in such counties. Central testified that sales in the area by handlers regulated under the Greater Kansas City and Southwest Plains orders are substantial enough so that it cannot be concluded that the area is more closely aligned with St. Louis than with these other markets.

Central testified that it receives its total milk supply from Mid-Am producers, 56 of which are located within the 12-county area. Central also indicated that milk is received from other Mid-Am members located outside the area and that supplemental supplies are obtained during fall months from Mid-Am's regulated plants. Central also testified that it pays for milk twice a month on the basis of farm weights and butterfat tests that are determined by Mid-Am and at prices determined by Mid-Am. Central also testified that the prices paid to Mid-Am for its total milk needs (between 4.8 and 5.3 million pounds per month) were in excess of the Southern Illinois Class I price. As a result, Central concludes that it is not a disruptive factor in the market and that regulated handlers have been successful in competing for sales in central Missouri. As evidence of this, Central testified that school contracts have been awarded to regulated handlers in the past and that most of the current contracts to serve a number of colleges and universities are held by a Southern Illinois regulated handler, while one is held by a Greater Kansas City regulated handler. Furthermore, Central testified that certain school contracts in the proposed area have been awarded at prices above those that apply to the St. Louis school district. In addition, Central testified that currently milk processed by Packet is priced below milk processed by Central in all outlets that are served by both handlers and that Central had to reduce prices to remain competitive when Packet first entered such outlets.

Central also contends that the 12-county area is not a major source of supply for handlers regulated under the Southern Illinois order and, thus, there is little overlap of procurement competition between regulated and unregulated handlers. In conclusion, Central contends that the 12-county area is not sufficiently associated with the Southern Illinois market, either in terms of sales or procurement, and that there is no evidence of disruptive or disorderly marketing conditions that would warrant regulation of the area. Central contends that adoption of the proposal would do nothing more than establish an administrative recordkeeping and reporting burden for Central Dairy that is not warranted in view of marketing conditions.

Packet's proposal was also opposed by Deters All-Star Dairy (Deters), an unregulated handler who operates a plant at Quincy, Illinois. Deters testified that it distributes a small amount of dairy products in Lincoln County and possibly in Audrain and Montgomery Counties. Deters testified that if these counties were added to the Southern Illinois marketing area, it would become a partially regulated handler under the order. Deters testified that the added administrative burden of such partial regulation would probably result in Deters withdrawing from the area.

In its brief, Deters contends that Lincoln County should not be added to the marketing area since Packet has no sales in that county. In addition, Deters argues that none of the 12-county area should be regulated since there is no evidence of disorder that would warrant Federal regulation. Deters argues that competition between regulated and unregulated handlers is not, in itself, evidence of a marketing problem.

The objective in defining a marketing area is to encompass that territory within which regulated handlers compete with each other for a major portion of their sales of fluid milk products. If a significant proportion of the major sales area of regulated handlers is excluded from the marketing area definition, the possibility of one or more plants avoiding full regulation is enhanced. Any plant that is able to avoid full regulation has the opportunity to have a significant price advantage, in both the procurement of raw milk supplies and in the distribution of fluid milk products in competition with regulated handlers who are subject to the classified pricing and pooling provisions of an order. This occurs because regulated handlers are required

to pay not less than minimum order prices for milk according to its use. Milk in fluid uses (Class I) is priced at the highest level while milk in manufacturing uses (Class II and III) is priced at lower levels. All producers who supply regulated handlers receive a blend price for all of their milk that is a weighted average of all the milk that is priced to all handlers at class prices. Thus, an unregulated handler is theoretically in a position to obtain a supply of milk for fluid use at the blend price paid to producers by regulated handlers since, all other factors being equal, producers would have no additional economic incentive to supply regulated handlers versus unregulated handlers. If an unregulated handler is able to obtain milk at such a price, such handler would have a pricing advantage for milk in fluid use over a regulated handler by the difference between the order Class I and blend prices. To the extent that an unregulated handler has manufacturing uses, the pricing advantage would be eroded since it is likely that such milk would also have to be procured at the blend price that is in excess of the minimum order Class II and Class III prices.

It is not possible or necessary to include within a marketing area definition the entire sales area of each and every regulated plant. It is very likely that there will always be some plants that have fluid sales beyond any defined regulatory boundary into secondary markets in competition with either unregulated plants or plants regulated under other orders. Resolution of the issue involves a judgment of what area constitutes the primary sales area of regulated plants and whether competition between regulated and unregulated plants in secondary markets is so inequitable that the only reasonable recourse is Federal regulation of such secondary markets.

It is obvious that the current Southern Illinois marketing area does not include a sufficient proportion of the sales area of currently regulated plants. This is a result of structural changes in the distribution sector of the Southern Illinois market that occurred when the St. Louis-Ozarks order was terminated on April 1, 1985. When such order was terminated, five additional distributing plants in the St. Louis area (three in Missouri and two in Illinois) became regulated under the Southern Illinois order by virtue of their sales in the Southern Illinois marketing area. As a result, the amount of producer milk pooled under the Southern Illinois order increased from about 75 million pounds in March to 149 million pounds in April 1985. Also, total Class I sales by distributing plants increased from 47 million pounds in March to about 96 million pounds in April. Of total Class I sales, the amount distributed inside the Southern Illinois marketing area by pool plants increased from about 25 million pounds in March to 33 million pounds in April. More importantly, the amount of fluid milk sales distributed outside the Southern Illinois marketing area increased from about 23 million pounds in March to over 63 million pounds in April. Thus, as a result of the termination of the St. Louis-Ozarks order and the regulatory change of the five distributing plants, Class I sales outside the marketing area by pool plants are almost twice as much as the total Class I sales made inside the marketing area by pool plants.

During the first quarter of 1985, prior to the termination of the St. Louis-Ozarks orders, Southern Illinois order handlers accounted for about 60 percent of all fluid milk sales in the Southern Illinois marketing area, while 40 percent of the sales were made by plants regulated under other orders. Most of the other order sales in the marketing area were made by St. Louis-Ozarks order handlers, about 25 percent of total sales in the marketing area. During the second quarter of 1985, the proportion of total fluid milk sales in the Southern Illinois marketing area accounted for by handlers regulated under the order increased to about 83 percent because of the pooling of the additional plants.

During the first quarter of 1985, about 52 percent of the total fluid milk sales of Southern Illinois regulated plants were made within the Southern Illinois marketing area while 48 percent were outside the marketing area. Also, about 16 percent of total fluid sales were made in nonfederally regulated territory. However, during the second quarter of 1985, the proportion of the total sales of Southern Illinois order handlers within the marketing area had declined to about 34 percent, while the proportion outside the marketing area had increased to 66 percent. More importantly, the proportion of regulated handlers' sales in nonfederally regulated territory increased to about 52 percent.

These dramatic shifts in market sales data were a result of the Southern Illinois marketing area not encompassing much of the sales areas of the five former St. Louis-Ozarks order handlers. This is further reflected in fluid milk sales data of such distributing plant. During March 1985, which was the last month of operation of the St. Louis-Ozarks order, about 18 percent of the fluid milk sales of the five plants were made in the Southern Illinois marketing area, 64 percent in the St. Louis-Ozarks marketing area, and about eight percent in nonfederally regulated territory. In April 1985, the proportion of the fluid milk sales of these plants in nonfederally regulated territory had increased to over 76 percent.

The previous data merely indicate that fluid milk sales of the five distributing plants continue to be made in the former St. Louis-Ozarks marketing area, which have been identified as sales in nonfederally regulated territory since the termination of that order. Prior to April 1, 1985, sales in unregulated territory by Southern Illinois pool plants averaged about 7.5 million pounds per month. Beginning with April 1985, such sales in unregulated territory increased to over 48 million pounds per month. For the April 1985 through March 1986 period, total route sales in unregulated territory were about 593 million pounds.

The unregulated territory in which these fluid milk sales are made is not precisely identified. However, it is reasonable to conclude that the greatest proportion of such sales are made in the St. Louis portion of the former St. Louis-Ozarks marketing area. This area, which is represented in Mid-Am's proposal, is a major consumption center which has a population in excess of 2.1 million, which is slightly in excess of the population of the current Southern Illinois marketing area. Annual fluid milk product consumption estimates for this area indicate that fluid milk sales in the area represent 90 percent or more of the total fluid milk sales made by Southern Illinois order handlers in unregulated territory.

Southern Illinois regulated handlers are by far the major suppliers of the territory proposed by Mid-Am to be added to the Southern Illinois marketing area. At least six handlers operating distributing plants under the Southern Illinois order have sales in the area. Additional relatively minor sales of fluid milk products are made in four of the counties either by one plant regulated under the Southwest Plains order or one plant regulated under the Paducah, Kentucky, order. It is estimated that Southern Illinois handlers account for 100 percent of the fluid milk sales in St. Clair County, Illinois; the city of St. Louis; and Bollinger, Franklin, Jefferson, Perry, St. Charles, Ste. Genevieve, St. Louis and Warren Counties in Missouri. In Cape Girardeau County, it is estimated that 98 percent of sales are by Southern Illinois order handlers while the remaining two percent are by a handler regulated under the Paducah, Kentucky, order. In the three remaining

Missouri counties included in the proposal (Crawford, St. Francois, and Washington) it is estimated that Southern Illinois order handlers account for 75, 90, and 95 percent, respectively, of fluid milk sales with the remainder in each of the counties being supplied by a Southwest Plains order handler.

In view of the previous findings concerning the sales area of regulated plants, all of the territory proposed by Mid-Am which was previously a part of the St. Louis-Ozarks marketing area should be added to the Southern Illinois marketing area. Such action is necessary because the current Southern Illinois marketing area does not reflect the structural and regulatory changes that occurred as a result of the termination of the St. Louis-Ozarks order. The current marketing area excludes a primary population center that is the major sales area of currently regulated plants. The addition of the territory would result in a marketing area definition that encompasses the major sales area of regulated plants and thereby provide greater assurance of a consistency of regulation among plants that compete with each other for the bulk of their fluid milk sales and for supplies of milk.

Packet's proposal to further extend the marketing area to include territory in central Missouri should not be adopted. The primary purpose of the proposal is to regulate Central Dairy. In this regard, it is noted that Central Dairy has no fluid milk sales in the current marketing area or in any of the territory previously discussed that would be added to the marketing area. Thus, Central Dairy is not a competitive factor with respect to fluid milk sales in the major population centers that represent the primary sales area of currently regulated plants.

The population of the 12-country area proposed by Packet (about 400,000) represents about 18 percent of the population in the area proposed by Mid-Am or about 9.3 percent of the total population of the marketing area as it would be expanded by this decision. Although the population of Boone and Cole Counties is rather large, the area in total represents a relatively minor secondary market for regulated handlers that serve other major markets.

Besides Central Dairy, which has sales in 11 of the 12 counties, fluid milk sales are made in the proposed area by six handlers who are regulated under the Southern Illinois order, three handlers who are regulated under the Greater Kansas City order, and by one Southwest Plains order handler. Deters, another unregulated handler, also has some fluid sales in at least one of the counties. However, for all practical purposes, regulated handlers and Central Dairy are the major competitors who sell in the 12-country area.

Sales in the area by Central Dairy represent from 50 to 57 percent of total fluid milk sales in the area based on a number of estimates of the total amount of fluid milk sales in the area. The proportion of sales represented by handlers regulated under the three orders is not revealed very precisely on the record, although it appears that Southern Illinois order handlers represent the greatest proportion of the remaining sales in the area. In Boone County, which has the greatest population, Central Dairy accounts for about 53 percent of total sales and it appears that Southern Illinois and Greater Kansas City order handlers account for about 31 and 18 percent of sales, respectively. In Cole County, Central Dairy accounts for 50–60 percent of sales while Southern Illinois, Greater Kansas City and Southwest Plains order handlers account for about 22 percent, 17 percent, and 3 percent of sales, respectively.

Although the preceding data are not precise, they indicate that Central Dairy is the primary handler serving the area and, furthermore, that such area constitutes Central Dairy's major sales area as about 85 percent of Central's sales are made in the area. Sales by regulated handlers, however, do not represent as great a share of the market and their sales in the area cannot represent a substantial proportion of their total business. Even if Southern Illinois regulated handlers had all of the fluid milk sales in the 12-county area, such sales would have represented from 8.8 to 7.3 percent of their total fluid milk sales. If it is assumed that Southern Illinois order handlers account for 35 percent of the sales in the area, such sales would represent from 3.0 to 2.5 percent of their total sales.

Since not all of the Southern Illinois order handlers have sales in the 12-county area, the sales in the area must represent a somewhat larger proportion of the business of those handlers who do sell in the area than the three percent indicated above. Even so, such sales cannot possibly represent a significant portion of the sales of regulated handlers. During the last three months of the existence of the St. Louis-Ozarks order, the five plants in the St. Louis area had from 7.6 to 8.3 percent of their sales in unregulated territory. However, the proportion of such sales in the 12-county area is not known. It is also noted that Packet has sales in only 6 of the 12 counties. Packet's total sales in the area during 1985 represented about six percent of the total estimated fluid milk sales in the 12-county area, or less than five percent of Packet's total fluid milk sales.

Packet's major contention is that Central Daisy has a pricing advantage over regulated handlers who are subject to classified pricing and that such handlers are, therefore, unable to compete successfully with Central Dairy for sales of fluid milk products in retail or institutional (schools, hospitals, military bases, etc.) outlets. In this regard, Packet has not been actively involved in soliciting institutional business, at least with respect to school contracts, in either the 12-county area or the St. Louis area for a number of years. However, a number of regulated handlers have secured school contracts in the 12-county area and one other Southern Illinois handler currently supplies a number of colleges and universities in the area.

As previously stated, Packet estimates that Central Dairy had an average price advantage over regulated handlers that ranged from 92 cents to $1.45 per hundredweight over the period of May 1985 to Octobver 1986. This cost difference was computed by applying an estimate of Central Dairy's Class I, Class II and Class III use to a regulated handler. Based on such uses, an average per hundredweight cost for a regulated handler was computed by applying order minimum class prices plus over-order charges that are paid by regulated handlers to Mid-Am and other cooperative associations. However, with respect to milk in Class I uses, Packet used announced Mid-Am prices, rather than prices paid, since certain monthly credits issued by Mid-Am were not considered in Packet's price comparisons.

Certain credits, up to a maximum of 31 cents, were identified on the record. Such credits relate to uniform daily receipts and to purchases of milk on the basis of farm weights and butterfat tests. However, Packet admitted that certain credits in addition to those that were identified apply to purchases of milk, although the magnitude to such other credits is not specifically contained in the record. Absent such other credits, the over-order charge for milk in Class I use that was used by Packet for the average price comparison from $1.63 to $2.24 per hundredweight.

Mid-Am testified that Central Dairy was charged the St. Louis area blend price plus comparable over-order charges that are paid by regulated handlers for milk in Class I use. Prices that were paid by Central Dairy during May 1985 through October 1986 minus the blend price at St. Louis indicate that such comparable over-order charges

applicable to Central Dairy, and presumably to regulated handlers, ranged from 97 cents to $1.22 per hundredweight. On this basis it would appear that the alleged pricing advantage for Central Dairy as computed by Packet is substantially overstated; as much as 52 to 95 cents per hundredweight over the period of the data.

In view of the previous price comparisons, it is obvious that the record is not at all clear as to what price level actually applies to regulated handlers for milk in Class I use. However, regardless of the price that applies to regulated handlers, it is apparent that Packet's computed pricing advantages for Central Dairy are related to factors other than the application of classified pricing to regulated handlers or the lack of classified pricing to Central Dairy.

During the May 1985 through October 1986 period, the average monthly prices paid by Central Dairy for all of the milk received from Mid-Am producers, absent certain credits, were in excess of the Southern Illinois order Class I price at St. Louis. Such average monthly prices were also subject to identifed credits that are available to all handlers that purchase milk from Mid-Am. The maximum credit, 31 cents per hundredweight, consists of three cents for purchasing milk on the basis of producer butterfat tests, three cents for milk purchased on the basis of farm tank weights, and up to 25 cents for uniform receipts. Central Dairy received the farm weights and tests credits but testimony did not reveal what credit level was received for uniform receipts. However, even if Central received the same volume of milk every day and obtained the maximum credit, the average price paid by Central Dairy would still have been in excess of the order Class I price during 14 of the 18 months. During the 14 months, Central Dairy's average price ranged from 3 to 52 cents over the order Class I price, with the average being almost 29 cents over the Class I price. During four months Central Dairy's average price was less than the order Class I price by 20, 10, 9, and 6 cents per hundredweight.

Central Dairy's average price for milk and the minimum order Class I price are not directly comparable. The Class I price applies to milk in fluid uses while the average price applies to all milk received by Central Dairy whether it is used in fluid milk products or in other dairy products such as cream or ice cream. In addition, the Class I price at St. Louis includes a plus location adjustment that is intended to reflect the additional cost of hauling milk to plants in this major population center from northern supply areas relative to the cost of hauling milk from such areas to plants located in the base zone of the marketing area. (Official notice is taken of the final decision issued by the Deputy Assistant Secretary on October 15, 1985 (50 FR 42549) that considers the pricing of milk in the St. Louis area). Consequently, it is not at all apparent that the location value of milk at Central Dairy's location (Jefferson City) would need to reflect the value that is necessary to attract a supply of milk to St. Louis. In view of these factors, as well as the previous price comparisons, it cannot be concluded that Central Dairy has a substantial pricing advantage over regulated handlers as is contended by Packet.

Central Dairy does rely, to a limited extent, on regulated milk to supplement fluid milk needs during fall months of the year. Such supplemental supplies, representing about 10 percent of Central Dairy's total fall receipts, are received from two Mid-Am supply plants. One of the supply plants is regulated under the Southern Illinois order while the other plant is regulated under the Southwest Plains order. Such milk is priced as Class I milk under the order that regulates the plant from which the milk is shipped.

Federal order producers who supply the Southwest Plains and Southern Illinois orders benefit from the plant sales that supplement Central Dairy's fluid milk needs during the fall months. However, during other months such producers carry the burden of maintaining the reserve supplies of milk that are necessary to meet Central Dairy's fluid milk needs without sharing in the benefits that accrue from Central Dairy's fluid milk sales. Consequently, there is some inequity between producers who carry the reserve supplies and those producers who supply Central Dairy throughout the year. Although this is contrary to the concept of marketwide pooling under Federal orders, whereby all producers share equally the benefits from fluid milk sales and the cost of maintaining reserve milk supplies, this is not in itself a sufficient basis under current marketing conditions to regulate Central Dairy under the Southern Illinois order for several reasons.

First of all, as a prelude to the equal sharing concept among producers, there must be some demonstration of a commonality of market from either a handler (sales) or producer (supply) viewpoint. This has not been demonstrated with respect to handlers as previously indicated by the description of the proportions of sales of fluid milk products made in the 12-county area by various handlers. The 12-county area is a relatively minor sales area that is served to a limited degree by Southern Illinois order regulated handlers who are primarily involved in supplying the fluid milk needs of other heavier populated markets. In terms of sources of supply, Mid-Am represents the producers in the 12-county area as well as a large proportion of the producers who supply the Southern Illinois market. However, in terms of the most current data in the record, there is no procurement area overlap between Central Dairy's supply area and the Southern Illinois order supply area.

Another factor of consideration is the extent to which all producers would be expected to benefit as a result of the extension of regulation to Central Dairy. Any potential benefit would be insignificant even if all of Central Dairy's receipts were sold as fluid milk products because of the limited volume of such receipts relative to the amount of milk included in the Southern Illinois order pool. Central Dairy's total receipts in May (4.8 million pounds) and October (5.3 million pounds) of 1986 would have represented 2.3 and 3.1 percent, respectively, of the producer milk that would have been pooled under the order during such months. This would have resulted in a blend price increase of a little over one cent for the two months. To the extent that Central Dairy has milk in other than fluid uses, the impact would have been less.

A third factor is that the fall supplemental supplies respresent a very limited proportion (about 10 percent or 500,000 pounds) of Central Dairy's total receipts. More importantly, about 80 percent of such supplemental milk is regulated under the Southwest Plains order, which indicates a greater association with that order than the Southern Illinois order. Furthermore, from the limited amount regulated under the Southern Illinois order (equivalent to less than three tanker loads per month), it cannot be concluded that Southern Illinois order producers are bearing a substantial burden by maintaining reserve milk supplies to meet Central Dairy's fluid milk needs.

In view of the previous findings, the Southern Illinois marketing area should not be expanded to include the 12-county area in central Missouri. Such area is neither a significant sales area of currently regulated plants nor a significant source of supply for regulated handlers. Furthermore, it cannot be concluded that regulated handlers have

a significant cost disadvantage in competing for fluid milk sales in the area because of Central Dairy's unregulated status and the resulting lack of application of classified pricing and pooling regulations to Central Dairy.

The marketing area expansion included herein will result in a marketing area definition that more appropriately reflects the sales area of currently regulated plants. The new territory should be included in the Southern Zone of the marketing area for pricing purposes to maintain the current level of pricing that applies at distributing plants in such area under the order. Also, as a result of the expansion, the Southern Illinois marketing area should be redesignated as the Southern Illinois-Eastern Missouri marketing area.

Proponents of the marketing area expansion that is adopted herein testified that the current Southern Illinois order provisions should apply to the expanded marketing area and no other proposed amendments of particular applicability to the added territory were contained in the notice of hearing or testified to at the hearing. Consequently, the regulatory provisions of the order for the expanded Southern Illinois-Eastern Missouri marketing area are those of the current Southern Illinois order, except as modified hereafter in the other material issues identified in the proceeding.

2. Performance Standards for Pool Plants

The two proposals to relax the shipping standards for pool supply plants should be adopted. The minimum percentage of a supply plant's receipts that must be transferred to distributing plants to qualify the supply plant as a pool plant is reduced from 50 percent to 40 percent for the month of December. Also, the minimum shipping percentage for a supply plant operated by a cooperative should be reduced to 25 percent if the cooperative delivered 75 percent of its producer milk to pool distributing plants during the immediately preceding 12-month period of September-August. In addition, the receipts of milk at distributing plants and supply plants that are used as a basis to determine whether such plants qualify as pool plants should be modified.

Under the current order provisions, a supply plant must transfer at least 50 percent of its receipts of milk from dairy farmers and cooperative associations to pool distributing plants to qualify as a pool plant. If the supply plant meets such standard for the months of September–January, it is eligible for automatic pool plant status for the following months of February-August.

The two changes in the pooling standards adopted herein for supply plants were proposed by six cooperative associations (AMPI, Land O'Lakes, Mid-Am, Midwest, Prairie Farms, and Wisconsin Dairies), that represent about 90 percent of the dairy farmers who supply the market.

The cooperatives testified that the December shipping standard should be reduced since the market's supply-demand balance is not as tight during December as it is during other months when supply plants must make shipments to distributing plants to qualify for pool plant status. The cooperatives contend that such situation exists because fluid milk demand is less during the last two weeks in December while production is beginning to increase seasonally.

The cooperatives also proposed that a 25-percent shipping standard should be adopted for a supply plant operated by a cooperative association to eliminate certain costly and inefficient movements of milk that are being made for pooling purposes. Testimony concerning the need for the proposal was limited to the marketing situation concerning a supply plant operated by Prairie Farms at Carbondale, Illinois. Prairie Farms testified that the supply plant, which also manufactures a number of Class II products, is located in the southern portion of the marketing area. Prairie Farms testified that a considerable portion of the plant's milk supply is obtained from northern procurement areas while the available distributing plants to which the Carbondale plant makes its qualifying shipments are also located to the north. Consequently, the cooperatives contend that a lower shipping standard would reduce the marketing costs incurred to qualify the Carbondale plant, or any other supply plant in a similar situation, for pooling purposes. The cooperatives also proposed, that a condition for a lower shipping standard, cooperatives operating any such supply plants would have to demonstrate a sufficient degree of performance in supplying the fluid milk needs of the market. Thus, in order to qualify for the lower shipping standard, the cooperatives proposed that at least 75 percent of the producer milk of the cooperative association operating the supply plant would have to be received at distributing plants during the immediately preceding 12-month period of September–August.

There was no opposition to the proposed lower shipping standard for December. However, NFO opposed the adoption of the 25-percent shipping standard for supply plants that are operated by cooperative associations. NFO contends that the proposal would provide an economic incentive for the market's deficit milk supplies to be committed to a supply plant for manufacturing uses and thereby jeopardize the availability of milk supplies for fluid uses at distributing plants.

The lower 40-percent shipping standard for December should be adopted. The lower standards is appropriate in view of the fact that the market's supply/demand relationship for December is not as tight as during the other months of the September through January qualifying period for supply plants. In addition, it is apparent that shipments from supply plants are relied on to a lesser extent to furnish the fluid milk needs of the market during December than during the other qualifying months. For example, during September-November 1984 and January 1985, about 69 percent of the producer receipts at the market's supply plants was transferred to distributing plants while about 57 percent was shipped during December 1984. During the next qualifying season (September 1985-January 1986) 53 percent was shipped during December while 57 percent was shipped during the other four months.

Although the above percentages for December 1984 and 1985 are in excess of the 50-percent shipping standard, such percentages also include shipments that were made solely for the purpose of pooling supply plants. Such additional shipments from supply plants require either a redirection of milk that is normally shipped directly from farms to distributing plants or the reloading of milk at distributing plants to be shipped back to supply plants or other manufacturing plants for surplus disposal. Such extra hauling and handling practices result in additional marketing costs, waste energy, adversely affect milk quality and may disrupt the efficient operation of distributing plants.

A lower December shipping standard for supply plants is warranted. The 40-percent standard should be low enough to eliminate most if not all of the uneconomic shipments by supply plants that are made in that month solely to qualify the plants and the milk associated with such plants for pooling. In addition, it should be sufficiently high to assure adequate supplies of milk at distributing plants during the first two-thirds of such month when Class I sales are higher.

The proposed lower shipping standard for supply plants operated by a

cooperative association that has furnished a high percentage of its milk supply to the market's distributing plants during the past year should also be adopted. Specifically, a 25-percent shipping standard should apply during September-January for a supply plant operated by a cooperative association, if 75 percent of such cooperative's producer milk was delivered to pool distributing plants during the immediately preceding 12-month period of September–August.

This proposal is designed to alleviate a specific marketing problem that Prairie Farms is encountering under the order's current 50-percent shipping standard for supply plants. It is not clear whether any other cooperative would qualify a supply plant for pooling under the lower performance standard.

Prairie Farms operates a pool supply plant at Carbondale, Illinois, which is in the Southern Zone of the marketing area. In addition to supply plant operations, cottage cheese, sour cream and other Class II uses are manufactured at the plant. The supply plant qualifies on the basis of shipments to the handler's Southern Illinois distributing plants located at Carlinville and Olney, which are located in the market's Base Zone and more than 120 miles north of Carbondale.

Since Carbondale is situated on the southern fringe of the market's procurement area, a considerable portion of the plant's milk supply is received from the farms of producers who are located more than 100 miles to the north. Milk produced on dairy farms in Clinton, Jefferson and St. Clair Counties is received regularly at the supply plant.

Each year during the qualifying season for supply plants (September-January), Prairie Farms ships at least 50 percent of its producer milk associated with the Carbondale plant to pool distributing plants to assure that the supply plant will qualify for pool plant status. At the same time that milk is being shipped north from the supply plant in the Southern Zone to distributing plants in the Base Zone to assure that the supply plant qualifies as a pool plant, milk from the north is being hauled south to supply the Carbondale plant's processing requirements. Consequently, there are some inefficiencies associated with the operation of the plant due to its location relative to the locations of the market's distributing plants, population centers, and milk supplies.

Prairie Farms delivered more than 79 percent of its producer milk to Southern Illinois pool distributing plants during the months of September 1985 through August 1986. For the same 12-month period, only 35 percent of the producer receipts at all of the market's supply plants was moved to pool distributing plants and 59 percent of the market's producer receipts was used for Class I purposes.

Despite the inefficiencies associated with the location of the Carbondale plant, the proposal should be adopted for this and other supply plants that are operated by cooperative associations that are substantially and primarily involved in supplying the fluid milk needs of the market throughout the year. A market supplier's willingness to furnish at least three-fourths of its pooled milk to distributing plants on a year-round basis should be recognized in the performance standards for pool supply plants. A lower qualifying standard is appropriate in view of a cooperative's overall effort in furnishing such a large percentage of its milk to pool distributing plants during the past marketing year for plants. Providing the lower standard will give cooperatives the flexibility to move milk supplies as necessary and to operate more efficiently by reducing if not eliminating unnecessary shipments of milk from supply plants solely for pooling purposes.

The 75-percent overall delivery standard that a cooperative would have to meet on an annual basis to be eligible to qualify supply plants under the lower shipping percentage is sufficiently above the marketwide average Class I utilization to maintain the integrity of the order's pooling standards for such plants. Furthermore, a supply plant would not be able to qualify for pool status entirely on the basis of a cooperative's direct deliveries to distributing plants. An eligible supply plant would continue to qualify for pool status on the basis of transfers from such plant to pool distributing plants. However, such a supply plant would have to transfer only 25 percent rather than 50 percent of its pooling base receipts to fully regulated distributing plants to qualify the supply plant as a pool plant.

NFO's concerns, i.e., that the proposal would provide an economic incentive for the market's deficit milk supplies to be committed to manufacturing uses thus jeopardizing the availability of milk supplies for fluid uses, are unwarranted. Actually, to be eligible to qualify a supply plant for pooling under the lower shipping standard, a cooperative would have to furnish 75 percent of its total pooled milk for the year to distributing plants whereas a supply plant must furnish only 50 percent of the plant's milk receipts to distributing plants each month. Furthermore, the year-round performance standard for a cooperative association to utilize the lower shipping standard is substantially in excess of the market's Class I utilization.

In addition, a modification is incorporated in the order language adopted herein that specifies that the lower shipping standard is applicable only to cooperative associations that have supplied the market during each of the months of the previous September through August period. This will prohibit the possibility of a cooperative association being able to pool additional milk under the order during the next 12 months by associating 75 percent of its supply during only a limited portion of the September through August period. The lower shipping standard is intended to apply only to those cooperative associations that have demonstrated a consistent, year-round, substantial level of performance in supplying the fluid milk needs of the market.

As intended, the provisions for automatic pooling for supply plants would not be changed. Thus, if an eligible supply plant operated by a cooperative met the 25-percent shipping standard during the qualifying months of September-January, such plant would qualify for automatic status in the following months of February-August. A supply plant's eligibility to qualify under the lower shipping percentage during the qualifying season, which begins on September 1 of each subsequent year, would be dependent on the cooperative's delivieries to distributing plants during the preceding 12-month period.

Additional proposed modifications should be made to the pool plant definition for both distributing plants and supply plants. The changes are necessary to clarify the pooling standard for supply plants and to modify what receipts of milk at distributing plants and supply plants should be used as a basis for determining whether such plants are pool plants. Briefly, under current order provisions, a distributing plant attains pool plant status if its route disposition meets specified percentages of receipts of milk from dairy farmers (including milk diverted by an operator of a pool plant) and cooperative associations. A supply plant acquires pool status by shipping a sufficient proportion of its receipts of milk to pool distributing plants. The type of receipts of milk at a supply plant that are used as a measure of performance are the same as those specified for a distributing plant. In addition, the pool supply plant provision requires that pool distributing plants that receive supply plant milk

must have at least 50 percent Class I use (40 percent in some months) of the total of supply plant milk and producer milk receipts.

This latter Class I use requirement should be eliminated from the pooling standard for supply plants. The application of this standard is an intrusion in the supply plant pooling provision that, in addition to being confusing and presenting a number of application questions, establishes a totally different pooling criteria than what is required of distributing plants to attain pool plant status. In order to pool a supply plant, it should only be necessary for a supply plant to ship a sufficient proportion of its receipts to distributing plants that are pooled on the basis of sufficient route disposition without the additional intrusion of a Class I use standard.

The supply plant pooling provision should also be modified to clarify what receipts of milk should be used as a basis to determine whether a sufficient proportion of receipts have been shipped to pool distributing plants. In addition to the current receipts that are specified (milk from dairy farmers and cooperative associations) all milk diverted from the plant should be included as receipts. Such receipts represent the normal supply of milk that is available for use at or shipment from a supply plant and, thus, should be used as a basis of measuring the plant's performance. However, milk that is received at a supply plant by diversion from another plant should not be considered a receipt for measuring supply plant performance. Such milk is normally recieved at some other plant (pooled under this or another order) and would be included in the pooling base receipts of the plant form which the milk was diverted.

As indicated under issue 4, milk may be diverted between pool plants, including from a supply plant to distributing plants. Such milk would be included as a receipt at the supply plant from which diverted since it represents a part of the normal supply of milk at the supply plant. However, any such diverted milk would not be included as a qualifying shipment for supply plant pooling purposes. Only milk that is transferred from the supply plant to a distributing plant would be included as qualifying shipments. This distinction was made on the record by proponents of the amendments to the supply plant provisions of the order. In this regard, the supply plant definition should also be modified to specify that milk must be "transferred" rather than "moved" to distributing plants.

It is noted that the proposed use of the term "producer milk" in referring to receipts of milk is not incorporated in the pool plant definition for a supply plant. Although such term is essentially the same as the terms used herein (receipts from dairy farmers, cooperative associations and milk diverted from a plant) it is technically incorrect since milk does not become "producer milk" until it is determined that the plant receiving the milk has qualified as a pool plant.

The pool plant definition for distributing plants should be modified to include additional receipts of milk in determining whether such plants are pool plants. Currently, the order does not include in a distributing plant's receipts all milk that may be diverted from the plant or milk that is received from a supply plant. As a result of the exclusion of these receipts, the current pooling standards for distributing plants do not accurately measure a plant's total performance in determining whether such plant should be pooled. For example, if a distributing plant received all of its milk from a supply plant, the distributing plant would have no pooling base (i.e., no receipts) and, technically, the plant could not qualify as a pool plant regardless of the amount of its route disposition. Also, if only a token amount of milk was received from dairy farmers or cooperative associations, the plant could be a pool plant regardless of the amount of milk that might be received from supply plants for other than fluid use. The same situation could occur by excluding from a distributing plant's receipts milk that is diverted from the plant to another outlet by other than a plant operator. There would be virtually no limit on the amount of milk that a cooperative association could associate with the market during the months of May, June and July. However, by including all diverted milk as a receipt at a distributing plant, an indirect diversion limitation is applicable through the pool plant standards.

In order to correct these deficiencies, all bulk fluid milk products physically received at a distributing plant, as well as all milk diverted from such a plant, should be included as receipts in determining whether distributing plants should acquire pool plant status. In addition to providing a better measure of a plant's performance, such action will protect the integrity of the pooling provisions of the order by limiting the amount of additional milk that may be associated with the market for other than fluid uses.

3. Regulation of Distributing Plants That Qualify as Pool Plants Under More Than One Order

The order should be amended to provide that a distributing plant that meets the pooling standards of this and one or more other Federal orders, and which was a pool plant under this order in the immediately preceding months, shall continue to be a pool plant under this order until the third consecutive month in which it has a greater proportion of its route disposition in another Federal milk marketing area.

The order currently provides for essentially the same regulatory provision for plants that meet the pooling standards of more than one order. However, a shift in regulation cannot occur until the third consecutive month in which a plant has more than 50 percent of its route disposition in the marketing area of another Federal order. Such provision was adopted on an expedited basis effective February 1, 1987, on the basis of an emergency partial final decision issued on the record of this proceeding.

The emergency final decision clearly sets forth the basis of the historical policy for regulating plants that have sales in a number of markets under the order in which the greater proportion of sales are made. However, the decision concluded that there should be a deviation from this policy because of the unique marketing conditions that existed as a result of the termination of the St. Louis-Ozarks order. Basically, the reason for such a deviation was that the policy disregards the fact that 75 percent or more of the sales of currently regulated plants are in nonfederally regulated territory that may well have a greater asociation with the Southern Illinois marketing area than with any other Federal milk marketing area.

In its brief, Mid-Am contends that the February 1 amendment should be continued since an expansion of the marketing area might not resolve a potential shift in plant regulation that the amendment was intended to prevent. Mid-Am contends that the sales pattern of one distributing plant was undergoing a period of adjustment at the time of the hearing and that the handler has continued to make adjustments since the hearing.

As indicated in issue number 1, the Southern Illinois marketing area is being expanded substantially to include all of the St. Louis territory that was included in the former St. Louis-Ozarks marketing area. such expansion to include this major metropolitan area will result in more than a doubling of the population

in the current Southern Illinois marketing area. The major reason for the expansion is to include the primary sales area of currently regulated plants in the marketing area. Consequently, recognition of a concern that a plant may shift regulation because of sales in another market would be in direct conflict with the need and basis for the marketing area expansion to include the major sales area of regulated plants. Therefore, the order should be amended to reestablish the order provision that existed prior to the February 1, 1987, amendment.

4. Definition of Producer Milk

The producer milk definition, which stipulates the conditions under which milk may be diverted (moved to alternative outlets) and remain pooled and priced under the order, should be revised. The revised definition incorporates the basic features proposed by cooperative associations to provide for greater overall marketing efficiencies in handling reserve supplies of milk associated with the market. Generally, the revised definition contains two major changes from current provisions. Diversions would no longer be limited on an individual producer basis and all milk diverted by handlers (including milk diverted by a cooperative association from another handler's pool plant) would have to be associated with a pool plant.

Specifically, the revised producer milk definition would allow cooperative associations and pool plant operators to divert 45 percent of their total milk supplies to nonpool plants and still be priced under the order during August and December. During September-November and January-April, 35 percent could be diverted to nonpool plants. In order to be eligible for diversion to nonpool plants, a dairy farmer's milk would have to be physically received at a pool plant at least once during each of the months of August-April. Also, unlimited amounts of milk could be diverted to other pool plants. All diverted milk would be priced at the location of the plant where it is physically received and guidelines would be provided to exclude any milk that is diverted in excess of prescribed limitations.

Currently, diversions to both pool plants and nonpool plants are limited on an individual producer basis. A dairy farmer's milk may not be diverted to another pool plant during any month for more days of production than such producer's milk is received at a pool plant. The same monthly limit applies to diversions to nonpool plants that are regulated under other Federal orders. With respect to diversions to unregulated nonpool plants, no limits apply in May, June and July. In the months of August and December, not more than 12 days of a dairy farmer's milk production may be diverted to such plants and during the months of September-November and January-April not more than 8 days of a producer's milk production may be so diverted.

The proposal to revise the producer milk definition was submitted by six cooperatives (AMPI, LOL, Mid-Am, Midwest, Prairie Farms, and Wisconsin Dairies) that supply 90 percent of the market's pooled milk. They testified that the changes are needed to give handlers more flexibility to move milk of dairy farmers to manufacturing plants when it is not needed at distributing plants for fluid use.

In order to provide for greater efficiency in marketing reserve supplies of milk, the cooperative associations proposed that the limits on diversions to nonpool plants apply on an aggregate handler basis rather than an individual producer basis. They proposed that handlers (pool plant operators and cooperative associations) be permitted to divert up to 25 percent of their total milk supply during September-November and January-April and up to 35 percent of their receipts during the months of August and December. They also proposed that the current differentiation in the order between the amount of milk that may be diverted to unregulated plants and other-order plants be eliminated to allow diversions to all nonpool plants on the same basis. The cooperatives also proposed that a dairy farmer's milk must be received at a pool plant at least once during each of the months of August-April in order to be eligible to be diverted to a nonpool plant and that all milk be priced at the plant to which it is diverted. As a further refinement, the cooperatives proposed that guidelines be established to determine the manner in which milk should be excluded from the pool in the event that diversions exceeded the proposed limitations. Also, the cooperatives proposed that the order be amended to provide for unlimited diversions between pool plants that are operated by the same handler.

The cooperatives testified that allowing milk to be diverted to nonpool plants on the basis of a handler's total producer receipts, rather than on an individual producer basis, would provide for greater flexibility and efficiency in marketing milk that is in excess of fluid milk needs. They testified that the proposal would reduce administrative costs associated with tracking the milk of individual producers and that the uneconomic hauling of milk that occurs because of the current provisions would be substantially reduced. The cooperatives testified that under current provisions, milk of different dairy farmers must be shifted between pool plants and nonpool plants because the milk of individual dairy farmers can only be diverted to nonpool plants for a specified number of days. Thus, they contended that significant savings in hauling costs would result under the proposal as the most advantageously located supplies of milk could be shipped to distributing plants while outlying milk could be moved to nonpool plants.

The cooperatives testified that the proposed diversion percentage limitations incorporate the seasonality reflected in the current diversion limitations. The cooperatives also testified that the proposed diversion limits were intended to reduce the amount of milk that could be shipped to nonpool plants and still be priced under the order. In effect, the cooperatives contend that since the proposal would result in greater handler flexibility and marketing efficiency, there is also a relatively greater need to protect the integrity of the pooling standards by limiting the amount of milk for manufacturing uses that could be associated with the market. Thus, they testified that the proposed diversion limitation for August and December (35 percent) is slightly below the current 39 percent diversion limitation on an individual producer basis (12 days of production divided by 31 days). During September-November and January-April, they testified that the proposed 25 percent diversion limitation reflects the need for relatively less milk to be diverted and is also slightly below the current 26 to 29 percent diversion limitation on an individual producer basis (8 days of production divided by 28 to 31 days).

In an effort to further reduce the amount of milk for manufacturing uses that could be associated with the market, the cooperatives also proposed that the same diversion limitations would apply regardless of the type of nonpool plant that receives the milk. They contended that substantial quantities of milk can be diverted during the August-April period when diversions are intended to be limited. They testitifed that this can occur because different quantities of milk can be diverted to unregulated nonpool plants (eight to 12 days) and nonpool, other-order plants (the same number of days of production that is received at a pool

plant). For example, during August and December when 12 days of production can be diverted to unregulated nonpool plants, they testified that pool plants could potentially receive only nine days of production as the remaining milk could be diverted to nonpool, other-order plants. Likewise, they testified that during those months when eight days of production can be diverted to nonpool plants, pool plants could ptotentially recieve only 11 days' worth of milk production during the month.

The cooperatives also proposed that a dairy farmer must be sufficiently associated with the fluid milk needs of the market in order to be eligible for diversion to a nonpool plant. Thus, they proposed that, in order to be eligible for diversion to a nonpool plant, a dairy farmer's milk would have to be received at a pool plant at least once during each of the months of August-April. The cooperatives also testified that guidelines should be established in the order that prescribe a method for dealing with milk that may be diverted in excess of the diversion limitations. They testified that such guidelines are necessary to avoid controversy over what milk should be excluded from the marketwide pool in the event that milk is over-diverted.

With respect to diversions between pool plants, the cooperatives testified that the current order limitations were intended to establish which handlers were responsible for paying producers when their milk is received at more than one pool plant during the month. The cooperatives testified that there should be no limit on such diversions between pool plants that are operated by the same handler since the same handler would continue to be responsible for the milk. The cooperatives also testified that all diverted milk should be priced at the plant where it is received, regardless of the type of plant that receives the milk.

There was no opposition to the cooperatives' proposal generally. NFO supported the proposal conceptually but testified that the proposed diversion allowances were overly restrictive in terms of NFO's marketing experiences under the order. NFO testified that if the proposed diversion allowances were adopted, it would not be able to pool all of the milk of its producers who have historically been associated with the market, unless uneconomic shipments of milk were made. Thus, NFO claimed that the elimination of the separate diversion allowance for deliveries to plants regulated under other Federal orders, in conjunction with a lower allowance for diversions to all types of nonpool plants, would have an adverse impact on its marketing situation. NFO testified that in October 1986, 26 percent of its producer milk was diverted to nonpool plants (10 percent to plants regulated under other Federal orders and 16 percent to other unregulated plants). In November 1986, 33 percent of its milk supply was diverted (19 percent to other order plants and 14 percent to other nonpool plants). Thus, NFO requested that the separate diversion allowance be continued for nonpool, other order plants, or, in the alternative, that the diversion allowances be increased by 10 percentage points.

When milk is not needed at a fluid milk plant, usually it is moved directly from the farm to a nonpool plant where it is used in manufactured dairy products. Hence, the order currently provides for the milk to be diverted from pool plants to nonpoon plants by regulated handlers in recognition of an efficient marketing practice for disposing of the necessary reserve supplies of milk that are associated with the fluid milk needs of the market. Even greater efficiencies, as well as handler flexibility, would result from the adoption of the cooperatives' proposal to limit diversions on the basis of a handler's total receipts. Adoption of the proposal would result in obvious savings in transportation costs as testified to be cooperative associations. The milk of distant producers who are located nearer to nonpool plants could be diverted more frequently than under current provisions while the milk of other dairy farmers who are situated near the market's fluid milk plants could be continuously delivered to such plants. Consequently, the primary thrust of the cooperatives' proposal to limit diversions to nonpool plants during August-April on the basis of handler's total receipts should be adopted.

However, the proposed limits on the amount of milk that a handler may divert to nonpool plants is overly restrictive in terms of the current diversion limitations. The proposal eliminates the allowance for diversions to plants regulated under other orders and also reduces the percentage allowances from about 27 percent to 25 percent for the months of September-November and January-April and from 39 percent to 35 percent in August and December. Such a reduction in the amount of milk that may be diverted to nonpool plants is not consistent with the changes that occurred in the supply-demand relationship for the market since the St. Louis-Ozarks order was terminated on April 1, 1985. For the 12-month period immediately preceding such termination (April 1984-March 1985), about 72 percent of the producer milk regulated under the Southern Illinois order was used in Class I. For the April 1985-March 1986 period, only about 60 percent of the producer milk was used in Class I. Consequently, the limits on diversions to nonpool plants should be increased by 10 percentage points as proposed by NFO.

Diversions to all types of nonpool plants would be accommodated under the higher limits. No separate allowance for diversions to plants regulated under other Federal orders would be provided. Since these outlets are used on a limited basis to dispose of this market's reserve milk supplies and are accommodated under the broader single category of nonpool plants with higher limits, there is no reason to provide a separate allowance for such plants.

Under the current method of limiting diversions to a nonpool plant, each dairy farmer's milk must be received frequently at a pool plant during the month. This automatically ensures that the milk of each dairy farmer is used to supply the fluid milk needs of the market and that such milk is, in fact, eligible to be used in fluid milk products. However, under the revised method of limiting diversions, a dairy farmer's milk could continuously be received at nonpool plants for manufacturing uses and be priced under the order. There would be no assurance that such milk was even eligible for use in fluid milk products, or that it was sufficiently associated with the fluid market. Thus, in order to establish a sufficient association with the market, the order should provide that each dairy farmer's milk must be received at a pool plant at least once during each of the months of August through April to be eligible for diversion to a nonpool plant.

The order also should include the procedure proposed by the cooperatives that would be used in excluding from pool status any milk diverted to a nonpool plant by a pool plant operator or a cooperative association that exceeds the percentage allowances specified in the order. As proposed and adopted herein, the quantity of milk that exceeds the percentage limit would not be considered producer milk and would not be priced under the order. In such cases, the handler diverting the milk may designate the dairy farmer deliveries that would not be producer milk. Absent such a designation by the handler, the milk last diverted would be excluded from the pool by the market administrator.

The six cooperative associations proposed that there should be no limit on the amount of milk that could be

diverted between pool plants operated by the same handler. However, there is no compelling reason to limit diversions between pool plants operated by different handlers. Consequently, no limitations should apply on milk diverted between pool plants. This will provide handlers with the maximum flexibility possible under the order in accounting and paying for such milk. Absent such a change, a handler who supplied another handler's pool plant, but who wanted to maintain the producer payroll, would have to physically receive the milk of such producers at its pool plant and then transfer the milk to the other handler's pool plant. Such transferring of milk would represent an unnecessary and costly movement of milk. Permitting unlimited diversions between pool plants will eliminate the need for such inefficient milk marketing practices and simplify the accounting and payrolling procedures associated with such producer milk.

In connection with its proposal to provide unlimited diversions between pool plants operated by the same handler, the cooperatives proposed that a handler be defined as a person who operates one or more pool plants. Since the provisions adopted herein will permit unlimited diversions between pool plants regardless of whether such plants are operated by the same handler or by different handlers, the proposed change in the handler definition is not needed.

As indicated under issue 2 concerning the performance standards for pool plants, all diverted producer milk would be included as a receipt at the pool plant from which the milk was diverted for purposes of determining whether such plant qualifies as a pool plant. Currently, milk diverted by a cooperative from the pool plant of another handler is not included in the plant's receipts to determine whether such plant is a pool plant. Consequently, there is no limit on the amount of milk a cooperative could attach with this market during May, June and July when there are no diversion limits.

Unless all diverted milk is associated with pool plants, the performance standards for such plants are not effective. The inclusion of these movements to nonpool plants as receipts at pool plants, will assure the integrity of the performance standards. Also, it will provide a limit on the amount of milk a handler may attach to the market. For the foregoing reason, all diverted producer milk must be reported by the handler diverting such milk as a diversion from a pool plant. Such diverted milk would be included in the plant's receipts in determining whether such plant qualifies as a pool plant for the month.

Most of the time, a cooperative will divert milk from the pool plant of another handler. In such cases, the pool plant operator is not aware of the circumstances involved, i.e., when the milk was diverted or how much milk was diverted from the plant during the month. Since these diversions are not in the operator's control, a mechanism is provided to insure that the plant will not lose its pool status in the event the cooperative's diversions from the plant would result in nonpool status for such plant. Basically, if the cooperative fails to designate what milk should be excluded from the pool, the market administrator would exclude the quantity of diverted milk that causes the plant to lose its pool status. In such cases, the market administrator would use the same procedure adopted herein for excluding over-diversions of milk to nonpool plants.

As proposed by the cooperatives, all diverted milk would be priced at the location of the plant to which the milk was diverted. Such pricing comports with the intent of the Act, which provides for the pricing of milk at the location of the plant where the milk is received.

Since diverted producer milk may be received at a pool plant or a nonpool plant, conforming changes are needed in §§ 1032.52 and 1032.75. The Class I and uniform prices for producer milk received at a plant (pool or nonpool) will be adjusted by the amount that is applicable at the location of the plant where the milk being priced was received.

5. Classification of Certain Fluid Milk Products and Biscuit Mix

A Prairie Farms proposal to amend the fluid milk product definition and classification provisions should not be adopted. The proposal would provide a Class II classification for buttermilk used at restaurants to make biscuits as well as a Class II classification for biscuit mix, a product that is similar to buttermilk.

Under current provisions, buttermilk is a fluid milk product. Thus, butterfat and skim milk disposed of as buttermilk are priced in Class I. An exception is made for bulk fluid milk products (including buttermilk) disposed of to any commercial food processing establishment at which food products (other than milk products) are processed and from which there is no disposition of fluid milk products other than those received in consumer-type packages. Bulk buttermilk disposed of to commercial food processing establishments (which do not include restaurants) is classified as Class II. In addition, a biscuit mix product that is similar to buttermilk is classifed as Class III because neither a Class I nor a Class II classification can be established for the product. A Class I classification does not apply since the product does not meet the fluid milk product definition because of certain ingredients contained in the product. A Class II classification does not apply because the product is not specified as a Class II use and does not meet the standards or criteria that are applicable to Class II milk.

Prairie Farms testified that the adoption of its proposal is necessary to clarify the classification of buttermilk and biscuit mix products that are used to make buttermilk biscuits. Under current provisions, similar products used to make such biscuits are classified in any of the three classes of use. Buttermilk is classified as Class I or Class II depending on the type of establishment that makes the biscuits, while biscuit mix is classified as Class III regardless of the type of establishment involved.

Prairie Farms testified that the impetus for its proposal stems from circumstances encountered in supplying buttermilk to McDonald's restaurants to be used to make buttermilk biscuits. The McDonald's corporation notified Prairie Farms that as a result of a Class I classification for such buttermilk, McDonald's was considering the use of a biscuit mix containing buttermilk powder in an effort to contain the cost of producing biscuits. As a result, Prairie Farms began producing a biscuit mix that is a modified buttermilk product that does not meet the fluid milk production definition, and which is classified as Class III.

Prairie Farms contends that since a Class II use applies to bulk buttermilk used by commercial food processing establishments to make biscuits, the same classification should apply to restaurants that make biscuits, provided that buttermilk is not sold in other than individualized serving containers. In this regard, Prairie Farms testified that if buttermilk is sold in a glass, a Class I classification would apply to the buttermilk distributed to such restaurant. In addition, Prairie Farms contends that biscuit mix, which is basically the same as buttermilk, should also be Class II. In the event that its proposal is adopted, Prairie Farms testified that it would probably supply

buttermilk for use in biscuits rather than the biscuit mix product.

No other interested party testified on Prairie Farms' proposal. However, in their briefs, Mid-Am and NFO opposed the adoption of the proposal on the basis that it would be administratively costly and impractical to determine the use of buttermilk at restaurants to determine classification. In addition, NFO contends that adoption of the proposal would lead to possible classification changes of additional fluid milk products based on use at restaurants and other establishments such as doughnut shops and bakeries in grocery stores and delicatessens. Also NFO contends that the lowering of returns to producers that would result from adopting the proposal cannot be tolerated.

As previously stated, the primary thrust of Prairie Farms' proposal is to include buttermilk and biscuit mix used to make buttermilk biscuits in Class II. To accomplish this, Prairie Farms' proposal would treat restaurants as commercial food processing establishments. Consequently, the classification of buttermilk disposed of to a restaurant for biscuit making would be changed from Class I to Class II. In addition, biscuit mix, which is currently Class III, would specifically be classified as Class II to agree with the classification of buttermilk for the same use. Prairie Farms contends that the need for the classification changes is to establish greater uniformity of classification of milk products used to make biscuits and to provide dairy farmers with the opportunity to continue to supply a perceived market expansion of dairy product needs for buttermilk biscuits made at restaurants, particularly fast-food eating establishments such as McDonald's.

The Southern Illinois order, as well as a large number of other orders that have essentially uniform classification provisions, does not define a commercial food processing establishment. The order does specify that such establishments cannot be milk plants and that the food products processed cannot be milk products. Also, such establishments are not to be involved in disposing of milk products other than those received in consumer-type packages. In this context, there is a reasonable degree of confidence that such establishments that receive bulk fluid milk products (including buttermilk) would not be involved in supplying milk for fluid use without the supplying handler being required to account for such milk at its fluid milk (Class I) value. This is not true, however, with respect to restaurants which prepare and serve food and dairy products in a variety of forms. Consequently, it would be virtually impossible to determine the ultimate use of fluid milk products at restaurants which are basically multiple-use users of fluid milk products just as consumers. It would be both impractical and costly to verify restaurant use of fluid milk products for order pricing purposes. Therefore, the proposal to treat restaurants as commercial food processing establishments, which extends beyond the making of buttermilk biscuits at fast-food operations, should not be adopted.

In addition to the impractical nature of the proposal, its adoption would result in a classification for buttermilk and biscuit mix under the Southern Illinois order different from the classification applicable under a large number of other orders. In this regard, official notice is taken of two decisions issued by the Assistant Secretary on February 19, 1974, concerning uniform pricing and classification provisions under 32 orders (Georgia, et al., 39 FR 8452, 8712, and 9012) and under seven orders (Chicago Regional, et al., 39 FR 8202). The Southern Illinois order was involved in these proceedings concerning the increasing need for uniform classification and pricing provisions among a large number of orders as a result of sales area expansions by plants into an increasing number of Federal milk marketing areas.

The record of the current proceeding does not demonstrate the existence of a marketing problem that would warrant a different classification for either buttermilk or biscuit mix under the Southern Illinois order than that which is provided under a large number of other orders. Plants regulated under at least seven other orders have sales in the proposed expanded Southern Illinois-Eastern Missouri marketing area while Southern Illinois regulated plants also have sales in at least seven other Federal milk marketing areas. Consequently, to the extent that it may be necessary to consider classification changes or the classification of new products such as biscuit mix, the competitive relationship among handlers and producers over a broad area is necessarily involved that cannot be addressed in an amendatory proceeding involving one market.

6. Shrinkage and Loss Product Allowance

A proposal to establish a loss product allowance provision, in lieu of the current shrinkage provisions, should not be adopted. Under this Prairie Farms proposal, products that are dumped or sold for animal feed, as well as any receipts for which a handler failed to establish a use (shrinkage) would be classified as Class I. In order to compensate a handler for the increase in Class I use, each handler would receive a monetary credit equal to two percent of the Class I differential adjusted for location. Under the proposal, the credit would be split between handlers who assume the loss from farm to plant (½ of 1 percent of the Class I differential) and handlers who assume plant processing and distribution losses (1.5 percent of the Class I differential).

Prairie Farms contends that its proposal would simplify handler accounting as well as the administration of the order with respect to unmarketable products and for receipts of milk for which a disposition cannot be established. Prairie Farms contends that an inordinate amount of time is spent in attempting to account for and verify losses that represent less than two percent of total receipts of milk for the market. Prairie Farms contends that under its proposal only Class II and Class III uses would have to be verified by the market administrator since all remaining receipts would be Class I, including all unaccounted for product, livestock feed, dumpage and route returns. As a result, Prairie Farms testified that handlers would not have to account for milk that is dumped, sold at salvage value for livestock feed, or route returns that ultimately may be dumped or sold at salvage value. Also, with respect to route returns of unmarketable products, Prairie Farms testified that under the proposal, such products would not have to be returned to a plant for verification which would thus eliminate a possible contamination concern. Prairie Farms also testified that the purpose of the credit is to compensate handlers for the increase in Class I use and would leave handlers in approximately the same monetary position that applies under current order provisions. No other interested party offered testimony on the proposal or commented on the proposal in briefs.

The current provisions of the Southern Illinois order pertaining to the classification of skim milk and butterfat that are dumped, disposed of for animal feed, or in shrinkage are generally uniform with those of other orders involved in the uniform classification and pricing decision, of which official notice was previously taken. A specific Class III classification applies to products that are dumped or disposed of for animal feed. With respect to shrinkage, up to two percent of handler's

receipts of milk directly from producers may be assigned to Class III. In general terms, the two percent maximum shrinkage allowance is split between receiving operations and processing operations, with up to 0.5 percent permitted for receiving milk and 1.5 percent for processing milk. This division of shrinkage among handlers is necessarily set forth in substantial detail in order provisions to allocate shrinkage among responsible handlers under various buying and selling arrangements. For example, if a handler purchases milk from a cooperative association handler on the basis of scale weights, the maximum Class III shrinkage allowance for the plant operator is 1.5 percent. The cooperative, as the receiving handler, is responsible for any difference between farm weights and butterfat tests and the weight and test at which the plant operator purchases the milk. Of this difference, up to 0.5 percent of the milk at farm weights is allowed the cooperative as Class III shrinkage. If the plant operator purchases the milk on the basis of farm weights and tests, the plant operator is permitted up to the full two percent Class III shrinkage.

The current order also provides for a method of prorating total plant shrinkage to (1) those receipts of bulk fluid milk products that are generally intended for Class I use, and on which Class III shrinkage limitations apply, and (2) certain other types of receipts generally intended for manufacturing use, such as milk from other order plants or unregulated supply plants for which a Class II or Class III classification is requested. All shrinkage associated with this latter category of receipts is assigned to Class III use, while shrinkage associated with the first category of receipts is assigned to Class I use to the extent that it exceeds the maximum amount permitted a Class III classification.

The concept of the current shrinkage provisions is relatively simple. Shrinkage up to the maximum allowance is paid for at the Class III price while any excess shrinkage is paid for at the Class I price. The additional details that are contained in the provision are necessary to accommodate various marketing arrangements and to recognize that certain receipts are intended for manufacturing uses while other receipts are generally intended for fluid uses.

The concept proposed by Prairie Farms is also relatively simple. All shrinkage, as well as livestock feed and dumped product, would be Class I under the order. A credit at two percent of the Class I differential would, in effect, result in a Class III price for such uses. Theoretically, any handler with two percent or more shrinkage would be treated the same under the proposal as under current provisions, i.e., shrinkage up to two percent would be priced in Class III while any additional shrinkage would be priced in Class I. Handlers with less than two percent shrinkage would receive a monetary gain under the proposal since the maximum credit would always be applied whereas the current provisions recognize actual shrinkage.

The primary reason for the simplicity of the proposal, relative to the current shrinkage provisions, is that the proposed order language ignores the details that are necessary to identify the shrinkage split among the buying and selling handlers who are responsible for shrinkage in receiving and processing operations. In addition, the proposal ignores the initial proration of shrinkage between those receipts that are intended primarily for manufacturing uses and those that are intended for fluid uses. This aspect of the proposal and its application to Southern Illinois handlers was not explored on the record of the proceeding. However, it would not appear to be reasonable to establish possible excessive Class I use because of shrinkage at plants that receive milk primarily for manufacturing uses.

Simplification of order provisions because of a perception by Prairie Farms that current provisions are not understood by handlers generally, is not a sufficient basis for an alteration of current provisions. Also, it does not appear that this goal would be realized as modifications to the proposal would be necessary to specify the proration of shrinkage among receipts and the shrinkage split among handlers. Incorporation of these specific factors into the proposal would result in essentially the same provisions that are currently included in the order, except that livestock feed and dumped products would be excluded as Class III uses.

With respect to this latter point, the application of the order to handlers, as well as their responsibilities under the order, would be simplified since milk that is dumped or used for animal feed would be ignored. How this would affect individual handlers and plant experiences that may be encountered in receiving or processing operations is not known since only marketwide data on dumpage and animal feed is contained in the record. For one reason or another, handlers may at times have a need to dump or dispose of significant quantities for salvage value. The proposal would not accommodate any such extraordinary circumstances as these dispositions of milk would not exist under the order. Consequently, implementation of the proposal would reduce the ability of the order to accommodate individual plant experiences encountered in processing and marketing milk.

The issue of possible contamination problems as related to the handling of route returns of unusable product is a matter of serious concern. In this regard, Prairie Farms testified that changes had been made with respect to the accountability of such products under current provisions that lessens such concerns. Although there may well be valid reasons for further consideration of this issue under this and other orders, the record of this proceeding does not demonstrate a particular problem with respect to this issue. The record indicates that contamination concerns can be lessened or rectified under current provisions of the order. In any event, there is no demonstration that an entire revision or elimination of the shrinkage provisions is necessary to further deal with this issue.

In total, there is no demonstration of the existence of a marketing problem under the Southern Illinois order, or any indication that marketing conditions are materially different than under other orders that could warrant a different treatment of shrinkage, approved dumps and animal feed than under most other orders. Consequently, for all of the previous reasons, the proposal is denied.

7. Location Adjustments

The location adjustment provisions should be revised to specify that a minus 17-cent location adjustment apply in six unregulated Illinois counties that are adjacent to the Northern Zone of the marketing area. Such location adjustment should apply at plants located in the Illinois counties of Adams, Brown, Cass, Pike, Schuyler and Scott. This change in pricing will increase the Class I and blend prices by three cents per hundredweight at one pool distributing plant that is operated by Prairie Farms at Quincy, Illinois (Adams County). This will result in pricing at Quincy being the same as at other plants that are located in the Northern Zone of the marketing area. No other location adjustment changes should be made.

Land O'Lakes, Inc. (LOL), and Prairie Farms, two cooperative associations that represent producers and operate plants under the order, proposed location adjustment changes to the order. Briefly, LOL proposed that a

minus 17-cent location adjustment should apply at Quincy. Also, LOL proposed that a minus location adjustment based on mileage should apply at all supply plants located outside the marketing area. Prairie Farms proposed that the current plus 9-cent location adjustment at Carbondale, Illinois (Jackson County) should be increased to 24 cents.

Basically, both cooperatives contend that the changes are necessary to correct perceived imperfections to location adjustment changes that were initially implemented on August 1, 1986, to conform location adjustment provisions with higher Class I differentials mandated by the Food Security Act of 1985. In addition, the cooperatives contend that certain current location adjustments under the order are not consistent with the findings and conclusions of decisions involving this and other nearby markets that also involve location adjustment issues as a result of mandated changes to Class I differentials. In particular, the cooperatives contend that current provisions are in conflict with recognition given to changes in historical price relationships that occurred as a result of changes to Class I differentials as well as to conclusions concerning the incentive for certain milk supplies that are associated with the Southern Illinois market to become a source of supply for more deficit, higher-priced southern markets. Consequently, as a perspective for consideration of the proposals, official notice is taken of the following decisions issued by the Deputy Assistant Secretary concerning location adjustment changes necessitated by Class I differential changes: (1) Emergency Final Decision, Memphis, Tennessee, issued May 8, 1986, published May 16, 1986 (51 FR 17982); (2) Final Decision, Texas, et al., issued October 30, 1986, published November 5, 1986 (51 FR 40176); and (3) Final Decision, Chicago Regional et al., issued December 5, 1986, published December 11, 1986 (51 FR 44611).

LOL proposed that the minus location adjustment at Quincy should be 16 cents per hundredweight rather than the 20 cents that applies to such plant under the order. LOL notes that the current 20-cents location adjustment results in a three-cent lower price at Quincy than at other plants in the Northern Zone of the marketing area whereas, historically, the location adjustment for the Northern Zone and Quincy has been identical. LOL contends that the three-cent lower price at Quincy, relative to the Northern Zone, presents a hardship to LOL producers who supply the Quincy plant from northern production areas around Spring Valley, Minnesota. LOL also contends that its members have not benefited to the same extent as other Federal order producers from increases in Class I differentials. Consequently, LOL argues that at least the price at Quincy should be increased to the same price level that applies in the Northern Zone.

LOL also proposed that minus location adjustments based on mileage should be applied at all supply plants that are located outside the marketing area. Under current provisions no location adjustments apply in the heavy milk producing areas in southern Missouri, specifically, any Missouri territory that is south and east of Interstate Highway 44. For all other territory outside the marketing area, minus location adjustments are established on the basis of mileage between the plant location and the nearer of three basing points.

As a result, LOL contends that not all distant supply plants and market suppliers are being treated equally under the order. For example, a minus 82-cents location adjustment applies to LOL's Spring Valley, Minnesota supply plant while no location adjustment applies to a Mid-Am supply plant at Cabool, Missouri (Texas County). LOL contends that, based on distance, at least a minus 36-cent location adjustment should apply at Cabool. LOL contends that if a lower value of milk is to be recognized at distant plants relative to distance from the population centers of the markets, location adjustments should be applied in all directions from the markets, not only in a northerly direction.

LOL testified that the price alignment considerations (establishing essentially the same price at specific location under a number of Federal orders) are important with respect to distributing plants but that other factors are important with respect to supply plants. LOL testified that supply plant operators decide to pool such plants on those markets where their total returns are greatest, which includes consideration of the blend price applicable at the supply plant for milk which is pooled but not shipped to distributing plants. LOL testified that, as a result of no applicable location adjustment at Cabool, the Southern Illinois order blend price was 15 to 16 cents per hundredweight in excess of the blend price at Cabool under the Southwest Plains order. Consequently, LOL contents that there is an economic incentive for milk supplies in southern Missouri to continue to be associated with the Souther Illinois order. LOL argues that this is contrary to the stated intent of officially noticed decisions, which according to LOL indicate that southern Missouri milk should be used to supply southern markets while the Southern Illinois order should reach to northern production areas for a source of supply. Therefore, LOL concludes that the intent to encourage such procurement arrangements would be accomplished by providing a minus location adjustment at Cabool and all of southern Missouri. LOL concludes that a reduce price in southern Missouri under the Southern Illinois order would discourage such milk from being a source of supply or from being pooled under the Southern Illinois order. Consequently, such milk would have to seek out other more southern markets while Southern Illinois order handlers would have to obtain milk from northern procurement areas.

Mid-Am opposed the proposal to establish minus location adjustments in southern Missouri. Mid-Am contends that such action would establish an inappropriate economic signal for Southern Illinois handlers to obtain milk supplies from such area. Mid-Am testified that milk from such area is needed by and is being shipped to more deficit southern markets in Arkansas, Tennessee, Georgia, Florida and Texas. Also, Mid-Am contends that adoption of LOL's proposal would be inconsistent with the overall Federal order pricing structure which provides for increasing prices from north to south. Mid-Am also opposed the location adjustment change at Quincy although no specific reasons for such opposition were presented.

Prairie Farms proposed that a plus 24-cent location adjustment be applied to Jackson County Illinois. Prairie Farms contends that the increase from the current 9-cent adjustment at its Carbondale supply plant is necessary to reflect the location value of milk in the southern portion of the marketing area. Prairie Farms testified that the price at Carbondale (which reflects a $2.01 Class I differential value) is too low relative to prices at such location under other orders. Prairie Farms testified that distance and alignment rates (rates for determining location adjustments at distant plants under Federal orders) easily establish that the location adjustment at Carbondale should be increased. For example, based on the 120 miles between Alton and Carbondale and the 2-cent rate for determining location adjustments, the Class I differential value should be $2.16 at Carbondale. Likewise, Prairie Farms testified that the Class I differential

value at Carbondale based on distance from Paducah and Memphis would be $2.215 and $2.308, respectively.

Prairie Farms also testified that the area around Carbondale (as well as the entire State of Illinois) is a deficit supply area. Basically, Prairie Farms contends that the current price at Carbondale is too low to attract a supply of milk and that the appropriate price at Carbondale should reflect the increase in milk values for north to south under the Federal order pricing structure. Prairie Farms further testified that the current blend price at Carbondale is too low relative to other markets and that both Prairie Farms and Mid-Am have lost members in the area to another cooperative association, presumably for use in more southern markets. Prairie Farms further indicated that in the event its proposal was not adopted, consideration would have to be given to pooling the Carbondale plant under the Paducah, Kentucky order or some other southern market. Also, Prairie Farms indicated that consideration would have to be given to operating the Carbondale facility as a distributing plant as it once was. Prairie Farms testified that if such a distributing plant could continue to be regulated under the Southern Illinois order with current pricing provisions, it would have a substantial competitive pricing advantage over distributing plants in more southern markets. Prairie Farms concludes that current and prospective marketing developments represent disorderly marketing conditions as a result of the failure of the order to establish an appropriate location value of milk at Carbondale.

NFO opposed Prairie Farms pricing proposal for Carbondale on the basis that the proposal would reduce the blend price to all producers supplying the market. In its brief, NFO argued that the effect of the proposal, in conjunction with other pooling proposals, would be to draw supplies of milk in a deficit market to a manufacturing plant at Carbondale. Mid-Am took no position on the proposal but indicated in its brief that if the Prairie Farms proposal is adopted, the same plus location adjustment should apply to a Mid-Am supply plant located at Jackson, Missouri (Cape Girardeau County) which is west and south of Carbondale.

Resolution of the location adjustment proposal requires a consideration of the pricing structure employed under the Federal order system. A thorough explanation of the pricing structure, as well as the purpose of location adjustments is clearly set forth in the officially noticed decisions concerning regional hearings that were held to consider proposals to amend location pricing provisions to conform with the Class I differentials mandated by the Food Security Act of 1985. Briefly stated, an alignment of Class I differentials necessarily exists among Federal order markets for economic reasons. The Class I differential in any market, in the long run, cannot exceed the cost of milk in an alternative market plus the cost of hauling bulk milk from such alternative source of supply. Consequently, Class I differentials increase from north to south in recognition of the substantial supplies of relatively lower cost milk in Minnesota and Wisconsin that are an actual and potential source of supply for markets to the south. The Class I price (the specified order Class I differential plus the basic formula price for the second preceding month) is applicable at a specific location and is intended to attract an adequate supply of milk to such location. To the extent that milk is received at other locations, the Class I price and blend price to producers are adjusted to reflect its economic value at such location relative to other locations. Thus, location adjustments reflect the cost of hauling milk from where it is produced to where it is needed for processing. In other words, location adjustments reflect the value of the economic service provided by producers to handlers at varying locations.

The Southern Illinois order provides for a zone pricing system within the current marketing area, which would be expanded to include the additional territory that would be added to the marketing area. The Base Zone, which includes 25 counties in the central portion of the marketing area, extends across the State of Illinois from the Missouri to the Indiana State borders. The order's $1.92 Class I differential applies throughout the Base Zone. There are two distributing plants and two supply plants located within the Base Zone. To the north of the Base Zone, the Class I price is reduced by 17 cents per hundredweight to reflect the fact that such area is nearer to northern production areas. This Northern Zone consists of 13 counties that extend from Morgan County on the west to Vermilion and Edgar counties on the east that border the State of Indiana. There are two distributing plants and one supply plant located in such zone. For plants that are located in the marketing area south of the Base Zone, a plus 9-cent location adjustment applies to reflect increasing value of milk to the south and the greater costs incurred in shipping milk to such area versus plants in the Base Zone. The Southern Zone also includes territory around the St. Louis metropolitan area that is directly west of the Base Zone. There are five distributing plants in the St. Louis area and a distributing plant and supply plant located south of St. Louis (Randolph and Jackson Counties) included in this pricing zone. Consequently, the marketing area pricing structure provides for increasing prices from north to south, and with the exception of the St. Louis area, provides for no change in prices on a west-east axis.

For plants located outside the marketing area, the Base Zone price is reduced on the basis of mileage from the nearest of Alton, Robinson, or Vandalia, Illinois. The location adjustment is minus 20 cents for plants that are 100 miles or more from such basing points and an additional two cents per 10 miles beyond 110 miles. As a result of such provision, a minus 20-cent location adjustment applies to a Prairie Farms pool distributing plant at Quincy that is outside the marketing area in Adams County, Illinois. Also, minus location adjustments of 70 and 82 cents apply at two supply plants that are located at Waukon, Iowa and Spring Valley, Minnesota, which are the two distant supply plants serving the market.

Such provision for determining location adjustments at distant plants is not applicable for plants locate in southern Missouri. Specifically, no location adjustment is applicable for plants located outside the marketing area in the State of Missouri that are located south and east of Interstate Highway 44. As a result no location adjustments are applicable at two Mid-Am supply plants located at Cabool (Texas County), and Jackson (Cape Girardeau County), Missouri. The order also provides for a minus 17-cent location adjustment for any plant located in the Indiana Counties of Fountain, Parke, Vermillion and Warren. Such counties are adjacent to and east of the Northern Zone of the marketing area, although no pool plants are located in such area.

The 3-cent change in the location adjustment at Quincy was supported on the basis of the historical pricing structure under the Southern Illinois order. No emphasis was placed on whether the price at Quincy need be any different than prices at other plants in the Northern Zone in order to attract a supply of milk from northern procurement areas. In this regard, the minus 20-cent location adjustment at Quincy was adopted on the basis that Quincy is nearer to northern supply areas than other plants regulated under the order.

A primary factor in determining the appropriate location adjustment at any plant is whether the resulting price is sufficient to attract supplies of milk from procurement areas that are also necessarily a source of supply for other regulated plants. Thus, with respect to pricing at Quincy, a relevant comparison is the distance between northern procurement areas and Quincy and the distance between the same procurement areas and Bloomington, Illinois, where the northernmost pool distributing plant is located. Quincy is located nearer to the Spring Valley, Minnesota (near Austin) supply area than is Bloomington. However, other locations in northeastern Iowa, southeastern Minnesota and southwestern Wisconsin are virtually equidistant from Bloomington and Quincy. For this purpose, official notice is taken of Mileage Guide 13 issued by the Household Goods Carriers' Bureau and mileage between cities that represent northern production areas (Lansing, Iowa; Austin, Minnesota; La Crosse and Prairie du Chien, Wisconsin) and Bloomington/Quincy. As a whole, such mileages indicate that prices at Quincy and Bloomington should be approximately the same.

It is noted that the westernmost located distributing plant regulated under the order is at Quincy while the northernmost plant is at Bloomington. As a result, Quincy is nearer to certain supply areas in Minnesota and Iowa while Bloomington is nearer to sources of supply in Wisconsin. However, no recognition should be given to the extent to which Quincy is located to the west of the marketing area. Historically, the Southern Illinois order has provided for no price differentiation on an east/west basis. Such a price structure extended beyond the marketing area boundaries to include Quincy as well as territory in Indiana that is east of the marketing area. In addition, the use of the three basing points that are aligned on an east/west axis has the effect of limiting any east/west price changes in northern procurement areas. Such east/west pricing in this area was further emphasized by the Congressionally mandated Class I differentials that established at $1.92 Class I differential for the Southern Illinois order and the Greater Kansas City order to the west. Consequently, for all of the above reasons, the location adjustment at Quincy should be changed from minus 20 cents to minus 17 cents.

The location adjustment change should not be limited to the counties of Adams and Schuyler as was proposed. Prior to the most recent order amendment, the order specified that the same location adjustment for Quincy should apply to all territory in Illinois that is outside the marketing area and south of the northern boundaries of Adams and Schuyler Counties. Such language, which covered a broader area, was unclear since some territory in the southern part of the State is also outside the marketing area. Consequently, the attached order language specifies that the minus 17-cent location adjustment should apply to the six Illinois counties that are specified at the beginning of the issue.

The proposal to increase the plus location adjustment at Carbondale from nine cents to 24 cents, which would provide for a Class I differential of $2.16, should not be adopted. Basically, Prairie Farms contends that the price at Carbondale is too low (i.e., misaligned) in terms of the increase in milk value from north to south in this region of the country. Basically, Prairie Farms is correct in its claim that the current price of milk is undervalued at Carbondale, although not by as much as the 15-cent increase that is proposed.

The officially noticed decisions concerning the Texas and certain other orders (including the Memphis, Tennessee order) indicate that the mandated Class I differential changes resulted in the greatest increases among Federal order markets in a straight north to south direction with basically no change from east to west from Chattanooga to Oklahoma City. In this region of the country, the north/south alignment rate among Federal order markets approaches three cents per hundredweight per 10 miles, which also represents a conservative estimate of the cost for hauling bulk milk. For example, the difference between the Class I differential at Fulton, Kentucky, Memphis and New Orleans reflect a rate of about three cents per hundredweight per 10 miles. Also the rate between Memphis and St. Louis reflected a rate of 2.7 cents per 10 miles. In this connection, it is noted that the rate between St. Louis and Memphis is about 2.9 cents per 10 miles without regard to the plus 9-cent adjustment at St. Louis that is necessary to attract milk to this major consumption center.

Since location adjustments are intended to reflect the cost of hauling milk from where it is produced to where it is needed, the use of a 3-cent per 10-mile hauling cost would derive an appropriate location value of milk at Carbondale relative to southern markets. Based on the 213 miles (22–10-mile zones) between Carbondale and Memphis, the Class I differential value at Carbondale would be $2.11 ($2.77 Memphis Class I differential minus 66 cents). Based on Fulton, Kentucky, where a distributing plant regulated under the Paducah order is located, the Class I differential value at Carbondale would be approximately $2.09 ($2.39 minus 30 cents for the 100 miles between Fulton and Carbondale).

Any consideration of the location value of milk at a particular plant, such as Carbondale, necessarily involves the relationship between the price at such plant and prices at other nearby plants. Significant price differences between nearby plants could affect the ability of plants to attract adequate supplies of milk for fluid use, which is a primary function of Federal milk marketing orders.

The nearest plant to Carbondale is located at Chester, Illinois (Randolph County). Such plant is a distributing plant that is currently in the same price zone as Carbondale. Chester is 38 miles northwest of Carbondale. However, as indicated previously, western direction is not a relevant factor in establishing price differences between plants as the order provides for no price variation on an east/west direction. In terms of its northern direction, Chester is about eight miles further north from Memphis than is Carbondale. In terms of north/south alignment, the Class I differential value at Chester based on Memphis would be $2.08. Pricing at Chester, however, was not an issue open for consideration at the hearing.

Both the Chester and Carbondale plants would be expected to procure supplies of milk from the same areas that are characterized as deficit supply areas. Chester Dairy, as a distributing plant, is primarily engaged in supplying the fluid milk needs of the market. Carbondale, while it supplies the fluid milk needs of the market by shipping milk to distributing plants, is primarily engaged in manufacturing Class II products. Also, in conjunction with the revision to the pooling provisions set forth under issue 2, required shipments from the Carbondale plant would be minimal in terms of receipts at the individual plant. Consequently, a location adjustment increase at Carbondale would be inconsistent with a primary objective of Federal milk marketing orders. Establishing a higher price at Carbondale, relative to Chester, would provide an incentive for milk to move to Carbondale for use in manufactured products rather than to the distributing plant for use in fluid milk products.

In addition to the Carbondale supply plant, another supply plant operated by

Mid-Am is located in Jackson, Missouri (Cape Girardeau County) which is west and south of Carbondale. Such territory is being added to the Southern Zone of the marketing area which results in the same location adjustment at both of the supply plants. Any increase in the location adjustment at Carbondale would appear to be appropriate for the Jackson supply plant because of the constant east/west price surface. This would result in the highest minimum order prices being applicable at two supply plants located in the southernmost portion of the marketing area that maintain their association with the market by shipping milk northward to distributing plants. Although establishing a higher price level at such plant would be consistent with the north/south price alignment, it would appear to be unreasonable to provide an economic incentive under the order for milk to be shipped to southern supply plants for ultimate shipments to northern distributing plants.

Although there may have been some loss of membership by Prairie Farms and Mid–Am to southern markets, there is no indication that distributing plants are unable to attract sufficient supplies of milk for fluid use under the current price structure. In addition, it would be expected that producers in the southern portion of the marketing area, and possibly the supply plants, would seek higher-priced markets to the south. Any such changes in milk movements to southern markets would be consistent with the overall pricing structure and are not evidence of disorderly marketing conditions. Consequently, for all the previous reasons, no change should be made to the plus location adjustment at Carbondale.

The LOL proposal to establish a minus location adjustment in southern Missouri based on mileage also should not be adopted. The proposal, which would result in a minus 36-cent location adjustment at Cabool, Missouri (Texas County), is totally inconsistent with the value of milk in such area under the overall Federal order pricing structure that exists.

The value of milk at Springfield, Missouri, as well as across southern Missouri, was considered at a public hearing held to consider location adjustment changes under the Texas and six other Federal order markets. Basically, the officially noticed decision involving these markets concluded that as low a value of milk as possible should be established for such area in recognition of the heavy milk production in the area. Consequently, a 3-cent per 10 mile hauling cost was used to establish the location adjustment at Springfield under the Southwest Plains order. The Class I differential value at Springfield could not be lower than $2.19 because of pricing constraints established by the Congressionally mandated Class I differentials and the existence of distributing plants located south of Springfield. Other southern Federal order markets also recognize such location value of milk at Springfield and southern Missouri and rely on production in the area as a source of supply.

The current Southern Illinois order provides for no location adjustment at Cabool and southern Missouri resulting in a $1.92 Class I differential value. This is already 27 cents below the location value of milk in such area under the Southwest Plains and other southern markets. However, it is not an uncommon practice under Federal orders to provide for no location adjustment in southern areas that are outside the marketing area. Establishing a plus adjustment outside the marketing area to recognize a higher milk value would be inconsistent with the pricing objective to attract supplies of milk to the major population centers of the market. Also, establishing a minus adjustment to the south is in conflict with the increasing value of milk from north to south and provides a pricing incentive for milk to move from south to north rather than from north to south. Consequently, the application of no location adjustment in southern areas outside the marketing area resolves a conflict between the overall pricing structure and the pricing structure of an individual market.

The basic purpose of LOL's proposal is to establish a lower price at Cabool so that Mid-Am would be discouraged from pooling the plant and milk supplies in the area on the Southern Illinois order. LOL's complaint is that the Southern Illinois order blend price exceeds the Southwest Plains order blend price at Cabool attracts such milk to the Southern Illinois market. In this connection, a blend price is a measure of a market's supply/demand situation at a given point in time that is a response to any number of factors that affect the supply of and demand for milk and dairy products. A blend price comparison among markets, which merely illustrates different varying supply/demand relationships among markets, is not in itself a sufficient basis to change location adjustments. In addition, a blend price comparison at a specific location, does not reflect the additional transportation costs that are incurred in shipping milk to various markets. The 15 to 16-cent blend price advantage under the Southern Illinois order at Cabool may well be absorbed by the cost of hauling milk to Southern Illinois order distributing plants. Furthermore, net returns at Cabool may well be greater if milk is shipped to higher-priced southern markets. This aspects of additional hauling costs to alternative markets was not explored at the hearing.

Milk supplies in southern Missouri are being shipped to higher-priced southern markets. The fact that the Cabool plant is pooled on the Southern Illinois order may reflect a lack of sufficient outlets to the south. Also, significant changes have occurred that have affected marketing conditions in Springfield and southern Missouri. These include the termination of the St. Louis-Ozarks order, the closing of a distributing plant in Springfield, and the changes to the Class I differentials. It may be that sufficient time has not yet elapsed to allow marketing adjustments to reflect these significant developments. In any event, it cannot be concluded that the pooling of the Cabool plant on the Southern Illinois order is inconsistent with the pricing incentive for southward movements of milk in the long run.

LOL contends that milk that is priced at the Cabool supply plant, but which is not shipped to Southern Illinois order distributing plants, returns a blend price that encourages the pooling of additional supplies of milk under the order. In this regard, supply plants are pooled under the order only if they perform the service of supplying a sufficient volume of milk to distributing plants. Consequently, to the extent that not all of a supply plant's receipts need be shipped to distributing plants, this is a pooling issue rather than a pricing issue. Such a situation exists with respect to all supply plants that perform adequate service to the fluid milk market.

For all of the previous reasons, LOL's proposal is denied.

8. Seasonal Payment Plan for Producers

The proposed seasonal payment plan (Louisville plan) to encourage dairy farmers to adjust production to better match consumption patterns should not be adopted. In addition to other factors, there is basically no producer support for the implementation of such a plan under the order.

Under the proposal, up to 90 cents per hundredweight would be deducted from the uniform prices to producers during the spring months of April-June. The actual amount deducted could not result in the uniform price being less than the

Class III price at any location. One-third of the amount deducted would be added to the uniform prices for each of the following fall months of September-November.

Prairie Farms, a cooperative association whose members supply about 20 percent of the market's milk, testified that the proposal was being offered as a first step to provide some type of regional or national seasonal incentive program to level-out the milk production of dairy farmers. Prairie Farms contends that the implementation of such a plan into a national program tailored to regional production patterns would address marketing problems associated with surplus production in the spring and milk shortages in the fall. Prairie Farms testified that tailoring milk production to milk needs by months would result in greater marketing efficiencies in all phases of the milk industry and reduce costs associated with balancing the fluid milk needs of Federal order markets. In its brief, Prairie Farms stated that, because the proposal has regional implications, it should not be implemented under the Southern Illinois order until Federal milk orders covering the states of Illinois, Wisconsin, Minnesota, Iowa, Missouri, Indiana, Kentucky, and Tennessee have similar payment provisions.

No interested party disagreed with the basic intent of the proposal. However, three cooperative associations that supply the market (AMPI, Mid-Am and NFO) and a proprietary handler who operates plants regulated under nearby orders (Kraft, Inc.) opposed the adoption of the proposal. These parties contend that the proposal would create marketing problems for handlers regulated under other orders since the procurement area for the Southern Illinois market overlaps with the procurement areas for a number of other Federal orders. They contend that the proposal would cause milk to shift to the Southern Illinois market during the fall months and away from such market during the spring months, thereby disrupting supply arrangements in other markets. Mid-Am also opposed the proposal because the deduction from the uniform prices during the spring would be limited so that the uniform price would not be less than the Class III price. As a result, Mid-Am notes that producers who supply distant plants would have less deducted from the uniform price during the spring than producers who supply nearby plants while all producers would receive the same addition to the fall uniform prices. Consequently, Mid-Am contends that there would be a disparity in returns to producers as a result of the proposal.

In this connection, LOL testified that it would oppose the proposal if the spring deduction was not specifically limited to prevent uniform prices from being less than the Class III prices at distant locations. LOL contends that it would make no sense to produce Grade A milk for the fluid market if the returns to producers were less than what could be obtained from supplying distant manufacturing plants. LOL also testified that it had no position on the seasonal payment plan if the spring deductions were limited as proposed.

Implementation of the seasonal payment plan would result in substantial inequities among producers who supply the market. If the proposal had been in effect during 1986, producers who supply the most distant supply plant on the market would have had their uniform prices reduced by 12 to 28 cents per hundredweight during the April-June period. At the same time, producers who supply plants in the Base Zone of the marketing area would have been subject to a 90-cent reduction in returns. All of the producers would have received the same additions to the uniform price during the following months of September-November. Consequently, there would be a disproportionate sharing among producers of the costs and benefits associated with seasonal pricing that is intended to encourage a different pattern of production.

It is not at all clear that the proposal would stimulate individual producers to change production patterns to produce relatively less milk in the spring and more milk in the fall. In the absence of similar payment plans in nearby orders, it would appear the primary effect of the proposal would be to create a shifting of producers among markets. The supply area for the Southern Illinois market would expand during the fall months, because of higher blend prices relative to other markets, and contract during the spring because of lower blend prices relative to other markets. In effect, as a result of such shifting of supplies, other Federal order markets and their producers would bear the burden of carrying the spring reserve supplies of milk for the Southern Illinois market. Although producers who supply the Southern Illinois market during the spring would likely benefit to some extent by the removal of milk supplies, their returns during the fall would be dissipated by additional milk that would be attracted to the market because of the additional funds that would be included in the uniform price. Basically, implementation of the proposal would introduce an inequitable element between those producers are advantageously located to shift among markets and those producers who, for one reason or another continue to supply the same market throughout the year.

The supply area for the Southern Illinois market overlaps with the procurement areas of at least the Central Illinois, Chicago Regional, Iowa, Southwest Plains and Upper Midwest Federal order markets. Seasonal adjustments would result in the Southern Illinois order blend price being substantially higher than the blend price under these orders during the fall months and subsequently lower during the spring months. Consequently, implementation of a Southern Illinois seasonal payment plan would disrupt the pricing and procurement activities of handlers regulated under other orders who rely on supplies of milk that are intermingled with milk supplies that are and could become associated seasonally with the Southern Illinois market. The degree to which the order milksheds overlap prohibits any consideration of a seasonal payment plan under the Southern Illinois order.

In addition to not being compatible with other orders, there is no indication that a seasonal payment plan is necessary for the Southern Illinois order. Although milk production and sales vary seasonally, it cannot be concluded that there is a significant seasonal marketing problem. There is no demonstration that the market requires additional milk supplies during certain periods of the year or that the reserve supplies of milk associated with the market during other times are excessive. This, there is no demonstration of the existence of disorderly marketing conditions in handling the milk associated with the market on a seasonal basis. Consequently, the proposal is denied.

9. Definition of Inventory

The proposal to provide for an "inventory" definition should not be adopted. However, a conforming change should be made in connection with this hearing to clarify the "route disposition" definition of the order.

An inventory definition was proposed by Prairie Farms and five other cooperative associations (AMPI, LOL, Mid-Am, Midwest, and Wisconsin Dairies) that represent about 90 percent of the milk regulated under the order. Since the proposal is relevant only to distributing plant operations, testimony concerning the need for the proposal was limited to experiences encountered

by Prairie Farms as one of the other cooperative associations operate distributing plants under the order. No other handlers who operate distributing plants presented testimony on the proposal.

The order contains a "route disposition" definition. Such definition is necessary since the proportion of a distributing plant's receipts of milk that is disposed of as route disposition (sales of fluid milk products) determines whether the plant should be regulated under the order. Under current provisions, route disposition occurs when fluid milk products leave the permises of a distributing plant. Thus, at the end of the month, only products that remain at the plant represent inventory.

Basically, Prairie Farms disagrees with this interpretation of the order and contends that an inventory definition is necessary to recognize the marketing practices employed by Prairie Farms and the distinction that Prairie Farms makes between route disposition and inventory. Under the proposal, inventory would consist of all fluid milk products that are still in the possession and control of the handler regardless of where the products are located (except for retail outlets).

Prairie Farms contends that current provisions cause a problem for handlers in reporting the extent to which sales are made in the marketing area, in other marketing areas, or in nonfederally regulated territory. Prairie Farms contends that it may be several days after products leave a plant before the actual sales area is known, particularly if the product moves through intermediate distribution points for delivery to retail outlets. Prairie Farms contends that the problem can be particularly acute when the regulatory status of the plant under this or another order is at stake.

Prairie Farms also contends that current provisions result in identical products being priced differently depending on whether the product is disposed of or maintained in inventory. In this regard, Prairie Farms considers fluid milk products at its various branches (intermediate distribution points) as well as such products at its processing plant at the end of the month to be inventory. Products at the plant are priced in Class III while products that Prairie Farms considers to be inventory at its branches are priced as Class I since such products at branches represent route dispositon under the order. Prairie Farms contends that this is confusing to its personnel and requires the cooperative to have two different prices for its inventory in accordance with accounting procedures to value inventory at costs.

Prairie Farms also contends that current procedures provide an incentive for handlers to use inventories to take advantage of anticipated changes in prices. Prairie Farms contends that handlers will hold as many fluid milk products as possible as Class II inventory at a plant at the end of a month and dispose of such products the next month when the Class I price is lower.

The reasons provided by Prairie Farms do not provide a sufficient basis for adoption of the proposal. Implementation of the proposal would change nothing with respect to a handler incentive to keep products on the premises of a plant to take advantage of a lower price. Also, the contention of the existence of a reporting problem with respect to the ultimate sales area of fluid milk products is not convincing. It would be expected that handlers would know the sales area of their plants. Also, the significant expansion of the marketing area would mitigate the extent to which there may be a limited degree of difficulty with sales routes that cross marketing area boundries. Such marketing area expansion also lessens the degree of urgency and precision that may be necessary to determine whether certain plants should be regulated under this or another order.

Under current provisions fluid milk products that Prairie Farms considers to be inventory are priced at two different levels, depending on whether the products are on the premises of a plant (Class III) or at a distribution point (Class I). However, this does not appear to be all that important as an issue since most of the inventories are maintained at plants (80 percent) with relatively little being maintained at branches (20 percent) within the Prairie Farms system of operation. It was also estimated that as little as 1.6 percent of the producer milk on the market is in packaged fluid milk products inventory off plant premises. Furthermore, an expansion of inventories to include products at branches or distribution points would have virtually no impact on the market since such inventories would become route disposition the following month.

Adoption of the proposal to accommodate the limited volume of inventory at branches must be viewed in the context of what is administratively practical under the order. As previously stated, the only purpose of the route disposition definition is its use in determining whether distributing plants are sufficiently associated with the market to be regulated. The current interpretation that disposition occurs when products leave a plant premises is easily determined and is a practical application of the order. Adoption of the proposal would essentially result in an extension of the 11 distributing plants' coolers and warehouses to as many as 30 additional locations. With respect to Prairie Farms, its four distributing plants would be extended to include an additional 15 to 20 locations at which a relatively minor proportion of its inventories are maintained. Thus, an unnecessary administrative burden would be incurred for essentially no apparent useful purpose. Also, a non-uniform application of the order would result relative to handlers who utilize their own branches and those whose milk moves through other distribution points.

The current application of the order is administratively practical and uniform among handlers, thus the proposal is denied. In addition, the route disposition occurs when products leave the premises of the plant without regard as to whether such products move through intermediate distribution facilities (such as branches) to retail or wholesale outlets.

10. Miscellaneous and Conforming Changes.

(a) "Reload point Definition

The "reload point" definition should be deleted as proposed by cooperative associations that represent 90 percent of the milk pooled under the order. There was no opposition to the proposal.

The current definition provides that a reload station, which is located on the premises of a milk plant that is using equipment to receive, cool, store and process milk during the month, be considered a single operating unit under the order. This definition could cause a reload point to be considered part of a supply plant because the reload station is located adjacent to a plant that is using equipment to receive and process milk.

Removing the provision will allow a handler to utilize the premises of a manufacturing plant to reload milk for delivery to the central market. In some cases, this could be the most favorably located facility to perform the reloading operations. Also, it will allow handlers to avoid the cost associated with locating an appropriate site to construct a separate reload station. In addition, it will facilitate the efficient assembly of milk from distant farms for movement to the market's distributing plants.

Elimination of the "reload point" definition will give the market administrator the flexibility to evaluate

each reloading operation individually on the basis of how the milk is handled at that location. The market administrator's determination about whether a reload point should be considered a supply plant would be established on the basis of how the milk actually is handled at the reload station rather than merely because the reloading is done on the premises of a plant. Affording the market administrator this discretion will provide the regulatory flexibility to meet changing marketing conditions.

(b) Basic Formula Price. The last sentence of the basic formula price provision states that for the purpose of computing Class I prices the basic formula price shall not be less than $4.33. This floor under the basic formula price is outdated. Accordingly, the obsolete language should be and hereby is eliminated, as proposed.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Southern Illinois order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held; and

(d) All milk and milk products handled by handlers, as defined in the tentative marketing agreement and the order as hereby proposed to be amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products.

Recommended Marketing Agreement and Order Amending the Order

The recommended marketing agreement is not included in this decision because the regulatory provisions thereof would be the same as those contained in the order, as hereby proposed to be amended. The following order amending the order, as amended regulating the handling of milk in the Southern Illinois marketing area is recommended as the detailed and appropriate means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 1032

Milk marketing orders, Milk, Dairy products.

PART 1032—[AMENDED]

1. The authority citation for 7 CFR Part 1032 continues to read as follows:

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

2. Section 1032.2 is revised to read as follows:

§ 1032.2 Southern Illinois-Eastern Missouri marketing area.

"Southern Illinois-Eastern Missouri marketing area", hereinafter called the "marketing area", means all territory within the boundaries of the following counties and the city of St. Louis, including all municipal corporations therein and all institutions owned or operated by the Federal, State, county or municipal governments located wholly or partially within such territory:

Base Zone—In the State of Illinois

Bond
Calhoun
Christian
Clark
Clay
Clinton
Coles
Crawford
Cumberland
Edwards
Effingham
Fayette
Greene
Jasper
Jefferson
Jersey
Lawrence
Macoupin
Madison (Alton Township only)
Marion
Montgomery
Richland
Shelby
Wabash
Wasington
Wayne

Northern Zone—In the State of Illinois

Champaign
DeWitt
Douglas
Edgar
Logan
Macon
McLean
Menard
Morgan
Moultrie
Piatt
Sangamon
Vermilion

Southern Zone—In the State of Illinois

Franklin
Hamilton
Jackson
Madison (except Alton Township)
Monroe
Perry
Randolph
Saline
St. Clair
White
Williamson

In the State of Missouri

Bollinger
Cape Girardeau
Crawford
Franklin
Jefferson
Perry
St. Charles
St. Francois
St. Louis (City)
St. Louis
Ste. Genevieve
Warren
Washington

3. Section 1032.3 is revised to read as follows:

§ 1032.3 Route disposition.

"Route disposition" means any delivery to a retail or wholesale outlet (except to a plant) either direct or through any distribution facility of a fluid milk product classified as Class I milk.

§ 1032.6 [Amended]

4. Section 1032.6 is amended by changing the word "moved" to "transferred".

5. In § 1032.7, the introductory text and paragraphs (a), (b) and (d)(2) are revised to read as follows:

§ 1032.7 Pool plant.

Except as provided in paragraph (d) of this section, "pool plant" means:

(a) A distributing plant from which:

(1) Route disposition, except filled milk, in the marketing area during the month is at leat the lesser of a daily average of 7,000 pounds or 10 percent of the total quantity of bulk fluid milk products physically received at such plant and diverted therefrom pursuant to § 1032.13; and

(2) Total route disposition, except filled milk, is at least 50 percent of the total quantity of bulk fluid milk products physically received at such plant and diverted therefrom pursuant to § 1032.13 during the months of August through February and 40 percent during the other months.

(b) A supply plant from which during December at least 40 percent, and at least 50 percent in all other months, of the total receipts of milk from dairy farmers (including producer milk diverted from such plant pursuant to § 1032.13 but excluding milk diverted to such plant) and handlers described in § 1032.9(c) is transferred to and physically received at plants described in paragraph (a) of this section, except that the minimum qualifying percentage shall be 25 percent for a plant(s) operated by a cooperative association that delivered producer milk during each of the immediately preceding months of September through August and at least 75 percent of the total producer milk marketed in that 12-month period by such cooperative association was delivered to and physically received at plants described in paragraph (a) of this section.

* * * * *

(d) * * *

(2) A distributing plant qualified pursuant to paragraph (a) of this section which also meets the pooling requirements of another Federal order and from which during the month there is a greater quantity of route disposition, except filled milk, in the marketing area covered by the other order than in this marketing area: *Provided,* That such a distributing plant which was a pool plant under this order in the immediately preceding month shall continue to be subject to all of the provisions of this part until the third consecutive month in which a greater proportion of such plant's total route disposition is made in such other marketing area, unless the other order requires regulation of the plant without regard to its maintaining pool status under this order on the basis of the proviso of this paragraph;

* * * * *

6. Section 1032.13 is revised to read as follows:

§ 1032.13 Producer milk.

"Producer milk" means the skim milk and butterfat contained in milk of a producer that is:

(a) Received at a pool plant directly from a producer or a handler described in § 1032.9(c);

(b) Received by a handler described in § 1032.9(c) in excess of the quantity delivered to a pool plant(s);

(c) Diverted from a pool plant for the account of the handler operating such plant to another pool plant;

(d) Diverted from a pool plant to a nonpool plant (other than a producer-handler plant) for the account of the handler described in § 1032.9(a) or (b), subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion during the months of August through April unless such producer's milk is delivered to and physically received at a pool plant at least once during each such month;

(2) The total amount of milk diverted by a cooperative association during each of the months of September through November and January through April, shall not exceed 35 percent of the producer milk that such cooperative caused to be delivered to and diverted from pool plants in each such month and 45 percent of such producer milk deliveries and diversions by the cooperative in each of the months of August and December;

(3) The operator of a pool plant (other than a cooperative association) may divert any milk that is not under the control of a cooperative association that is diverting milk during the month pursuant to (d)(2) of this section. The total amount of milk diverted during each of the months of September through November and January through April shall not exceed 35 percent of such plant operator's producer milk received at and diverted from such pool plant and 45 percent of such plant operator's producer milk receipts and diversions in each of the months of August and December;

(4) The quantity of milk diverted in excess of the applicable percentage limit prescribed in paragraph (d)(2) or (3) of this section shall not be producer milk. In such event, the handler diverting such milk may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to make such designation, milk diverted on the last day of the month, then the next-to-last day of the month, and so on, shall be excluded until such exclusions cover the excess quantity;

(5) The quantity of milk diverted for the account of a cooperative association from a pool plant of another handler that would cause the pool plant to be a nonpool plant shall not be producer milk. In such event, the diverting handler may designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to make such designation, milk diverted on the last day of the month, then the next-to-last day of the month, and so on, shall be excluded until such exclusions cover the excess quantity; and

(e) Milk diverted pursuant to paragraph (c) or (d) of this section shall be priced at the location of the plant to which diverted.

§ 1032.19 [Removed and Reserved]

7. Section 1032.19 is removed and reserved for future assignment.

§ 1032.51 [Amended]

8. Section 1032.51 is amended by removing the last sentence.

9. In § 1032.52, the introductory text of paragraph (a) is amended by removing the word "pool" and paragraph (a)(2) is revised to read as follows:

§ 1032.52 Plant location adjustments for handlers.

(a) * * *

(2) For a plant located outside the marketing area but in any of the following territory the adjustment shall be as follows:

(i) *Minus 17 cents.* In counties of Adams, Brown, Cass, Pike, Schuyler and Scott in the State of Illinois or in the counties of Fountain, Parke, Vermillion and Warren in the State of Indiana.

(ii) *No adjustment.* In the State of Missouri south and east of Interstate Highway 44.

* * * * *

§ 1032.75 [Amended]

10. In § 1032.75, paragraph (a) is amended by removing the word "pool" in the two places it appears.

Signed at Washington, DC, on: November 9, 1987.

J. Patrick Boyle,

Administrator.

[FR Doc. 87-26291 Filed 11-12-87; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 3, 4, 157, 292, 375 and 381

[Docket No. RM87-26-000]

Filing Fees Under Independent Offices Appropriations Act of 1952

November 5, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations to establish three additional fees for services and benefits provided by the Commission as required by the Independent Offices Appropriations Act of 1952 (IOAA). In addition, the Commission proposes to revise a number of its present fees under the IOAA and the rounding procedure used when calculating fees.

DATE: An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by December 14, 1987.

ADDRESS: All filings should refer to Docket No. RM87-26-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael A. Stosser, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-5597.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes numerous revisions to its existing filing fees including the establishment of three new filing fees for services and benefits provided by the Commission under its jurisdictional statutes.

II. Background and Discussion

In a series of rulemakings, the Commission established filing fees for most of its activities under its jurisdictional statutes including the Natural Gas Act (NGA), the Natural Gas Policy Act of 1978 (NGPA), the Public Utility Regulatory Policies Act of 1978 (PURPA), and Part II and III of the Federal Power Act (FPA).[1] These filing fees were promulgated under the authority of Independent Offices Appropriations Act of 1952 (IOAA).[2]

Under the IOAA, the Commission is authorized to establish fees for the services and benefits it provides.[3] The IOAA provides in pertinent part:

> [A]ny work, service, publication, report, document, benefit, privileges authority, use, franchise, license, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any Federal agency * * * to or for any person * * * shall be self-sustaining to the full extent possible and the head of each Federal agency is authorized by regulation to prescribe therefore such fee, charge or price, if any, which he shall determine, in case none exists, or redetermine, in case of an existing one, to be fair and equitable taking into consideration the direct and indirect costs to the Government, value to the recipient, public policy or interest served, and other pertinent facts, and any amounts so determined or redetermined shall be collected and paid into the Treasury as miscellaneous receipts.

The IOAA was interpreted by the Bureau of the Budget Circular A-25 [4], which stated that a fee should be assessed against each identifiable recipient of a measurable unit or amount of Government service or property from which such recipient derives a special benefit.[5]

In establishing a fee under the IOAA, the Commission must:

(1) Identify the service for which the fee is to be assessed;

(2) Explain why that particular service benefits an identifiable recipient more than it benefits the general public;

(3) Base the fee on as small a category of service as practical; and

(4) Demonstrate what direct and indirect costs are incurred by the Commission in rendering the service, and show how those costs are incurred in connection with service rendered the beneficiary.[6]

A. New Fees

The Commission proposes three new fees: (1) For filing an application for 5-megawatt (5 MW) exemptions under section 405 of PURPA; (2) for filing a notice from an owner or operator of a qualifying facility, under § 292.207(a) of the Commission's regulations, that the facility meets the requirements of § 292.203; (3) for written opinion letters by the Office of the General Counsel interpreting statutes and regulations under the jurisdiction of the Commission except for interpretation of Part I of the FPA.

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[1] The Commission's current fee structure and procedures for collecting fees is outlined in 18 CFR Part 381 (1987).

In *Phillips Petroleum Co.* v. *FERC*, 786 F.2d 370 (10th Cir. 1986), *cert. denied*, 107 S.Ct. 92 (1986), the court upheld the methodology proposed by the Commission in four of its fees rules: Order No. 360, Fees Applicable to Producer Matters Under the Natural Gas Act, 49 FR 5074 (Feb. 10, 1984) and Order No. 360-A, Order Denying Rehearing and Clarifying the Final Rule, 49 FR 17435 (Apr. 24, 1984); Order No. 361, Fees Applicable to Natural Gas Pipeline Rate Matters, 49 FR 5083 (Feb. 10, 1984), Order No. 361-A, Order Denying Rehearing, 49 FR 17437 (Apr. 24, 1984); Order No. 394, Fees Applicable to the Natural Gas Policy Act, 49 FR 35357 (Sept. 7, 1984), Order No. 394-A Order Denying Fees Applicable to the Natural Gas Policy Act, 49 FR 35357 (Sept. 7, 1984), Order No. 394-A, Order Denying Rehearing, 49 FR 44295 (Nov. 6, 1984); Order No. 395, Fees Applicable to General Activities, 49 FR 35348 (Sept. 7, 1984), Order No. 395-A, Order Denying Rehearingand Making Technical Corrections, 49 FR 44273 (Nov. 6, 1984).

[2] Subsequently, Congress directed the Commission to assess annual charges against jurisdictional companies under the Omnibus Budget Reconciliation Act of 1986. The Commission recently implemented that authority. *See* Order No. 472: Annual Charges Under the Omnibuse Budget Reconciliation Act of 1986, 52 FR 21263 (June 5, 1987) (Docket No. RM87-3-000) FERC Stats. & Regs. ¶ 30,750; Order No. 472-B, Order Granting Rehearing in Part, Denying Rehearing in Part and Making Conforming Amendments, 52 FR 36013 (Sept. 25, 1987).

[3] 31 U.S.C. 9701 (1982).

[4] Bureau of the Budget Circular A-25 (September 23, 1959). This interpretation has been quoted by the U.S. Supreme Court as "the proper construction of the Act," in FPC v. New England Power Co., 415 U.S. 345, 351, 94 S.Ct. 1151, 1155 (1974). The Office of Management and Budget has proposed revisions to OMB Circular A-25, 52 FR 24890 (July 1, 1987). The Commission is basing the proposed changes to its fees in this NOPR on the OMB Circular in effect prior to the proposed changes.

[5] Budget Circular A-25 at 1-2.

General Policy. A reasonable charge * * * should be made to each identifiable recipient for a measurable unit or amount of Government service or property from which he derives a special benefit. * * * For example, a special benefit will be considered to accrue and a charge should be imposed when a Government-rendered service:

a. Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than which accrue to the general public (e.g., receiving a patent, crop insurance, or a license to carry on a specific business); or

b. Provides business stability or assures public confidence in the business activity of the beneficiary (e.g., certificates of necessity and convenience for airline routes, safety inspections of craft). * * *

[6] *See National Cable Television Association, Inc. v. United States*, 415 U.S. 336 (1974); *FPC* v. *New England Power Co.*, 415 U.S. 345 (1974); *Mississippi Power & Light* v. *NRC*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980); *National Cable Television, Inc.* v. *FCC*, 554 F.2d 1109 (D.C. Cir. 1978); *National Association of Broadcasters* v. *FCC*, 554 F.2d 1118 (D.C. Cir. 1978); Capital Cities Communications, Inc. v. FCC, 554 F.2d 1135 (D.C. Cir. 1978).

1. Identification of Services

The Commission proposes a filing fee of $11,010 for an application for a 5 MW exemption under PURPA section 405 and Subpart K of Part 4 of the Commission's regulations. This fee is for an application for an exemption, on a case-specific basis, from all or part of Part I of the Federal Power Act, for projects which have a total installed capacity of 5 MW or less. The Commission's costs and the cost of other Federal agencies in administering the 5 MW program are presently collected from hydroelectric licensees under FPA section 10(e).[7]

The Commission proposes a filing fee of $45 to process a notice from an owner or operator of a qualifying facility, under § 290.207(a) of the Commission's regulations, that the facility meets the requirements of § 292.203. Presently, the cost of these applications is included in the cost of processing an application for Commission certification as a small power or cogeneration facility.

The Commission proposes a fee of $1,450 for a request for a written legal opinion of the Office of the General Counsel, interpreting any statute or regulation under its jurisdiction, except for Part I of the FPA.[8] Presently, the Commission only charges a fee of $35 for a written legal opinion interpreting the NGPA and its implementing regulations. In this NOPR, the Commission is also proposing to increase this fee to an amount equal to the fee proposed for other written legal opinions by the Office of the General Counsel, $1,450.

2. Special Benefits to Identifiable Recipients

The IOAA provides that an agency may collect fees for "any work, service, publication, report, document, permit, certificate, registration, or similar thing of value or utility performed, furnished, provided, granted, prepared, or issued by any federal agency * * *" [9] In delineating the services or benefits for which agencies are permitted to charge under the terms of the IOAA, Budget Circular A–25 states that a fee may be charged to an identifiable recipient who derives a special benefit from a Government service. In addition, the circular indicates that a "special benefit" has accrued if the recipient obtains "more immediate or substantial gains or values * * * than those which accrue to the general public." [10]

Although the public may also enjoy incidental benefits that flow from the service provided a recipient by the agency, any fee charged for that service remains valid.[11] In contrast, an agency may not charge for its services "when the identification of the ultimate beneficiary is obscure and the service can be considered as benefitting broadly the general public." [12]

Five MW exemption applications are processed primarily by the Commission's Office of Hydropower Licensing (OHL). OHL first reviews the application to see if the application meets the requirements of Subpart K of the Commission's regulations. If the application meets those requirements, it is accepted and a public notice requesting comments from government agencies and members of the general public is published in the **Federal Register.** The comments, which include the mandatory terms and conditions placed on the project by the United States Fish and Wildlife Service, the National Marine Fisheries Service and the state fish and wildlife agencies are then reviewed by the Commission's staff, which may recommend additional conditions for inclusion in any exemption issued. As part of this process, the Commission's staff develops an environmental analysis of the proposed project. The Commission has delegated to the Director of OHL the authority to issue the exemption. The Office of the General Counsel provides legal support in this review, including determining whether the person seeking the exemption owns or has the option to own the property as required by the Commission's regulations, 18 CFR 4.31(c)(2)(ii) (1987). Applicants filing a 5 MW application benefit because they are granted an exemption from all or part of Part I of the FPA, including the various procedures for licensing a hydroelectric power project.

Requests for a written legal opinion of the General Counsel's Office are handled by Commission attorneys based on the subject matter of the request. Each request for an opinion is accompanied by a fact situation, and requires staff to analyze relevant Commission and court precedent and applicable statutes in order to provide an opinion. Each opinion provided is signed by the Commission's General Counsel. The Commission believes that a person who requests a written legal opinion from the Office of the General Counsel benefits because the information and legal analysis provided in the opinion often guides the recipient in the decisionmaking and planning of complex transactions or activities.

A notice of qualifying status from an owner or operator of a qualifying facility is processed primarily by the Office of Electric Power Regulation (OEPR). A person that seeks qualifying status for a small power production or cogeneration facility can file a notice, under 18 CFR 292.207, instead of filing an application. Processing these notices by Commission staff involves ensuring that the requirements of the Commission's regulations are met; entering receipt of this notice into the Commission's computer system; and including in the Commission publication, "The Qualifying Facilities Report," that this facility is a qualifying small power production or cogeneration facility. A person filing a notice of qualifying status with the Commission benefits in two ways. First, this notice is required to complete the process for qualifying for the benefits in PURPA, including purchasing electricity from a qualifying facility by an electric utility at the avoided cost rate.[13] Second, since a notice of qualifying status is published in a Commission publication, electric utilities, financial institutions and the public receive notice that the facility has qualified for PURPA benefits.

[7] On March 11, 1987, the Commission issued a notice of proposed rulemaking in RM87–6–000: Fees for Hydroelectric Project Applications to Reimburse Fish and Wildlife Agencies, 52 FR 8463 (Mar. 18, 1987). The rulemaking provides a mechanism to reimburse Federal and State fish and wildlife agencies for costs of reviews and studies on projects subject to the mandatory terms and conditions of these agencies. The projects subject to reimbursement include 5 MW exemption projects. After the issuance of the final rules in RM87–6–000 and this proceeding, Federal fish and wildlife agencies should not include the costs of review and studies incurred on 5 MW exemption projects when submitting their costs under section 10(e) of the Federal Power Act. Such costs should be collected solely from the procedures established in RM87–6–000.

[8] However, costs incurred on written legal opinions interpreting Part I of the Federal Power Act are collected from hydroelectric licenses under the annual charges provisions of section 10(e) of the Federal Power Act, 16 U.S.C. 803(e) (1982). The Commission proposes to exclude legal opinions interpreting Part I of the FPA from the fee, since section 10(e) requires the Commission to recover the Federal Government's costs to administer Part I of the Federal Power Act, which includes legal costs, thr ugh annual charges.

[9] 31 U.S.C. 9701 (1982).

[10] Budget Circular A–25 at 1–2.

[11] See *Mississippi Power & Light* v. *NRC*, 601 F.2d 223, 227–28 (5th Cir. 1979) cert. denied 444 U.S. 1102 (1980); Electronic Industries Association v. FCC, 554 F.2d 1109, 115 (D.C. Cir. 1976).

[12] Budget Circular A–25 at 2; quoted with approval, *FPC* v. *New England Power Co.*, 415 U.S. 345 (1974).

[13] Section 210 of PURPA, 16 U.S.C. 824(a)(3) (1982) and Subpart C of Part 292 of the Commission's regulations, 18 CFR 292.301 thru 292.318 (1987).

3. Smallest Practical Unit

In designing a fee schedule, the IOAA requires the Commission to base the fees on the smallest unit of category of service or benefit practical.[14] A fundamental consideration in developing a fee structure under the IOAA is the practicality of establishing fees which relate not just to categories of services, but also to subcategories of services or even individual agency services. This problem relates to the accessibility of cost data and the expense incurred in collecting the data.

The Commission recognizes that there may be significant differences in the costs incurred for individual petitions or requests that are submitted for Commission action. Some filings are more complex or controversial than others or may require more time to process. The Commission is proposing in this NOPR to establish three new fees for categories of activities which share common characteristics. These fee categories are delineated according to the nature of the service or benefit provided, i.e., either a 5 MW exemption application, a notice of qualifying status and a request for a written legal opinion interpreting a statute or implementing regulation under the jurisdiction of the Commission, except Part I of the FPA. For the three new fees proposed in this notice, the Commission believes that it is charging a fee based on the smallest practical unit of cost data available to the Commission.

4. Basis of Cost Recovery

(a) *Direct and indirect costs included.* As in the previous rulemakings, the fee schedule proposed by the Commission would be designed to account for all types of recoverable costs attributable to a particular Commission service, and not merely the salaries of the employees who review the notices, applications, and requests.[15] As in the previous fee rules, the costs used to calculate the fees include: Salaries and benefits; travel; transportation of things; rents, communications and utilities; printing; other services, excluding direct program contracts; supplies and equipment. These cost items are also expended by the Commission in completing the processing of a 5 MW exemption application, a notice of qualifying status, and a request for a written legal opinion of the Office of the General Counsel.

(b) *Methodology.* In calculating these new fees, the Commission proposes to use the same methodology currently used for all its IOAA fees. This methodology determines the cost of providing any service or benefit, calculated in the following manner.

First, the work-months (WMs) reported for a specific type of docketed activity are added to a pro-rata share of the WMs reported for the relevant support activities. This figure, representing the total number of WMs dedicated to a given function for a year, is divided by the number of completions of the given activity in that year. The resulting figure represents the average number of WMs required to complete each activity.

Second, the Commission uses the figures provided by the Office of the Controller to derive the average cost of a WM. The average cost of a WM in fiscal year 1986 is based on the Commission's actual yearly costs per employee, as follows:

Salaries and benefits	$47,482
Travel	671
Transportation of things	96
Rents, communications and utilities	5,994
Printing	1,405
Other services—excludes direct program contracts	6,851
Supplies	626
Equipment	276
Total	$63,401

This total is divided by 12 to yield an average WM cost of $5,283.41. Third, in order to determine the cost of the activity, the Commission multiplies the average cost per WM by the average number of WMs required to complete the activity.

(c) *Actual Fee Calculation.* The following table summarizes, for fiscal year 1986, the total number of WMs and completions, and the average cost per completion for the services for which the Commission is establishing fees in this rule.

Service	Total WM's in 1986	Completions in 1986	Average No. WM's per completion in 1986	Average cost per employee in 1986	Average cost per completion in 1986
Review of 5 MW exemption applications	187.7	90	2.085556	$5,283.41	$11,018.85
Processing Notice of Qualifying Status	4.9	564	0.008688	5,283.41	45.90
OGC Opinion [1] Letter	6.9	25	0.276000	5,283.41	1,458.22

[1] Fee Based on Actual Activity in 1987 through June. The number of completions includes written opinions interpreting the NGPA.

Based on the revised rounding procedure proposed later in this NOPR, *i.e.*, rounding down to the nearest $10 if the total cost is more than $100, the following fees are established:

Services	Fees
Review of 5 MW Exemption Applications	$11,010
Processing Notice of Qualifying Status	45
OGC Opinion Letter	1,450

5. Miscellaneous Issues Relating to the New Fees Established by the NOPR

In previous rulemakings establishing fees under the IOAA, the Commission established procedures for a waiver from the payment of fees, procedures for paying fees, procedures for direct billing and procedures for updating fees.[16] The Commission is proposing to use the same procedures as utilized in the previous fees rules for these three fees.

B. Revising Current Fees

The Commission proposes six revisions to its present filing fees under the IOAA to redefine several fee categories, increase fees that do not reflect the full cost of a service, and make other minor changes. First, the Commission proposes to revise its rounding procedures. Second, the Commission proposes to make the fee for interpretations of the NGPA and its implementing regulations, the same as the fee for other legal opinions issued by

[14] See, *Electronic Industries Association* v. *FCC*, 554 F.2d 1109, 1116–17 (D.C. Cir. 1976).

[15] *Mississippi Power and Light* v. *NRC*, 601 F.2d 223 (5th Cir. 1979).

[16] *See* 18 CFR 381.103, 381.104, 381.105, 381.106 and 381.107 (1987).

OGC. Third, separate filing fees are proposed for an application for certification as a qualifying small power production facility or as a cogeneration facility. Fourth, the Commission proposes to collect, through fees, the full cost of completing a petition for issuance of a declaratory order under § 385.207 of the Commission's procedures. Fifth, the Commission proposes to revise the methodology for calculating the filing fee for jurisdictional agency determinations. Sixth, the Commission proposes to consolidate the three filing fees for electric utility rate filings under FPA sections 205 and 206 into one fee. Seventh, the Commission is proposing to revise the filing fees for self-implementing transactions by interstate natural gas pipelines under blanket certificates issued pursuant to Subpart G of Part 284 of the Commission's regulations.

1. Rounding Fee to the Nearest $10

In both the original and subsequent updates to its filing fees, the Commission calculated fees by taking actual costs and rounding down to nearest $5 if the total costs were less than $100 and to the nearest $100 if costs exceeded $100. The Commission is proposing to revise its present procedures for rounding costs to calculate filing fees. This revision would take actual costs and round down to the nearest $10, instead of $100, if the costs exceed $100.

The Commission's current rounding procedures are not mandated by the IOAA and were adopted for administrative convenience. Since its existing rounding procedures do not accurately reflect the full cost of providing the service, the Commission proposes this revision. With the exception of the fees discussed in this NOPR, the Commission is proposing to implement this change for fees based on FY 1987 information and each fiscal year thereafter.

2. Fees for Legal Interpretations by the Office of the General Counsel of the Natural Gas Policy Act

The Commission is proposing to increase the present fee of $35 for interpretations of the NGPA to a level equal to the amount proposed for other written legal opinions by the Office of the General Counsel, $1,450. These opinion letters are provided in accordance with the procedures in Rule 1901 of the Commission's Rules of Practice and Procedure, 18 CFR 385.1901 (1987).

The $1,450 fee is proposed based on the following changes. First, the Commission sees no reason to distinguish between a fee for an NGPA opinion and a fee for an opinion of any other statute under the jurisdiction of the Commission, such as the Natural Gas Act. Thus the Commission is including the cost and number of completions of written NGPA opinion letters in the calculation of the fee for other OGC opinion letters.[17] Second, the number of NGPA opinion letters completed, used in calculating the fee for an OGC opinion letter, includes only written NGPA opinions issued. The number of completions used in calculating the present $35 fee includes not only written opinions issued but also non-written responses to requests for interpretations of the NGPA. Since the Commission presently charges and proposes to charge only for written responses, non-written responses have not been included in the calculation of the revised fee.[18]

3. Fees for Commission Certification of a Qualifying Small Power Production Facility and a Qualifying Cogeneration Facility

The Commission is proposing to divide the current fee category of application for Commission certification of qualifying status into two categories: Application for Commission certification of qualifying status as either a small power production facility or as a cogeneration facility. The Commission is proposing to charge:

(1) $2,350 for an application for Commission certification of qualifying status as a small power production facility; and

(2) $3,150 for an application for Commission certification of qualifying status as a cogeneration facility.

In the past, the Commission combined the costs for these two activities because it did not anticipate the differential in costs for reviewing each application, and because when the original fees rules were issued, the Commission's management information system had not separated the two types of applications. The Commission has found that, on average, it is more time-consuming to process an application for qualifying status as a cogeneration facility than to process an application for qualifying status as a small power production facility. In addition, an application for Commission certification as a qualifying small power production and cogeneration facility must meet different requirements and thus demand separate review processes by the Commission staff.

Excluding notices of qualifying status from the calculation of the cost of an application seeking qualifying status, as previously discussed in this NOPR,[19] and charging separate fees for an application for Commission certification as a small power production facility and for an application as a cogeneration facility, result in the following changes to the Commission's fee structure based on 1986 data.

Services	Current Fees [1]	Proposed fees—Number of completions	Total WMs spent in FY86	Average No. of WMs per completion	Cost per WM	Cost per completion	Proposed fee [2]
Review of [1] notices of qualifying status	—0—	SPP 261 COG 303 564	4.9	0.008688	$5,283.41	$45.90	$45.00

[17] The calculation of the proposed fee for OGC opinion letters is included in section II.A.4. of the NOPR.

[18] Counting oral responses as completions, when no fee is charged, has the effect of lowering the Commission's fee for seeking a written response.

[19] See section II.A. of the NOPR. In the past the Commission included the number of notices received in the total number of completions of an application for certification in a given year. However, the Commission found this distorts the calculation of the fee for applications. Specifically, the notices did not add substantially to the cost of review of an application for Commission certification as a qualifying facility, since they increase the total number of completions and take a minimal amount of time to process. Therefore, since the Commission now has the capability to record time expended to complete notices separate and distinct from the time expended completing applications, it proposed a separate fee for notices.

Services	Current Fees [1]	Proposed fees—Number of completions	Total WMs spent in FY86	Average No. of WMs per completion	Cost per WM	Cost per completion	Proposed fee [2]
Applications for qualifying status as a small power facility	$1,300.00	312	139.0	0.445513	$5,283.41	$2,353.83	$2,350.00
Applications for qualifying status as a co-generation facility	$1,300.00	242	144.7	0.597934	$5,283.41	$3,159.13	$3,150.00
Total		1118					

[1] In this NOPR, the Commission is charging a new fee for this activity.
[2] Fee based on revised rounding procedure.

4. Elimination of the Reduction from Full Cost Recovery for Issuance of a Declaratory Order

Under the IOAA, the Commission's fee structure is designed to collect the full cost to complete an activity. However, the Commission is not presently charging the full cost to complete a petition for issuance of a declaratory order under § 385.207 of the Commission's Rules of Practice and Procedure, 18 CFR 381.302.[20]

The fee for this activity recoups only 40 percent of the full cost to complete the activity. The Commission had reduced this fee because it believed that a fee that recovered full costs would substantially discourage the use of this service and have a harmful impact on small entities. However, the Commission no longer believes that various entities will be discouraged from filing requests for issuance of a declaratory order, if this filing is accompanied by a fee representing the full cost of the activity. Moreover, if a small entity demonstrates a hardship caused by the recovery of the full cost, it can petition the Commission for a waiver pursuant to § 381.106 of the Commission's regulations.[21] Therefore, based on 1986 data, the Commission is proposing to charge the full cost of this activity as follows:

Service	Total WM's	Number of completions	Average WM's per completion	Average cost per employee	Average cost per completion	Fee
Declaratory Order	76.95	40	1.923750	$5,283.41	$10,163.96	$10,160

5. Increasing the Fee for Jurisdictional Agency Determinations, § 381.402

The Commission is proposing to increase the fee for Commission review of a jurisdictional agency determination, in § 381.402, from $35 to $50. The Commission reviews an initial determination by a jurisdictional agency to ensure that there is substantial evidence to support a finding that gas produced qualifies for a certain NGPA price category. The Commission is proposing to raise the fee because it plans to include the cost of determination audits. In a determination audit, the Commission reviews a selected number of jurisdictional agency determinations processed in the previous year. In the past, the Commission had excluded the costs of determination audits from the cost of jurisdictional agency determinations because it believed that audits were not part of the service of making a jurisdictional agency determination. However, the Commission's experience has proven that since these audits are the primary means by which the Commission ensures that the initial determination was accurate, they should be included in this service.

Including the cost of determination audits in the cost of jurisdictional agency determinations would result in the following change to the fee for a jurisdictional agency determination based on 1986 data.

	Present method	Proposed
Total WM's in 1986	273.2	356.4
Completions	36,097	36,097
Average Number of WM'S per completion	.007568	.009873
Average Cost per Employee in 1986	$5,283.41	$5,283.41
Average Cost per Completion	$39.98	$52.16
Fee (Rounded Down)	$35.00	$50.00

6. Fees for Electric Utility Rate Filings Under Sections 205 and 206 of the FPA

The Commission is proposing to revise the present fees for filing of rate schedules by electric utilities under FPA sections 205 and 206. Presently, the Commission charges three separate fees for such rate filings as follows:

Type of filing	Description	Fee
Class 1 rate schedule	Rate filing under sections 205 and 206 of the FPA having no effect on the rate the utility charge or involving only a rate decrease.	$1,100
Class 2 rate schedule	Rate filing under sections 205 and 206 of the FPA § 35.13(a)(2) of the Commission's regulations having an effect on the rate the utility charge and not supported by Period II data.	3,100
Class 3 rate schedule	Rate filing under sections 205 and 206 of the FPA involving the filing of Period II cost of service date.	8,900

The Commission is proposing to consolidate the fees for these three

[20] The Commission also only recoups between 35 and 40 percent of the full cost of the following three activities:

1. Review of Department of Energy Remedial Orders, § 381.303.

2. Review of Department of Energy Denial of Adjustment, § 381.304.

3. Staff Adjustments under NGPA section 502(c), § 381.401.

The Commission also does not presently recoup the full cost of requests for legal interpretations of the NGPA by the Office of the General Counsel.

[21] 18 CFR 381.106 (1987).

types of rate filings into one fee of $3,930.

Although the Commission had established three different filing fees,[22] it has found that at the time of filing it is often difficult to determine the proper fee. Specifically, the current fee is partly based on the impact that the rate filing has on present rates, and a determination of that impact cannot be readily made when a filing is made. Therefore, the Commission is proposing to eliminate the rate schedule categories and charge a single fee for electric utility rate schedule filings. The Commission believes that this change will make it easier for electric utilities to pay, and for the Commission to collect, these fees.

Additionally, the Commission notes that it only assesses one fee for rate change filings under NGA section 4 or 5 of the Natural Gas Act. The Commission charges a fee of $4,700 for tariff filings by natural gas pipelines, regardless of the complexity of the tariff filing. The $3,930 fee is based on the following fee calculation.

Present fee	Total WM's in 1985	Average WM's per completion in 1985	Average cost per employee in 1985	Average cost per completion	Fee
Class 1 rate schedule	100.8	.21	$5,330.50	$1,119.40	$1,100
Class 2 rate schedule	142.4	.549	5,530.50	3,150.32	3,100
Class 3 rate schedule	195.5	1.67	5,330.50	8,901.93	8,900
Proposed fee	**Total WM's**	**Average WM's per completion**	**Average cost per employee**	**Average cost per completion**	**Fee**
Rate Filing under Sections 205 and 206 of the FPA	476.9	.743994	$5,283.41	$3,930.83	3,930

Present fees are based on 1985 data because 1986 was unavailable for use. Proposed fee based on completions and work months in 1987 through July. Fee based on rounding procedure proposed in this notice of proposed rulemaking.

7. Fees for Prior Notice Filings of Activities Described in § 284.223(b)

The Commission proposes to modify the fee structure for filings required under 18 CFR 157.205(b) for the transportation of natural gas by an interstate pipeline for a shipper as described in 18 CFR 284.223(b). The Commission is proposing to reduce the current fee of $1,500 to less than full cost recovery. The proposed fee would be the fee prescribed in § 381.404 of the Commission's regulations. That fee is currently $600 and is paid by an interstate pipeline operating under a blanket certificate when filing an initial report on transportation service performed under the self-implementing transaction authority of § 284.223(a) of the Commission's regulations. However, the Commission is proposing to waive this fee, required by 18 CFR 157.205(b), if an interstate pipeline that holds a blanket certificate has previously paid the fee with its initial report for self-implementing transactions required by 18 CFR 284.223(d).

The Commission is proposing these changes so that a shipper does not decide betwen transportation under NGPA section 311 (Subpart B of Part 284 of the Commission's regulations) or under the blanket certificate provisions (Subpart G of Part 284 of the Commission's regulations) based on the amount of the fee the shipper may have to pay to the pipeline. Specifically, under the current fee structure, if a pipeline transports on behalf of a shipper under the self-implementing provisions of § 284.223(a) of the Commission regulations, it pays a $600 fee with its initial report. The authorization for transportation under § 284.223(a) is good for 120 days. If an interstate pipeline wishes to transport beyond 120 days (under § 284.223(b)), it must pay an additional fee of $1,500. However, the same interstate pipeline can transport gas under NGPA section 311 (Subpart B of Part 284) for an unlimited period of time, without paying the additional $1,500 fee. The Commission believes that the difference in fees could create a regulatory bias in favor of transportation of gas under NGPA section 311 over transportation under NGA section 7 blanket certificates.

III. Initial Regulatory Flexibility Analysis

Whenever the Commission is required by section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, to publish a general notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, to prepare and make available for public comment an initial regulatory flexibility analysis if the proposed rule will have a significant economic impact on a substantial number of small entities. The broad purpose of the RFA is to ensure more careful and informed agency consideration of rules that may significantly affect small business and small government entities and to encourage consideration of alternative approaches that may better resolve any unnecessarily costly or adverse effects on these small entities.

In this NOPR the Commission presents its reasons for this agency action, its objective, and the legal basis for this rulemaking. As discussed, the proposed rule would revise the fees to be paid to the Commission for certain benefits it provides and make revisions to the Commission existing filing fees.

This rule, if adopted, would affect a wide variety of entities under the jurisdiction of the Commission, including natural gas producers, electric utilities, developers of 5 MW hydroelectric projects, and persons seeking qualifying status as small power or cogeneration facility. The Commission recognizes that a significant portion of these entities may be small businesses, especially among natural gas producers, persons developing a 5 MW hydroelectric project and persons seeking qualifying status as a small power or cogeneration facility. Thus, this rule may have a significant impact on a number of small entities.

Where a proposal may have significant economic impact on a substantial number of small entities,

[22] 50 FR 40347, 40348 (Oct. 3, 1985).

section 603(c) of the Regulatory Flexibility Act requires the Commission to discuss significant alterantives to the proposal. The Commission has already attempted to minimize any disproportionate burden the proposal would have on small businesses. The Commission's fees rules contain a provision for waiver of fees. The Commission could, of course, consider reducing fees, or even eliminating fees, with respect to small businesses. However, in proposing fees, the Commission is also attempting to satisfy the statutory directive of the IOAA to be "self-sustaining to the full extent possible." The Commission believes that this fees rule and its remaining fees represent a fair balance which satisfies the purposes of both the IOAA and the Regulatory Flexibility Act.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) [23] and the Office of Management and Budget's (OMB) [24] regulations require that OMB approve certain information collection requirements imposed by agency rule. The provisions of this NOPR have been submitted to OMB for its approval. Interested persons can obtain information on those provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (attention: Ellen Brown, (202) 357–5311). Comments on the provisions of this NOPR can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (attention: Desk Officer for the Federal Energy Regulatory Commission).

V. Public Comment Procedures

The Commission invites all interested persons to submit written data, views, or other information on the matters in this NOPR. An original and fourteen copies should be submitted on or before December 14, 1987, to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Comments submitted should refer to Docket No. RM87–26–000. All written submissions will be placed in the Commission's public file and will be available for public inspection through the Commission's Public Reference Section, Room 1000, 825 North Capitol Street NE., Washington, DC 20426, during regular business hours.

[23] 44 U.S.C. 3501–3520 (1982).

[24] 5 CFR Part 1320 (1987).

List of Subjects

18 CFR Part 3

Freedom of information, Organization and functions (Government agencies).

18 CFR Part 4

Electric Power, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 292

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Parts 3, 4, 157, 292, 375, 381 in Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

PART 3—ORGANIZATION, OPERATION, INFORMATION AND REQUESTS

1. The authority citation for Part 3 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976); Freedom of Information Act, 5 U.S.C. 552 (1982).

2. In § 3.8, paragraph (h) is revised to read as follows:

§ 3.8 Public information and submittals.

* * * * *

(h)(1) The Commission staff provides informal advice and assistance to the general public and to prospective applicants for licenses, certificates and other Commission authorizations. Opinions expressed by the staff do not represent the official views of the Commission, but are designed to aid the public and facilitate the accomplishment of the Commission's functions. Inquiries may be directed to the director of the appropriate office.

(2)(i) An inquiry directed to the Chief Accountant that requires a written response must be accompanied by the fee prescribed by § 381.301 of this chapter.

(ii) A request for a legal opinion from the Office of the General Counsel, which requires a written response, must be accompanied by the fee prescribed in § 381.405 of this chapter.

* * * * *

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

3. The authority citation for Part 4 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142

4. In § 4.107, paragraph (a) is revised to read as follows:

§ 4.107 Contents of application for exemption from licensing.

(a) *General requirements.* An application for exemption from licensing submitted under this subpart must contain the introductory statement, the exhibits described in this section, the fee prescribed in § 381.305 of this chapter and, if the project structures would use or occupy any lands other than Federal lands, an appendix containing documentary evidence showing that the applicant has the real property interests required under § 4.103(b)(2)(ii) of this chapter.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

5. The authority citation for Part 157 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142 (1978); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982).

6. Section 157.205(b) is revised to read as follows:

§ 157.205 Notice procedure.

* * * * *

(b) *Content.* (1) Except as provided in paragraph (b)(2) of this section, for any activity subject to the requirements of this section the certificate holder must

file with the Secretary of the Commission the fee prescribed in § 381.208 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter and an original and fifteen copies of request for authorization under the notice procedure of this section that contains:

(i) The act legal name of the certificate holder and mailing address and telephone number of the person or persons to whom communications concerning the request are to be addressed;

(ii) The docket number in which its blanket certificate was issued;

(iii) Any information required in § 157.208 through § 157.218 of this chapter for the particular activity.

(iv) A verified statement that the proposed activity complies with the requirements of this subpart; and

(v) A form of notice suitable for publication in the **Federal Register** which briefly summarizes the facts contained in the request with sufficient particularity so as to notify the public of its scope and purpose.

(vi) Identities and docket numbers of other applications related to the transaction. All related filings must be made within 10 days of the first filing. Otherwise the applications on file will be rejected under paragraph (c) of this section without prejudice to refiling when all parties are ready to proceed.

(2) No fee will be assessed for—

(i) Abandonment activities under § 157.216(b) of this chapter, and

(ii) Transportation under § 284.223(b) of this chapter, if the fee required for under § 284.223(d) of this chapter for the initial report has previously been paid for an existing transportation authorized by § 284.223(a) of this chapter.

* * * * *

PART 292—REGULATIONS UNDER SECTIONS 201 AND 210 OF THE PUBLIC UTILITY REGULATORY POLICIES ACT OF 1978 WITH REGARD TO SMALL POWER PRODUCTION AND COGENERATION

7. The authority citation for Part 292 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, U.S.C. 791a–825r (1982), as amended by the Electric Consumers Protection Act of 1986; Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982) as amended.

6. In § 292.207, paragraph (a)(2) is revised to read as follows:

§ 292.207 Procedures for obtaining qualifying status.

(a) * * * * *

(2) The owner or operator of any facility qualifying under this paragraph must furnish notice to the Commission providing the information set forth in paragraphs (b)(2) (i) through (iv) of this section and the fee prescribed in § 381.513 of this chapter.

* * * * *

PART 375—THE COMMISSION

9. The authority citation for Part 375 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7532 (1982), E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 553 (1982); Federal Power Act, 16 U.S.C. 791–828c (1982) as amended by the Electric Consumers Protection Act of 1986; Natural Gas Act, 15 U.S.C. 3301 *et seq.*; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 *et seq.*, as amended.

10. In § 375.308, paragraph (m) is revised to read as follows:

§ 375.308 Delegations to the Director fo the Office of Electric Power Regulation.

* * * * *

(m) Deny or grant, in whole or in part, a petition for waiver of fees prescribed in §§ 381.502, 381.505, 381.510, 381.511, 381.512 and 381.513 of this chapter in accordance with § 381.106 of this chapter.

* * * * *

11. In § 375.309, paragraph (f) is revised to read as follows:

§ 375.309 Delegations to the General Counsel.

* * * * *

(f) Deny or grant, in whole or in part, petitions for waiver of fees prescribed in § 381.405 of this chapter in accordance with § 381.106 of this chapter.

12. In § 375.314, paragraph (gg) is revised to read as follows:

§ 375.314 Delegations to the Director of the Office of Hydropower Licensing.

* * * * *

(gg) Deny or grant, in whole or in part, petitions for exemption from the fees prescribed in § 381.302(a) and § 381.405(a) of this chapter in accordance with § 381.302(c) and § 381.405(c) of this chapter and the fee in § 381.305 of this chapter, in accordance with § 381.106 of this chapter.

* * * * *

PART 381—FEES

13. The authority citation for Part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

14. In § 381.104, paragraph (c) is revised to read as follows:

§ 381.104 Annual adjustment of fees.

* * * * *

(c) *Formula.* The formula for determining each fee is the actual work-months dedicated to a given fee category for the previous fiscal year divided by the number of actual completions in the previous fiscal year multiplied by the average cost per work-month in the previous fiscal year. The fee is rounded down to the nearest $5 increment if the fee is $100 or less, and the nearest $100 increment if the fee is more than $100. In the revision of any fees after July 1, 1987, and in the calculation of fees based on fiscal year 1987 costs and each calculation thereafter, the fee will be rounded down to the nearest $10 if the fee is more than $100.

* * * * *

15. Section 381.208 is revised to read as follows:

§ 381.208 Requests under the blanket certificate notice and protest procedures.

(a) Except as provided in paragraph (b) of this section, the fee established for a request for authorization under blanket certificate notice and protest procedures is $1,500. The fee must be submitted in accordance with Subpart A of this Part and § 157.205(b) of this chapter.

(b) The fee for an application under § 284.223(b) of this chapter is the same fee prescribed in § 381.404 of this chapter and no fee is required if the fee under § 284.223(d) has been paid for an existing transportation authorization pursuant to § 284.223(a) of this chapter.

16. In § 381.302, paragraph (a) is revised to read as follows:

§ 381.302 Petition for issuance of a declaratory order (except under Part I of the Federal Power Act).

(a) Except as provided in paragraph (b) of this section, the fee established for filing a petition for issuance of a declaratory order under § 385.207 of the Commission's Rules of Practice and Procedure is $10,160. The fee must be

submitted in accordance with Subpart A of this part.

* * * * *

17. A new § 381.305 is added to read as follows:

§ 381.305 5 MW exemption application.

The fee established for a 5 MW exemption application under section 405 of the Public Utility Regulatory Policies Act of 1978 and Subpart K of Part 4 of the Commission's regulations is $11,010. The fee must be submitted in accordance with Subpart A of this part.

18. Section 381.402 is revised to read as follows:

§ 381.402 Review of jurisdictional agency determinations.

The fee established for review of a jurisdictional agency determination is $50. The fee must be submitted in accordance with Subpart A of this part and § 274.201(e) of this chapter.

19. Section 381.405 is revised to read as follows:

§ 381.405 Interpretations by the Office of the General Counsel.

(a) Except as provided in paragraph (b) of this section, the fee established for an Office of the General Counsel interpretation of any statute under the jurisdiction of the Commission and the implementing regulations which requires a written response, is $1,450. The fee must be submitted in accordance with Subpart A of this part.

(b) No fee is necessary to file a request for a written legal opinion by the Office of the General Counsel that solely concerns matters under Part I of the Federal Power Act.

(c) A person claiming the exemption provided in paragraph (b) of this section must file an original and two copies of a petition for exemption in lieu of a fee along with its request for a written legal opinion by the Office of the General Counsel. The petition for exemption should summarize the issues raised in the request for a legal opinion and explain why the exemption is applicable. The Commission or its designee will analyze each petition to determine whether the petition has met the standards for exemption and will notify the applicant whether it is granted for denied. If the petition is denied, the applicant will have 30 days from the date of notification of the denial to submit the appropriate fee of the Commission.

20. Section 381.502 is revised to read as follows:

§ 381.502 Rate schedule filings under sections 205 and 206 of the Federal Power Act.

Unless the Commission orders direct billing under § 381.107 of this chapter or otherwise, the fee established for rate schedule filings under sections 205 and 206 of the Federal Power Act is $3,930. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and Part 35 of this chapter.

§ 381.503 [Removed and reserved]

21. Section 381.503 Class 2 rate schedule filings is removed in its entirety and reserved.

§ 381.504 [Removed and reserved]

22. Section 382.504 Class 3 rate schedule filings is removed in its entirety and reserved.

23. Section 381.505 is revised to read as follows:

§ 381.505 Certification of qualifying status as a small power production or cogeneration facility.

Unless the Commission orders direct billing under § 381.107 of this chapter or otherwise, the fee established for an application for Commission certification as a qualifying small power production facility, as defined in section 3(17) of the Federal Power Act is $2,350 and the fee established for an application for Commission certification as a qualifying cogeneration facility, as defined in section 3(18) of the Federal Power Act is $3,150. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and § 292.207(b)(2) of this chapter.

24. A new § 381.513 is added to read as follows:

§ 381.513 Notice of qualifying facility.

The fee established for a notice from an owner or operator of a qualifying facility, under the procedures in § 292.207 of this chapter, is $45. The fee must be submitted in accordance with Subpart A of this part and with the notice specified in § 292.207(a)(2) of this chapter.

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BILLING CODE 6717-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 200

Regulation To Exempt System of Records Under Privacy Act

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend § 200.5 of its regulations, which implement the Privacy Act, to exempt system of records, RRB-43, Investigation Files, from those requirements of the Privacy Act consistent with the general exemption provision of the act at 5 U.S.C. 552a(j)(2).

DATE: Comments must be submitted on or before January 12, 1988.

ADDRESS: Send written comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Leroy Blommaert, Privacy Act Officer, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4548 (FTS 387-4548).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board proposes to exempt, under the general exemption provisions of 5 U.S.C. 552a(j)(2), RRB records system: RRB-43, Investigation Files (50 FR 10332-33 (March 14, 1985)). This system of records is presently exempted under the specific exemption provision of 5 U.S.C. 552a(k)(2). At the time this system was established, it was not maintained by a component of the Board "Which performs as its prinicipal function any activity pertaining to the enforcement of criminal laws," and hence could not qualify for general exemption. The system is now maintained by a newly established Officer of Inspector General. A component of that Office, the Office of Investigations, performs as its prinicipal function activities pertaining to the enforcement of criminal laws. The system thus now qualifies for exemption under 5 U.S.C. 552a(j)(2).

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory Impact Analysis is required.

List of Subjects in 20 CFR Part 200

Railroad retirement, Railroad unemployment insurance, Privacy.

Title 20 CFR Part 200 is proposed to be amended as follows:

1. The authority citation for Part 200 continues to read as follows:

Authority: 45 U.S.C. 231f and 45 U.S.C. 362, unless otherwise noted.

Title 20 CFR, § 200.5 is proposed to be amended as follows:

2. The authority citation for § 200.5 continues to read as follows:

Authority: 5 U.S.C. 552a

3. Section 200.5(f) is revised to read as follows:

§ 200.5 [Amended]

* * * * *

(f) General exemptions—(1) Systems of records subject to investigatory material exemption under 5 U.S.C. 552a(j)(2). RRB–43, Investigation Files, a system containing information concerning alleged violations of law, regulation, or rule pertinent to the administration of programs by the RRB or alleging misconduct or conflict of interest on the part of RRB employees in the discharge of their official duties.

(2) Scope of Exemption. (i) The System of records identified in this paragraph is maintained by the Office of Investigations (OI) of the Office of Inspector General (OIG), a component of the Board which performs as its principal function activities pertaining to the enforcement of criminal laws. Authority for the criminal law enforcement activities of the OIG's OI is the Inspector General Act of 1978, 5 U.S.C. app.

(ii) Applicable information in the system of records described in this paragraph is exempt from subsection (c)(3) and (4) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8) (Agency Requirements) (f) (Agency Rules) and (g) (Civil Remedies) of 5 U.S.C. 552a.

(iii) To the extent that information in this system of records does not fall within the scope of this general exemption under 5 U.S.C. 552 (j)(2) for any reason, the specific exemption under 5 U.S.C. 552 (k)(2) is claimed for such information. (See paragraph (g) of this section.)

(3) Reason for exemptions. The system of records described in this section is exempt for one or more of the following reasons:

(i) 5 U.S.C. 552a(c)(3) requires an agency to make available to the individual named in the records, at his or her request, an accounting of each disclosure of records. This accounting must state the date, nature, and purpose of each disclosure of a record and the name and address of the recipient. Accounting of each disclosure would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of an investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

(ii) 5 U.S.C. 552a(c)(4) requires an agency to inform any person or other agency about any correction or notation of dispute made by the agency in accordance with subsection (d) of the Act. Since the RRB in claiming that this system of records is exempt from subsection (d) of the Act, concerning access to records, this section is inapplicable and is exempted to the extent that this system of records is exempted from subsection (d) of the Act.

(iii) 5 U.S.C. 552a(d) requires an agency to permit an individual to gain access to records pertaining to him or her, to request amendment of such records, to request a review of an agency decision not to amend such records, and to contest the information contained in such records. Granting access to records in the system of records could inform the subject of the investigation of an actual or potential criminal violation of the existence of that investigation, of the nature and scope of the information and evidence obtained as to his or her activities, of the identity of confidential sources, witnesses, and law enforcement personnel, and could provide information to enable the subject to avoid detection or apprehension. Granting access to such information could seriously impede or compromise an investigation, lead to the improper influencing of witnesses, the detruction of evidence, or the fabrication of testimony, and disclose investigative techniques and procedures.

(iv) 5 U.S.C. 552a(e)(1) requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a propose required by statute or executive order of the President. The application of this provision could impair investigations and law enforcement, because it is not always possible to detect the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established.

(v) 5 U.S.C. 552a(e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under Federal programs. The application of this provision could impair investigations and law enforcement by alerting the subject of an investigation of the existence of the investigation, enabling the subject to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Moreover, in certain circumstances the subject of an investigation cannot be required to provide information to investigators, and information must be collected from other sources. Furthermore, it is often necessary to collect information from sources other than the subject of the investigation to verify the accuracy of the evidence collected.

(vi) 5 U.S.C. 552a(e)(3) requires an agency to inform each person whom it asks to supply information, on a form that can be retained by the person, of the authority under which the information is sought and whether disclosure is mandatory or voluntary; of the principal purposes for which the information is intended to be used; of the routine uses which may be made of the information; and of the effects on the person, if any, of not providing all or any part of the requested information. The application of this provision could provide the subject of an investigation with substantial information about the nature of that investigation.

(vii) 5 U.S.C. 552a(e)(4)(G) and (H) require an agency to publish a **Federal Register** notice concerning its procedures for notifying an individual at his request if the system of records contains a record pertaining to him or her, how he or she can gain access to such a record, and how he or she can contest its contents. Since the RRB is claiming that the system of records is exempt from subsection (f) of the Act, concerning agency rules, and subsection (d) of the Act, concerning access to records, these requirements are inapplicable and are exempted to the extent that these systems of records are exempted from subsections (f) and (d) of the Act. Although the RRB is claiming exemption from these requirements, RRB has published such a notice concerning its notification, access, and contest procedures because, under certain circumstances, RRB might decide it is appropriate for an individual to have access to all or a portion of his or her records in this system of records.

(viii) 5 U.S.C. 552a(e)(4)(I) requires an agency to publish in the **Federal Register** notice concerning the categories of sources of records in the system of records. Exemption from this provision is necessary to protect the confidentiality of the sources of information, to protect the privacy of confidential sources and witnesses, and to avoid the disclosure of investigative techniques and procedures. Although RRB is claiming exemption from this requirement, RRB has published such a

notice in broad generic terms in the belief that this is all subsection (e)(4)(I) of the Act requires.

(ix) 5 U.S.C. 552a(e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to assure fairness to the individual in making any determination about the individual. Since the Act defines "maintain" to include the collection of information, complying with this provision would prevent the collection of any data not shown to be accurate, relevant, timely, and complete at the moment it is collected. In collecting information for criminal law enforcement purposes, it is not possible to determine in advance what information is accurate, relevant, timely, and complete. Facts are first gathered and then placed into a logical order to prove or disprove objectively the criminal behavior of an individual. Material which may seem unrelated, irrelevant, or incomplete when collected may take on added meaning or significance as the investigation progresses. The restrictions of this provision could interfere with the preparation of a complete investigative report, thereby impeding effective law enforcement.

(x) 5 U.S.C. 552a(e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record. Complying with this provision could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(xi) 5 U.S.C. 552a(f)(1) requires an agency to promulgate rules which shall establish procedures whereby an individual can be notified in response to his or her request if any system of records named by the individual contains a record pertaining to him or her. The application of this provision could impede or compromise an investigation or prosecution if the subject of an investigation was able to use such rules to learn of the existence of an investigation before it could be completed. In addition, mere notice of the fact of an investigation could inform the subject or others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony. Since the RRB is claiming that these systems of records are exempt from subsection (d) of the Act, concerning access to records, the requirements of subsections (f) (2) through (5) of the Act, concerning agency rules for obtaining access to such records, are inapplicable and are exempted to the extent that this system of records is exempted from subsection (d) of the Act. Although RRB is claiming exemption from the requirements of subsection (f) of the Act, RRB has promulgated rules which establish Agency procedures because, under certain circumstances, it might be appropriate for an individual to have access to all or a portion of his or her records in this system of records. These procedures are described elsewhere in this Part.

(xii) 5 U.S.C. 552a(g) provides for civil remedies if an agency fails to comply with the requirements concerning access to records under subsections (d) (1) and (3) of the Act; maintenance of records under subsection (e)(5) of the Act; and any rule promulgated thereunder, in such a way as to have an adverse effect on an individual. Since the RRB is claiming that this system of records is exempt from subsections (c) (3) and (4), (d), (e)(1), (2), (3), (4)(G), (H), and (I), (5), and (8), and (f) of the Act, the provisions of subsection (g) of the Act are inapplicable and are exempted to the extent that this system of records is exempted from those subsections of the Act.

* * * * *

By the authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

Dated: November 4, 1987.

[FR Doc. 87-26238 Filed 11-12-87; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Public Comment Period and Opportunity for Public Hearing on Proposed Modifications; Utah Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Notice of proposed rulemaking.

SUMMARY: OSMRE is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of program amendments submitted by the State of Utah to modify the Utah Permanent Regulatory Program (hereinafter referred to as the Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments pertain to alluvial valley floors.

This notice sets forth the times and locations that the Utah program and the proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed program elements, and the procedures that will be followed regarding the public hearings.

DATES: Written comments not received on or before 4:00 p.m., December 14, 1987, will not necessarily be considered.

If requested, a public hearing on the proposed modifications will be held on December 8, 1987, beginning at 10:00 a.m., at the location show under **"ADDRESSES."**

ADDRESSES: Written comments should be mailed or hand-delivered to: Mr. Robert H. Hagen, Field Office Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102.

If a public hearing is requested, it will be held at 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, UT 84180-1203.

Copies of the Utah program, the proposed amendments to the program, a listing of any scheduled public meetings, and all written comments received in response to this notice will be available for review at the OSMRE offices and the office of the State Regulatory Authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting the OSMRE Albuquerque Field Office listed under **"ADDRESSES."** The aforementioned documents are available for review at the following locations:

Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766-1486;

Office of Surface Mining Reclamation and Enforcement, Room 5131, 1100 L Street, NW., Washington, DC 20240, Telephone: (202) 343-5492.

Utah Division of Oil, Gas and Mining, 355 West North Temple, 3 Triad Center, Suite 350, Salt Lake City, UT 84180-1203, Telephone: (801) 538-5340.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Field Office Director, Office of Surface Mining Reclamation and Enforcement, Albuquerque Field Office, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102, Telephone: (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of the Interior approved the Utah program under SMCRA for the regulation of surface coal mining operations on January 21, 1981. Information pertinent to the general background and revisions to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Utah program, can be found in the January 21, 1981, **Federal Register** [46 FR 5899–5915]. Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 944.10, 944.12, 944.15, and 944.16.

II. Submission of Amendments

On September 29, 1987, Utah submitted proposed amendments to the Utah program for OSMRE's review and approval. The proposed amendments at SMC/UMC 785.19(e)(2) would delete the last sentence of subsection (e)(2) which states "The effect of the proposed operations on farming will be concluded to be significant if they would remove from production, over the life of the mine, a proportion of the farm's production that would decrease the expected annual income from agricultural activities normally conducted at the farm."

The full text of the proposed program amendments submitted by Utah are available for public inspection at the locations listed under **"ADDRESSES,"** or a copy of the proposed amendments can be obtained as described under the same section.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is seeking comment on whether the proposed amendments satisfy the requirements of 30 CFR 732.15 for the approval of State program amendments. If OSMRE finds the amendments in accordance with SMCRA and no less effective than the Federal regulations, they will be approved and become part of the Utah program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the OSMRE Albuquerque, New Mexico Field Office will not necessarily be considered and included in the Administrative Record for this proposed rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "For FURTHER INFORMATION CONTACT" by the close of business December 4, 1987. If no one requests to comment, a public hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those persons scheduled. The hearing will end after all persons who wish to comment have been heard.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed in **"ADDRESSES"** by contacting the person listed under **"FOR FURTHER INFORMATION CONTACT."**

All such meetings are open to public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Matters

1. *Compliance with National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: October 29, 1987.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

[FR Doc. 87–26244 Filed 11–12–87; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–87–58]

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Florida

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the National Aeronautics and Space Administration, the Coast Guard is considering a change to the regulations governing the Addison Point (SR 405) drawbridge at Kennedy Space Center, Florida by permitting the draw to remain closed during certain periods. This proposal is being made because periods of peak vehicular traffic have changed. This action should accommodate the needs of vehicular traffic and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before December 28, 1987.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130–1608. The comments and other materials referenced in this notice will be available for inspection and copying on the 4th Floor of the Brickell Plaza Federal Building, 909 SE 1st Ave, Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday

through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of Proposed Regulations

The Addison Point draw presently opens on signal, except that from 6:45 a.m. to 8 a.m. and 4:15 p.m. to 5:45 p.m. Monday through Friday, the draw need not open. Traffic counts clearly show that these closed periods do not cover the peak periods of vehicular traffic. NASA wants the closed period started 15 minutes earlier each morning and shifted 45 minutes earlier each evening to accommodate existing vehicular traffic movements. This should cause minimal additional delay to navigation. Public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property would continue to be passed at any time.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.261(l) is revised to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St Marys River to Key Largo.

* * * * *

(1) *John F. Kennedy Space Center (SR 405) bridge mile 885.0 at Addison Point.* The draw shall open on signal; except that from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 5 p.m. Monday through Friday, except federal holidays, the draw need not open.

* * * * *

Dated: October 29, 1987.

H.B. Thorsen,

RADM, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 87–26284 Filed 11–12–87; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–87–45]

Drawbridge Operation Regulations; Savannah River, Georgia

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Georgia Department of Transportation, the Coast Guard is considering a change to the regulations governing the Houlihan Bridge (U.S. 17) at Savannah Georgia, by requiring that advance notice of opening be given. This proposal is being made because of a very low volume of requests for opening of the draw. This action should relieve the bridge owner of an excess cost burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before December 28, 1987.

ADDRESSES: Comments should be mailed to Commander (oan), Seventh Coast Guard District, 51 SW. 1st Avenue, Miami, Florida 33130–1608. The comments and other materials referenced in this notice will be available for inspection and copying on the fourth floor of the Brickell Plaza Federal Building (909 SE 1st Avenue), Miami, Florida. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments also may be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky (305) 536–4103.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge and give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Seventh Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Mr. Walt Paskowsky, Bridge Administration Specialist, project officer, and Lieutenant Commander S.T. Fuger, Jr., project attorney.

Discussion of proposed Regulations

The bridge presently opens on signal from 6 a.m. to 11 a.m. and 12 noon to 3 p.m. At all other times the draw opens on signal if at least 3 hours notice is given. The draw was opened 33 times in 1986. This is not considered frequent enough to warrant constant bridgetender service.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the bridge openings are infrequent. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact

on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continued to read as follows:

Authority: 33 U.S.C. 499; CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.371(a) is revised to read as follows:

§ 117.371 Savannah River.

(a) The draw of the Houlihan bridge (U.S. 17) mile 21.6 at Savannah shall open on signal if at least three hours advance notice is given to the Georgia Department of Transportation Area Engineer in Savannah.

* * * * *

Dated: November 2, 1987.

M.J. O'Brien,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District Acting.

[FR Doc. 87-26283 Filed 11-12-87; 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 1

Exemptions from Public Access to Agency Records

AGENCY: Veterans Administration.

ACTION: Proposed regulation.

SUMMARY: The Veterans Administration (VA) proposes to update its regulations so that they conform to the statutory language changes made by the Freedom of Information Reform Act of 1986 (Pub. L. 99-570), and incorporate the statutory language of 5 U.S.C. 552(c)(1) and (c) (2) which were added by that Act. The effect of this regulation is simply to make 38 CFR 1.554 consistent with the statutory language.

DATES: Comments must be received on or before December 17, 1987. Comments will be available for public inspection until January 4, 1988. It is proposed to make these changes retroactively effective on the effective date of the statutory changes which they implement, October 27, 1986, as prescribed by section 1804(a) of Pub. L. 99-570.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed regulatory amendment to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, of the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until January 4, 1988.

FOR FURTHER INFORMATION CONTACT: Donald R. Howell, Management Analyst, Paperwork Management and Regulations Service (733), Office of Information Management and Statistics, (202) 233-3648.

SUPPLEMENTARY INFORMATION: The Freedom of Information Act permits records to be withheld under any of nine exemptions. One of these exemptions allows withholding of records compiled for law enforcement purposes. 38 CFR 1.554(a)(7) implements the law enforcement exemption within the VA. The Freedom of Information Reform Act of 1986 revised the language of the law enforcement exemption. For example, exemption (b)(7) of the FOIA statute originally read "investigatory records compiled for law enforcement purposes." The revised statutory wording deletes the qualifying word "investigatory" and adds "or information." Since VA's regulation uses the same wording as the statute, it is necessary to amend the regulation to conform to the revised wording of the statute.

In addition, a new paragraph is being added to 38 CFR 1.554 to also incorporate verbatim the statutory language of 5 U.S.C. 552(c)(1) and (c)(2). This new statutory language authorizes agencies to treat certain law enforcement records and information as not subject to the Freedom of Information Act in certain limited circumstances.

The Administrator hereby certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act 5 U.S.C. 601-612. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of Sections 603 and 604. The reason for this certification is that this change simply repeats, and makes VA regulations consistent with, the language of Pub. L. 99-570; it imposes no new administrative or paperwork burdens. It will have no significant direct impact on small entities (i.e., small businesses, small private and non-profit organizations, and small governmental jurisdictions).

The VA has determined that this proposed regulatory amendment is non-major in accordance with Executive Order 12291, entitled Federal Regulation. This amendment will not have a $100 million annual impact on the economy; nor will it have 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.

List of Subjects in 38 CFR Part 1

Administrative practice and procedure, Claims, Employment, Government employees, Freedom of Information Act, Privacy, Government property.

Approved: October 30, 1987.

Thomas K. Turnage,

Administrator.

PART 1—[AMENDED]

In 38 CFR Part 1, General, § 1.554 is proposed to be amended by revising paragraph (a)(7), adding paragraph (c), and adding citations at the end of paragraphs (a)(7) and (c) to read as follows:

§ 1.554 Exemptions from public access to agency records.

(a) * * *

(7) Records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) 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;

(v) Would disclose techniques and procedures 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

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(Authority: 5 U.S.C. 552(b)(7))

* * * * *

(c)(1) Whenever a request is made which involves access to records described in paragraph (a)(7)(i) of this section and—

(i) The investigation or proceeding involves a possible violation of criminal law, and

(ii) There is reason to believe that—

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) 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 this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the Agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(Authority: 5 U.S.C. 552(c)(1) and (c)(2))

[FR Doc. 87-26278 Filed 11-12-87; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-486, RM-5938]

Radio Broadcasting Services; Tallahassee and Quincy, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Dalcom Broadcasting, Inc., licensee of Station WTHZ(FM), Tallahassee, Florida, which seeks to substitute Channel 276C2 for Channel 276A, and to modify its Class A license to specify the Class C2 channel. To accommodate the Tallahassee upgrade, Channel 298A is proposed as a substitute for unused Channel 274A at Quincy, Florida (allotted in Docket 84-231). This can be accomplished in accordance with the provisions of the *Memorandum Opinion and Order* in Docket 84-231, 51 FR 36401, published October 10, 1986.

DATES: Comments must be filed on or before December 31, 1987, and reply comments on or before January 15, 1988.

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 M. Weitzman, Kaye, Scholer, Fierman, Hays and Handler, 1575 Eye Street NW., Washington, DC 20005 (Attorney for petitioner)

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-486, adopted October 16, 1987, and released November 6, 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 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.

Mark N. Lipp,

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

[FR Doc. 87-26211 Filed 11-12-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-487, RM-5965]

Radio Broadcasting Services; Lihue, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by John Hutton Corporation, licensee of Station KQNG-FM, Lihue, Hawaii, which proposes to substitute Channel 228C1 for Channel 228A at Lihue, and to modify its Class A license to specify the new channel.

DATES: Comments must be filed on or before December 31, 1987, and reply comments on or before January 15, 1988.

ADDRESSES: 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: Leonard S. Joyce, Esq., Blair, Joyce and Silva, 1825 K Street NW., Washington, DC 20006 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No.87-487, adopted October 16, 1987, and released November 6, 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 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.

Mark N. Lipp,

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

[FR Doc. 87-26208 Filed 11-12-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-494, RN-5869]

Radio Broadcasting Services; Barbourville, KY and Big Stone Gap, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Valley Broadcasting Inc., licensee of Station WLSD-FM, Channel 228A, Big Stone Gap, Virginia, proposing the substitution of Channel 228C2 for Channel 228A at Big Stone Gap and the modification of its license to specify operation on the higher class co-channel. In addition the proposal requires the substitution of Channel 241A for Channel 228A at Barbourville, Kentucky in order to accomplish the Big Stone Gap substitution. A first wide coverage area FM station could be provided to Big Stone Gap. Also a site restriction of 8.2 kilometers (5.1 miles) west of the Big Stone Gap is required.

DATES: Comments must be filed on or before December 31, 1987, and reply comments on or before January 15, 1988.

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: Joseph E. Dunne III, Esquire, May & Dunne, Chartered, 1156 15th Street NW., Suite 515, Washington, DC 20005-1704 (Counsel to petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-494, adopted October 19, 1987, and released November 6, 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 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

Mark N. Lipp,

Chief, Allocations Branch,Mass Media Bureau.

[FR Doc. 87-26207 Filed 11-12-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

MM Docket No. 86-103, RM-4984, RM-5456]

Radio Broadcasting Services; Troy, LA and Bowling Green, Springfield, and Columbia, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document orders the licensees of Stations KJFM, Louisiana, KPCR-FM, Bowling Green, and KTXR(FM), Springfield, Missouri to show cause why their licenses should not be modified to specify operations on Channels 271A, 231A, and 267C, respectively.

DATES: Interested parties may file comments on or before December 31, 1987 and reply comments on or before January 15, 1988.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the parties or their counsel or consultant, as follows: Richard J. Hayes, Jr., 1359 Black Meadow Road, Greenwood Plantation, Spotsylvania, Virginia 22553 (counsel for petitioner); Michael H. Rosenbloom, Wilner & Scheiner, Suite 300, 1200 New Hampshire Avenue NW., Washington, DC 20036 (counsel for Columbia FM, Inc.); Forbes W. Blair, Blair, Joyce & Silva, 1825 K Street NW., Washington, DC 20006 (counsel for Foxfire Communications, Inc.); Kathy J. Bible, Leibowitz & Spencer, 3050 Biscayne Boulevard, Miami, Florida 33137 (counsel for Pike County Broadcasting Co., Inc.); John R. Wilner, Bryan, Cave, McPheeters & McRoberts, 1015 Fifteenth Street NW., Suite 1000, Washington, DC 20005 (counsel for Stereo Broadcasting, Inc.); Russell C. Balch, Fly, Shuebruk, Gaguine, Boros and Braun, 1211 Connecticut Avenue NW., Washington, DC 20036-2768 (counsel for Contemporary Broadcasting, Inc.); and Rainer K. Kraus, Koteen & Naftalin, 1150 Connecticut Avenue NW., Washington, DC 20036 (counsel for EZ Communications, Inc.).

FOR FURTHER INFORMATION CONTACT: Joel Rosenberg, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Orders to Show Cause*, MM Docket No. 86-103, adopted October 20, 1987, and released November 6, 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 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. 87-26212 Filed 11-12-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-485, RM-5991]

Radio Broadcasting Services; Brownwood, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Group R Broadcasting, Inc., licensee of Station KPSM(FM), Channel 257A at Brownwood, Texas, proposing the substitution of Channel 257C2 for Channel 257A and modification of its license to specify operation on the higher class co-channel. A site restriction of 11.5 kilometers (7.1 miles) northwest of the city is required. Concurrence must also be obtained from the Mexican government.

DATES: Comments must be filed on or before December 31, 1987, and reply comments on or before January 15, 1988.

ADDRESSES: 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: Alfred C. Cordon, Jr., Esquire, Cordon & Kelly, 1920 N Street, NW., Second, Floor, Washington, DC 20036 (Counsel to petitioner); and John C. Renshaw, President, Group R Broadcasting, Inc., 114 Center Avenue, Suite 502, P.O. Box 602, Brownwood, Texas 76801 (Petitioner).

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

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87–485, adopted October 19, 1987, and released November 6, 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 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

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–26209 Filed 11–12–87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85–18; Notice 02]

Federal Motor Vehicle Safety Standards; Reflecting Surfaces

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Standard No. 107, *Reflecting Surfaces*, currently requires that the "specular gloss" of the surface of the materials used for the "bright metal components" on windshield wiper arms and blades, inside windshield mouldings, horn ring and hub of steering wheel assemblies, and the inside rear view mirror frames and mounting brackets may not exceed specified levels. Specular gloss refers to the amount of light reflected by a specimen of the tested material. This notice proposes to amend the standard to make both non-metallic and metallic components of the listed surfaces subject to the specular gloss limitations. This action is proposed to ensure that drivers will not be subjected to hazardous glare from the listed surfaces.

DATES: Comment closing date: December 28, 1987. Proposed effective date: 180 days after publication of the final rule in the **Federal Register.**

ADDRESS: Comments should refer to Docket No. 85–18; Notice 2 and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–5271.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 107, *Reflecting Surfaces*, specifies reflecting surface requirements for certain bright metal vehicle components in the driver's field of view. The purpose of the standard is to reduce the likelihood that unacceptable glare from reflecting surfaces in the driver's field of view will hinder the safe and normal operation of the motor vehicle. Under paragraph S4, the specular gloss of the surface of the materials used in those components must not exceed a specified value. ("Specular gloss" refers to the amount of light reflected from a test specimen.) The standard applies to passenger cars, multipurpose passenger vehicles, trucks and buses, but does not apply to items of motor vehicle equipment. The components in the vehicle subject to the standard are the following: Windshield wiper arms and blades; inside windshield mouldings; horn ring and hub of steering wheel assembly; and inside rearview mirror frame and mounting bracket.

This action commenced when the agency received a petition for rulemaking to amend Standard No. 107 from Ms. Patricia Hill of Howell, Michigan. Ms. Hill requested two changes to the standard. The first request sought to expand the scope of the standard by applying the stated requirements to components made from, or covered by materials other than "bright metal" materials. Second, the petitioner requested that NHTSA not limit the standard to the four vehicle components listed in paragraph S4. Ms. Hill asked that the agency amend the standard and apply the specular gloss requirements to all high gloss components in the driver's field of view.

The petitioner argued that Standard No. 107 has not responded to changes in design and materials that have occurred since the date of the standard's issuance in 1968. Ms. Hill asserted that many highly reflective metallic trim parts have been replaced by high-gloss non-metallic components, and further argued that there are many highly reflective but unregulated components within the driver's field of view that should be subject to Standard No. 107. NHTSA granted the petition because the agency believed Ms. Hill's arguments deserved further consideration. On January 7, 1986, NHTSA published a **Federal Register** notice granting Ms. Hill's petition (51 FR 657). That notice also requested comments on the following issues raised by the petition: (1) Whether a safety need exists to retain the performance criteria of Standard No. 107; (2) whether the standard should be expanded to include additional components in the driver's field of view other than those currently listed in S4; (3) whether the standard should be expanded to include non-metallic components; (4) whether the ASTM Standard established in 1962 to test the specular gloss should be updated to the

1980 revised ASTM Standard; and, (5) whether Standard No. 107 should be revised to add a certification and marking requirement for manufacturers of the listed components.

After reviewing the comments and recommendations submitted in response to the January 1986 notice, NHTSA proposes to revise Standard No. 107 only to extend specular gloss requirements to non-metallic materials used in parts that are currently identified in the standard. NHTSA is not proposing to rescind the existing standard, nor expand it to include additional parts of the vehicle, nor require any labeling or certification. Further, this notice does not propose any change to the ASTM test procedure.

Summary of Comments

Fourteen comments were submitted addressing the issues raised by the grant notice. One comment was from a testing laboratory and another from an individual; 12 of the 14 comments were from motor vehicle manufacturers: Volvo White, Chrysler, Flxible, Ford, General Motors, American Motors, Volkswagen, Honda, Jaguar, Blue Bird, Toyota and Mazda.

Safety Need

Commenters were sharply divided in their assessment of the safety need to retain or amend the standard. Some commenters recommended rescission, others recommended expansion, and some commenters recommended against any changes.

Most of the commenters questioning the need for the standard were motor vehicle manufacturers who found that their consumer and accident complaint files contained virtually no reports of accidents caused by glare. According to General Motors (GM), information from the National Accident Sampling System and GM's Motors Insurance Corporation files indicate that "glare from any source, including those sources external to the vehicle, is only very infrequently acknowledged in accident reports." Chrysler Corporation said that the lack of accident data and consumer complaints "suggests that there is little if any need for retaining MVSS 107. This lack of data also indicates an expansion of the standard to include any additional components in the driver's field of view is totally unnecessary." Chrysler's sentiments were echoed by several manufacturers, including GM, Toyota, and Mazda.

Commenters in support of retaining Standard 107 included Jaguar, who also found no data indicating whether any accidents have been caused by glare from either metallic or non-metallic surfaces in the driver's field of view and no reports of glare problems from items not covered by Standard 107. However, in contrast to some other commenters, Jaguar concluded that the absence of adverse reports shows that the standard is satisfying its objectives. Jaguar stated that it has no reason to object to the continuance of 107 as written.

Mr. Raymond Salehar commented that there is a glare problem that interferes with driver vision. Mr. Salehar said that he has experienced discomfort and vision problems from sunlight reflecting off of the instrument panel on to the windshield, and recommended that the standard should be extended to control other areas of reflectance.

Some commenters who supported retaining the standard suggested also that 107 should not be expanded to all high gloss components in the driver's field of view. The Blue Bird Body Company suggested that the standard be maintained to provide general guidelines for body and chassis manufacturers and component suppliers. However, while the commenter supported extending 107 to non-metallic components, Blue Bird recommended that NHTSA make a listing of regulated components and not create a broadened standard which would unnecessarily apply specular gloss requirements to objects unlikely to be striken by sunlight. Ford Motor Company commented that it believed distracting glare and images should be controlled to the extent practicable. It believed that "veiling images" (appearances of the mirrored image of surfaces) in the windshield between the driver and his or her view should be limited, but felt that there should be no restriction on luminous reflectance and saturation for surfaces which are not positioned to produce the "veil" in the windshield. Similar to Blue Bird, Ford was opposed to an extension of the standard to all components in the driver's field of view, stating that it was aware of no evidence that suggests that items such as belt buckles cause any discomfort or interference with the driver's vision.

Volkswagen of America (VW) and Flxible Corporation were concerned about cost increases resulting from a broadening of 107 to all components in the driver's field of view. VW said that while it probably would have no problems complying with a broadened standard, it was opposed to expanding the standard to additional or replacement components because the petitioner had not demonstrated a safety need for such an amendment. Flxible, a manufacturer of heavy duty transit buses, said that city transit buses have customized equipment installed in and around the driver's compartment, such as the farebox, two way radio control head, tachograph and transfer cutting equipment. Flxible said it is not aware of any problems relating to reflection with any transit bus equipment and believed that an extension of the standard to "everything" within the driver's field of view would result in unnecessary increases in paperwork burden and costs.

NHTSA's Tentative Analysis of the Issues

NHTSA believes it is helpful to separate the safety issue into three inquiries: (1) Whether a safety need exists to *retain* the performance requirements of the standard; (2) whether there is justification for applying the specular gloss requirement only to metallic components; and (3) whether there is a need to expand the requirement to more component parts than the ones listed in S4. NHTSA will address the safety issues raised by Ms. Hill's petition by separately setting forth its tentative answers to each of these three inquiries.

Retaining 107

AMC observed that it is difficult to ascertain the effectiveness of a standard by accident data, when the standard is intended to reduce the likelihood of accidents. The commenter stated it is unclear whether the static history of the standard illustrates "its exceptional effectiveness or its total lack of relevance." AMC concluded that the latter conclusion was more likely correct. Yet, by contrast, Jaguar concluded that the lack of accident data and customer complaints of glare indicates 107 is effective in satisfying its objectives. These two comments illustrate the vastly different conclusions that may be drawn from the lack of available information on accidents and complaints relating to specular gloss.

After carefully re-examining this subject and the comments, NHTSA has tentatively determined that the absence of accidents or consumer complaints attributed to glare from the components subject to Standard No. 107 is an insufficient basis to conclude that a safety hazard would not exist in the absence of the standard. Standard No. 107 itself works to ensure that drivers will not experience unacceptable glare from the subject vehicle components. Therefore, one would not expect to receive complaints of glare or find a high number of crashes caused by those components. Issuance of the standard reflected the agency's judgment that the

reflection of sun and bright lights into the driver's eyes would present a safety hazard and that there is a need to limit the specular gloss of items in the driver's line of sight, if such a limitation can be accomplished at a reasonable cost. NHTSA cannot conclude at this time that the decision to issue Standard No. 107 was in error or that changed circumstances warrant reversal of NHTSA's original assessment of the safety need. NHTSA notes, as did Jaguar, that environmental conditions have not changed in the years since Standard No. 107's issuance. Since the glare a driver can experience from sunlight and other bright lights is unchanged from that which could be experienced two decades ago, the agency concludes that Standard No. 107's limits on highly reflective componentry (i.e., possible sources of glare) still address a safety need for drivers.

Limiting Standard No. 107 to Metallic Surfaces

Some commenters disfavored broadening Standard No. 107, but their statements indicate more an opposition to an expansion of S4 to additional parts on the vehicle than to a proposal applying the standard to non-metallic components. Only five commenters expressly referred to non-metallic components in their comments. Of these, three were unopposed to extending Standard No. 107 to include non-metallic surfaces on components that are already subject to the standard. Jaguar and Blue Bird explicitly stated that it would be reasonable for the agency to subject non-metallic substances to the same reflectivity criteria set for metallic parts of subject components. Volvo White said it already applies the specular gloss requirements to both metallic and non-metallic applications of the components identified by the standard.

Honda was opposed to expanding the application of Standard No. 107 to both additional components and non-metallic components, because of the lack of accident data relating to glare problems and consumer complaints of glare. AMC implicitly argued against a requirement for non-metallic components, and expressly against retaining Standard No. 107, since it believed any material currently used for new components would not be highly reflective. According to the commenter, surfaces in the driver's forward field of view in modern automobiles are seldom constructed of glossy components because bright finishes do not meet with customer approval and are incompatible with the new trends of matte-finish componentry and trim, and digital and graphic instrumentation.

After fully examining this issue, NHTSA is proposing to extend specular gloss requirements to non-metallic materials used in the components already subject to Standard No. 107. This extension is proposed because the agency has tentatively concluded that there is no valid reason to distinguish between the safety hazards that could be caused by highly reflective metallic components, versus the safety hazards that could be caused by highly reflective non-metallic components. Many of the components subject to Standard No. 107 are made of plastic and other non-metallic materials. These materials can reflect sufficient light to produce excessive glare and thereby create a safety hazard.

The agency believes that AMC raises a legitimate point in its comments, when it suggests that today's customers prefer matte finishes, instead of bright finishes. This could be interpreted as evidence that there is no need to amend the standard at this time. However, NHTSA notes that consumer preferences in this area have changed in the past, and may well change again in the future. The agency tentatively concludes that extending Standard No. 107 to non-metallic surfaces of components already subject to the standard would ensure the continued use of low-gloss materials in those components, even if current consumer preferences change. If today's consumers are demanding non-glare finishes, regardless of whether Standard No. 107 requires them, this proposed change to the standard should impose essentially no costs on the vehicle manufacturers.

Extend the Standard to Additional Vehicle Components

NHTSA has tentatively determined that no safety need has been demonstrated that would warrant adding components to Standard 107 at this time. Accordingly, NHTSA declines the petitioner's request to expand paragraph S4's list of regulated components.

When NHTSA formulated Standard No. 107 in 1968, it sought to identify the vehicle components within the driver's field of view that were most likely to be sources of hazardous reflection and glare. Since 1968, only the listed components have been subject to the requirements of the standard. Therefore, if unregulated components had been sources of hazardous glare, one would expect this to be reflected in complaints and, to a lesser extent, in accident reports. However, this has not been the case.

After review of the comments and other information, NHTSA has found no data showing that glare from unregulated components has presented a safety hazard. Motor vehicle manufacturers responding to NHTSA's notice indicated that they had no reports of unacceptable or dangerous glare from unregulated surfaces. NHTSA has likewise found no significant number of consumer complaints of glare effects from components not now covered by 107. Manufacturers also commented that expanding the standard to all components in the driver's field of view would increase costs and complicate the design and assembly of vehicle components. Because NHTSA believes that paragraph S4 of Standard 107 already lists the components likely to be the primary sources of glare, the agency concludes that a proposal adding more components to the list is unnecessary at this time.

The agency also believes that the absence of data showing that glare from unregulated components has presented a safety hazard indicates that Standard No. 107 has correctly identified the components that are most likely to be the sources of hazardous glare. Assuming this indication to be accurate, there is no reason to expand the standard to include additional components. However, this indication further suggests that it is appropriate to require that non-metallic surfaces of the already identified components be certified as complying with the same requirements that would apply if those surfaces were metallic. Such a requirement would recognize changes that have occurred over two decades, while ensuring that Standard No. 107 would continue to achieve its objective of minimizing the chances that drivers will experience hazardous glare.

Test Procedures

NHTSA has determined that the 1962 ASTM Standard D523–62T procedure currently used under Standard No. 107 to test specular gloss should be retained in its present form. The revised 1980 ASTM test procedure changes the 1962 procedure only by requiring a 3 by 6 inch sample size for testing. NHTSA believes the current test procedure adequately measures the specular gloss values and it is therefore unnecessary to amend the test to reference the sample size of the 1980 standard.

AMC was opposed to changing the test procedure of Standard No. 107 because it believed such a change would only result in increased testing costs. Jaguar also was opposed to amending the current test method of 107.

According to Jaguar, the test procedures of 107 are currently identical with those of Australia. Jaguar asked that harmonization be continued between the U.S. and Australian standards.

Since the revised 1980 procedure is virtually the same as the specular gloss test currently used under the standard, because it appears that unnecessary cost increases and burdens could result from a change in test procedures, and because a change in test procedures would be contrary to the goal of harmonizing standards, the agency is not proposing that the 1980 revised version of ASTM Standard 0523–62T be incorporated into Standard No. 107.

Marking Requirements and Replacement Equipment

NHTSA has determined that Standard No. 107 should not be amended to require marking the "DOT" symbol on the components listed in the standard. Most commenters were opposed to a marking requirement. Toyota believed that such a requirement would unnecessarily increase costs and restrict the design of covered components. Jaguar said that a marking requirement might be very obtrusive on frontal surfaces and of little value on hidden surfaces. After review of the comments, NHTSA concludes that the safety benefits from a marking requirement would be insignificant. These minimal benefits would not outweigh the increased cost of retooling and the additional paperwork burdens and possible design restrictions. Accordingly, the agency declines to propose the additional certification and marking requirements.

NHTSA has also tentatively determined that Standard No. 107 should not be expanded at this time to items of replacement equipment. The agency has no data that show a safety problem arising from replacement equipment sufficient to justify the increased costs and burdens that would be associated with an expansion of Standard No. 107 to replacement equipment. Of course, if information becomes available in the future indicating a safety problem with replacement equipment, NHTSA will undertake rulemaking or other appropriate action.

Impacts

NHTSA has considered this proposal and has determined that it is neither major within the meaning of Executive Order 12291 nor significant under the Department's Regulatory Policies and Procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. The proposal would apply the same specular gloss requirements to certain vehicle parts made from non-metallic materials that currently apply to the same components made from bright metals. NHTSA estimates that most, if not all, of the components listed in 107 made from non-metallic materials already comply with the specular gloss requirement. Hence, the agency concludes that few, if any, vehicles would be affected by this proposed rule. The agency also concludes that the costs of limiting glare from non-metallic components that do not currently comply with the standard would be minimal, as evidenced by the already widespread use of complying components;

NHTSA has reviewed the proposed amendment under the Regulatory Flexibility Act. Based on that review, I hereby certify that this proposal would not have a significant impact on a substantial number of small entities, including small businesses, small governmental units or small organizations. Accordingly, no initial regulatory flexibility analysis has been prepared. Motor vehicle manufacturers generally are not small businesses within the meaning of the Regulatory Flexibility Act. NHTSA believes any vehicle manufacturer that does qualify as a small business would not be significantly affected by this proposed amendment, since no significant changes in the manufacture of vehicles would be required. Small business, small organizations, and small governmental entities would only be affected as purchasers of motor vehicles. As explained above, NHTSA has concluded that this proposal would result in minimal, if any, price increases for motor vehicles.

The agency has reviewed the proposed amendment under the National Environmental Policy Act and has determined that the changes would not have a significant impact on the quality of the human environment.

Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Paragraph S4 of Safety Standard No. 107, *Reflecting Surfaces*, (49 CFR 571.107), would be revised to read as follows:

§ 571.107 Standard No. 107, reflecting surfaces.

* * * * *

S4. *Requirements.* The specular gloss of the surface of the materials used for the following components in the driver's field of view shall not exceed 40 units

when measured by the 20° method of ASTM Standard D523–62T, June 1962.

(a) Windshield wiper arms and blades;

(b) Inside windshield mouldings;

(c) Horn ring and hub of steering wheel assembly; and

(d) Inside rearview mirror frame and mounting bracket.

* * * * *

Issued on November 6, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87–26171 Filed 11–12–87; 8:45 am]

BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 52, No. 219
Friday, November 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

Soil Conservation Service

Intent to Deauthorize Federal Funding; Calapooya Creek Watershed, Oregon

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of intent to deauthorize Federal funding.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the intent to deauthorize Federal funding for the Calapooya Creek Watershed project, Douglas County, Oregon.

FOR FURTHER INFORMATION CONTACT: Jack P. Kanalz, State Conservationist, Soil Conservation Service, 1220 SW. Third Ave., Room 1640, Portland, Oregon 97204, telephone (503) 221–2751.

SUPPLEMENTARY INFORMATION: A determination has been made by Jack P. Kanalz that the proposed works of improvement for the Calapooya Creek project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Jack P. Kanalz, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable.)

Jack P. Kanalz,
State Conservationist.
Date: November 3, 1987.

[FR Doc. 87–26172 Filed 11–12–87; 8:45 am]
BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–557–701]

Postponement of Preliminary Countervailing Duty Determination; Carbon Steel Wire Rod From Malaysia

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Based upon the request of petitioners, Armco, Inc., Georgetown Steel Corp., and Raritan River Steel Co., the Department of Commerce is postponing its preliminary determination in the countervailing duty investigation of carbon steel wire rod from Malaysia. The preliminary determination will be made on or before January 15, 1987.

EFFECTIVE DATE: November 13, 1987.

FOR FURTHER INFORMATION CONTACT: Steven Morrison or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202/377–0189 (Morrison) or 202/377–0161 (Taverman).

SUPPLEMENTARY INFORMATION: On September 23, 1987, the Department initiated a countervailing duty investigation on carbon steel wire rod from Malaysia. In our notice of initiation we stated that we would issue our preliminary determination on or before November 27, 1987 (52 FR 36601–2, September 30, 1987).

On November 2, 1987, the petitioner filed a request that the preliminary determination in this investigation be postponed for 49 days.

Section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), provides that the preliminary determination in a countervailing duty investigation may be postponed where the petitioner has made a timely request for such a postponement. Pursuant to this provision, and the timely request by petitioner in this investigation, the Department is postponing its preliminary determination to no later than January 15, 1988.

This notice is published pursuant to section 703(c)(2) of the Act.

Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.
November 6, 1987.

[FR Doc. 87–26290 Filed 11–12–87; 8:45 am]
BILLING CODE 3510–DS–M

Subcommittee on Export Administration of the President's Export Council; Closed Meeting

November 4, 1987.

A closed meeting of the President's Export Council Subcommittee on Export Administration will be held December 8, 1987, 9 a.m. to 3 p.m., U.S. Department of Commerce, Herbert Hoover Building, Room 4830, 14th and Constitution Avenue NW., Washington, DC.

The Subcommittee provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations, and of controlling trade for national security and foreign policy reasons.

Executive Session

9:00 a.m.–3:00 p.m. Discussion of matters properly classified under Executive Order 12610 pertaining to the control of exports for national security, foreign policy or short supply reasons under the Export Administration Act of 1979, as amended. A Notice of Determination to close meetings, or portions of meetings, of the subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 27, 1987, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, (202) 377–4217.

For further information, contact Sharon A. Gongwer, (202) 377–4275.

November 4, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87-26275 Filed 11-12-87; 8:45 am]

BILLING CODE 3510-DT-M

Minority Business Development Agency

Business Development Center Program Applications; California

Agency: Minority Business Development Agency, Commerce.

Action: Notice.

Summary: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $380,118 for the project performance period of April 1, 1988 to March 31, 1989. The MBDC will operate in the Anaheim Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $323,100 in Federal funds and a minimum of $57,018 in non-Federal funds (which can be a combination of cash, in-kind contributions and fees for services).

The I. D. Number for this project will be 09-10-88005-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firms and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firms's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105. November 24, 1987 at 10:00 a.m.

Proposals are to be mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974-9597.

Closing Date: The closing date for applications is December 16, 1987. Applications must be postmarked by midnight December 16, 1987.

For Further Information Contact: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

Supplementary Information: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

November 5, 1987.

[FR Doc. 87-26201 Filed 11-12-87; 8:45 am]

BILLING CODE 3510-21-M

Business Development Center Program Applications; California

Agency: Minority Business Development Agency, Commerce.

Action: Notice.

Summary: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $1,058,059 for the project performance period of April 1, 1988 to March 31, 1989. The MBDC will operate in the Los Angeles Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $899,350 in Federal funds and a minimum of $158,709 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09-10-88006-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and education institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, November 24, 1987 at 10:00 A.M.

Proposals are to be mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San

Francisco, California 94105, 415/974–9597.

Closing Date: The closing date for applications is December 16, 1987. Applications must be postmarked by midnight December 16, 1987.

For Further Information Contact: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

Supplementary Information: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

November 5, 1987.

[FR Doc. 87–26202 Filed 11–12–87; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Program Applications; California

Agency: Minority Business Development Agency, Commerce.

Action: Notice.

Summary: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3 year period, subject to available funds. The cost of performance for the first 12 months is estimated at $380,118 for the project performance period of April 1, 1988 to March 31, 1989. The MBDC will operate in the San Diego Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $323,100 in Federal funds and a minimum of $57,018 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The I.D. Number for this project will be 09–10–88007–01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firms's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as the MBDC's satisfactory performance, the availability of funds, and Agency priorities.

A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, Room 1280, San Francisco, California 94105, November 24, 1987 at 10:00 A.M.

Proposals are to be mailed to the following address: Minority Business Development Agency, U.S. Department of Commerce, San Francisco Regional Office, 221 Main Street, Room 1280, San Francisco, California 94105, 415/974–9597.

Closing Date: The closing date for applications is December 16, 1987. Applications must be postmarked by midnight December 16, 1987.

For Further Information Contact: Dr. Xavier Mena, Regional Director, San Francisco Regional Office.

Supplementary Information: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11:800 Minority Business Development Catalog of Federal Domestic Assistance)

Xavier Mena,

Regional Director, San Francisco Regional Office.

November 5, 1987.

[FR Doc. 87–26203 Filed 11–12–87; 8:45 am]

BILLING CODE 3510–21–M

Business Development Center Program Applications; Massachusetts et al.

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a three (3) year period, subject to available funds. The cost of performance for the first *twelve* months is estimated at *$347,000* for the project performance of *April 1, 1988* to *March 31, 1989.* The New England MBDC will operate in the *Massachusetts, New Hampshire, Rhode Island, Maine and Vermont* Standard Metropolitan Statistical Area (SMSA), but excluding the State of Connecticut. The first year cost for the MBDC will consist of *$347,000* in Federal funds and a minimum of *$61,235* in Non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a three (3) year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as an MBDC's satisfactory

performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is December 31, 1987. Applications must be postmarked on or before December 31, 1987.

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information copies of application kits and applicable regulations can be obtained at the above address. A pre-application conference to assist all interested applicants will be held on December 1, 1987, 10:00 a.m., at the John F. Kennedy Federal Building, Government Center, Room 2003A, Boston, Massachusetts, 617–565–6850.

Dated: November 6, 1987.

Gina A. Sanchez,

Regional Director, New York Regional Office.

[FR Doc. 87–26237 Filed 11–12–87; 8:45 am]

BILLING CODE 3510–21–M

National Technical Information Service

Intent To Grant Exclusive Patent License; Baxter Healthcare, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Baxter Healthcare, Inc., having a place of business at P.O. Box 11150, Santa Ana, CA 92711, an exclusive right in the United States and foreign countries to practice the invention embodied in U.S. Patent Application S.N. 7–026,540, "Oxyhydrogen Catalytic Thermal Tip for Angioplasty and the Like." Prior to any license grant by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87–26269 Filed 11–12–87; 8:45 am]

BILLING CODE 3510–04–M

Intent to Grant Exclusive Patent License; Magainin Sciences, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Magainin Sciences, Inc., having a place of business at 1250 Broadway, New York, NY 10001, an exclusive right in the United States and foreign countries to practice the invention embodied in U.S. Patent Applications S.N. 7–021,493, "New Antimicrobial Compounds," S.N. 7–076,734, "New Synthetic Bioactive Compounds" and S.N. 7–081,783, "New Method of Producing Bioactive Effect." Prior to any license grant by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license(s) will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license(s) may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license(s) would not serve the public interest.

Inquiries, comments and other materials relating to the intended license(s) must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87–26173 Filed 11–12–87; 8:45 am]

BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License; Molecular Oncology, Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Molecular Oncology, Inc., having a place of business at 1250 Broadway, New York, NY 10001, and Centocor, having a place of business in Malvern, PA 19355, a shared exclusive right in the United States and foreign countries to practice the invention embodied in U.S. Patent Application S.N. 7–058,381, "Autocrine Motility Factors in Cancer Diagnosis and Management." Prior to the grant of any license by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7 The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Robert P. Auber, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87–26270 Filed 11–12–87; 8:45 am]

BILLING CODE 3510–04–M

Intent To Grant Exclusive Patent License; Monsanto Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Monsanto Company, having a place of business in St. Louis, MO 63167, an exclusive right in the United States and foreign countries to practice the invention embodied in U.S. Patent Application S. N. 7–013,919, "Pentapeptide with Laminin Activity." Prior to any license grant by NTIS, the patent rights in this invention will be assigned to the United States of America, as represented by the Secretary of Commerce.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments and other materials relating to the intended license must be submitted to Robert P. Auber, Director, Office of Federal Patent

Licensing, NTIS, Box 1423, Springfield, VA 22151.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce.

[FR Doc. 87-26271 Filed 11-12-87; 8:45 am]

BILLING CODE 3510-04-M

National Oceanic and Atmospheric Administration

Marine Mammals; Permit Modification, Southwest Fisheries Center Modification No. 5 to Permit No. 413

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), and § 222.25 of the regulations governing endangered species permits (50 CFR Part 222), Scientific Research Permit No. 413 issued to the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, on April 20, 1983 (48 FR 17638), as modified on July 6, 1983 (48 FR 31062), May 11, 1984 (49 FR 20047), July 11, 1985 (50 FR 28238), and November 28, 1987 (51 FR 43066), is futher modified as follows:

Section B.9 is added:

9. The Holder shall conduct non-invasive research on animals taken under Section A.5. to determine the basal metabolic rate as described in the modification request of May 18, 1987.

This modification became effective on November 6, 1987.

As required by the Endangered Species Act of 1973 issuance of this modification is based on a finding that such modification: (1) Was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; (3) and will be consistent with the purposes and policies set forth in section 2 of the Endangered Species Act of 1973. This Modification was also issued in accordance with and is subject to Parts 220–222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

Documents submitted in connection with the above modification are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, Room 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 6, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-26308 Filed 11-12-87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Withdrawal of Application, Bernie Tershy (P402)

On August 18, 1987, notice was published in the **Federal Register** (52 FR 31063) that an application had been filed by Mr. Bernie Tershy for a permit to take by tagging fin whales, blue whales, humpback whales, and minke whales.

Notice is hereby given that on October 14, 1987, the application was withdrawn and the withdrawal request has been acknowledged and accepted without prejudice by the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Suite 805, Washington, DC 20235, and Director, Southwest Regional Office, 300 South Ferry Street, Terminal Island, California 90731.

Dated: November 6, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-26280 Filed 11-12-87; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review of the following request for renewal 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 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

Request for Extension

DoD FAR supplement Part 16 and Related Clauses in Part 52.216.

Information concerns certain data required to support use of various types of contracts (e.g., those containing economic price adjustment provisions).

Reporting is necessary to permit use of certain types of contracts (e.g., verification of cost increases triggering economic price adjustment provisions).

Businesses or others for profit/small business or organizations.

Responses: 200.

Burden hours: 1,600.

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 Ms. Pearl Rascoe-Harrison, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302, telephone (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Ms. Pearl Rascoe-Harrison This is a request for extension of an existing collection.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

November 6, 1987.

[FR Doc. 87-26225 Filed 11-12-87; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

Intent to Prepare a Draft Environmental Impact Statement; Seymour Johnson AFB, NC

The United States Air Force intends to prepare an environmental impact statement on its proposal to replace the 72 F–4 aircraft at Seymour Johnson AFB, North Carolina with 72 F–15E aircraft. The replacement would begin in January 1989.

The purpose of this proposal is to establish an operating location for the first combat-coded (wartime-capable) F–15E aircraft. The F–15E mission would encompass both air-to-air and air-to-surface operations, with emphasis on long-range, all-weather surface attack. The F–15E would employ the Low

Altitude Navigation and Targeting Infrared for Night (LANTIRN) system, allowing tactical employment under cover of darkness. The F–15E beddown would increase Seymour Johnson AFB's manpower authorizations by 220 people. This would offset (replace) some of the 700 authorizations lost when a squadron of F–4s was removed in 1985.

The development of the LANTIRN fire control system evolved from recent rapid advances in forward looking infrared sensors, lasers, digital processing, terrain following radar, and target recognition technologies. LANTIRN provides aircraft such as the F–15 and F–16 with a low altitude, day/night, under the weather air-to-surface capability. The system consists of a navigation pod and a targeting pod. The navigation pod contains a terrain following radar and wide field of Forward Looking Infrared (FLIR), which is displayed on a head-up display screen, giving the pilot a night vision capability similar to daylight conditions. The targeting pod contains a large aperture targeting FLIR, laser designator/ranger, automatic tracker, automatic MAVERICK hand-off capability, and growth provisions for an automatic target recognizer. These capabilities permit the pilot of a single or dual seat aircraft to deliver guided and unguided weapons under day/night, low altitude conditions using highly survivable standoff tactics.

The F–15E performance and operating characteristics would be similar to earlier versions of F–15 aircraft, as would also be the case for pollutant emissions and noise. Local airspace operations, such as departures, arrivals, and practice approaches at the end of a training mission would remain similar to that currently experienced at the base. However, due to the need to train with the LANTIRN system during darkness, some of the normally flown daytime sorties would be shifted to the evening hours. Currently the base flies about sixty sorties a day between the hours of 6:00 a.m. and 10:00 p.m. and averages one landing every other day after 10:00 p.m. Between the hours of sunset and 10:00 p.m. the base normally flies about five sorties per day. It is projected that the number of daily sorties flown between sunset and 10:00 p.m. would increase up to eighteen sorties as a result of the LANTIRN mission. Landings after 10:00 p.m. would increase up to three per day. Seymour Johnson AFB does not plan to change its "Quiet Hour Policy" (which restricts operations beyond 10:00 p.m. to mission essential operations only) because it is believed normal operations could continue to be completed before the quiet hour.

As with the current F–4 mission, the F–15E aircraft would continue to use available Military Training Routes (MTR) and the Dare County Range. Seymour Johnson AFB aircraft average about twenty-eight sorties per day on the routes between the hours of 6:00 a.m. and 10:00 p.m. with about three sorties a day flown between sunset and 10:00 p.m. The LANTIRN program would increase the daily MTR sorties up to thirty-six sorties with fourteen of them flown during the sunset to 10:00 p.m. time period. The Dare County Range would see a slight increase in use as a result of the LANTIRN program.

The environmental analysis will include such topics as impact to the flora and fauna, noise levels, air quality and other pertinent topics raised during the scoping process. Exact time and place of the scoping meeting will be announced in the local news media and by direct contact to organizations that have expressed an interest in attending. Participation in the environmental analysis process by interested private organizations and individuals is invited.

It is estimated that the draft environmental impact statement will be available for public review in March 1988.

Questions concerning the proposal, scoping meeting or the draft environmental impact statement may be directed to Mr. Alton Chavis, HQ TAC/DEEV, Langley AFB, VA 23665–5001.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87–26272 File 11–12–87; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Army Science Board Closed Meeting

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

Name of the Committee: Army Science Board (ASB).

Dates of meeting: 1–2 December 1987.

Times meeting: 0800–1600 hours daily.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Committee on Implementing Competitive Strategies will meet. Objectives of these working sessions will be to consolidate all data, both classified and unclassified, and formulate it into their draft final report and briefing. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classfied and unclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–26174 Filed 11–12–87; 8:45 am]

BILLING CODE 3710–07–M

Army Science Board Notice of Closed Meeting

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

Name of the Committee: Army Science Board (ASB).

Dates of meeting: 1 and 2 December 1987.

Times of meetings: 0830–1630 hours daily.

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Subgroup for Tactical Applications of Directed Energy Weapons (DEW) will meet to be briefed on threat issues and the DEW Master Plan, and will establish guidelines for conducting the study. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably interwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 87–26175 Filed 11–12–87; 8:45 am]

BILLING CODE 3710–08–M

Corps of Engineers, Department of the Army

To Prepare a Draft Supplement III to the Final Environmental Impact Statement (EIS); Proposed Flood Control Project, Minnesota River at Chaska, Carver County, Minnesota

AGENCY: U.S. Army Corps of Engineers, St. Paul District.

ACTION: Notice of intent to prepare a draft supplement III to the Final EIS.

SUMMARY: The St. Paul District proposes to implement a flood control plan at Chaska, Minnesota, on the Minnesota River. This plan consists of upgrading and extending an existing levee along the Minnesota River, diverting total flows of Chaska Creek to the outside of the leveed area, diverting flood flows of East Creek to the outside of the leveed area, and constructing interior drainage facilities.

The St. Paul District proposes to change the alignment and design concept of the Chaska Creek diversion feature. The present design involves the construction of a 35-foot-wide open channel to divert flows from Chaska Creek around the west side of the city. The proposed changes would divert the flows of Chaska Creek through Chaska by means of a 35-foot by 10-foot closed conduit constructed under Elm Street. The conduit would pass through the levee on the south end of Chaska, and the outlet located just downstream of the previously designed structure.

The following issues and concerns with the design changes were identified through coordination with city officials and other agencies.

1. Public safety of the structure.
2. Potential impacts on existing utilities and design for future utilities requirements.
3. Potential temporary construction impacts of traffic disruption, noise, and air pollution.
4. Potential impacts on fish and wildlife habitat.

No formal scoping meeting is planned for this supplement. However, significant issues and resources to be analyzed in the draft supplement will be identified through coordination with responsible Federal, State and local agencies, interested private organizations and parties, and affected Indian tribes. Any who has an interest in participating in the development of the draft supplement or who wishes to provide information is invited to contact the St. Paul District, Corps of Engineers.

The Final EIS on flood control at Chaska, Minnesota, was made available to the public in November 1976. Final Supplements I and II to the Final EIS were made available to the public in September 1982 and April 1985, respectively.

The review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), Engineer Regulation 200–2–2 (33 CFR Part 230), and all other applicable regulations and guidance.

We estimate that the draft supplement will be available to the public during the third quarter of fiscal year 1988 (April-June 1988).

Questions concerning the proposed action and draft supplement to the EIS can be directed to: Colonel Joseph Briggs, District Engineer, St. Paul District Corps of Engineers, 1135 U.S. Post Office and Custom House, St. Paul Minnesota 55101–1479.

John O. Roach II,

Army Liaison Officer with the Federal Register.

[FR Doc. 87–26177 Filed 11–12–87; 8:45 am]

BILLING CODE 3710-CY-M

DEPARTMENT OF ENERGY

Proposed Subsequent Arrangement; U.S. and EURATOM

Pursuant to Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Japan concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU(JA)–110, for the retransfer from Japan to France of 4.992 Kilograms of uranium metal enriched to 93.17 percent in the isotope uranium–235, for fabrication of fuel elements for the Kyoto University Reactor in Japan by the Compagnie pour 1'Etude et la Realisation de Combustibles Atomiques Establissement (CERCA), Paris France.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been detemined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: November 4, 1987.

David B. Waller,

Assistant Secretary for International Affairs and Energy Emergencies.

[FR Doc. 87–26305 Filed 11–12–87; 8:45 am]

BILLING CODE 6450-01-M

Inventories and Storage Task Group, Coordinating Subcommittee on Petroleum Storage and Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Inventories & Storage Task Group of the Coordinating Subcommittee on Petroleum Storage & Transportation of the National Petroleum Council.

Date and time: Wednesday, December 2, 1987, 8:30 a.m.

Place: Gulf Towers, 3101 McKinney Street, Room 1429, Houston, Texas.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the parent council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the meeting: Discuss decisions from the Coordinating Subcommittee meeting and review progress on individual assignments.

Tentative agenda

—Opening remarks by Chairman and Government Cochairman.
—Discuss decisions from the Coordinating Subcommittee meeting.
—Review progress on individual assignments.
—Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public participation: The meeting is open to the public. The Chairman of the Inventories & Storage Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Reading Room, Room 1E–190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of

9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 87-26250 Filed 11-12-87; 8:45 am]

BILLING CODE 6450-01-M

Coordinating Subcommittee on Petroleum Storage and Transportation, National Petroleum Council; Open Meeting

Notice is hereby given of the following meeting:

Name: Coordinating Subcommittee on Petroleum Storage and Transportation of the National Petroleum Council.

Date and time: Friday, December 11, 1987, 8:30 a.m.

Place: Stouffer Concourse Hotel—St. Louis, Orly Room, 9801 Natural Bridge Road, St. Louis, Missouri.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE-1), Washington, DC.

Purpose of the parent council: To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the meeting: Discuss study assignment and review task group assignments.

Tentative Agenda

—Opening remarks by the Chairman and Government Cochairman.
—Discuss study assignment.
—Review task group assignments.
—Discuss any other matters pertinent to the overall assignment from Secretary of Energy.

Public participation: The meeting is open to the public. The Chairman of the Subcommittee on Petroleum Storage & Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Subcommittee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 87-26251 Filed 11-12-87; 8:45 am]

BILLING CODE 6450-01-M

Bonneville Power Administration

Naselle-Long Beach Transmission Line Access Improvement Project; Finding of No Significant Impact

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Finding of No Significant Impact (FONSI) and floodplain statement of findings for BPA's proposed Naselle-Long Beach Transmission Line Access Improvement Project.

SUMMARY: Upland relocation of a 2.7-mile section of BPA's Naselle-Long Beach transmission lines in southwestern Washington is proposed to ensure reliable, year-round access to the lines. BPA has prepared an environmental assessment (DOE/EA-301) evaluating the proposed relocation. Two alternative upland relocation routes (north and south) were evaluated. Reasons that relocating the lines along either of the upland routes are not significant include: (1) Net loss of productive timberland would be up to about 44 acres in a locality and region where vast amounts of similar timberland would remain; (2) much of the land that would need to be cleared of trees is already cleared, and logging activity is common in the area; (3) the land does not provide unique wildlife habitat; (4) air and water resources would not be affected; and (5) relocation is consistent with pertinent local, state, and Federal plans, programs, and directives. A finding is included that there is no practicable alternative to removing the lines from within a floodplain/wetland.

SUPPLEMENTARY INFORMATION: BPA provides electrical service to the Long Beach, Washington, area over two parallel, wood pole, 115-kv transmission lines. The lines were constructed in 1955 and 1974, partly within lowlands behind a series of levees along the Naselle River. One of the levees was breached in 1978, creating a tidal wetland and hindering mainteance access to about 1 mile of the transmission lines. The lack of other sources of electricity to the Long Beach area, the deteriorating condition of the transmission line structures, and the inadequate access to the lines combine to place electrical service to about 9,000 consumers at risk. BPA needs to ensure reliable, year-round access to the transmission lines, and proposes to do so by relocating a 2.7-mile-long section of the transmission lines along a 2.6-mile-long route (the northern route alternative) on higher ground. BPA has prepared an environmental assessment (EA) evaluating the proposed action.

Other alternatives evaluated in detail in the EA are (1) relocating a 3.8-mile-long section of the transmission lines along a 2.7-mile-long route (the southern route alternative), (2) repairing and rehabilitating the breached levee, and (3) relocating a 0.8-mile-long section of the lines along the east side of a county road (Parpala Road), on double-circuit steel pole structures, in conjunction with a project to protect the road from tidal flooding. Repairing the levee would significantly affect the quality of the human environment because it would destroy or substantially reduce a 130-acre estuarine wetland that has become established landward of the levee. That the levee was whole and the area behind it mostly pasture for several decades does not diminish the importance of the existing wetland's contribution to the ecology of the Naselle River and Willapa Bay, to which the Naselle River flows. The levee repair alternative has been eliminated from further consideration because of unacceptable environmental impact. The alternative of relocating the lines along Parpala Road has also been eliminated from further consideration, because of the necessity of implementing the transmission line project in concert with a flood protection project for the road and the uncertainty that a road protection project will proceed in a timely manner.

With the proposed action, BPA would relocate a 2.7-mile-long section of the transmission lines along a 2.6-mile-long route on double-circuit, wood pole structures, and a right-of-way 100 feet wide, and would construct about 1.5 miles of new access roads. The alternative southern route is 2.7 miles long, replacing a 3.8-mile-long section of the existing lines, and would require construction of about 2.5 miles of new access roads.

There are several reasons why impact of the proposed relocation of the transmission line along the northern route, or along the alternative southern route, would not significantly affect the quality of the human environment:

(1) Both routes cross forested hills and require a cleared area averaging about 200-feet wide. The north route requires a total cleared area of about 61 acres, and the south route requires about 56 cleared acres. Timber production would be

prevented on this land for the life of the transmission lines. However, the 2.7-mile-long section of transmission lines that would be replaced with the north route now prevents timber production on about 17 acres of previously forested land that would likely return to timber production. The 3.8-mile-long section that would be replaced with the south route occupies about 35 acres of cleared land that would likely return to timber production, for a net loss of about 29 acres of productive timberland. The net loss of productive timberland is therefore about 44 acres for the north route and 29 acres for the south route. Although this is highly productive Douglas fir timberland, the loss of up to 44 acres is not significant in the context of the vast amounts of timberland in the locality and the region (estimated at 28,900,000 acres). Much of the land along the north route is already cleared, or soon will be, due to logging, so only up to about 30 acres would need to be cleared for the transmission lines and new access roads. With the southern route, about 60 acres would need to be cleared of trees. The northern route is preferred over the southern route because less land would need to be cleared of trees, thus reducing construction costs and loss of timber. Within the cleared area, ground cover would be retained or would recover, except where vegetation would be totally cleared from up to about 4.5 acres along about 1.5 to 2.5 miles of new access roads.

(2) Ground disturbance would be minimized and disturbed ground revegetated with grasses and clover, or as recommended by landowners and local sources. New infestations of noxious weeds caused by construction activity would be controlled under BPA's Vegetation Management Program and in coordination with the Pacific County Noxious Weed Control Board.

(3) Endangered and threatened species or critical habitat would not be affected. Other wildlife requiring forest habitat would likely disperse to remaining forest nearby. Except where the adjacent forest is similarly cleared by logging, the cleared right-of-way would create edge habitat attractive to a wide variety of wildlife species.

(4) The relocated lines would be less visible to most people than are the existing lines.

(5) No construction would occur near streams, and vegetation within 50 feet of streams would be substantially retained. About 1 mile of the existing line would be removed from a floodplain/wetland, and lines relocated outside floodplains or wetlands. To minimize potential harm to the floodplain/wetland, the transmission line facilities there would be removed by cable and winch stationed on Parpala Road; heavy equipment would not enter the wetland. Removing the existing lines from the wetland (which raptors and other birds use for feeding) would reduce perching opportunities there. If the landowners permit, BPA would leave up to 10 of the transmission line poles in the wetland for wildlife use. The other alternatives considered would have greater harm to the floodplain/wetland, especially the alternative of repairing the levee.

(6) Soil movement potentially caused by road construction would be avoided by designing the 1.5 miles of access roads to minimize cut embankments and side fills, and by including ditches, water bars, and culverts as necessary to ensure proper drainage.

(7) Cultural resources and recreation resources (wilderness, the National Trail System, and the Wild and Scenic Rivers System) would not be affected.

(8) The proposal is consistent with state and local land use plans, with Federal policy for protection of farmlands, and with all applicable pollution control standards.

The proposed action involves the simple, isolated, partial relocation of established transmission lines. For this and the other reasons explained above, the project is not likely to be highly controversial; does not involve unique or unknown risks; does not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration; and is not related to other actions with individually insignificant but cumulatively significant impacts.

Floodplain Statement of Findings: The proposal involves removal of 33 transmission line structures in 1 mile of the Naselle River floodplain and relocating the line in a non-floodplain, area. The proposed action, a location map, the impact of the floodplain, an explanation of why the action is being proposed in the floodplain, and steps taken to minimize environmental impacts to the affected floodplain are discussed in the EA. The proposal would have minimal adverse impact on the natural vegetation and would not affect normal flows. Committed mitigation measures will ensure that no significant impact will occur to the floodplain and that the action conforms to applicable state and local floodplain protection standards. DOE finds that there is no practicable alternative to removing the transmission lines from the floodplain, consistent with the policy set forth in Executive Order 11988.

Related Documents: Besides the EA, the only other documents related to this Finding are a September 1986 U.S. Army Corps of Engineers EA (For Work Reviewed in Accordance with section 10 of the Rivers and Harbors Act of March 3, 1899 and section 404 of the Clean Water Act Described in Permit Application No. 071–OYB–2–009735 of Denny Moore, et al., including the Bonneville Power Administration) and permit evaluation on a project to repair the levee, which resulted in denial of the permit.

Public Availability: This Finding will be distributed to all persons and agencies known to be interested in or affected by the proposed action or alternatives.

For Further Information Contact: Anthony R. Morrell, Environmental Manager, Bonneville Power Administration, P.O. Box 3621–SJ, Portland, Oregon 97208; telephone (503) 230–5136.

Determination: Relocating the transmission lines along either the northern route or the southern route is not an action normally requiring the preparation of an environmental impact statement, is not similar to any such action, and is not without precedent. Based on the information in the EA, as summarized here, the Department of Energy determines that BPA's actions will not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* Therefore, an environmental impact statement will not be prepared.

Issued in Washington, DC October 27, 1987.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 87–26204 Filed 11–12–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[Docket No. PP–84]

Intent To Prepare an Environmental Impact Statement and Conduct Public Scoping Meetings; Central Maine Power Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of intent by the Department of Energy to prepare an Environmental Impact Statement and to hold public scoping meetings to assess the environmental effects of the construction and operation of an electric transmission line crossing the U.S. international border.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969 and the regulations of the Council on Environmental Quality at 40 CFR 1501.7, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces its intention to prepare an Environmental Impact Statement (EIS) and to conduct public scoping meetings. This EIS will be prepared to assess the environmental impacts of a proposed DOE action: To grant (with terms and conditions) or to deny a Presidential permit authorizing Central Maine Power Co. and Hydro-Quebec to construct, connect, operate and maintain at the international border between the United States and Canada new facilities for the transmission of electric energy between Hydro-Quebec (HQ), a public agency of the Province of Quebec, and Central Maine Power Co. (CMP).

Written comments should be addressed to: Anthony J. Como, Office of Fuels Programs (RG–22), Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–5935.

For general information on the EIS process contact:

Carol M. Borgstrom, Acting Director, Office of NEPA Project Assistance (EH–25), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600

Stanley Echols, Office of General Counsel (GC–11), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6947

DATE: Tuesday, December 1, 1987, at the Lecture Hall of Mexico High School, Mexico, Maine, convening at 11:00 a.m., reconvening at 7:00 p.m.; Wednesday, December 2, 1987, at the Rangeley Town Hall, Rangeley, Maine, convening at 11:00 a.m., reconvening at 7:00 p.m.; Thursday, December 3, 1987, at the State Office Building, Room 120, Corner of Capitol and Sewall Streets, Augusta, Maine, convening at 11:00 a.m.; Thursday, December 3, 1987, at the Lewiston Multi-Purpose Center, 145 Birch Street, Lewiston, Maine, convening at 7:00 p.m.

SUPPLEMENTARY INFORMATION: On June 8, 1987, CMP applied to ERA, pursuant to Executive Order 10485, for a Presidential permit to construct, connect, operate and maintain eletric transmission facilities at the international border between the United States and Canada. This application has been docketed as PP–84. The components of the CMP project will consist of: (1) a ± 450 kV direct current transmission line extending from the United States-Canadian border in the township of Bowmantown, Maine, to a converter terminal located near the towns of Farmington and Jay, Maine; (2) a converter terminal located near the towns of Farmington and Jay, Maine; (3) a 345 kV alternating current transmission line extending from the converter terminal to the existing Surowiec Substation in the town of Pownal, Maine; (4) expansion of the 345 kV Surowiec Substation at Pownal, Maine; and (5) the possible construction of a ground electrode. The transmission line and converter terminal will be designed to transmit up to 1,000 megawatts (MW) of electric power.

According to the applicant, the purpose of the proposed project is to provide the electric service customers of CMP, and other Maine energy supply companies with a new source of power. Even with increasing conservation, load management and cogeneration, CMP still expects to need 150 to 200 MW of additional capacity in 1992 or 1993, and as much as 500 to 700 MW by the year 2000. CMP expects electricity sales to increase by about 2.9% a year into the next century.

CMP proposes to use the subject facilities to purchase electric power from HQ. The proposed purchased by CMP would consist of three blocks of capacity. The first block would be 400 MW and would start in 1992. The second block would be 200 MW and would start in 1995, and the last 200 to 400 MW block of capacity would start between 1999 and 2001. CMP plans to use about half of the first two blocks and most of the third block to meet its own needs. The remainder will be resold by CMP to other utilities in Maine and other New England states. Although the terms of the power purchase agreement are presented for public information, it should be noted that ERA does not approve or otherwise judge the terms of power purchase agreements and, furthermore, does not consider the economic merits of the commercial arrangement in deciding whether or not to grant a Presidential permit, as this is a State, not federal, issue.

The ERA has determined that the issuance of a Presidential permit to CMP for the proposed facilities would constitute a major federal action significantly affecting the environment. Consequently, pursuant to the provisions of the National Environmental Policy Act of 1969, and EIS will be prepared to assess the impact of the proposed action on the environment.

Interested agencies, organizations, and members of the general public desiring to submit written comments or suggestions for consideration in connection with the preparation of this EIS are invited to do so and are encouraged to attend the public scoping meetings which will be held on December 1, 1987, in Mexico, Maine, on December 2, 1987, in Rangeley, Maine, and on December 3, 1987, in Augusta and Lewiston, Maine. Parties who desire to present oral comments at the scoping meetings should provide advanced notice to ERA as described below under "COMMENTS AND SCOPING MEETING." Upon completion of the draft EIS, its availability will be announced in the **Federal Register**, at which time further comments will be solicited.

Preliminary Definition of Environmental Issues

The purpose of this notice is to solicit comments and suggestions for consideration in preparation of the EIS. As background for public comment and suggestions, it is useful to list those environmental issues which have been tentatively identified for analysis and assessment in the EIS. This is not intended to be all inclusive or to imply any predetermination of impacts.

Additional issues for analysis may be identified as a result of public comment.

A. Environmental Issues Associated with Transmission Line Contruction

(1) The loss or modification of upland plant communities due to the permanent removal of all tall-growing vegetation from proposed rights-of-way, and of all vegetation from tower footings, access roads substation sites;

(2) Minor relocations and alterations to other existing facilities along proposed rights-of-way;

(3) Temporary disruption of wildlife communities, agricultural production and other land uses along the line route during actual construction;

(4) Potential long-term effects on wildlife communities from loss and modification of habitat;

(5) Temporary interference with aquatic life during construction at steam and river crossings;

(6) Potential long-term effects to aquatic resources from erosion and sedimentation and clearing of riparian vegetation;

(7) Temporary secioeconomic perturbations due to the influx of construction workers into sparsely populated areas;

(8) Temporary noise and air pollution resulting from operation of construction equipment and from burning of slash from clearing of rights-of-way and the converter terminal site;

(9) Disruption and displacement of soils during activities associated with land clearing; and

(10) Potential disturbance and contamination of groundwater.

B. Environmental issues Associated with Transmission Line Operation and Maintenance

(1) Long-term withdrawal of traditional land use (e.g., forest, agriculture, residential) within rights-of-way and land required for other project facilities;

(2) Periodic interference with plant and wildlife communities along rights-of-way due to required maintenance activities, particularly vegetation control;

(3) Generation of acoustic noise and electromagnetic interference with radio and television reception along rights-of-way;

(4) Possible biological effects such as reduced growth or viability for plant and animal species resident within or in proximity to rights-of-way;

(5) Possible health effects from periodic and/or prolonged exposure to air ions and ozone produced by direct current transmission;

(6) Possible health effects from periodic and/or prolonged exposure to electric and magnetic fields produced by alternating and direct current transmission;

(7) Possible long-term effects on public health and aquatic and terrestrial organisms due to the use of herbicides for vegetation control;

(8) Indirect ecological and socioeconomic effects resulting from easier unauthorized human access to some areas via access roads and rights-of-way, such as increased hunting or use by motorcycles or snowmobiles;

(9) Long-term visual impacts resulting from the presence of support towers, conductors, and other project facilities; and

(10) Damage to non-project facilities (e.g., underground pipelines) due to operation of a ground electrode.

C. Other Specific Environmental Issues

(1) The possibility of affecting threatened or endangered species or critical habitats for such species;

(2) Identification and review of alternatives to construction within a 100-year floodplain or identified wetlands and identification and review of matigating measures to be taken if it is found that there are no practicable alternatives to construction in a floodplain or wetland;

(3) Possible direct and adverse effects on the values for which a wild, scenic or recreational river was established;

(4) Environmental factors relevant to any proposed construction in or over navigable rivers, or to any proposed actions resulting in the discharge of dredge or fill materials into any waters of the U.S.;

(5) Actions having an impact on the continued use and viability of prime and unique farmlands;

(6) Possible effects on sites or properties included on, nominated for, or eligible for inclusion in the National Register of Historic Places, or on historical, architectural or archeological sites or national significance; and

(7) Possible adverse impacts on National Forest lands.

Preliminary Definition of Alternatives

One of the major purposes of an EIS is to define the reasonable alternatives to the proposed action, and the environmental impacts to be expected from each reasonable alternative. As background for public comments and suggestions concerning reasonable alternatives to be considered, the broad classes of alternatives which have been tentatively identified are described briefly below:

A. If the Presidential Permit Is Issued

Issuance of the Presidential permit by DOE is one of the necessary steps leading to the construction of an electric transmission line which crosses the U.S. international border. Issuance of the permit indicates that there is no federal objection to the project, but does not mandate that the project be completed. Issuance of the permit would not necessarily result in construction of the project as presently proposed by CMP. Alternate project configurations which will be considered in the EIS include:

(1) Alternative corridor routes for the proposed transmission lines and alternative sites for the proposed converter terminal;

(2) Alternative tower designs; and

(3) Undergrounding of the proposed facilities.

B. If the Presidential Permit is Denied

Denial of the Presidential permit by DOE would result in CMP relying on other means to meet future increases in power demand. Alternative means to meet new load requirements could include:

(1) The traditional course of action of continuing the operation of existing oil-fueled generating plants as necessary to meet load, and the construction of new, conventional thermal or hydroelectric generating plants as necessary to satisfy future increases in load;

(2) Development and construction of new, non-conventional types of generating plants (e.g., solar or wind) to reduce the need for generating electric energy by oil or coal or for future construction of conventional generating plants;

(3) Load management by energy storage or conservation and/or replacement of some end uses of electricity by other sources of energy, which would reduce seasonal variations in load and total annual electrical energy requirements;

(4) Purchases of power from utilities within the United States; and

(5) Development of cogeneration and distributed small power projects throughout the state.

Mitigation Alternatives

The environmental impacts which would result from construction and operation of the proposed project would depend on the choice among a number of alternative possibilities as to where, when and how the project was constructed, as well as the choice of alternative maintenance and repair procedures during operation. Tentatively identified groups of alternatives for consideration in the EIS include: (a) Design, (b) route selection, (c) construction practices and (seasonal) timing, (d) rights-of-way clearing procedures, and (e) rights-of-way maintenance practices.

Comments and Scoping Meeting

The purpose of the scoping meetings is to obtain information from interested parties on the issues which should be addressed when preparing the EIS. These meetings will be conducted informally; however, a transcript of the meetings will be prepared. Parties who desire to present oral comments at a meeting should provide advanced notice to ERA by November 24, 1987, if possible. Every effort will be made to provide those present, who have not provided advanced notice, with a chance to speak if time permits. The ERA has designated Mr. Anthony J. Como as presiding officer at these meetings. The presiding officer will establish the order of speakers and provide any additional procedures necessary for the conduct of the meetings.

Speakers will be allotted approximately 15 minutes for their oral statement. Should any speaker desire to provide for the record further information which cannot be presented within the designated time limit, such additional information may be submitted in writing by January 12, 1988. Written comments will be considered

and given equal weight with oral comments.

A transcript of the scoping meetings will be retained by DOE and, upon request, made available for inspection and copying at the Freedom of Information Library, Room 1E–090, Forrestal Bldg., 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Draft EIS Schedule and Availability

The draft EIS (DEIS) is scheduled for completion by January 1989, at which time its availability will be announced in the **Federal Register** and public comments again will be solicited.

Those individuals who do not wish to submit comments or suggestions at this time but who would like to receive a copy of the DEIS for review and comment when it is issued should notify Mr. Anthony J. Como at the address given in the prior section.

One of the requirements placed on the applicant for a Presidential permit is the submission of an Environmental Report. This report is scheduled for completion by March 1988. This and other documents to be used in preparation of the DEIS will be made available for public inspection at several public libraries or reading rooms in Maine. A notice of the locations for such availability will be provided in the **Federal Register** at a later date.

Issued in Washington, DC, on November 9, 1987.

Mary L. Walker,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 87–26354 Filed 11–12–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER88–41–000, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

November 6, 1987.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER88–41–000]

Take notice that on October 15, 1987, Florida Power & Light Company (FLP) tendered for filing a Stipulation and Agreement executed between FPL and Seminole Electric Cooperative, Inc. (Seminole). FPL states that the Stipulation and Agreement is intended to comply with the Commission's Order No. 475 in Docket No. RM87–4 with respect to the effects of the lower marginal federal income tax rate under the Tax Reform Act of 1986.

FPL proposes revised long term transmission service rates (service provided with a duration of more than seven days) to be effective on October 1, 1987. FPL has submitted with this filing amendments to each of the transmission service agreements pursuant to which FPL provides transmission service to Seminole.

FPL states that the filed Stipulation and Agreement represents an overall compromise in order to resolve a number of issues concerning FPL's rates for transmission service and full and partial requirements service to Seminole, including the effect of the new tax laws on FPL's rates for these services.

FPL states that copies of the filing were served upon Seminole and upon the Florida Public Service Commission.

Comment date: November 23, 1987, in accordance with Standard Paragraph E at the end of this document.

2. Gulf States Utilities Company

[Docket No. ER86–558–012]

Take notice that on October 29, 1987, Gulf States Utilities Company tendered for filing pursuant to Commission Letter dated September 25, 1987 a compliance report for the total refund to the Town of Welsh, Louisiana, including interest.

Comment date: November 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Public Service Company

[Docket No. ER88–40–00

Take notice that on October 15, 1987, Iowa Public Service Company tendered for filing proposed changes in its FERC Electric Service Tariff, Volume No. 1. The proposed changes would decrease revenues in jurisdictional sales and service by $287,346 based on the twelve month period ending December 31, 1986.

The reason for this decrease in electric revenues is the result of Tax Reform Act of 1986.

Copies of the filing were served upon all parties affected by the filing and to the Iowa Utilities Board.

Comment date: November 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Kentucky Utilities Company

[Docket No. ER88–42–000]

Take notice that on October 15, 1987, Kentucky Utilities Company (Company) tendered for filing a rate reduction in its wholesale rates in accordance with the Final Rule in Order No. 475 in Docket No. RM87–4–000 issued by the Federal Energy Regulatory Commission (FERC) on June 26, 1987. This reduction concerns the Tax Reform Act of 1986, wherein the tax rate was lowered from 46% to 34%. FERC adopted a voluntary abbreviated filing procedure for electric utilities to file rate reductions through a formulary approach under Section 205 of the Federal Power Act.

Comment date: November 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Minnesota Power & Light Company

[Docket No. ER88–70–000]

Take notice that on October 30, 1987, Minnesota Power & Light Company (MP&L) tendered for filing a rate reduction relating to federal corporate income tax rate changes. MP&L's rate reduction is made in accordance with the formula under the Federal Energy Regulatory Commission's Order No. 475 in Docket No. RM87–4–000 and will be effective retroactively as of July 1, 1987.

Comment date: November 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Montana Power Company

[Docket No. ER88–73–000]

Take notice that on November 2, 1987, Montana Power Company (MPC) tendered for filing pursuant to Section 205 of the Federal Power Act an agreement dated September 2, 1987 for the sale of firm energy to the Sacramento Municipal Utility District during the period from November 1, 1987 through March 31, 1988.

MPC has requested waiver of the notice provisions of Section 35.3 of the Commission's regulations in order to permit the agreement to become effective on the date indicated above in accordance with its terms.

Comment date: November 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Wisconsin Electric Power Company

[Docket No. ER88–74–000]

Take notice that on November 2, 1987, Wisconsin Electric Power Company (Company) tendered for filing executed Supplements to the Service Agreement for Transmission Service between the Company and Wisconsin Public Power, Inc. System (the WPPI System). The Supplements set forth transmission transactions under which Wisconsin Electric will provide electric service to the WPPI System. Supplement No. 12 has an effective date of June 1, 1989, and Supplement Nos. 13 and 14 have an effective date of January 1, 1990.

Wisconsin Electric requests waiver of the Commission's notice requirement in order to allow the effective dates to become operative.

Copies of the filing have been served on the WPPI System and the Public Service Commission of Wisconsin.

Comment date: November 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Wisconsin)

[Docket No. ER88-72-000]

Take notice that on November 2, 1987, Northern States Power Company, Eau Claire, (Wisconsin) (NSPW) tendered for filing: proposed changes in its currently effective Firm Power Sale for Resale Service (W-1) Rate Schedules for full requirements service; and proposed changes in its currently effective Firm Power Sale for Resale Service-North Central Power (NCP-1) Rate Schedules. NSPW states that the proposed changes are intended to increase rates for W-1 service to its existing fifteen full requirements wholesale customers and to increase rates for partial requirements service to North Central Power Company, Inc.

NSPW states that the proposed rate schedule changes will increase revenues from sales to these customers by $2,369,293 based on sales for the January 1, 1988 to December 31, 1988 test year.

NSPW requests an effective date of January 2, 1988.

Copies of the filing were served upon each affected customer, the Public Service Commission of Wisconsin, and the Michigan Public Service Commission.

Comment date: November 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

9. San Diego Gas & Electric Company

[Docket No. ER88-71-000]

Take notice that on November 2, 1987, San Diego Gas & Electric Company (SDG&E) tendered for filing a change of scheduling and dispatching charge for the San Diego-Edison Firm Transmission Service Agreement (Agreement) Rate Schedule FERC No. 60.

Under the terms of the Agreement, SDG&E will make available to Southern California Edison Company (Edison) firm transmission service between points near the U.S.-Mexico border and San Onofre as specified in the Agreement.

SDG&E has requested an effective date of January 1, 1988.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Edison.

Comment date: November 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company (Minnesota)

[Docket No. ER88-75-000]

Take notice that on November 2, 1987, Northern States Power Company (Minnesota) (NSP) tendered for filing proposed changes in FERC wholesale rates.

The 10 affected firm power total requirements wholesale customers and their current FERC rate schedule designations of their contracts are as follows:

Customer	FERC rate schedule No.
Firm Power Service Primary Distribution Voltage:	
Arlington	421
Brownton	422
Kasota	426
Kasson	427
North St. Paul	429
Shakopee	431
Winthrop	433
Firm Power Service Transmission Voltage:	
Anoka	420
Buffalo	423
Chaska	424

The 9 affected load pattern partial requirements wholesale customers and their current FERC rate schedule designations of their contracts are as follows:

Customer	FERC rate schedule No.
Load Pattern Service Transmission Voltage:	
Ada	390
East Grand Forks	387
Fairfax	400
Kenyon	394
Le Sueur	392
Madelia	397
Melrose	401
Olivia	388
Sioux Falls	413

The total increase in $3,094,000, or 12.9%, above the rates in effect on the date of this filing. It is requested that the increase by permitted to become effective on January 1, 1988, which is 60 days from the date of filing.

NSP states that the proposed rate increases are needed because operating, maintenance and capital costs have increased since the present rates became effective.

Copies of the rate schedule change and comparative billing data were served upon NSP's customers affected by this filing. In addition, copies of the filing have been mailed to the Minnesota Public Utilities Commission, the North Dakota Public Service Commission and the South Dakota Public Utilities Commission.

Comment date: November 23, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26254 Filed 11-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES88-8-000 et al.]

UtiliCorp United, Inc., et al.; Electric Rate and Corporate Regulation Filings

Take notice that the following filings have been made with the Commission:

1. UtiliCorp United Inc.

[Docket No. ES88-8-000]

November 4, 1987.

Take notice that on October 28, 1987, UtiliCorp United Inc. (Applicant) filed an application seeking an order under Section 204(a) of the Federal Power Act authorizing the Applicant to issue, from time to time, up to and including $500,000,000 of unsecured notes. All notes would have final maturities no later than December 31, 1990.

Comment date: November 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Cliffs Electric Service Company et al.

[Docket No. ER87-632-000]

November 5, 1987.

Take notice that on October 30, 1987, Cliffs Electric Service Company, *et al.*, (CESCO) tendered for filing additional information that gives explanation to five cost items provided in CESCO's letter of September 28, 1987.

Comment date: November 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Edison Company of New York, Inc.

[Docket No. ER88-62-000]

November 5, 1987.

Take notice that on October 30, 1987, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a notice of termination of its currently effective Rate Schedule FERC No. 86. The Rate Schedule, dated April 29, 1987, provides for the sale of capacity and energy to Long Island Lighting Company (LILCO).

The Rate Schedule has been terminated pursuant to its terms.

Con Edison seeks an effective date of October 25, 1987, and therefore requests waiver of the Commission's notice requirements.

A copy of this filing has been served upon LILCO.

Comment date: November 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Michigan Power Company

[Docket No. ER88-65-000]

November 5, 1987.

Take notice that on October 30, 1987, Michigan Power Company (Michigan Power) tendered for filing a proposed rate change in Service Schedule B (Concurrent Exchange Agreement) of the Agreement between Indiana Michigan Power Company (I&M) (formerly Indiana & Michigan Electric Company) and Michigan Power, heretofore designated by the Commission as I&M Rate Schedule FERC No. 25, to reflect the decrease in the Federal corporate income tax rate pursuant to the Tax Reform Act of 1986. The proposed rate change will decrease Michigan Power's annual revenues from I&M for transmission service by approximately $22,391 per year. This rate decrease filing is being made pursuant to the abbreviated filing requirements set forth in Section 35.27 of the Commission Regulations.

Michigan Power requests that this rate change be made effective as of July 1, 1987.

Copies of the filing were served upon Indiana Michigan Power Company, the Indiana Utility Regulatory Commission and the Michigan Public Service Commission.

Comment date: November 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Michigan Power Company

[Docket No. ER88-66-000]

November 5, 1987.

Take notice that on October 30, 1987, Michigan Power Company (Michigan Power) tendered for filing proposed changes in its FERC Electric Tariff MRS, Voume No. 1, presently on file with the Commission which are applicable to the City of Dowagiac, Michigan and the Village of Paw Paw, Michigan to reflect the decrease in the Federal corporate income tax rate pursuant to the Tax Reform Act of 1986. The proposed change in resale rates will decrease Michigan Power's annual revenues from the City of Dowagiac by an estimated $8,183 and from the Village of Paw Paw by an estimated $8,048. This rate decrease filing is being made pursuant to the abbreviated filing requirements set forth in Section 35.27 of the Commission's Regulations.

Michigan Power requests that this rate change be made effective as of July 1, 1987.

Copies of the filing were served upon the City of Dowagiac, the Village of Paw Paw and the Michigan Public Service Commission.

Comment date: November 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Montaup Electric Company

[Docket No. ER88-61-000]

November 5, 1987.

Take notice that on October 29, 1987, Montaup Electric Company (Montaup) tendered for filing rate schedule revisions incorporating the 1988 forecast billing rate for its purchased capacity adjustment clause (PCAC) for all-requirements service to Montaup's affiliates Eastern Edison Company (Eastern Edison) in Massachusetts and Blackstone Valley Electric Company (Blackstone) in Rhode Island and contract demand service to three non-affiliated customers: The Town of Middleborough in Massachusetts and the Pascoag Fire District and the Newport Electric Corporation in Rhode Island. The new forecast billing rate is $6.94101/kw-Mo. Montaup requests that the new rate become effective January 1, 1988 in accordance with the PCAC.

Montaup's filing was served on the affected customers, the Attorneys General of Massachusetts and Rhode Island, the Rhode Island Public Utilities Commission and the Massachusetts Department of Public Utilities.

Comment date: November 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Company

[Docket No. ER88-68-000]

November 5, 1987.

Take notice that on October 30, 1987, New England Power Company (NEP) tendered for filing revised rate schedules reflecting rate decreases calculated pursuant to Order No. 475 and Section 35.27 of the Commission's regulations. In accordance with these regulations, NEP requests that these reductions become effective July 1, 1987. Upon approval of the proposed rates, NEP states that the appropriate refunds will be made without interest.

According to NEP, the proposed reductions have been calculated using the formula presented in Order No. 475 and, therefore, reflect the reduction in the Federal corporate tax rate from 46% to 34%. The revisions are proposed for the following NEP rate schedules:

FERC Electric Tariff, Original Volume No. 3
FERC Electric Tariff, Original Volume No. 4
Rate Schedule FERC No. 323, Supplement No. 5
Agreement for Transmission of Firm Power—Pascoag Fire District
Supplement No. 5 to Service Agreement under FPC Electric Tariff, Original Volume No. 1—Massachusetts Electric Facilities Credits
Supplement No. 6 to Service Agreement under FPC Electric Tariff, Original Volume No. 1—Massachusetts Electric Facilities Credits

NEP further states that copies of its filing letter and the appropriate revised rate sheets have been sent to all affected customers.

Comment date: November 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

8. Potomac Electric Power Company

[Docket No. ER88-69-000]

November 5, 1987.

Take notice that on October 30, 1987, Potomac Electric Power Company (Pepco), 1900 Pennsylvania Avenue, N.W. Washington, D.C. 20068, tendered for filing an amendment to its agreement for sale and purchase of electric power and energy for sales to its only wholesale customer, Southern Maryland Electric Cooperative, Inc. (Smeco) under Rate Schedule FERC No. 34. The amendment, which has been agreed to and concurred in by Smeco, provides rates for the period January 1, 1988

through December 31, 1990 that represent rate reductions from currently effective rate levels of $6.5 million for 1988, $5.25 million for 1989 and $3.75 million for 1990. These rates recognize the effects of the Tax Reform Act of 1986.

Comment date: November 19, 1987, in accordance with Standard Paragraph E at the end of this document.

9. Southwestern Public Service Company and Black Mesa Power Company

[Docket No. ER87-584-000]

November 5, 1987.

Take notice that on November 2, 1987, Southwestern Public Service Company (Southwestern) and Black Mesa Power Company (Black Mesa) tendered for filing an amendment to their original filing received on August 13, 1987. In their original filing, Southwestern and Black Mesa filed a joint application seeking an order pursuant to Sections 203, 204, and 205 of the Federal Power Act and Parts 33, 34, and 35 of the Commission's regulations.

Notice of the joint application was issued August 13, 1987.

In their amendments, the parties are providing information to supplement the original filing so that the application will meet certain filing requirements as prescribed by Part 35 of the Commission's regulations.

Copies of the Supplemental Filing were served upon the Corporation Commission of the State of Oklahoma and the State Corporation Commission of the State of Kansas.

Comment date: November 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER88-67-000]

November 5, 1987.

Take notice that on October 30, 1987, Southern California Edison Company (Edison) tendered for filing a change of rate for scheduling and dispatching services under the provisions of Edison's agreements with the parties listed below as embodied in their FERC Rate Schedules. Edison requests that the new rates for these services be made effective January 1, 1988.

Entity	Rate schedule FERC No.
1. City of Pasadena (Pasadena)	158, 177
2. City of Los Angeles (Los Angeles)	102, 118, 140, 141, 163, 188
3. State of California, Department of Water Resources (CDWR)	112, 113, 181
4. City of Burbank (Burbank)	166, 175
5. Pacific Gas and Electric Company (PGandE)	117, 147
6. Western Area Power Administration (Western)	120
7. Arizona Electric Power Cooperative Inc. (AEPCO)	132, 161
8. City of Glendale (Glendale)	143, 176
9. San Diego Gas and Electric Company (SDG&E)	151
10. M-S-R Public Power Agency (M-S-R)	153
11. Arizona Public Service Company (APS)	185

Edison states that the filing is in accordance with the terms of each of these agreements, which state that the rates for these services will be redetermined prior to January 1 of each year based on Edison's annual budget for load dispatching and production section function expenses for that year.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER88-64-000]

November 5, 1987.

Take notice that on October 30, 1987, Southern California Edison Company (Edison) tendered for filing a change of rate for scheduling and dispatching services under the provisions of Edison's agreements with the parties listed below as embodied in their FERC Rate Schedules. Edison requests that the new rates for these services be made effective January 1, 1988.

Entity	Rate schedule FERC No.
1. City of Riverside (Riverside)	129, 165, 192, 194, 198, 205, 212
2. City of Anaheim (Anaheim)	130, 164, 193, 200, 204, 208
3. City of Vernon (Vernon)	149, 154.7, 172, 195, 207
4. City of Banning (Banning)	159, 190, 199, 210
5. City of Azusa (Azusa)	160, 189, 196, 201, 209
6. City of Colton (Colton)	162, 191, 202, 211

Edison states that the filing is in accordance with the terms of each of these agreements, which state that the rates for these services will be redetermined prior to January 1 of each year based on Edison's annual budget for load dispatching and production section function expenses for that year.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Public Service Corporation

[Docket No. ER88-63-000]

November 5, 1987.

Take notice that on October 30, 1987, Wisconsin Public Service Corporation (Company) tendered for filing a new service agreement for partial requirements load pattern service to Consolidated Water Power Company, Wisconsin Rapids, Wisconsin (Customer) together with a new W-3 form of tariff for partial requirements load pattern service to interconnected customers. The new service agreement will replace in its entirety a service agreement between the parties dated June 24, 1977 which is currently on file as service agreement No. 1 under the Company's FERC Electric Tariff, 1st Revised Volume No. 1. The new tariff becomes an optional tariff to 1st Revised Volume No. 1. The Company, with the support of the Customer, has requested an effective date of January 1, 1980, for the new service agreement and tariff.

The new optional tariff is a complex time of use rate designed to follow the Company's load pattern and provide appropriate price signals to improve the overall efficiency of the Company's operation. Based on actual data for the 12 months ending July 31, 1987, there will be no change in revenue.

The Company states that copies of the executed service agreement were sent to the Customer, the two purchasers of service under the option 1st Revised Volume No. 1 and to the Public Service Commission of Wisconsin.

Comment date: November 19, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person, wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26255 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-895-000, et al.]

Hanson Corp., et al.; Applications for Certificates, Abandonments of Service and Petitions To Amend Certificates [1]

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before November 24, 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 Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
CI87-895-000, B, Sept. 9, 1987	Hanson Corporation, P.O. Box 1212, Midland, Texas 79702-1212.	Delhi Gas Pipeline Company, Certain acreage in Crane County, Texas.	(1)	
CI88-71-000 (CI69-593), B, Oct. 27, 1987.	Tennecco Oil Company, P.O. Box 2511, Houston, Texas 77001.	ANR Pipeline Company, Cedardale, N.E. Field, Major County, Oklahoma.	(2)	
G-18176-000, D, Nov. 3, 1987	....do	ANR Pipeline Company, Mocane-Laverne Field, Harper County, Oklahoma.	(3)	
CI82-316-001, D, Oct. 29, 1987	....do	Northern Natural Gas Company, Division of Enron Corp., Mocane-Laverne Field, Harper County, Oklahoma.	(3)	
CI88-80-000 (CI84-606), B, Nov. 2, 1987.	Mesa Operating Limited Partnership, P.O. Box 2009, Amarillo, Texas 79189-2009.	Natural Gas Pipeline Company of America, C.V. Davidson #2-2 Well, SW/4 of Sec. 2-T9N-R25W, Beckham County, Oklahoma.	(4)	
CI88-81-000 (CI68-1098) B, Nov. 2, 1987.	....do	Southern Union Gas Company, C1B OP 1 and C1B OP 2, SUB Units, Plaquemines Parish, Louisiana.	(5)	
CI88-82-000 (G-19383), B, Nov. 2, 1987.	....do	Northern Natural Gas Company, Division of Enron Corp., W/2 W/2 Section 21 E/2 W/2 Section 21, and W/2 Section, all of Block JT, TW&NG RR Co. Survey, Ochiltree County, Texas.	(6)	
CI88-84-000 (CI84-303), B, Nov. 2, 1987.	....do	Arkla Energy Resources, a division of Arkla, Inc., Sec. 36-T19N-R9W, Choate No. 1 Well, Sec. 2-T18N-R9W, Blodgett No. 1 Well and River No. 1 Well, Kingfisher County, Oklahoma.	(7)	
CI88-78-000 (CI68-976), B, Oct. 30, 1987.	....do	ANR Pipeline Company, N/2 NE/4, N/2 NW/4, SW/4 NW/4 and W/2 SW/4 of Sec. 27-T3N-R28ECM, Beaver County, Oklahoma.	(8)	
CI64-1470-001, D, Nov. 2, 1987	Union Oil Company of California, P.O. Box 7600, Los Angeles, Calif. 90051.	Williston Basin Interstate Pipeline Company, Howard Ranch Field, Fremont County, Wyoming.	(9)	
CI88-75-000 (CI79-368), B, Oct. 29, 1987.	Multistate Oil Properties, N.V., P.O. Box 2511, Houston, Texas 7701.	ANR Pipeline Company, Campbell, N.W. Field, Major County, Oklahoma.	(10)	

[1] Application was noticed in the Federal Register on September 24, 1987 (52 F.R. 35943). It is being renoticed to reflect Applicant's additional request, by letter received October 27, 1987, for a one-year pregranted abandonment for sales of the subject gas for resale in interstate commerce under Applicant's small producer certificate.

[2] Acreage sold to Unit Corporation, effective 1-1-87.

[3] Assigned acreage to Foran Oil Company, effective 12-1-86.

[4] Property sold to Jack P. Speed, effective 3-1-84.

[5] Property sold to Mr. William L. Douglas, effective 6-4-80.

[6] Property sold to Kaiser-Francis Oil Company, effective 12-23-85.

[7] Property sold to Jack Speed, effective 10-1-84.

[8] Property sold to Alan L. Lamb, effective 3-1-80.

[9] Union Oil Company of California sold its entire interest in the Howard Ranch Unit #23-15 to Natural Gas Processing Company, effective 12-29-86.

[10] Multistate Oil Properties, N.V., sold dedicated acreage to Vanguard Oil & Gas, Inc., effective 12-1-86.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-26301 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the serveral matters covered herein.

[Docket Nos. CP88-48-000 et al.]

K N Energy, Inc., et al.; Natural Gas Certificate Filings

November 6, 1987.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP88-48-000]

Take notice that on October 26, 1987, K N Energy, Inc. (K N), P.O. Box 15265, Lakewood, Colorado, 80215, filed in Docket No. CP88-48-000 a request pursuant to § 157.205(b) of the

Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate sales taps for the delivery of gas to end users under authorization issued in Docket Nos. CP83–140–000, CP83–140–001, and CP83–140–002 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N proposes the following points of delivery for the following end users: [1]

(1) Ken Christiansen

1 tap located in Thomas Co., Kansas at an estimated cost of $850.
Estimated annual usage of 800 Mcf

(2) Dale Unruh

1 tap located in Kearny Co., Kansas at an estimated cost of $1,150.
Estimated annual usage of 1,040 Mcf

(3) Steve Schultz

1 tap located in Hamilton Co., Nebraska at an estimated cost of $1,150.
Estimated annual usage of 1,600 Mcf

(4) Lela Ann Hassler

1 tap located in Fillmore Co., Nebraska at an estimated cost of $850.
Estimated annual usage of 120 Mcf

(5) Arden Quiring

1 tap located in York Co., Nebraska at an estimated cost of $850.
Estimated annual usage of 800 Mcf

It is stated that the natural gas will ultimately be consumed by end users served directly from K N's general system supply. The proposed sales taps are not prohibited by any of K N's existing tariffs, it is indicated. K N states that the addition of the new sales taps will have no significant impact on K N's peak day and annual deliveries. The gas delivered and sold by K N to the various end users will be priced in accordance with the currently filed rate schedules authorized by the applicable state or local regulatory body having jurisdiction, it is asserted.

Comment Date: December 21, 1987, in accordance with Standard Paragraph G at the end of this notice.

2. Northern Natural Gas Company, Division of Enron Corporation

[Docket No. CP88–37–000]

Take notice that on October 20, 1987, Northern Natural Gas Company, Division of Enron Corporation (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP88–37–000, a request pursuant to § 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to modify one delivery point and appurtenant facilities to accommodate natural gas deliveries to Peoples Natural Gas Company (Peoples), under the certificate issued in Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Specifically, Northern requests authorization to modify Eagan No. 1B, a town border station (TBS) located in Dakota County, Minnesota, because the TBS has expanded substantially in recent years with a subsequent load increase due to additional residential, commercial, and industrial customers. It is stated that the modification which is estimated to cost $4,500 would enable the TBS to serve the increased requirements of Peoples and its customers. Northern asserts that the requirements would increase from 487,200 Mcf to 904,800 Mcf per year.

Comment Date: December 21, 1987, in accordance with Standard Paragraph G at the end of this notice.

3. National Fuel Gas Supply Corporation

[Docket No. CP88–47–000]

Take notice that on October 23, 1987, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP88–047–000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing National Fuel to transport natural gas on behalf of Transco Energy Marketing Company (Temco), 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 Temco would cause gas that it purchased from Sulpetro, Ltd. to be delivered to National Fuel at one or both of two existing interconnections between National Fuel and Tennessee Gas Pipeline Company in Clarence and East Aurora, New York. National Fuel proposes to transport for Temco up to 75,000 Mcf of gas per day for a term of two years on an interruptible basis to an existing interconnection between National Fuel and Transcontinental Gas Pipe Line Corporation (Transco) near Wharton, Pennsylvania for ultimate delivery by Transco for Temco's account to Baltimore Gas and Electric Company, Long Island Lighting Company and Public Service Electric and Gas Company.

National Fuel states that as set forth in the proposed gas transportation agreement between National Fuel and Temco, it would charge Temco its generally applicable T–1 interruptible transportation rate. According to National Fuel the T–1 rate is currently 29.56 cents per Mcf, plus two percent shrinkage.

National Fuel states that the proposed transportation service would be conditioned upon the availability of capacity sufficient for National Fuel to perform the proposed services without detriment or disadvantage to National Fuel's obligations to its firm customers.

Comment Date: November 30, 1987, in accordance with Standard Paragraph F at the end of this notice.

4. Northwest Pipeline Corporation

[Docket No. CP88–44–000]

Take notice that on October 23, 1987, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP88–44–000 a request pursuant to § 157.205(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a receipt point in Sweetwater County, Wyoming, to an existing transportation service for Development Associates, Inc. (Development), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that Northwest is currently authorized to transport, on an interruptible basis, up to 50,000 MMBtu equivalent of natural gas per day for the account of Development, as agent for 13 end-users, pursuant to a gas transportation agreement dated August 22, 1986 (transportation agreement). It is claimed Northwest was authorized to receive gas for Development's account at 12 receipt points on Northwest's system and to transport and deliver the gas at 7 delivery points to The Washington Water Power Company (WWP) in Spokane, Franklin and Whitman Counties, Washington, for subsequent delivery by WWP to 13 specified end-users.

It is stated that on September 10, 1987, Northwest and Development entered into an amendment to the transportation agreement to add the Green River Gathering System Meter Station as a new receipt point. Northwest requests authority to utilize the Green River Gathering System Meter Station as a receipt point under the transportation agreement in order to provide Development with additional flexibility

[1] Customers reimburse to K N a portion of the costs through imposition of a connection charge which varies by state as follows: Kansas—$250, Nebraska—$400, Colorado—$400 and Wyoming—$500.

in tendering its gas supplies to Northwest for transportation. It is claimed this would ultimately benefit the 13 end-users eligible to be served under the transportation agreement.

Northwest further states that the total authorized transportation volume of 50,000 MMBtu per day to Development would not change as a result of this request and the addition of this receipt point would have no impact upon Northwest's annual or peak day deliveries to Development.

Comment Date: December 21, 1987, in accordance with Standard Paragraph G at the end of this notice.

5. Southern Natural Gas Company

[Docket No. CP88-22-000]

Take notice that on October 14, 1987, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham Alabama 35202-2563, filed in Docket No. CP88-22-000 an application pursuant to section 7(c) of the Natural Gas Act for a limited-term certificate of public convenience and necessity authorizing the transportation of natural gas, 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 up to 10,000 MMBtu of natural gas per day on an interruptible basis on behalf of the Stone Port Wentworth, Inc. (Stone). Southern would receive natural gas from SNG Trading Inc., SarVic Gas Company, Hadson Gas Systems, Inc., and Corporate Energy Services at various existing points of interconnection on Southern's contiguous pipeline system as specified in Exhibit F Part 1 of the agreement attached to the application. Southern further states that it would redeliver the gas less 3.25 percent retainer to Stone at the Stone Container-Port Wentworth Meter Station in Chatham County, Georgia. Southern further states that the natural gas would be transported under the terms and conditions of the transportation agreement between Stone and Southern dated September 24, 1987. Southern proposes to provide the transportation service through October 31, 1988.

Southern proposes to charge Stone the Transportation rate of 77.6 cents per MMBtu of gas redelivered by Southern. Southern further proposes to collect from Stone the GRI surcharge of 1.52 cents per Mcf or any other GRI funding unit or surcharge as hereafter prescribed, it is explained. Southern further states that the transportation arrangement will enable Stone to diversify its natural gas supply sources and to obtain gas at competitive prices. In addition, Southern will obtain take-or-pay relief on gas that Stone may obtain from its suppliers.

Comment Date: November 30, 1987, in accordance with Standard Paragraph F at the end of this notice.

6. Tennessee Gas Pipeline Company, a Division of Tenneco Inc. and United Gas Pipe Line Company

[Docket No. CP77-108-004]

Take notice that on October 27, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, and United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478 (Petitioners), filed in Docket No. CP77-108-004 a petition to amend the order issued April 14, 1978, as amended January 25, 1979, pursuant to sections 7(b) and 7(c) of the Natural Gas Act so as to authorize Tennessee and United to exchange natural gas, to authorize Tennessee to transport natural gas on behalf of United, and for permission and approval to abandon a point of receipt, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

By Commission order issued April 14, 1978, as amended by order issued January 25, 1979, Tennessee was authorized to transport and exchange up to 380,000 Mcf of natural gas per day (Mcfd) for and with United through Tennessee's Sabine-Kinder pipeline in Calcasieu Parish, Louisiana, it is stated. Petitioners indicate that Tennessee is authorized to receive United's gas from Transcontinental Gas Pipe Line Corporation near Starks, Calcasieu Parish, Louisiana (Starks receipt point), and Crowley, Acadia Parish, Louisiana (Crowley receipt point). It is explained that Tennessee delivers the gas to United at four points on United's system. In addition, Petitioners aver that Tennessee was authorized to deliver to United, as exchange gas, up to 150,000 Mcfd at Lirette, Terrebonne Parish, Louisiana (Lirette delivery point). These services are performed pursuant to a transportation agreement between Petitioners dated July 12, 1976, and an exchange and transportation agreement between Petitioners dated May 1, 1978, it is indicated.

Petitioners propose to implement changes to the May 1, 1978, exchange and transportation agreement pursuant to an amendment dated June 18, 1987. Specifically, Petitioners request authorization: (1) To abandon the Crowley receipt point, leaving the Starks receipt point as the sole receipt point; (2) to redefine the term "exchange quantity" to mean that portion of the transportation quantity up to 75,000 Mcfd in excess of the first 130,000 Mcfd which is received by Tennessee from United at the Starks receipt point to be returned to United at the Lirette delivery point; and (3) to amend the rates to reflect that United agrees to pay Tennessee for the first 130,000 Mcfd and for volumes in excess of the exchange quantity based on Tennessee's effective 100 Mcf-mile charge and the respective miles of haul between the Starks receipt point and the four delivery points on United's system.

Comment Date: November 30, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

7. Tennessee Gas Pipeline Company, a Division of Tenneco Inc.

[Docket No. CP88-43-000]

Take notice that on October 23, 1987, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP88-43-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to make redeliveries of natural gas at a metering facility near Putnam Lake, Connecticut under a transportation service to be rendered by Tennessee for Connecticut Natural Gas Corporation (CNG) instead of at a metering facility near Greenwich, Connecticut under the certificate issued in Docket No. CP82-413-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that it has been authorized by a Commission order issued July 24, 1987 at Docket No. CP81-296-008 to transport up to 2,000 Mcf of natural gas per day for CNG. The gas would be purchased by CNG from Boundary Gas, Inc. and would be delivered to Tennessee at an interconnection with TransCanada Pipe Line Limited near Niagara Falls, New York and, as authorized by the order of July 24, 1987, would be redelivered by Tennessee to CNG at a metering facility near Greenwich, Connecticut.

Tennessee states that CNG has requested Tennessee to redeliver such volumes at Putnam Lake instead of Greenwich. Tennessee further states that no additional facilities other than those proposed at Docket No. CP87-539-

000, now pending before the Commission, would be required to

Comment Date: Decmeber 21, 1987, in accordance with Standard Paragraph G at the end of this notice.

8. Williston Basin Interstate Pipeline Company

[Docket Nos. CP82-487-014 (Phase IV)]

Take notice that on October 23, 1987, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed an application in Docket No. CP82-487-014 (Phase IV) under section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing permanent maximum gas capacities and maximum stabilized shut-in wellhead pressure for each of its three gas storage fields and permanent maximum gas storage inventories for each of its authorized storage services, all as more fully set forth in the application on file with the Commission and open to public inspection.

Williston Basin states that on February 13, 1985, the Commission issued an order approving a settlement in Docket No. CP82-487-000, *et al.*, "Order Approving Partial Settlement and Denying Rehearing", Williston Basin Interstate Pipeline Company, 30 FERC ¶ 61,143 (1985). Article IV of that settlement provided for certain interim maximum gas storage capacities and maximum stablized shut-in wellhead pressures for each of Williston Basin's storage fields, and interim maximum working storage inventories for each of its authorized storage services, it is indicated. Further, it is stated that Article IV of the settlement requires Williston Basin to file with the Commission certain semiannual storage reports, storage capacity and deliverability studies, and the instant application for permanent gas storage capacities, wellhead pressures and working gas inventories.

Williston Basin states it believes that maximum gas capacities and wellhead pressures proposed in this application are consistent with maintaining the integrity of its gas storage reservoirs.

Comment Date: November 30, 1987, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26292 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-31-001]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

November 9, 1987.

Take notice that on November 3, 1987 Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing six copies of 1st Substitute 45th Revised Sheet No. 4, to First Revised Volume No. 1, Rate Schedule No. G-2.

AER states that this tariff sheet reflects a reduction in the surcharge and total rate of 15.30¢ per MCF at 14.73 PSIA as a result of a revision to estimated sales volumes used to calculate the surcharge rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 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 November 16, 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. 87-26303 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-133-001]

East Tennessee Natural Gas Co.; Tariff Filing and Rate Changes

November 9, 1987.

Take notice that on October 28, 1987, East Tennessee Natural Gas Company, (East Tennessee), tendered for filing the following tariff sheets to Original Volume No. 1 of the FERC Gas Tariff, to be effective October 1, 1987.

Original Volume No. 1

Substitute First Revised Sheet No. 142

East Tennessee states that it is filing this tariff sheet in response to and in compliance with Order No. 472B. East Tennessee states that its filing includes a new section 28, which provides for customer funding of annual charges assessed East Tennessee by the Federal Energy Regulatory Commission pursuant to Order No. 472.

East Tennessee states that copies of the filing have been mailed to all its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 16, 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. 87-26298 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA87-59-000]

H-M Oil Co.; Petition For Adjustment

Issued November 9, 1987.

On September 17, 1987, H-M Oil Company (H-M) filed with the Federal Energy Regulatory Commission a petition for adjustment pursuant to section 502(c) of the Natural Gas Policy of Act of 1978 (NGPA) [1] and Subpart K of the Commission's Rules of Practice and Procedure.[2] H-M seeks waiver of its obligation under Commission Order Nos. 399, 399-A, and 399-B [3] requiring payment of Btu adjustment refunds by first sellers of natural gas.

H-M states that it has been unable to collect $589.76 of Btu refunds from royalty owner(s) after repeated Unsuccessful attempts and, in its opinion, the owner in question is no longer in existence or solvent, or both. H-M further states that it derived no direct or indirect benefit from the royalty payments, and that it is unjust to require H-M to make such refunds since it distributed the well sales proceeds in order to to receive its own proceeds.

H-M asserts that the well in question ceased production in May, 1984, ending any contractual relationship that would permit collection of these obligations through billing adjustments and that legal action be uneconomical. H-M further asserts that unfair distribution of burden and inequity would result if it is required to pay the refund obligation attributable to the defaulting royalty interest owner. H-M submits that paying such liability would cause H-M to be in default on certain provisions of loan agreements with its institutions. Finally, H-M requests that it not be held accountable where it has made an unsuccessful good faith effort to locate the royalty owner.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of such Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26302 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-20-000]

Jupiter Energy Corp.; Proposed Changes in FERC Gas Tariff

November 5, 1987.

Take notice that Jupiter Energy Corporation ("Jupiter Energy" or the "Company") on October 30, 1987 tendered for filing the following sheets of its FERC Gas Tariff, Original Volume No. 1

Second Revised Sheet No. 4
Original Sheet No. 4A
Second Revised Sheet No. 5
Original Sheet No. 5A
Second Revised Sheet No. 6
Original Sheet No. 6A

Jupiter Energy states that the filed tariff sheets reflect addition of an Annual Charge Adjustment ("ACA") Clause that it proposes to be added to each of the rate schedules under which Jupiter Energy performs transportation service. The new ACA Clause is proposed for addition to such rate schedules pursuant to § 154.38(d)(6) of the Commission's regulations.

Jupiter Energy proposes an effective date of November 29, 1987.

Jupiter Energy states that copies of the filing have been served on the Company's 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 Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 13, 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 Jupiter Energy's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26258 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-2-5-000]

Midwestern Gas Transmission Co.; Rate Filing for Purchased Gas Adjustment Filing

November 5, 1987

Take notice that on October 30, 1987, Midwestern Gas Transmission Company (Midwestern) filed Substitute Twenty-Eighth Revised Sheet No. 5 to Original Volume No. 1 of its FERC Gas Tariff, to be effective November 1, 1987.

Midwestern states that the purpose of the filing is to reflect an out-of-cycle Purchased Gas Adjustment (PGA) reflecting an increase of 4 cents per dekatherm applicable to the gas component of Midwestern's sales rates and a decrease of 98 cents per dekatherm applicable to the CD-1 demand rate. These adjustments reflect changes in the rates of Tennessee Gas Pipeline Company (TGP), Midwestern's principal supplier, effective August 1, 1987, pursuant to the TGP compliance filing on October 15, 1987, in Docket Nos. RP85-178, *et al.* The Gas Rate After Current Adjustment also reflects adjustments from Twenty-Seventh Revised Sheet No. 5, which is being filed in an interim PGA adjustment on this same date.

The changes in the TGP rates have substantially increased the cost of gas purchased from TGP above the levels projected in Midwestern's semi-annual PGA effective July 1, 1987, and would result in substantial increases in the unrecovered purchased gas cost account unless Midwestern is permitted to adjust its rates effective November 1, 1987.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers on its Southern

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[1] 15 U.S.C. 3412(c) (1982).

[2] 18 CFR Part 385, Subpart K (1987).

[3] Refunds Resulting From Btu Measurement Adjustment 49 FR 37735 (Sept. 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,597; 49 FR 46353 (Nov. 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,612; and 50 FR 30141 (July 24, 1985), FERC Stats. & Regs. [Regulations Preambles 1982-1985] ¶ 30,651.

System and affected state regulatory commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 13, 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. 87-26256 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-131-001]

Midwestern Gas Transmission Co.; Tariff Filing and Rate Changes

November 9, 1987.

Take notice that on October 28, 1987, Midwestern Gas Transmission Company, (Midwestern), tendered for filing the following tariff sheets to Original Volume No. 1 of the FERC Gas Tariff, to be effective October 1, 1987.

Original Volume No. 1

Substitute Original Sheet No. 191A

Midwestern states that it is filing this tariff sheet in response to and in compliance with Order No. 472-B. Midwestern states that its filing amends Article XXIV, which provides for customer funding of annual charges assessed Midwestern by the Federal Energy Regulatory Commission pursuant to Order No. 472, to provide that Midwestern does not intend to recover these charges recorded in FERC Account 928 in a NGA section 4 rate case.

Midwestern states that copies of the filing have been mailed to all its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 208 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 16, 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. 87-26299 Filed 11-12-84; 8:45 am]

BILLING CODE 6717-01-M

Existing Licensee's Intent to File an Application for New License; Niagara Mohawk Power Corp.

November 9, 1987.

Take notice that on August 6, 1987, Niagara Mohawk Power Corporation, licensee for the Hydraulic Race Project No. 2424 has stated its intent pursuant to section 15(b)(1) of the Federal Power Act (Act) to file an application for a new license. The license for the Hydraulic Race Project No. 2424 will expire on June 30, 1991. The project is located on the New York State Barge Canal, on the Mohawk River in Niagara County, New York and has a total capacity of 4,687 kW.

The principal project works currently licensed for Project No. 2424 are: (1) A regulator tunnel owned by the New York State Department of Transportation; (2) a gate structure in the south canal wall above Lock No. 35 at Lockport; (3) a 140-foot-long, 12.5-foot-diameter tunnel connecting with the state tunnel; (4) a 99-foot-long, 13-foot-diameter steel penstock; (5) a powerhouse containing one generating unit with an installed capacity of 4,687-kW; and appurtenant facilities.

Under section 15(c)(1) of the Act, as amended by the Electric Consumer Protection Act of 1986, each application for a new license and any competing license application must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by June 29, 1989.

Pursuant to section 15(b)(2), the licensee is required to make available current maps, drawings, data and such other information as the Commission shall by rule require regarding the construction and operation of the licensed project. See Docket No. RM87-7-000 (Interim Rule issued March 30, 1987), for a detailed listing of required information. A copy of Docket No. RM87-7-000 can be obtained from the Commission's Public Reference Section, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426. The above information is required to be available for public inspection and reproduction at a reasonable cost as described in the rule at the licensee's offices.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26297 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-74-000]

Panhandle Trading Co.; Application

November 9, 1987.

Take notice that on October 29, 1987, Panhandle Trading Company (PTC) of P.O. Box 1354, Houston, Texas 77251-1354, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (NGA) 15 U.S.C. 717c and 717f, and the Federal Energy Regulatory Commission's regulations thereunder for a Blanket Certificate of Public Convenience and Necessity authorizing (a) sales by PTC of natural gas subject to the Commission's jurisdiction under the NGA for resale in interstate commerce; (b) sales by others to PTC of such gas for resale in interstate commerce; and (c) pregranted abandonment of all sales for resale authorized pursuant to the blanket certificate requested. PTC is seeking such authorization for gas previously certificated and abandoned and gas never previously sold in interstate commerce but which if sold would require a certificate. PTC does not request any term limitation to the requested authorization.

PTC also requests waiver of the Regulations under the NGA with respect to the establishment and maintenance of rate schedules under Part 154 of the Commission's regulations, waiver of the requirements of § 154.94(h) and (k) concerning the necessity to file a blanket affidavit in order to qualify for automatic collection of applicable monthly adjustments and any applicable allowances under section 110 of the NGPA and waiver of the NGA, the Natural Gas Policy Act (NGPA) and the Commission's regulations to the extent necessary for PTC to carry out the authorization requested.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 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.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26294 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP82-58-022]

Panhandle Eastern Pipe Line Co.; Change in Tariff

November 5, 1987.

Take notice that on October 30, 1987, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the revised tariff sheets as listed on Appendix No. 1 to its FERC Gas Tariff, Original Volume No. 1.

Panhandle states that these revised tariff sheets are being filed in compliance with Ordering Paragraph (D) of the Commission's Order of September 30, 1987 in Docket No. RP87-103-000. Panhandle proposes effective dates of August 19, 1987 and September 1, 1987.

Panhandle also states that the filing of these revised tariff sheets in compliance with the Commission's September 30, 1987 Order is without prejudice to Panhandle's rights on rehearing or in any judicial review proceeding or its position in Docket No. RP87-103-000.

Copies of this filing were served on all parties, jurisdictional customers and appropriate state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 13, 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.

Panhandle Eastern Pipe Line Company—Proposed Tariff Sheets

FERC Gas Tariff, Original Volume No. 1; Effective August 19, 1987

Alternate Substitute Fifty-Eighth Revised Sheet No. 3-A
Alternate Substitute Thirty-Fifth Revised Sheet No. 3-B
Alternate Twenty-Second Revised Sheet No. 4
Alternate Sixteenth Revised Sheet No. 5
Alternate First Substitute Seventeenth Revised Sheet No. 6
Alternate Twenty-Second Revised Sheet No. 7
Alternate Sixteenth Revised Sheet No. 8
Alternate First Substitute Seventeenth Revised Sheet No. 9
Alternate Twenty-Second Revised Sheet No. 10
Alternate Sixteenth Revised Sheet No. 11
Alternate First Substitute Seventeenth Revised Sheet No. 12
Alternate First Substitute Twenty-First Revised Sheet No. 13
Alternate First Substitute Twenty-First Revised Sheet No. 14
Alternate First Substitute Twenty-First Revised Sheet No. 16
Alternate First Substitute Twenty-First Revised Sheet No. 17
Alternate First Substitute Twenty-Second Revised Sheet No. 19
Alternate First Substitute Twenty-First Revised Sheet No. 20
Alternate Twenty-Fourth Revised Sheet No. 22
Alternate Sixteenth Revised Sheet No. 23
Alternate First Substitute Seventeenth Revised Sheet No. 24
Alternate Sixteenth Revised Sheet No. 24-A
Alternate Ninth Revised Sheet No. 24-B
Alternate First Substitute Tenth Revised Sheet No. 24-C
Alternate Seventeenth Revised Sheet No. 26-A
Alternate Eighteenth Revised Sheet No. 26-B
Alternate First Substitute First Revised Sheet No. 26-C
Alternate Eighteenth Revised Sheet No. 26-E
Alternate Eleventh Revised Sheet No. 26-F
Alternate Twelfth Revised Sheet No. 26-G
Alternate First Revised Sheet No. 43-10
Alternate First Revised Sheet No. 43-11
Original Sheet No. 49

Effective September 1, 1987

Alternate First Substitute Fifty-Ninth Revised Sheet No. 3-A
Alternate First Substitute Thirty-Sixth Revised Sheet No. 3-B

[FR Doc. 87-26257 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-70-000]

Richardson Products Co.; Application for Public Convenience and Necessity With Pre-Granted Abandonment

November 9, 1987.

Take notice that on October 28, 1987, Richardson Products Company ("Richardson"), pursuant to section 7 of the Natural Gas Act ("NGA"), and Part 157 of the Commission's regulations, applied for a blanket certificate of public convenience and necessity to permit the sale for resale in interstate commerce, with pre-granted abandonment, of natural gas which remains subject to the Commission's jurisdiction under the NGA.

Richardson states that it is seeking authority to sell and to abandon sales of natural gas purchased by Richardson and previously abandoned by Commission order or by the good faith negotiation procedures under FERC Order No. 451. Richardson seeks such authority for a period of three years. Richardson does not seek any transportation authority.

Richardson is a natural gas marketer. Richardson states that a grant of certificate with pregranted abandonment will promote competition by enabling Richardson to offer a complete range of gas supplies to its customers. Richardson submits that, in view of the benefits of competition, the authorities sought in its application are consistent with the public convenience and necessity.

Richardson futher requests expedited consideration of its application and, accordingly, requests omission of any intermediate decision procedure. Furthermore, it waives its right to an oral hearing and its opportunity to file exceptions to the Commission's decision, if the Commission utilizes the expedited procedures under Rule 802 of the Commission's Rules of Practice and Procedure.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 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 Richardson to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26300 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. SA87-57-000]

Shar-Alan Oil Co.; Petition for Adjustment

November 9, 1987.

Take notice that on July 22, 1987, Shar-Alan Oil Company (Shar-Alan) filed a petition for waiver pursuant to Order No 399-A,[1] section 502(c) of the Natural Gas Policy Act of 1978,[2] and Subpart K of the Commission's rules of practice and procedure.[3] Shar-Alan seeks a waiver of that portion of its Btu refund obligation under Order No. 399 [4] attributable to the certain working and royalty interest owners in certain wells located primarily in the Gates Ranch Field, Webb County, Texas. Under Order No. 399-C,[5] these refunds are due 30 days after issuance of an order by the Commission or the Director of the Office of Pipeline and Producer Regulation disposing of the pending petition.

Shar-Alan states, *inter alia,* that it should not be made guarantor of the obligations of the other working and royalty interests owners in the subject wells because it does not have the production records for the period from 1978-1982 and states that when the properties in question were sold to Petro-Lewis Corporation the documents were either discarded or assigned to Petro-Lewis. Shar-Alan states that it would cost thousands of dollars to do an accounting which would be only partially complete due to the lost documents. Shar-Alan also states that Gates Mineral Company received almost all of the ⅛ royalty paid and that Shar-Alan has no authority to collect reimbursement from Gates. Shar-Alan further states that for various reasons it would be impossible for it to enforce the Btu refund obligations against the other working and royalty interest owners and that it would thus be unfair to require it to be responsible for their obligations. Finally, Shar-Alan states that it is willing to pay those refunds attributable to its own interest in the wells in question.

The procedures applicable to the conduct of this adjustment proceeding are found in Subpart K of the Commission's rules of practice and procedure. Any person desiring to participate in this adjustment proceeding must file a motion to intervene in accordance with the provisions of Subpart K. All motions to intervene must be filed within 15 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-26295 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 5, 1987.

Take notice that October 30, 1987, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective December 1, 1987:

Original Sheet Nos. 4C-4I
Original Sheet Nos. 30L-30UU
Original Sheet Nos. 45R.1-45R.30
Original Sheet Nos. 53I.29-53I.60

Southern states that the tariff sheets establish as part of Southern's FERC Gas Tariff Rate Schedules FT and IT, the General Terms and Conditions for Rate Schedules FT and IT, Forms of Service Agreement under Rate Schedules FT and IT, and the initial rates for said rate schedules. Once effective, Rate Schedules FT and IT and their related tariff provisions will govern the terms, conditions, and rates under which firm and interruptible transportation will be generally available on Southern's pipeline system. Initially, Southern states that it will utilize Rate Schedules FT and IT to render self-implementing transportation services pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) and the Commission's Regulations thereunder recently revised by Order Nos. 500 *et al.*

Southern further states that all complete, written requests for transportation received by Southern by November 20, 1987, would be given equal priority for purposes of the Commission's "first-come, first-served" requirement.

Copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before November 13, 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. 87-26296 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA88-1-58-000]

Texas Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

November 5, 1987.

Take notice that on October 30, 1987, Texas Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff), the below listed tariff sheet to be effective December 1, 1987.

Nineteenth Revised Sheet No. 4a

TGPL states that the purpose of the instant filing is to reflect rate adjustments pursuant to section 12 of the General Terms and Conditions of TGPL's Tariff (Purchased Gas Cost Adjustments). Specifically, Nineteenth Revised Shett No. 4a reflects a net increase in the Rate After Current Adjustment to 146.30¢/Mcf and a change in the rate Surcharge Adjustment to 7.63¢/Mcf yielding a proposed Current Effective Rate of 183.40¢/Mcf

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[1] 49 FR 46,353 (Nov. 26, 1984), FERC Stats. & Regs. [Regulation's Preambles 1982-1985] ¶ 30,612.

[2] 15 U.S.C. 3412(c) (1982).

[3] 18 CFR 385.1101-385.1117 (1987).

[4] 49 FR 37,735 (Sept. 26, 1984); FERC Stats. & Regs. [Regulation's Preambles 1982-1985] ¶ 30,597. In Order No. 399, the Commission established refund procedures for charges for natural gas above NGPA ceilings as a result of Btu measurements based on the water vapor content of the gas "as delivered," rather than on a water-saturated basis. In so doing, the Commission was implementing the decision in Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied,* 465 U.S. 1108 (1984).

[5] 51 FR 41,080 (Nov. 13, 1986), 37 FERC P 61,091.

(at 14.65 psia) to be effective December 1, 1987.

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 protest should be filed on or before November 13, 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. 87-26259 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-19-000]

Valero Interstate Transmission Co.; Proposed Changes in Rates and FERC Gas Tariff

November 5, 1987.

Take notice that on October 30, 1987, Valero Interstate Transmission Company ("Vitco") tendered the following tariff sheets for filing containing annual charge adjustment clauses ("ACA") and adding the ACA unit unit rate in each applicable rate schedule:

Original Volume No. 1
- 14th Revised Sheet No. 14
- 6th Revised Sheet No. 14.2
- 2nd Revised Sheet No. 15
- 1st Revised Sheet No. 21.12
- 2d Revised Sheet No. 22
- Original Sheet No. 29.9

Original Volume No. 2
- 2nd Revised Sheet No. 1
- 11th Revised Sheet No. 6
- 1st Revised Sheet No. 7
- Original Sheet Nos. 12.1-12.49 Reserved
- Original Sheet No. 12.50

The proposed effective date for the above filings is December 1, 1987. Vitco requests a waiver of any Commission regulations or orders which would prohibit implementation by December 1, 1987.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 13, 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. 87-26260 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-18-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 5, 1987.

Take notice that on October 30, 1987, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Original Sheet No. 6A
First Revised Sheet Nos. 11, 14, 17, 19, 21, 23, 25, 29, 31, 33, 35 and 37

The proposed effective date of these tariff sheets is December 1, 1987. WNG states that the purpose of these sheets is to include in each of its currently effective sales rate schedules a Standby Charge to recover costs associated with standing by to serve its firm sales customers that do not reduce their full requirements service or contract demand where such customers obtain and have transported on WNG's system gas abandoned by WNG's producers under the Good Faith Negotiation procedures in Section 270.201 of the Commission's Regulations promulgated in Order No. 451.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 13, 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 persons 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. 87-26261 Filed 11-12-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-115-000]

Williston Basin Interstate Pipeline Co.; Proposed Change in FERC Gas Tariff

November 5, 1987.

Take notice that Williston Basin Interstate Pipeline Company (Williston Basin), on October 29, 1987, tendered for filing revised tariff sheets to First Revised Volume No. 1, Original Volume No. 1-A, and Original Volume No. 2 of its FERC Gas Tariff. Williston Basin states that these tariff sheets with supporting workpapers are filed in compliance with the Commission's Order of September 29, 1987, in Docket No. RP87-115-000.

Copies of the filing were served upon Williston Basin's affected jurisdictional customers, interested state regulatory agencies, and intervenors herein.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 13, 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.

Appendix A

First Revised Volume No. 1

Substitute First Revised Sheet No. 1
Substitute Second Revised Sheet No. 2
Substitute Fifth Revised Sheet No. 10
Substitute First Revised Sheet No. 25
Substitute First Revised Sheet No. 26
Substitute Second Revised Sheet No. 27
Substitute First Revised Sheet No. 28
Substitute Original Sheet No. 28A
Substitute Original Sheet No. 28B
Substitute First Revised Sheet No. 29
Substitute Second Revised Sheet No. 36
Substitute Original Sheet No. 36A
Substitute Original Sheet No. 36B
Substitute First Revised Sheet No. 37
Substitute First Revised Sheet No. 45

Substitute Second Revised Sheet No. 46
Substitute First Revised Sheet No. 47
Substitute First Revised Sheet No. 55
Substitute First Revised Sheet No. 56
Substitute First Revised Sheet No. 90
Substitute First Revised Sheet No. 91
Substitute First Revised Sheet No. 97
Substitute First Revised Sheet No. 111
Substitute First Revised Sheet No. 113
First Revised Sheet No. 156
First Revised Sheet No. 157
First Revised Sheet No. 158
First Revised Sheet No. 159
Original Sheet No. 159A
Substitute First Revised Sheet Nos. 160–164

Original Volume No. 1–A

Substitute First Revised Sheet No. 1
Substitute Second Revised Sheet No. 2
Substitute Third Revised Sheet No. 11
Substitute Fifth Revised Sheet No. 12
Substitute First Revised Sheet No. 127
Substitute First Revised Sheet No. 97A
Substitute First Revised Sheet No. 144

Original Volume No. 2

Substitute Second Revised Sheet No. 1
Substitute Second Revised Sheet No. 1A
Substitute Eighth Revised Sheet No. 10
Substitute Ninth Revised Sheet No. 11
Substitute First Revised Sheet No. 11A
Substitute Second Revised Sheet No. 11B

[FR Doc. 87–26262 Filed 11–12–87; 8:45 am]
BILLING CODE 6717–01–M

Office of Hearings and Appeals

Determination of Excess Petroleum; Violation Escrow Funds for Fiscal Year 1988

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of determination of excess amount of petroleum violation escrowed amounts pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986.

SUMMARY: The Petroleum Overcharge Distribution and Restitution Act of 1986 requires the Secretary of Energy to determine annually the amount of oil overcharge funds held in escrow that is in excess of the amount needed to make restitution to injured parties and to meet other commitments. Notice is hereby given that $56,779,537.32 of the amounts currently in escrow is determined to be excess funds for fiscal year 1988 and will be made available to state governments for use in specified energy conservation programs.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 (Mann); 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: The Petroleum Overcharge Distribution and Restitution Act of 1986 (hereinafter "PODRA"), contained in Title III of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, establishes certain procedures for the disbursement of oil overcharge funds collected by the Department of Energy pursuant to the Emergency Petroleum Allocation Act of 1973 ("EPAA") or the Economic Stabilization Act of 1970 ("ESA"). These funds are moneys obtained to remedy actual or alleged violations of such Acts.

PODRA requires the Department of Energy, through the Office of Hearings and Appeals, to conduct proceedings under 10 CFR Part 205, Subpart V, to refund these overcharge moneys to persons injured by violations of the EPAA and the ESA. In addition, the Secretary of Energy must determine annually the amount of oil overcharge funds that will not be required for restitution to injured parties in these Subpart V proceedings and make it available to state governments for use in four energy conservation programs. The determination is due within 45 days after the beginning of each fiscal year. PODRA, section 3003(c). The Secretary has delegated this responsibility to the Office of Hearings and Appeals. See 51 FR 43964 (December 5, 1986).

Notice is hereby given that based on currently available information, $56,779,537.32 is in excess of the amount that is needed to make restitution to injured persons.

To arrive at that figure, the Office of Hearings and Appeals has reviewed all accounts in which moneys covered by PODRA are deposited. Funds eligible for distribution under PODRA in the current fiscal year consist entirely of funds in the DOE Deposit Fund Escrow Account which are derived from alleged violations of refined petroleum product or natural gas liquids regulations. PODRA, section 3002. As of September 30, 1987, the Office of Hearings and Appeals had jurisdiction in its refund proceedings over $318,876,408.11 subject to PODRA. In addition, a relatively small amount of funds is subject to the control of the Economic Regulatory Administration.

The Office of Hearings and Appeals has employed the following methodology to determine the amount in excess of that required for direct restitution. For each account subject to PODRA, we have determined the eligible amount of principal and accrued interest earned as of the end of fiscal year 1987. Keeping in mind that provision of the legislation which directs that "primary consideration [be given] to assuring that at all times sufficient funds (including a reasonable reserve) are set aside for making [direct] restitution," and in accordance with our prior practice, in major refiner proceedings where refund claims may not yet be filed, we have reserved 75 percent of the funds for direct restitution to injured persons. For proceedings in which all claims have been considered or in which no claims have been filed and the deadline for filing claims has passed, no reserve is maintained. In proceedings in which refund claims are pending, we have on a case-by-case basis examined pending claims, and established reserves sufficient to pay the entire amount of all claims. The amount of those reserves also includes all refunds ordered by the Office of Hearings and Appeals since September 30, 1987. Interest accrued after September 30, 1986 in accounts that were closed in the fiscal 1987 PODRA determination (51 FR 43964) is part of the "excess" for fiscal 1988.

In those proceedings where the escrowed amounts have been designated, prior to the enactment of PODRA, for disbursement to specific persons or classes of persons as indirect restitution (i.e. subjected to "second stage" refund proceedings), those amounts have been excluded from the determination of "excess" amounts in accordance with section 3002(c)(3) of PODRA. An erroneous allocation between crude oil and product funds was made in one account during the fiscal 1987 PODRA determination, and the amount of excess funds available from that account was overstated. Those funds will be restored and that amount ($198,349.76) excluded from the excess funds for fiscal 1988. No "other commitments" are reflected in those reserves. *Id.*

The total escrow account equity allocated to refined products and natural gas liquids is $318,876,408.11. The total amount needed as reserves for direct restitution in all cases eligible for distribution under PODRA in fiscal 1988 is $262,096,870.79. That total amount of reserves was subtracted from the total escrow account equity allocated to refined products and natural gas liquids, and the remainder, $56,779,537.32, is the amount in fiscal year 1988 that is "in excess" of the amount that will be needed to make restitution to injured persons. Appendix A sets forth for each case within the jurisdiction of the Office of Hearings and Appeals the total product equity eligible for distribution under PODRA, amount reserved for direct restitution, and excess amount. Appendix B reflects information

supplied by the Economic Regulatory Administration regarding cases subject to PODRA under its jurisdiction.

Accordingly, $56,779,537.32 will be transferred to a separate account within the United States Treasury and made available to the states for use in the four designated energy conservation programs in the manner prescribed by the Act.

Dated: November 6, 1987.

BILLING CODE 6450-01-M

APPENDIX A

APPENDIX: Determination of Excess Funds as of Sept. 30, 1987

Name	OHA Case Number	Consent Order Number	Total Product Equity As Of Sept. 30, 1987	Reserve For Claimants And Litigation	Funds Available Under PODRA For FY88
ALEMANY CHEVRON SERVICE CENTER	KEF-0023	999K90059Z	$3,234.65	$3,234.65	$0.00
ALLIED MATERIALS CORP & EXCEL	HEF-0200	660S00302Z	$143,964.17	$0.00	$143,964.17
AMINOIL, U.S.A., INC.	HEF-0007	740V01259Y	$14,121,002.78	$14,121,002.78	$0.00
AMTEL, INC.	HEF-0027	720H00552Z	$1,075,559.39	$1,075,559.39	$0.00
ANDERSON, R.W.	BEF-0066	641T00147Y	$334,775.05	$334,775.05	$0.00
APCO OIL CORPORATION	HEF-0008	660S00632Y	$542,515.09	$242,515.09	$300,000.00
APPALACHIAN FLYING SERVICE INC	HEF-0028	432K00435Z	$10,408.05	$0.00	$10,408.05
ARAPAHO PETROLEUM, INC.	HEF-0231	710V03019Z	$192,275.63	$0.00	$192,275.63
ARKANSAS LOUISIANA GAS COMPANY	HEF-0201	641S00255Z	$2,563,635.47	$888,286.91	$1,675,348.56
ARKANSAS VALLEY PETROLEUM	HEF-0029	660H10655Z	$47,462.43	$0.00	$47,462.43
ARKLA CHEMICAL CORPORATION	HEF-0030	641H00364Z	$18,317.40	$420.40	$17,897.00
ATLANTIC RICHFIELD COMPANY	HEF-0591	RARH00001Z	$40,350,555.81	$40,350,555.81	$0.00
A. TARRICONE INC.	HEF-0177	240H00291Z	$17,546.15	$0.00	$17,546.15
BAK LTD.	HEF-0034	320H00043Z	$466,596.02	$466,596.02	$0.00
BEACON OIL COMPANY	HEF-0203	910S00008Z	$2,320,800.02	$2,320,800.02	$0.00
BETTS, KEN (PINOLE,MONT.,BUBB)	HEF-0514	999K90040Z	$28,147.69	$0.00	$28,147.69
BOX, CLOYCE K.	HEF-0041	600H00037Z	$545,487.69	$0.00	$545,487.69
BUD'S EXXON SERVICE	HEF-0511	999K90038Z	$1,657.12	$0.00	$1,657.12
BUTLER FUEL CORPORATION	KEF-0094	110E00421Z	$51,502.47	$51,502.47	$0.00
CAR WASH SERVICES	HEF-0516	999K90047Z	$1,006.68	$0.00	$1,006.68
CLEAN MACHINE, INC	KEF-0097	999K90079Z	$22,611.84	$22,611.84	$0.00
CONOCO, INC.	HEF-0010	RCOA00001Y	$1,495,483.14	$1,495,483.14	$0.00
CONSUMERS OIL COMPANY	HEF-0055	930H00097Z	$233,919.75	$0.00	$233,919.75
CRANSTON OIL SERVICE CO., INC.	KEF-0029	111K00123Z	$67,477.37	$67,477.37	$0.00
CROWN CENTRAL PETROLEUM CORP.	KEF-0044	RCWA00000Z	$6,331,915.17	$6,331,915.17	$0.00
CRYSTAL OIL COMPANY	HEF-0204	641S00098Z	$666,761.62	$0.00	$666,761.62
C.K. SMITH & COMPANY, INC.	HEF-0172	111H00028Z	$557,904.11	$278,952.05	$278,952.06
DALCO PETROLEUM INC.	HEF-0060	660T00642Z	$48,351.34	$0.00	$48,351.34
DORCHESTER GAS CORPORATION	HEF-0559	670S00113Z	$2,438,340.48	$1,305,341.04	$1,132,999.44
EAGLE PETROLEUM CO.	HEF-0243	710V03025Z	$39,522.39	$0.00	$39,522.39
EARL'S BROADMOOR TEXACO	HEF-0566	640Z00357Z	$3,251.29	$0.00	$3,251.29
EARTH RESOURCES CO.	HEF-0205	431S00341Z	$471,554.93	$471,554.93	$0.00
EASTERN OF NEW JERSEY, INC.	HEF-0065	240H00441Z	$376,922.20	$0.00	$376,922.20
EASTERN OIL COMPANY	KEF-0085	412H00040Z	$223,353.40	$223,353.40	$0.00
EDG, INC.	KEF-0003	930S00173Z	$1,812,796.41	$1,812,796.41	$0.00
ELIAS OIL COMPANY	KEF-0022	412H00105Z	$121,999.94	$121,999.94	$0.00
ELM CITY FILLING STATIONS, INC	HEF-0067	150H00126Z	$247,968.33	$247,968.33	$0.00
EMPIRE GAS CORPORATION	KEF-0048	720T00521Z	$1,033,668.52	$1,033,668.52	$0.00
EVETT OIL COMPANY	KEF-0020	400H00221Z	$69,444.14	$69,444.14	$0.00
EXXON CORPORATION	KEF-0087	REXL00201Z	$29,831,382.62	$22,373,536.96	$7,457,845.66
FARSTAD OIL COMPANY	HEF-0567	850H00018Z	$31,402.91	$3,402.91	$28,000.00
FERRELL COMPANIES, INC.	HEF-0587	710T00075Z	$44,007.90	$4,007.90	$40,000.00
GARY ENERGY CORPORATION	HEF-0245	810V00003Z	$348,908.25	$0.00	$348,908.25
GCO MINERALS COMPANY	HEF-0570	NGCP00001Z	($191,849.86)	$6,499.90	($198,349.76)
GETTY OIL COMPANY	HEF-0209	RGEA00001Z	$35,497,214.56	$28,847,854.56	$6,649,360.00

APPENDIX: Determination of Excess Funds as of Sept. 30, 1987

Name	OHA Case Number	Consent Order Number	Total Product Equity As Of Sept. 30, 1987	Reserve For Claimants And Litigation	Funds Available Under PODRA For FY88
GIBBS INDUSTRIES, INC.	HEF-0079	110H00494Z	$71,061.43	$71,061.43	$0.00
GOOD HOPE REFINERIES INC.	HEF-0211	150S00154Z	$256,079.22	$174,219.89	$81,859.33
GULF OIL CORPORATION	HEF-0590	RGFA00001Z	$38,229,688.11	$38,229,688.11	$0.00
GULF OIL CORP.	DFF-0001	NOOR00007Y	$31,901,097.80	$25,392,184.66	$6,508,913.14
GULL INDUSTRIES, INC.	HEF-0086	010H00056Z	$185,768.72	$0.00	$185,768.72
GULL INDUSTRIES, INC.	HEF-0084	010H00357Z	$40,612.01	$0.00	$40,612.01
GULL INDUSTRIES, INC.	HEF-0085	N00SD0001Z	$860,192.26	$0.00	$860,192.26
HICKS OIL & HICKS GAS CO, INC.	HEF-0091	570E00128Z	$29,661.10	$0.00	$29,661.10
HOWARD OIL COMPANY	KEF-0008	240H00280Z	$14,188,290.01	$10,641,217.51	$3,547,072.50
HOWELL OIL CORP. / QUINTANA	HEF-0212	610S00068Z	$1,498,712.25	$150,000.25	$1,348,712.00
HUSKY OIL COMPANY OF DELAWARE	HEF-0213	820S00007Z	$252,854.97	$252,854.97	$0.00
H.C. LEWIS OIL CO.	HEF-0115	340H00493Z	$15,263.28	$0.00	$15,263.28
INDIAN OIL CO., INC.	HEF-0095	132H00243Z	$52,793.28	$0.00	$52,793.28
INLAND USA, INC.	HEF-0096	720H00563Z	$274,112.20	$0.00	$274,112.20
INMAN OIL CO.	HEF-0097	720H00557Z	$17,315.76	$5,865.76	$11,450.00
JAY OIL COMPANY	HEF-0101	6C1H00209Z	$61,260.77	$61,260.77	$0.00
KELLER OIL COMPANY, INC.	HEF-0103	720H00598Z	$50,619.27	$50,619.27	$0.00
KENT OIL & TRADING COMPANY	HEF-0578	940X00232Z	$63,680.57	$3,863.96	$59,816.61
KEY OIL COMPANY	HEF-0106	430H00477Z	$41,290.67	$8,290.67	$33,000.00
KING & KING ENTERPRISES	HEF-0108	710H02500Z	$45,536.80	$18,536.80	$27,000.00
LA GLORIA OIL AND GAS CO.	HEF-0210	641S00234Z	$769,917.73	$48,365.73	$721,552.00
LAKES GAS CO., INC.	HEF-0112	510E00134Z	$4,496.86	$0.00	$4,496.86
LEATHERS OIL CO., INC.	HEF-0113	000H00426Z	$16,793.45	$0.00	$16,793.45
LEE GARRETT CHEVRON	KEF-0040	999K90057Z	$6,967.59	$6,967.59	$0.00
LEONARD E. BELCHER, INC.	HEF-0586	151H00003Z	$10,058.92	$0.00	$10,058.92
LEO'S WINSTEAD'S INC.	HEF-0114	710H01376Z	$61,548.41	$36,548.41	$25,000.00
LEWTEX OIL & GAS CORP.	BEF-0033	6D0V00020Y	$393,317.49	$0.00	$393,317.49
LITTLE AMERICA REFINING CO.	HEF-0215	830S00012Z	$7,392.11	$0.00	$7,392.11
LOCKHEED AIR TERMINAL INC.	HEF-0117	930H00199Z	$199,217.66	$0.00	$199,217.66
LOWE OIL COMPANY	HEF-0118	710H01379Z	$56,756.27	$0.00	$56,756.27
LUCIA LODGE ARCO	HEF-0119	910K00133Z	$13,551.28	$1,051.28	$12,500.00
LUKE BROTHERS INC.	HEF-0120	660E00075Z	$6,652.97	$0.00	$6,652.97
MACMILLAN RING-FREE OIL CO.	HEF-0506	960S00053Z	$222,552.22	$222,552.22	$0.00
MALCO INDUSTRIES INC.	HEF-0121	530H00435Z	$11,376.24	$0.00	$11,376.24
MAPCO, INC.	HEF-0258	740V01246Z	$146,460.58	$1,199.63	$145,260.95
MARATHON PETROLEUM COMPANY	KEF-0021	RMNA00001Z	$6,573,385.14	$6,573,385.14	$0.00
MARINE PETROLEUM / MARS OIL	HEF-0122	720H00567Z	$190,723.29	$30,723.29	$160,000.00
MARLEN L. KNUTSON DIST. INC.	HEF-0110	000H00422Z	$43,858.33	$43,858.33	$0.00
MARTIN OIL COMPANY	HEF-0124	910T00120Z	$110,821.51	$110,821.51	$0.00
MARTIN OIL SERVICE, INC.	HEF-0123	570H00200Z	$90,263.02	$90,263.02	$0.00
MAXWELL OIL CO.	HEF-0125	000H00425W	$9,974.75	$9,974.75	$0.00
MCCLEARY OIL CO., INC.	HEF-0127	310H00439Z	$48,129.61	$3,316.61	$44,813.00
MCCLURE OIL COMPANY	KEF-0009	660E00083Z	$16,785.56	$16,785.56	$0.00
MCCLURE'S SERVICE STATION	HEF-0128	340H00486Z	$2,165.25	$0.00	$2,165.25
MISSOURI TERMINAL OIL CO.	HEF-0131	720H00562Z	$13,161.08	$0.00	$13,161.08
MOBIL OIL CORPORATION	HEF-0508	RMOA00001Z	$16,204,632.56	$9,593,561.29	$6,611,071.27
MOYLE PETROLEUM CO.	HEF-0133	810H00300Z	$834.49	$0.00	$834.49
MURPHY OIL CORPORATION	KEF-0095	RMUH01983Z	$7,336,955.38	$5,502,716.53	$1,834,238.85

APPENDIX: Determination of Excess Funds as of Sept. 30, 1987

Name	OHA Case Number	Consent Order Number	Total Product Equity As Of Sept. 30, 1987	Reserve For Claimants And Litigation	Funds Available Under PODRA For FY88
NATIONAL PROPANE CORP.	HEF-0135	270T00002Z	$17,927.89	$10,927.89	$7,000.00
NAVAJO REFINING COMPANY	HEF-0217	672S00136Z	$49,849.50	$49,849.50	$0.00
NORTHEAST PETROLEUM INDUSTRIES	HEF-0137	110H00334Z	$602,187.81	$602,187.81	$0.00
NORTHEAST PETROLEUM INDUSTRIES	HEF-0580	6C0X00241Z	$1,632,838.47	$1,632,838.47	$0.00
NORTHEAST PETROLEUM, INC.	HEF-0138	120H00491Z	$732,202.21	$332,202.21	$400,000.00
NORTHWEST PIPELINE CORP.	HEF-0264	710V03015Z	$704,300.63	$20,000.00	$684,300.63
OCEANA TERMINAL CORP., ET AL	HEF-0142	240H00361Z	$201,946.29	$11,946.29	$190,000.00
ONEOK, INC.	HEF-0571	740V01406Z	$922,532.98	$6,314.00	$916,218.98
O'CONNELL OIL CO.	HEF-0141	110H00513Z	$7,348.86	$5,348.86	$2,000.00
PACER OIL CO. OF FLORIDA, INC.	HEF-0143	412H00172Z	$22,045.36	$18,245.36	$3,800.00
PACIFIC NORTHERN OIL	HEF-0144	010H00028Z	$31,886.96	$18,886.96	$13,000.00
PANHANDLE EASTERN (CENTURY)	BEF-0041	710V02006Y	$79,064.62	$79,064.62	$0.00
PARMAN OIL CORPORATION	HEF-0145	430H00219Z	$38,069.46	$0.00	$38,069.46
PASCO PETROLEUM CO., INC.	HEF-0146	000H00442Z	$82,646.50	$0.00	$82,646.50
PEDERSEN OIL, INC.	HEF-0147	000H00418Z	$15,073.66	$15,073.66	$0.00
PERTA OIL MARKETING CORP.	HEF-0148	930H00088Z	$204,900.36	$0.00	$204,900.36
PETERSON PETROLEUM INC.	HEF-0149	240H00491Z	$4,138.35	$0.00	$4,138.35
PETROLANE-LOMITA GASOLINE CO.	HEF-0269	940V00195Z	$49,710.65	$49,710.65	$0.00
PETROLEUM HEAT & POWER CO, INC	HEF-0150	110H00530Z	$358,061.21	$100,313.21	$257,748.00
PETROLEUM SALES/SERVICE INC.	HEF-0151	340H00488Z	$16,130.16	$0.00	$16,130.16
PLACID OIL COMPANY	KEF-0007	6D0S00005Z	$1,843,698.46	$1,843,698.46	$0.00
PLAQUEMINES OIL SALES CORP.	KEF-0039	640H00174Z	$641,335.78	$641,335.78	$0.00
PLATEAU, INC.	HEF-0272	733V02013Z	$6,079.53	$0.00	$6,079.53
POINT LANDING INC.	HEF-0152	640H00175Z	$120,657.32	$120,657.32	$0.00
PORT OIL COMPANY INC.	HEF-0153	420H00278Z	$6,771.61	$0.00	$6,771.61
POST PETROLEUM CO.	HEF-0154	910H00145Z	$2,205.51	$0.00	$2,205.51
POWER PAK CO., INC.	HEF-0155	610H10452Z	$114,739.56	$114,739.56	$0.00
POWER TEST PETROLEUM DIST.	KEF-0042	240H00499Z	$442,152.11	$442,152.11	$0.00
PRIDE REFINING, INC.	HEF-0218	6D0S00036Z	$283,636.01	$0.00	$283,636.01
PROPANE GAS & APPLIANCE CO.	HEF-0156	420E00206Z	$13,757.51	$0.00	$13,757.51
PYROFAX GAS CORPORATION	HEF-0157	641T00099Z	$3,321,906.69	$3,321,906.69	$0.00
QUAKER STATE OIL REFINING CORP	HEF-0219	340S00352Z	$2,633,393.78	$0.00	$2,633,393.78
QUARLES PETROLEUM, INC.	HEF-0158	N00H00905Z	$13,904.65	$13,904.65	$0.00
RAMOS OIL CO., INC.	HEF-0159	910H00144Z	$11,053.73	$0.00	$11,053.73
RESOURCES EXTRACTION & PROCESS	HEF-0574	740V01409Z	$9,020.86	$0.00	$9,020.86
REYNOLDS OIL CO.	HEF-0164	810H00324Z	$1,948.58	$0.00	$1,948.58
RICHARDSON AYERS JOBBER, INC.	HEF-0166	640H00354Z	$19,435.59	$19,435.59	$0.00
SABER ENERGY, INC.	HEF-0220	6D0S00037Z	$1,310,271.12	$1,310,271.12	$0.00
SAUVAGE GAS COMPANY, INC.	KEF-0024	710H06008Z	$442,666.79	$442,666.79	$0.00
SHELL OIL COMPANY	KEF-0093	RSHA00001Z	$20,920,371.97	$15,690,278.98	$5,230,092.99
SID RICHARDSON CARBON & GAS	BEF-0022	6D0V00025Y	$427,119.84	$44,898.44	$382,221.40
SIGMOR CORPORATION	HEF-0581	6D0S00091Z	$40,962.01	$20,332.17	$20,629.84
SOUTH HAMPTON REFINING	HEF-0222	6E0S00002Z	$150,644.51	$0.00	$150,644.51
SOUTHERN UNION COMPANY	HEF-0223	673S00336Z	$61,035.04	$0.00	$61,035.04
STEVE'S EXXON	HEF-0550	999K00036Z	$2,649.50	$0.00	$2,649.50
STINNES INTER OIL INC.	HEF-0174	240H00519Z	$18,244.60	$0.00	$18,244.60
ST. JAMES RESOURCES CORP	HEF-0100	110H00487Z	$68,624.79	$0.00	$68,624.79
SUBURBAN PROPANE GAS CORP.	KEF-0038	733V02010Z	$1,963,619.06	$1,472,714.29	$490,904.77
SWIFTY OIL COMPANY INC.	HEF-0175	550H00337Z	$16,729.95	$0.00	$16,729.95

APPENDIX: Determination of Excess Funds as of Sept. 30, 1987

Name	OHA Case Number	Consent Order Number	Total Product Equity As Of Sept. 30, 1987	Reserve For Claimants And Litigation	Funds Available Under PODRA For FY88
TENNECO OIL COMPANY	BEF-0073	RTNA00001Y	$192,883.69	$136,216.56	$56,667.13
TEXAS GAS & EXPLORATION	HEF-0274	6E0V00015Z	$27,843.81	$0.00	$27,843.81
THRIFTYMAN, INC.	KEF-0018	610H10449Z	$152,132.57	$152,132.57	$0.00
TIPPERARY CORP.	HEF-0277	670V00323Z	$27,841.42	$0.00	$27,841.42
TOTAL PETROLEUM, INC.	KEF-0133	540S00227Z	$2,404,114.88	$2,404,114.88	$0.00
TRESLER OIL COMPANY	KEF-0019	530H00449Z	$168,904.94	$2,351.00	$166,553.94
TRUE COMPANIES, THE	HEF-0557	733V02019Z	$3,115,709.61	$3,115,709.61	$0.00
UNION TEXAS PETROLEUM CORP	HEF-0009	6E0S00075Y	$224,241.05	$0.00	$224,241.05
UPG, INC.	KEF-0026	641S00123Z	$496,049.90	$248,024.95	$248,024.95
U.S.A. PETROLEUM, INC.	HEF-0500	960S00093Z	$60,951.22	$7,284.46	$53,666.76
WELLEN OIL, INC.	HEF-0584	240H00071Z	$33,333.88	$0.00	$33,333.88
WHITE PETROLEUM INC.	HEF-0196	550H00317Z	$651.38	$0.00	$651.38
WINSTON REFINING COMPANY	HEF-0589	6D0S00006Z	$132,127.18	$132,127.18	$0.00
WITCO CHEMICAL CORPORATION	HEF-0227	240S00054Z	$3,132,788.40	$3,132,788.40	$0.00
WORLD OIL COMPANY	KEF-0005	960S00104Z	$2,389,347.70	$2,389,347.70	$0.00
PRODUCT TRACKING - PODRA		999D0E005W	$270,585.35	$0.00	$270,585.35
TOTALS			$318,876,408.11	$262,096,870.79	$56,779,537.32

BILLING CODE 6450-01-C

George B. Breznay,
Director, Office of Hearings and Appeals.

Appendix B

Department of Energy,
Washington, DC 20585.
October 23, 1987.

Memorandum For George B. Breznay, Director, Office of Hearings and Appeals.
From: Marshall A. Staunton, Administrator, Economic Regulatory Administration.
Subject: ERA Input For The Podra Section 3003 (c) Report.

We have completed our review of the funds held in escrow as of September 30, 1987, which have not been petitioned under Subpart V. This review was to identify the escrow amount in excess of that necessary to make restitution to persons or classes of persons in accordance with section 3003 (b)(1) of the Petroleum Overcharge Distribution and Restitution Act of 1986. Once final payments are made into an escrow account, a Subpart V petition is filed with your office. Consequently, the escrow accounts that we examined still have balances due. Many of these accounts are for firms in bankruptcy or have been referred to the Department of Justice for collection. Since the extent of possible claims and amounts that will be available to satisfy the claims are not known at this time, it would be inadvisable to consider any of these funds excess.

[FR Doc. 87-26304 Filed 11-12-87; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3290-5]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed November 2, 1987 Through November 6, 1987 Pursuant to 40 CFR 1506.9

EIS No. 870392, Final, SCS, WY, Big Sandy River Unit, Onfarm Irrigation Improvements, Colorado River Salinity Control Program, Sublette and Sweetwater Counties, Due: December 14, 1987, Contact: Frank Dickson (307) 261-5201.

EIS No. 870393, Draft, SFW, NY, VT, Lake Champion Sea Lamprey Control Temporary Program, Use of Lampricides and an Assessment of Effects on Certain Fish Populations and Sport Fisheries, Clinton, Essex and Washington Counties, NY and; Addison and Chittenden Counties, VT, Due: March 31, 1988, Contact: Ralph Abele, Jr. (617) 965-5100.

EIS No. 870394, Final, AFS, CA, Angeles National Forest, Land and Resource Management Plan, Los Angeles, Ventura and San Bernardino Counties, CA, Due: December 14, 1987, Contact: George Roby (818) 574-1613.

EIS No. 870395, Final, BLM, WY, Washakie Resource Area, Resource Management Plan and Wilderness Study Area Recommendations, Designation or Nondesignation, Big Horn, Washakie and Hot Springs Counties, WY, Due: December 14, 1987, Contact: Roger Inman (307) 347-9871.

EIS No. 870396, Final, COE, TX, El Paso Southeast Area Local Flood Control Plan, El Paso County, TX, Due: December 14, 1987, Contact: James White (505) 766-3577.

EIS No. 870397, Final, SFW, AK, Selawik National Wildlife Refuge Comprehensive Conservation Plan, Wilderness Review and Wild River Plan, Kotzebue Sound, AK, Due: December 14, 1987, Contact: William Knauer (907) 786-3399.

EIS No. 870398, Draft, FHW, NC, US 220 Construction, Steed to Ulah Connection, Randolph and Montgomery Counties, NC, Due: December 29, 1987, Contact: Kenneth Bellamy (919) 856-4346.

EIS No. 870399, Draft, AFS, CA, Modoc National Forest, Land and Resource Management Plan, Modoc, Lassen and Siskiyou Counties, CA, Due: March 7, 1988, Contact: Douglas Smith (916) 233-5811.

EIS No. 870400, Final, BLM, NV, Elko Resource Area, Wilderness Study Areas Recommendations, Designation or Nondesignation, Cedar Ridge, Red Spring, Little Humboldt River and Rough Hills Wilderness Study Areas, Elko, Lander and Eureka Counties, NV, Due: December 14, 1987, Contact: Rodney Harris, (702) 738-4071.

EIS No. 870401, Draft, BLM, CA, NV, California Section 202 Wilderness Study Areas Recommendations, Wilderness Designation or Nondesignation, Due: February 1, 1988, Contact: Carl Rountree (916) 460-4722.

EIS No. 870402, Final, BLM, NV, Walker Resource Area, Wilderness Recommendations, Designation or Nondesignation, Mineral and Douglas Counties, NV, Due: December 14, 1987, Contact: John Matthiessen (702) 885-6100.

EIS No. 870403, Final, BLM, NV, Shoshone-Eureka Area, Wilderness Recommendations, Designation or Nondesignation, Nye, Lander, and Eureka Counties, NV, Due: December 14, 1987, Contact: Mary O'Brien (702) 635-5181.

EIS No. 870404, Draft, UAF, GU, Uruno Beach (Urunao Beach) Cleanup Program, Implementation, Guam, Due: December 28, 1987, Contact: Bill Taylor (402) 294-5854.

EIS No. 870405, Draft, AFS, OR, WA, UMATILLA National Forest, Land and Resource Management Plan, Implementation, Due: February 19, 1988, Contact: Lyle Jensen (503) 276-3811.

EIS No. 870406, Draft, AFS, OR, Fremont National Forest, Land and Resource Management Plan, Lake and Klamath Counties, OR, Due: March 1, 1988, Contact: Orville Grossarth (503) 947-2151.

EIS No. 870407, Draft, COE, CA, Tierrasanta Community (formerly Camp Elliott) Remedial Action Alternative for Conventional Explosive Ordnance Items, San Diego County, CA, Due: December 31, 1987, Contact: Eugene Miller (205) 895-5140.

EIS No. 870408, Final, ERA, MA, NH, New England/Hydro-Quebec 450kV Transmission Line Interconnection Phase II, Construction and Operation, Amendment to Presidential Permit PP-76, Due: December 14, 1987, Contact: Anthony Como (202) 586-5935.

EIS No. 870409, Draft, FRC, CA, El Portal Hydroelectric Project, Construction, Operation and Maintenance, License Merced River, Marposa County, CA, Due: December 28, 1987, Contact: Frank Karwoski (202) 376-1730.

Amended Notices

EIS No. 870278, Draft, AFS, OR, Malheur National Forest, Land and Resource Management Plan, Due: December 14, 1987, Published FR 8-14-87—Review period extended.

EIS No. 870388, Draft, AFS, NC, TN, Nolichucky Gore Segment, Wild and Scenic River Study, Eligibility and Suitability, National Wild and Scenic Rivers System, Due: January 28, 1988, Published FR 11-6-87—Incorrect due date.

EIS No. 870365, Draft, BLM, OR, Brothers/LaPine Planning Area, Resource Management, Due: January 15, 1988, Published FR 11-6-87—Incorrect due date.

Special Notation for EIS Nos. 870390 and 870391

Due to development of new ADP Tracking System, EISs were omitted from **11-6-87 Federal Register.** Review period began as of 11-6-87.

EIS No. 870390, Final, OSM, WA, Black Diamond Petition Area, Designation of Lands Unsuitable for Surface Coal Mining Operations, King County, WA, Due: December 7, 1987, Contact: Raymond Lowrie (303) 884-2451.

EIS No. 870391, Final, DOE, SC, Savannah River Plant Alternative Cooling Water Systems for C- and K-Reactors and D- Area Powerhouse, Construction and Operation, Aiken, Barnwell, and Allendale, SC, Due: December 7, 1987, Contact: S.R. Wright (803) 725-3093.
Dated: November 9, 1987.

Barbara Bassuener,

Acting Deputy Director, Office of Federal Activities.

[FR Doc. 87-26306 Filed 11-12-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3290-7]

Proposed Administrative Penalty Assessment and Opportunity to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative penalty assessment and opportunity to comment.

SUMAMRY: EPA is providing notice of proposed administrative penalty assessment for alleged violations of the Clean Water Act. EPA is also providing notice of opportunity to comment on the proposed assessment.

Under 33 U.S.C. 1319(g), EPA is authorized to issue orders assessing civil penalties for various violations of the Act. EPA may issue such orders after the commencement of either a Class I or Class II penalty proceeding. EPA provides public notice of the proposed assessments pursuant to 33 U.S.C. 1319(g)(4)(a).

Class II proceedings are conducted under EPA's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation and Suspension of Permits, 40 CFR Part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II order is thirty days after issuance of public notice.

On the date identified below, EPA commenced the following Class II proceeding for the assessment of penalties:

In the Matter of Cloud 9 Ranch Estates, 90 Rainbow Way, Sierra Vista, Arizona 85635; EPA Docket No. IX-FY88-8; filed on November 13, 1987, Regional Hearing Clerk, U.S. EPA, Region 9, 215 Fremont St., San Francisco, California 94105, (415) 974-8036; proposed penalty, $125,000, for five years of non-submittal of daily monitoring reports (DMRs), forty-five days of discharging without permit, and violation of schedule in permit at Cloud 9 Ranch Estates Mobile Home Park, NPDES No. AZ 0021733, issued February 16, 1982.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the complaint or other documents filed in this proceeding, comment upon a proposed assessment, or otherwise participate in the proceeding should contact the Regional Hearing Clerk identified above. Unless otherwise noted, the administrative record for each of the proceedings is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to December 3, 1987.

Dated: November 5, 1987.

Harry S. Seraydarian,

Director, Water Management Division.

[FR Doc. 87-26268 Filed 11-12-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Lottery Rankings of 900 MHz SMRS Applicants for Hartford, Salt Lake City, Louisville, Oklahoma City, Memphis, Birmingham, Nashville, Albany, Honolulu and Jacksonville Designated Filing Areas

September 30, 1987.

On September 25, 1987, the Federal Communications Commission conducted its final round of lotteries to select applicants to provide 900 MHz Specialized Mobile Radio (SMR) Service. These lotteries were used to rank applications in each of the following Designated Filing Areas (DFAs):

#36 Hartford
#37 Salt Lake City
#39 Louisville
#40 Oklahoma City
#41 Memphis
#43 Birmingham
#44 Nashville
#46 Albany
#48 Honolulu
#50 Jacksonville

Lists of the forty top-ranked applications in each of these Designated Filing Areas are attached to this Public Notice. The top 20 selectees in each DFA will be granted authorizations to provide SMR service. The next 20 ranked applicants will be alternate selectees should it be determined that any of the winners are not qualified to be licensees, or if any of the winners fail to provide the Commission with required transmitter site information within the specified time period. Within 30 days of the publication of this Public Notice in the **Federal Register**, interested parties may advise the Commission of any matter that may reflect on an applicant's qualifications to be a license. A copy of any such pleading must be served on the applicant in question on or before the day on which the document is filed with the Commission. *See* § 1.47(b) of the Commission's rules, 47 CFR 1.47(b). Service can be accomplished pursuant to § 1.47(d) of the Commission's rules, 47 CFR 1.47(d). Matters raised in such pleadings will be resolved prior to issuance of any license to the applicant. Individual applications may be examined at the Private Radio Bureau's Public Reference Room in Gettysburg, PA. Copies of individual applications may be ordered from the Commission's copy contractor, International Transcription Services, at (717) 337-1433.

All applications ranked below number 40 are hereby dismissed and will not be returned to the applicants. There will be no individual notices of dismissal mailed to applicants. The Lottery Notice of September 1, 1987 contains the names and addresses of lottery participants.

For further information regarding the selection procedures, consult the November 4, 1986 Public Notice (1 FCC Rcd 543 (1986), 52 FR 1302 (January 12, 1987)) or contact Betty Woolford of the Land Mobile and Microwave Division at (202) 632-7125.

900 MHz SMR Applications in the Hartford DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. Danoff, Ed	148	052330
2. Palomar Communication Service Co	416	056730
3. Millicom Radio Telephone Co., Inc	374	055898
4. Santos, Eliseus R	490	057727
5. First Telecommunications Group, Inc	195	052274
6. Accent Radio Service, Inc	004	055690
7. Berkle, Frances H	056	054426
8. T R S, Inc	542	058752
9. Stetter, John	532	060030
10. Metro Mobile Communications, Inc	366	054782
11. Cureton, Terry L	143	059056
12. Shults, William O	513	059620
13. Lomijah Partnership	326	054019
14. Gonzalez, Thomas M	222	058476
15. Ward, Thomas G	573	052064

900 MHz SMR Applications in the Hartford DFA—Continued

Rank and applicant name	Lottery code	File No.
16. Triangle Communications, Inc	555	055275
17. Parkinson Electronics Co	420	054723
18. Peters, William F	429	060513
19. Kazmi, Ehtisham	283	058185
20. Russo, Frederick	482	060437
Alternates:		
21. Sinelli, Andrew R	517	058572
22. Shea, William W	504	058999
23. Luothan, Ronald J	331	059572
24. Wang, Richard Y. & Janet C	572	057054
25. American Mobilphone Paging, Inc	022	053188
26. Must Bon Realty Co	391	054796
27. Polokoff, John G	435	060500
28. Clear Channel Communications Corp	109	053733
29. Price III, James L	441	057554
30. Alert Electronics, Inc	013	053924
31. Kay, Jr., James A	282	057376
32. K & R Industries, Inc	279	056230
33. Goodwin, Jr., Barclay R	223	057657
34. Fife, Georgiann	194	051904
35. Cicciari, Robert	106	054533
36. Ginsberg, Richard	218	054005
37. Atlantic Excavating	031	060196
38. Willford, John	567	057343
39. Simmons, Connie J	516	060017
40. Harper, Betty F	234	058965

900 MHz SMR Applications in the Salt Lake City DFA

Rank and applicant name	Lottery code	File no.
Winners:		
1. Renfeldt, Harvey W	447	052662
2. Mazzei, Petra H	338	059444
3. Hewell, Betty J	242	053227
4. Sheahan, Dennis P	487	055568
5. Professional Communications	427	053445
6. Cecil, Karen K	097	058412
7. Prisk, Kevin A	426	057458
8. Horner, Jack	248	053075
9. Liccardi, William J	308	059367
10. Gifford Engineering	213	051752
11. Wildes, Gregory G	566	060443
12. Maxwell, Earl A	335	059292
13. K & R Industries, Inc	272	056229
14. Yeager, John J	577	060725
15. Davidson, Mary F	148	058608
16. Euclidean Corp	182	055887
17. American Telemobile Corp	023	052316
18. Anderson, David W	025	053937
19. Metracom Trunked Radio Communications	354	056244
20. Carter, Wayne D	096	058152
Alternates:		
21. Raymond and Company	444	060177
22. Parkerson Electronics, Inc	405	053618
23. All American Associates	015	051988
24. Capobianchi, Joseph D	090	056981
25. Carter, Jimmie D	094	052251
26. Shibayama, Mas	491	059926
27. Sadler, Wendy A	465	056353
28. Rosenzweig, Saul	459	054906
29. Echols, Cathryn R	167	054034
30. Crawford Communications Co	133	054377
31. Zeff, A. Robert	582	060742
32. Telecommunications Network, Inc	528	056581
33. Song, Shenn Jen & Sue Jen	489	057609
34. Riley, Michael W	454	058822
35. Beaver, K. L	049	052035
36. Smith, Norman	504	056542
37. Simmons, Connie J	497	060018
38. Foss, Julian P	198	055330
39. Herman, Gregory L	241	058125
40. Daubman, Arthur M	147	057935

900 MHz SMR Applications in the Louisville DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. R & R Communications Corp	433	055741
2. Price III, James L	424	057552
3. Sadler, Wendy A	464	056282
4. Willard, William G. & Katheryn L	563	053559
5. Longshore, Michael D	320	059537
6. Song, Shenn Jen & Sue Jen	487	057610
7. Rosenthal, Paul C	457	055285
8. Kitzman, J. Andrew	285	053026
9. Carter, Richard M	093	057389
10. Stangel, Barry	506	053512
11. Professional Communications	426	053446
12. Daniels Electronics	144	055876
13. Newell, Robert C	389	056909
14. Kohler, Alan C	286	058524
15. Radio Communication Co	435	052081
16. Nashawaty, Thomas	387	052422
17. Gist & Harriss	218	059972
18. Halladay, Joel F	228	057091
19. Burroughs, Jr., Benton	083	059895
20. Domencich, Thomas A	162	055541
Alternates:		
21. Telecommunications Network, Inc	525	056582
22. Thornton, David L	529	059211
23. Stark, Richard	507	056155
24. United Radiophone Systems	539	052022
25. Terramics, Inc	527	054235
26. Cicciari, Robert	103	054531
27. May, Robert T	341	060575
28. Quadratics, Inc	432	053769
29. Azi Ros Com	034	055069
30. Hollister, Gary	250	060758
31. John Smith Enterprises	269	055657
32. Gonzalez, Thomas M	221	058547
33. Advance Radio, Inc	005	055230
34. Ramer, Donald J	440	054047
35. Sauve, R. Marc	471	059045
36. Nash, Rene	386	060274
37. Staggs, Jay B	504	055944
38. Windle, Ray D	566	054464
39. General Electric Radio Services Corp	213	058733
40. Harris Communications Co	234	051829

900 MHz SMR Applications in the Oklahoma City DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. Reyes, Sandra G	454	059161
2. Progressive Communications, Inc	431	055343
3. Walsh, Beverly	561	060059
4. Stark, Richard G	515	056156
5. High Tech Controls	246	052267
6. Beck, Harold I	050	053741
7. Command Communications	120	053867
8. Pulstar Electronics Corp	435	055668
9. Beier Partnership	053	057646
10. Halladay, Joel F	228	057307
11. Puckeylow, Harold	433	054099
12. Moroney, Robert G	376	059356
13. Cristina, Daniel	136	057811
14. Anderson, David W	025	053935
15. Davidson, Mary F	150	058813
16. Calpage, Inc	090	052997
17. Plisko, John	421	058533
18. Kirschner, Jan M	284	059067
19. Larussa, Lorice A	302	052305
20. Bill Hood Auto Sales, Inc	060	054761
Alternates:		
21. Harris, Cindy M	235	058891
22. Cleveland Mobile Radio Sales, Inc	109	054614
23. Lomijah Partnership	317	054022
24. Jason, Jay	266	054541
25. Euclidean Corp	184	055889
26. Vatsis, John	556	052097
27. Syntonic Technology, Inc	529	052432
28. Becker, Philip	052	056693
29. Gidas, Peter J	215	059006
30. MDI Systems, Inc	354	054111

900 MHz SMR Applications in the Oklahoma City DFA—Continued

Rank and applicant name	Lottery code	File No.
31. Shade, Ross	487	054663
32. Global Information Technologies, Inc	220	052811
33. Maxwell, Earl L	339	058581
34. Gist & Harriss	218	059971
35. Hartquist, David A	238	055400
36. Kramps, Karl	289	056048
37. Crissman, Thomas N	135	058570
38. O'Neill, Brian	395	059099
39. Kramps, Walter H	290	060330
40. Shorelands Water Co., Inc	498	060330

900 MHz SMR Applications in the Memphis DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. Laughton, Clifford	368	052865
2. Meyer, Steven C	438	059582
3. R & R Communications Corp	518	055743
4. Pulstar Electronics Corp	515	055666
5. Eby, Jr., Peter	199	058037
6. K & R Industries, Inc	328	056226
7. Bridges, Michael S	092	056072
8. Fox, Byron L	242	057352
9. Pappas, Peter	485	059516
10. Marzec, Frances	408	052152
11. Waxman, Marvin N	674	052407
12. White, Stephen E	683	059855
13. Buda, Jr., Wiliam C	099	059141
14. Progressive Communications, Inc	511	055345
15. Powell Broadcasting Co	505	059563
16. Silver, Irving	596	053261
17. Select Communications and Data	579	060403
18. Echols, Cathryn R	200	054037
19. Stebbins Communications	613	059720
20. Gonzales, Thomas M	265	058545
Alternates:		
21. Longoria, Salvador G	384	058421
22. Harris, Stanley W	281	057154
23. Litt, Robert S	380	057958
24. Brandon, Steven W	087	056762
25. Standard Communications Corp	610	059798
26. Stern, Todd	618	060374
27. Kralowetz, Joseph	350	057626
28. James, John R	316	057102
29. Mazzei, Petra H	413	059447
30. Davis, J. Michael	180	054370
31. Imboden, Josie	309	053054
32. Nashawaty, Thomas	463	052424
33. O'Connell, Barbara	469	054953
34. F M Communications, Inc	221	053611
35. Aalcom Communications	002	055981
36. Minadeo, Colleen A	445	059460
37. Mentari, Sandra	429	057930
38. M & M Communications, Inc	394	058225
39. Lanty Wylie Communication Consultant	364	052597
40. King, Jeffrey W	341	055527

900 MHz SMR Applications in the Birmingham DFA

Rank and Applicant name	Lottery code	File No.
Winners:		
1. Lomijah Partnership	307	054024
2. Yohalem, Joel	569	055584
3. Huffman Communications Sales, Inc	246	051776
4. Corsiglia, David R	125	055966
5. All American Associates Group, Inc	014	051992
6. McLang Company	339	058166
7. Kirschner, Jan M	273	058816
8. Orr, William A	388	058388
9. R & R Communications Corp	424	055744
10. Ramsey, Kenneth L	432	052045

900 MHz SMR Applications in the Birmingham DFA—Continued

Rank and Applicant name	Lottery code	File No.
11. Horner, Jack	242	053079
12. Metz, Forrest L.	350	054430
13. M & M Communications, Inc.	316	058226
14. Reese, Wayne S.	436	052640
15. B & D Enterprises	035	051818
16. Telecommunications Network, Inc.	517	056585
17. Telecom, Inc.	516	060412
18. Aubol, Dean & Petrina	031	054732
19. Crowningshield, Gloria	130	052708
20. Louisiana Cellular Services, Inc.	311	054331
Alternates:		
21. Aldrich, Lyman D.	011	057429
22. D & R Radio	139	057059
23. Charter Communications Corp.	098	052613
24. Cristina, Daniel	129	058374
25. D & L Communications, Inc.	138	052189
26. Electronic Distributing Corp.	166	055555
27. Larison, John F.	291	060008
28. Pullman, James M.	421	053704
29. Euclidean Corp.	175	055891
30. Andersen, Stanton D.	026	058684
31. Walker, William	539	054866
32. Cunningham Communications, Inc.	135	053214
33. Tel Radio Communications Properties	511	053306
34. Jabbour, C. Eugene	253	058917
35. Triple J Investment Co.	526	051791
36. Litt, Robert, S.	304	057957
37. Payne, John W.	399	054337
38. McFadden, Sr., Jack L.	336	054626
39. O'Neill, Dennis	383	053295
40. Tepper, Lynn	518	059410

900 MHz SMR Applications in the Nashville DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. Harris Communications Co.	233	051833
2. Markham, H. Reed	336	060566
3. Folta, Edmund V.	198	054836
4. James, John R.	264	057100
5. Baird, Robert	043	052543
6. Lugbill, Ralph W.	325	051637
7. Kahan, Eric	278	051742
8. Jehlik, Edward P.	267	053283
9. March Enterprises	332	058723
10. Stevenson, Alexander	520	059806
11. Must Bon Realty Co.	384	054802
12. Mantz, Edward G.	331	059917
13. Meyer, Louis J.	364	052624
14. Cordell, William E.	127	051956
15. Santos,Eliseus R.	477	057721
16. Cohen, Judith S.	115	059029
17. Silver, Irving	502	053259
18. Russo, Frederick	469	060467
19. Johnson Radio Corp.	271	060186
20. Zolkos Communications	594	059153
Alternates:		
21. Windle, Ray D.	580	054469
22. Dean, Richard C.	150	057028
23. Ciferri, Michael A.	105	053799
24. Weidlein, Mimi C.	568	058930
25. Oliver, Richard A.	398	059417
26. Radecki, John J.	440	054593
27. Cecil, Karen K.	096	058408
28. BRB, Inc.	075	053008
29. B & L Communications, Inc.	038	052899
30. Crowningshield, Gloria	133	052709
31. Alphatronics, Inc.	021	057860
32. Kay, Jr., James A.	276	057370
33. Gavin, Thomas	211	052923
34. Kitzman, J. Andrew	285	053032
35. American Mobilphone Paging, Inc.	230	053018
36. Clinton, Joseph	110	060371
37. John Smith Enterprises	269	055661
38. K & R Industries, Inc.	275	056224
39. Landau, Eric	299	053493

900 MHz SMR Applications in the Nashville DFA—Continued

Rank and applicant name	Lottery code	File No.
40. Advanced Communications Service Co.	006	059336

900 MHz SMR Applications in the Albany DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. Rill, James F.	453	055596
2. Sheahan, Dennis P.	487	055574
3. Milligan, Jayne P.	363	058970
4. Walker, William	549	054864
5. Battistini, Keith	044	060203
6. 17th Floor Associates, Inc.	001	056630
7. Smith, Dayton W.	501	057298
8. Lyon, Juliette J.	322	059477
9. Wall Enterprises, Inc.	550	052794
10. Litelco Communications, Inc.	310	060154
11. Esty Productions, Inc.	179	059083
12. Markham, H. Reed	331	060563
13. Radio Systems, Inc.	438	053679
14. Moroney, Robert G.	370	059361
15. Feiler, Michael H.	185	060733
16. Oliver, Richard A.	391	059415
17. Stetter, John	514	060038
18. Lugbill, Ralph W.	320	051648
19. Cooper, Charles B.	123	054871
20. Skail, Greg P.	500	052455
Alternates:		
21. Welch, Franklin D.	560	057527
22. Culpepper, Patricia M.	136	051932
23. Brown, Dennis C. & Schwaninger, Robert H.	074	051609
24. Chesley, Susan M.	100	056787
25. Fischer, Sheldon	192	051690
26. Halladay, Joel F.	225	057327
27. Ponce, Anna	419	056133
28. Euclidean Corp.	180	055894
29. All Comm, Inc.	015	054673
30. Alert Electronics, Inc.	012	053931
31. Kulzer, Peter R.	287	057227
32. Gist & Harriss	215	059967
33. National Exchange, Inc.	383	054288
34. Wheeling, David	561	057881
35. Mussman, Kyle W.	376	057496
36. Payne, John W.	407	054334
37. Standard Communications Corp.	507	059802
38. Triple J Investment Co.	537	051793
39. Burlew, Randall T.	080	055452
40. Matthews Radio Service, Inc.	335	058512

900 MHz SMR Applications in the Honolulu DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. Riley, William H.	540	058050
2. Beaver, K. L.	058	052126
3. Apte, Manohar	030	056336
4. Munch, John	453	058867
5. Electronic Communications Service	203	053786
6. Abadie, Leon W.	003	057201
7. N. Eyesh Properties Partnership	458	051677
8. Alfieri, Edward V.	013	058135
9. Deiss, Stephen R.	185	052217
10. Domencich, Thomas A.	192	055535
11. Communications Engineering Co.	145	052740
12. Dham, Chand K.	188	058190
13. O'Neill, Dennis	469	053299
14. Munch, David	452	058854
15. C Q of Ohio, Inc.	110	054415
16. Schiller, Lois	568	058342
17. MDI Systems, Inc.	425	054117
18. Stebbins Communications	606	059725
19. Progressive Radio, Inc.	509	053177

900 MHz SMR Applications in the Honolulu DFA—Continued

Rank and applicant name	Lottery code	File No.
20. McComas, Greg	413	055010
Alternatives:		
21. Walker, William	659	054863
22. Conlon, Edward J.	148	056298
23. Epstein, Stanley	214	058486
24. Battistini, Keith	056	060204
25. Klett, Albert A.	344	056308
26. DeGrandis, Joseph	184	057904
27. Radio Communication Co.	517	052087
28. Perry, Anthony	493	059874
29. Luck, Charlotte T.	387	057830
30. Blair, Robert A.	072	058695
31. Jabbour, C. Eugene	315	058913
32. Cunningham Communications, Inc.	168	053210
33. Hewell, Betty J.	293	053231
34. Channel One Communications	125	060219
35. Ferrara, Dennis J.	226	060461
36. Joyce, Jr., William J.	328	057635
37. Taricska, Joseph K.	624	056103
38. Stull, Charles C.	619	052451
39. O'Neill, Dennis	469	053299
40. Mester, John	430	059789

900 MHz SMR Applications in the Jacksonville DFA

Rank and applicant name	Lottery code	File No.
Winners:		
1. MCCA Service Corp.	386	054346
2. Reese, Wayne S.	502	052630
3. Wawcomm Partnership	638	051693
4. Walker, William	631	054983
5. Brahser, Patricia A.	080	052727
6. Allegro Communications Co.	015	056717
7. Izing, Gary M.	292	057144
8. Davis, Carl N.	167	053544
9. Hartpence, Elmer	262	054395
10. La Rue, Knox	334	054605
11. Henderson, Alan D.	267	056074
12. Howell, Lee	284	059889
13. Capobianchi, Joseph D.	102	056990
14. Cleveland Mobile Radio Sales, Inc.	122	054608
15. Lambert, Ronald D.	339	055163
16. Nietert, Eileen	437	059765
17. Morningstar Communications	422	052089
18. Elert Systems Corp.	195	056726
19. March Enterprises	372	058719
20. Auger, Ulysses G.	038	055838
Alternates:		
21. Esty Productions, Inc.	204	059093
22. Certified Systems, Inc.	112	055104
23. Robson, James J.	514	056189
24. Kramps, Karl	329	056038
25. Bonasso, Russell P.	076	058027
26. Jabbour, C. Eugene	295	058912
27. O'Connell, Barbara	440	054947
28. Preslar, David & Jeanne	473	054778
29. Friedman, Brian J.	229	057698
30. Faith, Leroy	208	057041
31. Palomar Communication Service Co.	454	056739
32. Webre, John C.	640	057550
33. Cooper, Ellaree P.	140	058247
34. Battistini, Keith	057	060205
35. Waxman, Marvin N.	639	052412
36. Scanlan, Jr., John E.	534	057833
37. Feiler, Michael H.	209	059682
38. Domenoich, Thomas A.	182	055548
39. McCormack, John D.	388	059520
40. Bratten, Wayne H.	081	056171

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87-26215 Filed 11-12-87; 8:45 am]

BILLING CODE 6712-01-M

Specialized Mobile Radio Service Frequencies To Be Available for Reassignment

October 13, 1987.

The following channels were recently recovered from licensees who failed to meet the Commission's loading or construction requirements and will be available for reassignment to trunked Specialized Mobile Radio (SMR) applicants. They were previously licensed at the coordinates indicated and are available at any location within the geographic area which will protect existing SMR systems pursuant to Rules 90.362 and 90.621.

856/860.1125 MHz, West Warwick, RI, 41–42–28 North, 71–31–58 West
856/860.5125 MHz, Austin, TX, 30–19–10 North, 97–48–06 West
856/860.1125 MHz[1], Atlantic City, NJ, 39–21–18 North, 74–26–16 West
862.7875, 863.5375, 864.2875, 865.0375, 865.7875 MHz, Tacoma, WA, 47–18–15 North, 122–23–44 West
856/860.1375 MHz, Denver, CO, 39–45–55 North, 105–22–07 West
856/860.1625 MHz, Atlantic City, NJ, 39–21–18 North, 74–26–16 West
856/860.1625 MHz, Stephenville, LA, 29–45–27 North, 91–10–25 West
857/860.5625 MHz, Phoenix, AZ, 33–20–03 North, 112–03–40 West

Pursuant to the Public Notice of January 6, 1986, Mimeo No. 1805, these channels will be available for reassignment on November 12, 1987. All applications received before November 12, 1987 will be dismissed. The first application received after the channels become available for reassignment opens the filing window. The window stays open only for the day on which the first application is received. *All applications MUST reference the date and DA number of this Public Notice in order to be considered for these frequencies.*

There is a $30.00 fee required for each application filed. All checks should be made payable to the FCC. Applications should be mailed to: Federal Communications Commission, 800 Megahertz Service, P.O. Box 360416M, Pittsburgh, PA 15251–6416. Applications may also be filed in person between 9:00 am and 3:00 pm at the following address: Federal Communications Commission, c/o Mellon Bank, Three Mellon Bank Center, 525 William Penn Way, 27th Floor, Room 153–2713, Pittsburgh, PA 15259, Attention: (Wholesale Lockbox Shift Supervisor).

For further information, refer to Public Notice of January 6, 1986 or contact Riley Hollingsworth or Betty Woolford (202) 632–7125 of the Private Radio Bureau's Land Mobile and Microwave Division.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–26214 Filed 11–12–87; 8:45 am]

BILLING CODE 6712–01–M

[1] These frequencies may not be assignable in accordance with Rule 90.621.

FEDERAL RESERVE SYSTEM

[Docket No. R–0618]

Fee Schedules for Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Approval of a Private Sector Adjustment Factor and fee schedules for Federal Reserve Bank priced services for 1988, and approval of a change in methodology used to calculate the Private Sector Adjustment Factor.

SUMMARY: The Board of Governors has approved a Private Sector Adjustment Factor ("PSAF") for 1988 of $76.2 million. This represents an increase of $5.3 million, or approximately 7.5 percent, from the 1987 target PSAF of $70.9 million. The PSAF is a recovery of imputed costs that takes into account the taxes that would have been paid and the return on capital that would have been provided had the Federal Reserve's priced services been furnished by a private business firm. This factor will now be calculated using three-year averages of bank holding company data, rather than a single year's data. The Board also approved 1988 fees schedules for the check collection, automated clearing house, wire transfer of funds and net settlement, definitive securities safekeeping and noncash collection, and book-entry securities services.

EFFECTIVE DATE: The new PSAF will take effect on January 1, 1988. Fees for check collection, Interdistrict Transportation System ("ITS"), wire transfer of funds and net settlement, definitive safe-keeping and noncash collection, book-entry securities services, and automated clearing house services will also take effect on January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Elliott McEntee, Associate Director (202/452–2231), or Paul W. Bettge, Analyst (202/452–3174), Division of Federal Reserve Bank Operations; Oliver I. Ireland, Associate General Counsel (202/452–3625), or Joseph R. Alexander, Senior Attorney (202/452–2489), Legal Division; or, *For the hearing impaired only,* Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf (202/452–3254), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Copies of the fee schedules for Federal Reserve Bank priced services for 1988 are available from local Federal Reserve Banks.

SUPPLEMENTARY INFORMATION:

Private Sector Adjustment Factor

Section 11A of the Federal Reserve Act, 12 U.S.C. 248a, provides that fees for Federal Reserve services include "an allocation of imputed costs which takes into account the taxes that would have been paid and the return on capital that would have been provided had the services been provided by a private business firm * * *." The Private Sector Adjustment Factor ("PSAF") is intended to reflect the imputed costs related to taxes and return on capital. As in past years,[1] the PSAF for 1988 is based on data developed in part from a model comprised of the nation's 25 largest bank holding companies.

Briefly stated, the methodology first entails determining the value of Federal Reserve assets that will be used directly in producing priced services during the coming year, including the net effect of assets planned to be acquired or disposed of during the year. Short-term assets are assumed to be financed by short-term liabilities; long-term assets are assumed to be financed by a combination of long-term debt and equity.

Imputed capital costs are determined by applying related interest rates and rate of return on equity derived from the bank holding company model to the assumed debt and equity values. These costs, together with imputations for estimated sales taxes, FDIC insurance assessment on clearing balances held with the Federal Reserve to settle for transactions, and expenses of the Board of Governors related to priced services, comprise the PSAF.

Details regarding the derivation of the PSAF are as follows:

Asset Base

The estimated value of Federal Reserve assets used in providing prices services in 1988 is reflected in Table 1. Table 2 shows that the value of assets assumed to be financed through debt and equity are projected to total $417.2 million in 1988, an increase of $23.4 million, or 6 percent, from 1987. This increase results largely from capital

[1] *See* 49 FR 11251 (Mar. 26, 1984); 49 FR 44556 (Nov. 7, 1984); 50 FR 47624 (Nov. 19, 1985); 51 FR 42630 (Nov. 25, 1986).

expenditures for bank premises, furniture, and equipment planned by the Reserve Banks next year.

Cost of Capital and Taxes

Because of abnormal earnings performance by bank holding companies included in the model, the Board has approved imputing the cost of equity capital for the PSAF using a three-year average of rates of return on equity derived from the model in each of the last three years. The Board has now approved use of the three-year average of rates as the standard methodology in place of a single year's data. Three-year averages will also be used for determining imputed interest costs for long-term debt, and for income taxes.

Table 3 shows the interest, equity, and tax rates to be used in 1988 and compares them with the rates used for developing the PSAF for 1987. The sample of 25 bank holding companies used to calculate the rates for 1988 is slightly different from that used for the 1987 PSAF. Because of mergers or changes in asset size, three bank holding companies replaced other bank holding companies in the sample. One large bank holding company was again removed from the sample because of unique government oversight over bank management decisions during the past year, and the twenty-sixth largest bank holding company was substituted. The bank holding companies with the highest and lowest rates of return on equity before taxes were also excluded, consistent with the methodology for determining the PSAF. Calculations were then based on the remaining 23 bank holding companies.

Other Imputed Costs

As shown in Table 3, other required PSAF recoveries for 1988 for sales taxes, FDIC insurance, and Board expenses total $11.8 million, up $1.2 million from 1987. Most of the increase is in imputed sales taxes, which is attributable primarily to be a projected increase in capital expenditures planned for 1988 over 1987. The remainder of the increase is in imputed cost for FDIC insurance, resulting from the expected rise in clearing balances reflected in Table 1.

1988 Fee Schedules

The fees for priced services that were approved by the Board for 1987 were set to recover 101.9 percent of the cost of providing such services, including the PSAF and the cost of float. Through the first eight months of 1987, the System experienced a recovery rate of 103.4 percent. The Board estimates that total costs including the PSAF for 1987 will be $627.1 million and revenue will be $648.5 million, resulting in a 103.4 percent recovery rate for the entire year.

In 1988, the Board projects that total costs for priced services including the PSAF will be $647.1 million and total revenue will be $658.8 million, resulting in a 101.8 percent recovery rate. The majority of the 1988 fees are the same as those in effect for 1987.

Discussion of the fee schedules for individual service categories follow:

Commercial Check Collection

Ninety-one percent of the 1988 prices for the check service are the same as those currently in effect. In the Interdistrict Transportation System ("ITS"), 70 percent of the 4,300 prices will not change from current prices. Of the 30 percent of prices which will change, 90 percent will be lowered.

Commercial check collection fees for 1988 are available from the local Federal Reserve Banks.

Automated Clearing House ("ACH")

The current basic transaction fees for processing automated clearing house transactions will be lowered in 1988. The interregional per-item fee is being lowered from 1.8¢ to 1.7¢ due to cost savings from the elimination of duplicate editing between the originating Reserve Bank and the receiving Reserve Bank. The ACH night cycle credit and debit surcharges are being reduced from 3.0¢ to 2.0¢ and 6.0¢ to 4.5¢, respectively, due to reduced operating costs and lower float costs resulting from improved operating procedures.

Over 80 percent of the fees for nonautomated services will increase in 1988. However, the proposed increases are modest, allowing Reserve Banks to more fully recover the costs associated with providing labor-intensive services.

ACH fees for 1988 are listed in Attachment 1.

Funds Transfer and Net Settlement

In 1988, funds transfer costs, including the PSAF, are projected to increase by $0.5 million or less than 1 percent over 1987. The volume of basic funds transfers originated is expected to increase by 6.4 percent in 1988.

The net settlement per entry fee will be reduced from $1.30 to $1.00. Based upon this fee reduction and Reserve Bank cost and volume estimates for 1988, retaining the basic funds transfer fee of $.50 would result in a recovery rate of about 106 percent. In view of this projection, the Board has reduced the basic transfer fee to $.47, resulting in a projected recovery of 102.7 percent.

Electronic connection fees are not changing at this time. However, the System is reviewing the pricing structure and fees for electronic connections and changes may be proposed at a later date.

Wire transfer and net settlement fees are listed in Attachment II, and electronic connection fees are listed in Attachment III.

Definitive Securities Safekeeping and Noncash Collection

Definitive securities safekeeping and noncash collection costs are expected to increase by 3.0 percent in 1988. Volume declines are expected to continue as remaining bearer securities gradually mature or are called. Although total revenue is expected to increase by 4.2 percent as a result of price increases in ten Reserve Banks, volume declines and increased costs will result in a small net revenue deficit of $54,000.

In definitive securities safekeeping, volumes are expected to decline about 8.3 percent in 1988. Nine out of eleven Districts offering this service are increasing prices to offset volume declines. Price increases range from $.75 to $5.00 for deposits and withdrawals; from $.15 to $.75 for receipts/issues maintained; and from $.75 to $5.00 for purchases and sales and reregistration transactions.

For the noncash collection service, eight of the eleven Districts that offer the service will increase prices to offset an anticipated 7.5 percent volume decline. Price increases range from $.10 to $1.00 per envelope for collection of coupons, and from $.50 to $10.00 for return items and bond collections.

Fees for definitive securities safekeeping and noncash collection services are listed in Attachment IV.

Book-Entry Securities Services

Although the 1988 recovery rate is expected to 97.9 percent, no changes in the fees for book-entry services are being made at this time. Costs are projected to increase about 15 percent due to a change in the cost allocation methodology used to distribute data processing and data communication costs, and, in some Districts, the costs of providing contingency capabilities. The

Reserve Banks have projected that volume will increase 12.8 percent, resulting in a 5.3 percent gross revenue growth in 1988. The Board believes that, given a continued strong market in federal agency mortgage-backed securities, actual volume and recovery rates will be higher.

By order of the Board of Governors of the Federal Reserve System, November 6, 1987.
William W. Wiles,
Secretary of the Board.

TABLE 1.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES

[Millions of Dollars—Average for Year]

	1988	1987
Short-term assets:		
Imputed reserve requirement on clearing balances	$268.2	$239.2
Investment in marketable securities	1,967.0	1,753.8
Receivables [1]	28.0	26.8
Materials and supplies [1]	6.4	4.4
Prepaid expenses [1]	5.8	4.2
Net items in process of collection (float)	438.3	363.5
Total short-term assets	$2,713.7	$2,391.9
Long-term assets:		
Premises [1 2]	$245.4	$229.6
Furniture and equipment [1]	129.5	126.8
Capital leases	2.5	1.8
Leasehold improvements [1]	2.2	2.0
Total long-term assets	379.6	360.2
Total assets	$3,093.3	$2,752.1
Short-term liabilities:		
Clearing balances	$2,325.2	$1,993.0
Balances arising from early credit of uncollected items	438.3	363.5
Short-term debt [3]	401.1	35.4
Total short-term liabilities	$2,713.6	$2,391.9
Long-term liabilities:		
Obligations under capital leases	$2.5	$1.8
Long-term debt [3]	136.4	126.2
Total long-term liabilities	138.9	128.0
Total liabilities	2,852.5	2,519.9
Equity [3]	240.7	232.2
Total liabilities and equity	$3,093.2	$2,752.1

[1] Financed through PSAF; other assets are self-financing.
[2] Includes allocations in Board of Governors' assets to priced services on $0.5 million for 1988 and $0.6 million of 1987.
[3] Imputed figures; represent the source of financing for certain priced services assets.
Note: Details may not add to totals due to rounding.

TABLE 2.—DERIVATION OF THE 1988 PSAF

[Millions of dollars]

A. Assets to be Financed: [1]	
Short-term	$40.1
Long-term	377.1
	417.2
B. Weighted Average Cost:	
1. Capital Structure: [3]	
Short-term Debt	9.6%
Long-term Debit	32.7%
Equity	57.7%

TABLE 2.—DERIVATION OF THE 1988 PSAF—Continued

[Millions of dollars]

2. Financing Rates/ Costs: [3]		
Average rates paid by the bank holding companies included in the sample:		
Short-term Debt		7.1%
Long-term Debit		9.7%
Pre-tax Equity [4]		20.1%
3. Elements of Capital Costs:		
Short-term Debt	$40.1×7.1%=$2.8	
Long-term Debit	136.4×9.7%=13.3	
Equity	240.7×20.1%=48.3	
		$64.4

TABLE 2.—DERIVATION OF THE 1988 PSAF—Continued

[Millions of dollars]

C. Other Required PSAF Recoveries:	
Sales Taxes	$8.2
Federal Deposit Insurance Assessment	1.9
Board of Governors Expenses	1.7
	$11.8
D. Total PSAF Recoveries	$76.2
As a percent of capital	18.3%
As a percent of expenses [5]	16.3%

[1] Priced service asset base is based on direct determination of assets method.

[2] Consists of total long-term assets less capital leases that are self-financing.

[3] All short-term assets are assumed to be financed by short-term debt. Of the total long-term assets, 36.2 percent are assumed to be financed by long-term debt and 63.8 percent by equity.

[4] The pre-tax rate of return on equity is based on averge after-tax rates of return on equity for the bank holding company sample, adjusted by the effective tax rate to yield the pre-tax rate of return on equity. The 1988 figure for after-tax equity and the tax rate are based upon a three-year average of these rates.

[5] Systemwide 1988 budgeted priced service expenses less shipping were $466.8 million.

TABLE 3.—CHANGES BETWEEN 1988 AND 1987 PSAF COMPONENTS

	1988	1987
A. Assets to be Financed (millions of dolars)		
Short-term	$40.1	$35.4
Long-term	377.1	358.4
B. Cost of Capital:		
Short-term Debt Rate	7.1%	8.5%
Long-term Debt Rate	9.7%	10.2%

TABLE 3.—CHANGES BETWEEN 1988 AND 1987 PSAF COMPONENTS—Continued

	1988	1987
Pre-tax Return on Equity [1]	20.1%	19.1%
Weighted Average Cost of Capital	15.4%	15.3%
C. Tax Rate [1]	32.3%	33.9%
D. Capital Structure:		
Short-term Debt	9.6%	9.0%
Long-term Debt	32.7%	32.0%
Equity	57.7%	59.0%
E. Other Required PSAF Recoveries (millions of dollars):		
Sales Taxes	$8.2	$7.3
Federal Deposit Insurance Assessment	1.9	1.6
Board of Governors Expenses	1.7	1.7
F. total PSAF:		
Required Recovery	$76.2	$70.9
As Percent of Capital	18.3%	18.0%
As Percent of Expenses	16.3%	15.8%

[1] The 1988 figures for pre-tax equity and the tax rate are based on a three-year averge of these rates:

	1984	1985	1986	Average
Pre-tax equity rate	19.6%	21.1%	19.7%	20.1%
Tax rate	38.9%	29.1%	28.7%	32.3%

ATTACHMENT VI—FEDERAL RESERVE SYSTEM BOOK-ENTRY FEE SCHEDULE

[Effective January 1, 1988]

	Transaction	Fees
On-Line Transfers Originated.	Per Transfer	$2.25
Off-Line Transfers Originated.	Per Transfer	7.00
Off-Line Transfers Received.	Per Transfer	7.00
Account Maintenance.	Per Account/ Per Month.	15.00
Issues in Accounts Maintained.	Per Issue/Per Month.	.45

ATTACHMENT I—FEDERAL RESERVE SYSTEM AUTOMATED CLEARING HOUSE FEE SCHEDULE, LOCALLY ESTABLISHED NONAUTOMATED FEES

[Effective January 1, 1988]

	Tapes billed fee	Non-electronic delivery fee	Messenger pickup fee	Telephone advice fee	Common paper returns & NOC fee	Diskette output fee
Boston	$3.75	$3.75	$3.00		$3.75	
New York		4.50				
Philadelphia	3.00	4.50	2.75	2.50	2.75	
Cleveland	3.75	4.75	3.50	3.50	3.75	3.00
Richmond	3.75	4.25	3.25	3.50	3.25	3.00
Atlanta	3.00	3.75	2.75	3.50	2.75	3.00
Chicago	3.75	4.50	3.25	3.00	3.75	3.00
St. Louis	3.50	4.75	3.50	3.50	3.75	
Minneapolis	3.75	4.25	3.50	3.50	3.75	
Kansas City	3.50	3.75	2.75	3.50	3.00	2.50
Dallas	3.75	4.75	3.75	3.50	3.75	3.00
San Francisco	3.75	4.75	3.75	3.50	3.75	3.00

ATTACHMENT II—FEDERAL RESERVE SYSTEM WIRE TRANSFER AND NET SETTLEMENT FEE SCHEDULE

[Effective January 1, 1988

Wire transfer of funds	Fees
Basic Transfer Originated	$.47
Basic Transfer Received	.47
Off-Line Origination Surcharge	6.00
Telephone Advice Surcharge	3.50
Net Settlement :[1]	
Settlement Entry	1.00

ATTACHMENT II—FEDERAL RESERVE SYSTEM WIRE TRANSFER AND NET SETTLEMENT FEE SCHEDULE—Continued

[Effective January 1, 1988

Wire transfer of funds	Fees
Off-Line Settlement Surcharge	8.00
Telephone Advice Surcharge	3.50

[1] In cases where net settlement arrangements resulted in higher operating costs than those incurred for standard arrangements, the Reserve Banks may establish higher fees.

ATTACHMENT III—FEDERAL RESERVE SYSTEM ELECTRONIC CONNECTIONS FEE SCHEDULES

[Effective January 1, 1988]

Electronic connections	Fees (month)
Dedicated Leased Line	$400
Multi-Drop Leased Line	250
Dial-Up	60

ATTACHMENT IV—FEDERAL RESERVE SYSTEM, DEFINITIVE SAFEKEEPING FEE SCHEDULE

[Effective January 1, 1988]

	Deposits	Withdrawals	Receipts/Issues		Purchases and sales	Re-registrations	Per month per $1,000 par value [1]
			1–400	400+			
Boston	$13.25	$13.25	$3.05	$2.35	$18.00	$13.25	
New York	40.00	40.00	5.35	4.75		40.00	$0.0050
Philadelphia [2]	16.00	16.00	3.50	2.50	20.00	20.00	
Cleveland	18.00	18.00	2.90	2.00	30.00	20.00	0.0080
Richmond	17.50	17.50	2.25	1.75	20.00	20.00	
Atlanta [3]	0.00	7.00	([5])	([5])		5.00	
Chicago [4]	17.50	17.50	4.25	3.25	25.00	17.50	
St. Louis	23.00	23.00	4.00	1.70		20.00	
Minneapolis	15.00	15.00	3.25	1.50	25.00	15.00	
Kansas City	18.00	18.00	3.30	2.80	25.00	18.00	
Dallas	10.00	10.00	3.00	2.00	26.50	10.00	0.0100

[1] Applied to coupon bearing securities only.
[2] Philadelphia imposes a $2.50 receipt fee for all registered securities. This is to recognize the lower handling costs of registered securities versus bearer securities.
[3] Atlanta has a three tier structure: 1–500 receipts at $2.50; 500–1000 at $2.00; and 1000+ at $1.50.
[4] Chicago intra-district fine sort coupons $2.00 per envelope.
[5] See below.

ATTACHMENT IV—FEDERAL RESERVE SYSTEM NONCASH COLLECTION FEE SCHEDULE NON-MIXED DEPOSIT PRODUCT

[Effective January 1, 1988]

	Local coupons		Add-on fee for interdistrict coupons	Postage and insurance [1]	Return items	Bond redemptions and sales [2]
	City	Country				
Boston	$2.10	$2.10	$3.25	$1.00	$5.00	$13.00
New York	3.00	4.50	5.50	0.75	10.00	40.00
Philadelphia	2.90	2.90	3.45	1.00	10.00	20.00
Richmond	2.35	2.35	3.75	1.00	10.00	25.00
Chicago [3]	5.00	5.00	3.25	([4])	10.00	20.00
Minneapolis [5]	4.75	4.75	5.00		20.00	22.50
Kansas City	4.00	4.00	4.00	$1.00	15.00	25.00

[1] Per $1,000 value shipped.
[2] Plus out-of-pocket expenses if any.
[3] Chicago intra-district fine sort coupons $2.00 per envelope.
[4] Chicago Postage and Insurance $1.00 local, $2.00 interdistrict; postage and insurance fees will not be assessed for city items processed through the Detroit office.
[5] Minneapolis charges a fee of $5.00 (including postage and insurance) to collect 12th District coupons and a fee of $22.50 to collect 12th District bonds.

ATTACHMENT IV—FEDERAL RESERVE SYSTEM NONCASH COLLECTION FEE SCHEDULE—MIXED DEPOSIT PRODUCT

[Effective January 1, 1988]

	Local coupons from in-district DI's		Local coupons from out-of-district DI's		Inter-district fine sort	Coupons mixed	Return items	Bond redemptions and sales
	City	Country	City	Country				
Cleveland	$3.25	$3.50	$3.75	$4.00	$4.75	$5.75	$20.00	$25.00
Atlanta	1.75	2.50	2.65	3.40	2.75	3.75	10.00	15.00
St. Louis [1]	5.00	5.00	5.00	5.00	5.00	5.00	15.00	15.00

ATTACHMENT IV—FEDERAL RESERVE SYSTEM NONCASH COLLECTION FEE SCHEDULE—MIXED DEPOSIT PRODUCT—Continued

[Effective January 1, 1988]

	Local coupons from in-district DI's		Local coupons from out-of-district DI's		Inter-district fine sort	Coupons mixed	Return items	Bond redemptions and sales
	City	Country	City	Country				
Dallas	3.50	23.50	3.50	3.50	4.00	4.00	15.00	20.00

[1] St. Louis intra-district fine sort coupons $2.25 per envelope.

[FR Doc. 87-26235 Filed 11-12-87; 8:45 am]
BILLING CODE 6210-01-M

First Fidelity Bancorp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The Company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 30, 1987.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Fidelity Bancorporation*, Newark, New Jersey, and Philadelphia, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of First Fidelity Bancorporation, Newark, New Jersey, and thereby indirectly acquire First Fidelity Bank, N.A., New Jersey, Newark, New Jersey; First Fidelity Bank, N.A., North Jersey, Totowa, New Jersey; First Fidelity Bank, N.A., South Jersey, Burlington, New Jersey; First Fidelity Bank, N.A., Princeton, South Brunswick, New Jersey; Morris Savings Bank, Morristown, New Jersey; and First Fidelity Trust, N.A., Florida, Boca Raton, Florida; and Fidelcor, Inc., Philadelphia, Pennsylvania, and thereby indirectly acquire Fidelity Bank, National Association, Malvern, Pennsylvania, and Fidelity Bank Delaware, New Castel, Delaware, Merchants Bancorp, Inc., Allentown, Pennsylvania, and thereby indirectly acquire Merchants Bank, N.A., Allentown, Pennsylvania, Number One State Bank, Wilkes-Barre, Pennsylvania, and Merchants Bank, North, Wilkes-Barre, Pennsylvania.

In connection with this application, Applicants also proposes to acquire First Fidelity Capital Corporation, Newark, New Jersey, and thereby engage in the extension of consumer and commercial direct loans, lines of credit, and letters of credit pursuant to § 225.25(b)(1); and personal and real property lease transactions pursuant to § 225.25(b)(5); First Fidelity Service Corporation, Newark, New Jersey, and thereby engage in extensions of credit as permitted a sales finance company pursuant to § 225.25(b)(1); Broad and Lombardy Associates, Inc., Newark, New Jersey, and thereby engage in acting as insurance agent or broker for credit related life and health insurance; sale of credit-related property and casualty insurance protecting property which acts as collateral pursuant to § 225.25(b)(8)(iv); Fidelcor Life Insurance Company, Phoenix, Arizona, and thereby engage in reinsurance of credit related life and accident and health insurance pursuant to § 225.25(b)(8); Fidelity Overseas Investment, Inc., Wilmington, Delaware, an Edge Act corporation holding the shares of FIB Asia Ltd., a Hong Kong chartered deposit accepting company, pursuant to section 25(a) of the Federal Reserve Act and § 211.4(b)(3) of Regulation K; Fidelity International Bank, New York, New York, an Edge Act corporation, pursuant to section 25(a) of the Federal Reserve Act and § 211.4(b)(3) of Regulation K; First Fidelity Tradexport Corporation, Newark, New Jersey, an export trade company within the meaning of section 4(c)(14)(F)(i) of the Bank Holding Company Act and section 211.32(a) of Regulation K; First Fidelity Community Development Corporation, Atlantic City, New Jersey, and thereby engage in making equity and debt investments in corporations or projects designed to promote community welfare pursuant to § 225.25(b)(6); this activity will be conducted in the State of New Jersey; First Fidelity Trust, N.A., Florida, Boca Raton, Florida, and thereby engage in activities performed or carried on by a national trust company in a manner authorized by applicable federal and state law pursuant to § 225.25(b)(3); this activity will be conducted in the State of Florida; First Fidelity Brokers, Inc., Newark, New Jersey, and thereby engage in retail securities brokerage services pursuant to § 225.25(b)(15); this activity will be conducted in the states of New Jersey, New York, Florida and Pennsylvania; First Fidelity Trust Company, New York, New York, and

thereby engage in fiduciary, agency or custodial activities authorized by federal and state laws consistent with Regulation Y pursuant to § 225.25(b)(3); Fidelcor Business Credit Corporation, New York, New York, and thereby engage in originating and servicing loans and other extensions of credit, commercial finance, factoring and data processing pursuant to § 225.25 (b)(1) and (b)(7); Fidelcor Business Credit Corporation of California, Inc., Los Angeles, California, and thereby engage in originating and servicing loans and other extensions of credit, commercial finance, factoring pursuant to § 225.25(b)(1); Fidelcor Brokerage Services, Inc., Philadelphia, Pennsylvania, and thereby engage in securities brokerage services pursuant to § 225.25(b)(15); Latimer and Buck, Inc., Philadelphia, Pennsylvania, and thereby engage in originating and servicing mortgage loans, providing portfolio investment advice consistent with Regulation Y, providing financial advice to state and local governments, acting as advisory company for mortgage or real estate investment trust, appraising real estate and arranging commercial real estate equity financing pursuant to § 225.25 (b)(1), (b)(4), (b)(13) and (b)(14); Corporate Programs, Inc., Philadelphia, Pennsylvania, and thereby engate in originating and servicing mortgage loans, providing portfolio investment advice consistent with Regulation Y, providing financial advice to state and local governments, acting as advisory company for mortgage or real estate investment trust, appraising real estate and arranging commercial real estate equity financing pursuant to § 225.25 (b)(1), (b)(4), (b)(13) and (b)(14); Florida Commercial Mortgage Corporation, Orlando, Florida, and thereby engage in originating and servicing mortgage loans, providing portfolio investment advice consistent with Regulation Y, providing financial advice to state and local governments, acting as advisory company for mortgage or real estate investment trust, appraising real estate and arranging commercial real estate equity financing pursuant to § 225.25 (b)(1), (b)(4), (b)(13) and (b)(14); Fidelcor Mortgage Corporation, Franklin, Georgia, and thereby engage in originating extensions of credit or acquiring loans secured by real estate and sale of credit related life and accident and health insurance pursuant to § 225.25 (b)(1) and (b)(8); these activities will be conducted in the southeastern portion of the United States; Fidelcor Mortgage Company of Georgia, Inc., Franklin, Georgia, and thereby engage in originating extensions of credit or acquiring loans secured by real estate and sale of credit related life and accident and health insurance pursuant to § 225.25 (b)(1) and (b)(8); these activities will be conducted in the southeastern portion of the United States; Fidelcor Trading Inc., Philadelphia, Pennsylvania, and thereby engage in executing and clearing options in foreign currency pursuant to § 225.25(b)(18); Fidelity Credit Corporation, Philadelphia, Pennsylvania, and thereby engage in servicing loans pursuant to § 225.25(b)(1); FCC-PR, Inc., Puerto Rico, and thereby engage in servicing loans pursuant to section 225.25(b)(1); and Merchants Life Insurance Company, Allentown, Pennsylvania, and thereby engage in reinsurance of credit related life and accident and health insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y; this activity will be conducted in the State of Pennsylvania.

Board of Governors of the Federal Reserve System, November 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-26229 Filed 11-12-87; 8:45 am]

BILLING CODE 6210-01-M

First National Cincinnati Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 30, 1987.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First National Cincinnati Corporation,* Cincinnati, Ohio; to acquire 100 percent of the voting shares of Peoples Liberty Bancorporation, Covington, Kentucky, and thereby indirectly acquire The Peoples Liberty Bank of Northern Kentucky, Covington, Kentucky.

2. *Tri-State Finanical Bancorp, Inc.,* Bryan, Ohio; to acquire 100 percent of the voting shares of Mid American National Bank & Trust, Northwood, Ohio.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Suwannee Valley Bancshares, Inc.,* Chiefland, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Florida, N.A., Chiefland, Florida.

2. *Union Bancshares, Inc.,* Blairsville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Union County Bank, Blairsville, Georgia.

C. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinios 60690:

1. *Capac Bancorp, Inc.* Capac, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Capac State Savings Bank, Capac, Michigan.

D. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Klein Bancorporation, Inc.,* Chaska, Minnesota; to aquire 100 percent of the voting shares of Oakley Holding Company, Buffalo, Minnesota, and thereby indirectly acquire The Oakley National Bank of Buffalo, Buffalo, Minnesota.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Dominion Bankshares, Inc.,* Denver, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Dominion National Bank, Denver, Colorado.

2. *International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers,* Kansas City, Kansas; to acquire additional shares not exceeding 47.5 percent of the voting shares of Brotherhood Bank & Trust Co., Kansas City, Kansas.

3. *Kansas State Financial Corporation*, Wichita, Kansas; to acquire 75.2 percent of the voting shares of Central Financial Corporation, Wichita, Kansas, and thereby indirectly acquire Central Bank and Trust, Wichita, Kansas. Comments on this application must be received by November 27, 1987.

4. *Security Bancshares, Inc.*, Scott City, Kansas; to become a bank holding company by acquiring 80 percent of the voting shares of Security State Bank, Scott City, Kansas. Comments on this application must be received by November 27, 1987.

Board of Governors of the Federal Reserve System, November 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-26230 Filed 11-12-87; 8:45 am]

BILLING CODE 6210-01-M

First NH Banks, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 2, 1987.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *First NH Banks, Inc.*, Manchester, New Hampshire; to acquire New England Acceptance Corporation, Keene, New Hampshire, and thereby engage in the business of financing insurance premiums directly with the insured or by taking an assignment of an insurance agent's loans to his customer; and perform premium finance services and administrative functions for banks and other premium finance lenders performing premium finance lending functions pursuant to § 225.25(b)(1)(i) and (iv) of the Board's Regulation Y.

B. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Provident Bancorp, Inc.*, Cincinnati, Ohio; to acquire North American Finanical Services, St. Petersburg, Florida, and thereby engage in providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-26231 Filed 11-12-87; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notice; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 27, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Forrest N. Jenkins*, Marion, Arkansas; to acquire 45.06 percent of the voting shares of First Citizens Bancshares Company, Marion, Arkansas, and thereby indirectly acquire Citizens Bank, Marion, Arkansas.

Board of Governors of the Federal Reserve System, November 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-26232 Filed 11-12-87; 8:45 am]

BILLING CODE 6210-01-M

Marine Midland Banks, Inc., et al.; Applications to Engage De Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicted. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 1987.

A. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Marine Midland Banks, Inc.*, Buffalo, New York; The Hong Kong and Shanghai Banking Corporation, Hong Kong; HSBC Holdings B.V., Amsterdam, The Netherlands; and Kellett N.V., Curacao, Netherlands Antilles; to engage *de novo* through their subsidiary, CM&M Futures, Inc., New York, New York, in permissible securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y. Comments on this application must be received by November 25, 1987.

B. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Sterling Bancorp, Inc.*, Richmond, Virginia; to engage *de novo* through its subsidiary, Sterling Data Systems, Inc., Milton, West Virginia, in the provision of data processing services to non-subsidiary banks pursuant to § 225.25(b)(7) of the Board's Regulation Y. Comments on this application must be received by December 2, 1987.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Missouri Bancorporation, Inc.*, Columbia, Missouri; to engage *de novo* in making, acquiring, and/or servicing of loans or other extensions of credit for the company's account or for the account of others, such as would be made by mortgage companies or commercial finance companies pursuant to § 225.25(b)(1) of the Board's Regulation Y. This activity will be conducted in the State of Missouri.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BSD Bancorp, Inc.*, San Diego, California; to engage *de novo* through its subsidiary, North American Trust Company, San Diego, California, in trust services pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 6, 1987

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-26233 Filed 11-12-87; 8:45 am]

BILLING CODE 6210-01-M

Signet Banking Corp.; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 1987.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Signet Banking Corporation*, Richmond, Virginia; to engage *de novo* through its subsidiary, Signet Investment Corporation, Richmond, Virginia, in the purchase and sale of precious metals for the account of customers.

Board of Governors of the Federal Reserve System, November 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-26234 Filed 11-12-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Migrant Health; Rechartering

Purusant to the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix II), the Health Resources and Service Administration announces the rechartering by the Secretary, HHS, of the following Council.

Council	Termination date
National Advisory Committee on Migrant Health.	Continuing.

Authority for this Committee is continuing and a Charter will be filed no later than October 31, 1989, in accordance with section 14(b)(2) of Pub. L. 93-462.

Dated: November 6, 1987.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 87-26279 Filed 11-12-84; 8:45 am]

BILLING CODE 4160-15-M

National Institutes of Health

Committee Reestablishment; National Institute on Aging et al.

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), and the Health Research Extension Act of 1985, November 20, 1985 (Pub. L. 99-158, section 402(b)(6)), the Director, NIH, announces the reestablishment, effective December 1, 1987, of the following committees:

Board of Scientific Counselors, National Institute on Aging
Board of Scientific Counselors, National Institute of Dental Research
Cellular and Molecular Basis of Disease Review Committee
Genetic Basis of Disease Review Committee
Minority Access to Research Careers Review Committee
National Institute of Dental Research Special Grants Review Committee
Pharmacological Sciences Review Committee

Duration of these committees is continuing unless formally determined by the Director, NIH, that termination would be in the best public interest.

Dated: November 9, 1987.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 87-26353 Filed 11-12-87; 8:45 am]

BILLING CODE 4140-01-M

Public Health Service

Request for Nominations for Voting Members on National Vaccine Advisory Committee

AGENCY: Office of the Assistant Secretary for Health, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (DHHS) is requesting nominations for voting members to serve on the National Vaccine Advisory Committee.

DHHS is implementing the National Vaccine Program established by Title XXI of the Public Health Service Act, enacted by Pub. L. 99-660, The National Vaccine Injury Compensation Act of 1986. The establishment of the National Vaccine Advisory Committee is an important aspect of the program.

DATES: Nominations are to be submitted by November 30, 1987. Nominations received after November 30, 1987 will be considered for future vacancies.

ADDRESSES: All nominations for membership should be sent to Dr. Alan R. Hinman (address below).

FOR FURTHER INFORMATION CONTACT: Dr. Alan R. Hinman, Coordinator, National Vaccine Program, Office of the Assistant Secretary for Health, Room 9-32, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-0715.

SUPPLEMENTARY INFORMATION: The National Vaccine Program is requesting nominations of voting members for 13 vacancies on the National Vaccine Advisory Committee. Nominated individuals should have expertise in vaccine research or the manufacture of vaccines, or should be physicians, or members of parent organizations concerned with immunization, or representatives of State or local health agencies, on public health organizations.

Members will be invited to serve overlapping four year terms with the exception that initial terms of appointment at the beginning of the committee's operation will be less than 4 years for most members so that changes in committee membership is staggered.

The National Vaccine Advisory Committee shall: (1) Study and recommend ways to encourage the availability of an adequate supply of safe and effective vaccination products in the United States, (2) recommend research priorities and other measures the Director of the Program should take to enhance the safety and efficacy of vaccines, (3) advise the Director of the Program in the implementation of sections 2102, 2103, and 2104, and (4) identify annually for the Director of the Program the most important areas of government and non-government cooperation that should be considered in implementing sections 2102, 2103, and 2104.

In keeping with normal departmental policy, nominees generally should not currently be serving on another DHHS advisory committee, although exceptions will be considered.

DHHS has a special interest in ensuring that women, minority groups, and the physically handicapped are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and physically handicapped candidates. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the National Vaccine Advisory Committee. Nominations shall state that the nominee is aware of the nomination, is willing to serve as a member of the committee, and appears to have no conflict of interest that would preclude committee membership. A curriculum vitae should be submitted with the nomination.

This notice is issued under the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770776 (5 U.S.C. App. I) and the National Vaccine Injury Compensation Act of 1986 (Pub. L. 99-660).

Dated: November 6, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87-26281 Filed 11-12-87; 8:45 am]

BILLING CODE 4160-17-M

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-38424, August 31, 1982, as amended most recently at 52 FR 27585, July 22, 1987), is amended to reflect the office structure of the Bureau of Maternal and Child Health and Resources Development. The Bureau was approved by the Secretary on May 27, 1987, with an effective date of October 1, 1987.

Under HB-10, *Organization and Functions*, add the following functional statements immediately after the functional statement for the *Bureau of Maternal and Child Health and Resources Development (BMCHRD)*:

Immediate Office of the Director (HBR1). Provides leadership and direction for programs and activities of the Bureau and oversees its relationships with other national health programs. Specifically: (1) Coordinates the internal functions of the Bureau and its relationships with other national health programs; (2) establishes program objectives, alternatives, and policy positions consistent with legislation and broad Administration guidelines; (3) develops and administers operating policies and procedures, and provides guidance and assistance to the Regional Health Administrators or regional staff as appropriate; (4) evaluates program accomplishments; (5) serves as principal contact and advisor to the Department and other parties concerned with matters relating to planning and development of healthy delivery systems; (6) administers regional facilities engineering and construction activities performed by PHS Regional Offices; (7) directs and coordinates Bureau activities carried out in support of Equal Employment Opportunity programs; (8) provides direction for the Bureau's Civil Rights compliance activities; and (9) provides information about Bureau programs to the general public, health professions associations, and other interested groups and organizations.

Office of Program Support (HBR12). Plans, directs, coordinates and evaluates Bureau-wide administrative and management support activities. Specifically: (1) Serves as the Bureau Director's principal source for management and administrative advice and assistance; (2) in cooperation with the Division of Personnel, HRSA, coordinates personnel activities for the Bureau; (3) in cooperation with the Division of Financial Management, HRSA, provides guidance to the Bureau on financial management activities, including budget formulation, presentation, and execution functions; (4) provides communications advice and services to the Bureau; (5) directs the formulation of ADP policy for the Bureau—plans, develops and evaluates the Bureau's ADP systems, and

develops, manages, and operates the Bureau's information systems; (6) conducts all business management aspects of the review, negotiation, award, and administration of Bureau grants, and coordinates the Bureau's contracts and cooperative agreement operations; (7) provides support to the PHS Regional Offices as appropriate; (8) provides organization and management analysis for the Bureau, develops policies and procedures for internal Bureau requirements, and interprets and implements the Administration's management policies and procedures; (9) coordinates the Bureau's program and administrative delegations of authority activities; (10) manages the Bureau's performance management and recognition system and employee performance management system; and (11) serves as liaison or provides the Bureau with support services such as supply management, correspondence control, manual issuances, forms, records, reports, Freedom of Information Act and Privacy Act coordination, and the support of Civil Rights compliance activities.

Office of Program Development (HBR13). Serves as the Bureau focal point for planning, evaluation, legislation, and legislative implementation activities including the development and dissemination of program objectives, alternatives, and policy positions. Advises the Bureau Director and Office Directors in the development of plans and legislative proposals to support Administration goals. Interprets evaluation requirements and coordinates the development of annual evaluation plans, as well as specific project proposals. Coordinates its activities closely and continuously with the Office of Planning, Evaluation, and Legislation, HRSA. Specifically: (1) Stimulates, guides, and coordinates the Bureau's program planning and development activities, and prepares the Bureau's forward planning agenda; (2) promotes and oversees evaluation and monitoring activities to provide objective measurements of program performance; (3) provides staff services and coordinates activities pertaining to legislative policy development and interpretation, including the development of legislative proposals and the analysis of existing and pending Federal and State legislation to assure the fullest possible consideration of programmatic requirements in meeting established departmental, PHS, and HRSA goals, liaison with other agencies, and distribution of legislative materials; (4) participates in the development and coordination of program policies, implementation plans, and processes for health facilities, maternal and child health, organ transplantation, and acquired immune deficiency syndrome (AIDS) programs, and devises implementation plans, including the development, clearance, and dissemination of regulations, criteria, guidelines, and operating procedures; (5) directs the production of program management information and progress reports; and (6) develops and administers operating policies and procedures, and provides guidance and assistance to the Regional Health Administrators or regional staff as appropriate.

Office of Engineering Services (HBR14). Administers the HRSA Facilities Engineering and Construction Assistance Programs. Specifically: (1) Provides policy and operational direction for the Agency's facilities engineering and construction management system; (2) negotiates interagency reimbursement agreements with the Department of Education, Department of Housing and Urban Development, and the Health Care Financing Administration; (3) assures the delivery of comprehensive architectural and engineering services in support of Federally-assisted programs; (4) administers property management activities related to PHS-owned and PHS-utilized facilities; (5) serves as source of expertise and provides technical assistance on engineering activities to PHS regional offices; (6) develops, implements, and monitors the annual work plan related to assigned program areas in response to national and regional priorities; (7) coodinates the development of regional objectives which cross program and organizational lines; (8) advises the Director, BMCHRD, and the Administrator on Agency engineering activities, representing the Agency on committees and work groups; (9) develops guidance materials and technical publications to enhance efficiency and economy in the design, construction, modernization, and conversion of health facilities; and (10) maintains liaison, coordinates activities, and jointly develops pertinent programmatic materials with components of the Bureau, HRSA, other PHS agencies, DHHS, and other concerned Federal agencies.

Office of Associate Director for Maternal and Child Health (HBRA). Provides national leadership in identifying and interpreting national trends and issues of significance in promoting the health of mothers and children. Specifically: (1) Administers a program of block grants to the States to (a) assure mothers and children (especially those with low income or limited availability of health services) access to quality maternal and child health services; (b) reduce infant mortality and the incidence of preventable diseases and handicapping conditions among children, reduce the need for inpatient and long-term care services, and otherwise promote the health of mothers and children; (c) provide for rehabilitation services for blind and disabled persons under the age of 16 receiving benefits under Title XVI of the Social Security Act; (d) provide services for crippled children or children suffering from conditions leading to crippling; and (e) provide services in areas of special concern such as mental retardation, sudden infant death syndrome, lead-based paint poisoning, metabolic disorders and adolescent pregnancy; (2) administers special projects of regional or national significance, training, and research, and supports genetic disease testing, counseling, and information development and dissemination programs and comprehensive hemophilia diagnostic and treatment centers; (3) promotes coordination at the Federal level of activities authorized under Title V and Title XIX of the Social Security Act, especially early and periodic screening, diagnosis and treatment and related activities funded by the Departments of Agriculture and Education; (4) disseminates information to the States on preventive health services and advances in the care and treatment of mothers and children; (5) provides clinical and programmatic consultation and assistance on request to the States in program planning, establishment of goals and objectives, standards of care, and evaluation; (6) cooperates with the National Center for Health Statistics—collects, maintains, and disseminates information relating to the health status and health service needs of mothers and children in the United States; and (7) assists in the preparation of reports to Congress on the activities and accomplishments achieved under Title V of the Social Security Act from reports by the States.

Office of Associate Director for Special Projects (HBRD). Plans, directs, coordinates, and monitors a sphere of operations and activities associated with specified program areas which have a national focus. Specifically: (1) Plans, develops, implements, monitors, and evaluates education, demonstration and other programs which reflect national priorities in the delivery of health care services to patients of

acquired immune deficiency syndrome (AIDS); (2) tracks events and trends in the health care industry to determine appropriate policies for addressing issues identified; (3) develops and provides information and methods to health program planners, providers, and consumers to assist in decisionmaking and cost efficiency in the operations of emerging health programs such as AIDS and organ procurement; (4) develops and maintains a program of grants to organ procurement organizations; (5) monitors contracts for establishment of an organ procurement and transplantation network and registry; (6) conducts a program of public information to inform the public of the need for organ donations; (7) provides policy guidance, technical assistance and promotes cooperative efforts with entities in the health care system involved in organ donations, procurement, and transplantation; and (8) maintains close liaison with PHS, Department, and other Federal entities concerned with or interested in the program activities of the Office and maintains liaison with non-Federal, public, and private entities as necessary for the accomplishment of program mission and objectives.

Office of Associate Director for Health Facilities (HBRE). Carries out the Bureau's health facilities national program. Specifically: (1) Plans, directs, coordinates, monitors, and develops policies pertaining to the financial capital, organizational, and physical matters of health care organizations; (2) administers loan, loan guarantee, and interest subsidy programs relating to the construction, modernization, conversion, or closure of health facilities; (3) enforces institutional compliance with required reasonable volume of uncompensated care assurances; (4) in close coordination with the Office of Engineering Services, the Office of Associate Director for Special Projects, and the Office of Associate Director for Maternal and Child Health, develops policy and administers programs for the systematic planning, construction, modernization, conversion, or discontinuance of health facilities; (5) in close coordination with the Office of Engineering Services and the Bureau of Health Professions, administers grant programs for the construction of health facilities, teaching facilities, and nurse training facilities; (6) develops and implements policies and programs, and disseminates information on programs designed to achieve more efficient use of energy resources in health facilities and the development and utilization of less costly and/or more reliable energy sources for such facilities; (7) develops regulations, policies, and procedures to insure that the Federal Government takes appropriate recovery action as prescribed by Titles VI, VII, VIII, and XVI of the PHS Act; (8) develops, promotes, and directs efforts to improve the management, operational effectiveness, and efficiency of health facilities; (9) coordinates its programs and maintains liaison with other HRSA and PHS components, the Department, and other Federal departments and agencies concerned with health facilities' matters; and (10) maintains liaison and coordinates with non-Federal public and private entities as necessary for the accomplishment of its mission and objectives.

All delegations and redelegations of authorities to officers and employees of the Health Resources and Services Administration which were in effect immediately prior to the effective date of this reorganization will be continued in effect in them or their successors, pending further redelegation, provided they are consistent with this reorganization.

This reorganization is effective upon date of signature.

Date: November 2, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87-26263 Filed 11-12-87; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-08-4121-13]

Availability of Mudlogs and Geophysical Logs; Campbell County, WY

ACTION: Public Notice of Availability of 13 Mudlogs and 14 Geophysical Logs from the Rawhide Village—Horizon Subdivision, Campbell County, Wyoming.

SUMMARY: Notice is hereby given that 13 mudlogs and 14 geophysical logs from 15 coal test holes located in the Rawhide Village—Horizon Subdivision, Campbell County, Wyoming are now available to the public.

The test holes, located in Township 51 North, Range 72 West, Section 20 were designed to provide additional information on the methane gas concentration within the Rawhide Village—Horizon Subdivision.

ADDRESS: Reproductions of the geophysical logs and mudlogs are available at cost. Contact: William H. Lee, Chief, Branch of Mining Law and Solid Minerals, Division of Mineral Resources, Bureau of Land Management, P.O. Box 1828, Cheyenne, Wyoming 82003. Telephone (307) 772-2567.

Marlyn V. Jones,

Associate State Director.

[FR Doc. 87-26200 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-22-M

[NV-930-07-4332-09; FES-87-59]

Availability of Final Environmental Impact Statement for Elko Resource Area Wilderness

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement (EIS) on the Wilderness Recommendations for the Elko Resource Area, Elko District, Nevada.

SUMMARY: This EIS assesses the environmental consequences of managing four wilderness study areas (WSAs) as wilderness or nonwilderness. The alternatives analyzed included: (1) A No Wilderness/No Action alternative for each WSA, (2) an All Wilderness alternative for each WSA, and (3) a Partial Wilderness alternative for one of the WSAs.

The name of the WSAs analyzed in the EIS, their total acreage, and the proposed action for each are as follows:

WSA	Acres suitable	Acres nonsuitable
Rough Hills WSA	6,685	0
Little Humboldt River WSA	29,775	12,438
Cedar Ridge WSA	0	10,009
Red Spring WSA	0	7,847
Total	36,460	30,294

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to the Congress. The final decision on wilderness designation rests with Congress. In any case, no final decision on these proposals will be made by the Secretary during the 90 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10B(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Manager, Elko Resource Area, P.O. Box 831, Elko, Nevada 89801, or call (702) 738-4071. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Street, NW, Washington, DC 20240
Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520
Bureau of Land Management, Elko District, 3900 E. Idaho St., Elko, NV 89801

FOR FURTHER INFORMATION CONTACT: Steve Ashworth, EIS Team Leader, P.O. Box 831, Elko District, Elko, Nevada 89801.

Dated: November 6, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87-26112 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-07-4332-09; FES-87-51]

Availability of Final Environmental Impact Statement for Shoshone-Eureka Resource Area Wilderness

AGENCY: Department of the Interior, Bureau of Land Management, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement (EIS) on the Wilderness Recommendations for the Shoshone-Eureka Resource Area, Battle Mountain District, Nevada.

SUMMARY: This EIS assesses the environmental consequences of managing three wilderness study areas (WSAs) as wilderness or nonwilderness. The alternatives analyzed included: (1) A No Wilderness/No Action alternative for each WSA, (2) an All Wilderness alternative for each WSA, and (3) a Partial Wilderness alternative for one of the WSAs.

The name of the WSAs analyzed in the EIS, their total acreage, and the proposed action for each are as follows:

WSA	Acres suitable	Acres nonsuitable
Antelope Range WSA	82,600	4,800
Roberts Mountain WSA	15,090	0
Simpson Park WSA	0	49,670
Total	98,190	54,470

Note.—Includes 500 acres added to the original WSA.

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to the Congress. The final decision on wilderness designation rests with Congress. In any case, no final decision on these proposals will be made by the Secretary during the 90 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10B(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Manager, Shoshone-Eureka Resource Area, P.O. Box 1420, Battle Mountain, Nevada 89820. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Street, NW., Washington, DC 20240
Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520
Bureau of Land Management, Battle Mountain, N. 2nd and Scott, P.O. Box 1420, Battle Mountain, NV 89820

FOR FURTHER INFORMATION CONTACT: Terry Plummer, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820.

Dated: October 20, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87-26113 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-07-4332-09; FES 87-58]

Availability of Final Environmental Impact Statement for Walker Resource Area Wilderness

AGENCY: Department of the Interior, Bureau of Land Management, Interior.

ACTION: Notice of Availability of Final Environmental Impact Statement (EIS) on the Wilderness Recommendations for the Walker Resource Area, Carson City District, Nevada.

SUMMARY: This EIS assesses the environmental consequences of managing the Gabbs Valley Range Wilderness Study Area (WSA) and the Burbank Canyons WSA as wilderness or nonwilderness. The alternatives analyzed included: (1) A No Wilderness/No Action alternative for each WSA, (2) an All Wilderness alternative for each WSA, and (3) Partial Wilderness alternatives for each WSA.

The total acreage and the proposed action for each of the WSAs analyzed in the EIS are as follows:

WSA	Acres suitable	Acres nonsuitable
Gabbs Valley Range WSA	0	79,600
Burbank Canyons WSA	0	13,395
Total	0	92,995

The Bureau of Land Management wilderness proposals will ultimately be forwarded by the Secretary of the Interior to the President and from the President to the Congress. The final decision on wilderness designation rests with Congress. In any case, no final decision on these proposals can be made by the Secretary during the 30 days following the filing of this EIS. This complies with the Council on Environmental Quality Regulations, 40 CFR 1506.10B(2).

SUPPLEMENTARY INFORMATION: A limited number of individual copies of the EIS may be obtained from the Area Manager, BLM Walker Resource Area, 1535 Hot Springs Road, Suite 300, Carson City, Nevada, 89706, or call (702) 885-6134. Copies are also available for inspection at the following locations:

Department of the Interior, Bureau of Land Management, 18th and C Streets, NW., Washington, DC 20240
Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, NV 89520
Bureau of Land Management, Carson City District, 1535 Hot Springs Road, Suite 300, Carson City, NV 89706

FOR FURTHER INFORMATION CONTACT: Stephen Weiss, EIS Team Leader, at BLM Walker Resource Area, 1535 Hot Springs Road, Suite 300, Carson City, NV 89706, (702) 885-6134.

Dated: November 6, 1987.

Bruce Blanchard,

Director, Office of Environmental Project Review.

[FR Doc. 87-26114 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-HC-M

[CO-070-07-4322-10-2410]

Grand Junction District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of Grand Junction District Grazing Advisory Board.

SUMMARY: Notice is hereby given that a meeting of the Grand Junction District Grazing Advisory Board will be held on Thursday, December 10, 1987. The meeting will convene in the third floor conference room at the Bureau of Land Management Office, 764 Horizon Drive, Grand Junction, Colorado, at 9:00 a.m.

SUPPLEMENTARY IFORMATION: The agenda for the meeting will include: (1) Introductions; (2) minutes of the previous meeting; (3) re-allocation of the former Eagle Ranch preference; (4)

report on the East Desert Well, Fessler Fence, 16 Road Fence and Lookout Mountain Pipeline; (5) use of convict labor on range improvement work; (6) Fish Park Pipeline Agreement; (7) status of current project work; (8) new advisory board project proposals; (9) public presentations; and (10) arrangements for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 3:00 and 3:30 p.m. or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506 by December 8, 1987. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Minutes of the Board meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) after thirty (30) days following the meeting.

Further information on the meeting may be obtained at the above address or by calling (303) 243-6552.

Robert W. Klein,

Acting District Manager, Grand Junction District.

[FR Doc. 87-26310 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-JB-M

[WY-920-08-4111-15; W-98847]

Proposed Reinstatement of Terminated Oil and Gas Lease; Carbon County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease W-98847 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessees have agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessees have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-98847 effective March 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-26180 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-22-M

[WY-920-08-4111-15; W-87504]

Proposed Reinstatement of Terminated Oil and Gas Lease; Weston County, WY

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease W-87504 for lands in Weston County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W-87504 effective July 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87-26181 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-22-M

[ES-030-08-4212-14; ES-00157-003]

Realty Action; Sale of Public Land in Ottertail County, MN; Modified; Competitive Sale ES-33894

AGENCY: Bureau of Land Management, Interior.

ACTION: Sale of Public Land in Ottertail County, Minnesota—Modified—Competitive Sale ES 33894.

SUMMARY: The following public land has been examined and determined to be suitable for sale under section 203(a)(1) of the Federal Land Policy and Management Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at no less than the appraised fair market value shown below. The sale also includes conveyance of the mineral estate under the authority of section 209(b)(1)(1) of FLPMA.

Fifth Principal Meridian, Minnesota

T. 134N., R.42E., Section 10, Lot 7

Containing 4.3 acres.

Appraised Fair Market Value: $2,800.

Date of sale: February 10, 1988 at 3:00 p.m.

Place of sale: Milwaukee District Office, Bureau of Land Management, P.O. Box 0631, Milwaukee, Wisconsin 53203-0631.

Minimum bid and requirements: The minimum bid is the appraised fair market value of $2,800. Potential purchasers are required to submit 20 percent of their bid as down payment. *An additional $50.00* nonrefundable filing fee for the mineral estate *Must* accompany the bid deposit. The bid and deposit must be enclosed in a sealed envelope clearly marked "Public Sale ES-33894" on the left hand side of the envelope. The successful high bidder will be allowed 180 days to submit the remainder of the bid price. If the remainder of the bid price has not been received from the successful bidder within the specified time period, the bid deposit will be forfeited. If for any reason the land remains unsold after the specified sale date, the land will remain available for sale over the counter until sold.

Example: If your bid is $2,800 you must submit 20 percent ($560.00) plus $50.00 for a total of $610.00. If your bid is $3,000 you must submit 20 percent ($600.00) plus $50.00 for a total of $650.00.

Bidder qualifications: Purchasers must be a citizens of the United States 18 years of age or over; a corporation; State; State instrumentality or political subdivision; or other legal entity, subject to the laws of any State or the United States.

There are no known mineral values in the land, therefore, the mineral estate is also being transferred. The lands are being offered for sale subject to a preference consideration to allow Mr. Norman Long and Mr. William Winstanely, adjacent landowners, to meet the high bid. The sale will be conducted by modified competitive bidding procedures (sealed bid envelope). An apparent high bidder will be declared. The apparent high bidder and the designated bidders (Mr. Long and Mr. Winstanely) will be notified.

Publication of this notice will segregate the land from all appropriation, including the mining laws, for 270 days, or until issuance of patent, whichever occurs first. For a period of 45 days from the date of this

notice, interested parties may submit comments to the District Manager, Milwaukee, Wisconsin.

FOR FURTHER INFORMATION: Detailed information concerning this sale is available at the Milwaukee District Office, Bureau of Land Management, 310 West Wisconsin Avenue, Suite 225, Milwaukee, Wisconsin 53203; or by calling Larry Johnson at (414) 291–4413.

Bert Rodgers,

District Manager.

[FR Doc. 87–26182 Filed 11–12–87; 8:45 am]

BILLING CODE 4310–GJ–M

[WY–040–07–4212–14; W87192]

Availability Amendment to Big Sandy Management Framework Plan (MFP)/ Notice of Realty Action, Sale of Public Lands, Sweetwater County; Correction

In **Federal Register** Document 87–24043 appearing on pages 38532–38533, October 16, 1987, this legal description of the public lands in Section 26, T.21 N., R.101 W., is corrected to read the W½NE¼.

FOR FURTHER INFORMATION CONTACT: Sally Haverly, Realty Specialist, 307–362–6422.

Donald H. Sweep,

District Manager.

November 3, 1987.

[FR Doc. 87–26179 Filed 11–12–87; 8:45 am]

BILLING CODE 4310–22–M

[WY–040–08–4212–14; W–87621]

Realty Action; Sale of Public Lands in Sweetwater County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability amendment to the Big Sandy Management Framework Plan (MFP)/ Notice of realty action, sale of public lands, Sweetwater County.

SUMMARY: The BLM has amended the Big Sandy MFP to allow for the direct sale of the following public lands to Pacificorp and the Idaho Power Company for use as a fly ash disposal site:

Sixth Principal Meridian, Wyoming

T. 21 N., R. 101 W.,
Sec. 24: S½SW¼.

Containing 80 acres, more or less.

The lands have been examined through the land use planning process and are suitable for sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713.

Publication of this notice in the **Federal Register** segregates the public lands from the operation of the mining laws. The segregative effect will end upon issuance of the patent or 270 days from the date of this publication, whichever occurs first.

DATES: Planning Protest—For a period of 45 days from the date this notice is published in the **Federal Register**, any party that participated in the plan amendment and is adversely affected by the amendment may protest this action in accordance with 43 CFR 1610.5–2, only as it affects issues submitted for the record during the planning process.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the land sale to the District Manager, Rock Springs District, Bureau of Land Management, P.O. Box 1869, Rock Springs, Wyoming 82902.

Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objection, this realty action will become final.

FOR FURTHER INFORMATION CONTACT: Duane Feick (Realty Specialist), (307) 362–6422.

SUPPLEMENTARY INFORMATION: Conveyance of the mineral interest, except oil and gas, will occur simultaneously with the sale of the lands.

The patent, when issued, will be subject to existing valid rights and will contain reservations to the United States for oil and gas, ditches, and canals. The 2-year notice prior to cancellation of a portion of the grazing permit has been waived by the grazing permittee.

The planning document and environmental assessment/land report covering the proposed sale are available for review at the Bureau of Land Management, Green River Resource Area Office.

Hillary A. Oden,

State Director, Wyoming.

November 2, 1987.

[FR Doc. 87–26178 Filed 11–12–87; 8:45 am]

BILLING CODE 4310–22–M

[WY–060–08–4212–14; W–88741]

Land Sale Appraisal Update for Lands in Goshen County, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Land Sale Appraisal update for lands in Goshen County, Wyoming.

SUMMARY: The Bureau of Land Management (BLM) has determined that the land described below is suitable for public sale and will accept bids on these lands. Section 203 of the Federal Land Policy and Managememt Act (FLPMA) of 1976 (90 Stat. 2750; 43 U.S.C. 1713) requires the BLM to receive fair market value for the land sold and any bid for less than fair market value will be rejected. The BLM may accept or reject any and all offers, or withdraw any land interest on the land for sale if the sale would not be consistent with FLPMA or other application laws.

This parcel is continuing to be reoffered for sale under competitive procedures as per **Federal Register** notice which appeared as follows:

51 *FR* 27090—27091 (July 29, 1986)

The planning document, environmental assessment/land report, and memoranda and letters of Federal, state, and local contacts concerning the sale are available for review for Goshen County at the BLM, Platte River Resource Area Office. All bids and requests for this parcel should be sent to BLM, Platte River Resource Area Office, P.O. Box 2420, Mills, WY 82644, street address at 815 Connie, Mills, WY (phone: (307) 261–5008).

Goshen County:

Serial No.	Legal description	Acreage	Appraised value
W–88741	T. 23 N., R. 62 W., 6th P.M., Section 4: Lot 3, SE¼NW¼, NE¼SW¼, NW¼SE¼.	161.11	$9,375.00

Date: November 6, 1987.

Leslie A. Olver.

Acting District Manager.

[FR Doc. 87–26274 Filed 11–12–87; 8:45 am]

BILLING CODE 4310–22–M

[UT–060–08–4410–12]

Final Decision on Plan Amendment; Grand Resource Area, Utah

November 3, 1987.

AGENCY: Bureau of Land Management, Moab, Utah, Interior.

ACTION: Final decision on plan amendment for Grand Resource Area Resource Management Plan.

SUMMARY: Notice is given to the public that the Bureau of Land Management has made a final decision to amend the Grand Resource Area Resource Management Plan. The plan amendment changes the management actions found

at page 20 by the addition of the following statement: "Allow changes in kind of livestock on those allotments which would be suitable for either or both kinds of livestock (sheep or cattle) or where resources would benefit by changing to a kind of livestock not currently authorized."

DATES: Protests on the plan amendment may be filed on or before December 14, 1987. This decision will become effective at that time, provided protests are not received.

ADDRESSES: Protests on the plan amendment shall be sent to Director, Bureau of Land Management, 18th and C Street NW., Washington, DC 20240. The environmental assessment prepared for the plan amendment is available at the Grand Resource Area, P.O. Box M, Moab, Utah 84532.

FOR FURTHER INFORMATION CONTACT: Colin P. Christensen, Grand Resource Area, (801) 259-8193.

Gene Nodine,

District Manager.

[FR Doc. 87-26183 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-DQ-M

[CA-940-07-4520-12; C-15-87]

Filing of Plat of Survey; California

November 5, 1987.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Plumas County

T. 27 N., R. 11 E.

2. This supplemental plat of the NW¼ of Section 2, Township 27 North, Range 11 East, Mount Diablo Meridian, California, was accepted October 16, 1987.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Plumas National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87-26184 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4520-12; C-13-87]

Filing of Plat of Survey; California

November 5, 1987.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Sierra County

T. 21 N., R. 14 E.

2. This supplemental plat of the NE¼ of Section 29, Township 21 North, Range 14 East, Mount Diablo Meridian, California, was accepted October 16, 1987.

3. This supplemental plat will immediately beccme the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to "met certain administrative needs of the Tahoe National Forest.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87-26185 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-07-4520-12; C-12-87]

Filing of Plat of Survey; California

November 5, 1987.

1. This supplemental plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

San Bernardino Meridian, San Diego County

T. 18 S., R. 5 E.

2. This supplemental plat of Section 23, Township 18 South, Range 5 East, San Bernardino Meridian, California, was accepted September 29, 1987.

3. This supplemental plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This supplemental plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Herman J. Lyttge,

Chief, Public Information Section.

[FR Doc. 87-26186 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-40-M

[CO-942-08-4520-12]

Filing of Plats of Survey; Colorado

November 4, 1987.

The official filing of the following described plats is hereby changed to January 25, 1988. They were originally to be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 A.M., November 23, 1987.

The plat representing the dependent resurvey of a portion of the east boundary and the survey of islands designated as Tracts 37, 38, and 39, T. 6 S., R. 95 W., Sixth Principal Meridian, Colorado, Group No. 719, was accepted September 21, 1987.

The plat representing the dependent resurvey of a portion of the east, west, and north boundaries and the subdivisional lines, and the survey of the subdivision of certain sections and of an island designated as Tract 37, T. 7 S., R. 95 W., Sixth Principal Meridian, Colorado, Group No. 719, was accepted September 21, 1987.

The plat representing the dependent resurvey of portions of the Twelfth Guide Meridian West (west boundary) and the subdivisional lines and the survey of islands designated as Tracts 37, 38, 39, 40, and 41, T. 8 S., R. 96 W., Sixth Principal Meridian, Colorado, Group No. 719, was accepted September 21, 1987.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado.

[FR Doc. 87-26187 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-JB-M

[MT-930-08-4220-10; M-589, M-1793, M-21217, M-23776, and M-29847]

Termination of Proposed Withdrawal and Reservation of Lands; Opening Order; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the segregation from mineral location effected by notation of the public land records for five withdrawal applications filed by the Departments of Commerce and Transportation on behalf of the Montana Department of Highways

involving highway construction. The withdrawal applications have been relinquished. Roughly 26.13 acres of public land and 1347.71 acres of forest land in the Deer Lodge National Forest are being restored to mineral location.

EFFECTIVE DATE: December 14, 1987.

FOR FURTHER INFORMATION CONTACT: Edward H. Croteau, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–657–6082.

SUPPLEMENTARY INFORMATION: 1. Notice of the Department of Commerce's application M 589 for withdrawal from mineral location and entry, and reservation for highway construction of the land described in paragraph 3 was published in 32 FR 621–622, January 19, 1967.

2. Notice of the Department of Transportation's applications M 1793, M 21217, M 23776, and M 29847 for withdrawal and reservation of lands as specified in paragraph 1 were published respectively in 32 FR 7921, June 1, 1967; 37 FR 9501, May 11, 1972; 38 FR 986, January 5, 1973; and 39 FR 26760, July 23, 1974.

3. The applications have been canceled in their entirety as the result of a relinquishment filed on October 20, 1987. The lands affected are described as follows:

Principal Meridian

M 589

T. 6 N., R. 5 W.,
Sec. 17, lot 18 and the unpatented portion of the NE¼SE¼.

Deer Lodge National Forest

T. 6 N., R. 6 W.,
Sec. 13, lot 10;
Sec. 14, lot 10;
Sec. 22, lot 5;
Sec. 24, lots 1 and 7 and that portion of lot 2 not embraced in MS 4399;
Sec. 27, NW¼NE¼SE¼NW¼, W½SE¼NW¼, W½NE¼SW¼, and W½NW¼SE¼SW¼.

The areas described aggregate 230.23 acres.

M 1793

T. 2 S., R. 9 W.,
Sec. 10, W½E½NE¼.

Deer Lodge National Forest

T. 5 N., R. 6 W.,
Sec. 3, lots 4, 7, 8 SW¼NW¼;
Sec. 10, E½SW¼;
Sec. 15, lots 2 and 3, NW¼NW¼ and SE¼SW¼;
Sec. 21, lot 4, NE¼NE¼, W½NE¼, N½SE¼NE¼, SW¼SE¼NE¼, and NE¼SW¼;
Sec. 22, NW¼NW¼.

The areas described aggregate 673.47 acres.

M 21217

Deer Lodge National Forest

T. 6 N., R. 5 W.,
Sec. 18, lots 28 and 30.

T. 5 N., R. 6 W.,
Sec. 10, W½SW¼;
Sec. 15, lots 1 and 4, and SW¼SW¼;
Sec. 21, NW¼SE¼ and NW¼NE¼SE¼.

T. 6 N., R. 6 W.,
Sec. 22, SW¼SW¼;
Sec. 24, lot 3;
Sec. 34, lots 2, 3, and 6.

The areas described aggregate 404.23 acres.

M 23776

Deer Lodge National Forest

T. 6 N., R. 6 W.,
Sec. 13, lots 5, 6, 7, 13, 14, & 15.
The area described contains 54.34 acres.

M 29847

Deer Lodge National Forest

T. 6 N., R. 6 W.
Sec. 24, lot 2.
The area described contains 39.54 acres.
The lands are located in Jefferson and Silver Bow Counties.

At 9 a.m. on December 14, 1987, the lands will be opened to location and entry under the United States mining laws. Appropriation of any of the lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

November 3, 1987.

[FR Doc. 87–26188 Filed 11–12–87; 8:45 am]

BILLING CODE 4310–DN–M

[NV–943–08–4220–11; N–6029, Nev–051786]

Proposed Continuation and Modification of Withdrawals; Nevada

November 4, 1987.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) proposes that 178.26 acres of land withdrawn for two air navigation sites continue for an additional 20 years. The lands will remain closed to location and entry under the mining laws. The lands have been and will remain open to leasing under the mineral leasing laws.

DATE: Comments should be received by December 14, 1987.

ADDRESS: Comments should be sent to the Nevada State Director, BLM, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, 702–784–5481.

SUPPLEMENTARY INFORMATION: The FAA proposes that the existing land withdrawals made by Public Land Orders 3456, 4239, and 5244 dated October 7, 1964, July 6, 1967, and August 10, 1972, respectively, be continued for a period of 20 years pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714. The lands are described as follows:

Mount Diablo Meridian

T. 41 N., R. 35 E.
Sec. 22, S½SW¼SE¼SW¼, SW¼SE¼SE¼SW¼;
Sec. 27, W½NW¼NW¼NE¼, SW¼NW¼NE¼, N¼NW¼SW¼NE¼, SW¼NW¼SW¼NE¼, NW¼SW¼SW¼NE¼, NE¼NW¼, E½NE¼NW¼NW¼, SW¼NE¼NW¼NW¼, SE¼NW¼NW¼, NE¼SW¼NW¼, NE¼SE¼SW¼NW¼, N½,SE¼,NW¼, N½S½SE¼NW¼, SE¼SW¼SE¼NW¼, SW¼SE¼SE¼NW¼.

T. 4 N., R. 68 E.
Sec. 6, lot 1.

The areas described aggregate 178.26 acres in Humboldt and Lincoln Counties.

The function of the sites is to maintain air to ground communications to provide navigational assistance for civil aviation, commercial airlines, and military aircraft. The purpose of the withdrawals is to provide the minimum essential acreage required to protect the construction, operation, and maintenance of these air navigation sites from electronic or physical interference for flight safety purposes.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the continuation of the proposed withdrawals may present their views in writing to the Nevada State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and if so, for how long. The final determination on the continuation of the withdrawals

will be published in the **Federal Register.** The existing withdrawals will continue until such final determination is made.

Daniel C. B. Rathbun,

Acting State Director, Nevada.

[FR Doc. 87-26311 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-HC-M

[OR-943-08-4220-11; GP-08-023; OR-20586]

Proposed Continuation of Withdrawal; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service proposes that a withdrawal continue for an additional 20 years and requests that the land involved remain closed to mining and be opened to surface entry.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM, Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the withdrawal made by the Secretarial Order of October 26, 1906 continue for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 1714.The land involved is located within sec. 31, T. 21 S., R. 1 E., W.M.

The area described contains 104.46 acres in Lane County.

The purpose of the withdrawal is to protect the Layng Creek Work Center/ Rujada Sites. The withdrawal currently segrates the land from operation of the public land laws generally, including the mining laws. The Forest Service requests no changes in the purpose or segregative effect of the withdrawal except that the land be opened to operation of the public land laws generally.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuation may present their views in writing to the undersigned officer at the address specified above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President and Congress, who will determine whether or not the withdrawal will be continued and if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

B. Lavelle Black,

Chief, Branch of Lands and Minerals Operations.

Dated: November 4, 1987.

[FR Doc. 87-26189 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Alaska OCS Region; Availability of Outer Continential Shelf Official Protraction Diagrams

1. Notice is hereby given that, effective with this publication, the following Official Protection Diagram, last approved or revised on the dates indicated, are on file and available at the Minerals Management Service, Alaska OCS Region, Anchorage, Alaska. In accordance with Title 30, Code of Federal Regulations, these Protraction Diagrams are the basic record for the descriptions of mineral and oil and gas lease sales in the geographic area they represent.

OUTER CONTINENTAL SHELF PROTRACTION DIAGRAMS

Description	Revision/ approval date
NM 1-3 Kanaga Basin	June 4, 1981.
NM 2-3	June 4 1981.
NM 58-2	Feb. 25, 1981.
NM 58-4	Feb. 25, 1981.
NM 59-1	Feb. 25, 1981.
NM 59-3	July 14, 1981.
NM 60-3	July 14, 1981.
NN 3-4 False Pass (revised)	June 4, 1985.
NN 3-6 Unimak Seamount (revised)	Sept. 17, 1985.
NN 3-8 Aleutian Trench (revised)	Sept. 17, 1985.
NN 5-5	Jan. 12, 1983.
NN 7-6	Jan 12, 1983.
NN 59-2	Feb. 25, 1981.
NN 59-3	Feb. 25, 1981.
NN 59-4 (revised)	Feb. 25, 1981.
NN 59-5	Feb. 25, 1981.
NN 59-7	Feb. 25, 1981.
NN 60-1 (revised)	April 14, 1981.
NO 1-1 Pervenets Canyon (revised)	Sept. 17, 1985.
NO 1-2 Pervenets Canyon East (revised)	Sept 17, 1985.
NO 1-3 St Matthew Canyon (revised)	Sept 17, 1985.
NO 1-5 (revised)	Sept. 17, 1985.
NO 2-8 St. George Island (revised)	Sept. 10, 1984.
NO 3-8 Bristol Bay (revised)	Sept. 17, 1985.
NO 6-2 Middleton Island (revised)	Sept. 17, 1985.
NO 6-3 Portlock Bank (revised)	Sept. 17, 1985.
NO 59-8	Feb. 25, 1981.
NO 60-2	Feb. 25, 1981.
NO 60-3	Feb. 25, 1981.
NO 60-4	Feb. 25, 1981.
NO 60-5	Feb. 25, 1981.
NO 60-7	Feb. 25, 1981.
NP 1-2 (revised)	Feb. 25, 1981.
NP 2-1 Gambell	Feb. 25, 1981.
NP 3-3 Black (revised)	Sept. 17, 1985.
NP 60-8	Feb. 25, 1981.
NQ 2-2 Cape Seppings West (revised)	Sept. 14, 1987.
NQ 2-4 Bering Strait (revised)	Sept. 14, 1987.
NQ 2-6 Little Diomede Island (revised)	Feb. 25, 1981.
NQ 2-7 NQ 2-8 Ukivok (revised)	Feb. 25, 1981.
NR 2-6 Chukchi Sea (revised)	Sept. 14, 1987.

OUTER CONTINENTAL SHELF PROTRACTION DIAGRAMS—Continued

Description	Revision/ approval date
NR 2-8 Point Hope West (revised)	Sept. 14, 1987.
NR 3-3 (revised)	Dec. 16, 1985.
NR 3-4 Solivik Island (revised)	Dec. 16, 1985.
NR 3-5 Point Lay West (revised)	Sept. 14, 1987.
NR 3-6 Point Lay (revised)	Dec. 16, 1985.
NR 3-7 Point Hope (revised)	Dec. 16, 1985.
NR 3-8 DeLong Mountains (revised)	Dec. 16, 1985.
NR 4-1 Hanna Shoal (revised)	Sept. 14, 1987.
NR 4-3 Wainwright (revised)	Dec. 16, 1985.
NR 4-4 Meade River (revised)	Dec. 16,1987.
NS 2-8	Feb. 25, 1981.
NS 3-7	July 14, 1981.
NS 3-8	Jan. 21, 1981.
NS 4-8	Jan. 21, 1981.
NS 5-7 Barrow Canyon (revised)	Sept. 14, 1987.
NS 5-8	Jan. 21, 1981.
NS 7-7 Beaufort Terrace	Mar. 17, 1983.
NS 7-8 (revised)	Aug. 12, 1987.
Index Diagram	Oct. 1987.

2. Copies of these diagrams may be purchased for $2.00 each from the Records Manager, Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Suite 110, Anchorage, Alaska 99508-4302. Checks or money orders should be made payable to the Department of the Interior—Minerals Management Service.

Irven F. Palmer, Jr.,

Acting Regional Director.

[FR Doc. 87-26191 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-MR-M

Development Operations Coordination Document; Union Pacific Resources Co.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Union Pacific Resources Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 8170, Block A-183, High Island Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Galveston, Texas.

DATE: The subject DOCD was deemed submitted on November 6, 1987.

ADDRESS: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Ms. Angie D. Gobert; Minerals

Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2876.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public pursuant to sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: November 6, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-26190 Filed 11-12-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: The Alling & Cory Company, 25 Verona Street, Rochester, New York 14608.

2. Wholly-owned subsidiary which will participate in the operations, and State of incorporation: The Alcor Envelope Company, 160 Elmview Avenue, Hamburg, New York 14075. Incorporated in State of New York.

B. 1. *Parent Corporation and Address of Principal Office:* Great Lakes Brick & Stone Ltd., 602 Grand Avenue, Chatham, Ontario, Canada N7L 3Z3.

2. *Wholly-Owned Subsidiaries Which Will Participate in the Operations, and State of Incorporation:* Mid Lakes Transport, Inc., 602 Grand Avenue, Chatham, Ontario, Canada N7L 3Z3. Incorporated: Ontario, Canada.

Noreta R. McGee,

Secretary.

[FR Doc. 87-26252 Filed 11-12-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-18 (Sub-No. 103X)]

Chesapeake and Ohio Railway Co.; Exemption; Abandonment Between Butler and Fredericktown, in Richland and Knox Counties, OH

AGENCY:

Interstate Commerce Commission.

ACTION:

Notice of exemption.

SUMMARY:

The Interstate Commerce Commission exempts The Chesapeake and Ohio Railway Company from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon a 10.93-mile line of railroad in Richland and Knox Counties, OH, subject to conditions for labor protection and historic preservation.

DATES:

This exemption will be effective on December 13, 1987. Petitions to stay must be filed by November 30, 1987, and petitions for reconsideration must be filed by December 8, 1987.

ADDRESSES:

Send pleadings referring to Docket No. AB-18 (Sub-No. 103X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Patricia Vail, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT:

Joseph H. Dettmar, (202) 275-7245, [TTD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357 (DC Metropolitan area), (assistance for the hearing impaired is available through TDD services (202) 275-1721 or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters).

Decided: November 5, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley concurred in the result.

Noreta R. McGee,

Secretary.

[FR Doc. 87-26253 Filed 11-12-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-26 (Sub-No. 38)]

Tennessee, Alabama and Georgia Railway Co.; Abandonment; Between Gadsden and Ewing, in Etowah and Cherokee Counties, AL; Findings

The Commission has found that the public convenience and necessity permit Tennessee, Alabama and Georgia Railway Company to abandon its 18.3-mile line of railroad and 1.31 miles of yard and other track between Gadsden (milepost TA-90.3) and Ewing, AL (milepost TA-72.0) in Etowah and Cherokee Counties, AL.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: November 6, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons. Vice Chairman Lamboley and Commissioner Simmons dissented and will submit separate expressions at a later date.

Noreta R. McGee,

Secretary.

[FR Doc. 87-26312 Filed 11-12-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; Procter & Gamble Manufacturing Co.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *The Procter & Gamble Manufacturing Company* has been lodged with the United States District Court for the Eastern District of New York. The consent decree addresses alleged violations by Procter & Gamble of the particulate emission limit applicable to its Port Ivory Division

plant on Staten Island, New York under the New Source Performance Standards promulgated under the Clean Air Act.

The proposed Consent Decree requires Procter & Gamble to comply with the particulate emission limit applicable to its Port Ivory Division plant. It also requires Procter & Gamble to pay a civil penalty of $22,000.

The Department of Justice will receive for a period of thrity (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v *The Procter & Gamble Manufacturing Company* D.J. Ref. 90–5–2–1–974.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York 11201, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278. Copies of the consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Ave. NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to the referenced case name and D.J. Ref. number.

Roger J. Marzulia,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 87–26192 Filed 11–12–87; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Proposed Program Letter on Noncharging

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed Unemployment Insurance Program Letter.

SUMMARY: The Employment and Training Administration gives notice that it proposes to issue an Unemployment Insurance Program Letter addressed to all State Employment Security Agencies which administer experience rating plans pursuant to State unemployment compensation laws approved under the Federal Unemployment Tax Act (FUTA).

The Program Letter proposed in this document will establish the Department of Labor's interpretation governing noncharging in State experience rating plans approved under FUTA. The Program Letter sets forth the principles which will guide the Department in approving and disapproving specific State noncharging provisions or proposals. For States which need to amend their laws, the Program Letter provides adequate time for enacting conforming legislation and achieving compliance in the administration of State laws with the interpretation in the proposed Program Letter.

DATES: Written comments on the proposed Unemployment Insurance Program Letter must be received by close of business on January 12, 1988.

ADDRESS: Written comments should be addressed to Carolyn M. Golding, Director, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room S–4231, 200 Constitution Avenue, NW., Washington, DC, 20210.

FOR FURTHER INFORMATION CONTACT: Carolyn M. Golding, Director, Unemployment Insurance Service. Tel: (202) 535–0600 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Federal-State Unemployment Compensation Program is a cooperative program which provides unemployment insurance (UI) protection to workers nationwide. The program operates pursuant to State unemployment compensation laws approved under the Federal Unemployment Tax Act (FUTA), 26 U.S.C. 3301–3311. The Federal law levies an annual payroll tax of 6.0 percent on subject employers (6.2 percent in 1987) and establishes conditions for credits of up to 5.4 percent against the tax assessed. Sections 3301–3302, FUTA.

Tax Credits

Employers are allowed a credit of up to 5.4 percent of the FUTA tax for unemployment taxes they pay into State unemployment funds. For employers to receive this credit, the State law must be approved under section 3304(a), FUTA. An additional credit is allowed, up to the full credit of 5.4 percent, for employers who pay contributions at reduced rates (typically less than 5.4 percent) based on their experience. For employers to receive the additional credit, the reduced rates must be calculated under a State experience rating system which meets the requirements of section 3303(a)(1).

Experience Rating

Experience rating has three primary purposes. The first is to ensure the fair allocation of the costs of unemployment benefits among employers in the system. Under an approved experience rating system, employers who experience greater unemployment among their workers will generally be assigned higher contribution rates, thereby contributing more to the system. The second purpose of experience rating is to promote employment stability by giving employers an incentive to reduce worker turnover. Insofar as employers can control their business operations, they can reduce layoffs and lower their contribution rates. A third important purpose of experience rating is to encourage employers to participate in the benefit payment and appeals process, thus helping to ensure benefits are paid only to claimants entitled to receive them.

Section 3303(a)(1), FUTA, requires that reduced contribution rates be based exclusively on each employer's

> . . . experience with respect to unemployment or other factors bearing a direct relation to unemployment risk.

This experience rating requirement forms the basis of the position set forth in the proposed Program Letter.

No current State experience rating system directly measures "experience with respect to unemployment." Instead, all States utilize "other factors" approved under section 3303(a)(1), FUTA. The two "factors" approved under most State experience rating systems are unemployment benefits paid and benefit wages. (Benefit wages are the wage credits on which benefits payable are based.) Using factors such as benefits paid and benefits wages requires that an experience rating account be established for each employer in the State system. The employer's account is then charged with the benefits or benefit wages attributable to the employer under the State law.

Over the years, different charging methods have been approved under section 3303(a)(1), FUTA. These charging methods must meet the long established principle which requires that all benefits and all employers be charged by the same method over the same time period. This is consistent with the basic principle of experience rating which requires the experience of all employers to be measured by the

same factor (or combination of factors) over the same time period.

The purpose of these principles is to assure that employers with similar experience pay similar rates. To accomplish this objective, each employer's experience must be measured in relation to all other employers' experience so that each employer's contribution rate truly reflects his experience under the State system. Consequently, the more charges to an employer's account, the higher the employer's contribution rate. If the employer has a stable work force and fewer charges to his account, his contribution rate will be lower. Under these systems, the method used to charge either benefits or benefit wages can significantly affect both the allocation of costs among employers and individual employer contribution rates.

Although the emphasis in the foregoing discussion has been on benefits and benefit wages, the principles discussed above apply uniformly to all other factors approved under section 3303(a)(1), FUTA. Similarly, the discussion on noncharging which follows applies in principle to all approved factors, although emphasis is placed on the most common factor of benefits paid.

Noncharging

Soon after the unemployment insurance program was established, the issue arose whether all benefits paid must be charged to individual employer accounts for a State to meet the experience rating requirement, or whether all that is required is a reasonable measurement of each employer's experience relative to that of other employers. This issue was settled with the issuance of Unemployment Compensation Program Letter (UCPL) No. 78, dated December 29, 1944, followed by a clarification in UCPL No. 85, dated April 16, 1945. These Program Letters established the principles that have guided the approval or disapproval of specific noncharging provisions in the years since their issuance. The principle guiding allowable noncharging was set forth in UCPL 78 as follows:

> [Section 3303(a)(1)] . . . as interpreted by the [Social Security] Board standards (Employment Security Memorandum No. 9), does not require that *all* benefits paid be charged as part of the experience of employers, provided that those which are charged assure a reasonable measurement of the experience of employers with respect to unemployment risk. The same general principle is true if separations, periods of unemployment, or benefit wages, are used for the measurement of experience. The test is one of reasonableness in the measurement of each employer's experience in relation to other employers and to the purposes of experience rating.

UCPL 78 then listed seven specific types of noncharging deemed consistent with these principles. The Social Security Board thus established the following principles regarding noncharging: the test of reasonableness in measuring experience, the relative measurement of each employer's experience, and consistency with the purposes of experience rating.

UCPL No. 78, however, did not establish an explicit test of noncharging. Consequently, over a period of time noncharging provisions have been approved under varying ideas of what constitutes a "reasonable" measurement of experience. Therefore, consistency with the purposes of experience rating has not been uniformly achieved.

Excessive or inconsistent noncharging can negatively affect a State's experience rating system. Under systems where noncharging is high, a substantial percentage of benefits is not charged to individual employer accounts. Since no single employer is liable for these charges, all employers in the system must share the cost, thereby reducing the effectiveness of experience rating. This in turn results in situations where contribution rates do not reasonably reflect an employer's actual experience compared to other employers in the system. This conflicts directly with the purposes of section 3303(a)(1).

In 1967, the Department reinstated UCPL 78. Since then, the Department has sought to develop a "reasonable basis" test of noncharging consistent with the purposes of experience rating and section 3303(a)(1). This task has been delayed and interrupted many times for a variety of reasons. Among the most important was the flood of legislation affecting the unemployment insurance program which culminated in the 1970 amendments to the Social Security Act. This was followed by the 1976 amendments and further legislation in the 1980's. Over the past two years, additional developments have culminated in the proposed Program Letter published in this document for comment.

Test of Noncharging

Preparation of the proposed Program Letter was preceded by the consideration of the following options for addressing the question of allowable noncharging:

1. Allow no noncharging under any circumstances.
2. Allow noncharging so long as experience rating is not distorted.
3. Establish a "reasonable basis" test of noncharging.

Option 1 was rejected as being too great a change.

Because noncharging has been permitted for over 40 years, such a change would be difficult to justify. Option 2 would be difficult to justify without an empirical study to support a numerical standard. In addition, it would be impractical to administer because a numerical standard could be applied only after the fact. Option 3 was selected as providing a valid basis for noncharging firmly rooted in principles of experience rating established in the earliest days of the program with the issuance of Employment Security Memorandum No. 9, which in turn formed the basis of the noncharging position in UCPL 78.

The proposed Program Letter published in this document thus sets forth a "reasonable basis" test of noncharging based on the principles enunciated in UCPL No. 78. These are:

1. Section 3303(a)(1) does not require that *all* benefits paid be charged as part of the experience of employers, provided that those which are charged assure a reasonable measurement of the experience of employers with respect to unemployment risk, and
2. The test is one of reasonableness in the measurement of each employers's experience in relation to other employers and to the purposes of experience rating.

Other principles of long standing which are relevant to these principles and to any test of noncharging are that "unemployment risk" refers to the risk of the individual worker, and that any approvable method of charging must charge all benefits and all employers by the same rule of charging over the same time period. These general principles apply whatever "factor" is used to measure experience; that is, whether the factor is benefits paid, benefit wages, separations, periods of unemployment or some other approved factor.

Accordingly, the Program Letter in this document proposes the following specific test of noncharging:

Noncharging is consistent with the requirements of section 3303(a)(1) of the Internal Revenue Code of 1954 in situations where *one* or both of the following conditions are met:

1. The worker's unemployment is the result of the worker's own action, or
2. The worker's unemployment is beyond the direct or indirect control of the employer, except under circumstances where the unemployment is due to general economic, trade, or other business reasons.

Based on the above interpretation, benefits paid due to unemployment

caused by economic or trade conditions which require an employer to reduce his workforce (e.g., seasonal layoffs or plant closures) must be charged. In addition, where State law and the circumstances of the claim require charging to more than one employer's account, each charge must be reviewed individually to determine if noncharging may be permitted.

For example, if a claimant worked for three employers in the base period and the State law provides for charging base period employers proportionately or in inverse chronological order, the separation from each employer must be reviewed to determine if the benefits attributable to the base period employer may be noncharged. Alternatively, a State may determine whether noncharging is appropriate in this situation solely on the basis of the separation from the most recent employer on the basis of which the claimant's eligibility for benefits was determined.

Under the above interpretation, the proposed Program Letter provides that noncharging of benefits to an employer's account is consistent with section 3303(a)(1) in any one or more of the following situations:

1. Benefits are paid, without any disqualification, to a worker who has left work voluntarily for good cause not attributable to the work or to the employer.

2. Benefits are paid immediately following the expiration of a period of disqualification for voluntary quit without good cause, discharge for misconduct, or refusal of suitable work without good cause.

3. Benefits are paid to a worker who left employment under conditions which would have been disqualified under State law if the employer had been the separating employer for eligibility determination purposes. This occurs in States where benefits are charged proportionately to all base period employers, or employers are charged individually in inverse chronological order.

4. Benefits paid are ultimately determined to be overpaid for any cause not attributable to employer fault or error.

5. An otherwise charageable employer continues to employ the claimant during the claim series on the same part-time basis as during the claimant's base period. For this purpose the same part-time basis means substantially the same number of hours each pay period at gross wages which equal or exceed the average gross wages per day period in the base period.

6. Benefits are paid with respect to unemployment directly due to a major disaster declared by the President pursuant to the Disaster Relief Act of 1974.

7. Benefits are paid to a claimant while attending training approved under a State unemployment compensation law, section 236 of the Trade Act of 1974, or Title III of the Job Training Partnership Act.

In addition to the sepcific instances of allowable noncharging cited above, extended benefits (EB), as defined in section 205(3) of the Federal-State Extended Unemployment Compensation Act of 1970, may be charged or noncharged as specified in regulations at 20 CFR 615.10(a). However, regular benefits (whether sharable or not) and additional compensation (as defined in section 205 (2) and (4) of the Act, respectively) may be noncharged only in the specific circumstances noted in items 1 through 7 above.

Any noncharging provisions not specifically identified as allowable in the proposed Program Letter would have to be repealed within the time limit provided. Among the most common provisions which would have to be repealed are those providing for noncharging benefits paid based on seasonal employment and benefits paid under combined wage claims. The Program Letter provides ample time for States to enact any amendments necessary for the State law to meet the requirements of section 3303(a)(1) as interpreted in the proposed letter.

The proposed Program Letter is published below. Comments on the proposed letter and proposed test of noncharging are invited from States and State employment security agencies, employers covered by the Federal Unemployment Tax Act, employers and employees covered by any State unemployment compensation law, and any other entity, organization or person with an interest in this subject matter. All comments must be received in writing within the comment period stated above in this preamble.

Dated: November 4, 1987.

Roger D. Semerad,

Assistant Secretary of Labor.

PROPOSED: Unemployment Insurance Program Letter No. ———

All State Employment Security Agencies

Donald J. Kulick,

Administrator for Regional Management.

Noncharging Allowable Under Section 3303(a)(1), FUTA.

1. *Purpose.*

a. To announce a revised Department of Labor interpretation of section 3303(a)(1) of the Federal Unemployment Tax Act (FUTA) regarding the noncharging which may be allowed under experience rating systems approved pursuant to section 3303(a)(1).

b. To provide guidance to States which must amend the noncharging provisions of State law to remain in conformity and compliance with section 3303(a)(1), and to establish a timeframe for when the interpretation in this Program Letter will affect certification of State laws under section 3303(b), FUTA.

2. *References.* Sections 3301, 3302(a)(1), 3302(b), 3303(a)(1), 3303(b), 3304, and 3306, FUTA.

3. *Background.* Section 3303(a)(1) requires that reduced rates of employer contributions to a State unemployment fund be based on each employer's

> . . . experience with respect to unemployment or other factors bearing a direct relation to unemployment risk. . . .

This is known as the "experience rating" requirement for reduced rates. Each State's experience rating system (method for calculating reduced employer contribution rates) must meet the requirements of section 3303(a)(1) for employers in the State to qualify for the additional credit allowed under section 3302(b) against the employer's Federal unemployment tax liability. These requirements extend to State law provisions for the noncharging of benefits, as well as to other elements used to determine reduced rates under an approved experience rating system.

Over the years, beginning with Unemployment Compensation Program Letter (UCPL) No. 78 in 1944, the Department has issued numerous statements on allowable noncharging. However, many of the Department's decisions and rulings have expanded, negated or contradicted the original noncharging principles set forth in UCPL No. 78. Because of the number of issuances related to noncharging, and because many are obsolete or conflicting, there is some confusion over the specific noncharging provisions allowable under section 3303(a)(1).

This Program Letter is issued to establish principles for allowable noncharging consistent with the experience rating requirements in section 3303(a)(1) and to ensure consistent and fair application of State noncharging provisions in accordance with these requirements.

4. *Federal Provisions Related to Noncharging.* The unemployment compensation system is founded on two payroll taxes—one Federal and one

State. FUTA imposes a nationwide payroll tax on employers against which credit is allowed for unemployment taxes paid to States. FUTA also provides an additional credit with respect to State contributions paid at reduced rates under an approved "experience rating" system. The Department of Labor's interpretation of allowable noncharging provided in this Program Letter is based on the FUTA payroll tax, tax credit and experience rating requirements listed below.

a. *Federal Payroll Tax.* Section 3301 imposes a 6.0 percent payroll tax on employers (6.2 percent for 1987). The employers, wages, and employment subject to this tax are defined in Section 3306.

b. *Normal Tax Credit.* FUTA allows employers two credits against their FUTA tax liability if they are paying taxes under a State law which meets certain FUTA requirements. The first credit, allowed under section 3302(a)(1), reduces the employer's FUTA tax liability by the amount the employer actually pays into the State unemployment fund, up to a maximum of 5.4 percent. This is usually referred to as the "normal" credit. For employers to receive the normal credit, the Secretary of Labor must annually certify the State under section 3304(c).

c. *Additional Tax Credit.* Under section 3302(b) an additional credit is allowed to employers who pay reduced State contributions. In addition to the normal credit discussed above, the employer may also deduct from his FUTA tax liability the amount he would have paid into the State fund if he had been taxed at the highest rate under the State law, again up to a maximum of 5.4 percent. For employers to receive the additional credit, the State's unemployment compensation law must be certified under section 3303(b)(1).

d. *Experience Rating.* The certification for the additional credit requires that reduced rates of contributions be calculated only in accordance with Section 3303(a)(1). This section requires that reduced rates of employer contributions under a State law may be permitted only on the basis of employer "experience." This is generally referred to as the experience rating requirement. Specifically, section 3303(a)(1) provides that:

(a) *State Standards.*—A taxpayer shall be allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

(1) No reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk. . . .

This means that each State's experience rating system, including provisions for how benefits paid are charged or noncharged to employer accounts, must meet the requirements of section 3303(a)(1) for employers to qualify for the additional credit. Only paragraph (1) of section 3303(a) is cited above because all State systems fall under this paragraph rather than paragraph (2) or (3). In addition, no State system directly measures experience with respect to unemployment. Instead, all States use a "factor" or combination of factors approved under section 3303(a)(1).

Originally, experience rating had two primary purposes. The first is to ensure the fair allocation of the costs of unemployment benefits among the employers in the system. Under an approved experience rating system, employers who experience greater unemployment among their workers will generally be assigned higher contribution rates. The second purpose of experience rating is to promote employment stability by giving employers an incentive to reduce worker turnover. Insofar as employers can control their business operations, they can reduce layoffs and thereby lower their contribution rates. More recently, a third important purpose has been identified, which is that experience rating encourages employers to participate in the benefit payment and appeals process, thereby helping to ensure that benefits are paid only to claimants who are entitled to them.

5. *State Experience Rating Plans.* Although not required by Federal law to do so, almost all States use experience rating to determine employer contribution rates. While experience rating systems vary greatly among States, each system must meet the requirements of section 3303(a)(1).

Almost two thirds of the States use reserve-ratio and another one third use benefit-ratio systems. Under these systems, each employer has an account in the State's unemployment fund. Employer contribution rates are determined primarily by the amount of benefits received by the employer's former workers which are charged to the employer's account in the State fund.

A few States use benefit-wage-ratio systems. These states do not charge benefits to employer accounts. Instead the wages, called "benefit wages," earned by former workers which qualify them for benefits are charged to the employer's account. The amount of benefit wages charged to the employer's account is then used in calculating the employer's contribution rate.

All States which charge benefits or benefit wages to employer accounts allow noncharging under certain conditions. The degree and type of noncharging allowed can significantly affect both the allocation of costs among employers and individual employer contribution rates. Therefore, noncharging provisions must be evaluated for their potential effect on the State's experience rating system, and for conformity and compliance with section 3303(a)(1).

6. *Relationship Between Experience Rating and Noncharging.* As applied to existing State experience rating systems, section 3303(a)(1) requires that reduced rates of contributions to a State unemployment fund be based on employers' experience with respect to an approved factor or combination of factors. In addition, the system must measure *all* of an employer's experience, not merely selected or partial experience. Under a properly constituted system, an employer who experiences higher turnover will generally pay a higher contribution rate, while an employer with a more stable workforce will generally pay a lower contribution rate.

Noncharging can negatively affect experience rating in various ways. Under systems where noncharging is high, a substantial percentage of benefits is not charged to individual employer accounts. Since no single employer is liable for these charges, all employers in the system must share the cost, thereby reducing the effectiveness of experience rating. This in turn leads to situations where contribution rates do not reflect an employer's actual experience as compared to other employers in the system. This conflicts directly with the purposes of section 3303(a)(1).

The Department has long held that Federal law does not require that all benefits paid be charged to the experience rating accounts of individual employers provided that the benefits which are charged assure a reasonable measure of each employer's experience. UCPL No. 78, issued in 1944, set forth this principle as follows:

> [Section 3303(a)(1) . . . as interpreted by the [Social Security] Board standards (Employment Security Memorandum No. 9), does not require that *all* benefits paid be charged as part of the experience of employers, provided that those which are

charged assure a reasonable measurement of the experience of employers with respect to unemployment risk. The same general principle is true if separations, periods of unemployment, or benefit wages, are used for the measurement of experience. The test is one of reasonableness in the measurement of each employer's experience in relation to other employers and to the purposes of experience rating.

The Social Security Board (the agency originally charged with administering the Federal-State UI program) thus established the following principles regarding noncharging: the test of reasonableness in measuring experience, the relative measurement of each employer's experience, and consistency with the purposes of experience rating. While these principles have guided the approval or disapproval of noncharging provisions over the years, inconsistencies in the application of the principles have developed. The purpose of this Program Letter is to establish a "reasonable basis" test of noncharging based on the principles originally set forth in UCPL 78. These are:

a. Section 3303(a)(1) does not require that *all* benefits paid be charged as part of the experience of employers, provided that those which are charged assure a reasonable measurement of the experience of employers with respect to unemployment risk, and

b. The test is one of reasonableness in the measurement of each employer's experience in relation to other employers and to the purposes of experience rating.

Other principles of long standing which are relevant to these principles and to any test of noncharging are that "unemployment risk" refers to the risk of the individual worker, and that any approvable method of charging must charge all benefits and all employers by the same rule of charging over the same time period. These general principles apply to whatever "factor" is used to measure experience: benefits paid, benefit wages, separations, periods of unemployment or some other approved factor or combination of factors. The interpretation outlined in Section 7 below accords with these longstanding principles regarding allowable noncharging. The interpretation applies to noncharging of benefits and benefit wages in all States with reserve-ratio, benefit-ratio, or benefit-wage-benefit-wage-ratio experience rating systems. In addition, the interpretation applies with equal force to all other approved factors.

7. *Interpretation of Allowable Noncharging.* Noncharging is consistent with the requirements of section 3303(a)(1) in situations where *one* or both of the following conditions are met:

a. The worker's unemployment is the result of the worker's own action, or

b. The worker's unemployment is beyond the direct or indirect control of the employer, except under circumstances where the unemployment is due to general economic, trade, or other business reasons.

Based on the above interpretation, benefits paid due to unemployment caused by economic or trade conditions which require an employer to reduce his workforce (e.g., seasonal layoffs or plant closures) must be charged.

In addition, where State law and the circumstances of the claim require charging to more than one employer's account, each charge must be reviewed individually to determine if noncharging may be permitted. For example, if a claimant worked for three employers in the base period and the State law provides for charging base period employers proportionately or in inverse chronological order, each base period separation must be reviewed to determine if the benefits attributable to the base period employer may be noncharged. Alternatively, a State may determine whether noncharging is appropriate in this situation solely on the basis of the separation from the most recent employer on the basis of which the claimant's eligibility for benefits was determined.

Under the above interpretation, the noncharging of benefits to an employer's account is consistent with section 3303(a)(1) in one or more of the following situations:

(1) Benefits are paid, without any disqualification, to a worker who has left work voluntarily for good cause not attributable to the work or to the employer.

(2) Benefits are paid immediately following the expiration of a period of disqualification for voluntary quit without good cause, discharge for misconduct, or refusal of suitable work without good cause.

(3) Benefits are paid to a worker who left employment under conditions which would have been disqualifying under State law if the employer had been the separating employer for eligibility determination purposes. This occurs in States where benefits are charged proportionately to all base period employers, or employers are charged individually in inverse chronological order.

(4) Benefits paid are ultimately determined to be overpaid for any cause other than employer fault or error.

(5) An otherwise chargeable employer continues to employ the claimant during the claim series on the same part-time basis as during the claimant's base period. For this purpose the same part time basis means substantially the same number of hours each pay period at gross wages which equal or exceed the average gross wages per pay period in the base period.

(6) Benefits are paid with respect to unemployment directly due to a major disaster declared by the President pursuant to the Disaster Relief Act of 1974.

(7) Benefits are paid to a claimant attending training approved under a State unemployment compensation law, or section 236 of the Trade Act of 1974, or Title III of the Job Training Partnership Act.

In addition to the specific instances of allowable noncharging cited above, extended benefits (EB), as defined in section 205(3) of the Federal-State Extended Unemployment Compensation Act of 1970, may be noncharged as specified in regulations at 20 CFR 615.10(a).

Regular benefits (whether sharable or not) and additional benefits (as defined in sections 205(2) and (4), respectively) may be noncharged only in the specific circumstances noted in items (1) through (7) above.

8. *Amendments to State Laws.* States are not required to include any noncharging provisions in State law. However, only the noncharging provisions listed above are considered consistent with section 3303(a)(1). To the extent other noncharging may have been authorized by or pursuant to Program Letters 78 or 85, such noncharging will no longer be considered consistent with section 3304(a)(1). Any noncharging provisions in State law other than those listed above must therefore be repealed. In addition, noncharging provisions may not be applied only to certain benefits or to certain employers or industries. If a noncharging provision is enacted, it must apply equally to all benefits and to all employers and industries.

To give States sufficient time to amend their laws, the interpretation of allowable noncharging in this Program Letter will be effective for the October 31, 1990 certification date. States which must amend their laws have until November 1, 1989 to make such changes effective. A State's failure to amend its law could result in the Secretary of Labor withholding certification of the State law for the additional tax credit allowed under section 3302(b). Loss of certification would in turn result in a loss of additional tax credit to all employers in the State.

9. *Action Required.* State agency administrators are requested to review existing State law provisions involving noncharging, determine if any amendments are needed for the law to meet the requirements of section 3303(a)(1), as interpreted in this Program Letter, and take appropriate action to ensure necessary amendments are enacted before the end of October, 1989. Although the amendments need not be effective before November 1, 1989, enactment should occur earlier to allow sufficient time for the National Office to review the adequacy of State laws and to determine if conformity proceedings must be initiated with respect to any State before the October 31, 1990 certification date.

10. *Inquiries.* Please direct inquiries to the appropriate Regional staff.

[FR Doc. 87-26286 Filed 11-12-87; 8:45 am]
BILLING CODE 6510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice Del Norte, Humboldt, Lake, and Mendocino Counties, California and Kewaunee, Manitowoc, and Sheboygan Counties, Wisconsin from General Wage Determination Nos. CA87-4, WI87-14, and WI87-15 dated January 2, 1987.

Agencies with construction projects pending to which this wage decision would have been applicable should utilize the project determination procedure by submitting a SF-308. See Regulations Part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR 1.6(c)(2)(i)(A), the incorporation of the withdrawal decision in contract specifications, when the opening of bids is within ten (10) days of this notice, need not be affected.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

District of Columbia:
DC87-1 (Jan. 2, 1987) ..... p. 86.
Delaware:
DE87-2 (Jan. 2, 1987) ..... pp. 102-108.
New York:
NY87-14 (Jan. 2, 1987) ..... p. 808.

Volume II:

Illinois:
IL87-6 (Jan. 2, 1987) ..... p. 132.
IL87-8 (Jan. 2, 1987) ..... p. 142.
IL87-9 (Jan. 2, 1987) ..... pp. 148-149.
IL87-11 (Jan. 2, 1987) ..... p. 158.
IL87-12 (Jan. 2, 1987) ..... p. 164.
IL87-13 (Jan. 2, 1987) ..... p. 176.
IL87-16 (Jan. 2, 1987) ..... p. 206.
Indiana:
IN87-5 (Jan. 2, 1987) ..... p. 292.
Missouri:
MO87-3 (Jan. 2, 1987) ..... p. 613.
Nebraska:
NE87-1 (Jan. 2, 1987) ..... pp. 666-667.
Wisconsin:
WI87-14 (Jan. 2, 1987) ..... pp. 1151-1154.
WI87-15 (Jan. 2, 1987) ..... p. 1155.
Listing by location (Index) ..... p. iii.

Volume III:

California:
CA87-2 (Jan. 2, 1987) ..... pp. 46, 50-51, pp. 53-62d
CA87-4 ..... pp. 67-77.
Montana:
MT87-1 ..... p. 166.
South Dakota:
SD87-1 ..... p. 298.
Listing by location (index) ..... p. xxi, p. xxii.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts,

including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 6th day of November 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-26159 Filed 11-12-87; 8:45 am]

BILLING CODE 4510-27-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[87-92]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee and the Aerospace Research and Technology Subcommittee.

DATE AND TIME: December 1, 1987, 8:30 a.m. to 4:30 p.m.; December 2, 1987, 8 a.m. to 5:30 p.m.; December 3, 1987, 8 a.m. to 12:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Lewis Research Center, Building 500, 21000 Brookpark Road, Cleveland, OH 44135.

FURTHER INFORMATION CONTACT: Ms. Joanne Teague, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2775.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (AAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on aeronautics research and technology activities.

The Aerospace Research and Technology Informal Subcommittee was formed to provide technical support for the AAC and to conduct ad hoc interdisciplinary studies and assessments. The Committee, chaired by Mr. Robert B. Ormsby, is comprised of 23 members. The Subcommittee is comprised of 47 members. The meeting will be open to the public up to the seating capacity of the room (approximately 150 persons including the Subcommittee members and other participants).

Type of Meeting: Open.

Agenda:

December 1, 1987

8:30 a.m.—Opening Remarks.
9 a.m.—Discussion of Membership Changes.
9:15 a.m.—Aeronautics Overview.
9:45 a.m.—Parallel Discipline Program Reviews on Aerodynamics, Materials & Structures, Propulsion, and Controls & Guidance/Human Factors.
1 p.m.—Facility Tour.
2 p.m.—Continuation of Discipline Program Reviews.
4:30 p.m.—Adjourn.

December 2, 1987

8 a.m.—Continuation of Discipline Program Reviews.
1 p.m.—Facility Tour.
2 p.m.—Parallel Vehicle Program Reviews of Rotorcraft, General Aviation/Transport/Supersonic, High Performance, and Hypersonics/National Aerospace Plane.
4 p.m.—Plenary Session.
5:30 p.m.—Adjourn.

December 3, 1987

8 a.m.—Remarks by AAC Chairperson.
8:30 a.m.—Remarks by Associate Administrator for Aeronautics and Space Technology.
9 a.m.—Progress Reports by Ad Hoc Review Team Chairpersons.
10 a.m.—Discussion of Issues and Recommendations.
11 a.m.—Summary Session.
12:30 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

November 5, 1987.

[FR Doc. 87-26223 Filed 11-12-87; 8:45 am]

BILLING CODE 7510-01-M

[87-93]

NASA Advisory Council (NAC), Space Systems and Technology Advisory Committee (SSTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Systems and Technology Advisory Committee, Ad Hoc Review Team on Lunar and Planetary Mission Propulsion.

DATE AND TIME: November 23, 1987, 8:30 a.m. to 4:30 p.m., and November 24, 1987, 8:30 a.m. to 4:30 p.m.

ADDRESS: National Aeronautics and Space Administration, Room 625, Federal Office Building 10B, Washington, DC 20546.

FURTHER INFORMATION CONTACT: Mr. Robert Wasel, Office of Aeronautics and Space Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-2855.

SUPPLEMENTARY INFORMATION: The NAC Space Systems and Technology Advisory Committee (SSTAC) was established to provide overall guidance to the Office of Aeronautics and Space Technology (OAST) on space systems and technology programs. Special ad hoc review teams were formed to address specific topics. The Ad Hoc Review Team on Lunar and Planetary Mission Propulsion, chaired by Dr. Robert Jahn, is comprised of 9 members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the team members and other participants).

Type of Meeting: Open.

Agenda:

November 23, 1987

8:30 a.m.—Introduction.
8:45 a.m.—Manned Lunar Base and Manned Mars Mission Analyses.
3 p.m.—Jet Propulsion Laboratory Mission Analyses.
4 p.m.—Working Group Discussion.
4:30 p.m.—Adjourn.

November 24, 1987

8:30 a.m.—Chemical/Nuclear Propulsion.
10:30 a.m.—Ascent and Descent Propulsion.
1 p.m.—Nuclear-Thermal Propulsion.
3 p.m.—Working Group Discussion.

4:30 p.m.—Adjourn.

Ann Bradley,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

November 5, 1987.

[FR Doc. 87-26224 Filed 11-12-87; 8:45 am]

BILLING CODE 7510-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30-16055; License No. 34-19089-01]

Advanced Medical Systems, Inc.; Confirmatory Order Modifying License, Effective Immediately

I

Advanced Medical Systems, Inc. One Factory Row, Geneva, OH (AMS, or licensee) is the holder of Byproduct Material License No. 34-19089-01 issued by the Nuclear Regulatory Commission (the NRC) pursuant to 10 CFR Part 30. The license authorizes possession and use of 150,000 curies of cobalt-60 as solid metal, 150,000 curies of cobalt-60 in sealed sources, and 40,000 curies of cesium-137 in sealed sources in the manufacture, installation and servicing of radiography and teletherapy devices. The license further authorizes the installation, servicing, maintenance, and dismantling of radiography and teletherapy units. The license, originally issued on November 2, 1979, was renewed on June 25, 1986, with an expiration date of October 31, 1986. A timely renewal application has been submitted.

II

On July 23, 1987, the NRC issued an Order Modifying License, Effective Immediately, and Demand for Information ("Order") requiring, among other things, that decontamination of the licensee's teletherapy source fabrication facility located at 1020 London Road, Cleveland, Ohio ("London Road Facility" or "facility") commence by August 31, 1987, and be completed by April 1988, in accordance with a decontamination plan prepared for AMS by RAD Services, Inc. The basis for the immediate effectiveness of the July 23, 1987, Order was that NRC lacked reasonable assurance that decontamination, redesign, reconstruction, and upgrading of the licensee's London Road Facility would be initiated and completed in an orderly and timely fashion to assure that the health and safety of the public and the licensee's employees would be protected. On August 11, 1987, AMS requested a hearing on the July 23, 1987, Order. That request is pending before an Atomic Safety and Licensing Board.

On October 14, 1987, as required in Section VII.B of the July 23, 1987, Order, the licensee submitted the first written report of the facility decontamination progress. That report described that AMS had fallen behind the schedule for decontaminating the London Road facility due primarily to the liquidation of RAD Services, Inc., the firm AMS had originally contracted to perform facility decontamination activities.

On October 20, 1987, the licensee submitted a license amendment request that, inter alia, would supersede the previously incorporated RAD Services, Inc. facility decontamination plans and schedules with the Nuclear Support Services, Inc. (NSS) facility decontamination plans and schedules. On October 22, 1987, the NRC Region III staff discussed those decontamination plans and schedules with AMS and, based on the above actions, AMS's general manager agreed to the changes in the NSS plan as described in Section IV below.

III

Due to the licensee's position requiring renegotiation of the facility decontamination contract resulting from conditions beyond its control, the NRC recognizes the necessity for minor revisions to the decontamination schedules and plans. However, these revisions do not alter the basis for the immediate effectiveness of the July 23, 1987, Order. To permit continued expeditious progress on eliminating the health and safety hazard associated with the excessive contamination at the London Road Facility, pursuant to 10 CFR 2.201(c), no prior notice is required.

IV

In view of the foregoing, and pursuant to sections 81, 161b, 161c, 161i, 161o, and 182 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR Part 30, it is hereby ordered, effective immediately, that License No. 34-19089-01 is modified as follows:

A. License Modification A contained in Section V of the July 23, 1987, Order shall be deleted and replaced with the following:

1. As of November 2, 1987, AMS shall continue decontamination of the London Road Facility in accordance with the Nuclear Support Services, Inc. "Facility Decontamination Plan" ("NSS Plan"), submitted to the NRC by licensee letter dated October 20, 1987, with the following changes:

a. Section 2.4 of the NSS Plan shall be revised by inserting the following words after, "* * * will report to the AMS Radiation Safety Officer."

"The Technical Supervisor shall be physically present at the London Road Facility at least two work days every two weeks supervising and reviewing activities undertaken pursuant to this plan."

b. Section 2.5 of the NSS Plan shall be revised by inserting the following words after, "* * * will be responsible for the direct health physics coverage of decontamination activities."

"The Senior Health Physics Technician shall be physically present supervising all decontamination and cleanup activities undertaken pursuant to this Plan."

c. The text of the Note under Section 4.0 of the NSS Plan shall be deleted and replaced with, "Any changes to the above sequence or extensions to the above duration of decontamination activities shall be approved in advance by the NRC Regional Administrator, Region III. Requests for changes shall be submitted to NRC in writing, including a description of the basis for the change."

d. Section 5.6 of the NSS Plan shall be deleted in its entirety.

e. Section 9.0 of the NSS Plan shall be revised to delete the word "tentatively" in the first line.

f. The text of Section 9.1 of the NSS Plan shall be deleted and replaced with, "Any changes to the above named key NSS assigned personnel shall be approved in advance by the NRC Regional Administrator, Region III. Requests for changes shall be submitted to NRC in writing, including a description of the basis for each change and the resume of the proposed replacement persons."

g. The milestone chart included in Section 5.0 of the NSS Plan (Page 5) shall be deleted and replaced with the October 23, 1987, revision of the milestone chart attached to a letter dated October 28, 1987 from Mr. T.J. Hebert with the title "Isolate WHUT Room" under Item 11 in the chart changed to "Decon WHUT Room."

B. License Modification B contained in Section V of the July 23, 1987, Order shall be deleted.

C. The terms and conditions of this Confirmatory Order Modifying License, Effective Immediately, and the July 23, 1987, Order may be revised in writing by the Regional Administrator, Region III, for good cause shown in writing by the licensee.

All other conditions of the July 23, 1987, Order shall remain in effect and

are not modified by this Confirmatory Order

V

Any person other than the licensee adversely affected by this Confirmatory Order may request a hearing within twenty days of its issuance. Any request for hearing shall be submitted to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies shall also be sent to the Assistant General Counsel for Enforcement at the same address and the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois 60137. If such a person requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d). A request for hearing shall not stay the immediate effectiveness of this confirmatory order.

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 30th day of October, 1987.

James M. Taylor,

Deputy Executive Director for Regional Operations.

[FR Doc. 87-26219 Filed 11-12-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-21 issued to Northeast Nuclear Energy Company (NNECO), (the licensee), for operation of Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut.

The amendment would change the Millstone Unit No. 1 Technical Specifications (TS) to reflect the deletion of the low reactor pressure permissive switches from the emergency core cooling system pump start logic during the 1987 refueling outage in accordance with the licensee's application for amendment dated October 20, 1987.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

NNECO has also reviewed the proposed changes in accordance with 10 CFR 50.92 and has concluded that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. NNECO reviewed the removal of the low reactor pressure permissive switches from the ECCS pump start logic for potential impact on the design basis accidents, specifically, the loss-of-coolant accident (LOCA). The removal of PS 263-54 A and B decreases the probability of a malfunction of equipment important to safety (i.e., safety-related) since there are two less components that could either fail or have a set point drift large enough to have a safety impact. Therefore, there is no adverse impact on the design basis analysis.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The removal of PS 263-54 A and B will in fact decrease the probability of a malfunction or accident in that there are two less components to fail or experience a significant set point drift. As stated previously, the problem that these switches were originally installed to prevent, inadvertent ECCS pump starts, does not exist at Millstone Unit No. 1. Thus, the removal of these instruments has no impact on the probability of any accident.

3. Involve a significant reduction in a margin of safety. The removal of PS 263-54 A and B has no adverse impact on the margin of safety. The removal of these switches from the ECCS pump start logic is an improvement in that two potential events that could have adverse consequences on the protective boundaries have been eliminated. The Commission is seeking public comments on this proposed determination.

Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 14, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should

also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Michael L. Boyle, Acting Director, Integrated Safety Assessment Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel—Bethesda, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Bethesda, Maryland, this 5th day of November 1987.

For the Nuclear Regulatory Commission.

Michael L. Boyle,

Acting Director, Integrated Safety Assessment Project Directorate, Division of Reactor Projects–III, IV, V and Special Projects.

[FR Doc. 87–26218 Filed 11–12–87; 8:45 am]

BILLING CODE 7590–01–M

Subagreement No. 1 Between U.S. Nuclear Regulatory Commission and Commonwealth of Pennsylvania

AGENCY: Nuclear Regulatory Commission.

ACTION: Publication of Subagreement No. 1.

SUMMARY: In November 1986, and "umbrella" MOU was signed by the NRC and the Commonwealth of Pennsylvania, providing principles of cooperation in areas of concern to the Commonwealth.

Subagreement No. 1 provides the basis for mutually agreeable procedures whereby the Commonwealth may perform inspection functions for and on behalf of the Commission at certain reactor and material licensees' facilities in the areas of low-level radioactive waste packages and low-level radioactive waste transportation for waste destined for disposal in a low-level waste disposal facility. Subagreement No. 1 is printed in its entirety below.

FOR FURTHER INFORMATION CONTACT: Marie T. Miller, Regional State Liaison Officer, U.S. Nuclear Regulatory Commission Region I, 631 Park Avenue, King of Prussia, Pennsylvania 19406, (Telephone (215) 337–5246).

Dated at King of Prussia, Pennsylvania, this 4th day of November 1987.

For the U.S. Nuclear Regulatory Commission.

William T. Russell,

Regional Administrator.

Subagreement 1 Pertaining to Low-Level Radioactive Waste Package and Transportation Inspections Between the Commonwealth of Pennsylvania and U.S. Nuclear Regulatory Commission

This Subagreement is entered into under the provisions of the Memorandum of Understanding between the Commonwealth of Pennsylvania and the United States Nuclear Regulatory Commission effective November 4, 1986.

The Commonwealth of Pennsylvania, in fulfilling its obligations under the Low-Level Radioactive Waste Policy Amendments Act of 1985 contemplates that it will make periodic inspections of

the areas of low-level radioactive waste packages and transport activities of generators located within its borders if shipments of such waste destined for disposal at a low-level radioactive waste disposal facility.

The United States Nuclear Regulatory Commission (NRC or Commission) has the statutory responsibility to inspect its licensees to determine compliance with NRC requirements, including requirements pertaining to the shipment, packaging and transportation of low-level radioactive waste destined for disposal. In the exercise of this responsibility, the Commission regularly conducts a review of the waste packaging and transportation programs of its licensees including the licensees' procedures for quality assurance, packaging, marking, labeling and loading of vehicles. These programs reviews usually have been found adequate to ensure licensee compliance with the Commission's regulations regarding low-level radioactive waste packaging and transportation without the need for Commission inspection of each individual shipment.

Under section 274i. of the Atomic Energy Act of 1954, as amended, the Commission in carrying out its licensing and regulatory responsibilities under the Act is authorized to enter into a Memorandum of Understanding (agreement) with any State to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. While the Commission does not conduct on-site inspections of every low-level radioactive waste shipment of its licensees, it desires to foster the goals of the Low-Level Radioactive Waste Policy Amendments Act of 1985, the Commonwealth of Pennsylvania, and the Appalachian Compact.

Accordingly, this Subagreement between the Commonwealth of Pennsylvania and the NRC establishes mutually agreeable procedures whereby the Commonwealth may perform inspection functions for and on behalf of the Commission at certain NRC reactor and materials licensees' facilities which generate low-level radio-active waste.

It is hereby agreed between the Commission and the Commonwealth as follows:

1. The Commission hereby authorizes the Commonwealth to perform, for and on behalf of the Commission, the following functions with respect to low-level radioactive waste, as defined in section 2(9) of the Low-Level Radioactive Waste Policy Amendments Act of 1985, in the possession of Commission licensees located within the Commonwealth:

(a) Inspections to determine compliance with the Commission's rules and regulations regarding waste packages and transportation of low-level radioactive waste destined for disposal at a commercial low-level radioactive waste disposal site; and

(b) Notification of Commission licensees and the Commission in writing of any findings disclosed by such inspections. All enforcement actions (such as Notices of Violations, Civil Penalties or Orders) pursuant to this Subagreement resulting from such inspection findings will be undertaken by the Commission.

The Commonwealth agrees to utilize personnel knowledgeable in radiation safety, waste packaging requirements, and packaging and transportation regulations. The Commonwealth agrees to perform its functions under this Subagreement at no cost or expense to the NRC. NRC may provide training to employees of the Commonwealth at no expense to the Commonwealth (except travel and per diem). The Commission does not normally evaluate the Commonwealth's ability to perform such functions; however, prior to Commonwealth qualification of inspectors, Commonwealth management, accompanied by an NRC representative, will assess its inspectors preparedness to conduct independent inspections.

2. The authority to inspect NRC licensees pursuant to the preceding paragraph is limited to the licensees' low-level waste packages and low-level transportation activities. Specifically, this authority is limited to:

(a) Review, for understanding, the licensee's written procedures;

(b) Inspection of the licensee's written records; and

(c) Inspection of completed packages and transportation activities.

The authority does not include assessment of the adequacy of the licensee's written procedures, plant equipment, quality control programs, training programs or staffing. Specific implementing procedures are attached hereto which may be modified, as required.

3. In taking any action authorized hereunder, the Commonwealth shall not undertake to amend or revoke Commission licenses. This Subagreement, however, shall not be construed to preclude the Commonwealth from exercising any authority lawfully available to it under its own laws.

4. Efforts will be made by both parties to avoid duplicative enforcement action against an NRC licensee for the same inspection finding. However, this is not meant to preclude appropriate complementary actions for the same inspection findings such as termination of a user permit by the Commonwealth and NRC enforcement action.

5. Nothing herein shall be deemed to authorize the Commonwealth to inspect or otherwise enter the premises of any licensee of the Commission which is a Federal instrumentality without the prior consent of the licensee.

6. Nothing herein shall be deemed to preclude or affect in any manner the authority of the Commission to perform any or all of the functions described herein.

7. Nothing herein is intended to restrict or expand the statutory authority of NRC or the Commonwealth or to affect or vary the terms of any agreement in effect under the authority of section 274b. of the Atomic Energy Act of 1954, as amended.

8. Nothing herein shall be deemed to permit the Commonwealth to impose packaging or transport standards beyond those contained in Federal regulations.

9. The principal NRC contacts under this Subagreement shall be the Emergency Preparedness and Radiological Protection Branch Chief for reactor licensees and the Nuclear Materials Safety and Safeguards Branch Chief for materials licensees, both of whom are located in the Division of Radiation Safety and Safeguards, Region I, NRC. The principal Commonwealth contact shall be the Chief, Division of Nuclear Safety, Pennsylvania Bureau of Radiation Protection.

10. This Subagreement shall become effective upon signing by the Secretary, Department of Environmental Resources, Commonwealth of Pennsylvania, and the Regional Administrator, Region I, Nuclear Regulatory Commission and shall remain in effect permanently unless terminated by either party on thirty days prior written notice.

Dated this 17th day of August 1987 at King of Prussia, Pa.

For the Nuclear Regulatory Commission.

William T. Russell,

Regional Administrator.

For the Commonwealth of Pennsylvania.

Dated: September 11, 1987.

Arthur A. Davis,

Secretary, Department of Environmental Resources.

Implementing Procedures—Subagreement I Pertaining to Low-Level Radioactive Waste Package and Transportation Inspections Between the Commonwealth of Pennsylvania and the NRC

I. Training

A. Pennsylvania staff attendance at NRC Sponsored Courses

1. Pennsylvania staff may attend NRC sponsored training courses when mutually agreed upon by Pennsylvania and NRC.

2. Attendance at any particular course will be scheduled on a space available basis.

3. Staff applying for attendance must fulfill any necessary course prerequisites.

4. Attendance will normally be limited to 1–2 individuals at any one particular course.

5. Pennsylvania will pay any transportation and per diem expenses except for courses offered in connection with the Agreement State Program where NRC pays for travel and per diem of State personnel selected to attend.

B. On-the-Job Training

1. On-the-job training will be provided to the Pennsylvania staff in the conduct of inspections to determine compliance with the requirements in 10 CFR Parts 20, 61 and 71.

2. The training accompaniments will normally be limited to NRC licensees located in the Commonwealth of Pennsylvania.

3. The training accompaniments will follow the protocol set out in Mr. Haynes' November 5, 1982 letter to Mr. Gerusky. Under the protocol, the activities of the individual accompanying the NRC inspector will be limited to observation and familiarization with plant activities and the NRC inspection process. The NRC inspector will be responsible for initiating action to correct any program deficiencies identified during the inspection through NRC's normal inspection and enforcement process.

4. Commonwealth of Pennsylvania staff accompanying the NRC inspector will normally be limited to two persons—the senior staff member responsible for the program and the cognizant inspector for the plant being inspected.

5. Emphasis will be placed on training two senior Pennsylvania staff who can learn this area quickly and who, in turn, can begin to train other Pennsylvania staff.

6. The training may also involve pre-inspection planning at the Regional office or in the NRC resident inspection office prior to the inspection. The Commonwealth inspection staff is expected to have reviewed prior inspection reports, inspection findings and enforcement actions for the facility inspected. It is also expected that the Commonwealth inspectors are thoroughly knowledgeable of the NRC inspection procedures and reference material cited in those procedures. These are important parts of preparing for the inspection.

7. The training accompaniments will be provided by a Region based inspector who routinely inspects waste packaging and transportation activities, not the resident inspector or TMI–2 inspection staff.

8. The contact for the training accompaniment inspections at reactors will be the Chief, Emergency Preparedness and Radiological Protection Branch, Division of Radiation Safety and Safeguards. The similar contact for materials inspections will be the Chief, Nuclear Materials Safety and Safeguards Branch, Division of Radiation Safety and Safeguards. If either of the above are not available the contact will be the Regional State Liaison Officer.

C. Initiation of Independent Inspections by Pennsylvania Staff

1. The Commonwealth will ensure that its inspectors are qualified in accordance with NRC Inspection and Enforcement Manual Chapter 1245, or its equivalent, and will keep NRC informed of the Commonwealth inspectors that have been so qualified and certified. Prior to Commonwealth qualification of inspectors, Commonwealth management, accompanied by an NRC representative, will assess the performance of its inspectors during an inspection to determine their preparedness to conduct independent inspections. Following the accompaniment, the NRC representative will provide a critique to the inspector and his supervisor. Periodically, Commonwealth management will accompany its inspectors during the performance of inspections to verify the inspector's continued effectiveness. Finally, NRC will inform Commonwealth management of problems identified during the NRC review of Commonwealth inspection findings for appropriate corrective action.

2. Commonwealth inspectors may periodically accompany NRC inspectors during NRC's programmatic waste package and transportation inspections to maintain familiarity with a licensee's program and NRC inspection requirements. The Commonwealth and NRC may also meet periodically to exchange information and discuss changes in procedures. Commonwealth inspectors may also contact the region based and resident inspectors prior to or during the Commonwealth's independent inspection at the site.

3. Arrangements to gain access to any licensee's facility are a responsibility of the Commonwealth. Specifically, individuals planning to conduct inspections at reactor facilities should meet all licensee requirements for site access.

II. Procedures to be Followed by Pennsylvania for Inspections Conducted Under the Subagreement

A. Pennsylvania will perform the following inspection activities relating to 10 CFR Part 71:

1. Examine the licensee's written waste shipment records. As the situation allows, observe completed packages so as to:

a. Verify that the licensee has marked the package with the applicable general and specific package markings which are required (49 CFR 172.300 through 172.310).

Verify that for NRC-certified packages, or DOT-revalidated packages of foreign origin, the outside of the package is durably and legibly marked with the package identification marking indicated in the COC or the DOT Competent Authority Certificate.

b. Verify that for non-exempted packages, the licensee provides for and accomplishes labeling of each package with the appropriate category of RADIOACTIVE (White-I, Yellow-II, or Yellow-III) label, one each on two opposite sides of the package; and accurately completes the entry of the required information in the blank spaces thereon (49 CFR 172, Subpart E).

c. Verify that the licensee provides for and accomplishes monitoring of each completed package to assure that external radiation and removable surface contamination are within the allowable limits (49 CFR 173.475(i), 49 CFR 173.411, 49 CFR 173.443, and 10 CFR 71.87 (i) and (j)).

2. Examine the licensee's written waste shipment records. As the situation allows, observe actual transport operations so as to:

a. Verify whether the licensee prepared the required shipping paper documentation, so as to accurately include all of the applicable required elements of information, including the shiper's certificate. [Note: for licensee

private motor vehicle shipments, the certificate is not required (49 CFR 172, Subpart C).]

b. For non-exclusive use shipments, verify that the licensee provides to a highway carrier or applies directly to a rail vehicle, the required placards whenever he delivers any quantity of RADIOACTIVE-Yellow-III labeled packages to such carrier for transport (49 CFR 172.506 and 508).

c. For exclusive use shipments, verify that the licensee assures that the package and vehicle radiation/contamination levels are within the regulatory limits (49 CFR 173.475(i) and 10 CFR 71.87 (i) and (j)).

Verify that except for uranium or thorium ores, the transport vehicle is placarded by the licensee when delivering to a carrier any exclusive-use shipment for which placarding is required (49 CFR 172, Subpart F, and 49 CFR 173.425(b)(7)).

For exclusive use shipments, verify that shipping paper documentation provided by the licensee to the carrier contains satisfactory instructions for maintenance of exclusive-use shipment controls (49 CFR 173.441(c) and 49 CFR 173.425(b)(9)).

Verify that for exclusive-use shipments of low-specific activity materials, the licensee has provided for three additional specific requirements (49 CFR 173.425 (b)(1) through (9)).

d. Verify that the licensee provides for notification to the consignee before shipment: the dates of shipment and expected arrival, any special loading/unloading or operating instructions whenever any non-exempt fissile material and/or packages containing "highway route controlled quantities" are involved (49 CFR 173.22(b) and 10 CFR 71.89).

e. Verify that the licensee provides for advance notification to the Governor of a State, or his designee, of any shipment of radioactive waste requiring Type B packaging through, to, or across a state boundary (10 CFR 71.97). [Note: This requirement is not the same as that required for safeguards purposes pursuant to 10 CFR 73.72.]

3. Review the licensee's records and reports to verify that a system is in place to:

a. Maintain on file for two years after shipment a record of each shipment of licensed material (which is not exempt therefrom) and that such records contain the required information (10 CFR 71.87 and 10 CFR 71.91(a)).

b. Report to the Director, NMSS, within 30 days, any instances where there has been a significant reduction in the effectiveness of any packaging during its use; providing additionally the details of any defects of safety significance to the packaging after first use and the means employed to repair such defects to prevent their recurrence (10 CFR 71.95).

c. Immediately report to DOT, when transporting licensed materials as a private carrier, any incident that occurs in which as a direct result of the radioactive material: any person is killed; receives injuries requiring hospitalization; property damage exceeds $50,000; or fire, breakage, spillage, or suspected radioactive contamination occurs (49 CFR 171.15 and 49 CFR 171.16).

B. Pennsylvania will perform the following inspection activities relating to 10 CFR Parts 20 and 61:

1. Review the licensee's records and, as the situation allows, observe actual packages and transport activities to verify that each shipment of radioactive waste intended for off-site disposal to a broker or a licensed land disposal facility is accompanied by a shipment manifest which includes all of the required information (10 CFR 20.311 (b) and (c)).

2. Review the licensee's documentation and records to determine whether procedures have been established and are being maintained to properly classified all low-level wastes according to 10 CFR 61.55.

3. Review the licensee's documentation and records to determine whether procedures have been established and are being maintained, to properly characterize low-level waste in conformance with the requirements of 10 CFR 61.56).

4. Review the licensee's records and as the situation allows, observe actual packages and transport activities to verify that each package of low-level waste intended for shipment to a licensed land disposal facility is labeled, as appropriate, to identify it as Class A, B, or C waste in accordance with the classification criteria of 10 CFR 61.55 (10 CFR 20.311(d)(2)).

5. Review the licensee's records and, as the situation allows, observe actual packages and transport activities to verify that the licensee has forwarded to recipients or delivered to waste collectors at the time of shipment, a copy of the waste manifest. Verify that acknowledgement of receipt of the manifest is obtained. Verify that the license has a procedure in place to effect an investigation in any instances wherein acknowledgement of receipt of the shipment has not been received within the specified period. Verify that procedures are in place to report such investigations to the appropriate NRC Regional Office and file the required written report (10 CFR 20.311(d), (e), (f), and (h)).

6. Review the licensee's records to verify that the applicable disposal site license conditions are being met. Verify that the licensee has on file a current version of the disposal site license.

C. Inspections performed by the Commonwealth for and on behalf of the Commission are not to include those elements of NRC inspection procedures dealing with evaluation of the licensee's written procedures, equipment, quality control programs, training programs or staffing.

III. Documentation of Inspection Findings

Following each inspection, the Commonwealth will document the areas covered and findings of the inspection in an inspection report using guidance set out in NRC Inspection and Enforcement manual Chapters 0610 and 0611. Following Commonwealth management approval, the report will be sent to the NRC contact listed in section 9 of the Subagreement with a copy to the licensee. The Commonwealth will complete and forward the inspection report to the NRC within 30 days of completion of the inspection. Following appropriate NRC review, the report will be placed in the Public Document Room and a request sent to the licensee by the NRC for proper corrective action if deemed necessary. For those inspections performed by the Commonwealth which result in deficiencies in compliance with NRC regulations, the Commonwealth shall identify the deficiencies in the cover letter transmitting the report, and specify that any enforcement action is a responsibility of the NRC. In addition, when any findings which would become a violation once the shipment departs the plant gate are identified, such findings should be furnished to the licensee and the NRC Resident Inspector before the shipment departs the licensee's site. It is the Commission's sole discretion as to whether the licensee will be requested or required to take corrective action or to respond to discrepancies in compliance with NRC regulations as a result of findings from these inspections. Commonwealth inspectors will provide support to NRC during any hearings and other meetings relating to their inspections, as required.

IV. Changes to Implementing Procedures

These implementing procedures may be changed by mutual written agreement between the Director, Division of Radiation Safety and Safeguards, NRC, and the Chief,

Division of Nuclear Safety,
Commonwealth of Pennsylvania.

For the Nuclear Regulatory Commission.

Thomas T. Martin,

Division of Radiation Safety and Safeguards.

Dated: August 17, 1987.

For the Commonwealth of Pennsylvania.

William P. Dornsite,

Division of Nuclear Safety.

Dated: September 16, 1987.

[FR Doc. 87-26285 Filed 11-12-87; 8:45 am]

BILLING CODE 7590-01-M

RAILROAD RETIREMENT BOARD

Privacy Act of 1974; Proposed Changes to System of Records

AGENCY: Railroad Retirement Board.

ACTION: Notice of proposed changes to a system of records.

SUMMARY: The purpose of this document is to give notice that the Railroad Retirement Board is changing the system manager for one of its systems of records and that it is proposing to amend the same system to claim a general exemption under section (j)(2) to certain Privacy Act requirements.

DATE: The change in system manager is effective as of November 13, 1987; the claimed general exemption under section (j)(2) will become effective upon publication of a final rule establishing the general exemption.

ADDRESS: Send comments to Beatrice Ezerski, Secretary to the Board, Railroad Retirement, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: LeRoy Blommaert, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, Telephone 312-751-4548.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board proposes to exempt, under the general exemption provisions of 5 U.S.C. 552a(j)(2), system of records, RRB-43, Investigation Files, last published at 50 FR 10332-33 (March 14, 1985).

The system of records is presently exempted under the specific exemption provision of 5 U.S.C. 552a(k)(2). At the time this system was established, it was not maintained by a component of the Board "which performs as its principal function any activity pertaining to the enforcement of criminal laws," and hence could not qualify for a general exemption. This system is now maintained by a newly established Office of Inspector General. A component of that Office, the Office of Investigations, performs as it principal function activities pertaining to the enforcement of criminal laws. The system thus now qualifies for exemption under 5 U.S.C. 552a(j)(2).

The Inspector General believes that the additional protection for investigation records afforded by claiming the general exemption is necessary because of the sensitivity of some of the investigations.

On September 17, 1987, the Railroad Retirement Board filed a new/altered system report for this system with the Speaker of the House of Representatives, the President of the Senate, and the Office of Management and Budget. This was done to comply with Section 3 of the Privacy Act of 1974 and OMB Circular No. A-130, Apendix I.

By the Authority of the Board.

Beatrice Ezerski,

Secretary of the Board.

Dated: November 4, 1987.

RRB-43

SYSTEM NAME: INVESTIGATION FILES—RRB.

* * * * *

This section is revised to read as follows:

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Inspector General, Office of Investigations, Office of Inspector General, U.S. Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611

* * * * *

This section is revised to read as follows:

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2) records in this system of records which are compiled for the purpose of criminal investigations are exempted from the requirements under 5 U.S.C. 552a(c)(3) and (4) (Accounting of Certain Disclosures), (d) (Access to Records), (e)(1), (2), (3), (4), (G), (H), and (I), (5) and (8) (Agency Requirements), (f) (Agency Rules), and (g) (Civil Remedies) of 5 U.S.C. 552a.

Pursuant to 5 U.S.C. 552a(k)(2) records in this system of records which consist of investigatory material compiled for law enforcement purposes are exempted from the notice, access and contest requirements under 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f); however, if any individual is denied any right, privilege, or benefit to which the individual would otherwise be eligible as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

The reason why the head of the Railroad Retirement Board decided to exempt this system of records under 5 U.S.C. 532a(j) and 532(k) are given in a rule published elsewhere in this **Federal Register.**

[FR Doc. 87-26194 Filed 11-12-87; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25090; File No. SR-CBOE-87-49]

Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Inc. Relating to Index Options Trading Halts

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 October 21, 1987, the Chicago Board Options Exchange, Inc. "(Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The proposed rule change provides that in emergency circumstances, the Office of the Chairman may direct that trading continue or resume in an index option which would otherwise be halted due to a percentage of the stocks comprising the index being halted or suspended (in the case of broad-based index options, 20% of the index value; in the case of industry index options, 10% of the index value).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to change its index trading halt rule to clarify the Exchange's ability to respond to emergency conditions. As the rule currently provides, trading in a broad-based index option is to be halted if underlying stocks comprising 20% of the index value are halted or suspended. In industry indexes, trading is to be halted if underlying stocks comprising 10% of the index value are halted or suspended.

Although it would appear that the Exchange already has broad authority to override more restrictive trading rules as necessary due to unusual market conditions, the proposed rule change will clarify the Exchange's authority to respond to emergency conditions as necessary in index option trading. The Exchange intends to use this emergency authority sparingly, to allow trading in index options to continue where market conditions in the underlying market have reached such conditions as: Widespread trading disruptions, due to such factors as trading imbalances; a calamity resulting in the failure of the primary market to open trading; or a large-scale reporting failure in the primary market. Such circumstances would be coupled with a judgment by the Office of the Chairman [1] that it is necessary to allow market participants to continue to trade, rather than disabling market participants from trading at a time of substantial market movement and acitivity.

In addition, in the interest of clarity, the word "suspended" is deleted from the first sentence of the rule, because trading is only halted, not suspended, when the necessary percentage of the index is not open for trading.

The proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934 ("Act") and, in particular, section 6(b)(5) thereof, in that the rule change will enhance market liquidity and efficiency, and allow the Exchange to be responsive to market conditions in the regulation of its market place.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

[1] The Office of the Chairman consists of the Exchange's three highest officials: its Chairman, President and Vice Chairman.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission 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 December 4, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: November 4, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-26242 Filed 11-12-87; 8:45 am]

BILLING CODE 8010-01-M

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information Collection under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99-591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395-3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751-2523.

Type of Request: Regular submission.

Title of Information Collection: Energy Center Feedback Form.

Frequency of Use: On occasion.

Type of Affected Public: State or local governments, non-profit institutions.

Small Businesses or Organization Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 400.

Estimated Total Burden Hours: 200.

Need for and Use of Information: The Energy Center Feedback Form will provide data on the effectiveness of the TVA Energy Center's educational materials, exhibits, and programs. The data will be analyzed to determine what changes, if any, are needed to meet the Energy Center's educational objectives.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 87-26195 Filed 11-12-87; 8:45 am]

BILLING CODE 8120-01-M

Information Collection Under Review by Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information collection under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2523.

Type of Request: Regular submission.

Title of Information Collection: Hardwood Lumber Export Production and Market Data File.

Frequency of Use: On occasion.

Type of Affected Public: Businesses or other for-profit, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 40.

Estimated Total Annual Burden Hours: 60.

Need for and Use of Information: This survey will collect information on the production capability of hardwood lumber sawmills in the Tennessee Valley region. The data will be used to match company products with foreign market demands and provide necessary information to help prepare the companies to enter new international markets.

John W. Thompson,

Manager of Corporate Services, Senior Agency Official.

[FR Doc. 87–26196 Filed 11–12–87; 8:45 am]

BILLING CODE 8120–01–M

Information Collection Under Review by Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information collection Under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), as amended by Pub. L. 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be directed to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 100 Lupton Building, Chattanooga, TN 37401; (615) 751–2523.

Type of Request: Regular submission.

Title of Information Collection: Survey of State Floodplain Management Activities.

Frequency of Use: On occasion.

Type of Affected Public: State or local governments.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 54

Estimated Total Annual Burden Hours: 108.

Need For and Use of Information: This information collection is part of a larger study on the Status of the Nation's Floodplain Management Program and is funded by the Federal Interagency Task Force on Floodplain Management. The Task Force is comprised of FEMA, TVA, EPA, USGS, the Soil Conservation Service, Bureau of Reclamation, and the Corps of Engineers. The survey data will be incorporated into a comprehensive report on the Status of the Nation's Floodplain Management Program and will help identify improvements that can be made in floodplain management.

John W. Thompson,

Manager of Corporation Services, Senior Agency Official.

[FR Doc. 87–26197 Filed 11–12–87; 8:45 am]

BILLING CODE 8120–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Aleutian Air, Ltd.

AGENCY: Department of Transportation.

ACTION: Notice of Essential Air Service Fitness Determination, Order 87–11–14, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Aleutian Air, Ltd., is fit, willing and able to provide essential air service under section 419 of the Federal Aviation Act and is capable of providing reliable essential air service at Umnak Island (Nikolski), Alaska.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination and reliability findings should file their responses with the Service Analysis Division, P–53, Room 5100, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, and serve them on all persons listed in Appendix G of the order. Responses shall be filed no later than November 23, 1987.

FOR FURTHER INFORMATION CONTACT: John R. McCamant, Service Analysis Division, P–53, Room 5100, Department of Transportation, 400 7th Street, SW., Washington, DC 20590 (202) 366–1060.

Dated: November 6, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–26247 Filed 11–12–87; 8:45 am]

BILLING CODE 4910–62–M

Application of Seagull Air Service, Inc., for Certificate Authority Under Subpart Q

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Order to Show Cause (Order 87–11–15), Docket 44150.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Seagull Air Service, Inc., fit and awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation.

DATES: Persons wishing to file objections should do so no later than November 24, 1987.

ADDRESSES: Responses should be filed in Docket 44150 and addressed to the Documentary Services Division (C–55, Room 4107), U.S. Department of

Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Mary Catherine Terry, Air Carrier Fitness Division, Office of Aviation Analysis, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2343.

Dated: November 6, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87-26246 Filed 11-12-87; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

Office of Hazardous Materials Transportation; Applications for Renewal or Modification of Exemptions or Applications to Become a Party To an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or applications 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 and 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 application 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 December 3, 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
3004-X	Air Products and Chemicals, Inc., Allentown, PA.	3004
4453-X	El Dorado Chemical Company, St. Louis, MO.	4453
4850-X	Halliburton Company, Duncan, OK.	4850
4850-X	GOEX, Inc. Cleburne, TX.	4850
5206-X	El Dorado Chemical Company, St. Louis, MO.	5206
5749-X	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	5749
5876-X	FMC Corporation, Philadelphia, PA.	5876
5945-X	Cardox Corporation, Countryside, IL.	5945
5951-X	Dixie Petro-Chem, Inc., Dallas, TX.	5951
5951-X	Jones Chemicals, Incorporated, Caledonia, NY.	5951
6296-X	Rhone-Poulenc Inc., Monmouth Junction, NJ (See Footnote 1).	6296
6501-X	GOEX, Inc., Cleburne, TX.	6501
6530-X	National Welders, Charlotte, NC.	6530
6530-X	Union Carbide Corporation, Danbury, CT.	6530
6530-X	Messer Griesheim Industries, Inc., Valley Forge, PA.	6530
6626-X	Brown Welding Supply, Inc., Salina, KS.	6626
6765-X	Messer Griesheim Industries, Inc., Valley Forge, PA.	6765
6765-X	Union Carbide Corporation, Danbury, CT.	6765
7011-X	Russell-Stanley Corporation, Red Bank, NJ (See Footnote 2).	7011
7052-X	American Meter Company, Philadelphia, PA.	7052
7052-X	Battery Engineering, Inc., Hyde Park, MA.	7052
7052-X	Beckman Instruments, Inc., Fullerton, CA.	7052
7052-X	Gearhart Industries, Inc., Fort Worth, TX.	7052
7052-X	General Dynamics Corporation, Forth Worth, TX.	7052
7052-X	GTE Government Systems Corporation, Waltham, MA.	7052
7052-X	In-Situ, Inc., Laramie, WY.	7052
7052-X	Moli Energy, Limited, Burnaby, B.C., Canada.	7052
7052-X	Northrop Corporation, Hawthorne, CA.	7052
7052-X	Smith International, Houston, TX.	7052
7052-X	Sparton Corporation, Jackson, MI.	7052
7052-X	TNR Technical, Inc., Deer Park, NY.	7052
7052-X	Eastman Christensen, Salt Lake City, UT.	7052
7052-X	GN Lithium Batteries as Koege, Denmark.	7052
7052-X	Schlumberger Well Services, Rosharon, TX.	7052
7052-X	Hughes Electronics Products Corporation, Livonia, MI.	7052
7052-X	Jet Propulsion Laboratory, Pasadena, CA.	7052
7052-X	Sonatech, Inc., Ventura, CA.	7052
7052-X	Teledyne Systems Company, Northridge, CA.	7052
7052-X	Flow Research Corporation, Houston, TX.	7052
7052-X	Macrodyne, Inc., Schenectady, NY.	7052
7052-X	NL Industries, Inc., Houston, TX.	7052
7052-X	Bren-Tronics, Inc., Commack, NY.	7052
7052-X	Sippican Ocean Systems, Inc., Marion, MA.	7052
7052-X	ITT Barton Instruments Company, City of Industry, CA.	7052
7052-X	Interstate Electronics Corporation, Anaheim, CA.	7052
7052-X	DME Corporation, Ft. Lauderdale, FL.	7052

Application No.	Applicant	Renewal of exemption
7052-X	Electrochem Industries, Inc., Clarence, NY.	7052
7052-X	McDonnell Douglas Corporation, St. Louis, MO.	7052
7052-X	Wilson Greatbatch Ltd., Clarence, NY.	7052
7052-X	Altus Corporation, San Jose, CA.	7052
7052-X	SAFT America, Inc., Cockeysville, MD.	7052
7073-X	Ethyl Corporation, Baton Rouge, LA.	7073
7595-X	Rhone-Poulenc, Inc., Monmouth Junction, NJ.	7595
7595-X	Rhone-Poulenc Ag Company, Research Triangle Park, NC.	7595
7753-X	Monsanto Company, Saint Louis, MO.	7753
7770-X	Eurotainer, S.A., Paris, France.	7770
7909-X	Dow Chemical Company, Midland, MI (See Footnote 3).	7909
7943-X	Hasa, Inc., Saugus, CA.	7943
7943-X	GPS Industries, City of Industry, CA.	7943
7946-X	Westinghouse Electric Corporation, Horseheads, NY.	7946
7969-X	Crosby & Overton, Inc., Long Beach, CA.	7969
8006-X	Kilgore Corporation, Toone, TN.	8006
8099-X	Rhone-Poulenc Ag Company, Research Triangle Park, NC (See Footnote 4).	8099
8156-X	Liquid Carbonic Specialty Gas Corporation, Chicago, IL.	8156
8162-X	Structural Composites Industries, Pomona, CA.	8162
8213-X	Trailmaster Tanks, Incorporated, Fort Worth, TX.	8213
8273-X	TRW Vehicle Safety Systems, Washington, MI.	8273
8354-X	Compagnie des Containers Reservoirs, Paris, France.	8354
8445-X	Dow Chemical Company, Midland, MI.	8445
8445-X	Rohm and Haas Company, Philadelphia, PA.	8445
8445-X	Thomas Gray & Associates, Inc., Orange, CA.	8445
8445-X	Rhone-Poulenc, Inc., Monmouth Junction, NJ.	8445
8445-X	U.S. Department of Defense, Falls Church, VA.	8445
8478-X	West-Mark, Ceres, CA.	8478
8556-X	Air Products and Chemicals, Inc., Allentown, PA.	8556
8585-X	Bergen Barrel and Drum Company, Kearny, NJ (See Footnote 5).	8585
8602-X	Minnesota Valley Engineering, Inc., New Prague, MN.	8602
8718-X	Structural Composites Industries, Pomona, CA.	8718
8725-X	CNG Cylinder Corportion, Long Beach, CA.	8725
8757-X	Y-Z Industries, Inc., Snyder, TX (See Footnote 6).	8757
8758-X	Union Carbide Corporation, Danbury, CT.	8758
8767-X	HR Textron, Inc., Pacoima, CA.	8767
8967-X	Hercules, Incorporated, Wilmington, DE.	8967
9043-X	Ozella Harrington Trucking Company, Benson, AZ.	9043
9120-X	Western Atlas International, Inc., Houston, TX (See Footnote 7).	9120
9262-X	GOEX, Inc., Cleburne, TX (See Footnote 8).	9262
9400-X	Poly Cal Plastics, Inc., French Camp, CA.	9400
9414-X	Union Carbide Corporation, Danbury, CT.	9414
9440-X	Hoover Group, Inc., Beatrice, NE.	9440
9462-X	Aztec Metal Fabricating Co., Odessa, TX.	9462
9480-X	Air Products and Chemicals, Inc., Allentown, PA.	9480
9499-X	Cleveland Container Corporation, Cleveland, OH.	9499
9513-X	American Cyanamid Company, Wayne, NJ.	9513
9527-X	Carolina Aircraft Corporation, Ft. Lauderdale, FL.	7527
9545-X	Keystone Diagnostics, Inc., Columbia, MD.	9545
9555-X	E. I. du Pont de Nemours & Company, Inc., Wilmington, DE.	9555
9577-X	Altus Corporation, San Jose, CA (See Footnote 9).	9577
9690-X	Snyder Industries, Inc., Lincoln, NE (See Footnote 10).	9690
9798-X	Societe Euromissile, Fontenay-aux-Roses, France (See Footnote 11).	9798
9854-X	Morton Thiokol, Inc., Brigham City, UT.	9854

[1] To authorize materials identified as organophosphorus pesticide, solid, n.o.s. as additional materials.

[2] To authorize additional materials that are classed as corrosive, flammable, poison B and oxidizer, solids, and presently authorized in DOT Specification 21C fiber drums.

[3] To authorize renewal and an alternative packaging configuration.

[4] To authorize slight modifications to the prescribed packaging—reduction of size and notched areas on end panel flaps.

[5] To renew and authorize certain hazardous materials which are not presently authorized in DOT Specification 34 containers.

[6] To authorize rail and water as additional modes of transportation.

[7] To authorize pressure testing of the pressure vessels at a longer interval, at least every 5 years, than presently prescribed.

[8] To authorize certain DOT specification fiberboard boxes as additional packaging.

[9] To authorize an alternative battery design.

[10] To authorize cargo vessel as an additional mode of transportation and to approve combustible liquids as additional materials.

[11] To renew exemption originally issued on an emergency basis to authorize shipment of rocket ammunition with explosive projectile, classed as Class A explosive by cargo aircraft only.

Application No.	Applicant	Parties to exemption
2582-P	Advance Research Chemicals, Inc., Catoosa, OK.	2582
4453-P	Roundup Powder Company, Inc., Miles City, MT.	4453
4453-P	Harrison Explosives, Inc., Allentown, PA.	4453
4484-P	Liquid Carbonic Gas Corporation, Chicago, IL.	4884

Application No.	Applicant	Parties to exemption
6293-P	Atlas Powder Company, Dallas, TX.	6293
6922-P	Great Lakes Chemical Corporation, West Lafayette, IN.	6922
6922-P	Shin-Etsu Silicones of America, Inc., Torrance, CA.	6922
6922-P	Shin-Etsu Chemical Co., Ltd., Tokyo, Japan.	6922
7051-P	Advance Research Chemicals, Inc., Catoosa, OK.	7051
7052-P	Battery Assemblers Inc., Bohemia, NY.	7052
7616-P	Grand Trunk Western Railroad Company, Detroit, MI.	7616
7835-P	Amerigas Inc., Valley Forge, PA.	7835
8006-P	Esquire Novelty Corporation, Amsterdam, NY.	8006
8077-P	Liquid Carbonic Specialty Gas Corporation, Chicago, IL.	8077
8180-P	Liquid Carbonic Specialty Gas Corporation, Chicago, IL.	8180
8390-P	KTI Chemicals, Inc., Danbury, CT.	8390
8445-P	Chem-Clear of Baltimore, Baltimore, MD.	8445
8451-P	Olin Chemicals Group Research Center, Cheshire, CT.	8451
8526-P	Key Way Transport, Inc., Baltimore, MD.	8526
8526-P	Stanley J. Clark, Emden, IL.	8526
8526-P	North Star Transport, Inc., St. Paul, MN (See Footnote 1).	8526
8923-P	Liquid Carbonic Specialty Gas Corporation, Chicago, IL.	8923
9610-P	IMR Powder Company, Plattsburgh, NY.	9610
9750-P	LaRoche Industries Inc., Atlanta, GA.	9750
9841-P	Greenfield Overseas Containers, Inc., Sandton, South Africa.	9841

[1] To authorize party status and an additional heating system for the motor vehicle.

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 November 5, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 87-26249 Filed 11-12-87; 8:45 am]

BILLING CODE 4910-60-M

Office of Hazardous Materials Transportation; Applications For Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given 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.

DATE: Comment period closes December 17, 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: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

New Exemptions

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9871-N	Olin Hunt Specialty Products, Inc. Seward, IL.	49 CFR 173.251(b)(1), 175.3	To authorize shipment of boron tribromide classed as a corrosive material in accordance with 49 CFR 173.251(b)(1) except that a stainless steel container not to exceed 1.2 liters will be substituted for the specified glass inner container. (Modes 1, 2, 3, 4.)
9872-N	Bowater Drums, Ltd., Cheshire, England.	49 CFR 178.224-1, 173.156, 173.154, 173.217, 173.365, 173.510, 175.3.	To authorize manufacture, marking and sale of non-DOT specification fiber drums equivalent to DOT Specification 21C fiber drums except lid is constructed of high density polyethylene for transporting of certain flammable solids, oxidizers, and Class B poisons, solid. (Modes 1, 2, 3, 4.)
9873-N	Hercules, Incorporated, Wilmington, DE.	49 CFR 173.184, 175.3	To authorize shipment of nitrocellulose with not less than 25% water by weight classed as a flammable solid in a non-DOT combination package consisting of a plastic sack sealed by a tightening band around the neck in a non-DOT specification fiberboard box sealed by glue and taping. (Modes 1, 2, 3, 4.)
9874-N	Dow Chemical Company, Freeport, TX.	49 CFR 177.834(i)(3)	To permit observance of loading and unloading of cargo tanks by personnel utilizing video cameras and monitors from control centers instead of personnel remaining within 25 feet of the cargo tank. (Mode 1.)
9875-N	Fabricated Metals, Inc., San Leandro, CA.	49 CFR 173.346, 178.251-2	To authorize manufacture, marking and sale of a stainless steel DOT Specification 57 portable tank without a bottom outlet for use in the transport of toluene diisocyanate, classed as a poison B. (Modes 1, 2.)
9876-N	Metalcraft, Inc., Baltimore, MD	49 CFR 173.34(d)	To authorize use of a fusible safety relief device on DOT Specification 39 cylinders used as fire extinguishers and charged with a nonflammable liquefied compressed gas. (Mode 1.)
9877-N	Systron Donner, Concord, CA	49 CFR 173.304-a2	To authorize manufacture, marking and sale of cylinders (fire extinguishers) comparable to DOT Specification 39 except the maximum filling density will be 145% instead of 124% to contain Bromotrifluoromethane (R-13B1 or H-1301), classed as a nonflammable gas. (Modes 1, 4, 5.)

Note: Request revision to original application published in **Federal Register** on Tuesday, July 14, 1987 on page 26390. To authorize those hazardous materials that are permitted for shipment by the IM Tank Table in steel tanks to be shipped in identical tanks except they are constructed of nickel.

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 5, 1987.

J. Suzanne Hedgepeth,

Chief, Exemptions Branch Office of Hazardous Materials Transportation.

[FR Doc. 87-26248 Filed 11-12-87; 8:45 am]

BILLING CODE 4910-60-M

Urban Mass Transportation Administration

UMTA Sections 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: Public Law 99-500 signed into law by President Reagan on October 18, 1986, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** each time a grant is obligated pursuant to sections 3 and 9 of the Urban Mass Transportation Act of 1964, as amended. The statute requires that the announcement include the grant number, the grant amount, and the transit property receiving each grant. This notice provides the information as required by statute.

FOR FURTHER INFORMATION CONTACT: Edward R. Fleischman, Chief, Resource Management Division, (202) 366-2053, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: The Section 3 program was established by the Urban Mass Transportation Act of 1964 to provide capital assistance to eligible recipients in urban areas. Funding for this program is distributed on a discretionary basis. The Section 9 formula program was established by the Surface Transportation Assistance Act of 1982. Funds appropriated to this program are allocated on a formula basis to provide capital and operating assistance in urbanized areas. Pursuant to Pub. L. 99-500, UMTA reports the following grant information:

Section 3 Grants

Transit property	Grant number	Grant amount	Date obligated
Santa Cruz Metropolitan Transit District, Santa Cruz, CA	CA-03-0311	$1,235,343	09-30-87
Southern California Rapid Transit District, Los Angeles, CA	CA-03-0130-07	107,380,398	09-30-87
Santa Clara County Transit District, San Jose, CA	CA-03-0309	18,357,750	09-30-87
Public Utilities Commission, San Francisco, CA	CA-03-0309	9,144,000	09-30-87
Bay Area Rapid Transit District, San Francisco, CA	CA-03-0321	4,854,000	09-24-87
City of Vail, Vail, CO	CO-03-0041	202,875	09-30-87
Connecticut Department of Transportation, Hartford, CT	CT-03-0050	17,478,000	09-30-87
Connecticut Department of Transportation, Hartford, CT	CT-03-0054	9,561,750	09-30-87
Regional Transportation Authority-Commuter Rail Division, Chicago, IL	IL-03-0126-01	1,875,000	09-24-87
Regional Transportation Authority-Chicago Transit Authority, Chicago, IL	IL-03-0134	3,124,995	09-24-87
Greater Portland Transit District, Portland, ME	ME-03-0020	1,249,995	09-30-87
Mass Transit Administration, Laurel, MD	MD-03-0037	442,791	09-30-87
Montachussetts Regional Transit Authority, Fitchburg, MA	MA-03-0150	546,450	09-30-87
Pioneer Valley Transit Authority, Springfield, MA	MA-03-0152	525,000	09-30-87
St. Cloud Metropolitan Transit Commission, St. Cloud, MN	MN-03-0036	340,000	09-30-87
New Jersey Transit Corporation, Newark, NJ	NJ-03-0064	20,000,001	09-30-87
New Jersey Transit Corporation, Newark, NJ	NJ-03-0065	6,667,500	09-30-87
New Jersey Transit Corporation, Newark, NJ	NJ-03-0068	19,597,500	09-30-87
Metropolitan Transit Authority, New York, NY	NY-03-0218-01	2,495,388	09-30-87
Metropolitan Transit Authority, New York, NY	NY-03-0229	57,282,075	09-30-87
Chemung County Transit System, Elmira, NY	NY-03-0227	195,000	09-30-87
Metropolitan Transit Authority, New York, NY	NY-03-0230	2,719,500	09-30-87
Nassau County, Long Island, NY	NY-03-0224	123,750	09-30-87
Nassau County, Long Island, NY	NY-03-0225	99,000	09-30-87
Southwest Ohio Regional Transit Authority, Cincinnati, OH	OH-03-0095	2,700,000	09-30-87
Tri-County Metropolitan Transit District, Portland, OR	OR-03-0025-07	1,293,500	09-30-87
Lane County Transit District, Eugene, OR	OR-03-0033	6,171,693	09-24-87
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA	PA-03-0195	7,500,000	09-30-87
Mass Transit Authority, Houston, TX	TX-03-0090	17,885,475	09-18-87
Seattle Metro, Seattle, WA	WA-03-0059-02	67,412,649	08-21-87
Monongalia County, Morgantown, WV	WV-03-0019	712,500	09-24-87

Section 9 Grants

Transit property	Grant number	Grant amount	Date obligated
Municipality of Anchorage, Anchorage, AK	AK-90-X005-00	$999,990	09-30-87
Tuscaloosa County Parking and Transit Authority, Tuscaloosa, AL	AL-90-X027-00	174,500	09-30-87
Alabama Highway Department, Montgomery, AL	AL-90-X026-00	1,289,312	09-30-87
City of Gadsden, Gadsden, AL	AL-90-X025-00	43,077	09-30-87
City of Huntsville, Huntsville, AL	AL-90-X024-00	411,792	09-30-87

SECTION 9 GRANTS—Continued

Transit property	Grant number	Grant amount	Date obligated
Mobile Transit Authority, Mobile, AL	AL-90-X023-00	1,506,757	09-30-87
City of Gadsden, Gadsden, AL	AL-90-X018-01	88,000	09-30-87
Central Arkansas Transit, Little Rock, AR	AR-90-X009	335,700	09-30-87
Arkansas State Highway and Transportation Department, Little Rock, AR	AR-90-X010	69,500	09-28-87
Bay Area Rapid Transit District, San Francisco, CA	CA-90-X038-04	11,904,000	09-30-87
Santa Clara County Transportation Agency, San Jose, CA	CA-90-X044-03	9,698,040	09-30-87
Stockton Metro Transit District, Stockton, CA	CA-90-X108-01	1,165,140	09-30-87
Southern California Rapid Transit District, Los Angeles, CA	CA-90-X204-01	15,600,000	09-30-87
City of Napa, Napa, CA	CA-90-X237-01	180,000	09-30-87
Santa Maria Area Transit, Santa Maria, CA	CA-90-X254-00	374,433	09-30-87
Chico Area Transit Service, Chico, CA	CA-90-X255-00	203,622	09-30-87
Sacramento Regional Transit, Sacramento, CA	CA-90-X145-01	548,248	09-11-87
Municipal Railway, San Francisco, CA	CA-90-X223-01	4,604,184	09-30-87
Metropolitan Transit Development Board, San Diego, CA	CA-90-X256-00	1,290,160	09-30-87
Public Utility Commission, San Francisco, CA	CA-90-X263	4,800,000	09-30-87
City of Fort Collins, Fort Collins, CO	CO-90-X013-01	25,320	09-30-87
City of Pueblo, Pueblo, CO	CO-90-X035-00	42,880	09-30-87
City of Greeley, Greeley, CO	CO-90-X032-01	225,845	09-30-87
City of Colorado Springs, Colorado Springs, CO	CO-90-X033-00	85,000	09-30-87
Denver Regional Transportation District, Denver, CO	CO-90-X005-05	56,000	09-30-87
Town of Stratford, Stratford, CT	CT-90-X083	640,000	09-30-87
Housatonic Area Regional Transit, Danbury, CT	CT-90-X101	180,000	09-30-87
Capitol Region Council of Governments, Hartford, CT	CT-90-X104	34,848	09-30-87
Middletown Transit District, Middletown, CT	CT-90-X100	280,000	09-30-87
Greater Hartford Transit District, Hartford, CT	CT-90-X093-02	696,000	09-30-87
Greater New Haven Transit District, New Haven, CT	CT-90-X102	92,000	09-30-87
Pinellas Suncoast Transit Authority, Clearwater, FL	FL-90-X096	8,260,783	09-30-87
East Volusia Transportation Authority, Daytona Beach, FL	FL-90-X088	1,895,044	09-30-87
City of New Smyrna Beach, New Smyrna Beach, FL	FL-90-X098	64,162	09-30-87
Orange-Seminole-Osceola Transportation Authority, Orlando, FL	FL-90-X073-01	500,000	09-30-87
Palm Beach County Transportation Authority, W. Palm Beach, FL	FL-90-X097	3,000,000	09-30-87
Augusta-Richmond County Planning Commission, Augusta, GA	GA-90-X038	42,920	09-30-87
Georgia Department of Transportation, Atlanta, GA	GA-90-X039	2,694,619	09-30-87
Department of Transportation Services, Honolulu, HI	HI-90-X005	19,614,737	09-30-87
University of Iowa, Iowa City, IA	IA-90-X077	52,000	09-30-87
Iowa City Transit, Iowa City, IA	IA-90-X078	384,000	09-30-87
Sioux City Board of Transit Trustees, Sioux City, IA	IA-90-X079	108,000	09-30-87
De Moines Metropolitan Transit Authority, Des Moines, IA	IA-90-X075-01	9,600	09-30-87
City of Pocatello, Pocatello, ID	ID-90-X014	446,455	09-30-87
Danville Runaround, Danville, IL	IL-90-X108	225,000	09-30-87
Regional Transportation Authority—Commuter Rail Division, Chicago, IL	Il-90-X101	34,160,656	09-30-87
Regional Transportation Authority—Chicago Transit Authority, Chicago, IL	IL-90-X100	55,860,986	09-30-87
Decatur Public Transit System, Decatur, IL	IL-90-X099	351,966	09-30-87
Loves Park Transit System, Loves Park, IL	IL-90-X102	135,800	09-30-87
Rockford Mass Transit District, Rockford, IL	IL-90-X104	180,452	09-30-87
Champaign-Urbana Mass Transit District, Champaign-Urbana, IL	IL-90-X097	1,024,000	09-30-87
Greater Peoria Mass Transit District, Peoria, IL	IL-90-X095	2,139,680	09-30-87
Pace Suburban Bus Service, Chicago, IL	IL-90-X096	12,960,000	09-30-87
City of Muncie, Muncie, IN	IN-90-X081-01	90,080	09-18-87
East Chicago Bus Transit, East Chicago, IN	IN-90-X097	275,000	09-30-87
Gary Public Transportation Corporation, Gary, IN	IN-90-X096	2,875,413	09-30-87
Wichita Metropolitan Transit Authority, Wichita, KS	KS-90-X026	355,136	09-30-87
Mid America Regional Council, Kansas City, KS	KS-90-X027	120,000	09-30-87
Topeka Metropolitan Transit Authority, Topeka, KS	KS-90-X025	861,984	09-30-87
Transit Authority of the Lexington-Fayette Urban Cty., Lexington, KY	KY-90-X027-01	2,187,824	09-28-87
Shreveport Area Transit Area, Shreveport, LA	LA-90-X070	1,552,100	09-28-87
City of Alexandria, Alexandria, LA	LA-90-X071	51,360	09-30-87
St. Bernard Urban Rapid Transit, St. Bernard Parish, LA	LA-90-X065	175,317	09-28-87
Regional Transit Authority, New Orleans, LA	LA-90-X066	4,763,070	09-28-87
Capital Transportation Corporation, Baton Rouge, LA	LA-90-X073	1,499,867	09-28-87
Merrimack Valley Regional Transit Authority, Bradford, MA	MA-90-X071	461,076	09-30-87
Lowell Regional Transit Authority, Lowell, MA	MA-90-X070-01	159,216	09-30-87
Worcester Regional Transit Authority, Worcester, MA	MA-90-X048-02	203,200	09-30-87
Berkshire Regional Transit Authority, Pittsfield, MA	MA-90-X063-01	561,880	09-30-87
Bershire County Regional Planning Commission, Pittsfield, MA	MA-90-X072	20,000	09-30-87
Howard County Columbus Transit System, Baltimore, MD	MD-90-X030-00	240,500	09-28-87
Allegany County Transit Authority, Cumberland, MD	MD-90-X031-00	209,749	09-30-87
Casco Bay Island Transit District, Portland, ME	ME-90-X030	92,632	09-30-87
Kalamazoo Metro Transit System, Kalamazoo, MI	MI-90-X087	140,000	09-30-87

SECTION 9 GRANTS—Continued

Transit property	Grant number	Grant amount	Date obligated
Bi-State Development Agency, St. Louis, MO	MO-90-X042	512,656	09-30-87
City of St. Joseph, St. Joseph, MO	MO-90-X041	552,488	09-30-87
City Utilities of Springfield, Springfield, MO	MO-90-X040	97,368	09-30-87
City of Jackson, Jackson, MS	MS-90-X017-00	1,065,369	09-30-87
Missoula Urban Transportation District, Missoula, MT	MT-90-X020-00	106,000	09-30-87
City of Billings, Billings, MT	MT-90-X019-00	563,650	09-30-87
Chapel Hill Transit, Chapel Hill, NC	NC-90-X064-00	1,206,504	09-29-87
City of Hickory, Hickory, NC	NC-90-X051-01	225,657	09-29-87
Gastonia Transit, Gastonia, NC	NC-90-X067-00	271,723	09-28-87
Wilmington Transit Authority, Wilmington, NC	NC-90-X066-00	329,860	09-28-87
Guilford County, Greensboro Agency Transportation Express, Greensboro, NC	NC-90-X063-00	415,665	09-28-87
North Carolina Department of Transportation, Raleigh, NC	NC-90-X058-01	181,500	07-31-87
Gaston County Central Transportation Department, Gastonia, NC	NC-90-X068-00	94,080	09-28-87
Winston-Salem Transit Authority, Winston-Salem, NC	NC-90-X069-00	2,904,465	09-29-87
City of Nashua, Nashua, NH	NH-90-X014	435,000	09-30-87
Cooperative Alliance for Seacoast Transportation, Portsmouth, NH	NH-90-X015	472,901	09-30-87
New Jersey Transit Corporation, Newark, NJ	NJ-90-X021-03	7,534,240	09-11-87
City of Las Cruces, Las Cruces, NM	NM-90-X015	359,712	09-30-87
City of Albuquerque, Albuquerque, NM	NM-90-X018	1,795,284	09-30-87
City of Albuquerque, Albuquerque, NM	NM-90-X017	160,000	09-28-87
City of Santa Fe, Santa Fe, NM	NM-90-X016	249,486	09-30-87
City of Albuquerque, Albuqueque, NM	Nm-90-X019.	5,800,000	09-30-87
Regional Transportation Commission of Washoe County, Reno, NV	NV-90-X007-00	1,193,070	09-30-87
Regional Transportation Commission of Clark County, Las Vegas, NV	NV-90-X006-00	3,007,059	09-30-87
Metropolitan Transportation Authority, New York, NY	NY-90-X111-01	219,952,525	09-11-87
Nassau County Planning Commission, Nassau, NY	NY-90-X120	5,633,721	09-11-87
Westchester County Transportation Department, Westchester, NY	NY-90-X121	2,043,871	09-11-87
City of Poughkeepsie, Poughkeepsie, NY	NY-90-X123	250,000	09-11-87
Rochester-Genesse Regional Transportation Authority, Rochester, NY	NY-90-X108-01	2,220,867	09-11-87
County of Dutchess, Dutchess County, NY	NY-90-X125	425,986	09-30-87
Southwest Ohio Regional Transit Authority, Cincinnati, OH	OH-90-X072-01	4,166,408	09-30-87
Southwest Ohio Regional Transit Authority, Cincinnati, OH	OH-90-X059-03	30,300	09-30-87
Ohio Department of Transportation, Columbus, OH	OH-90-X088	5,917,072	09-30-87
Lorain County Transit Board Elyria, OH	OH-90-X089	475,160	09-30-87
Lorain County Transit Board Elyria, OH	OH-90-X086	152,000	09-30-87
Canton Regional Transit Authority, Canton, OH	OH-90-X082	1,168,400	09-30-87
Enid Public Transportation, Enid, OK	OK-90-X019	203,731	09-28-87
Tri-County Metropolitan Transportation District, Portland, OR	OR-90-X019-03	3,921,832	09-30-87
Cumberland-Dauphin-Harrisburg Transit Authority, Harrisburg, PA	PA-90-X127-00	4,022,155	09-29-87
Centre Area Transportation Authority, State College, PA	PA-90-X112-01	90,150	09-28-87
Transportation and Motor Buses for Public Use Authority, Altoona, PA	PA-90-X130-00	763,919	09-30-87
Berks Area Reading Transportation Authority, Reading, PA	PA-90-X118-01	2,078,400	09-29-87
County of Lackawanna Transit System, Scranton, PA	PA-90-X129-00	762,533	09-28-87
Shenango Valley Shuttle Service, Sharon, PA	PA-90-X133-00	116,450	09-29-87
Red Rose Transit Authority, Lancaster, PA	PA-90-X131-00	1,455,000	09-30-87
Erie Metropolitan Transit Authority, Erie, PA	PA-90-X120-01	65,600	09-29-87
Centre Area Transportation Authority, State College, PA	PA-90-X128-00	2,064,000	09-30-87
Municipality of Canovanas, Canovanas, PR	PR-90-X032-0	250,928	09-30-87
Municipality of Gurabo, Gurabo, PR	PR-90-X030-00	277,600	09-30-87
Department of Transportation and Public Works, San Juan, PR	PR-90-X011-02	2,600,000	09-30-87
Municipality of Arecibo, Arecibo, PR	PR-90-X029	525,884	09-30-87
Rhode Island Department of Transportation, Providence, RI	RI-90-X009-01	108,480	09-30-87
Central Midlands Regional Planning Council, Columbia, SC	SC-90-X019-00	3,228,611	09-30-87
Greenville Transit Authority, Greenville, SC	SC-90-X020-00	179,100	09-28-87
Greenville Transit Authority, Greenville, SC	SC-90-X017-01	28,000	09-28-87
City of Sioux Falls, Sioux Falls, SD	SD-90-X010-00	522,000	09-30-87
City of Kingsport, Kingsport, TN	TN-90-X058-00	61,150	09-28-87
Metropolitan Transit Authority, Nashville, TN	TN-90-X056-00	1,981,020	09-30-87
Knoxville Transportation Auth., Knoxville, TN	TN-90-X057-00	2,658,704	09-30-87
Clarksville Transit System, Clarksville, TN	TN-90-X042-01	550,000	09-29-87
Abilene Transit, Abilene, TX	TX-90-X099	433,081	09-28-87
City of Galveston, Galveston, TX	TX-90-X093	416,400	09-28-87
Abilene Transit, Abilene, TX	TX-90-X109	61,344	09-28-87
Suncity Area Transit, El Paso, TX	TX-90-X105	25,208	09-29-87
Permian Basin Regional Planning Commission, Midland, TX	TX-90-X104	40,000	09-28-87
Waco Transit System, Waco, TX	TX-90-X102	417,152	09-28-87
Beaumont Mass Transit, Beaumont, TX	TX-90-X100	1,960,000	09-28-87
Houston Metropolitan Transit Authority, Houston, TX	TX-90-X101	10,241,530	09-28-87
Lower Rio Grande Valley Development Council, McAllen, TX	TX-90-X106	42,700	09-28-87

SECTION 9 GRANTS—Continued

Transit property	Grant number	Grant amount	Date obligated
Petersburg Area Transit, Petersburg, VA	VA-90-X050-00	291,070	09-28-87
Greater Richmond Transit Company, Richmond, VA	VA-90-X047-00	6,087,390	09-29-87
Bristol Virginia Transit, Bristol, VA	VA-90-X048-00	206,076	09-29-87
Greater Roanoke Transit Company, Roanoke, VA	VA-90-X051-00	1,965,521	09-30-87
Greater Lynchburg Transit Company, Lynchburg, VA	VA-90-X049-00	1,042,570	09-30-87
Community Transit, Everett, WA	WA-90-X075-01	1,094,493	09-30-87
City of Everett, Everett, WA	WA-90-X078-00	336,036	09-30-87
Spokane Transit Authority, Spokane, WA	WA-90-X077	3,373,989	09-30-87
Pierce County, Tacoma, WA	WA-90-X073-01	80,000	09-30-87
City of Longview, Longview, WA	WA-90-X076	169,680	09-30-87
Waukesha Co. Express and Freeway Flier, Milwaukee, WI	WI-90-X073	226,902	09-30-87
Madison Metro, Madison, WI	WI-90-X080	4,670,477	09-30-87
Belle Urban System, Racine, WI	WI-90-X083	1,121,581	09-30-87
La Crosse Municipal Transit Utility, La Crosse, WI	WI-90-X076	482,955	09-16-87
Eau Claire Transit, Eau Claire, WI	WI-90-X082	982,578	09-30-87
Ohio Valley Regional Transportation Authority, Wheeling, WV	WV-90-X024	1,183,600	09-29-87

SECTION 9 GRANTS READY FOR OBLIGATION: WAITING FOR 13(C) CERTIFICATION

Transit property	Grant number	Grant amount
Rock Island County Metropolitan Mass Transit District, Rock Island, IL	IL-90-X105-00	$425,760
Maine Department of Transportation, Augusta, ME	ME-90-X031-01	435,430

Issued on: October 30, 1987.

Alfred A. DelliBovi,

Deputy Administrator.

[FR Doc. 87-26166 Filed 11-12-87; 8:45 am]

BILLING CODE 4910-57-M

VETERANS ADMINISTRATION

Special Medical Advisory Group; Meeting

The Veterans Administration gives notice under Pub. L. 92-463 that a meeting of the Special Medical Advisory Group will be held on December 3 and 4, 1987. The session on December 3 will be held at the Sheraton Carlton Hotel, 923 Sixteenth Street, NW., Washington, DC 20006, and the session on December 4 will be held in the Omar Bradley Conference Room (10th floor) at the Veterans Administration Central Office, 810 Vermont Avenue, NW., Washington, DC 20420. The purpose of the Special Medical Advisory Group is to advise the Administrator and Chief Medical Director relative to the care and treatment of disabled veterans, and other matters pertinent to the Veterans Administration's Department of Medicine and Surgery. The session on December 3 (held at the Sheraton Carlton Hotel) will convene at 6 p.m. and the session on December 4 will convene at 8 a.m. All sessions will be open to the public up to the seating capacity of the rooms. Because this capacity is limited, it will be necessary for those wishing to attend to contact Lorri Fertal, Office of the Chief Medical Director, Veterans Administration Central Office (phone 202/233-3985) prior to November 25, 1987.

Dated: November 5, 1987.

By direction of the Administrator:

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 87-26307 Filed 11-12-87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52. No. 219
Friday, November 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

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: November 6, 1987, 52 FR 42757.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 10, 1987, 10:00 a.m.

CHANGE IN THE MEETING: The following item has been added:

Item No., Docket No., and Company

CAG–37
CP63–159–000, Panhandle Eastern Pipe Line Company and National Helium Corporation

Lois D. Cashell,
Acting Secretary.

[FR Doc. 87–26376 Filed 11–10–87; 3:41 pm]

BILLING CODE 6712–02–M

Corrections

Federal Register
Vol. 52, No. 219
Friday, November 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.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits of Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

Correction

In notice document 87-25265 beginning on page 42031 in the issue of Monday, November 2, 1987, make the following correction:

On page 42032, in the first column, in the table, under "Adjusted 12-mo. limit", "5542,435 doz." should read "542,435 doz.".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87N-0267]

Clinical Studies of Safety and Effectiveness of Orphan Products; Availability of Grants; Request for Applications

Correction

In notice document 87-24648 beginning on page 39996 in the issue of Monday, October, 26, 1987, make the following correction:

On page 39996, in the second column, under **ADDRESS**, in the eighth line, the telephone number should read "301-443-6170".

BILLING CODE 1505-01-D

federal register

Friday
November 13, 1987

Part II

Office of Management and Budget

Questions and Answers on the Single Audit Process of OMB Circular A-128 "Single Audits of State and Local Governments"; Notice

OFFICE OF MANAGEMENT AND BUDGET

Questions and Answers on the Single Audit Process of OMB Circular A–128, "Single Audits of State and Local Governments"

This is a question and answer booklet which helps Federal, State and local officials and independent public accountants gain a better understanding of OMB Circular A–128 "Single Audits of State and Local Governments." The questions are ones that come up most frequently in correspondence and discussions with Federal, State and local officials and independent auditors.

Darrell A. Johnson,

Assistant Director for Administration.

November 1987.

Questions and Answers On the Single Audit Provisions of OMB Circular A–128, "Audits of State and Local Governments"

Executive Office of the President

Office of Management and Budget

Contents

Foreword

The Single Audit Act, Pub. L. 98–502 builds upon earlier efforts to improve audits of Federal aid programs. The Act requires State or local governments that receive $100,000 or more a year in Federal funds to have an audit made for that year. The Act also requires State or local governments that receive between $25,000 and $100,000 a year in Federal funds to have a single audit made for that year, or to have an audit made in accordance with the Federal laws governing the programs in which they participate.

Section 7505 of the Act requires the Director of the Office of Management and Budget to prescribe policies, procedures and guidelines to implement the Act. This was done through OMB Circular A–128 issued on April 12, 1985. The Circular established audit requirements for State and local governments that receive Federal aid, and defined Federal responsibilities for implementing and monitoring those requirements.

As single audits were made under the provisions of the new Circular many auditors raised questions about compliance testing, audit reports and issues concerning subrecipients. The purpose of this booklet is to provide additional guidance through a series of questions and answers to those participating in single audits. The questions are ones that came up most frequently in discussions and through correspondence with Federal, State, and local government officials. Also, some of the questions came from auditors participating in single audits across the country. This booklet will provide answers to these questions to broader audiences.

We hope the booklet will be useful to you. Of course, if you have any additional questions or comments concerning the single audit, please let us know. Questions or comments should be addressed to: Financial Management Division, Office of Management and Budget, Washington, DC 20503, Telephone: (202) 395–3993.

James C. Miller III,

Director.

Questions About Audit Requirements

1. The Single Audit Act and Circular A–128 seem to have the same objectives as Attachment P to Circular A–102, "Uniform Requirements for Grants to State and Local Governments." Why was it necessary to replace an administrative policy already in place?

The Congress found that the pace of the implementation of Attachment P was slow and difficult. There also appeared to be some disagreement between Federal, State and local officials in the scope and purpose of the single audit. The Single Audit Act strengthens the single audit requirement and clarifies what is expected as a minimum from an audit of Federal programs. Also, the Act calls for more frequent audits and covers programs that were not covered under Attachment P.

2. Has OMB granted any exceptions to the requirements of Circular A–128?

Yes. See Question 39.

3. Must the auditor actually evaluate internal controls or can the report be based simply on the results of the auditor's testing of transactions from Federal programs?

The auditor must evaluate internal controls. The Government Operations Committee's report accompanying the Act (House Report 98–708) states that "a single audit must include an evaluation and written report on the recipient's internal accounting and administrative control systems over its Federal financial assistance programs." The report makes it clear that while the auditors need not express an opinion on the recipient's internal controls, their report is to be the result of a study and evaluation of those controls and not merely the by-product of testing for compliance with applicable laws and regulations. Further guidance on testing is contained in the AICPA Accounting and Audit Guide, for "Audits of State and Local Governmental Units"—1986 revised edition.

4. If an audit is performed on a departmental basis rather than on a governmentwide basis, should a major program be determined based on the expenditures of the department or the expenditures of the government as a whole?

If the entity is a department, the expenditures of the department would be the criteria used to determine a major program. For determining a major program the auditor should apply the criteria contained in Attachment A of Circular A–128 to the expenditures of the audited entity.

5. Do State laws that authorize but do not compel a less frequent than annual audit requirement provide an adequate basis for the biennial exception?

A State law that authorizes, but does not compel, a "less frequent than annual" audit requirement is not an adequate basis for qualifying for the biennial exception. Circular A–128 subsection 9(b)(2) provides that the exception applies only if the "less frequent than annual" audit requirement "is required" by statute. States with permissive (rather than mandatory) statutes constitute a subset of cases falling within the subsection (b)(3) exception (since the selection of more than one year cycles will be made by policy decision). Therefore, they must have converted to mandatory statutes by January 1, 1987 in order to qualify for the biennial audit exception.

6. Are medicaid funds paid by States to hospitals and other providers of services covered by the Single Audit Act?

Medicaid funds paid by the Federal government to States are Federal assistance payments and are covered by the Single Audit Act. However, most medicaid arrangements between the States and providers are contracts for services and not Federal assistance; therefore, they would not be covered by the Act.

7. If an entity participates in a loan or loan guarantee program which is determined to be major but has no expenditures during the period under audit (pursuant to the Single Audit Act and Circular A–128), what procedures, if any, are required of the auditor?

The auditor should ensure that the entity is in compliance with the appropriate laws and regulations governing the program. For loan guarantee programs that do not have expenditures during a specific period, the auditor should perform procedures annually to determine that loan recipients are eligible beneficiaries, the necessary review and award procedures are performed relative to loans, and that loans are being repaid and properly serviced. (See question 33.)

8. What is the basis for defining "receives" Federal financial assistance?

The definition of receipt of Federal assistance will be based on how the recipient recognizes and reports its revenue. Generally this means an entity has "received" Federal financial assistance when it has obtained Federal cash, or it has incurred expenditures which will be reimbursed under a Federal financial assistance program. For governments following GAAP receipt of Federal financial assistance means when the related assets or revenues are recorded in the financial statements. For those not following GAAP, receipt means when the cash is actually received.

For programs that involve the receipt of tangible assets (such as food stamps, food commodities and donated surplus property) "receives" should be based on when the revenue is recognized in accordance with GAAP.

For programs that do not involve the transfer of tangible assets (such as guarantee and insurance programs), "receives" shall be based on the transaction or event which gives rise to the award of assistance. For example, "receipt" of a loan guarantee would occur when a loan is made that is guaranteed by the Federal government. Or for example, "receipt" under an insurance program would occur when the event occured that is insured by the Federal government. (See question 33.)

9. Are all Indian organizations receiving Federal financial assistance required to comply with the Single Audit Act and OMB Circular A–128?

All Federally recognized Indian tribes receiving $100,000 or more in total Federal financial assistance are required to have a single audit performed of their operations. Tribes receiving between $25,000 and $100,000 must have a single audit or an audit of the Federal programs in which they participate. The Federally recognized tribes are those identified by the Bureau of Indian Affairs (BIA), U.S. Department of the Interior, as eligible to receive services for BIA. A list of these tribes is published periodically by BIA in the Federal Register.

The Circular also requires any other Indian organization, Alaskan Native Village or Regional Corporation that receives financial assistance under the Indian Self Determination Act, Public Law 98–638, to have a single audit performed, provided that they meet the criteria contained in Circular A–128.

Questions on Compliance

10. When testing the entity's compliance with Federal laws and regulations, can the auditors limit their audit procedures or inquiries to those specified in the Compliance Supplement?

Yes. For the programs contained in the Compliance Supplement the audit of the requirements contained in the supplement will meet the requirements of Circular A–128.

11. What should the test procedure be for programs not included in the Compliance Supplement?

For programs not included in the Compliance Supplement, the auditor should review the award, grant agreement, contract, regulations, or enabling legislation to determine whether there are special conditions that need to be considered. Also, the auditor may have to contact the Federal program agency or the cognizant agency for assistance.

12. Is the auditor required to make compliance tests of nonmajor programs?

Yes. The Circular requires that transactions that are selected in connection with examinations of financial statements and/or evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

13. Are auditors required to review the program compliance requirements contained in the Compliance Supplement?

For major and/or nonmajor programs the use of the Compliance Supplement is not mandatory. However, the Federal Government recommends its use for identifying the compliance requirements to be tested. The requirements contained in the Compliance Supplement are those that Federal program officials and the Inspectors General have identified as being the minimum requirement for their programs. Auditors should recognize the importance of the Compliance Supplement to the Federal agencies when exercising their professonal judgment in identifying which laws and regulations may have a material effect on the programs.

14. If an auditor selects a Federal assistance program transaction in his tests of financial balances or internal controls is the auditor required to test the entity's compliance with all major compliance requirements of that program?

No. The auditor would be required to test only those compliance aspects of the particular transaction selected. For example, if the transaction is a charge for travel the auditor should ascertain whether the travel was necessary and authorized by the grant or contract agreement.

15. Must the auditor read each Federal assistance agreement in its entirety?

No. The auditor should be familiar with the special terms and conditions of grants, loans, etc., but is not required to read each agreement in its entirety.

16. Does OMB Circular A–128 replace the guidance on the audit of block grant programs?

Yes.

17. Should the recipient's cost allocation plan be reviewed?

If indirect costs were claimed as expenditures on Federal programs during the period being audited, the auditor should ascertain if amounts claimed or used for matching were determined in accordance with OMB Circular A–87, "Cost Principles for State and Local Governments."

The auditor should do enough work to determine the reasonableness of the indirect cost rate or rates. In order to determine this the auditor should determine whether:

—The costs, bases, and methods of allocating costs are in accordance

with guidelines provided in OMB Circular A–87 or a plan that has been approved by the Federal Government.

—The same costs are not treated or charged both as indirect costs and direct costs.

—Statistical data such as square footage, population, salaries, included in the bases are current and reasonable.

—The costs are reasonable in amount and they are properly allocated.

—The costs were incurred within the period under review.

18. Must the expenditures of each major Federal program be considered as a separate population to support an auditor's report as to whether the entity has complied with laws and regulations that may have a material effect upon each major Federal assistance program?

Both the Single Audit Act and Circular A–128 clearly indicate the auditor must determine and report on compliance for each major program. Both also indicate the auditors shall select and test a representative number of transactions from each major program. Audit efficiency might be achieved by developing a test of transactions based on the overall population of all major (and even nonmajor) program transactions. However, the selection and testing of transactions must include, based on the auditor's professional judgment, a representative number of transactions from each major program.

Questions on Audit Sampling

19. Are independent auditors required to use statistical sampling techniques?

Either a nonstatistical or statistical approach to audit sampling may be used. However, statistical sampling is the preferred approach for selecting transactions for audit whenever the universe to be audited is susceptible to statistical treatment and the use of the technique is economical. The auditor is not required to *report* projected questioned costs, but in forming a basis for his opinion on an entity's compliance with requirements governing each major Federal financial assistance program, the auditor should project the results of any sampling applications he performed to the population from which he selected the sample. However, as indicated in answer 32, the size of the universe, the number tested, the error rate (and related amounts when applicable) should be disclosed in the auditor's report, in order to give the reader a basis for judging the prevalence of non-compliance.

20. When testing for compliance with laws and regulations using a sampling technique, should the auditor expand the scope of the audit to determine the effect of any questioned costs?

The scope of the audit is not required to be expanded nor is the auditor required to include a projection of questioned costs to the universe of Federal financial assistance programs. However, the auditor must consider the potential effect of the questioned costs in reporting on the entity's financial statements and on individual financial assistance programs.

Questions About Subrecipient and Contractor Audits

21. How are subrecipients defined in the Single Audit Act?

Under OMB Circular A–128(5) Subsection (m), subrecipients are defined as "any person or government department, agency or establishment that receives Federal financial assistance to carry out a program through a State or local government, but does not include an individual that is a beneficiary of such a program. A subrecipient may also be a direct recipient of Federal financial assistance."

22. What is the difference between a subrecipient and a vendor and what is the determining factor in deciding whether a subrecipient relationship exists?

A subrecipient is an entity that receives Federal assistance passed down from the prime recipient. The subrecipient's responsibility is to help the recipient meet the requirements of the assistance award. A subrecipient's performance would be measured against meeting the objectives of the Federal assistance award. (See questions 21 and 26.)

A vendor is an entity that receives a procurement contract for goods or services from a recipient which will be paid for from Federal assistance funds. The vendor's responsibility is to meet the requirements of the procurement contract.

The test for a subrecipient relationship is whether a subrecipient receives Federal financial assistance from a recipient to carry out a program. Where a recipient enters into a *procurement* contract to buy goods or services, the other party to the contract is not a subrecipient for purposes of single audit. The answer is the same regardless of the type of entity involved (governmental, nonprofit, etc.) or the form of the agreement between the parties.

23. Are prime recipients to conduct quality control reviews of subrecipient audits?

Circular A–128 does not specifically require recipients to make quality control reviews of subrecipient audits. However, prime recipients are expected to establish a system to assure that audits of the subrecipients meet the requirements of Circular A–128 (or A–110 "Uniform requirements for grants to universities, hospitals and other nonprofit organizations" when applicable). (See question 24.) Such a system should include a desk review of each subrecipient report to ensure it conforms to the Circular.

24. Are nonprofit organizations and universities receiving funds through a State or local government required to have an audit made in accordance with the provisions of Circular A–128?

No. The provisions of Circular A–128 apply only to State and local governments including public hospitals and public colleges and universities and to certain Indian Tribes. Audits of other nonprofit organizations should be made in accordance with the applicable statutory requirements and/or provisions of Circular A–110, "Uniform Requirements for Grants to Universities, Hospitals, and Other Nonprofit Organizations." State and local governments may exclude public hospitals and public colleges from the provisions of Circular A–128 provided that the audits are made in accordance with statutory requirements and the provisions of Circular A–110.

25. For many Federal programs, funds flow down from the recipient to a subrecipient. Is the independent auditor required to make audits of subrecipients as part of the recipient audit?

No. Circular A–128 requires the recipient to determine that subrecipients have an audit made in accordance with the Circular's requirements. As long as the audit report of the subrecipient is current, it need not cover the same period as the recipient's audit. It is the recipient's responsibility to:

a. establish a system to assure that the audits of the subrecipients meet the requirements of Circulars A–128 or A–110.

b. establish a system for followup on questioned costs, weaknesses in internal control systems, and other audit exceptions and ensure that appropriate corrective action is taken within 6 months.

c. consider whether subrecipient's records necessitate adjustments of the recipient's own records.

d. require access to subrecipient's records and financial statements.

The recipient's auditor would:

a. review the recipient's systems for obtaining and acting on subrecipient audit reports.

b. test to determine whether the system is functioning in accordance with prescribed procedures.

c. comment on the recipient's monitoring and disbursing procedures with respect to subrecipient, if warranted by the circumstances.

Reported questioned costs require consideration for materiality, possible adjustment of financial statements, and possible footnote disclosure.

In the event that subrecipient audits have not been made and the amount of funds are material, the scope of the recipient audit can be expanded to include testing of the subrecipient expenditures. Alternatively, the recipient's auditor should report this condition as a finding and if the subrecipient expenditures are material to the recipient, then the recipient's auditor should consider whether to qualify and/or disclaim in their audit report in financial statements because the subrecipient's expenditures were not tested.

If a subrecipient's audit report was due but not received the recipient's auditor should report this condition as a finding.

26. Does the requirement for a single audit apply to contracts awarded by recipients to profitmaking organizations, and private or governmental organizations?

Commercial contractors (private for profit) and private or governmental organizations providing goods or services to State or local governments are not required to have a single audit performed in accordance with Circular A-128. State and local governments should use the same procedures used to monitor their own expenditures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds. However, the use of a contract by a governmental recipient to provide Federal *financial assistance* to a subrecipient will require the subrecipient to have an audit made in accordance with the Act.

27. Who is responsible for the audit resolution of findings resulting from subrecipient audits?

The entity providing funds to the subrecipient is responsible for resolving findings pertaining to pass through funds resulting from the audit. Consequently, in some cases an entity may first have to resolve some audit findings with a Federal agency and then other findings with another level of government for funds which flow down from a recipient to a subrecipient.

28. Auditors at the subrecipient level have found that the subrecipient is not always able to identify the Federal share of funds received from another governmental entity. What are the auditor's responsibilities when he finds such a situation?

It is the subrecipient's, not the auditors' responsibility to learn or determine the amount, if any, of Federal funds included in monies received from a recipient government. If a government is not able to determine the portion of Federal funds included in the monies received, the auditor at a minimum should review the award document and determine whether the terms and conditions of the award are being met for all funds. The auditor should comment in the audit report that Federal funds could not be identified in pass-through awards and recommend that recipients identify the amount of Federal funds in subawards.

29. Can a recipient also mandate a single audit on its nonprofit subrecipients who also receive direct Federal funding subject to the A-110 audit requirement?

Yes. A State and local government may have its own audit requirements including A-128 audits for subrecipients provided the audit covers as a minimum the Federal requirements. The Federal audit requirements for State and local governments appear in Circular A-128, "Audits of State and Local Governments." Federal audit requirements for other not-for profit recipients are covered in Attachment F "Standards for Financial Management Systems" to Circular A-110, "Uniform Requirements for Grants to Universities, Hospitals, and Other Nonprofit Organizations."

30. What are the audit requirements under the Single Audit Act for profit making organizations, such as nursing homes and individuals, receiving Federal financial assistance through State and local governments?

The Single Audit Act contains no audit requirements for profit making organizations or individuals. However, if a prime recipient passes down funds with the intent of providing financial assistance to a profit-making subrecipient, the prime recipient has the same responsibilities outlined in paragraph 9 of Circular A-128. (See questions 6, 22, and 25.).

Questions About Audit Reports

31. If a government elects to have a single audit performed on an individual department, agency or establishment, can only the schedule of Federal financial assistance and the related auditor's reports be submitted?

No. The Act and Circular A-128 provide certain governments with the option to have a single audit of the entire operations of that government, or of only those departments, agencies or establishments that received, expended, or otherwise administered Federal financial assistance. If a single audit is performed for individual departments, agencies or establishments, then the audited financial statements with the auditor's report thereon, the schedule of Federal financial assistance with the auditor's reports thereon, and the auditor's reports on internal controls and compliance shall all focus on the individual departments, agencies or establishments selected for inclusion in the Single Audit package. (See question 35 for further guidance.).

32. Is it essential that findings of noncompliance with applicable laws and regulations include the cause and effect as well as the condition and criteria?

Findings of noncompliance *must* address the condition—what is questioned—and the criteria as to what the condition should have been. It should also address cause and effect; however, in some cases this will be impossible and, in other cases, the benefit of the auditor extending his procedures to develop the cause and effect may not justify the additional audit costs. Auditors should place the findings in proper perspective to give readers a basis for judging the prevalence of noncompliance. The auditor should disclose the number and dollar amount of items tested, size of universe error rate the number and dollar amount of findings. The General Accounting Office's *Standards for Audit of Governmental Organizations, Programs, Activities and Functions* provides guidance in presenting noncompliance findings.

33. How should Federal guarantee, loan or insurance programs which are operated by the governmental entity, but do not involve a current Federal outlay, be included on the schedule of Federal domestic assistance and in determining the program's status as a major program?

The existence and value of Federal guarantee, loan or insurance programs at the end of the fiscal year should be

disclosed in a footnote to the schedule of Federal assistance. Any interest subsidy, or administrative costs allowance received during the fiscal year under a loan or loan guarantee program should be included in the schedule of Federal assistance.

Generally, the total amount of expenditures of Federal Financial assistance included in the Schedule is the basis for applying the criteria in the attachment to A-128 for determining Major Federal Assistance Programs. However, for a loan or loan guarantee program the total value of new loans during the fiscal year plus the balance of loans for previous years for which the government is at risk and any interest subsidy, cash or administrative costs allowance received should be used to determine if that program is also a Major Federal Assistance Program. One exception to this is the Guaranteed Student Loan Program. Institutions of higher education that are not lenders should use the value of new loans made during the year.

If based on the above, it is determined that a loan or loan guarantee program is a Major program, this should not effect the identification of Major programs, using the criteria applicable to the Schedule of Federal Assistance. Sometimes, including a large loan program in the base used to determine major programs may distort the base. Therefore, if the number of programs determined to be major is significantly affected by the inclusion of a guarantee loan program in total Federal assistance the auditor should use his judgment as to whether the guarantee program should be included when determining which other programs are major.

34. Where should audit reports be sent when the audit is completed?

In accordance with the provision of Circular A-128 the recipient shall submit copies of reports to each Federal department or agency that directly provided Federal assistance funds to the recipient. Each agency may specify in its program regulations or in the award the distribution point for the Single Audit reports. Recipients of $100,000 or more in Federal funds shall submit a copy of the audit report within 30 days after issuance to a central audit report clearinghouse. The address of the clearinghouse is: Bureau of the Census, Data Preparation Division, 1201 E 10th Street, Jeffersonville, Indiana 47132.

Subrecipients shall also submit copies to recipients that provided them with Federal assistance funds.

35. Does the circular require the preparation of general purpose financial statements in accordance with generally accepted accounting principles?

The Circular does not require the preparation of general purpose financial statements in accordance with GAAP. However, financial statements are required. The Circular requires an audit of financial statements that are prepared by the recipient to meet its needs and the needs of other statement users. However, if these statements are not prepared in accordance with generally accepted accounting principles, the audit report should state the nature of the variances therefrom and follow professional guidance for reporting on financial statements which have not been prepared in accordance with GAAP.

36. Circular A-128 calls for the auditor to comment in the compliance report on financial reports and claims for advances or reimbursements made to the Federal Government. Does this mean that a 100 percent audit of all such reports and claims must be made?

No. A determination as to the reliability of the Federal financial reports can be made through a study and evaluation of internal systems used to accumulate the data for the reports in addition to tests of sample reports.

37. Can a cognizant agency reject an audit report or take similar actions? If so, what steps will be taken?

Circular A-128 anticipates that a Federal cognizant agency will advise the recipients of audits that have been found not to have met the requirements. In such instances, the recipient will be expected to work with the auditor to take corrective action. If corrective action is not taken, the Federal cognizant agency shall notify the recipient organization and Federal awarding agencies that the audit failed to meet Federal standards and cannot be relied upon. The Circular requires that the cognizant agency recommend followup action. This may include a recommendation to other Federal agencies to return the audit report to the recipient. It may also include a recommendation regarding appropriate sanctions by the Federal awarding agencies that should be taken against the recipient organization.

38. If a State makes an award of $100,000 to a city and 50 percent of the award comes from Federal sources how much should be reported in the city's schedule of Federal financial assistance?

The city's schedule of Federal Financial Assistance should show the amount of the Federal funds for each Federal assistance program. In this case the amount would be $50,000. If the percentage or amount of the Federal share is not known the total amount should be included with a footnote.

39. If a college or university is covered as part of the single audit of the State, must the statement of Federal financial assistance list all of the individual grant and contract awards by catalog of Federal domestic assistance program number?

No. In some cases because of the large number of awards or the lack of data it may be impractical to list them all. A summary of total expenditures by funding agency and a schedule of expenditures for each student financial assistance program will suffice for now. Reporting guidance for university audit reports will be forth coming soon as part of a new revised OMB Circular A-88, "Coordinating Audits and Negotiating Indirect Cost Rates at Educational Institutions."

40. How should the value of food stamps and commodities distributed and inventory thereof be reported?

The value of foods stamps issued and commodities distributed should be shown on the schedule of Federal assistance either as an expenditure or in a note. Likewise the value of food coupons on hand and the value of commodities in inventory should be shown in the entity's financial statements or in a note.

Question About Cost and Reimbursement for Audits

41. How will State and local governments pay for the cost of the single audits?

State and local governments should use normal financing procedures to pay for the single audit, the cost of which should be less than the aggregate cost of numerous individual Federal assistance audits. Under the current arrangements the Federal Government will reimburse recipients for its fair share of audit costs in accordance with Circular A-87, "Cost Principles for State and Local Governments." These payments are usually made as part of the allocated cost of Federal assistance programs being carried on by the unit of

government. However, Circular A–128 provides that allowable charges for audit may also be a direct cost.

Question About Sanctions

42. If recipients do not comply with the provisions of Circular A–128, what happens?

The Single Audit Act provides that no cost may be charged to Federal assistance programs for audits required by the act that were not made in accordance with the Circular. We expect that this sanction will be enforced much more frequently than it has in the past. Therefore, State and local officials should ensure that there is an adequate contract administration system in effect to monitor contracts for audit servicing.

In cases of a grantee's continued inability or unwillingness to have a proper audit, Federal agencies have other sanctions available including:

—withholding a percentage of assistance payments until the audit is completed satisfactorily, and/or
—withholding or disallowing overhead costs, and/or
—suspending the Federal assistance agreement until the audit is made.

Federal agencies may take action to perform the necessary audit work themselves.

Questions on Cognizant Responsibility

43. What guidance is provided to the cognizant audit agencies regarding their responsibilities in an organization-wide audit?

The responsibilities of the cognizant audit agencies are set forth in a document entitled, "Federal Cognizant Agency Audit Organization Guidelines." The document was prepared by the President's Council on Integrity and Efficiency Single Audit Committee.

It addresses such areas as:

- technical advice and liaison,
- desk reviews of audit reports,
- reviews of audit organizations and their work,
- addressing deficiencies noted during reviews, and
- processing audit reports by Federal agencies.

The "Federal Cognizant Agency Audit Organization Guidelines" can be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Stock Number 040–000–00491–2.

44. What is the role of the cognizant audit agency regarding the approval of the audit scope or plan?

There is no requirement for the Federal cognizant audit agency to approve the audit scope or plan in advance of the audit. However, most auditors and cognizant audit agencies would agree that a review of the plan is highly useful for avoiding future misunderstandings.

45. When a recipient contracts for a single audit, does the Federal cognizant agency need to approve the auditor in advance?

No. The selection of an independent auditor is a recipient responsibility and the process is often addressed in State law. Prior approval is not required by the Federal cognizant agency, although the Federal cognizant audit agency can provide advice for those recipients that have little or no experience in arranging for audit service.

Recipients selecting independent auditors should follow the Procurement Standards contained in Attachment O of OMB Circular A–102, "Uniform Requirements for Grants to State and Local Governments." These standards provide that services shall be obtained in an efficient and economical manner that provides maximum open and free competition. In addition recipients should ensure that the selected auditors are not currently in a suspended or debarred status. (Federal agencies are in the process of developing regulations which will explain procedures for screening of debarred and suspended organizations. Final regulations will be issued early in calendar year 1988.)

46. Is Attachment O "Procurement Standards" applicable to the procurement of single audit services if the audit costs are not charged to Federal programs?

Yes. Even though the Federal Government is not being charged for audit services and procurement standards should be followed. The standards help ensure that the auditor selected will meet the general standards for auditors contained in the GAO publication "Standards For Aduit of Governmental Organizations, Programs, Activities, and Functions."

47. OMB issued a listing of Federal agencies responsible for cost negotiation and audits of the larger State and local governments on January 6, 1986. How do local governments not included in the listing get technical advice and guidance?

Cognizant agencies will not be assigned to those governments not included in the listing. Smaller governments not assigned a cognizant agency that need technical audit advice or guidance should contact the Federal agency or State agency that provides them the most funds whether the funds are transferred directly or indirectly. Ciruclar A–128 refers to these Federal agencies as general oversight agencies.

48. Does an oversight agency have the same responsibility as a cognizant agency?

No. An oversight agency's responsibility would not be nearly as broad as a cognizant agency's responsibilities. Like a cognizant agency, an oversight agency would represent all Federal agenics. However, an oversight agency's primary responsibility would be to provide advice and counsel to recipients when requested by the recipient. An oversight agency may take on additional responsibilities if deemed necessary, such as ensuring audits are conducted and transmitted to appropriate Federal officials, conducting reviews of reports and audit work and resolving crosscutting or systems findings.

Questions About Small and Minority Audit Firms

49. What are the obligations of recipients of Federal funds under OMB Circular A–128 for hiring small and minority audit firms?

Paragraph 19 requires recipients of Federal funds to provide the maximum practicable opportunity for small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals to be considered for selection by audited organizations. Audited organizations must provide such opportunity in order to ensure that qualified audit firms are not overlooked merely because they may be small or controlled by disadvantaged persons.

State and local governments and other recipients of Federal funds retain the authority to select audit firms at their discretion. Federal cognizant audit agencies do not have the authority under Paragraph 19 to challenge an audited organization's choice of audit firms. Paragraph 19 establishes a requirement of a fair and open process for selection of audit firms; it does not establish any requirement that particular firms or classes of firms be selected.

Questions About Other Matters

50. Will changes be made to the audit requirements contained in the compliance supplement and Circular A–128?

Yes. When the need for change is disclosed from our own experience or is brought to our attention by others, the

Director of OMB will make such changes or interpretations as necessary. When important changes are proposed, the Director of OMB will solicit the views of Federal agencies, State and local officials, professional organizations, public interest groups, and other interested parties. He will use these suggestions in interpreting or revising the requirements.

51. Can Federal agencies add requirements to those prescribed by Circular A–128?

No additonal audit requirements should be imposed upon recipients unless specifically required by Federal law, executive order or prior arrangement as stated in paragraph 10 of A–128. To the extent that problems are encountered between a grantee and a Federal grantor agency which cannot be resolved, the Office of Management and Budget will lend assistance to resolve such problems in a timely manner.

52. When is a single audit report due?

A single audit report is due 13 months following the end of the entity's fiscal year. The twelve months are for the preparation of the audit report. The 13th month is for audit transmittal.

53. Are funds provided by the National Guard bureaus to the States covered by the Single Audit Act?

At the present time, funds provided by the National Guard Bureau to the States are not considered Federal financial assistance funds within the provisions of the Single Audit Act. However, the matter is currently under review.

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LIST OF PUBLIC LAWS

Last List November 12, 1987
This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 307/Pub. L. 100-156
To designate the Federal Building and United States Post Office located at 315 West Allegan Street in Lansing, Michigan, as the "Charles E. Chamberlain Federal Building and United States Post Office." (Nov. 9, 1987; 101 Stat. 893; 1 page) Price: $1.00

H.R. 1366/Pub. L. 100-157
To provide for the transfer of certain lands in the State of Arizona, and for other purposes. (Nov. 9, 1987; 101 Stat. 894; 2 pages) Price: $1.00

H.J. Res. 309/Pub. L. 100-158
Providing support for the Civic Achievement Award Program in Honor of the Office of Speaker of the House of Representatives. (Nov. 9, 1987; 101 Stat. 896; 3 pages) Price: $1.00

S. 442/Pub. L. 100-159
To amend chapter 9 of title 17, United States Code, regarding protection extended to semiconductor chip products of foreign entities. (Nov. 9, 1987; 101 Stat. 899; 2 pages) Price: $1.00

H.R. 614/Pub. L. 100-160
To designate the new United States courthouse in Birmingham, Alabama, as the "Hugo L. Black United States Courthouse." (Nov. 10, 1987; 101 Stat. 901; 1 page) Price: $1.00

H.J. Res. 368/Pub. L. 100-161
Designating the week of November 8 through November 14, 1987, as "National Food Bank Week." (Nov. 10, 1987; 101 Stat. 902; 1 page) Price: $1.00