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

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 730]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to domestic markets during the period from August 12 through August 18, 1990. Consistent with program objectives, such action is needed to balance the supplies of fresh lemons with the demand for such lemons during the period specified. This action is based on a recommendation by the Lemon Administrative Committee (Committee), the price/parity projection for the current season, and other information. The Committee is responsible for local administration of the lemon marketing order.

EFFECTIVE DATE: Regulation 730 (7 CFR part 910) is effective for the period from August 12 through August 18, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), Room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

The California-Arizona lemon industry is characterized by a large number of growers located over a wide area. The production area is divided into three districts which span California and Arizona. The Committtee estimates District 1, central California, 1990–91 production at 6,495 cars compared to the 4,158 cars produced in 1989–90. In District 2, southern California, the crop is expected to be 24,700 cars compared to the 24,292 cars produced last year. In District 3, the California desert and Arizona, the Committee estimates a production of 9,639 cars compared to the 9,436 cars produced last year. The Committee's estimate of 1990–91 production is 40,834 cars (one car equals 1,000 cartons at 38 pounds net weight each), as compared with 37,886 cars during the 1989–90 season. The National Agricultural Statistics Service will publish on October 11, 1990, an estimate of the 1990–91 lemon crop.

The three basic outlets for California-Arizona lemons are the domestic fresh, export, and processing markets. The domestic (regulated) fresh market is a preferred market for California-Arizona lemons. The Committee estimates that about 44 percent of the 1990–91 crop of 40,834 cars will be utilized in fresh domestic channels (17,340 cars), compared with the 1989–90 total of 16,500 cars, about 44 percent of the total production of 37,886 cars in 1989–90. Fresh exports are projected at 22 percent of the total 1990–91 crop utilization compared with 22 percent in 1989–90. Processed and other uses would account for the residual 34 percent compared with 34 percent of the 1989–90 crop.

Volume regulations issued under the authority of the Act and Marketing Order No. 910 are intended to provide benefits to growers and consumers. Reduced fluctuations in supplies and prices result from regulating shipping levels and contribute to a more stable market. The intent of regulation is to achieve a more even distribution of lemons in the market throughout the marketing season and to avoid unreasonable fluctuations in supplies and prices.

Based on the Committee's marketing policy, the crop and market information provided by the Committee, and other information available to the Department, the costs of implementing the regulations are expected to be more than offset by the potential benefits of regulation.

Reporting and recordkeeping requirements under the lemon marketing order are required by the Committee from handlers of lemons. However, handlers in turn may require individual growers to utilize certain reporting and recordkeeping practices to enable handlers to carry out their functions. Costs incurred by handlers in connection with recordkeeping and reporting requirements may be passed on to growers.

The Committee submitted its marketing policy for the 1990–91 season to the U.S. Department of Agriculture (Department) on June 19. The marketing policy discussed, among other things, the potential use of volume and size

regulations for the ensuing season. The Committee considered the use of volume regulation for the season. This marketing policy is available from the Committee or Ms. Rodriguez. The Department reviewed that policy with respect to administrative requirements and regulatory alternatives in order to determine if the use of volume regulations would be appropriate.

The Committee met publicly on August 7, 1990, in Los Angeles, California, to consider the current and prospective conditions of supply and demand. Based on the Committee's recommendation, the price/parity projection for the current season, and other information, a total of 321,000 cartons is the quantity of lemons deemed advisable to be shipped to fresh domestic markets during the specified week. The marketing information and data provided to the Committee were compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, the preceding week's shipments and shipments to date, crop conditions, weather and transportation conditions, and a reevaluation of the prior week's recommendation in view of the above.

The Department reviewed the Committee's recommendation in light of the projections as set forth in its 1990–91 marketing policy. The amount of lemons deemed advisable to be shipped to fresh domestic markets is 11,000 cartons above the estimated projection in the shipping schedule.

During the week ending on August 4, 1990, shipments of lemons to fresh domestic markets, including Canada, totaled 309,000 cartons compared with 306,000 cartons shipped during the week ending on August 5, 1989. Export shipments totaled 144,000 cartons compared with 183,000 cartons shipped during the week ending on August 5, 1989. Processing and other uses accounted for 267,000 cartons compared with 175,000 cartons shipped during the week ending on August 5, 1989.

Fresh domestic shipments to date for the 1990–91 season total 309,000 cartons compared with 306,000 cartons shipped by this time during the 1989–90 season. Export shipments total 144,000 cartons compared with 183,000 cartons shipped by this time during 1989–90. Processing and other use shipments total 267,000 cartons compared with 175,000 cartons shipped by this time during 1989–90.

For the week ending on August 4, 1990, regulated shipments of lemons to the fresh domestic market were 309,000 cartons on an adjusted allotment of 429,000 cartons which resulted in net undershipments of 120,000 cartons. Regulated shipments for the current week (August 5 through August 11, 1990) are estimated at 310,000 cartons on an adjusted allotment of 385,000 cartons. Thus, undershipments of 75,000 cartons could be carried over into the week ending on August 18, 1990.

The average f.o.b. shipping point price for the week ending on August 4, 1990, was $14.18 per carton based on a reported sales volume of 316,000 cartons compared with last week's average of $14.40 per carton on a reported sales volume of 321,000 cartons. The 1990–91 season average f.o.b. shipping point price to date is $14.18 per carton. The average f.o.b. shipping point price for the week ending on August 5, 1989, was $14.24 per carton; the season average f.o.b. shipping point price this time during 1989–90 was $14.24 per carton.

The Department's Market News Service reported that, as of August 7, demand for lemons of all sizes and grades is "fairly light". The market is "about steady" for most grades an sizes of lemons but lower for small-sized, second grade fruit (140's and smaller). At the meeting, one Committee member characterized the movement of large-sized, first grade fruit as good and that movement is "somewhat slow" for small-sized, second grade lemons. The Committee member commented on competition from Florida fruit and fruit from the Bahamas. Another Committee member commented on the relatively high level of small-sized lemons in storage and the need to move that fruit is an orderly fashion. Two Committee members commented on the current levels of undershipments. These two members supported open movement. After discussion of various levels of volume regulation and open movement, the Committee recommended, by an 8 to 4 vote, with one abstention, volume regulation for the period from August 12 through August 18, 1990.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the California-Arizona 1990–91 season average fresh on-tree price is estimated at $9.76 per carton, 119 percent of the projected season average fresh on-tree parity equivalent price of $8.20 per carton.

Limited the quality of lemons that may be shipped during the period from August 12 through August 18, 1990, would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of lemons to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, it is found that this action will tend to effectuate the declared policy of the Act.

Based on the above information, the Administrator of the AMS has determined that issuance of this rule will not have a significant economic impact on a substantial number of small entities.

Pursuant 50 U.S.C. 553, it is further found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until August 7, 1990, and this action needs to be effective for the regulatory week which begins on August 12, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

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

2. Section 910.730 is added to read as follows: [*This section will not appear in the Code of Federal Regulations.*]

§ 910.730 Lemon Regulation 730.

The quantity of lemons grown in California and Arizona which may the handled during the period from August

12 through August 18, 1990, is established at 321,000 cartons.

Dated: August 8, 1990.

Robert C. Keeney,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 90–18984 Filed 8–10–90; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 90–115]

CITE® Test, Brucellosis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the brucellosis regulations by allowing designated epidemiologists to consider the results of the concentration immunoassay technology (CITE®) test as a diagnostic supplement to the standard card testing of all cattle and bison. Prior to the effective date of this document, the regulations allowed use of the CITE® test as a supplemental test only for official vaccinates. This action will permit more accurate diagnostic testing than has been available to determine brucellosis disease status, and will help prevent the unnecessary destruction of valuable cattle and bison because of false positive test results.

EFFECTIVE DATE: September 12, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. John D. Kopec, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 730, Federal Building 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–6188.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine in order to help prevent the interstate spread of brucellosis. On May 9, 1990, we published in the **Federal Register** (55 FR 19268–19269, Docket Number 89–217) a document proposing to allow designated epidemiologists to consider the results of the concentration immunoassay technology (CITE®) test as a diagnostic supplement to the standard brucellosis card testing of all cattle and bison.

We solicited comments concerning the proposed rule for a 30-day comment period ending June 8, 1990. We received two comments, one from a cattle breeders association and the other from a national veterinary medical association. Both commenters supported the proposed rule in its entirety. Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule without change.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This amendment allows designated epidemiologists a faster method of gathering data to supplement standard card test results. The current procedure of verifying standard card test results by performing supplemental testing in the laboratory will remain a possible option.

This amendment will not change the testing requirements for brucellosis. It merely authorizes an optional methodology to laboratory verification of standard card test results. CITE® testing is faster than laboratory testing because it can be done at the stockyard and allows for faster marketing, but the economic effect on owners of officially vaccinated cattle or bison should not be significant.

The primary economic effects of this action will be in the form of economic benefits to the owners of several hundred cattle moved to slaughter each year as a result of false positive standard card tests. Many of these owners are small entities. Use of the CITE® test will allow these owners to move the cattle for purposes other than slaughter and increase their profit from the sale of cattle.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial amount of small entities.

Paperwork Reduction Act.

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Incorporation by reference, Quarantine, Transportation.

PART 78—BRUCELLOSIS

Accordingly, 9 CFR part 78 is amended as follows:

1. The authority citation for part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f, 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.1 [Amended]

2. Paragraph (a)(9) of the definition of "Official test" in § 78.1 is amended by removing the phrase "official vaccinates" and adding in its place the phrase "cattle and bison".

3. Paragraph (a)(11)(i) of the definition of "Official test" in § 78.1 is amended by removing the phrase "official vaccinates" and adding in its place the phrase "cattle and bison".

Done in Washington, DC, this 7th day of August 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–18967 Filed 8–10–90; 8:45 am]

BILLING CODE 3410–34–M

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9 CFR Part 114

[Docket No. 90–126]

Viruses, Serums, Toxins, and Analogous Products; Shipment of Certain Exempted Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations regarding veterinary biological products, prepared for intrastate distribution or export, which were exempted by the 1985 amendments to the Virus-Serum-Toxin Act from the requirement that such products be prepared under a USDA license. The purpose of such exemption was to allow intrastate producers sufficient time to

phase into the USDA licensing system. This final rule provides that shipment of such products will not be allowed after midnight December 31, 1990.

The intent of this rule is to effectuate the purposes of the act as it pertains to the statutorily authorized phase-in period for regulation of these products.

EFFECTIVE DATE: September 12, 1990.

FOR FURTHER INFORMATION CONTACT: Dr. David A. Espeseth, Deputy Director, Veterinary Biologics; Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8245.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 1990, a proposed rule was published in the **Federal Register** (55 FR 18345–18346, Docket No. 89–221) which provided that products produced for intrastate commerce or export under an exemption granted by the Secretary of Agriculture could be shipped until January 1, 1991, or the expiration date of such products, whichever is earlier. A 30-day comment period was provided for in that proposal until June 2, 1990. One comment was received by APHIS in support of the proposed rule. The proposed rule is adopted as a final rule without changes. We believe that this rule is reasonable and appropriate in light of the purpose of the statutorily authorized phase-in period for regulation of these products. At the same time, we believe it is necessary to limit the time during which such products may be distributed after the exemption period has expired.

The Virus-Serum-Toxin Act of 1913 (21 U.S.C. 151–159) (Act), as amended by the Food Security Act of December 23, 1985, makes it unlawful for any person, other than one exempted by statute, to ship a veterinary biological product anywhere in or from the United States, unless that product was prepared under and in compliance with regulations prescribed by the Secretary of Agriculture in an establishment licensed by the Secretary. The Act further provides that veterinary biological products, prepared solely for intrastate distribution or for export, during the 12-month period ending on the date of enactment of the 1985 amendments, will not be in violation of the Act because they were not prepared pursuant to a license, until January 1, 1990. Persons desiring to prepare products under this exemption were required to claim the exemption by January 1, 1987.

Thus, the 1985 amendments to the Virus-Serum-Toxin Act provided a 4-year grace period during which manufacturers of unlicensed products could continue to produce products solely for intrastate distribution or export. The purpose of the grace period was to allow intrastate producers sufficient time to phase into the USDA licensing system.

Producers and other persons in possession of products prepared under exemption can continue to ship such products intrastate or to export them until January 1, 1991, or the product's expiration date, if earlier. Thereafter, products prepared under an exemption which had not been extended, and which are not otherwise exempt, that are shipped anywhere in or from the United States, would be in violation of the Act and regulations.

This final rule does not affect products produced under an exemption which has been extended.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this final rule in conformance with Executive Order 12291 and Departmental Regulation 1512–1 and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this final rule has an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and will not have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The 1985 amendments to the Virus-Serum-Toxin Act provided for a 4-year period of exemption during which time manufacturers of exempted, unlicensed veterinary biological products could continue to produce such products solely for intrastate distribution or export while phasing into the USDA licensing system. The 4-year exemption period expired January 1, 1990. This final rule allows for the continued shipment and sale of exempted products until January 1, 1991.

Allowing shipment of products prepared under exemption until January 1, 1991, or the product's expiration date, if earlier, minimizes financial hardship for persons who still have products in inventory. The period allowing continued shipment of exempted products should have minimal adverse impact on the manufacturer, as well as others who may have such products in inventory, since inventory of such products at this point should be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 114

Animal biologics.

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

1. The authority citation for 9 CFR part 114 continues to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 114.2, new paragraph (d)(5) is added to read as follows:

§ 114.2 Products not prepared under license.

* * * * *

(d) * * *

(5) Products produced prior to January 1, 1990, under an exemption, granted by the Secretary pursuant to this section, which was not extended, may be shipped intrastate or exported, until January 1, 1991, or until the expiration date of such products, whichever is earlier.

Done in Washington, DC, this 7th day of August 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–18968 Filed 8–10–90; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 791

[Docket No. 91162-0119]

RIN 0694-AA10

Foreign Availability Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On November 22, 1989, the Bureau of Export Administration ("BXA") published a proposed rule in the **Federal Register** to revise part 791, "Foreign Availability," of the Export Administration Regulations (54 FR 48273). The proposed rule was in response to the 1988 Omnibus Trade and Competitiveness Act amendments to the foreign availability provisions of the Export Administration Act, and the Office of Foreign Availability's own experiences with the program. This revision is intended to improve the Foreign Availability process and the effectiveness of the program, thereby enhancing national security and improving U.S. competitiveness. This final rule incorporates some of the public comments received in response to the proposed rule. A detailed discussion of the public comments is contained in the **SUPPLEMENTARY INFORMATION** section of this document.

EFFECTIVE DATE: This rule is effective August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Office of Foreign Availability, U.S. Department of Commerce, Washington, DC 20230, Telephone (202) 377-8074.

SUPPLEMENTARY INFORMATION:

Background

Under sections 5 (f) and (h) of the Export Administration Act of 1979, as amended (EAA), the Office of Foreign Availability (OFA) assesses foreign availability. Part 791 of the Export Administration Regulations (EAR) establishes procedures and criteria for initiating and reviewing the foreign availability of items controlled for national security purposes.

On November 22, 1989, BXA published a proposed revision to the foreign availability regulations (part 791, EAR), and sought public comments. BXA proposed the revision in response to the 1988 Omnibus Trade and Competitiveness Act amendments to the foreign availability provisions of the EAA, and OFA's own experiences with the program. This revision is intended to improve the Foreign Availability process and the effectiveness of the program, thereby enhancing national security and improving U.S. competitiveness.

Public Comments

The Department received 4 separate comments in response to the notice: 3 from corporations, and 1 from a trade association. In consultation with the Departments of State and Defense, BXA reviewed the comments and, where appropriate, made chnges to the proposed regulations.

Although the public comments were generally positive, they raised 6 issues. The discussion below delineates the issues, and the Department's response. The parenthetical citations below refer to relevant sections of the proposed rule.

1. Functional Equivalent

One commenter recommended that we add "functionally equivalent" to the list of characteristics the Department considers in determining if an item is comparable in quality. (Section 791.1(d), "Definitions")

BXA did not accept this recommendation. BXA believes that there is enough flexibility in the proposed definition of "comparable quality" to cover functional equivalency.

2. Scope of the West-West Decontrol

Three commenters expressed concern over the potential scope of a west-west decontrol. They wanted to ensure that a positive finding of west-west foreign availability would result in a decontrol to all applicable destinations. They were concerned that the Department would limit the decontrol to the countries specified in a claim thereby ignoring evidence of availability to other destinations.

BXA changed the regulations in response to these comments. BXA intends to apply the west-west decontrol to all applicable destinations.

To clarify this intention, § 791.7(h) is changed to read as follows:

Foreign availability to non-controlled countries. If the Secretary determines that foreign availability to non-controlled countries exists, the Secretary will decontrol the item for export to all non-controlled countries to which it is found to be available, or approve the license in question, unless the President exercises a National Security Override."

3. Burden on Industry

Most of the comments expressed concern over the evidentiary and data gathering burden that the regulations appear to impose on the claimant. They argued that Congress intended the Government to be responsible for investigating allegations of foreign availability following the exporter's submission of an allegation, and for developing sufficient evidence and gathering relevant data. They believe that the information burden on exporters would deter them from utilizing the foreign availability program. (Section 791.5)

BXA has clarified the regulations in response to these comments. BXA believes that the Congressional mandated deadlines to issue foreign availability determinations, given the Department's resource restrictions, allow the Department to exercise discretion on when to initiate an assessment. Otherwise, the Department would be forced to initiate assessments even when the claim was frivolous or unsupported by evidence. Although the Department wants to assure industry that it will respond to all allegations received, it cannot commit to initiating an assessment that is not supported by sufficient evidence.

BXA also believes that both industry and government are responsible for gathering evidence. BXA recognizes that the Federal government is in the best position to gather certain types of evidence. At the same time, industry is an excellent source of other types of information. Section 791.5(b) of the rule merely recommends that industry present such information at the outset, in order to facilitate the Department's own data gathering. Industry may not only be in a better position to have this information, but it is also in industry's best interest to make such information available at the first opportunity.

BXA amended § 791.5(d) to clarify the Department's role in the data gathering process:

> If OFA determines that the FAS or TAC Certification is lacking in supporting evidence, the Office will seek additional evidence from appropriate sources, including the Claimant or TAC. OFA will initiate the asssment when it determines that it has sufficient evidence supporting the belief that Foreign Availability may exist.

4. Revised Procedures for Denied License Claims

Two of the commenters did not support the change in procedures for denied license claims (i.e., the requirement that the exporter submit a specific claim to OFA). They believe that this is "undue additional effort without any real need." (Section 791.4(b))

A third commenter argued that if the Department limited the denied license decontrol to the "quantities" specified

on the license application, it would force exporters to seek a foreign availability determination to each country and for each quantity that they want to export.

BXA made no change to the regulations. The increased complexity and scope of the program requires the Department to have clear and definite submissions to assure accountability, to determine the assessment deadlines, and to target resources. The current system of having licensing officers forward all claims of foreign availability to OFA is flawed because some of the claims are not forwarded, some are not supported by evidence, and of those that have some evidence, it is insufficient. BXA remains convinced that the modified denied license procedure is prudent, necessary and will benefit industry.

The third commenter misinterpreted the regulations. The denied license procedures are designed to give quick relief to an exporter in an instance where the exporter is about to lose a specific sale to a foreign competitor. Under sections 5(f)(1) and 5(f)(2) of the EAA, BXA considers whether to initiate a general decontrol assessment following each positive foreign availability determination for a denied license. Therefore, there is no need for exporters to come in on a continuing case-by-case basis.

5. The Definition of Available-in-fact to Non-Controlled Countries

One commenter argued that items that are available under license from COCOM or 5(k) countries should be considered in assessing foreign availability to non-controlled countries. (Section 791.1(d))

BXA does not accept this argument. Section 5(f)(2) of the EAA specifically directs the Department not to consider an item that is available:

> under license from a country which maintains export control on such goods or technology cooperatively with the United States pursuant to the agreement of the group known as the Coordinating Committee or pursuant to an agreement described in subsection (k) of this section.

If foreign companies must obtain a license prior to exporting an item, then there is nothing inherently unfair about requiring the same of U.S. exporters. This is one aspect of the "level playing field" concept.

6. The Process is Too Long and Demanding

One commenter argued that the proposed regulations do not take into consideration the "clear will of the Congress." The commenter believes that the process is burdensome and too long.

BXA disagrees. The extensive and lengthy foreign availability procedures are dictated by the difficulty of the task, and the need for careful and complete inter-agency consideration of the issues and of the implications of each determination. Many of the procedures, and all of the deadlines, the EAA specifically mandated. The recent positive foreign availability determinations for polycrystalline silicon and hard disk drives indicate that this program is working.

In addition, the Department has made several non-substantive editorial changes to the text.

The regulations incorporate the above changes.

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. This rule contains a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) which has been approved under OMB control number 0694–0004. Public reporting for this collection of information is estimated to average 105 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Anatoli Welihozkiy, Acting Director, Office of Foreign Availability, Room SB–097, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230, the Office of Security and Management Support, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Paperwork Reduction Project (0694–0004), Washington, DC 20503.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

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

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of Section 553, including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these requirements because it concerns a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Because of the importance of the issues involved, however, this rule was published in proposed form and public comments were solicited. Although there is no formal comment period on this final rule, additional comments from the public are always welcome. Comments should be submitted to: Anatoli Welihozkiy, Acting Director of the Office of Foreign Availability, Room SB–701, 14th Street and Pennsylvania Avenue, NW., Department of Commerce, Bureau of Export Administration, Washington, DC 20230.

List of Subjects in 15 CFR Part 791

Exports, Foreign availability, Reporting and recordkeeping requirements, Science and technology, Technical Advisory Committees.

Accordingly, the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. Part 791 is revised as follows:

PART 791—FOREIGN AVAILABILITY DETERMINATION PROCEDURES AND CRITERIA

Sec.

791.1 Introduction.
791.2 Foreign availability described.
791.3 Foreign availability assessment.
791.4 Initiation of an assessment.
791.5 Contents of foreign availability submissions and Technical Advisory Committee certifications.
791.6 Criteria.
791.7 Procedures.
791.8 Eligibility for expedited licensing procedures for non-controlled countries.
791.9 Appeals of negative foreign availability determinations.
791.10 Removal of controls on less sophisticated items.

Supplement No. 1 to Part 791—Evidence of Foreign Availability

Supplement No. 2 to Part 791—Items Eligible for Expedited Licensing Procedures [Reserved]

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, by Pub. L. 99–

64 of July 12, 1985, and by Pub. L. 100–418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 791.1 Introduction.

(a) *Authority.* Pursuant to sections 5(f) and 5(h) of the Export Administration Act of 1979, as amended (EAA), the Under Secretary of Commerce for Export Administration directs the Office of Foreign Availability (OFA) in gathering and analyzing all the evidence necessary for the Secretary to determine foreign availability.

(b) *Scope.* This part applies only to the extent that items are controlled for national security purposes.

(c) *Types of programs.* There are two general programs of Foreign Availability:

(1) Foreign Availability to controlled countries. In this category are Denied License Assessments (see §§ 791.4 (b) and 791.7) and Decontrol Assessments (see §§ 791.4 (c) and 791.7).

(2) Foreign Availability to non-controlled countries. In this category are Denied License Assessments, Decontrol Assessments, and Evaluations of Eligibility for Expedited Licensing (see § 791.8).

(d) *Definitions.* The following are definitions of terms used in this part 791:

Allegation. See Foreign Availability Submission.

Applicant. Any person or firm as defined in § 770.2 of this subchapter.

Assessment. An evidentiary analysis that OFA conducts concerning the foreign availability of a given Item in light of the Assessment Criteria and the data and recommendations submitted by the Departments of Defense and State and other relevant departments and agencies, TAC committees, and industry.

Assessment Criteria. Statutorily established criteria that must be assessed for the Secretary to make a Determination with respect to foreign availability. They are "available-in-fact", "from a non-U.S. source", "in sufficient quantity so as to render the control ineffective", and "of comparable quality". (See § 791.6)

Available-in-fact. An Item is "Available-in-fact" to a country if it is produced within the country or if it may be obtained by that country from a third country. (Ordinarily, Items will not be considered available-in-fact to Non-controlled Countries that are available only under a validated national security license or a comparable authorization from a country that maintains export controls on such items cooperatively with the U.S. pursuant to the agreement of the group known as COCOM, or pursuant to an agreement under Section 5(k) of the EAA ("COCOM" and "Cooperating Third Countries").) Items which are available only under a U.S. license for export or re-export are not considered Available-in-fact.

Claimant. Any applicant who makes a Foreign Availability Submission, excluding TACs.

Comparable Quality. An Item is of Comparable Quality to an Item Controlled under these regulations if it possesses the characteristics specified in the Commodity Control List for that Item and is alike in key characteristics that include, but are not limited to: (1) Function; (2) technological approach; (3) performance thresholds; (4) maintainability and service life; and (5) any other attribute relevant to the purpose for which the control was placed on the commodity.

Controlled Countries. The Controlled Countries are: Albania, Bulgaria, Cambodia, Cuba, Czechoslovakia, Estonia, the German Democratic Republic (including East Berlin), Hungary, Laos, Latvia, Lithuania, Mongolian People's Republic, North Korea, Poland, Romania, the USSR, and Vietnam, and the People's Republic of China (PRC).

Decontrol. Removal of validated license requirements under the Export Administration Regulations (EAR).

Decontrol Assessment. An Assessment of the foreign availability of an Item to a country or countries for purposes of determining whether Decontrol is warranted. Such Assessments may be conducted after the Department receives a Foreign Availability Submission or a TAC Certification, or on the Secretary's own initiative.

Denied License Assessment. A foreign availability Assessment conducted as a result of an Applicant's Allegation of foreign availability for an Item (or Items) for which the Department of Commerce has denied or has issued a letter of intent to deny an export license. If the Secretary finds foreign availability, the Department's approval of a validated license will be limited to the Items, countries, and quantities in the application.

Determination. The Secretary's decision that foreign availability within the meaning of the EAA does or does not exist. (See § 791.7.)

Expedited Licensing Procedure Eligibility Evaluation. An evaluation that OFA initiates for the purpose of determining whether an Item is eligible or the Expedited Licensing Procedure. (See § 791.8.)

Expedited Licensing Procedures. Under Expedited Licensing Procedures, the Office of Export Licensing (OEL) reviews and processes an individual validated license application for the export of an eligible Item to a Non-controlled Country within statutory time limits. Licenses are deemed approved unless the OEL complies with the statutory time limits See § 791.8.).

Foreign Availability Submission (FAS). An Allegation a Claimant makes of foreign availability, supported by Reasonable Evidence, and submits to OFA. (See § 791.5.)

Item. Any good, technical data or software.

Item Eligible for Non-Controlled Country Expedited Licensing Procedures. An Item is eligible for Expedited Licensing Procedures if it is described as such in Supplement No. 2 of part 791. (See § 791.8.)

National Security Override (NSO). A Presidential decision to maintain export controls on an Item notwithstanding its foreign availability as determined under the EAA. The President's decision is based on a determination that the absence of the controls would prove detrimental to the national security of the United States. Once the President makes such a decision, the President must actively pursue negotiations to eliminate foreign availability with the governments of the sources of foreign availability. (See § 791.7.)

Non-controlled Countries. Any country not listed as a Controlled Country.

Non-U.S. Source/Foreign Source. A person located outside the United States (as defined in § 770.2 of this subchapter) that makes available an Item.

Reasonable evidence. Relevant information that is credible.

Reliable Evidence. Relevant information that is credible and dependable.

Secretary. As used in this regulation, the Secretary refers to the Secretary of Commerce or designee.

Similar Quality. An Item is of Similar Quality to an Item that is controlled under the EAR if it is substantially alike in key characteristics that may include, but are not limited to: (1) function; (2) technological approach; (3) performance thresholds; (4) maintainability and service life; and (5) any other attribute relevant to the purpose for which the control was placed on the commodity.

Sufficient Quantity. The amount of an Item that would render the U.S. export

control, or the denial of the export license in question, ineffective in achieving its purpose with respect to a particular country or countries. For a Controlled Country, it is the quantity that meets the military needs of that country so that U.S. exports of the item to that country would not make a significant contribution to its military potential.

Technical Advisory Committee (TAC). A Committee created under section 5(h) of the EAA that advises and assists the Secretary of Commerce, the Secretary of Defense, and any other department, agency, or official of the Government of the United States to which the President delegates authority under the Export Administration Act on export control matters related to specific areas of controlled goods and technology.

TAC Certification. A statement that a TAC submits to OFA, supported by Reasonable Evidence, documented as in a FAS, that foreign availability to a Controlled Country exists for an Item that falls within the TAC's area of technical expertise.

§ 791.2 Foreign availability described.

(a) *Foreign Availability.* Foreign Availability exists when the Secretary determines that an item is comparable in quality to an item subject to U.S. national security export controls, and is available-in-fact to a country, from a non-U.S. source, in sufficient quantities to render the U.S. export control of that item or the denial of an export license ineffective. For a Controlled Country, such control or denial is "ineffective" when comparable items are available-in-fact from foreign sources in sufficient quantities so that maintaining such control or denying a license would not be effective in restricting the availability of goods or technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the national security of the United States (See sections 5(A) and 3(2)(A) of the EAA.)

(b) *Types of Foreign Availability.* There are two types of Foreign Availability:

(1) Foreign Availability to a controlled country; and

(2) Foreign Availability to a non-controlled country.

(See § 791.7 for delineation of the Foreign Availability assessment procedures, and § 791.6 for the criteria used in determining Foreign Availability)

§ 791.3 Foreign availability assessment.

(a) *Foreign Availability Assessment.* A Foreign Availability assessment is an evidentiary analysis that the Office of Foreign Availability (OFA) conducts to assess the foreign availability of a given item under the assessment criteria. OFA uses the results of the analysis in formulating its recommendation to the Secretary on whether foreign availability exists for a given item. If the Secretary determines that Foreign Availability exists, the Secretary will control the item or approve the license in question, unless the President exercises a National Security Override. (See § 791.7.)

(b) *Types of assessments.* There are two types of foreign availability assessments:

(1) Denied License Assessment; and

(2) Decontrol Asssessment.

(c) *Expedited Licensing Procedures.* See § 791.8 for the evaluation of eligibility of an item for the Expedited Licensing Procedures.

§ 791.4 Initiation of an assessment.

(a) *Assessment request.* To initiate an assessment, each claimant and TAC must submit a FAS or a TAC Certification to OFA. TACS are authorized to certify foreign availability only to controlled countries. Claimants can allege foreign availability for either controlled or non-controlled countries.

(b) *Denied License Assessment.* An export license applicant whose export license the Department of Commerce has denied, or has issued a letter of intent to deny on national security grounds may request OFA to initiate a Denied License Assessment by submitting a FAS within 90 days after denial of the export license. As part of its Submission, the claimant must request that the specified license application be approved on the grounds of foreign availability. The evidence must relate to the particular export as described on the license application and to the alleged comparable item. If foreign availability is found, the Secretary will approve the validated license (or a request for reexport authorization) for the specific items, countries, and quantities listed on the application. The Denied License Assessment procedure, however, is not intended to trigger the removal of the U.S. export control on an item by incrementally providing a country with amounts that taken together would constitute a sufficient quantity of an item. The Secretary will not approve on foreign availability grounds a denied export license (or a denied request for re-export authorization) if the approval of such license would itself render the U.S. export control ineffective in achieving its purpose with respect to a particular country or countries. In the case of a positive determination, the Secretary will determine whether a Decontrol Assessment is warranted. If so, then OFA will initiate a Decontrol Assessment.

(c) *Decontrol Assessment.* (1) Any claimant may at any time request OFA to initiate a Decontrol Assessment by making a FAS alleging foreign availability to any country or countries to OFA.

(2) A TAC may request OFA to initiate a Decontrol Assessment at any time by submitting a TAC Certification to OFA that there is foreign availability to a controlled country for items that fall within the area of the TAC's technical expertise.

(3) The Secretary, on his/her own initiative, may initiate a Decontrol Assessment.

(d) *OFA Mailing Address.* All Foreign Availability Submissions and TAC Certifications are to be submitted to: Director, Office of Foreign Availability, Room SB 097, Bureau of Export Administration, Department of Commerce, 14th and Pennsylvania Avenue NW., Washington, DC 20230.

§ 791.5 Contents of foreign availability submissions and Technical Advisory Committee certifications.

(a) All Foreign Availability Submissions must contain at least:

(1) The name of the claimant;

(2) The claimant's mailing and business address;

(3) The claimant's telephone number; and

(4) A contact point and telephone number.

(b) Foreign Availability Submissions and TAC Certifications should contain as much evidence as is available to support the claim, including, but not limited to:

(1) Product names and model designations of the items alleged to be comparable;

(2) Extent to which the alleged comparable item is based on U.S. technology;

(3) Names and locations of the non-U.S. sources and the basis for claiming that the item is a non-U.S. source item;

(4) Key performance elements, attributes, and characteristics of the items on which a qualitative comparison may be made;

(5) Non-U.S. source's production quantities and/or sales of the alleged comparable items and marketing efforts;

(6) Estimated market demand and the economic impact of the control;

(7) Product names, model designations, and value of U.S. controlled parts and components

incorporated in the item allged to be comparable; and

(8) The basis for the claim that the item is available-in-fact to the country or countries for which foreign availability is alleged.

(c) Supporting evidence of foreign availability may include, but is not limited to, the following: foreign manufacturers' catalogs, brochures, operation or maintenance manuals; articles from reputable trade and technical publications; photographs; depositions based on eyewitness accounts; and other credible evidence. Examples of supporting evidence are provided in Supplement No. 1 to this part 791.

(d) Upon receipt of a FAS or TAC Certification, OFA will review it to determine whether there is sufficient evidence to support the belief that Foreign Availability may exist. If OFA determines the FAS or TAC Certification is lacking in supporting evidence, OFA will seek additional evidence from appropriate sources, including the Claimant or TAC. OFA will initiate the assessment when it determines that it has sufficient evidence that Foreign Availability may exist. Claimant and TAC initiated assessments will be deemed to be initiated as of the date of such determination.

(e) Claimants and TACs are advised to review the foreign availability assessment criteria delineated in § 791.6 and the examples of evidence set forth in Supplement No. 1 to this part 791 when assembling supporting evidence for inclusion in the FAS or TAC Certification.

§ 791.6 Criteria.

OFA evaluates the evidence contained in a FAS or TAC Certification and all other evidence gathered in the assessment process in light of certain criteria that must be met before OFA can recommend a positive determination to the Secretary. In order to initiate an assessment, each FAS and TAC Certification should address each of these criteria. The criteria are statutorily prescribed and are:

(a) Available-in-fact;
(b) Non-U.S. source;
(c) Sufficient quantity; and
(d) Comparable quality.

The criteria are defined in § 791.1(d).

§ 791.7 Procedures.

(a) *Initiation of an assessment.* (1) Once OFA accepts a FAS or TAC Certification of Foreign Availability, OFA will notify the claimant or TAC that it is initiating the assessment.

(2) The Bureau of Export Administration will publish a **Federal Register** notice of the initiation of any assessment.

(3) OFA will notify the Departments of Defense and State, the intelligence community, and any other departments, agencies and their contractors that may have information concerning the item on which OFA has initiated an assessment. Each such department, agency, and contractor shall provide to OFA all relevant information that it has concerning the item. OFA will invite interested departments and agencies to participate in the assessment process (See § 791.7(e) for details).

(b) *Data gathering.* OFA will seek and consider all available information that bears upon the presence or absence of foreign availability, including but not limited to that evidence set out in § 791.5 (b) and (c). As soon as Commerce initiates the assessment, it will seek evidence relevant to the assessment, including an analysis of the military needs of a selected country or countries, technical analysis, and intelligence information from the Departments of Defense and State, and other U.S. agencies. Evidence is particularly sought from industry sources worldwide; other U.S. organizations; foreign governments; commercial, academic and classified data bases; scientific and engineering research and development organizations; and international trade fairs.

(c) *Analysis.* OFA conducts its analysis by evaluating whether the reasonable and reliable evidence that is relevant to each of the foreign availability criteria provides a sufficient basis for a recommendation for a determination that foreign availability does or does not exist.

(d) *Recommendation and determination.* (1) Upon completion of each assessment, OFA, on the basis of its analysis, recommends to the Secretary of Commerce that the Secretary make a determination either that there is or that there is not foreign availability, whichever the evidence supports. OFA's assessment upon which OFA based its recommendation accompanies the recommendation to the Secretary.

(2) OFA will recommend on the basis of its analysis that the Secretary determine that foreign availability exists to a country when the available evidence demonstrates that an item of comparable quality is available-in-fact to the country, from non-U.S. sources, in sufficient quantity so that continuation of the existing export control, or denial of the license application in question would be ineffective in achieving its purpose. For a controlled country, such control or denial is "ineffective" when comparable items are available-in-fact from foreign sources in sufficient quantities so that maintaining such control or denying a license would not be effective in restricting the availability of goods and technology which would make a significant contribution to the military potential of any country or combination of countries which would prove detrimental to the national security of the United States.

(3) The Secretary makes the determination of foreign availability on the basis of the OFA assessment and recommendation; the Secretary's determination takes into account the evidence provided to OFA, the recommendations of the Secretaries of Defense and State and any other interested agencies, and any other information that the Secretary considers relevant.

(4) For all Decontrol and Denied License Assessments (pursuant to section 5(f)(3) of the EAA) initiated by a FAS, the Secretary makes a determination within four months of the initiation of the assessment, and so notifies the claimant. The Secretary submits positive determinations for review to appropriate departments and agencies.

(5) The deadline for determinations based on self-initiated and TAC-initiated assessments are different than the deadlines for claimant-initiated assessments (see § 791.7 (f)(2) and (f)(3)).

(e) *Interagency Review.* Commerce notifies all appropriate U.S. agencies and Departments upon the initiation of the assessment and invites them to participate in the assessment process. Commerce provides all interested agencies and departments an opportunity to review source material, draft analyses and draft assessments immediately upon their receipt or production. For claimant-initiated assessments, Commerce provides a copy of all positive recommendations and assessments to interested agencies and departments for their review following the Secretary's determination of foreign availability. For self-initiated and TAC-initiated assessments, Commerce provides all interested agencies an opportunity to review and comment on the assessment.

(f) *Notification.* (1) No later than 5 months after the initiation of an assessment based on a FAS (claimant assessments), the Secretary informs the claimant in writing and submits for

publication in the **Federal Register** a notice to the effect that:

(i) Foreign availability exists, and

(A) The requirement of a validated license has been removed or the license application in question has been approved; or

(B) The President has determined that for national security purposes the export controls must be maintained or the license application must be denied, notwithstanding foreign availability, and that appropriate steps to eliminate the foreign availability are being initiated; or

(C) In the case of an item controlled multilaterally under COCOM, the U.S. Government will submit the proposed decontrol or approval of the license for COCOM review for a period of up to four months from the date of the publication of the determination in the **Federal Register** (The U.S. Government may remove the validated license requirement for exports to non-controlled countries pending completion of the COCOM review process.); or

(ii) Foreign availability does not exist.

(2) For all TAC Certification Assessments, the Secretary makes a foreign availability determination within 90 days following initiation of the assessment. OFA prepares and submits a report to the TAC and to the Congress stating that:

(i) The Secretary has found foreign availability and has removed the requirement of a validated export license; or

(ii) The Secretary has found foreign availability, but has recommended to the President that negotiations be undertaken to eliminate the foreign availability; or

(iii) The Secretary has not found foreign availability.

(3) There is no statutory deadline for assessments initiated on the Secretary's own initiative or for the resulting determination. However, the Department will make every effort to complete such assessments and determinations promptly.

(g) *Foreign availability to controlled countries.* When the Secretary determines that a COCOM-controlled item is available to a controlled country and the President does not issue an NSO, OFA submits the determination to the Department of State, along with a draft proposal for the multilateral decontrol of the item or for COCOM approval of the license. The Department of State submits the proposal or the license to the COCOM review process. COCOM has up to four months for review of the proposal.

(h) *Foreign availability to non-controlled countries.* If the Secretary determines that foreign availability to non-controlled countries exists, the Secretary will decontrol the item for export to all non-controlled countries to which it is found to be available, or approve the license in question, unless the President exercises a National Security Override.

(i) *Negotiations to eliminate foreign availability.* (1) The President may determine that an export control must be maintained notwithstanding the existence of foreign availability. Such a determination is called a National Security Override (NSO) and is based on the President's decision that the absence of the control would prove detrimental to the United States national security. Unless extended (as described in paragraph (i)(7) of this section), an NSO is effective for six months. Where the President invokes an NSO, the U.S. Government will actively pursue negotiations with the government of any source country during the six month period to eliminate the availability.

(2) There are two types of National Security Overrides:

(i) An NSO of a determination of foreign availability resulting from an assessment initiated pursuant to section 5(f) of the EAA (claimant and self-initiated assessments); and

(ii) An NSO of a determination of foreign availability resulting from an assessment initiated pursuant to section 5(h) of the EAA (TAC-certification assessments).

(3) For an NSO resulting from an assessment initiated pursuant to section 5(f) of the EAA, the Secretary of any agency may recommend that the President exercise the authority under the Act to retain the controls or deny the license notwithstanding the finding of foreign availability.

(4) For an NSO resulting from an assessment initiated pursuant to section 5(h) of the EAA, the Secretary of Commerce may recommend that the President exercise the authority under the Act to retain the controls notwithstanding the finding of foreign availability.

(5) Under an NSO resulting from an assessment initiated pursuant to section 5(f) of the EAA, the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Foreign Affairs of the House of Representatives will be notified of the initiation of the required negotiations. The notice will include an explanation of the national security interest that necessitates the retention of controls.

(6) Under an NSO resulting from an assessment initiated pursuant to section 5(f) of the EAA, the Bureau of Export Administration will publish notices in the **Federal Register** of:

(i) The Secretary's determination of foreign availability;

(ii) The President's decision to exercise the National Security Override;

(iii) A concise statement of the basis for the President's decision; and

(iv) An estimate of the economic impact of the decision.

(7) The six month effective period for an NSO may be extended up to an additional 12 months if prior to the end of the 6 months the President certifies to Congress that the negotiations are progressing, and determines that the absence of the controls would continue to be detrimental to the United States national security.

(8) After the conclusion of negotiations, the Department of Commerce will retain the control only to the extent that foreign availability is eliminated. If foreign availability is not eliminated, the Department of Commerce will decontrol the item by removing the requirement for a validated export license for the export of the item to the destinations covered by the assessment. To the extent that the negotiations are successful and the foreign availability is eliminated, Commerce will remove the validated license requirement for the export of the item to any country that has agreed to eliminate foreign availability.

(j) *Changes in Foreign Availability.* If OFA becomes aware of conditions, including new evidence, that affects a previous determination that foreign availability exists or does not exist, the Office of Foreign Availability may review the evidence. If the Office finds that the foreign availability previously determined no longer exists, or that foreign availability not earlier found now does exist, the Office will make a recommendation to the Secretary of Commerce for the appropriate changes in the control. The Secretary of Commerce will make a determination, and the Bureau of Export Administration will publish a **Federal Register** notice of the determination.

§ 791.8 Eligibility for expedited licensing procedures for non-controlled countries.

(a) OFA determines the eligibility of an item for Expedited Licensing Procedures on the basis of an evaluation of the foreign availability of the item. Eligibility is specific to the items and the countries to which they are found to be available.

(b) OFA will initiate an eligibility evaluation:

(1) On its own initiative;

(2) On receipt of a FAS; or

(3) On receipt of a TAC certification.

(c) Upon initiation of an eligibility evaluation following receipt of either a FAS or TAC Certification, the Bureau of Export Administration will notify the claimant or TAC of the receipt and initiation of an evalution and publish a **Federal Register** notice of the initiation of the evaluation.

(d) The criteria for determining eligibility for Expedited Licensing Procedures are:

(1) The item must be available-in-fact to the specified non-controlled country from a foreign source;

(2) The item must be of a quality similar to that of the U.S. controlled item; and

(3) The item must be available-in-fact to the specified non-controlled country without effective restrictions.

(e) Within 30 days of initiation of the evaluation, the Secretary of Commerce makes a determination of foreign availability on the basis of the OFA evaluation and recommendation which takes into account the evidence the Secretaries of Defense, State, and other interested agencies provided to OFA and any other information that the Secretary considers relevant. The Secretary of Commerce will provide all interested agencies an opportunity to review and comment on the evaluation.

(f) Within 30 days of the receipt of the FAS or TAC Certification, the Bureau of Export Administration will publish the Secretary's determination in the **Federal Register**, inform the Office of Export Licensing that the item is/is not eligible for expedited licensing procedures to the stated countries, and, where appropriate, amend supplement No. 2 to part 791.

(g) Following completion of a self-initiated evaluation, the Office of Export Licensing will be notified of the Secretary's determination and, where appropriate, supplement No. 2 of part 791 will be amended. (Items exported to countries listed in supplement No. 2 to part 791 will be licensed in accordance with the procedures in § 770.14 of this subchapter, except that the initial licensing action will be within 20 working days.)

(h) Foreign Availability Submissions and TAC Certifications to initiate an Expedited Licensing Procedure evaluation must be clearly designated on their face as a request for Expedited Licensing Procedure purposes, must specify the items, quantities and countries alleged eligible, and should be sent to: Director, Office of Foreign Availability, Room SB 097, Bureau of Export Administration, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230.

§ 791.9 Appeals of negative foreign availability determinations.

Appeals of negative determinations will be conducted according to the standards and procedures set forth in 15 CFR part 789. A Presidential decision (NSO) to deny a license or continue controls notwithstanding a determination of foreign availability shall not be subject to appeal.

§ 791.10 Removal of controls on less sophisticated items.

Where the Secretary has decontrolled an item for foreign availability reasons, the Secretary will also remove national security controls on similar items that are controlled for national security reasons and whose functions, technological approach, performance thresholds, and other attributes that form the basis for national security export controls do not exceed the technical parameters of the item that Department of Commerce has decontrolled for foreign availability reasons.

Supplement No. 1 to Part 791—Evidence of Foreign Availability

Below is a list of examples of evidence that the Office of Foreign Availability has found useful in conducting assessments of foreign availability. A claimant submitting evidence supporting a claim of foreign availability should review this list for suggestions as evidence is collected.

Acceptable evidence indicating possible foreign availability is not limited to these examples, nor is any one of these examples, usually, in and of itself, necessarily sufficient to meet a foreign availability criterion. A combination of several types of evidence for each criterion usually is required. A FAS should include as much evidence as possible on all four of the criteria listed below. OFA combines the submitted evidence with the evidence that it collects from other sources. OFA evaluates all evidence, taking into account factors that may include, but are not limited to: information concerning the source of the evidence, corroborative or contradictory indications, and experience concerning the reliability of reasonableness of such evidence. OFA will assess all relevant evidence to determine whether each of the four criteria has been met. Where possible, all information should be in writing. If information is based on third party documentation, the submitter should provide such documentation to OFA. If information is based on oral statements a third party made, the submitter should provide a memorandum of the conversation to OFA if the submitter cannot obtain a written memorandum from the source.

OFA will amend this informational list as it identifies new examples of evidence.

Examples of Evidence of Foreign Availability

The following are intended as examples of evidence that OFA will consider in evaluating foreign availability. OFA will evaluate all evidence according to the provisions in 791.7(c) in order for it to be used in support of a foreign availability determination. This list is illustrative only.

Available-in-Fact

—Evidence of marketing of an item in a foreign country (e.g., an advertisement in the media of the foreign country that the item is for sale there);
—Copies of sales receipts demonstrating sales to foreign countries;
—The terms of a contract under which the item has been or is being sold to a foreign country;
—Information, preferably in writing, from an appropriate foreign government official that the government will not deny the sale of an item it produces to another country in accordance with its laws and regulations;
—Information, preferably in writing, from a named company official that the company legally can and would sell an item it produces to a foreign country;
—Evidence of actual shipments of the item to foreign countries (e.g., shipping documents, photographs, news reports);
—An eyewitness report of such an item in operation in a foreign country, providing as much information as available, including where possible the make and model of the item and its observed operating characteristics;
—Evidence of the presence of sales personnel or technical service personnel in a foreign country;
—Evidence of production within a foreign country;
—Evidence of the item being exhibited at a trade fair in a foreign country, particularly for the purpose of inducing sales of the item to the foreign country;
—A copy of the export control laws or regulation of the source country which shows that the item is not controlled.
—A catalog or brochure indicating the item is for sale in a specific country.

Foreign (Non-U.S.) Source

—Names of foreign manufacturers of the item including, and if possible, addresses and telephone numbers;
—A report from a reputable source of information on commercial relationships that a foreign manufacturer is not linked financially or administratively with a U.S. company;
—A list of the components in the U.S. item and foreign item indicating model numbers and their sources;
—A schematic of the foreign item identifying its components and their sources;
—Evidence that the item is a direct product of foreign technology (e.g., a patent law suit lost by a U.S. producer, a foreign patent);
—Evidence of indigenous technology, production facilities, and the capabilities at those facilities;
—Evidence that the parts and components of the item are of foreign origin or are exempt from U.S. export licensing requirements by

the parts and Components provision (§ 776.12 of this subchapter).

Sufficient Quantity

—Evidence that foreign sources have the item in serial production;
—Evidence that the item or its products is used in civilian applications in foreign countries;
—Evidence that a foreign country is marketing in the specific country an item of its indigenous manufacture;
—Evidence of foreign inventories of the item;
—Evidence of excess capacity in a foreign country's production facility;
—Evidence that foreign countries have not targeted the item or are not seeking to purchase it in the West;
—An estimate by a knowledgeable source of the foreign country's needs;
—An authoritative analysis of the worldwide market (i.e., demand, production rate for the item for various manufactures, plant capacities, installed tooling monthly production rates, orders, sales and cumulative sales over 5–6 years).

Comparable Quality

—A sample of the foreign item;
—Operation or maintenance manuals of the U.S. and foreign items;
—Records or a statement from a user of the foreign item;
—A comparative evaluation, preferably in writing, of the U.S. and foreign items by, for example, a western producer or purchaser of the item, a recognized expert, a reputable trade publication, or independent laboratory;
—A comparative list identifying, by manufacturers and model numbers, the key performance components and the materials used in the item that qualitatively affect the performance of the U.S. and foreign items;
—Evidence of the interchangeability of U.S. and foreign items;
—Patent descriptions for the U.S. and foreign items;
—Evidence that the U.S. and foreign items meet a published industry, national, or international standard;
—A report or eyewitness account, by deposition or otherwise, of the foreign item's operation;
—Evidence concerning the foreign manufacturers' corporate reputation.
—Comparison of the U.S. and foreign end item(s) made from a specific commodity tool(s), technical data or device.
—Evidence of the reputation of the foreign item including, if possible, information on maintenance, repair, performance and other pertinent factors.

Supplement No. 2 to Part 791—Items Eligible for Expedited Licensing Procedures—[Reserved]

Dated: August 2, 1990.

James M. LeMunyon,

Deputy Assistant Secretary For Export Administration.

[FR Doc. 90–18752 Filed 8–10–90; 8:45 am]

BILLING CODE 3510-DT-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 514

Exchange Visitor Summer Student Travel/Work Programs; Policy Statement

AGENCY: United States Information Agency.

ACTION: Statement of policy and notice to sponsors.

SUMMARY: The General Accounting Office issued a report entitled "Inappropriate Uses of Educational and Cultural Exchange Visas" dated February 16, 1990. That report questions the legality of summer student travel/work programs under the J-visa. This notice statement sets forth the Agency's interim response.

DATES: This policy statement is effective August 13, 1990.

ADDRESSES: Questions regarding this policy statement should be addressed to Merry Lymn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 485–8829.

SUPPLEMENTARY INFORMATION: The General Accounting Office issued a report entitled "Inappropriate Uses of Educational and Cultural Exchange Visas" dated February 16, 1990. That report questions the legality of camp counselor programs under the J-visa.

The statutory basis under which the United States Information Agency can designate programs for a J-visa is found at 8 U.S.C. 1101(a)(15)(J). That section defines nonimmigrants of the J category as follows:

(J) an alien having a residence in a foreign country which he has no intention of abandoning who is a *bona fide student, scholar, trainee, field of specialized knowledge* or *skill,* or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the *purpose of teaching, instructing* or *lecturing,* or *studying, observing, conducting research, consulting, demonstrating special skills,* or *receiving training* and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 1182(j) of this title, and the alien spouse and minor children of any such alien if accompanying him or following to join him. [Emphasis added.]

The GAO pointed out that:

Summer student travel/work programs, which provide foreign university students with employment opportunities in the United States during their summer vacations, do not require participants to engage in activities cited in the legislation. Some sponsors told us that the participants work at fast food restaurants, summer resorts, amusement parks, or other places where they can find work. Participants may be placed in jobs before they arrive or find work after they arrive. These are not jobs requiring special skills or distinguished merit and ability. One of the program sponsors we interviewed brings about 8,000 to 11,000 summer students a year to the United States.

In response to the GAO report, the Agency has established a Task Force on Regulatory Reform of the Exchange Visitor Program. The Agency will be examining the Summer Student Travel/Work program as part of the regulatory reform. The Agency also will examine the exchange visitor program and policy, as well as foreign policy, to determine whether the Summer Student Travel/Work program should be continued. If the Agency determines that it is in the foreign policy interest of the United States Goverment to designate sponsors of summer student travel/workers, it will then consider whether regulations can be drafted to conform with the existing law. If regulations cannot be drafted in conformity with the law, and the Agency determines that such programs are necessary for foreign policy reasons, then the Agency may consider proposing a change in the law to accommodate its foreign policy needs.

While the Agency is studying the summer student travel/work programs, they shall continue under their present designations abiding by the regulations published at 22 CFR 514.13(e). However, the existing programs will not be allowed to expand in any way, nor will new programs be designated.

List of Subjects in 22 CFR Part 514

Cultural exchange programs, Reporting and recordkeeping requirements.

Dated: July 12, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90–18780 Filed 8–10–90; 8:45 am]

BILLING CODE 8230-01-M

22 CFR Part 514

Exchange Visitor Training Programs; Policy Statement

AGENCY: United States Information Agency.

ACTION: Statement of policy and notice to sponsors.

SUMMARY: The General Accounting Office issued a report entitled "Inappropriate Uses of Educational and Cultural Exchange Visas" dated February 16, 1990. That report questions the appropriateness of some of the training programs under the J-visa. This policy statement sets forth the Agency's interim response.

DATES: This policy statement is effective August 10, 1990.

ADDRESSES: Questions regarding this policy statement should be addressed to Merry Lymn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Assistant General Counsel, Office of the General Counsel, Room 700, United States Information Agency, 301 4th Street, SW., Washington, DC 20547, (202) 485–8829.

SUPPLEMENTARY INFORMATION: The General Accounting Office issued a report entitled "Inappropriate Uses of Educational and Cultural Exchange Visas" dated February 16, 1990. That report questions the appropriateness of some of the training programs under the J-visa.

The statutory basis under which the United States Information Agency can designate programs for a J-visa is found at 8 U.S.C. 1101(a)(15)(J). That section defines nonimmigrants of the J category as follows:

> (J) an alien having a residence in a foreign country which he has no intention of abandoning who is a *bona fide student, scholar, trainee, field of specialized knowledge* or *skill*, or other person of similar description, who is coming temporarily to the United States as a participant in a program designated by the Director of the United States Information Agency, for the *purpose of teaching, instructing* or *lecturing*, or *studying, observing, conducting research, consulting, demonstrating special skills*, or *receiving training* and who, if he is coming to the United States to participate in a program under which he will receive graduate medical education or training, also meets the requirements of section 1182(j) of this title, and the alien spouse and minor children of any such alien if accompanying him or following to join him. [Emphasis added.]

The GAO pointed out that:

> We noted several instances of training which, in our view, did not have the same status as the categories mentioned in the statute and which would not generally be considered to have the same educational and cultural value. Training appeared to consist primarily of manual labor in commercial enterprises with no cultural or educational emphasis placed on the participants' program activities.
>
> * * * * *
>
> USIA's J-visa regulations are not comprehensive enough to ensure compliance with the intent of the act. USIA reported this as a major internal control weakness in its 1987 and 1988 Financial Integrity Act reports. The following quote is from its 1987 report.
>
> "Current regulations governing the administration of the Agency's Exchange-Visitor Program are not sufficiently comprehensive to ensure compliance with the intent and purpose of the Mutual Educational and Cultural Exchange Act (MECCA) of 1961 * * *. For example, the regulations covering training programs lack sufficient definition to prevent work programs, under the guise of training, from being conducted under the program."

In response to the GAO report, the Agency has established a Task Force on Regulatory Reform of the Exchange Visitor Program. The Agency will be examining the training programs as part of the regulatory reform. The Agency also will examine the exchange visitor program and policy, as well as foreign policy, to determine what aspects and in what form the training program should be continued. Furthermore, the Agency must determine how to conform the training programs to accommodate its foreign policy needs.

The Agency does not believe it fair to the private sector to continue to designate programs which may have to be terminated within a short time of their establishment. Such a practice may create uncertainty and false expectations. Consequently, the Agency will not designate nongovernmental training programs until after the regulations have been modified.

While the Agency is studying the training programs, the programs shall continue under their present designations abiding by the regulations published at 22 CFR 514.13(c). However, the existing programs will not be allowed to expand in any way, nor will new programs be designated.

List of Subjects in 22 CFR Part 514

Cultural exchange programs, Reporting and recordkeeping requirements.

Dated: July 12, 1990.

Alberto J. Mora,

General Counsel.

[FR Doc. 90–18781 Filed 8–10–90; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 256, 265, 266, 267, and 268

Outer Continental Shelf Minerals and Rights-of-Way Management and Oil and Gas and Sulphur Operations

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule; technical amendments.

SUMMARY: This rule corrects reference errors that appear in 30 CFR part 256 of the regulations of the Minerals Management Service (MMS). In addition, since Outer Continental Shelf (OCS) Orders have been or are being incorporated into the offshore operating rules at 30 CFR part 250, there is not further need to reserve 30 CFR parts 265 through 268 for the Alaska, Atlantic, Gulf of Mexico, and Pacific OCS Orders. This action is being taken to notify the public of the corrections and changes referred to above.

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Gerald D. Rhodes, Chief, Branch of Rules, Orders, and Standards; telephone (703) 787–1600 or (FTS) 393–1600.

SUPPLEMENTARY INFORMATION: The reference to Federal Maritime Commission regulations in 30 CFR 256.7(d) and the reference to 30 CFR 250.35 appearing in 30 CFR 256.70 need to be updated. Also, the final rule published by MMS in the **Federal Register** on April 1, 1988 (53 FR 10596), consolidated and restructured within 30 CFR part 250 various existing rules contained in the regulations, OCS Orders, and Notices to Lessees and Operators. The promulgation of that rule eliminated the need to reserve 30 CFR parts 265 through 268 for the Alaska, Atlantic, Gulf of Mexico, and Pacific OCS Orders.

The MMS is issuing this technical amendment as a final rule under the authority of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) for the following reasons:

(1) The changes in the rule are determined to be "technical amendments."

(2) The final rule has already been subject to public review and comment.

(3) The substance of the final rule has not changed.

This final rule is being made effective upon publication under the authority conferred by 5 U.S.C. 553(d) for the

reasons set forth in the preceding paragraph.

This notice makes technical corrections to 30 CFR part 256—Outer Continental Shelf Minerals and Rights-of-Way Management, General. Notice is also being given that there is no further need to reserve 30 CFR parts 265 through 268. This rule does not establish any new information collection and reporting requirements nor does it change the substance of the subject regulations.

Author

This document was prepared by Wanda Stepanek, Offshore Rules and Operations Division, MMS.

Executive Order 12291

This amendment is not a major rule for the purposes of Executive Order (E.O.) 12291; therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this rule will not have a significant economic effect on small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

Takings Implication Assessment

The DOI has determined that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to E.O. 12630, Government Action and Interference with Constitutionally Protected Property Rights.

National Environmental Policy Act

The DOI has also determined that this action does not constitute a major Federal action affecting the quality of the human environment; therefore, an Environmental Impact Statement is not required.

List of Subjects in 30 CFR Part 256

Administrative practice and procedure, Continental Shelf, Government contracts, Oil and gas exploration, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds.

Dated: July 27, 1990.

Ed Cassidy,

Deputy Director, Minerals Management Service.

For the reasons set forth in the preamble, 30 CFR part 256 is amended as follows:

PART 256—OUTER CONTINENTAL SHELF MINERALS AND RIGHTS-OF-WAY MANAGEMENT, GENERAL

1. The authority citation for part 256 continues to read as follows:

Authority: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U.S.C. 1331 *et seq.*, as amended, 92 Stat. 629.

§ 256.7 [Amended]

2. In § 256.7, paragraph (d), add the words "and operators," after the word "vessels" and remove the words "Federal Maritime Commission" and "46 CFR part 544" and add in their places the words "Coast Guard" and "33 CFR parts 132, 135, and 136," respectively, so that the sentence reads: "For Coast Guard regulations on the oil spill liability of vessels and operators, see 33 CFR parts 132, 135, and 136."

§ 256.7 [Amended]

3. In § 256.7, remove paragraph (e) and amend the sequential order of the paragraphs by redesignating paragraph (f) as (e), paragraph (g) as (f), paragraph (h) as (g), and paragraph (i) as (h).

§ 256.7 [Amended]

4. In § 256.7, remove the "Editorial Note" at the end.

§ 256.70 [Amended]

5. In § 256.70, revise the citation "30 CFR 250.35" to read "30 CFR 250.13."

PART 265—ALASKA OCS ORDERS [RESERVED]

PART 266—ATLANTIC OCS ORDERS [RESERVED]

PART 267—GULF OF MEXICO OCS ORDERS [RESERVED]

PART 268—PACIFIC OCS ORDERS [RESERVED]

6. Remove parts 265, 266, 267, and 268.

[FR Doc. 90-18955 Filed 8-10-90; 8:45 am]

BILLING CODE 4310-MR-M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

Utah Permanent Regulatory Program

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing approval of an amendment to the Utah permanent regulatory program (hereinafter referred to as the "Utah program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of changes to title 40, chapter 10, of the Utah Code Annotated (U.C.A. 1953), otherwise known as the Utah Coal Mining and Reclamation Act (the Utah Act). The amendment pertains to permit applications; permit findings issued to the applicant and other interested parties; civil penalties for violations; civil actions; dedicated credits, transfer and investment of funds by State Treasurer; judicial review of rules and orders; and adjudicative procedures that supersede the procedures of the Utah Administrative Procedures Act. The amendment is intended to improve operational efficiency.

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102; Telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Utah Program

On January 21, 1981, the Secretary of the Interior conditionally approved the Utah program. Information regarding the general background for the Utah program, including the Secretary's findings, the disposition of comments, and the detailed explanation of the conditions of approval of the Utah program can be found in the January 21, 1981, **Federal Register** (46 FR 5899). Actions taken subsequent to the approval of the Utah program are codified at 30 CFR 944.15, 944.16, and 944.30.

II. Submission of Amendment

During OSM's ongoing oversight of the Utah program, OSM discovered revisions to the Utah Act that OSM had not previously reviewed and approved as a State program amendment in accordance with 30 CFR 732.15 and 732.17. OSM notified Utah by letter dated October 19, 1989, that any changes to the Utah Act that had not been submitted to OSM for approval must be submitted as a proposed State

program amendment (administrative record No. UT–536).

By letter dated November 13, 1989, Utah submitted a proposed amendment to its approved program pursuant to SMCRA (administrative record No. UT–540). The sections of the Utah Act that the State proposed to amend are U.C.A.: 40–10–6.5, rulemaking authority and procedure; 40–10–6.6, deadline for review and proposal of revision of rules; 40–10–10, permit applications; 40–10–14, permit findings issued to the applicant and other interested parties; 40–10–20, civil penalty for violations; 40–10–21, civil actions; 40–10–25, dedicated credits, transfer of funds, and investment by State Treasurer; 40–10–30, judicial review of rules and orders; and 40–10–31, adjudicative procedures that supersede the procedures of the Utah Administrative Procedures Act at chapter 46b, title 63.

OSM announced receipt of the proposed amendment in the December 5, 1989, **Federal Register** (54 FR 50242) and in the same notice, opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment. The public comment period closed on January 4, 1990. The public hearing, scheduled for December 30, 1989, was not held because no one requested an opportunity to testify.

By letter dated March 23, 1990 (administrative record No. UT–561), OSM notified Utah that the proposed amendment at U.C.A. 40–10–6.6(3) (deadline for review and proposal of revision of rules—deadline for revision of rules—effect of notice of violation or denial of permit) appeared to be inconsistent with SMCRA. By letter dated May 29, 1990 (administrative record No. UT–568), Utah notified OSM that it did not wish to address OSM's concern at that time and it was withdrawing U.C.A. 40–10–6.5 (rulemaking authority and procedure), as well as U.C.A. 40–10–6.6, from the amendment package under OSM's consideration. By letter dated June 18, 1990, (administrative record No. UT–569), OSM acknowledged Utah's withdrawal of the two proposed statutes and informed Utah that: (1) The Director does not recognize these provisions as part of the Utah program; and (2) Utah may not implement 40–10–6.5 or 40–10–6.6 since these statutory provisions have not been approved by the Director.

III. Director's Findings

After a thorough review, the Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the amendment submitted by Utah on November 13, 1989, and as revised on May 29, 1990, is no less stringent than SMCRA, as discussed below. However, the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSM's ongoing oversight of the Utah program.

1. Revisions to Utah's Statute That Are Substantially Identical to the Counterpart Sections of SMCRA

Utah proposes revisions to the following sections of the Utah Act that either contain language that is the same or similar to the counterpart sections of SMCRA and are nonsubstantive in nature or add specificity without adversely affecting other aspects of the program. The respective counterpart section of SMCRA are in parentheses.

U.C.A. 40–10–10, permit applications (Section 513);

U.C.A. 40–10–14, permit findings issued to the applicant and other interested parties (Section 514 (f));

U.C.A. 40–10–20(8), civil penalty for violations (Section 518(h)); and U.C.A. 40–10–21, civil actions (Section 520).

Because the proposed revisions to these sections of the Utah Act either contain language that is the same as or similar to the counterpart sections of SMCRA and are nonsubstantive in nature or add specificity without adversely affecting other aspects of the program, the Director finds that these proposed revisions to the Utah Act are no less stringent than the counterpart provisions of SMCRA. The Director approves the propsoed revisions.

2. U.C.A. 40–10–20 (9) and (10), Civil penalty for violations

Utah proposes to delete a portion of its statutory provisions regarding civil penalties at U.C.A. 40–10–20 (9) and (10). Subsection (9) of U.C.A. 40–10–20 requires that fines or penalties collected for violations be remitted to the State Treasurer for deposit in the general fund. Subsection (10) of U.C.A. 40–10–20 requires that total or partial refunds directed by administrative or judicial determination of any fines or penalties be made directly from the general fund.

In lieu of the deleted requirement at U.C.A. 40–10–20(9), Utah proposes, at U.C.A. 40–10–25(1)(d), that monies collected by the State for violations be deposited in the general fund as nonlapsing dedicated credits to the Division of Oil, Gas and Mining to administer a program for reclamation of abandoned mine lands. (For a discussion of the proposed revisions at U.C.A. 40–10–25(1)(d), see finding No. 3.)

There are no requirements in section 518 of SMCRA directly corresponding to the deleted requirements at U.C.A. 40–10–20 (9) and (10). Section 518 of SMCRA does not specify any particular fund into which collected civil penalties are to be deposited or from which refunded civil penalties are to be withdrawn. Utah's proposed deletion of U.C.A. 40–10–20 (9) and (10) and its proposed addition of U.C.A. 40–10–25(1)(d) are not inconsistent with section 518 of SMCRA. Therefore, the Director approves Utah's proposed deletion of U.C.A. 40–10–20 (9) and (10) and the addition of U.C.A. 40–10–25(1)(d).

3. U.C.A. 40–10–25, Dedicated credits, transfer of funds, and investment by State Treasurer

(a) U.C.A. 40–10–25 (1) and (1)(d)

Utah proposes to amend U.C.A. 40–10–25. Existing U.C.A 40–10–25(1) establishes an "abandoned mine reclamation account" in the general fund which provides monies for the administration of Utah's abandoned mine land reclamation program. Utah proposes to delete reference to the abandoned mine reclamation account and proposes to establish an account where monies received by the State from the various sources would be deposited in the general fund as "nonlapsing dedicated credits to the Division of Oil, Gas and Mining to administer a program for reclamation of abandoned mine lands." Utah also proposes to add a new subsection (1)(d) to U.C.A. 40–10–25 that would allow fines collected from violations of the Utah Act, or any rule or order issued under it, to be deposited into the account.

Section 401(b)(4) of SMCRA allows States to derive funds for deposit in State abandoned mine land reclamation funds from "recovered moneys as provided for in this title." These recovered monies include fines collected from violations. Also, the Federal regulations at 30 CFR 872.12(b)(5) allow States to deposit such other monies as the States decide in the State abandoned mine land reclamation funds.

The Director finds that Utah's proposed amendments at U.C.A. 40–10–25 are not inconsistent with Section 401 of SMCRA and are no less effective than the Federal regulation at 30 CFR 872.12(a)(5). Therefore, the Director approves the proposed amendments.

(b) U.C.A. 40–10–25(4)

Utah also proposes to add a new subsection (4) at U.C.A. 40–10–25 that would allow Utah to set aside for use after August 3, 1992, up to 10 percent annually of the abandoned mine land

(AML) monies received from the Secretary of the Interior. At U.C.A. 40–10–25(4)(b), Utah proposes that "at any time" the director of the Division of Oil, Gas and Mining (Division), with the concurrence of the Board of Oil, Gas and Mining (Board), may request a transfer of funds from the Utah AML fund for emergencies requiring immediate reclamation.

The phrase "at any time" in proposed U.C.A. 40–10–25(4)(b) could be interpreted to allow Utah to receive monies from the AML fund prior to August 3, 1992. However, the Office of the Attorney General for the State of Utah, by letter dated February 7, 1990 (administrative record No. UT–562), clarified that "at any time" means at any time after August 3, 1992.

Given this clarification, the Director finds that Utah's proposed amendments at U.C.A. 40–10–25(4) (a), (b), and (c) are no less stringent than section 402(g)(3) of SMCRA and the Director approves them.

4. U.C.A. 40–10–30, Judicial review of rules and orders

Utah proposes to add section U.C.A. 40–10–30. This section specifies procedures for judicial review of State rules and orders.

Proposed U.C.A. 40–10–30(1) requires that an appeal from a rule or order of the Board be conducted as a trial on the record and not a trial de novo. This proposed statute also lists conditions under which the court may set aside the Board actions.

Proposed U.C.A. 40–10–30(2) requires rulings by the State district court as expeditiously as feasible, and sets forth the court's decision options and limits the information upon which the court may base its decision.

Proposed U.C.A. 40–10–30(3) provides that review of an adjudication by the district court is by the State Supreme Court.

Section 526(e) of SMCRA requires that actions of the State regulatory authority pursuant to an approved State program shall be subject to judicial review by a court of competent jurisdiction in accordance with State law. The proposed amendments at U.C.A. 40–10–30 (1), (2), and (3) specify the judicial review procedures to be followed under State law. Therefore, the Director finds that Utah's proposed statutes at 40–10–30 (1), (2), and (3) are not inconsistent with section 526(e) of SMCRA. The Director approves them.

5. U.C.A. 40–10–31, Adjudicative procedures that supersede the procedures of the Utah Administrative Procedures Act at Chapter 46b, Title 63 (UAPA)

Utah proposes to amend the Utah Act by adding a new section at U.C.A. 40–10–31 that includes adjudicative procedures which would supersede the procedures of UAPA. Utah proposes that "[t]he provisions of this chapter relating to agency adjudicative procedures before the board or division supersede the procedures and requirements of Chapter 46b, Title 63, only until and unless the appropriate federal authority approves chapter 46b, title 63, for the governance of the board as to this chapter." The effect of this proposed statute is that the administrative procedures of the Utah Act, as previously approved by OSM, remain in effect until Utah obtains OSM approval of the UAPA as part of the approved State Program. The Director notes that Utah has informally submitted the UAPA for OSM's review as a State program amendment.

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17 requires that any alteration of an approved State program be immediately submitted to OSM for review as a program amendment. In addition, 30 CFR 732.17(g) provides that no change to State law or regulations shall take effect for purposes of a State program until approved by OSM as an amendment.

The Director finds that proposed U.C.A. 40–10–31 is not inconsistent with Section 503 of SMCRA and the Federal regulation at 30 CFR 732.17(g). Therefore, the Director approves the proposed statute.

IV. Summary and Disposition of Comments

1. Public comment

The Director solicited public comment and provided opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), the Director solicited comments from the Administrator of the Environmental Protection Agency (EPA), the Secretary of Agriculture, and the heads of various other Federal agencies with an actual or potential interest in the Utah program.

By letter dated January 4, 1990 (administrative record No. UT–552), EPA commented on Utah's proposed statutes at U.C.A. 40–10–6.5, rulemaking authority and procedure, and U.C.A. 40–10–6.6(3), effect of notice of violation or denial of permit. EPA stated that "the amendments impose unnecessary barriers to the adoption and enforcement by the Board of Oil, Gas, and Mining or regulations more stringent than imposed under [SMCRA]." EPA further stated that "Federal regulations under SMCRA applicable to surface coal mines require a minimum level of control in all areas in the country and, in some areas, may not be adequate to attain the national ambient air quality standards (NAAQS)." EPA stated that it would prefer that the Board not be encumbered in adopting or enforcing more stringent regulations needed to protect the NAAQS by such requirements as full evidentiary hearings or allowing challenges to enforcement actions in which a source can raise the need for more stringent regulations.

By letter dated May 29, 1990, Utah withdrew these proposed sections of the amendment (administrative record UT–568). In accordance with 30 CFR 732.17(g), these provisions will not take effect in the Utah program until and unless the Director approves them. If, at some future time, Utah again submits to OSM, as proposed State program amendments, the statutes at U.C.A. 40–10–6.5 and 40–10–6.6, or similar program provisions, EPA, as well as other interested parties, will again be given the opportunity to review and comment on them.

By letter dated December 16, 1989, the Mine Safety and Health Administration (MSHA) acknowledged receipt of the proposed amendment and stated that Utah's proposed statutes did not conflict with MSHA's regulations (administrative record No. UT–550).

By letter dated December 20, 1989, the Bureau of Mines acknowledged receipt of the proposed amendment and stated that the proposed amendment would have no significant adverse impacts to mineral resource production (administrative record No. UT–549).

Environmental Protection Agency (EPA) Concurrence. Pursuant to 30 CFR 732.17(h)(11)(ii), the Director solicited the written concurrence of the Administrator of the EPA with respect to those provisions of the proposed program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). EPA

gave its written concurrence on January 3, 1990 (administrative record No. UT–551).

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP). Pursuant to 30 CFR 732.17(h)(4), the Director provided the proposed amendments to the SHPO and ACHP for comment. Neither the SHPO nor ACHP provided any comments to OSM.

V. Director's Decision

Based on the above findings, the Director approves Utah's proposed amendment as submitted on November 13, 1989, and revised on May 29, 1990.

The Federal regulations at 30 CFR part 944 codifying decisions concerning the Utah program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision. Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17 requires that any alteration of an approved State program be immediately submitted to OSM for review as a program amendment. In addition, 30 CFR 732.17(g) provides that no change to State laws or regulations shall take effect for purposes of a State program until approved by OSM as an amendment. In the oversight of the Utah State Program, the Director will: (1) Recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials; (2) require the enforcement by Utah of only such provisions; and (3) promptly bring to the State's attention, using the procedures established in 30 CFR 732.17, any state program provision which has not been approved by OSM or which otherwise does not meet the requirements of SMCRA or chapter VII, title 30, of the Code of Federal Regulations.

VI. Procedural Determinations

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.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM 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, for this action, OSM is exempt from the requirement to prepare a regulatory impact analysis, and this action does not require regulatory review by OMB. The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining

Dated: August 3, 1990.

Raymond L. Lowrie,

Assistant Director, Western Field Operations.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 944—UTAH

1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 944.15 is amended by adding a new paragraph (o) to read as follows:

§ 944.15 Approval of amendments to State regulatory program.

* * * * *

(o) Revisions to the following sections of the Utah Code Annotated 1953, title 40, as submitted to OSM on November 13, 1989, and revised on May 29, 1990, are approved effective August 13, 1990.

40–10–10 Permit Applications
40–10–14 Permit Findings Issued to the Applicant and Other Interested Parties
40–10–20 Civil Penalty for Violations
40–10–21 Civil Actions
40–10–25 Dedicated Credits, Transfer of Funds, and Investment By State Treasurer
40–10–30 Judicial Review of Rules and Orders
40–10–31 Adjudicative Procedures That Supersede Chapter 46b, Title 63

[FR Doc. 90–18868 Filed 8–10–90; 8:45 am]
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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Penile Implants, Testicular Prostheses, Correction of Sex Gender Confusion

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule amendment revises the DoD Regulation 6010.8–R (32 CFR part 199) by establishing coverage under the CHAMPUS program for Food and Drug Administration (FDA) approved penile implants when performed for organic impotency, and for FDA approved penile implants and testicular prostheses when performed following disease, trauma, injury, radical surgery, for correction of a congenital anomaly, or sex gender confusion (that is, ambiguous genitalia) which has been documented to be present at birth. This final rule amendment also removes the current regulatory restriction for completion of the correction of sex gender confusion by the age of ten, and reclarifies the CHAMPUS position to continue to exclude coverage for psychotherapy for diagnosable mental disorders involving sexual disorders, dysfunctions and inadequacies.

EFFECTIVE DATES: For the penile implant procedure February 1, 1988; for testicular prostheses, August 13, 1990; and for removal of the current regulatory restriction for completion of the correction of sex gender confusion (that is, ambiguous genitalia) after the age of ten, June 19, 1987.

ADDRESSES: Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: Judy Carroll, Office of Program Development, OCHAMPUS, telephone (303) 361–3521.

SUPPLEMENTARY INFORMATION: In FR Doc. 77–7834, appearing in the Federal Register on April 4, 1977 (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R,

"Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as part 199 of this title. 32 CFR part 199 (DoD 6010.8–R) was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008). In FR Doc. 90–1219 appearing in the **Federal Register** on January 22, 1990 (55 FR 2116), the Office of the Secretary of Defense published for public comment a notice of proposed rulemaking regarding establishing coverage under the CHAMPUS program for Food and Drug Administration (FDA) approved penile implants when performed for organic impotency and for FDA approved penile implants and testicular prostheses when performed following disease, trauma, injury, radical surgery, for correction of a congenital anomaly, or sex gender confusion (that is, ambiguous genitalia) which has been documented to be present at birth. The proposed amendment also recommended removal of the current regulatory restriction for completion of the correction of sex gender confusion by the age of ten. We received no public comments recommending changes or additions to the proposed rule. Additionally, we received no comments from those government agencies which by law CHAMPUS is required to consult with during the rulemaking process. However, during the OCHAMPUS review of the published proposed rule, we noticed that the proposed effective date for beginning coverage of penile implants was incorrectly indicated as October 1, 1988. The date which should have been indicated in the proposed rule for beginning CHAMPUS coverage for penile implants is February 1, 1988, the date of endorsement by national technology assessment. The February 1, 1988, date for beginning CHAMPUS coverage for penile implants is incorporated in the final rule. Additionally, in an effort to prevent interpretations that this final rule is also meant to expand coverage for psychotherapy for diagnosable mental disorders involving sexual dysfunctions, disorder, and inadequacies, we have added appropriate clarifying exclusionary language to the final rule. This additional language only reclarifies the current CHAMPUS position to continue to exclude coverage for psychotherapy for diagnosable mental disorders involving sexual dysfunctions, disorders, and inadequacies.

As stated in the proposed rule, CHAMPUS does not extend benefits for penile implants or testicular prostheses. Current statutory provisions prohibiting CHAMPUS coverage for therapy or counseling for sexual dysfunctions or inadequacies resulted in similar language being incorporated in the regulation and the specific mention of the penile implant and testicular prosthesis as CHAMPUS program exclusions. Historically, these exclusions have been interpreted to apply to all medical conditions and to prohibit CHAMPUS reimbursement in all instances.

However, the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) has recently reviewed the legislative history and intent of the existing statutory exclusion for therapy or counseling for sexual dysfunctions or inadequacies. The ASD(HA) review determined that the current statutory language was intended to exclude sex therapy, sexual advice, sexual counseling, sex behavior modification, and other similar activities, but was not intended to prohibit payment by CHAMPUS for otherwise appropriate medical (non-psychiatric) or surgical care provided to correct sexual dysfunctions or sexual inadequacies resulting from organic origin (i.e., certain medical diseases, radical surgical procedures, trauma, injury, etc.).

As a result of this review and interpretation, OCHAMPUS feels that continued denial of CHAMPUS program benefits for the penile implant and testicular prosthesis when performed as treatment for conditions of organic origin is inappropriate and no longer supportable under current statutory and regulatory language.

At this time, we are also amending the regulation to allow benefits for correction of sex gender confusion (that is, ambiguous genitalia) documented to be present at birth when determined to be medically appropriate. Current regulatory language allows benefits for sex gender confusion, (that is, ambiguous genitalia), performed on a child 10 years of age and under. However, it has been brought to our attention through several recent case histories that many of the surgical procedures for the correction of sex gender confusion require a growth period, and as a result of this growth requirement, total correction cannot be completed by the age of ten. Therefore, OCHAMPUS feels removal of the age restriction to be more in keeping with general medical practice. We are including this in the final amendment now, since there may be instances in which correction of sex gender confusion may involve the penile implant or testicular prosthesis procedures. In implementing this final amendment, we have chosen several effective dates which reflect either national endorsement by technology assessment bodies, specific case circumstances upon which an OCHAMPUS decision to implement was made, and employment of normal implementing OCHAMPUS procedures which are based on regulatory publication. The effective dates are as follows: for the penile implant procedure February 1, 1988, (date selected based on a recognized national assessment); for the testicular prosthesis August 13, 1990 (a date which is normally used to establish OCHAMPUS benefit coverage); and for correction of sex gender confusion (that is, ambiguous genitalia) after the age of ten, June 19, 1987 (date based on specific case circumstances necessitating this change).

This final rule offers coverage for services now unavailable to the CHAMPUS beneficiary population, but which are available to their civilian counterparts. It is an enhancement of military benefits.

Section 605(b) of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires that each federal agency prepare and make available for public comment, a regulatory flexibility analysis when the agency issues regulation which would have a signficant impact on a substantial number of small entities. The Secretary certifies, pursuant to section 605(b) of title 5, United States Code, enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this regulation amendment will not have a signficant impact on a substantial number of small businesses, organizations, or government jurisdictions. The final rule will broaden the scope of CHAMPUS benefits by extending benefits to include coverage for penile implants, testicular prostheses, in certain instances, and for the correction of sex gender confusion (that is, ambiguous genitalia) when documented to be present at birth when determined to be medically appropriate. It will not involve any significant burden on CHAMPUS beneficiaries or providers. Increase in program costs associated with this change are not substantial since we expect that less than one percent of the CHAMPUS population will require such services.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR part 199 is amended as set forth below.

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301; Pub. L. 101–165, sec. 9100.

2. Section 199.4 is amended by revising paragraphs (e)(7), (e)(8)(ii) (A) and (D), (e)(8)(iv) (P), (Q) and (R), (g) (29) and (30), by redesignating paragraph (e)(8)(i)(E) as paragraph (e)(8)(i)(F), and by adding a new paragraph (e)(8)(i)(E) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(e) * * *

(7) *Transsexualism or such other conditions as gender dysphoria.* All services and supplies directly or indirectly related to transsexualism or such other conditions as gender dysphoria are excluded under CHAMPUS. This exclusion includes, but is not limited to, psychotherapy, prescription drugs, and intersex surgery that may be provided in connection with transsexualism or such other conditions as gender dysphoria. There is only one very limited exception to this general exclusion, that is, notwithstanding the definition of congenital anomaly, CHAMPUS benefits may be extended for surgery and related medically necessary services performed to correct sex gender confusion (that is, ambiguous genitalia) which has been documented to be present at birth.

(8) * * *

(i) * * *

(E) Penile implants and testicular prostheses for conditions resulting from organic origins (i.e., trauma, radical surgery, disease process, for correction of congenital anomaly; etc.). Also, penile implants for organic impotency.

Note: Organic impotence is defined as that which can be reasonably expected to occur following certain diseases, surgical procedures, trauma, injury, or congenital malformation. Impotence does not become organic because of psychological or psychiatric reasons.

* * * * *

(ii) * * *

(A) For the purposes of CHAMPUS, dental congenital anomalies such as absent tooth buds or malocclusion specifically are excluded. Also excluded are any procedures related to transsexualism or such other conditions as gender dysphoria, except as provided in paragraph (e)(7) of this section.

* * * * *

(D) In addition, whether or not it would otherwise qualify for benefits under paragraph (e)(8)(i) of this section, the breast augmentation mammoplasty is specifically excluded.

* * * * *

(iv) * * *

(P) Any procedures related to transsexualism or such other conditions as gender dysphoria except as provided in paragraph (e)(7) of this section.

(Q) Penile implant procedure for psychological impotency, transsexualism, or such other conditions as gender dysphoria.

(R) Insertion of prosthetic testicles for transsexualism, or such other conditions as gender dysphoria.

* * * * *

(g) * * *

(29) *Transsexualism or such other conditions as gender dysphoria.* Services and supplies related to transsexualism or such other conditions as gender dysphoria (including, but not limited, to intersex surgery, psychotherapy, and prescription drugs), except as specifically provided in paragraph (e)(7) of this section.

(30) *Therapy or counseling for sexual dysfunctions or sexual inadequacies.* Sex therapy, sexual advice, sexual counseling, sex behavior modification, psychotherapy for mental disorders involving sexual deviations (i.e., transvestic fetishm), or other similar services, and any supplies provided in connection with therapy for sexual dysfunctions or inadequacies.

* * * * *

Dated: August 2, 1990.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–18549 Filed 8–10–90; 8:45 am]

BILLING CODE 3810–01–M

Defense Logistics Agency

32 CFR Part 1286

[DLA Reg. 5400.21]

Defense Logistics Agency Privacy Act Program

AGENCY: Defense Logistics Agency, DOD.

ACTION: Final rule.

SUMMARY: The Defense Logistics Agency is changing Identification Numbers on two existing exempt record systems to reflect administrative/organizational changes. The Identification Numbers S153.01 DLA–T and S160.50 (DLA(T) will read S153.10 DLA–I and S160.50 DLA–I, respectively. These Identification Numbers will supersede two existing DLA exemption rule Identification Numbers found at 32 CFR part 1286, Appendix H—DLA Exemption Rules.

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Susan Salus, Privacy Act Officer, Administrative Management Branch, Resources Management Division, Defense Logistics Agency, Room 5A120, Cameron Station, Alexandria, VA 22304–6100. Telephone (202) 274–6234.

List of Subjects in 32 CFR Part 1286

Privacy.

Accordingly, DLA is exchanging Identification Numbers for two existing exemption rules to 32 CFR part 1286 as follows:

PART 1286—DEFENSE LOGISTICS AGENCY PRIVACY PROGRAM

1. The authority citation for 32 CFR part 1286 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Part 1286, Appendix H is amended by revising the system identification numbers in paragraphs a. and b. as follows:

Appendix H—DLA Exemption Rules

* * * * *

a. ID: S153.10 DLA–I (Specific Exemption).

* * * * *

b. ID: S160.50 DLA–I (Specific Exemption).

* * * * *

Dated: August 7, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 90–18901 Filed 8–10–90; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD–FRL–3818–4]

National Emission Standards for Hazardous Air Pollutants; Test Methods; Addition of Methods 108B and 108C

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; Technical amendment.

SUMMARY: A rule entitled "National

Emission Standards for Hazardous Air Pollutants; Test Methods" was published in the Federal Register on May 31, 1990 (55 FR 22026). This rule added Methods 108B and 108C for arsenic determination in ores to appendix B. With the rule, reference material cited in Method 108C was incorporated by reference in § 61.18. In column 1 of page 22027, the rule incorrectly added the material to § 61.18(a)(7), which was already designated for other material. This action corrects the rule to add the material to § 61.18(a)(11) instead of § 61.18(a)(7).

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Foston Curtis or Roger Shigehara, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1063.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 61

Air pollution control, Asbestos, Arsenic, Beryllium, Hazardous materials, Incorporation by reference, Mercury, and Vinyl chloride.

Dated: August 2, 1990.

Michael Shapiro,

Acting Assistant Administrator for Air and Radiation.

Accordingly, 40 CFR part 61 is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, and 7601.

2. In § 61.18, the second paragraph (a)(7), which was added May 31, 1990 (55 FR 22027), is removed.

3. In § 61.18, paragraph (a)(11) is added to read as follows:

§ 61.18 Incorporation by reference.

* * * * *

(a) * * *

(11) ASTM E 50–82 (reapproved 1986), Standard Practices for Apparatus Reagents, and Safety Precautions for Chemical Analysis of Metals, IBR approved for Method 108C, par. 2.1.4.

* * * * *

[FR Doc. 90–18553 Filed 8–10–90; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6791

[AK–932–00–4214–10; AA–6497]

Partial Revocation of Power Site Reserve No. 485, as Modified; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes Power Site Reserve No. 485 of April 1, 1915, insofar as it affects approximately 227 acres of land which have left Federal ownership and approximately 600 acres of National Park System land at Tanalian River. The land is no longer needed for the purpose for which it was withdrawn. The public land is part of the Lake Clark National Preserve as established by the Alaska National Interest Lands Conservation Act and, except as explicitly provided otherwise in the Act, remains withdrawn from all forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws.

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Power Site Reserve No. 485, as modified by Restoration Order No. 1302 and by Public Land Order No. 2489, is hereby revoked insofar as it affects the following described land:

Seward Meridian

Located within T. 1 N., R. 29 W., unsurveyed, and more particularly described as:

All lands within one-quarter of a mile of the Tanalian River between Lake Clark and Mile 2.9 of the river.

The area described contains approximately 827 acres.

2. The public land remains withdrawn under sections 201(7)(a) and 206 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2371, 2380 and 2384, as part of the Lake Clark National Preserve. The land remains, except as explicitly provided otherwise in the Act, withdrawn from all forms of appropriation and disposition under the public land laws, including the mining and mineral leasing laws.

Dated: August 6, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90–18881 Filed 8–10–90; 8:45 am]

BILLING CODE 4310–JA–M

43 CFR Public Land Order 6792

[AK–932–00–4214–10; F–496]

Partial Revocation of Air Navigation Site No. 145; McGrath, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial Order insofar as it affects 9.85 acres of public land withdrawn for Air Navigation Site No. 145 at McGrath, Alaska. The land is no longer needed for the purpose for which it was withdrawn. The land continues to be subject to the terms and conditions of an overlapping withdrawal and remains closed to all forms of appropriation under the public land laws, including the mining and mineral leasing laws, but not disposals of materials under the Act of July 31, 1947.

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. The Secretarial Order dated October 1, 1940, as amended, which withdrew public land for Air Navigation Site No. 145 is hereby revoked insofar as it affects the following described land:

McGrath, Alaska

Beginning on line 2–3, U.S. Survey No. 1962 where it intersects west ditch line of the road lying parallel to, and east of, the north south runway of the McGrath Airfield;
Thence east along line 3–2 of U.S. Survey No. 1962, 1,300 feet to corner No. 2, U.S. Survey No. 1962;
Thence south 330 feet;
Thence west 1,300 feet to west ditch line of said road;
Thence north 330 feet to the point of beginning.

The area described contains approximately 9.85 acres.

2. The land continues to be withdrawn by Public Land Order No. 2133, and remains closed to all forms of appropriation under the public land laws, including the mining and mineral

leasing laws, but not disposals of materials under the Act of July 31, 1947, 30 U.S.C. 601–604 (1988), as amended.

Dated: August 6, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90–18890 Filed 8–10–90; 8:45 am]

BILLING CODE 4310–JA–M

43 CFR Public Land Order 6793

[CO–930–00–4214–10; C–48697]

Withdrawal of National Forest System Land for Protection of Recreational Values; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 4,094 acres of National Forest System land from mining for a period of 20 years for the protection of existing recreational facilities at the Snowmass Ski Area. The land has been and remains open to such forms of disposition as may by law be made of National Forest System land and to mineral leasing.

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–236–1752.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land, which is under the jurisdiction of the Secretary of Agriculture, is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. ch. 2) to protect existing recreational values which are a part of the Snowmass Ski Area:

Sixth Principal Meridian

T. 10 S., R. 85 W.,
Sec. 18, W½;
T. 10 S., R. 86 W.,
Sec. 10, lots 1, 2, 3, 4, 5, and 6, SE¼NW¼, E½E½SW¼NW¼, E½NE¼SW¼, NW¼NE¼SW¼, E½E½SE¼SW¼, and S½SE¼;
Sec. 11, lots 3, 4, 5, and 6, and S½S½;
Sec. 12, lots 4, 5, 6, 7, and 8, S½NE¼, SE¼NW¼, NE¼SW¼, S½SW¼, and SE¼;
Sec. 13;
Sec. 14;
Sec. 15, N½NE¼, SE¼NE¼, E½SW¼NE¼, NW¼SW¼NE¼, NE¼SE¼, and E½SE¼SE¼;
In protracted section 19 of T. 10 S., R. 85 W., and sections 22, 23, 24, and 26 of T. 10 S., R. 86 W., by metes and bounds:

Beginning on the hydrographic divide between East Snowmass Creek and Brush Creek at a point of intersection with the south line of section 15, T. 10 S., R. 86 W., from which the southeast corner of said section 15 bears East approximately 450 feet.

From the point of beginning, by metes and bounds,

Thence southerly on said hydrographic divide between East Snowmass Creek and Brush Creek approximately 1.2 miles to the hydrographic divide between Brush Creek and Willow Creek;

Northeasterly on said divide 2.7 miles to the summit of Burnt Mountain (elevation 11,835 feet);

Northwesterly to the south one-quarter section corner of section 18 T. 10 S., R. 85 W., Sixth Principal Meridian, Colorado;

Westerly on the south boundaries of section 18, T. 10 S., R. 85 W., and sections 13, 14, and 15, T. 10 S., R. 86 W., to the point of beginning.

The tract as described contains approximately 1,580 acres, subject to adjustment to lines of public land surveys.

Between the beginning point and the summit of Burnt Mountain, (elevation 11,835 feet), the above boundary is identical with the boundary of the Maroon Bells-Snowmass Wilderness Area.

The area described contains approximately 4,094 acres of National Forest System land in Pitkin County, Colorado. The land described is intended to include only the National Forest System land outside the boundary of the Maroon Bells-Snowmass Wilderness Area.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of National Forest System land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be extended.

Dated: August 7, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90–18893 Filed 8–10–90; 8:45 am]

BILLING CODE 4310–JB–M

43 CFR Public Land Order 6794

[AK–932–00–4214–10; F–030966, F–030967]

Revocation of Air Navigation Site 154, as Amended, and Partial Revocation of Air Navigation Site 164, as Amended, for Selection of Lands by the State of Alaska; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes two Secretarial Orders insofar as they affect 77.51 acres of public land withdrawn for Air Navigation Site No. 154 at Central, Alaska, and Air Navigation Site No. 164, at Boundary (Walkers Fork), Alaska. The lands are no longer needed for the purpose for which they were withdrawn. This action also opens the lands for selection by the State of Alaska, if such lands are otherwise available. Any lands described herein that are not conveyed to the State will be subject to the terms and conditions of withdrawals of record.

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. The Secretarial Order dated February 11, 1941, as amended, which withdrew public lands for Air Navigation Site 154, is hereby revoked in its entirety and the Secretarial Order dated July 19, 1941, as amended, which withdrew public lands for Air Navigation Site 164, is hereby revoked in part as to the following described lands:

Central, Alaska

U.S. Survey No. 5380, Lot 2.
The area described contains 32.06 acres.

Boundary, Alaska

U.S. Survey No. 8835.
The area described contains 45.45 acres.
The areas described aggregate 77.51 acres.

2. Subject to valid existing rights, the lands described above are hereby opened to selection by the State of Alaska under either the Alaska Statehood Act of July 7, 1958, 48 U.S.C. prec. 21 (1988), or section 906(b) of the Alaska National Interest Lands

Conservation Act, 43 U.S.C. 1635(b) (1988).

3. The State of Alaska selection made under section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the Federal Register. Lands not conveyed to the State will be subject to the terms and conditions of withdrawals of record.

Dated: August 7, 1990.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 90-18892 Filed 8-10-90; 8:45 am]

BILLING CODE 4310-JA-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 395

[FHWA Docket Nos. MC-114 and MC-119]

Federal Motor Carrier Safety Regulations; General; Technical Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rules; technical amendments.

SUMMARY: This document includes two technical amendments which correct final rules that appeared in the Federal Register on May 19, 1988 (53 FR 18042) and October 30, 1987 (52 FR 41718). The first correction amends the definitions of "private motor carrier of passengers" and "private motor carrier of property" in 49 CFR 390.5 to make them consistent with the definition of "motor private carrier" in the underlying statutory authority and to eliminate any misinterpretation of those definitions. The second correction, amending § 395.3(b), is necessary to include a phrase that was inadvertently omitted when the rule was last amended.

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Office of Motor Carrier Standards, (202) 366-2983, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366, 1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Title 49, Code of Federal Regulations, § 390.5, Definitions, was amended by a final rule published in the Federal Register on May 19, 1988 (53 FR 18042, 18054). The rule included definitions of the terms *"private motor carrier of passengers"* and *"private motor carrier of property."* Both definitions were made applicable to persons engaged in an enterprise "other than transportation." That phrase was intended to be a stylistic modification to make the definitions more easily understandable. However, it inadvertently caused confusion by allowing an interpretation that was substantially inconsistent with the underlying statutory authority (49 U.S.C. 10102(16) (1982 & Supp. IV 1986)). The phrase "other than transportation" erroneously implied that motor carriers operated by railroads, steamship lines, airlines or other transportation companies were not covered by the two definitions, and were thus exempt from the FHWA's jurisdiction. The statutory definition in section 10102(16) is clearly applicable to all such motor carriers. This technical amendment therefore removes the words "other than transportation" from both of the definitions in § 390.5. It further clarifies the definition of "private motor carrier of passengers" by adopting terminology used throughout the Federal Motor Carrier Safety Regulations (FMCSRs).

The FMCSRs have always prohibited a motor carrier from permitting or requiring a driver to violate the hours of service regulations. In addition, the FMCSRs have always prohibited a driver from violating the hours of service regulations. The latter prohibition was inadvertently omitted when § 395.3(b) was amended on October 30, 1987 (see 52 FR 41718. The FHWA is therefore amending § 395.3(b) to make it clear that a driver is personally prohibited from driving a commercial motor vehicle after having been on duty 60 hours in any 7 consecutive days or 70 hours in any 8 consecutive days.

List of Subjects

49 CFR Part 390

Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

In view of the above, the FHWA is amending 49 CFR parts 390 and 395 as follows:

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. App. 2503 and 2505; 49 U.S.C. 3102 and 3104; 49 CFR 1.48.

2. Section 390.5 is amended by revising the definitions of the terms *"private motor carrier of passengers"* and *"private motor carrier of property"* to read as follows:

§ 390.5 Definitions.

* * * * *

Private motor carrier of passengers means a person who is engaged in an enterprise and provides transportation of passengers, by motor vehicle, that is within the scope of, and in the futherance of that enterprise.

Private motor carrier of property means a person who provides transportation of passengers by motor vehicle, and is not a for-hire motor carrier.

* * * * *

PART 395—[AMENDED]

3. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 3102; 49 U.S.C. App. 2505; and 49 CFR 1.48.

4. In § 395.3, the introductory text of paragraph (b) is revised to read as follows:

§ 395.3 Maximum driving and on-duty time.

* * * * *

(b) No motor carrier shall permit or require a driver of a commercial motor vehicle to drive, nor shall any driver drive, regardless of the number of motor carriers using the driver's services, for any period after—

* * * * *

(Catalog of Federal Domestic Assistance Program No. 20.217, Motor Carrier Safety.)

Issued on: July 26, 1990.

T.D. Larson,

Administrator.

[FR Doc. 90-18875 Filed 8-10-90; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 900511-0111]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure and inseason adjustment.

SUMMARY: NOAA announces the closure of the commercial salmon fishery for all salmon species in the exclusive economic zone (EEZ) from Cascade Head, Oregon, to Horse Mountain, California, at midnight, July 31, 1990, to ensure that the coho salmon ceiling for the subarea south of Cascade Head is not exceeded; regularly scheduled commercial fisheries between Cascade Head, Oregon, and Horse Mountain, California, will reopen for all salmon species except coho at 0001 hours August 1, 1990. NOAA also announces an increase in the subquota for chinook salmon in the commercial salmon fishery from Sisters Rocks, Oregon, to Punta Gorda, California, from 12,200 to 18,300 fish. The Director, Northwest Region, NMFS (Regional Director), has determined that this action is necessary to conform to the preseason notice of 1990 management measures. This action is intended to ensure conservation of coho salmon and to allow maximum harvest of ocean salmon quotas established for the 1990 season.

DATES: *Effective:* Closure of the EEZ from Cascade Head, Oregon, to Horse Mountain, California, to commercial fishing for all salmon species is effective at 2400 hours local time, July 31, 1990. Regularly scheduled commercial fisheries between Cascade Head, Oregon, and Horse Mountain, California, will reopen for all salmon species except coho salmon effective at 0001 hours local time, August 1, 1990. Modification of the chinook salmon subquota for the August commercial fishery from Sisters Rocks, Oregon, to Punta Gorda, California, is effective at 0001 hours local time, August 1, 1990. Actual notice to affected fishermen was given prior to those times through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989). *Comments:* Public comments are invited until August 23, 1990.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its preseason notice of 1990 management measures (55 FR 18894, May 7, 1990), NOAA announced that the 1990 commercial fishery from Cape Falcon to the U.S.-Mexico border is limited to an overall catch quota of 167,000 coho salmon. Within this overall catch quota, there is a subarea catch ceiling which allows a harvest of no more than 102,000 coho salmon south of Cascade Head, Oregon. A separate catch quota of 5,000 coho salmon has been reserved preseason for the commercial fishery from Horse Mountain, California, to the U.S.-Mexico border which will be available upon attainment of the overall catch quota or the subarea catch ceiling minus the 5,000 deduction, which is equivalent to an overall catch quota of 162,000 coho salmon or subarea catch ceiling of 97,000 coho salmon.

According to the best available information on July 30, commercial catches through midnight, July 31, are projected to total 92,000–94,000 coho salmon south of Cascade Head, leaving 3,000–5,000 coho salmon available for harvest. The Regional Director has determined that this amount of coho salmon is insufficient for one more day of fishing based on projected high catch rates of coho salmon by continuing fisheries and by fisheries scheduled to open on August 1 in previously closed areas. Therefore, commercial salmon fishing from Cascade Head, Oregon, to Horse Mountain, California, is closed effective 2400 hours local time, July 31.

In accordance with the preseason notice of 1990 management measures (Table 1 at 55 FR 18899), regularly scheduled commercial fisheries between Cascade Head, Oregon, and Horse Mountain, California, will reopen for all salmon species except coho salmon effective 0001 hours local time, August 1. Furthermore, commercial fishing for all salmon species will continue between Horse Mountain and the U.S.-Mexico border until the earlier of September 30 or attainment of the 5,000 coho salmon reserve.

The 1990 commercial fishery from Sisters Rocks, Oregon, to Punta Gorda, California, is managed not to exceed an overall quota of 18,400 chinook salmon through August 31. This quota is divided into two subquotas, with any overage or underage in meeting a subquota being subtracted from or added to the next commercial fishery prior to August 31. Inseason modification of quotas is authorized by the regulations at 50 CFR 661.21(b)(1)(i).

Commercial landings in the May 1–24 fishery from Sisters Rocks to House Rock, Oregon, totaled 100 chinook salmon, leaving 6,100 fish unharvested of the 6,200 chinook salmon subquota. Accordingly, the chinook salmon subquota for the August 1–6 and August 15–31 fishery from Sisters Rocks to Punta Gorda should be increased by 6,100, from 12,200 to 18,300 fish. Therefore, effective 0001 hours local time August 1, the August commercial fishery from Sisters Rocks, Oregon, to Punta Gorda, California, is limited to an 18,300 chinook salmon subquota; as stated above, this fishery will reopen for all salmon species except coho salmon.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of this action was given prior to the times listed above by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz. NOAA issues this notice of: (1) closure of the commercial fishery to coho salmon in the EEZ from Cascade Head, Oregon, to Horse Mountain, California, which is effective 2400 hours local time, July 31, 1990, and (2) modification of the chinook salmon subquota for the commercial fishery in the EEZ from Sisters Rocks, Oregon, to Punta Gorda, California, which is effective 0001 hours local time, August 1, 1990.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding this action. The States of Oregon and California will manage the commercial fishery in State waters adjacent to this area of the EEZ in accordance with this federal action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through August 23, 1990.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 7, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-18958 Filed 8-8-90; 11:51 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 156
Monday, August 13, 1990

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 1230

[No. LS-89-106]

Pork Promotion and Research

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposal to (1) Terminate a provision of the Pork Promotion, Research, and Consumer Information Order (Order) which contains a schedule for remittance of assessments on sales of porcine animals to the National Pork Board (Board), and (2) issue a remittance schedule in the regulations which implement the Order provisions. Such remittance schedule would allow a 15-day time period for remittance of assessments rather than the 10-day period contained in the current schedule. In addition a marketing period of any consecutive 4-week period could be used as an alternative to the currently specified monthly marketing period. The intent of these proposed changes is to facilitate the remittance of pork assessments by purchasers of porcine animals.

DATES: Comments must be received by September 12, 1990.

ADDRESSES: Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; AMS-USDA, Room 2624-S; P.O. Box 96456; Washington, D.C. 20090-6456.

Comments will be available for public inspection during regular business hours at the above office in room 2624 South Building; 14th and Independence Avenue SW.; Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief, Marketing Programs Branch—202/382-1115.

SUPPLEMENTARY INFORMATION: The proposed rule contained in this notice was reviewed under Executive Order No. 12291 and Departmental Regulation 1512-1 and has been determined to be a nonmajor rule under the criteria contained therein.

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Many producers and collecting persons subject to the Order may be classified in this category. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. These proposed changes would make the remittance requirements less restrictive, greatly facilitate the remittance process, and eliminate the need for some purchasers to make costly changes in their recordkeeping and reporting procedures to avoid incurring late payment penalties.

The information collection requirements contained in the provisions of the Pork Promotion, Research, and Consumer Information Order, which would be affected by this proposal, have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0651-0151.

The Pork Promotion, Research, and Consumer Information Act of 1985 (7 U.S.C. 4801-4819) (Act) approved December 23, 1985, authorizes the establishment of a national pork promotion, research, and consumer information program. The program is funded by an assessment rate of 0.25 percent of the market value of all porcine animals marketed in the United States and an equivalent amount of assessment on imported porcine animals, pork, and pork products. The final Order establishing a pork promotion, research, and consumer information program was published in the September 5, 1986, issue of the **Federal Register** (51 FR 31898; as corrected at 51 FR 36383; and amended at 53 FR 1909 and 53 FR 30243). Assessments began on November 1, 1986.

The Order requires that producers pay to the Board an assessment of 0.25 percent of the market value of each porcine animal upon sale. For purposes of collecting and remitting assessments, porcine animals are divided into three separate categories: (1) Feeder pigs, (2) slaughter hogs, and (3) breeding stock. The Order specifies that purchasers of feeder pigs, slaughter hogs, and breeding stock shall collect an assessment on these animals if assessments are due. The Order further provides that for the purposes of collecting and remitting assessments, a person engaged as a commission merchant, an auction market, or a livestock market in the business of receiving such porcine animals for sale on commission for or on behalf of a producer shall be deemed to be a purchaser.

The procedures for collection and remittance of assessments are presently contained in § 1230.71(b) of the Order. Under that section, purchasers of porcine animals are required to collect assessments from producers upon the sale of porcine animals, if an assessment is due, and remit such assessment to the Board. Section 1230.71(b)(4) of the Order contains a remittance schedule which is based on the month in which the porcine animals subject to assessment were marketed and a 10-day time limit following that month for remittance of assessments. Assessments totaling $25 or more per month must be remitted on a monthly basis and are due by the 10th day of the month following the month in which the porcine animals were marketed. Assessments of less than $25 per month can be accumulated and be remitted quarterly and are due by the 10th day of the month following the end of the quarter in which the porcine animals were marketed. Compliance with the due date is based on the applicable postmark date of the remittance or the date the remittance is received by the Board whichever is earlier.

Purchasers who do not remit assessments by the dates specified under the remittance schedule are subject to a late payment charge pursuant to § 1230.76 of the Order. As provided in that section, any assessment not paid when due shall be increased at the rate of 1.5 percent per month until paid.

Based on its experience, since the assessment collection and remittance began in November 1986, the Board has found that a due date for the remittance of assessments to the Board based on the 10th day of the month following the month or quarter in which the porcine

animals were marketed is too restrictive. It is the Board's view that the 10-day time limit does not allow sufficient time for many purchasers, i.e., meat packers, auction markets, commission firms, other livestock market agencies, or individual producers, to process and remit assessments to the Board without incurring a late payment charge pursuant to § 1230.76. According to the Board, this is particularly true for those purchasers who operate multiple buying stations in outlying areas. Assessments collected at the buying stations must be first sent to the purchaser's headquarter's office for processing before being remitted to the Board. This procedure significantly reduces the number of days the purchaser has remaining in the 10-day period in which to submit the assessments.

Based on its records of remittance receipt dates, it is the Board's recommendation that assessments should be remitted by the 15th day of the month following the month in which the porcine animals were marketed or 15th day of the month following the end of a quarter for those purchasers whose assessments total less than $25 per month and who choose to sumit assessments on a quarterly basis and not the 10th day as is presently required. The Board believes that 15 days will provide ample time for even those purchasers with outlying buying stations to remit assessments by the established due dates and thus not be subject to late payment charges.

The Board also believes that there should be more flexibility in the time frames for remittances of assessments by purchasers. Section 1230.71(b)(4) specifies that the due date for remitting assessments to the Board shall be the 10th day of the month following the month in which the porcine animals were marketed. Some purchasers' established business accounting cycles are based on thirteen 4-week periods rather than twelve calendar months. Purchasers who close their books or end an accounting cycle for a 4-week period on a date which does not coincide with the ending date of a calendar month could have assessments collected from the sales of porcine animals in two consecutive months, some of which would be past due before they closed out their books for the 4-week period. According to the Board, such purchasers cannot comply with a due date based solely on a calendar month changing their established accounting cycles or establishing separate recordkeeping and reporting practices which could create an unnecessary administrative burden and result in increased operating expenses.

Based on the Board's findings and recommendations discussed above, it is proposed that the provisions of § 1230.71(b) of the Order containing the schedule for remittance of assessments on sales of porcine animals to the Board be terminated.

It is proposed that a revised remittance schedule based on the Board's recommendations be published in the rules and regulations implementing the Order. The revised schedule would provide that assessments are due by the 15th day of the month following the month in which the porcine animals were marketed or by the 15th day following the end of a Board approved consecutive 4-week period in which the porcine animals were marketed rather than the 10th day as is currently required.

In addition, purchasers whose assessments total less than $25 per month and who choose to submit assessments on a quarterly basis would be required to submit assessments by the 15th day of the month following the quarter in which the porcine animals were marketed instead of the 10th day.

It is not anticipated that the proposed changes would significantly affect the Board's total monthly receipts or prevent the Board from being able to meet its monthly financial obligations.

List of Subjects in 7 CFR Part 1230

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreement, Meat and meat products, Pork and pork products, Reporting and recordkeeping requirements.

For reasons set forth in the preamble, it is proposed that 7 CFR part 1230 be amended as set forth below:

PART 1230—PORK PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR part 1230 continues to read as follows:

Authority: 7 U.S.C. 4801–4819.

§ 1230.71 [Amended]

2. In § 1230.71 in the introductory text of paragraph (b)(4), the words "in accordance with the following remittance schedule:" and paragraphs (b)(4) (i), (ii), (iii), and (iv) are removed.

3. Section 1230.111 would be added to Subpart B—Rules and Regulations, to read as follows:

§ 1230.111 Remittance of assessments on domestic porcine animals.

Assessments on domestic porcine animals shall be remitted to the National Pork Board pursuant to § 1230.71(b) in accordance with the following remittance schedule.

(a) Monthly assessments totaling $25 or more shall be remitted to the Board by the 15th day of the month following the month in which the porcine animals were marketed or by the 15th day following the end of a Board approved, consecutive 4-week period in which the porcine animals were marketed.

(b) Assessments totaling less than $25 during each month of a quarter in which the porcine animals were marketed may be accumulated and remittance by the 15th day of the month following the end of a quarter. The quarters shall be: January through March; April through June; July through September; October through December.

(c) Assessments totaling $25 or more during any month of a quarter must be remitted by the 15th day of the month following the month of the quarter in which the assessments totaled $25 or more, together with any unremitted assessments from the previous month(s) of the quarter, if applicable.

(d) Assessments collected during any calendar quarter and not previously remitted as described in paragraph (b) or (c) this section must be remitted by the 15th day of the month following the end of the quarter regardless of the amount.

Done at Washington, DC, on August 7, 1990.

Daniel Haley,

Administrator.

[FR Doc. 90–18902 Filed 8–10–90; 8:45 am]

BILLING CODE 3410–02–M

Animal and Plant Health Inspection Service

9 CFR Part 114

[Docket No. 90–003]

Production Requirements for Biological Products; Outline Guide for Diagnostic Test Kits

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations by adding an outline guide which contains the requirements for the preparation of Outlines of Production for diagnostic test kits. The current Standard Requirements contain such guides for

other biological products but not for diagnostic test kits. The purpose of this proposed action is to codify uniform requirements for the preparation of Outlines of Production for diagnostic test kits whch could be used by all producers of animal biologics.

DATES: Consideration will be given only to comments received on or before October 12, 1990.

ADDRESSES: To help ensure that our written comments are considered, send an original and three copies of written comments to Chief, Regulatory Analysis and Development PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 90–003. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8:00 a.m. and 4:30 p.m. Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Senior Staff Veterinarian, Veterinary Biologics, BBEP, APHIS, USDA, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8245.

SUPPLEMENTARY INFORMATION:

Background

Animal biological products subject to the provisions of the Virus-Serum-toxin Act (21 U.S.C. 151–159), including diagnostic test kits, are required to be prepared in accordance with the production requirements for biological products contained in 9 CFR, Part 114. An Outline of Production must be filed with the Animal and Plant Health Inspection Service (APHIS) for each product. The Outline of Production contains a detailed protocol of methods to be followed in the preparation of a biological product.

Currently, the regulations contain outline guides for the preparation of Outline of Production for antisera, antitoxins, and normal sera; vaccines, bacterins, antigens, and toxoids; and for allergenic extracts. However, there is no such guide in the regulation for diagnostic test kits.

This proposed amendment would add a guide, developed through the cooperative efforts of licensees and applicants, research organizations, academic institutes, and the National Veterinary Services Laboratories, for the preparation of Outlines of Production for diagnostic test kits. The requirement in the proposed guide are like those contained in the regulations for other products listed in this section, including guides for vaccines, bacterins, and antisera. Codifying the guide for diagnostic test kits in the regulations would require manufacturers to conform to uniform standards approved by APHIS, and would help to assure the purity, potency, and efficacy of these products.

Executive Order 12291 and Regulatory Flexibility Act

This proposed rule is issued in conformance with Executive Order 12291 and Department Regulation 1512–1 and has been determined not to be a "major rule." Based on information compiled by the Department, it has been determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Its purpose is to publish in the regulation a guideline for preparing Outlines of Production for diagnostic test kits which are required to be submitted to APHIS for filing.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant econimic impact on a substantial number of small entities.

Paperwork Reduction Act

In accordance with Section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection provisions that are included in this proposed rule will be submitted for approval to the Office of Management and Budget. Your written comments will be considered if you submit them to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. You should submit a duplicate copy of your comments to the Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

List of Subjects in 9 CFR Part 114

Animal biologics.

Accordingly, title 9 of the Code of Federal Regulations would be amended as follows:

PART 114—PRODUCTION REQUIREMENTS FOR BIOLOGICAL PRODUCTS

1. The authority citation for 9 CFR part 114 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 114.9 would be amended by adding paragraph (f) to read as follows:

§ 114.9 Outline of production guidelines.

* * * * *

(f) Outlines of Production for diagnostic test kits shall be written according to the following outline guide:

Outline Guide for Diagnostic Test Kits

License No. Name of Product Date

Introduction

Provide a brief description of the kit as follows:

1. Principle of the test (ELISA, latex agglutination, etc.).
2. Antigen or antibody detection test.
3. Sample(s) used for testing (serum, whole blood, tears, etc.).
4. List reagents, reference, and equipment included.
5. Identify materials obtained under split manufacturing agreements.
6. General description of test interpretations and their limitations, including followup tests.

I. Antibody Components

A. Production of polyclonal antibody components.

1. If purchased, list suppliers, criteria for acceptability, and describe all tests performed after receipt to determine that specifications have been met.

2. If produced in-house, describe the species, age, weight, conditions, and general health of all animals used in antiserum production.

a. Preinjection considerations: Describe the examination, preparation, care, quarantine procedures, and treatment administered before immunization(s). Describe all tests used to determine suitability for use. Describe the preparation of any standard negative serum(s) collected prior to immunization.

b. Immunization of animals:

i. Describe the character and dose of the antigen; if adjuvant is used provide details on its preparation If commercial product is used include its true name as shown on the label, the manufacturer, serial number, and expiration date.

ii. Describe the method and schedule for immunizations.

iii. Describe the method for harvesting and evaluating the immunization product, including tests for acceptability.

iv. Number and internals between harvests, volume obtained, and any other pertinent information.

B. Production of Monoclonal Antibody Components.

1. Hybridoma components:

a. If hybridoma components are purchased, list suppliers and criteria for acceptability; if tests are performed after receipt, describe fully.

b. If hybridomas are prepared inhouse, identify the antigen(s) used, describe the information scheme, and the species of animal used.

c. Identify the tissue of origin, and the procedures for harvesting, isolating, and identifying the immune cells.

d. Describe the source, identify, and the product secreted (light or heavy chain) by the parent Myeloma Cell Line.

e. Summarize cloning and recloning procedures, including clone characterization and propagation, if appropriate.

f. If appropriate, describe procedures for establishing and maintaining seed lots.

g. Describe any other pertinent tests and/or procedures performed on the hybridoma cell line.

2. Antibody production:

a. Describe the production method. If produced in cell culture, animal serum additives must conform to 9 CFR 113.53. If produced in animals, describe fully including husbandry practices and passage procedures.

b. Provide the criteria for acceptable monoclonal antibody, including tests for purity.

c. Describe all tests or other methods used to ensure uniformity between production lots of monoclonal antibody. Include all reaction conditions, equipment used, and reactivity of the component.

d. Describe all characterization procedures and include the expected reactivity of all reference monoclonal antibodies.

II. Antigen Preparation

A. Identify the microorganism, giving isolation and passage history, and pertinent information on Master Seed testing. Provide details of dates of United States Department of Agriculture confirmatory tests and approval, if appropriate.

B. Describe all propagation steps, including identification of cell cultures, media ingredients, cultural conditions, and harvest methods. If an approved cell line is used, give dates of testing and approval.

C. Describe procedures used for extracting and characterizing the antigen.

D. Describe the method used to standardize the antigen.

E. If the antigen is purchased, identify the supplier and describe the criteria for acceptable material, including all tests performed by the producer and/or the recipient to determine acceptability.

III. Preparation of Standard Reagents

A. Describe the preparation of positive and negative reference standards to be included in the kit. If purchased, list suppliers and criteria for acceptability; if tests are performed after receipt, describe fully.

B. Describe preparation of the conjugate(s). If purchased, list suppliers and describe tests used to determine acceptability.

C. Describe the preparation of substrate(s). If purchased, list suppliers and describe tests used to determine acceptability.

D. List and describe the preparation of all buffers, diluents, and other solutions to be used with the kit.

IV. Preparation of the Product

A. Fully describe methods of standardization of antigens, reference standards, positive and negative control serums, including concentration procedures, equipment used, equipment setting, dilutions, etc.

B. List composition and quantity of preservatives in each as appropriate.

C. Fully describe method of filling, plating, or attaching the antigen and/or antibody component to a solid phase.

D. State the minimum and maximum acceptable fill volumes for each vial of reagent or the average number of plates per harvest volume for material attached to a solid phase.

E. Describe disposition of unsatisfactory material.

V. Testing

A. Purity

Describe all tests of the kit for purity or specify the exemption as provided in 9 CFR 113.4.

B. Safety

In vitro products are exempt from safety tests.

C. Potency

Provide details of tests used to determine the relative reactivity of kit.

VI. Postpreparatory Steps

A. Describe the form and size of final containers of kit components prepared by the licensee.

B. Describe the form and size of final containers of components obtained from other sources. List the source(s).

C. Describe the collection, storage, and submission of representative samples. Refer to 9 CFR 113.3(b)(7).

D. Specify the expiration date. Refer to 9 CFR 114.13.

E. Provide details of recommendations for use, including all limitations, qualifications, and interpretation of results.

F. Submit confidentiality statement identifying specific parts of the outline containing information, the release of which would cause harm to the submitter.

Done in Washington, DC, this 7th day of August 1990.

James W. Glosser,

Animal and Plant Health Inspection Service.

[FR Doc. 90–18969 Filed 8–10–90; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89–46; FCC 90–137]

Broadcast Service; Reduction of Interference Between AM Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Notice of intent to amend rules.

SUMMARY: The Commission gives notice that it has adopted a Report and Order (Report) regarding certain proposals made in the Notice of Proposed Rule Making (NPRM) in this proceeding (54 FR 11972, March 23, 1989) aimed at reducing the potential for interference between AM broadcast stations. The action is taken as part of a cohesive effort by the Commission to revitalize the AM broadcasting industry, which has been hurt in recent years by rapidly changing technology, channel congestion, interference, and low fidelity receivers. This series of coordinated decisions, including the current Report are thus needed to ensure the continued survival of a vital, competitive AM radio service. The Commission is not promulgating rules at this time, but will publish final rules after action is taken in a related docket.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, Policy and Rules Division, (202) 634–6530.

SUPPLEMENTARY INFORMATION: Public reporting burden for § 73.1750 is estimated to average 3 minutes per response and the reporting burden for § 73.3517 is also estimated to average 3 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of the Managing Director, Washington, DC 20554, and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

This is a synopsis of the Commission's Report and Order in MM Docket No. 89–46, FCC 90–137 adopted April 12, 1990, and released July 18, 1990.

The complete text of this Report is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. The Commission, through this decision, adopts proposals to amend part 73 of its Rules and Regulations, as part of a three-pronged initiative designed to transform and revitalize the AM broadcast service by the year 2000. This effort is an outgrowth of both the Mass Media Bureau's Report on the Status of the AM Broadcast Rules, released April 3, 1986, and the subsequent Notice of Inquiry (See 2 FCC Rcd 5014, 1987, and 52 FR 31796, August 24, 1987), addressing the technical, legal, and policy issues pertaining to AM broadcasting. The record established, based on the responses generated by the Notice of Inquiry, the need to improve the overall quality of the AM service. The Commission responded to this need by initiating four separate dockets aimed at revitalizing the AM industry. (See Notice of Proposed Rule Making in MM Docket 88–508, 53 FR 45948, November 15, 1988; Notice of Proposed Rule Making in MM Docket 88–509, 53 FR 45524, November 10, 1988; Notice of Proposed Rule Making in MM Docket 88–510, 53 FR 48664, December 2, 1988; and Notice of Proposed Rule Making in MM Docket 88–511, 53 FR 47235, November 22, 1988.)

2. The Commission has today adopted, in addition to the instant decision, a Notice of Proposed Rule Making in MM Docket No. 87–267, intended to refine and integrate the proposals made in the above-cited dockets into a master plan for significantly improving AM broadcast service. (See Notice of Proposed Rule Making in MM Docket No. 88–267, FCC 90–136, adopted April 12, 1990.) As an intrinsic part of that master plan, we now remove regulatory barriers that prevent or discourage individual AM stations from lessening the amount of interstation interference and improving the quality of service through private agreements. The result of these negotiations between AM stations may be the filng of contingent applications. In order to provide this opportunity, it is necessary to make certain changes in our AM rules and procedures.

3. First, the Commission has decided to discontinue its policy of permitting applicants applying for deleted AM stations to specify the former facilities even though those facilities do not comply with current Commission technical, requirements. We find that, in many cases, this policy leads to the perpetuation of AM stations' causing or receiving objectionable interference. Thus, we are adopting a new policy that new applicants must meet current technical standards.

4. Second, we will amend § 73.3517 of the Rules to permit contingent applications that would assure a reduction in overall AM interference. This amendment should provide two incentives for stations to enter into such agreements, both of which will benefit the station making the payment to the other station. The first incentive is the protection offered to a station improving its facilities from competing applications. The second incentive for contingent application arrangements concerns the calculation of the RSS limit. During nighttime hours, an existing station is protected from its transmitter to its RSS contour. The effect of reducing interference toward a station would be to reduce the RSS limit at the old RSS contour, thereby expanding that station's protected service area. To avoid potential problems for stations seeking to participate in a contingent application arrangement and so improve nighttime operation, all associated contingent applications will be granted simultaneously. This will require a station seeking an improvement in nighttime operation to protect only existing RSS contours of all stations not a party to the contingent application arrangement.

5.Third the Commission will amend § 73.3571 of the Rules to prohibit competing applications in connection with contingent application arrangements looking to a reduction in AM interference. The amended rule will require any competing application to protect the licensed facilities of all stations participating in the contingent agreement.

6. Finally, we have decided against establishing a specific local service floor with respect to our public interest evaluation of contingent application arrangements that could terminate or reduce AM facilities. Instead, we will consider the issue of a local service floor on a case-by-case basis. However, we are providing some guidelines as to what we will consider in specific cases. AM and FM stations will be considered part of a single aural service. Also, we do not envision a situation where we would find a contingent application arrangement to be in the public interest if it would create a "white" or "gray" area. We would also be concerned if a community would lose its only local broadcast service. In such situations we would consider the availability of other services, the amount of AM interference reduction, and the possibility of restoring local service with either lesser AM facilities or an FM station.

Regulatory Flexibility Act Analysis

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted rule will have a positive impact on AM radio broadcasters by providing them with the flexibility and incentive to reduce interference and improve the technical quality of the AM band, thus making AM stations more attractive to the listening public.

8. The Secretary shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981)).

9. Authority for the action taken herein is contained in sections 4 (i) and (j) , and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154 (i), (j), 303(r).

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations will be amended, when the final rules are promulgated, as follows:

PART 73—[AMENDED]

10. The authority citation for part 73 continues to read as follows:

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

11. Section 73.1750 will be amended to add the following language at the end to read as follows:

§ 73.1750 Discontinuance of operation.

* * * If a licensee surrenders its license pursuant to an interference reduction arrangement, and its surrender is contingent upon the grant of another application, the licensee surrendering the license must identify in its notification the contingencies involved.

12. Section 73.3517 will be amended by adding new paragraph (c) to read as follows:

§ 73.3517 Contingent applications.

* * * * *

(c) Upon payment of the filing fees prescribed in § 1.1111 of this chapter,

the Commission will accept two or more applications filed by existing AM licensees for modification of facilities that are contingent upon granting both, if granting such contingent applications will reduce interference to one or more AM stations or will otherwise increase the area of interference-free service. The applications must state that they are filed pursuant to an interference reduction arrangement and must cross-reference all other contingent applications.

13. Section 73.3571 will be amended by adding new paragraph (c)(1) to read as follows:

§ 73.3571 Processing of AM broadcast station applications.

* * * * *

(c) * * *

(1) In order to grant a major or minor change application made contingent upon the grant of another licensee's request for a facility modification, the Commission will not consider mutually exclusive applications by other parties that would not protect the currently authorized facilities of the contingent applicants. Such major change applications remain, however, subject to the provisions of §§ 73.3580 and 1.1111. The Commission shall grant contingent requests for construction permits for station modifications only upon a finding that such action will promote the public interest, convenience and necessity.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-18936 Filed 8-10-90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-510; FCC 90-139]

AM Broadcast Services; Groundwave Field Strength Calculations

AGENCY: Federal Communications Commission.

ACTION: Notice of intent to amend rules.

SUMMARY: The Commission gives notice that it has adopted a *Report and Order (R&O)*, that will replace its current AM broadcast band groundwave propagation curves with a new set of curves. The new curves are derived from data generated by a 1986 computer program which allowed mathematical calculation of predicted groundwave field strengths at all distances. As a result, the new curves are more accurate than the old ones, which were derived by "curve fitting" between the curve segments that could be calculated. The Commission is not amending the pertinent rule at this time, but will publish a final rule when related changes in technical assignment criteria are adopted.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gordon Godfrey, Mass Media Bureau, (202) 632-9660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 88-510, adopted April 12, 1990, and released July 18, 1990.

The full test of this Commission decision is available for inspection and copy during normal business hours in the FCC Docket 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 Services, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. In addition, the Commission gives notice that it will replace its current AM broadcast band groundwave propagation curves with a new, more reliable set of cureves for depicting groundwave service and interference. The set of groundwave propagation is an engineering tool used to predict signal strengths for use in determining where service will occur and also to provide interference protection. Inaccurate curves cause the erroneous prediction of electromagnetic field strengths which can result in the inadvertent authorization of an interfering station or the denial of an otherwise viable application.

2. This proceeding was initiated by *Notice of Proposed Rule Making (Notice)* (FFC 88-326, 53 FR 48664, December 2, 1988) and is one of several proceedings generated by a *Notice of Inquiry* in MM Docket No. 87-267 (52 FR 31795, August 24, 1987) and a 1986 Mass Media Bureau Report on the Status of the AM Broadcast Rules (RM-5532). The consensus of comments filed in response to the *Notice* supports the action taken today, and the Commission believes that the new curves describe groundwave signal coverage more accurately than the existing curves and should lead to better prediction of when objectionable intereference does or does not exist.

3. The *Notice* and the comments suggested several other related actions. For example, we examined changes in the curve's horizontal and vertical scales. We find, however, that the current format offers the best compromise between ease of distinguishing values and the range of values included. As proposed in the *Notice*, we will amend the language in 47 CFR 73.184, pertaining to Figure 20, to refer to metric units. The *Notice* discussed the "Kirke method," the procedure currently specified in our rules for calculating groundwave field strength over paths containing more than one ground conductivity value. Generally, retaining the "Kirke method" was supported by the comments that addressed the issue, and we find that our resources are better spent in other areas rather than on continuing the search for alternative method at this time.

4. Additionally, the *Notice* suggested improving the FCC ground conductivity map, Figure M3, but proposed no revision. The Commission continues to believe that updating Figure M3 is a beneficial project that should be pursued. However, current funding and staff levels still fall short of supporting such a revision. We will act on this matter in a future rulemaking proceeding.

5. Finally, the *Notice* raised the question of whether the rule changes it proposed should become effective in a "piecemeal" fashion, or coordinated with action in the related proceedings to change other AM technical assignment criteria. The majority of comments favored a coordinated implementation. The implementation date for the new curves will be established in the AM improvement proceeding, Docket No. 87-267, in which we consider related assignment criteria. In that proceeding, we have proposed additional rules to integrate the new groundwave model with related AM technical and assignment standards. In that docket, parties to this proceeding will have an opportunity to comment on the final intended effect of all of our recent AM improvement actions, including any implementational refinements of the groundwave model.

Final Regulatory Flexibility Analysis Statement

6. Pursuant to the Regulatory Flexibility Act of 1989, 5 U.S.C. 605, it is certified that the adopted rules and modification will have a significant positive impact on a substantial number of small entities, by providing for a more accurate, reliable method of depicting service interference relationships between AM broadcast stations.

7. The Secretary shall cause a copy of this *Report and Order*, including the Final Regulatory Flexibility Analysis, to

be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Paragraph (603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq., (1981)).

Paperwork Reduction Act Statement

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–18938 Filed 8–10–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[Docket No. 88–508; FCC 90–138]

AM Broadcast Services; Skywave Field Strength Calculations

AGENCY: Federal Communications Commission.

ACTION: Notice of intent to amend rules.

SUMMARY: The Commission gives notice that it has adopted a Report and Order (R&O), concerning a new skywave signal strength prediction model as described by the formulas contained in the rule amendments below. The action is taken because the new model represents a significantly more accurate depiction of skywave signal propagation than the current model. Thus, both Commission staff and broadcast industry consulting engineers will be in a position to know more accurately the intersignal relationships produced by facilities in the AM service. The model can be used as a tool (in conjunction with other technical criteria) to improve the quality of the AM service by preventing or reducing interference between stations. The Commission is not promulgating a new rule at this time, but will publish a final rule after action is taken in related dockets.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James E. McNally, Jr., Mass Media Bureau, (202) 632–9660.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–508, adopted April 12, 1990, and released July 18, 1990..

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Docket 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 Services, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Report and Order

1. The Commission, in this action, gives notice that it will replace the current method of computing skywave signal strength in the AM broadcast band with a new, more accurate skywave model. Although the availability of an improved skywave propagation model by itself will not make an improvement in the quality of the AM service, used in conjunction with other technical criteria (some of a more subjective nature), the model can prevent or reduce interference between stations. Comments received in response to the Notice of Proposed Rule Making (Notice) (53 FR 45948, November 15, 1988) in this Docket, unanimously expressed the belief that the new skywave model represents the most accurate depiction of skywave signal propagation ever developed, and that only by having a realistic idea of interstation skywave signal relationships can the Commission take effective action to reduce interference levels.

2. This proceeding is one of several proceedings generated by a Notice of Inquiry in MM Docket No. 87–267 (52 FR 31795, August 24, 1987) and a 1986 Mass Media Bureau Report on the Status of the AM Broadcast Rules (RM–5532). Two of the skywave propagation curves set forth currently in the Rules were empirically derived from periods of observation of AM band propagation phenomena which were completed in 1935 and 1944. However, years of additional observations and measurements have revealed deficiencies in the traditional skywave propagation curves that can no longer be tolerated if AM interference is to be significantly reduced as part of our AM improvement effort. The new skywave model, based on a "modified method" will serve the public interest because it is more accurate than the current propagation curves and because it is easily implemented on computers. Thus, its use will avoid the disputes that have arisen in the past as a result of different graphical interpretations of curve data. The enthusiastic support for the new model that was expressed in the comments and reply comments derives from the fact that the "modified method" has been given careful and widespread engineering scrutiny.

3. We conclude, after a careful review of the record in this proceeding, that no amendment of the skywave progration model set forth in the proposed rule section of the Notice is necessary. Therefore, we will adopt that model exactly as proposed. However, consistent with the discussion in the Notice, we will not incorporate the model in the Rules at this time. Instead, in the AM improvement proceeding, MM Docket No. 87–267, we propose rules that will implement the new skywave model in conjunction with other changes in the AM technical standards. Thus, interested parties have an opportunity to comment on the final effect of all of our recent AM improvement actions, including any minor refinements of the skywave model that may be necessary to make it conform to domestic policy and international agreements.

Final Regulatory Flexibility Analysis Statement

4. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that the adopted rules and modifications will not have a significant immediate impact on a substantial number of small entities, because the rules are not going into effect immediately. In any case, by minimizing or eliminating opportunities for AM interference, the new rules should be of benefit to AM broadcasters and the public.

5. The Secretary shall cause a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with Paragraph 603(a) of the Regulatory Flexibility Act (Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.*, (1981)).

Paperwork Reduction Act Statement

6. While a new skywave propagation model is being adopted in this action, the effective date of the rule change is being deferred. Therefore, the rule is not being amended at this time, so no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements subject to the Paperwork Reduction Act of 1980 will result at this time. Neither will the burden hours placed upon the public be increased or decreased. We believe that implementation of hte new skywave model will have little, if any impact on

the Paperwork Reduction Act concerns listed above, except that the burden hours placed upon the public may be decreased through automation of skywave signal calculations on inexpensive and widely available computers.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

BILLING CODE 6712-01-M

CALCULATION OF SKYWAVE FIELD STRENGTH

The following formulas are proposed to be used in place of the curves in Section 73.190 of the FCC Rules. The methods used to determine other factors such as radiation value, elevation angle, and $f(\theta)$ are unchanged and can be determined by referring to the appropriate section of the FCC Rules.

1. Skywave field strength, 50% of the time (at SS+6):

The skywave field strength, $F_c(50)$, for a characteristic field strength of 100 mV/m at 1 km is given by:

$$F_c(50) = (97.5 - 20\log D) - (2\pi + 4.95\tan^2\phi_M)\sqrt{(D/1000)} \ \text{dB}(\mu\text{V/m}) \quad (1)$$

The slant distance, D, is given by:

$$D = \sqrt{40{,}000 + d^2} \ \text{km} \quad (2)$$

The geomagnetic latitude of the midpoint of the path, ϕ_M, is given by:

$$\phi_M = \arcsin[\sin a_M \sin 78.5^\circ + \cos a_M \cos 78.5^\circ \cos(69 + b_M)] \ \text{degrees} \quad (3)$$

The short great-circle path distance, d, is given by:

$$d = 111.18d^\circ \ \text{km} \quad (4)$$

Where:

$$d^\circ = \arccos[\sin a_T \sin a_R + \cos a_T \cos a_R \cos(b_R - b_T)] \ \text{degrees} \quad (5)$$

Where:
a_T is the geographic latitude of the transmitting terminal (degrees)
a_R is the geographic latitude of the receiving terminal (degrees)
b_T is the geographic longitude of the transmitting terminal (degrees)
b_R is the geographic longitude of the receiving terminal (degrees)
a_M is the geographic latitude of the midpoint of the great-circle path and is given by:

$$a_M = 90 - \arccos\left[\sin a_R \cos\left(\frac{d^\circ}{2}\right) + \cos a_R \sin\left(\frac{d^\circ}{2}\right)\left\{\frac{\sin a_T - \sin a_R \cos d^\circ}{\cos a_R \sin d^\circ}\right\}\right] \ \text{degrees} \quad (6)$$

b_M is the geographic longitude of the midpoint of the great-circle path and is given by:

$$b_M = b_R + k\left[\arccos\left(\frac{\cos(\frac{d^\circ}{2}) - \sin a_R \sin a_M}{\cos a_R \cos a_M}\right)\right] \ \text{degrees} \quad (7)$$

Note(1): If $|\phi_M|$ is greater than 60 degrees, equation (1) is evaluated for $|\phi_M| = 60$ degrees.
Note(2): North and east are considered positive; south and west negative.
Note(3): In equation (7), $k = -1$ if $b_R > b_T$, otherwise $k = 1$.

2. Skywave field strength, 10% of the time (at SS+6):

The skywave field strength, $F_c(10)$, is given by:

$$F_c(10) = F_c(50) + \Delta \ \text{dB}(\mu\text{V/m}) \quad (8)$$

Where:
$\Delta = 6$ when $|\phi_M| < 40$
$\Delta = 0.2|\phi_M| - 2$ when $40 \leq |\phi_M| \leq 60$
$\Delta = 10$ when $|\phi_M| > 60$

For the complete text of this revised CFR Section, See the Notice of Proposed Rule Making in MM Docket No. 87-267, FCC 90-136 at 55 FR 31607.

[FR Doc. 90-18937 Filed 8-10-90; 8:45 am]
BILLING CODE 6712-01-C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 552

[Docket No. 89-27; Notice 2]

Automotive Battery Explosions

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition for rulemaking.

SUMMARY: This notice denies a petition for rulemaking submitted by Dr. C.J. Abraham and Dr. Malcolm Newman of Inter-City Testing and Consulting Corporation, requesting the agency to reopen rulemaking on automotive battery explosions and to reconsider its earlier decision denying a petition to reopen rulemaking on this issue and to require a shield on batteries. After reviewing public comments solicited by the agency after receipt of the petition, the agency again concludes that there is no safety need to warrant rulemaking on battery explosions or to require a shield for batteries. In addition, the agency has concluded that a standard would be of doubtful effectiveness. Therefore, the second petition is denied.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Cavey, Office of Rulemaking, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-5271.

SUPPLEMENTARY INFORMATION: Based on section 103 of the National Traffic and Motor Vehicle Safety Act (the Act), the National Highway Traffic Safety Administration (NHTSA) has promulgated Federal motor vehicle safety standards at 49 CFR part 571 setting forth performance requirements for motor vehicles and certain items of motor vehicle equipment.

On several occasions, the agency has investigated whether there is a need for a safety standard regulating automotive batteries and has concluded each time that such a standard would not meet the criteria of the Act. NHTSA first began investigating injuries resulting from the explosion of motor vehicle batteries in 1976, in conjunction with the U.S. Consumer Product Safety Commission (CPSC). Based on the results of that investigation, the agency terminated a rulemaking proceeding in which it had considered establishing performance and labeling requirements for batteries. (46 FR 43718, August 31, 1981).

On October 12, 1989, NHTSA issued a notice denying a 1988 petition from Dr. C.J. Abraham and Dr. Malcolm Newman of Inter-City Testing and Consulting Corp. (Inter-City), requesting NHTSA to reopen rulemaking on wet cell battery explosions. (54 FR 41854). The petitioner requested the agency to implement performance requirements and standards to reduce the incidence of injuries from battery explosions because it believed that there were a significant number of injuries from such explosions. In particular, the petitioner requested that the agency require all batteries to have a protective plastic sheild.

In response to Inter-City's initial petition, NHTSA reexamined the problem of battery explosions in general and the effectiveness of the petitioner's shield in particular. As explained in the October 1989 notice, the agency denied the petition for several reasons. First, injuries from battery explosions were not a significant safety problem: They were not of the magnitude alleged by the petitioners and ninety-eight percent of battery explosion injuries were "not severe" (i.e., of a nature in that those injured were treated and released from a hospital without requiring additional hospital care); and there were no reported fatalities from such explosions. Second, the data indicated that injuries from battery explosions were decreasing. Third, this downward injury trend was attributable to improved battery design and warning labels. Fourth, the protective shield requested by the petitioner appeared to be impractical in real-world situations. Fifth, the estimated cost of the petitioner's shield would be $93.75 million per year, and without a sufficient corresponding improvement in safety.

On November 13, 1989, the petitioner requested the agency to reconsider the denial in a letter entitled, "Response to Denial of Petition for Rulemaking." On December 4, 1989, Representative Thomas Luken requested the agency to hold a public meeting about automotive batteries. In response to these inquiries, the agency decided to treat the November 13, 1989, letter as a new petition for rulemaking because the agency's procedures do not provide for the reconsideration of a denial notice. As a result, the agency issued a notice requesting additional information about the magnitude of the problem of automotive battery explosions, the causes and location of such explosions, and countermeasures to prevent explosions. (55 FR 760, January 9, 1990). The notice explained that the agency would use this information to decide what action, if any, would be necessary to address this problem. The notice emphasized that after evaluating the comments in accordance with the statutory criteria, the agency would determine whether a rulemaking would be appropriate. In a January 11, 1990 letter to Representative Luken, the agency explained that its decision to issue a notice requesting comments instead of holding a public meeting was based on its judgment that soliciting comments was a more productive course under the circumstances and that holding a public meeting is a procedure the agency uses rarely and reserves for complex and significant matters.

In response to the request for comments, the agency received comments from motor vehicle and battery manufacturers, the CPSC, and the petitioner. Aside from the petitioner and an individual affiliated with it, all the commenters stated that a rulemaking on battery explosions was unnecessary because there was no safety need. The petitioner submitted no new information that would make it appropriate for the agency to change its previous decision to deny the initial petition. Aside from anecdotal accounts, unconfirmed assertions, and a limited study of injuries at the Naval Safety Center, the petitioner merely cited a study it conducted with the Detroit Society for the Blind. The agency's review of the Detroit study revealed significant methodological shortcomings, making it unreliable. For instance, the respondents were self-selected and represented only 3.7 percent of doctors and 1.8 percent of hospitals contacted. In addition, some of the petitioner's data support the agency's decision to deny the petition. For instance, even assuming that the injuries in the Naval Safety Center study were caused by motor vehicle batteries and thus subject to NHTSA's authority, that study generally indicated a downward trend in injuries from battery explosions.

Based on the comments and the agency's review of battery explosions, the agency again concludes that there is no safety need to warrant a rulemaking on automotive battery explosions or to require a battery shield. Despite hundreds of millions of automotive batteries on the market, the data indicate no fatalities and only 2 percent (approximately 120 per year) of the injuries as being classified as "severe" (e.g., requiring additional hospital treatment). The number of injuries relevant to the issue of explosion of automotive batteries is even smaller than this figure suggests since the CPSC data reveal that a significant number of battery injuries are caused by non-automotive batteries, splashed acid, and dropping a battery.

Other issues addressed by commenters include the cause of battery

explosions, the location of such explosions, countermeasures and new technologies to reduce or eliminate such explosions, the effectiveness of the petitioner's battery shield, and costs of requiring a shield.

Several commenters discussed the causes of battery explosions and explained how their efforts to reduce such explosions related to those causes. General Motors and the Battery Council International (BCI) commented that most explosions are caused by "abuse" or misuse of the battery (e.g., breaking the battery's container or terminals, or overcharging). Chrysler, General Motors, and BCI stated that changes in battery design have reduced the potential for gassing and ignition and thus injuries from battery explosions. Johnson Controls, a battery manufacturer, explained the development of its attenuation approach to reduce the potential for battery explosions. Gates Rubber Company explained the development of a battery with many improvements including a small head space to make it more difficult for gases to accumulate and explode. BCI mentioned improvement in battery-related equipment such as battery chargers that automatically prevent overcharging and booster cables that indicate the proper alignment of jumper cables.

The petitioner stated that regardless of whether most explosions result from battery abuse or misuse, such actions are foreseeable. It also criticized all the potential technologies, except for Gates' efforts. It also stated that a battery shield would eliminate all injuries due to battery explosions and suggested regulatory text for a safety standard intended to contain fragments from battery explosions. The petitioner commented that use of a battery shield by Porsche, Jaguar, and Mercedes demonstrated the effectiveness of such a shield.

However, Jaguar and Mercedes criticized the petitioner's suggested battery shield. Mercedes stated that the shield would be ineffective or too burdensome to be practicable. Freightliner, Chrysler, American Trucking Association and Johnson Controls also commented that a battery shield would be ineffective or impractical and might reduce the circulation of air, thus increasing the potential for battery explosions.

After reviewing the comments, the agency again has concluded that rulemaking on automotive battery explosions is not warranted. In addition to the agency's decision that there is no safety need to justify a rulemaking, the agency has determined that a standard would be of questionable effectiveness and might increase the potential for explosions. Because such injuries are often caused by individuals breaking or removing the battery cover or part of the battery, these people might also tamper with the petitioner's battery shield. Therefore, despite the petitioner's repeated assertions that a standard requiring a shield would eliminate battery-related injuries, the agency has concluded that the suggested approach would be far from fail-safe and would be susceptible to the same abusive treatment as the battery itself. In addition, the shield might reduce the circulation of air, thus increasing the potential for battery explosions.

In the initial denial notice, the agency estimated that the cost of requiring a protective shield on each automotive battery would be $93.75 million. Comments indicated that the costs of the rulemaking might have been higher. Chrysler predicted that the unit cost would be $2.50 per battery, resulting in an aggregate cost of $177.5 million; and the petitioner stated that by 1995, each vehicle will have two or three batteries. These comments confirm the agency's initial decision that a safety standard requiring a battery shield would significantly increase costs without sufficient corresponding safety benefits.

In conslusion, the docket comments resulted in no new information to justify a rulemaking. Therefore, for the reasons set forth above, the agency again concludes that there is no reasonable possibility that a rule requiring a battery shield or other device would be issued at the conclusion of the requested rulemaking proceeding. Therefore, the petition is denied.

Issued on August 7, 1990.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 90-18885 Filed 8-10-90; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 90-17; Notice 1]

RIN 2127-AD23

Federal Motor Vehicle Safety Standards for Tire Selection and Rims; Passenger Cars and Vehicles Other Than Passenger Cars

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Grant of petition; Notice of proposed rulemaking.

SUMMARY: In response to a petition from the Rubber Manufacturer's Association (RMA), this notice proposes to amend Federal Motor Vehicle Safety Standard No. 110, *Tire Selection and Rims,* and Standard No. 120, *Tire Selection and Rims for Vehicles Other Than Passenger Cars.* This proposal would require that wheels intended for use on passenger cars be marked both with size information to facilitate the proper matching of a tire to a rim and vehicle load carrying capacity information to reduce the likelihood of overloading. It would also amend the marking requirements for rims and wheels intended for use on vehicles other than passenger cars. In addition, this notice would introduce several new definitions and modify existing definitions.

DATES: Comments on this notice must be received on or before October 12, 1990. If adopted as a final rule, these requirements would become effective September 1, 1991.

ADDRESSES: Comments should refer to Docket No. 90-17; Notice 1 and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket Room hours 9:30 a.m. to 4:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. Larry Cook, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366-4803.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety No. 110, *Tire Selection and Rims,* sets forth requirements for tire selection and rims for passenger cars to prevent tire overloading. Unlike Standard No. 120, *Tire Selection and Rims for Vehicles Other Than Passenger Cars,* Standard No. 110 does not include rim making requirements to ensure that vehicles are equipped with tires that are of the appropriate size and type for the rim. Standard No. 110 currently applies only to new passenger cars. This proposal would amend Standard No. 110 to require rims and wheels intended for use on passenger cars to be marked with size and loading information. The requirement would apply to aftermarket rims and wheels as well as those mounted on passenger cars as original equipment.

In contrast to standard No. 110, section S5.2 of Standard No. 120 already contains specific provisions requiring the marking of rims and wheels. Any rim or single-piece wheel disc is required to be marked with a designation indicating the source of the rim's published nominal dimensions (e.g., "T" indicates the Tire and Rim Association); the rim size designation, and in the case of

multi-piece rims, the rim type designation; the symbol DOT, constituting a certification by the manufacturer of the rim that the rim complies with all applicable safety standards; a designation that identifies the manufacturer of the rim by name, trademark, or symbol; and the month and year of manufacture (the day of manufacture being optional).

Standard No. 120 also requires the following information to be on the certification label (or a separate tire identification label) placed on any vehicle manufactured on or after December 1, 1984: the size designation of tires as appropriate for the vehicle's gross axle weight rating; the size designation and, if applicable, the type designation of rims appropriate for those tires; and the cold inflation pressure for those tires.

On April 26, 1989, the Rubber Manufacturers Association (RMA) petitioned the agency to amend Standard No. 110 and Standard No. 120 to require size labeling on both new and aftermarket wheels. The petitioner stated that such information would provide service personnel with information necessary for the proper and safe selection of replacement tires that would safely fit on a wheel's rim.

After reviewing RMA's petition, NHTSA has decided to grant the petition and to propose amending Standard No. 110 and Standard No. 120. The agency tentatively believes that the best way to prevent mismatch problems is to directly mark rims with the information about which tires may be safely used with which rims. As amended, Standard No. 110 would require that original equipment wheels and aftermarket wheels be marked with size information to facilitate the proper matching of a tire to a rim as well as vehicle load carrying capacity information to reduce the likelihood of overloading. As a result, Standard 110's purpose and scope section (S1) would be amended to include reference to tire and rim selection and matching, and its application section (S2) would be amended to apply to wheels intended for use on passenger cars, whether original equipment or aftermarket. The standard will thus apply to all newly manufactured passenger car wheels, whether the wheels are to be mounted on new passenger cars or sold in the aftermarket.

With respect to Standard No. 120's applicability to aftermarket rims and wheels, the agency notes that the standard is presently applicable to the aftermarket as well as to original equipment. The RMA petition raises a concern that the standard's application might not be correctly understood in the industry. The agency is therefore taking this opportunity to stress that the current rim marking requirements in S5.2 are fully applicable to aftermarket rims and wheels. Any such rim or wheel not marked in accordance with S5.2 is in noncompliance with the standard and may subject its manufacturer to civil penalities under the Vehicle Safety Act. Since the result requested by RMA is already provided by the current standard, NHTSA is not amending the application section. However, the agency believes that improvements can be made in the marking requirements of S5.2 and is therefore proposing amendments to the standard.

Standard No. 110

NHTSA tentatively believes that the safe use of tires and rims on motor vehicles is related to proper tire and rim size matching and to the tire and rim load carrying capacity. The first factor, size matching, is dependent on the rim width, the rim diameter, and the rim contour. The second factor, load carrying capability, is dependent on the vehicle axle weight ratings, the tire size load and inflation pressure, the rim's or wheel's size, and the wheel's maximum load and maximum load inflation pressure. The tire industry, through its standardization organizations, has determined that this information is necessary to properly match tires to rims and wheels.

This information is currently contained on separate wall charts and, by the manufacturers' voluntary action, on some rims and wheels. However, the agency tenatively believes that to match wheels to the tire and vehicle, it is necessary to require the following markings on wheels: (1) The rim width in inches, (2) the rim contour code, (3) the rim dimension source code, (4) the rim diameter in inches, (5) the wheel manufacturer's plant code, (6) the wheel manufacturer's build date code, (7) the wheel's maximum load capacity in pounds, and (8) the maximum inflation pressure. A manufacturer would also have to mark the wheel with the DOT symbol as a certification.

NHTSA tentatively believes that the rim width, rim diameter, rim contour code and the rim dimension source code would assist in the proper matching of a tire to a rim. The wheel manufacturer's plant code and build date code would also serve to identify a wheel for safety purposes, since some discs and wheels are non-standard. In particular, for many sports cars, wheels of the same size and capacity cannot fit on a particular vehicle because different manufacturers produce wheels with different disc and contour configurations. In addition, the manufacturer's plant and build date code would help the agency to identify wheel's and rims during defect investigations. The recordkeeping requirements related to the manufacturer and its plant code will be discussed below.

NHTSA has tentatively decided that the information specified in the previous paragraph is necessary for an effective marking system. The agency believes this information would convey important safety information while still being relatively straight-forward and easily understood. With these considerations in mind, NHTSA requests comments about whether the agency should require manufacturers to mark the wheels with the information specified above. In particular, the agency welcomes comments about whether each specified item of information is necessary to ensure safety. It also requests comments about whether there is any other information that is necessary to ensure safety.

NHTSA also tentatively concludes that the required information should be marked in the order specified in S4.4.1.1 and S4.4.1.2 to be easily identifiable to those using the codes. The agency is aware that specifying the order may require changes for those manufacturers that currently mark their wheels with the proposed information but in a different order. The agency welcomes comments about the current marking practices, the anticipated costs to comply with the new requirements, and the order specified for the information.

NHTSA notes that the manufacturing process for wheels can require several stages. In certain situations, there are different manufacturers for the rim, the disc, the wheel (the rim and disc assembly), and the painting of it. In the case of passanger car wheels, however, the final product is a completed wheel assembly. There are no multi-piece rims in use for passenger cars. For this reason, the notice proposes to define a "wheel," for purposes of Standard No. 110, as a complete assembly, having its rim permanently attached to the disc, and to require that the wheel, as completed, be marked with specified information. The responsibility for marking would thus lie with the final stage wheel manufacturer, who would have to ensure that each required item of information is placed on the finished wheel in the correct order.

This notice proposes new requirements pertaining to the assignment of a code for each manufacturing plant (S4.4.3) and the

placement of the plant code on each wheel (S4.4.1.3(f)). These provisions, which are patterned after the requirements set forth in 49 CFR 574.6 for the tire identification code, are intended to aid the agency in its defect investigations. To obtain a wheel plant identification code, a manufacturer would have to apply in writing to the agency, which would then assign the code. The applicant would be required to furnish to the agency the following information: Its name, main office address and phone number, contact person, and the name and address of each wheel plant operated by the manufacturer for which a plant code would be assigned, and the type of wheels manufactured at each plant. Section S5.2.2.5 of Standard No. 120 sets forth a similar proposal for wheels, rims, or rim components used on vehicles other than passenger cares. The agency invites comment on this proposal to require an identification code and the related application process.

NHTSA notes that although the proposed effective date for this rulemaking is September 1, 1991, the agency would begin assigning the code as soon as the final rule is issued. Such a procedure would ensure that each manufacturer could obtain the code in time to meet the effective date of the standard. The agency emphasizes that it cannot guarantee assignment of a code prior to the effective date of the rule for requests received within 30 days of the effective date.

This notice also proposes to introduce new definitions in Standard No. 110. The proposed definitions are consistent with the definitions used by the National Wheel and Rim Asociation, the Firestone Rim/Wheel Safety and Service Manual, and the Goodyear Motor Wheel Safety and Service Manual. In addition to defining "wheel," as discussed above, the agency is proposing to introduce new definitions in Standard No. 110 for the terms "disc," "rim," "rim contour," "rim diameter," "rim width," and "weather side." The agency tentatively believes that the proposed definitions would reduce confusion and promote uniformity among NHTSA, rim and wheel manufacturers, and standardization organizations. The agency welcomes comments on these proposed definitions.

Standard No. 120

As noted earlier, NHTSA tentatively believes that for purposes of size matching, a rim or wheel should contain information about rim width, rim diameter, and the rim contour. Standard No. 120 currently requires a rim to be marked with the source code, the rim size designation, the rim type designation for multi-piece rims, the DOT certification, the manufacturer's designation, and the date of manufacture. The agency tentatively believes that it is also necessary to require a rim or wheel to be marked with the rim contour code in order to enable a tire to be matched more exactly to the rim.

The agency further notes that the current Standard No. 120 has no prescribed format for marking rims or wheels and no required order for the presentation of the information. As noted in the discussion related to amending Standard No. 110, the agency tentatively believes that the required information should be marked in the order specified in order to be easily identifiable to those using the codes. Accordingly, this notice proposes to specify the fomat for the marking information. The agency is aware that requiring the markings to be done in a specified order might result in changes for those manufacturers who currently mark their rims or wheels with the proposed information but in a different order. The agency welcomes comments concening the order specified for the information.

Section S5.2.2 of Standard No. 120 specifies the entity responsible for marking the rim or wheel and related components. One difference from the requirements proposed in Standard No. 110 is that for multi-piece rims, each component (e.g., rim flanges, side rings, and locking rings) would have to be marked with specified information. If any such marking does not remain readable after the disc is attached, then the final stage wheel manufacturer would be required to mark the disc with the specified rim information. Comments are requested concerning these marking responsibilities.

This notice also proposes to introduce new definitions in Standard No. 120. The proposed definitions would be consistent with the definitions used by the National Wheel and Rim Association, the Firstone Rim/Wheel Safety and Service Manual, and the Goodyear's Motor Wheel Safety and Service Manual. In particular, the agency is proposing to introduce new definitions in Standard No. 120 for the terms "demountable single-piece rim," "disc," "multi-piece rim," "rim," "rim contour," "rim and wheel combination," "spoke wheel," and "wheel." In addition, the agency is proposing to modify the existing definitions for "rim diameter," "rim size designation," "rim width," and "weather side." The agency tentatively believes that the proposed definitions would reduce confusion and promote uniformity among NHTSA, rim and wheel manufacturers, and standardization organizations. In addition, each modification provides greater specificity about the term being defined. The agency welcomes comments on the proposed definitions.

The agency does not have data that will allow it to quantify the number of accidents or incidents that result from mismatches of tires, rims and wheels, and vehicles, and the agency seeks data in this regard. For the present, the agency tentatively concludes that even though it can not quantify the magnitude of the safety problem, there is enough potential for problems to exist and enough interest on the part of the industry, as shown by the RMA petition, to justify an attempt to provide adequate labeling on all highway vehicle rims and wheels.

NHTSA has considered the economic impacts likely to result from this proposal. The proposed agency marking requirements would cause the manufacturers that comply with Standard No. 120 requirements to experience a small, one-time engineering expense of one to two man-days per wheel part to update their stamping dies and mold inserts. Further, they would incur a small yearly production expense of about one man-week per year per wheel part to mark their products with a weekly rather than the monthly build date that is currently required. About 83 percent of all current rim and wheel production falls within this category, and such a cost effect is considered to be minimal.

The proposed agency marking requirements would cause the manufacturers that do not mark their products to experience a small, one-time engineering expense of about three man-days per wheel part to develop necessary stamping dies and mold inserts. Further, they would incur an annual marking cost of about $2.4 million to provide markings on about 16 million rim and wheel parts that do not have any markings. The unit cost to provide such markings is estimated to be about $0.15 per rim and wheel part.

As the discussion in the previous paragraphs reflect, the agency has considered the costs and other effects of the proposal and has determined that it would not be significant within the meaning of the Department of Transportation's policies and procedures for internal review nor major within the meaning of Executive Order 12291. The proposal would not have an impact on the economy in excess of $100 million nor would it result in a major

change in costs or prices for consumers, individual industries, government, or any geographic region, or otherwise significantly affect competition. The agency thus has determined that the costs and other impacts associated with this proposal would not be significant enough to warrant the preparation of a full regulatory analysis under section 10 of the Department of Transportation's procedures. Nevertheless, a Preliminary Regulatory Evaluation has been prepared to more fully describe the benefits, costs, and other impacts of this proposal.

Based on this agency's review of this proposal under the Regulatory Flexibility Act, I certify that it would not have a significant economic impact on a substantial number of small entities. All the rim and wheel manufacturers would be affected by the agency's proposed revision of Standards 110 and 120, but any economic impact should not be significant. Small organizations and small governmental entities may be affected by these proposed changes, as purchasers of rims or wheels, but any economic impact should be minimal.

NHTSA has considered the environmental implications of this rule in accordance with the National Environmental Policy Act and has determined that the proposal would not have a significant adverse effect on the human environment. There will be an increase in markings for rims and wheels, but the marking process is not harmful to the environment.

This proposal has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this proposal does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. No State laws would be affected.

The reporting and recordkeeping requirements proposed in this notice are considered to be information collection requirements as that term is defined by the Office of Management and Budget in 5 CFR Part 1320. Accordingly, those proposed requirements are being submitted to OMB for its review pursuant to the Paperwork Reduction Act. Comments on the proposed information collection requirements should be submitted to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: Desk Officer for NHTSA. It is requested that comments sent to OMB also be sent to NHTSA's rulemaking docket for this proposed action.

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 postcared by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency proposes to amend Standard No. 109, *New Pneumatic Tires*, Standard No. 110, *Tire Selection and Rims* and Standard No. 120, *Tire Selection and Rims for Vehicles Other Than Passenger Cars*, in title 49 of the Code of Federal Regulations at Part 571 as follows:

PART 571—[AMENDED]

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.

§ 571.109 [Amended]

2. Section S3 would be amended by revising the definition of "rim" to read as follows:

* * * * *

Rim means a continuous one-piece contoured circular assembly which supports the inflated tire.

* * * * *

§ 571.110 [Amended]

3. Section S1 would be revised to read as follows:

S1. *Purpose and scope.* This standard specifies requirements for tire and wheel selection to prevent tire and wheel overloading, and requirements for wheel markings to ensure that tires and wheels match each other.

4. Section S2 would be revised to read as follows:

S2. *Application.* This standard applies to passenger cars and to wheels for use on passenger cars.

5. Section S3 would be amended by adding the following definitions to be placed in the proper alphabetical location:

* * * * *

Disc means the contoured center member which is permanently attached to the rim and is, in turn, attached to the vehicle axle spindle by studs and nuts or stud bolts.

* * * * *

Rim means a continuous one-piece contoured circular assembly which supports the inflated tire.

Rim contour code means the characters designated by the industry or manufacturer for a rim contour.

Rim diameter means the nominal diameter of the bead seat measured between the base of the flange and a corresponding position diametrically opposed.

Rim width means the nominal distance between the two rim flanges measured on the inside of the rim.

* * * * *

Weather side means the surface of the rim not covered by the inflated tire.

Wheel means the complete assembly which supports the tire and vehicle load and, which secures the tire and rim to the axle spindle. For a passenger car, the wheel consists of a rim and a disc permanently attached to the rim.

* * * * *

6. Section S4.1 would be revised to read as follows:

S4. *General.* Passenger cars shall be equipped with tires that meet the requirements of Federal Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires—Passenger Cars," and with wheels whose rims are listed by the manufacturer of the tires as suitable for use with those tires, in accordance with S4.4 of Standard No. 109 or S5.1 of Standard No. 119 as applicable.

7. Section S4.3(d) would be revised to read as follows:

* * * * *

(d) Vehicle manufacturer's recommended tire size designation and recommended rim diameter, rim width, and rim contour.

8. Section S4.4 would be revised to read as follows:

S4.4 *Rims and Wheels.*

S4.4.1 Rim and Wheel Markings. On and after September 1, 1991, each rim and wheel shall be marked with the information listed in S4.4.1.3, in lettering not less than one-eighth inch high, impressed to a depth, or, at the option of the manufacturer, embossed to a height of not less than 0.005 inch.

S4.4.1.1 The information items listed in paragraph (a) through (e) of S4.4.1.3, shall be placed, in order, on either the weather side of the rim or the valve stem side of the disc, with a one-character space between each item. If placed on the disc, the items shall be on a separate line from the items specified in S4.4.1.2. Example of rim identification:

DOT T 15.5 6.75 JJ

S4.4.1.2 The information items listed in paragraphs (a), (f), (g), and (h) of S4.4.1.3 shall be placed, in order, on the valve stem side of the disc, with a one-character space between each item. Example of disc identification:

DOT EC 3189
MAX LOAD: 1257 AT 32 PSI

S4.4.1.3 The information items provided on a wheel are as follows:

(a) The symbol DOT, constituting a certification by the manufacturer of the wheel that the wheel complies with all applicable motor vehicle safety standards.

(b) Rim dimension source code. A letter which indicates the source of the rim's published nominal dimensions, as follows:

(1) "T" indicates the Tire and Rim Association.

(2) "E" indicates the European Tire and Rim Technical Organization.

(3) "J" indicates the Japan Automobile Tire Manufacturers Association.

(4) "D" indicates the Deutsche Industrie Norm.

(5) "B" indicates the British Standards Institution.

(6) "S" indicates the Scandinavian Tire and Rim Organization.

(7) "A" indicates the Tyre and Rim Association of Australia.

(8) "N" indicates the independent listing pursuant to S4.4.1(a) of FMVSS No. 109 or S5.1(a) of FMVSS No. 119.

(c) The rim diameter in inches, expressed in numerals of up to four characters. For example: 12, 15, 15.5, 16.5, or 17.5.

(d) The rim width in inches, expressed in numerals of up to five characters. For example: 6.0, 6.5, 6.75, 10.0, 10.5, or 10.75.

(e) A rim contour code of up to five characters. For example: B, J, JJ, JB, TR150, TLA.

(f) A two-character alpha-numeric plant code, as provided in S4.4.3.

(g) The wheel manufacturer's build-date, expressed by a four-character numeric code in which the first two characters identify the week of the year, using "01" for the first full calendar week in each year. The final week of each year may include not more than six days of the following year. The second two characters identify the year. For example: 0591 means the 5th week of 1991; and 5292 means the final week of 1992.

(h) The abbreviation "MAX LOAD," followed by a number of up to five characters representing the maximum wheel load capacity, in pounds, and by a number of up to three characters representing the pressure, in pounds per square inch (PSI), at which the maximum wheel load capacity is determined. For example MAX LOAD: 2500 at 32 PSI.

S4.4.2 *Wheel Requirements.* Each wheel on a passenger car shall—

(a) Be constructed with a rim having the dimensions of a rim that is listed pursuant to the definition of "test rim" in paragraph S3 of 571.109 (Standard No. 109) for use with the tire size designation with which the vehicle is equipped.

(b) In the event of rapid loss of inflation pressure with the vehicle traveling in a straight line at a speed of 60 miles per hour, retain the deflated tire until the vehicle can be stopped with a controlled braking application.

S4.4.3 *Wheel Manufacturer's Plant Code.* To obtain the code specified in S4.4.1.3(f), each person who manufactures a passenger car wheel shall submit the following information in writing to "Wheel Identification and Recordkeeping," Office of Vehicle Safety Standards, NRM–11, National Highway Traffic Safety Administration, United States Department of Transportation SW., Washington, DC 20590:

(a) The applicant's name, main office address, phone number, and contact person.

(b) The name, address, and phone number of each wheel plant operated by the manufacturer.

(c) The type of wheel manufactured at each plant, e.g., passenger car wheel.

The symbols in the wheel manufacturer's plant-code may be any number and any bold faced capital letter, except the letters G,I,O,Q,S,Z.

§ 571.120 [Amended]

9. In § 571.120, paragraph S1 would be revised to read as follows:

S1. *Scope.* This standard specifies tire and rim selection requirments and wheel and rim marking requirements.

10. In § 571.120, paragraph S2 would be revised to read as follows:

S2 *Purpose.* The purpose of this standard is to provide safe operational performance by ensuring that vehicles to which it applies are equipped with tires and wheels and rims of adequate size and load ratings and with tires and wheels and rims that properly match each other.

11. In section S4, the definitions of "rim base," "rim diameter," "rims size designation," and "rim width" would be revised to read as follows:

* * * * *

Rim base means a continuous or split across the base one-piece contoured circular rim with one permanent flange and is the part that remains after all split or continuous rim flanges, side rings, and locking rings that can be detached from the rim are removed.

Rim diameter means the nominal diameter of the bead seat measured between the base of the flange and a corresponding position diametrically opposed.

Rim size means the rim diameter, rim width and rim contour.

Rim width means the nominal distance between the two rim flanges measured on the inside of the rim.

* * * * *

12. Section S4 would be amended by adding the following definitions to be placed in the proper alphabetical location:

Demountable single piece rim means a continuous one-piece contoured assembly which supports the inflated tire, does not have a center disc, and is clamped onto a spoke wheel.

Disc means the contoured center member which is permanently attached to the rim and is, in turn, attached to the vehicle axle spindle.

Multi-piece rim means an assembly consisting of a rim base and either a split side (flange) ring or a continuous side (flange) ring with a split lock ring. A multi-piece rim can also be a demountable rim with no center disc, which is clamped onto a spoke wheel.

Rim means a continuous single-piece or fully assembled multi-piece contoured circular assembly which supports the inflated tire.

Rim contour code means the characters designated by the industry or manufacturer for a rim contour.

Rim and wheel combination means a demountable rim secured to a spoke wheel.

Spoke wheel means an assembly which includes a hub and spokes to which a demountable single-piece rim is attached with clamps.

Weather side means the surface of the rim not covered by the inflated tire.

Wheel means the complete assembly which supports the tire and vehicle load, and which secures the tire and rim to the axle spindle. For a motor vehicle other than a passenger car, a wheel consists of a single-piece or a multi-piece rim and a disc permanently attached to the rim.

13. Subsection S5.2, *Rim marking*, would be redesignated as "*Rim and Wheel Markings*," and would be amended by redesignating the present text as "S5.2.1, Rim marking"; by adding "and before September 1, 1991," immediately after "1977," in the first sentence thereof; and by adding new subparagraph S5.2.2, as follows:

S5.2.2 *Rim and Wheel markings.* On and after September 1, 1991, each rim and each wheel shall be marked with the information listed in S5.2.2.5, in lettering not less than one-eighth inch high, impressed to a depth, or, at the option of the manufacturer, embossed to a height of not less than 0.005 inch.

S5.2.2.1 Each rim shall be marked on the weather side with the information listed in S5.2.2.5 paragraphs (a) through (g) in order.

Example of rim identification: DOT T 15.5 6.75 JJ EC 3490

S5.2.2.2 Each removable component of a multi-piece rim shall be marked with the information listed in S5.2.2.5 paragraphs (b), (c), (d), (e), and (g), in order.

Example of component identification: T15.5 6.75 JJ 3490

S5.2.2.3 Each disc shall be marked on the valve stem side with the information listed in S5.2.2.5 paragraphs (a), (g), (f), and (h), in order. If any part of the rim information required by S5.2.2.1 becomes illegible after the disc is attached, then the disc shall be marked on the valve stem side with the information listed in S5.2.2.5 paragraphs (a) through (g), in order.

Example of disc identification

DOT 3490 EC

MAX LOAD; 14500 AT 135 PSI

S5.2.2.4 Each spoke wheel shall be marked, in a location which is readable without having to remove the spoke wheel from the axle spindle, with the information listed in S5.2.2.5 paragraphs (a), (g), (f), and (h), in order. The information on a demountable rim does not have to be readable while the rim is attached to the spoke wheel.

S5.2.2.5 The information items provided on a rim or wheel are as follows:

(a) The symbol DOT, constituting a certification by the manufacturer of the rim or wheel that the rim or wheel complies with all applicable motor vehicle safety standards.

(b) The rim dimension source code, a one-character designation which indicates the source of the rim's published nominal dimensions, as follows:

(1) "T" indicates the Tire and Rim Association.

(2) "E" indicates the European Tyre and Rim Technical Organisation.

(3) "J" indicates the Japan Automobile Tire Manufacturers Association.

(4) "D" indicates the Deutsche Industrie Norm

(5) "B" indicates the British Standards Institution

(6) "S" indicates the Scandinavian Tire and Rim Organization

(7) "A" indicates the Tyre and Rim Association of Australia

(8) "N" indicates in independent listing pursuant to S4.4.1(a) of FMVSS No. 109 or S5.1(a) of FMVSS No. 119.

(c) The rim diameter in inches, expressed in numerals of up to four characters. For example: 12, 15, 15.5, 16.5, oir 17.5.

(d) The rim width in inches, expressed in numerals of up to five characters. For example: 6.0, 6.5, 6.75, 10.0, 10.5., or 10.75.

(e) A rim contour code of up to five characters. For example: B, J, JJ, JB, TR150, TLA.

(f) A two-character alpha-numeric plant code, as provided in S5.2.2.6.

(g) The wheel manufacturer's build-date, expressed by a four-character numeric code in which the first two characters identify the week of the year, using "01" for the first full calendar week in each year. The final week of each year may include not more than six days of the following year. The second two characters identify the year. For example: 0591 means the 5th week of 1991; and 5292 means the last week of 1992.

(h) The abbreviation "MAX LOAD," followed by a number of up to five characters representing the maximum wheel load capacity, in pounds, and by a number of up to three characters representing the pressure, in pounds per square inch (PSI), at which the maximum wheel load capacity is determined. For example MAX LOAD: 14500 AT 135 PSI.

S5.2.2.6 *Rim and wheel manufacturer's identification.* To obtain the code specified in S5.2.2.5(f), each person who manufacturers a wheel, rim, or rim component for use on a vehicle other than a passenger car shall submit the following information in writing to "Wheel Identification and Recordkeeping," Office of Vehicle Safety Standards NRM–11, National Highway Traffic Safety Administration, United States Department of Transportation, SW., Washington, DC 20590:

(a) The applicant's name, address, phone number, and contact person.

(b) The name, address, and phone number of each wheel plant operated by the manufacturer.

(c) The type of wheel, rim, or rim component manufactured at each plant, e.g., bus wheel, truck wheel or motorcycle wheel.

The symbols in the wheel manufacturers plant code may be any number and any bold faced capital letter, except the letters G,I,O,Q,S,Z.

14. Paragraph S5.3.4 would be revised to read as follows:

S.5.3.4 The rim diameter, rim width, rim contour, and the rim dimension source code of rims (not necessarily those on the vehicle) appropriate for those tires.

15. Paragraph S5.3.5 would be revised to read as follows:

S5.3.5 Cold inflation pressure for those tires.

Truck Example

Suitable Tire-Rim Choice

GVWR: 17280

GAWR: Front—6280 with 7.50—20(D) tires, T 20 × 6.00 F rims, at 75 psi cold single

GAWR: Rear—11000 with 7.50—20(D) tires, T 20 × 6.00 F rims, at 65 psi cold dual.

GVWR 17340

GAWR: Front—6300 with 7.00—20(E)

tires, T 20 × 5.50 KA rims, at 90 psi cold single

GAWR: Rear—11040 with 7.00—20(E) tires, T 20 × 5.50 KA rims, at 80 psi cold dual.

Issued on: August 7, 1990.

Barry Felrice,

Associate Administrator for Rulemaking

[FR Doc. 90–18886 Filed 8–10–90; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 55, No. 156
Monday, August 13, 1990

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

Animal and Plant Health Inspection Service

[Docket No. 90-140]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of Permit To Field Test Genetically Engineered Cantaloupe and Squash Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the UpJohn Company to allow the field testing in Kalamazoo County, Michigan; San Benito County, California; Kern County, California; and Worth County, Georgia, of cantaloupe and squash plants genetically engineered to express the coat protein genes of cucumber mosaic virus and papaya ringspot virus. The assessment provides a basis for the conclusion that the field testing of these genetically engineered cantaloupe and squash plants will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m., and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90-088-03. Permit number 90-088-03 is a renewal of permit number 89-300-01 granted February 21, 1990, and permit numbers 89-305-01, 89-305-03, and 89-311-01 granted March 1, 1990.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906, June 16, 1987).

The UpJohn Company, of Kalamazoo, Michigan, has submitted an application for a permit for release into the environment, to field test cantaloupe and squash plants genetically engineered to express the coat protein genes of cucumber mosaic virus and papaya ringspot virus. The field trials will take place in Kalamazoo County, Michigan; San Benito County, California; Kern County, California; and Worth County, Georgia.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the cantaloupe and squash plants under the conditions described in the UpJohn Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the UpJohn Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Genes encoding the viral coat protein of cucumber mosaic virus (CMV) and papaya ringspot virus (PRV) have been inserted into cantaloupe and squash chromosomes, respectively. In nature, chromosomal genetic material from these plants can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced genes cannot spread to other plants by cross-pollination because the test plot is isolated by border rows and no other cantaloupe and squash plants will be grown within about 3 miles of the test site.

2. Neither the viral coat protein genes nor their gene products, confer on cantaloupe and squash any plant pest characteristics.

3. The expression of the viral coat protein genes does not provide the transformed cantaloupe and squash plants with any apparent selective advantage over nontransformed cantaloupe and squash in their ability to be disseminated or to become established in the environment.

4. Select noncoding regulatory regions derived from plant pests have been inserted into the cantaloupe and squash chromosomes. These sequences do not confer on cantaloupe and squash any plant pest characteristics.

5. The vector used to transfer the plant viral genes to the cantaloupe and squash plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from DNA sequences with

known plant pest potential, has been effectively disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic on susceptible plants.

6. The vector agent, the bacterium that was used to deliver the vector DNA and the plant viral coat protein gene into the plant cell, has been shown to be eliminated and no longer associated with the transformed cantaloupe and squash plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome unidirectionally (i.e., chromosomal DNA). The inserted gene has been shown to be stably integrated into the cantaloupe and squash genome. The vector does not survive in the plants.

8. The field test site is small (will not exceed 2 acres) and is completely surrounded by crops unrelated to these cucurbits within about 3 miles of the test site.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 8th day of August 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–18970 Filed 8–10–90; 8:45 am]

BILLING CODE 3410–34–M

[Docket No. 90–155]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Cantaloupe and Squash Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Upjohn Company to allow the field testing in Kalamazoo County, Michigan; Worth County, Georgia; and Kern and San Benito Counties, California, of cantaloupe and squash plants genetically engineered to express the coat protein genes of cucumber mosaic virus, papaye ringspot virus, watermelon mosaic virus, and zucchini yellow mosaic virus. The assessment provides a basis for the conclusion that the field testing of these genetically engineered cantaloupe and squash plants will not present a risk of the introduction or dissemination of a plant pest and will not have a significant impact on the quality of the human environment. Based on this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an enviornmental impact statement need not be prepared.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Sivramiah Shantharam, Biotechnologist, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 841, Federal Building, 6505 Belcrest Road, Hyattsville, MD, 20782, (301) 436–7612. For copies of the environmental assessment and finding of no significant impact, write Mr. Clayton Givens at this same address. The environmental assessment should be requested under permit number 90–088–01.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906, June 16, 1987).

The Upjohn Company, of Kalamazoo, Michigan, has submitted an application for a permit for release into the environment, to field test cantaloupe and squash plants genetically engineered to express the coat protein genes of cucumber mosaic virus, papaya ringsport virus, watermelon mosaic virus, and zucchini yellow mosaic virus. The field trial will take place in Kalamazoo County, Michigan; Worth County, Georgia; and Kern and San Benito Counties, California.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the cantaloupe and squash plants under the conditions described in the Upjohn Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the Upjohn Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Genes encoding the viral coat protein of cucumber mosaic virus (CMV), papaya ringspot virus (PRV), watermelon mosaic virus-2 (WVV–2), and zucchini yellow mosaic virus (ZYMV) have been inserted into cantaloupe and squash chromosomes, respectively. In nature, chromosomal genetic material from these plants can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the test plot is isolated by border rows and no other cantaloupe and squash plants will be grown within 2 miles of the test site.

2. Neither the viral coat protein genes nor their gene products, confer on cantaloupe and squash any plant pest characteristics.

3. The expression of the viral coat protein genes does not provide the transformed cantaloupe and squash plants with any apparent selective advantage over nontransformed

cantaloupe and squash in their ability to be disseminated or to become established in the environment.

4. Select noncoding regulatory regions derived from plant pests have been inserted into the cantaloupe and squash chromosomes. These sequences do not confer on cantaloupe and squash any plant pest characteristics.

5. The vector used to transfer the plant viral genes to the cantaloupe and squash plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been effectively disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic on susceptible plants.

6. The vector agent, the bacterium that was used to deliver the vector DNA and the plant viral coat protein gene into the plant cell, has been shown to be eliminated and no longer associated with the transformed cantaloupe and squash plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome unidirectionally (i.e., chromosomal DNA). The inserted gene has been shown to be stably integrated into the cantaloupe and squash genome. The vector does not survive in the plants.

8. The field test site is small (will not exceed 2 acres) and is completely surrounded by crops unrelated to these cucurbits within 2 miles of the test site.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51274–51274, August 31, 1979).

Done in Washington, D.C., this 8th day of August 1990.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 90–18971 Filed 8–10–90; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–034]

Elemental Sulphur From Mexico; Revocation of Antidumping Finding

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of revocation of antidumping finding.

SUMMARY: The Department of Commerce has determined to revoke the antidumping finding on elemental sulphur from Mexico, because it is no longer of any interest to interested parties.

EFFECTIVE DATE: June 1, 1990.

FOR FURTHER INFORMATION CONTACT: Sheila Forbes or Robert Marenick, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–5255.

SUPPLEMENTARY INFORMATION:

Background

On June 1, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 22364) its intent to revoke the antidumping finding on elemental sulphur from Mexico (37 FR 12727, June 28, 1972).

Additionally, as required by 19 CFR 353.25(d)(4)(ii), the Department served written notice of its intent to revoke this finding on each interested party listed on the service list. Interested parties who might object to the revocation were provided the opportunity to submit their comments no later than thirty days from the date of publication.

Scope of the Finding

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedules (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this finding are shipments of elemental sulphur. Through 1988, such merchandise was classifiable under item number 415.4500 of the Tariff Schedules of the United States Annotated. This merchandise is currently classifiable under HTS item number 2503.10.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Determination to Revoke

The Department may revoke an antidumping finding or order if the Secretary of Commerce concludes that the finding or the order is no longer of any interest to interested parties. We conclude that there is no interest in an antidumping finding or order when no interested party has requested an administrative review for four consecutive review periods (19 CFR 353.25(d)(4)(i)(1989)) and when no interested party objects to the revocation.

In this case, we received no requests to conduct an administrative review pursuant to our notices of Opportunity to Request Administrative Review for five consecutive review periods (51 FR 21011, June 10, 1986; 52 FR 21338, June 5, 1987; 53 FR 19978, June 1, 1988; 54 FR 24728, June 9, 1989; 55 FR 24916, June 19, 1990). Furthermore, we received no objections to our notice of intent to revoke the antidumping finding (55 FR 22364). Based on these facts, we have concluded that the antidumping finding covering elemental sulphur from Mexico is no longer of any interest to interested parties. Accordingly, we are revoking this antidumping finding in accordance with 19 CFR 353.25(d)(4)(iii).

The revocation applies to all unliquidated entries of elemental sulphur from Mexico entered, or withdrawn from warehouse, for consumption on or after June 1, 1990. Entries made during the period June 1, 1989 through May 31, 1990 will be subject to automatic assessment in accordance with 19 CFR 353.22(e). The Department will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 1, 1990, without regard to antidumping duties, and to refund any estimated antidumping duties collected with respect to those entries.

This notice is in accordance with 19 CFR 353.25.

Dated: August 6, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–18897 Filed 8–10–90; 8:45 am]

BILLING CODE 3510-DS-M

[A-122-503]

Iron Construction Castings From Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

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

SUMMARY: In response to requests by the petitioner and four respondents, the Department of Commerce has conducted an administrative review of the antidumping duty order on iron construction castings from Canada. The review covers four manufacturers and/or exporters of this merchandise to the United States and the period October 28, 1985 through February 28, 1987. The review indicates the existence of dumping margins during the period.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Barbara Victor or Laurie A. Lucksinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-5253.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1986, the Department of Commerce (the Department) published in the **Federal Register** (51 FR 17220) the antidumping duty order on iron construction castings from Canada. The petitioner and four respondents requested in accordance with 19 CFR 353.53(a) that we conduct an administrative review. We published the notice of initiation on April 22, 1987 (52 FR 13268). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

The United States has developed a system of tariff classification based on the international harmonized system of Customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by the review are shipments of certain iron construction castings, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water, and sanitary systems, classifiable as heavy castings under item number 657.0950 of the Tariff Schedules of the United States (TSUSA) and to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water or gas meters, classifiable as light castings under TSUSA item number 657.0990. Heavy castings are currently classifiable under HTS items 7325.10.00.10 and 735.10.00.50. Light castings are classifiable under HTS items 8306.29.00.00 and 8310.00.00. The HTS numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers four manufacturers/exporters, Founderie Grand'Mere, Founderie Laroche, LaPerle Foundry, and Mueller Canada, of certain Canadian iron construction castings and the period October 28, 1985 through February 28, 1987.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772 of the Tariff Act. Purchase price was based on the packed f.o.b. price to unrelated purchasers in the United States. Where applicable, we made deductions for inland freight and brokerage charges. We also made deductions, where appropriate, for sales discounts and rebates. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value, we used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison.

Home market price was based upon the packed f.o.b. price to unrelated purchasers in Canada, with appropriate deductions for freight, early payment discounts, and rebates. We also made adjustments, where appropriate, for differences in commissions and credit expenses.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margins exist for the period October 28, 1985 through February 28, 1987:

Manufacturer/exporter	Margin (percent)
Founderie Grand'Mere	1.69
Founderie Laroche	2.33
LaPerle Foundry	6.31
Mueller Canada	33.46

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed no later than 37 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearings.

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

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties based on the above margins shall be required for all shipments of Canadian iron construction castings from these firms.

These cash deposit requirements are effective for all shipments from these four firms of Canadian iron construction castings entered, or withdrawn from warehouse for consumption on or after the date of publication of the final results of this administrative review. The cash deposit requirements in our notice of final results of administrative review (55 FR 460, January 5, 1990) remain in effect for all other firms and new shippers.

This administrative review and notice are in accordance with § 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.22 of the Department's regulations (19 CFR 353.22).

Dated: August 7, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-18933 Filed 8-10-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-404]

Certain Textile Mill Products From Argentina Revocation of Countervailing Duty Order

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

ACTION: Notice of revocation of countervailing duty order.

SUMMARY: The Department of Commerce is revoking the countervailing duty order on certain textile mill products from Argentina because it is no longer of interest to interested parties.

EFFECTIVE DATE: January 1, 1990.

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

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 7358) its intent to revoke the countervailing duty order on certain textile mill products from Argentina (50 FR 9846; March 12, 1985). Interested parties who objected to the proposed revocation were provided the opportunity to submit their comments on or before March 31, 1990. On March 28, 1990, the Department published a notice of opportunity to request administrative review of this order (55 FR 11417) for the period January 1, 1989 through December 31, 1989.

On March 30, 1990, the American Textile Manufacturers Institute, Inc. (ATMI), a trade association, objected to our intent to revoke the order. However, because the Department had determined in the final determination of this proceeding that ATMI lacked standing as an interested party, we sent a letter on May 29, 1990 requesting that ATMI provide information demonstrating its current status as an interested party in accordance with 19 CFR 355.2(i). This regulation defines, in relevant part, an interested party as "[a] trade or business association a majority of the members of which are producers in the United States of the like product or sellers (other than retailers) in the United States of the like product produced in the United States; * * *".

On June 14, 1990, ATMI provided the Department with a list of certain members companies that produce each of the like products covered by the order, stating that in filing its March 30, 1990 letter of opposition to the proposed revocation, it was acting on behalf of these individual producers. ATMI further argued that each of these companies is a manufacturer of like products and thus an interested party with the right to oppose the revocation.

Determination to Revoke

In its March 30, 1990 letter, ATMI objected to revocation on behalf of itself and its members without establishing its standing as an interested party in the proceeding. In its June 14, 1990 response to our May 29, 1990 letter, ATMI did not provide information demonstrating that the majority of its members were producers or sellers of each of the like products covered by the order, information that the Department had specifically requested. Therefore, we determine that ATMI, as a trade association, is not an interested party in this proceeding in accordance with 19 CFR 355.2(i)(5) and lacks standing to object to the Department's intent to revoke.

ATMI claimed in its June 14, 1990 letter that its March 30, 1990 letter objecting to revocation was filed on behalf of the individual producers provided on the list accompanying the June 14 letter. However, because such producers were not specifically identified as objecting interested parties in the March 30 letter, the Department determines that ATMI objected to the revocation only as a trade association. ATMI's June 14, 1990 substitution of individual producers of the like products as interested parties objecting to the revocation was untimely, pursuant to 19 CFR 355.25(d)(4).

Under section 355.25(d)(4) of the so-called "Sunset Provision," the domestic industry may easily keep an order in place. There are only two conditions that must be met to maintain an order:

1. The objecting party must be an interested party as defined in § 355.2(i); and

2. The interested party must object within thirty days of the Department's notice of intent to revoke.

The regulations provide that any interested party may object to the Department's notice of intent to revoke by merely submitting a letter to the Department stating that they request the order be maintained. Under § 355.25(d)(4)(iii), the objector is not required to offer evidence, nor required to ask the Department of Commerce or the International Trade Commission to determine whether subsidization or injury continues.

Although the requirements for keeping an order in place are minimal, it is clear that only interested parties may object to the revocation of an order. ATMI was on notice that the Department did not consider it an interested party during the investigation. In fact, the only way the domestic industry was able to satisfy the Department's standing requirements during the course of the investigation was by amending the petition to add eight individual producer firms as interested parties. In view of that, ATMI's March 30, 1990 letter should have clearly identified the individual firms that objected to the revocation of the order.

We received no other objections to our intent to revoke the countervailing duty order on certain textile mill products from Argentina and have not received a request to conduct administrative reviews of the order for the past five consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Therefore, the Department is revoking the countervailing duty order on certain textile mill products from Argentina. The effective date of revocation is January 1, 1990.

Further, as required by 19 CFR 355.25(d)(5), the Department is terminating the suspension of liquidation and will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported from Argentina on or after January 1, 1990.

This notice is in accordance with 19 CFR 355.25(d)(3)(vii) and 355.25(d)(5).

Dated: August 3, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90-18894 Filed 8-10-90; 8:45 am]

BILLING CODE 3510-DS-M

[C-301-401]

Certain Textile Mill Products and Apparel From Colombia; Termination of Suspended Countervailing Duty Investigations

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of termination of suspended countervailing duty investigations.

SUMMARY: The Department of Commerce is terminating the suspended countervailing duty investigations on certain textile mill products and apparel from Colombia because they are no longer of interest to interested parties.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Linda Pasden, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–3793.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 6669) its intent to terminate the suspended countervailing duty investigations on certain textile mill products and apparel from Colombia (50 FR 9863; March 12, 1985). Interested parties who objected to the proposed terminations were provided the opportunity to submit their comments on or before March 31, 1990. On March 28, 1990, the Department published a notice of opportunity to request an administrative review of these suspended investigations (55 FR 11417) for the period January 1, 1989 through December 31, 1989.

On March 30, 1990, the American Textile Manufacturers Institute, Inc. (ATMI), a trade association, objected to our intent to terminate the suspended investigations. However, because the Department had determined in the final determinations of these proceedings that ATMI lacked standing as an interested party, we sent a letter on May 29, 1990 requesting that ATMI provide information demonstrating its current status as an interested party in accordance with 19 CFR 355.2(i). This regulation defines, in relevant part, an interested party as "[a] trade or business association a majority of the members of which are producers in the United States of the like product or sellers (other than retailers) in the United States of the like product produced in the United States; * * *"

On June 14, 1990, ATMI provided the Department with a list of certain member companies that produce each of the like products covered by the suspended investigations, stating that in filing its March 30, 1990 letter of opposition to the proposed terminations, it was acting on behalf of these individual producers. ATMI further argued that each of these companies is a manufacturer of like products and thus an interested party with the right to oppose the termination.

Determination to Terminate

In its March 30, 1990 letter, ATMI objected to termination on behalf of itself and its members without establishing its standing as an interested party in the proceedngs. In its June 14, 1990 response to our May 29, 1990 letter, ATMI did not provide information demonstrating that the majority of its members were producers or sellers of each of the like products covered by the suspended investigations, information that the Department had specifically requested. Therefore, we determine that ATMI, as a trade association, is not an interested party in these proceedings in accordance with 19 CFR 355.2(i)(5) and lacks standing to object to the Department's intent to terminate.

ATMI claimed in its June 14, 1990 letter that its March 30, 1990 letter objecting to termination was filed on behalf of the individual producers provided on the list accompanying the June 14 letter. However, because such producers were not specifically identified as objecting interested parties in the March 30 letter, the Department determines that ATMI objected to the termination only as a trade association. ATMI's June 14, 1990 substitution of individual producers of the like products as interested parties objecting to the termination was untimely, pursuant to 19 CFR 355.25(d)(4).

Under § 355.25(d)(4) of the so-called "Sunset Provision," the domestic industry may easily keep a suspension agreement in place. There are only two conditions that must be met to maintain a suspension agreement:

1. the objecting party must be an interested party as defined in § 355.2(i); and

2. the interested party must object within thirty days of the Department's notice of intent to terminate.

The regulations provide that any interested party may object to the Department's notice of intent to terminate, by merely submitting a letter to the Department stating they request the suspension agreement to be maintained. Under § 355.25(d)(4)(iii), the objector is not required to offer evidence, nor required to ask the Department of Commerce or the International Trade Commission, to determine whether subsidization or injury continues.

Although the requirements for keeping a suspension agreement in place are minimal, it is clear that only interested parties may object to the termination of a suspended investigation. ATMI was on notice that the Department did not consider it an interested party during the investigations. In fact, the only way the domestic industry was able to satisfy the Department's standing requirements during the course of the investigations was by amending the petition to add eight individual producer firms as interested parties. In view of that, ATMI's March 30, 1990 letter, should have clearly identified the individual firms that objected to the terminations of the suspended investigation.

We received no other objections to our intent to terminate the countervailing duty suspended investigations on certain textile mill products and apparel from Colombia and have not received a request to conduct an administrative review of the suspension agreement for the past five consecutive annual anniversary months

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that a suspended investigation is no longer of interest to interested parties and terminate the suspended investigation if no interested party objects to termination or requests an administrative review by the last day of the fifth anniversary month. Therefore, the Department is terminating the suspended investigations on certain textile mill products and apparel from Colombia. The effective date of termination is January 1, 1990.

This notice is in accordance with 19 CFR 355.25(d)(3)(vii) and 355.25(d)(5).

Dated: August 3, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–18934 Filed 8–10–90; 8:45 am]

BILLING CODE 3510–05–M

[C–333–402]

Certain Textile Mill Products and Apparel From Peru; Revocation of Countervailing Duty Orders

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

ACTION: Notice of revocation of countervailing duty orders.

SUMMARY: The Department of Commerce is revoking the countervailing duty orders on certain textile mill products and apparel from Peru because they are no longer of interest to interested parties.

EFFECTIVE DATE: January 1, 1990.

FOR FURTHER INFORMATION CONTACT: Sylvia Chadwick or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S.

Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 7358) its intent to revoke the countervailing duty orders on certain textile mill products and apparel from Peru (50 FR 9871; March 12, 1985). Interested parties who objected to the proposed revocations were provided the opportunity to submit their comments on or before March 31, 1990. On March 28, 1990, the Department published a notice of opportunity to request administrative review of these orders (55 FR 11417) for the period January 1, 1989 through December 31, 1989.

On March 30, 1990, the American Textile Manufacturers Institute, Inc. (ATMI), a trade association, objected to our intent to revoke the orders. However, because the Department had determined in the final determination of these proceedings that ATMI lacked standing as an interested party, we sent a letter on May 29, 1990, requesting that ATMI provide information demonstrating its current status as an interested party in accordance with 19 CFR 355.2(i). This regulation defines, in relevant part, an interested party as "(a) trade or business association a majority of the members of which are producers in the United States of the like product or sellers (other than retailers) in the United States of the like product produced in the United States; * * *."

On June 14, 1990, ATMI provided the Department with a list of certain member companies that produce each of the like products covered by the orders, stating that in filing its March 30, 1990 letter of opposition to the proposed revocations, it was acting on behalf of these individual producers. ATMI further argued that each of these companies is a manufacturer of like products and thus an interested party with the right to oppose the revocations.

Determination to Revoke

In its March 30, 1990 letter, ATMI objected to revocation on behalf of itself and its members without establishing its standing as an interested party in the proceedings. In its June 14, 1990 response to our May 29, 1990 letter, ATMI did not provide information demonstrating that the majority of its members were producers or sellers of each of the like products covered by the orders, information that the Department had specifically requested. Therefore, we determine that ATMI, as a trade association, is not an interested party in these proceedings in accordance with 19 CFR 355.2(i)(5) and lacks standing to object to the Department's intent to revoke.

ATMI claimed in its June 14, 1990 letter that its March 30, 1990 letter objecting to revocation was filed on behalf of the individual producers provided on the list accompanying the June 14 letter. However, because such producers were not specifically identified as objecting interested parties in the March 30 letter, the Department determines that ATMI objected to the revocations only as a trade association. ATMI's June 14, 1990 substitution of individual producers of the like products as interested parties objecting to the revocation was untimely, pursuant to 19 CFR 355.25(d)(4).

Under § 355.25(d)(4) of the so-called "Sunset Provision," the domestic industry may easily keep an order in place. There are only two conditions that must be met to maintain an order:

1. The objecting party must be an interested party as defined in § 355.2(i); and

2. The interested party must object with thirty days of the Department's notice of intent to revoke.

The regulations provide that any interested party may object to the Department's notice of intent to revoke by merely submitting a letter to the Department stating that they request the order be maintained. Under § 355.25(d)(4)(iii), the objector is not required to offer evidence, nor required to ask the Department of Commerce or the International Trade Commission to determine whether subsidization or injury continues.

Although the requirements for keeping an order in place are minimal, it is clear that only interested parties may object to the revocation of an order. ATMI was on notice that the Department did not consider it an interested party during the investigations. In fact, the only way the domestic industry was able to satisfy the Department's standing requirements during the course of the investigations was by amending the petition to add eight individual producer firms as interested parties. In view of that, ATMI's March 30, 1990 letter should have clearly identified the individual firms that objected to the revocation of the orders.

We received no other objections to our intent to revoke the countervailing duty orders on certain textile mill products and apparel from Peru and have not received a request to conduct administrative reviews of the orders for the past five consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Therefore, the Department is revoking the countervailing duty orders on certain textile mill products and apparel from Peru. The effective date of revocation is January 1, 1990.

Further, as required by 19 CFR 355.25(d)(5), the Department is terminating the suspension of liquidation and will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported from Peru on or after January 1, 1990.

This notice is in accordance with 19 CFR 355.25(d)(3)(vii) and 355.25(d)(5).

Dated: August 3, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–18895 Filed 8–10–90; 8:45 am]

BILLING CODE 3510–DS–M

[C–542–401]

Certain Textile Mill Products and Apparel From Sri Lanka; Revocation of Countervailing Duty Orders

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

ACTION: Notice of revocation of countervailing duty orders.

SUMMARY: The Department of Commerce is revoking the countervailing duty orders on certain textile mill products and apparel from Sri Lanka because they are no longer of interest to interested parties.

EFFECTIVE DATE: January 1, 1990.

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

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1990, the Department of Commerce (the Department) published in the **Federal Register** (55 FR 7358) its intent to revoke the countervailing duty orders on certain textile mill products and apparel from Sri Lanka (50 FR 9826; March 12, 1985). Interested parties who objected to the proposed revocations were provided the opportunity to submit

their comments on or before March 31, 1990. On March 28, 1990, the Department published a notice of opportunity to request administrative review of these orders (55 FR 11417) for the period January 1, 1989 through December 31, 1989.

On March 30, 1990, the American Textile Manufacturers Institute, Inc. (ATMI), a trade association, objected to our intent to revoke the orders. However, because the Department had determined in the final determination of these proceedings that ATMI lacked standing as an interested party, we sent a letter on May 29, 1990 requesting that ATMI provide information demonstrating its current status as an interested party in accordance with 19 CFR 355.2(i). This regulation defines, in relevant part, an interested party as "(a) trade or business association a majority of the members of which are producers in the United States of the like product or sellers (other than retailers) in the United States of the like product produced in the United States; * * *."

On June 14, 1990, ATMI provided the Department with a list of certain member companies that produce each of the like products covered by the orders, stating that in filing its March 30, 1990 letter of opposition to the proposed revocations, it was acting on behalf of these individual producers. ATMI further argued that each of these companies is a manufacturer of like products and thus an interested party with the right to oppose the revocations.

Determination to Revoke

In its March 30, 1990 letter, ATMI objected to revocation on behalf of itself and its members without establishing its standing as an interested party in the proceedings. In its June 14, 1990 response to our May 29, 1990 letter, ATMI did not provide information demonstrating that the majority of its members were producers or sellers of each of the like products covered by the orders, information that the Department had specifically requested. Therefore, we determine that ATMI, as a trade association, is not an interested party in these proceedings in accordance with 19 CFR 355.2(i)(5) and lacks standing to object to the Department's intent to revoke.

ATMI claimed in its June 14, 1990 letter that its March 30, 1990 letter objecting to revocation was filed on behalf of the individual producers provided on the list accompanying the June 14 letter. However, because such producers were not specifically identified as objecting interested parties in the March 30 letter, the Department determines that ATMI objected to the revocations only as a trade association. ATMI's June 14, 1990 substitution of individual producers of the like products as interested parties objecting to the revocation was untimely, pursuant to 19 CFR 355.25(d)(4).

Under § 355.25(d)(4) of the so-called "Sunset Provision," the domestic industry may easily keep an order in place. There are only two conditions that must be met to maintain an order:

1. The objecting party must be an interested party as defined in § 355.2(i); and

2. The interested party must object within thirty days of the Department's notice of intent to revoke.

The regulations provide that any interested party may object to the Department's notice of intent to revoke by merely submitting a letter to the Department stating that they request the order be maintained. Under § 355.25(d)(4)(iii), the objector is not required to offer evidence, nor required to ask the Department of Commerce or the International Trade Commission to determine whether subsidization or injury continues.

Although the requirements for keeping an order in place are minimal, it is clear that only interested parties may object to the revocation of an order. ATMI was on notice that the Department did not consider it an interested party during the investigations. In fact, the only way the domestic industry was able to satisfy the Department's standing requirements during the course of the investigations was by amending the petition to add eight individual producer firms as interested parties. In view of that, ATMI's March 30, 1990 letter should have clearly identified the individual firms that objected to the revocation of the orders.

We received no other objections to our intent to revoke the countervailing duty orders on certain textile mill products and apparel from Sri Lanka and have not received a request to conduct administrative reviews of the orders for the past five consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. Therefore, the Department is revoking the countervailing duty orders on certain textile mill products and apparel from Sri Lanka. The effective date of revocation is January 1, 1990.

Further, as required by 19 CFR 355.25(d)(5), the Department is terminating the suspension of liquidation and will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported from Sri Lanka on or after January 1, 1990.

This notice is in accordance with 19 CFR 355.25(d)(3)(vii) and 355.25(d)(5).

Dated: August 3, 1990.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 90–18896 Filed 8–10–90; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Gulf of Mexico Fishery Management Council

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of a change of location for a public hearing, the scheduling of an additional hearing, and request for comments.

SUMMARY: A notice of public hearings concerning a regulatory amendment proposed for implementation in 1991, which will implement conservation and management measures for red snapper was published August 1, 1990 (55 FR 31208). The Gulf of Mexico Fishery Management Council, by this notice, is changing the location of one hearing and scheduling an additional hearing. All other information, as published, remains the same.

DATES: The hearings will begin at 7 p.m. and adjourn at 10 p.m. The location of a hearing scheduled for August 30, 1990, in New Orleans, Louisiana, has been changed and an additional hearing has been scheduled for August 31, 1990. Written comments will be accepted until September 7, 1990.

ADDRESSES: The location for the hearing scheduled for August 30, 1990, in New Orleans, Louisiana, has been changed to the New Orleans Theater of Performing Arts, 1201 St. Peter Street, New Orleans, Louisiana. An additional hearing scheduled for August 31, 1990, will be held at the Cameron Elementary School, Auditorium, Main Street (Highway 82), Cameron, Louisiana.

FOR FURTHER INFORMATION CONTACT: Douglas Gregory, Gulf of Mexico Fishery Management Council, (813) 228–2815.

Dated: August 7, 1990.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90–18959 Filed 8–10–90; 8:45 am]

BILLING CODE 3510–22–M

Membership of National Oceanic and Atmospheric Administration Performance Review Boards

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Membership of NOAA Performance Review Boards.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C., 4314(c)(4), NOAA announces the appointment of persons to serve as members of NOAA Performance Review Boards (PRB). The NOAA PRB's are responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and amounts, and initial recommendations for potential rank awards. The appointment of these members to the NOAA PRB's will be for periods of 24 months service beginning August 31, 1990.

DATES: The effective date of service of appointees to the NOAA Performance Review Board is August 31, 1990.

FOR FURTHER INFORMATION CONTACT: John Innocenti, Acting Director, Personnel and Civil Rights Office, Office of Administration, NOAA, 1335 East-West Highway, Silver Spring, Maryland 20910, (301) 427–2530.

SUPPLEMENTARY INFORMATION: The names and titles of the members of the NOAA PRB's (NOAA officials unless otherwise identified) are set forth below:

Gray Castle, Deputy Under Secretary for Oceans and Atmosphere
Carmen J. Blondin, Deputy Assistant Secretary for International Interests
Dennis F. Geer, Director, Office of Administration (OA)
Curtis T. Hill, Director, Mountain Administrative Support Center, OA
Donald E. Humphries, Deputy Director, Office of Administration
Kelly C. Sandy, Director, Western Administrative Support Center, OA
Robert S. Smith, Director, Eastern Administrative Support Center, OA
James W. Brennan, Deputy General Counsel for Policy, Research Services and Coastal Zone Management, GC
Thomas A. Campbell, General Counsel
Jay S. Johnson, Deputy General Counsel for Fisheries, Enforcement and Regions, GC
William H. Hooke, Executive Director, Office of the Chief Scientist
Donald Scavia, Director, NOAA Coastal Ocean Program Office, Office of the Chief Scientist
Reed H. Boatright, Director, Office of Public Affairs
Henry R. Beasley, Director, Office of International Affairs, National Marine Fisheries Service (NMFS)
Nancy Foster, Director, Office of Protected Resources, NMFS
William W. Fox, Jr., Assistant Administrator, NMFS
Ellsworth C. Fullerton, Director, Southwest Region, NMFS
Morris M. Pallozzi, Director, Office of Enforcement, NMFS
Richard B. Roe, Director, Northeast Region, NMFS
Rolland A. Schmitten, Director, Northeast Region, NMFS
Michael R. Tillman, Deputy Assistant Administrator, NMFS
John J. Carey, Deputy Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service (NOS)
Bruce C. Douglas, Chief, Geodetic Research and Development Laboratory, NOS
Charles N. Ehler, Director, Office of Oceanography and Marine Assessment, NOS
Timothy Keeney, Director, Ocean and Coastal Resource Management, NOS
Frank W. Maloney, Chief, Aeronautical Charting Division, NOS
Andrew Robertson, Chief, Ocean Assessments Division, NOS
Virginia K. Tippie, Assistant Administrator for Ocean Services and Coastal Zone Management, NOS
Kenneth D. Hadeen, Director, National Climatic Data Center, National Environmental Satellite, Data, and Information Service (NESDIS)
E. Larry Heacock, Director, Office of Satellite Operations, NESDIS
Russell Koffler, Deputy Assistant Administrator, Satellite and Information Services, NESDIS
Thomas N. Pyke, Assistant Administrator, NESDIS
Gregory W. Withee, Director, National Oceanographic Data Center, NESDIS
Richard P. Augulis, Director, Central Region, National Weather Service (NWS)
Louis J. Boezi, Deputy Assistant Administrator for Modernization, NWS
Elbert W. Friday, Assistant Administrator, NWS
Michael D. Hudlow, Director, Office of Hydrology, NWS
Robert Landis, Deputy Assistant Administrator for Operations, NWS
Ronald J. Lavoie, Director, Office of Meteorology, NWS
Ronald D. McPherson, Director, National Meteorological Center, NWS
Douglas H. Sargeant, Director, Office of Systems Development, NWS
Walter Telesetsky, Director, Office of Systems Operations, NWS
Hugo F. Bezdek, Director, Atlantic Oceanographic and Meteorological Laboratories, Office of Oceanic and Atmospheric Research (OAR)
Kirk Bryan, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratories, OAR
J. Michael Hall, Director, Office of Climatic and Atmospheric Research, OAR
Robert J. Mahler, Deputy Director, Environmental Research Laboratories, OAR
Jerry D. Mahlman, Director, Geophysical Fluid Dynamics Laboratories, OAR
Syukuro Manabe, Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratories, OAR
Ned A. Ostenso, Assistant Administrator, OAR
Alan R. Thomas, Deputy Assistant Administrator, OAR
Robert D. Wildman, Director, Office of Oceanic Research Programs, OAR
Joseph E. Clark, Deputy Director, National Technical Information Service, Department of Commerce (DOC)
David Farber, Deputy Director, Office of Procurement and Administrative Services, DOC
Frederick T. Knickerbocker, Executive Director, Economic Affairs, DOC
Roy R. Mullen, Associate Chief, National Mapping Division, United States Geological Survey, Department of the Interior
Clif Parker, Assistant Director for Administration, Bureau of Census, DOC
Joe D. Simmons, Deputy Director, Center for Basic Standards, National Institutes of Science and Technology, DOC

Dated: September 2, 1990.

John A. Knauss,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 90–18940 Filed 8–10–90; 8:45 am]

BILLING CODE 3510–08–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

August 8, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 15, 1990.

FOR FUTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posed on the

bulletin boards of each Customs port or call (202) 343–6495. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously for carryforward used and carryforward applied but not used.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 54 FR 52437, published on December 21, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisins of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Dated: August 8, 1990.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee For the Implementation of Textile Agreements

August 8, 1990.

Commisioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 15, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vetetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on Aug. 15, 1990, the directive of December 15, 1989 is amended to adust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Macau:

Category	Adjusted twelve-month limit [1]
200–239, 300–369, 400–469, 600–670 and 800–899, as a group.	80,377,489 square meters equivalent
Sublevels in Group I: 333/334/335/833/834/835	165,526 dozen of which not more than 87,192 dozen shall be in Categories 333/335/833/835.
338	203,842 dozen.
339	863,073 dozen.
340	201,688 dozen.
341	130,085 dozen.
347/348/847	501,073 dozen.
641/840	133,070 dozen.
Sublevels in Group II: 445/446	74,511 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–18932 Filed 8–10–90; 8:45 am]

BILLING CODE 3510–DR–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange; Proposed Amendments Relating to the Broiler Chickens Futures Contract, and Proposal to Recommence Trading in That Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted proposed amendments to the broiler chickens futures contract that would convert the delivery provisions of the contract from the current physical delivery system to a cash settlement system. In conjunction with the proposed amendments, the CME has submitted a proposal to recommence trading in that futures contract, which is currently dormant within the meaning of Commission Regulation 5.2. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that these proposals are of major economic significance. On behalf of the Commission, the Division is requesting comment on these proposals.

DATES: Comments must be received on or before September 10, 1990.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the CME broiler chickens futures contract and/or the proposal to recommence trading in that contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581; telephone (202) 254–7303.

SUPPLEMENTARY INFORMATION: The Exchange submitted proposed amendments to the broiler chickens futures contract that would:

(1) Delete all existing physical delivery provisions of the contract. The deleted provisions of the contract relating to physical delivery would be replaced by terms and conditions specifying cash settlement of all positions open at the expiration of trading in each contract month. The cash settlement price would be the composite price known as the "12 City Composite Weighted Average Report" of prices negotiated for trucklot sales of ready-to-cook, ice-packed and CO_2-packed broiler/fryers as published by the United States Department of Agriculture for the week after futures trading ceases.

(2) Increase the trading unit for the contract, to 40,000 pounds from 30,000 pounds.

(3) Increase the speculative position limits for the contract, to 10,000 contracts net long or net short in all contract months combined, from 750 contracts net long or net short in all contract months combined. A speculative position limit of 2,000 contracts in any one month also would be established for all months. The speculative position limit for the spot month would thus be increased to 2,000 contracts from the current level of 300 contracts.

(4) Change the last day of trading, to the second-to-last Friday of the contract month from the business day immediately preceding the last six business days of the contract month. Under the proposal, if the second-to-last Friday of the contract month is a holiday, the last trading day would be the immediately preceding business day.

Under the proposal, the minimum permissible price fluctuation would remain at $.00025 per pound. The

maximum permissible daily price fluctuation would remain $.02 per pound above or below the previous day's settlement price.

The Exchange intends to list February, April, May, June, July, August, October and December as trading months for the revised contract. The Exchange intends to list the nearest five of these contract months for trading at any one time.

The CME's broiler chickens futures contract is not currently listed for trading and is dormant within the meaning of Commission Regulation 5.2. Under Regulation 5.2, an exchange must submit for Commission review and approval, pursuant to section 5a(12) of the Commodity Exchange Act (Act) and Commission Regulation 1.41(b), an appropriate bylaw, rule, regulation or resolution to recommence trading in a dormant contract. Accordingly, the Exchange has submitted, pursuant to section 5a(12) of the Act and Commission Regulation 1.41(b), a proposal to list new months in the subject contract for trading pursuant to the amended rules.

In support of its proposal to amend the broiler chickens futures contract and recommence trading in that contract, the Exchange indicates that it believes that trading in the revised contract would provide for price discovery and offer hedging opportunities for the poultry industry that are not available elsewhere. In this respect, the Exchange believes that implementation of the proposed cash settlement system will eliminate disputes and uncertainties associated with grading of deliveries on the contract; eliminate the risk to longs of receiving inconvenient or undesirable deliveries; eliminate the costs associated with making or taking delivery; and eliminate the need for periodic contract amendments due to changes in the industry. The Exchange believes that using the USDA's composite broiler price will provide for a cash settlement price that simultaneously reflects cash market broiler prices and minimizes the possibility of manipulation.

On behalf of the Commission, the Division is seeking comment on the proposed amendments and the CME's proposal to recommence trading in the broiler chickens futures contract. In particular, the Division is seeking comment regarding the extent to which the USDA's "12 City Composite Weighted Average Report" of prices upon which cash settlement for the futures contract will be based will reflect the underlying cash market, and the susceptibility of such reported prices to distortion or manipulation.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions of the broiler chickens futures contract can be obtained through the Office of the Secretariat by mail at the above address, or by telephone at (202) 254–6314.

The material submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)). Requests for copies of such material should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such material to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on August 7, 1990.

Steven Manaster,

Director, Division of Economic Analysis.

[FR Doc. 90–18939 Filed 8–10–90; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Prepare Legislative Environmental Impact Statement Strategic Arms Reduction Talks Treaty; Correction

In notice document 90–17121 published in the **Federal Register** Monday, July 23, 1990 (55 FR 29880), make the following corrections:

In the last line of the document, change the incorrectly listed phone number from (513) 257–9886 to (513) 257–8996.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 90–18877 Filed 8–10–90; 8:45 am]

BILLING CODE 3910–01–M

Corps of Engineers, Department of the Army

Intent To Prepare Draft Environmental Impact Statement (DEIS) for Proposed Replacement of the Hobucken Atlantic Intracoastal Waterway Bridge, Pamlico County, NC

AGENCY: Army Corps of Engineers, Department of the Army, DoD

ACTION: Notice of intent.

SUMMARY: The proposed action consists of replacing the existing swing-span bridge across the Atlantic Intracoastal Waterway (AIWW) at Hobucken, North Carolina, with a high-level, fixed-span bridge. The existing bridge is obsolete and presents serious traffic hazards to the public because of restricted carrying capacities. The new bridge would improve the flow of traffic on N.C. 33–304, reduce operating costs of the bridge, and improve the flow of land and waterborne traffic.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by: Mr. Coleman Long; Environmental Resources Branch; U.S. Army Engineer District, Wilmington; Post Office Box 1890; Wilmington, North Carolina 28402–1890; telephone: (919) 251–4751 or FTS 232–4751.

SUPPLEMENTARY INFORMATION: Replacement of the Hobucken AIWW Bridge was authorized by the River and Harbor Act of 1970 (Pub. L. 91–611), contingent upon the State of North Carolina contributing 25 percent of the actual first costs. The authorization was amended by the Water Resources Development Act of 1986 (Pub. L. 99–662), to provide for 100-percent Federal funding of the first costs. The State will be required to accept maintenance, replacement, and ownership responsibilities after construction.

1. The replacement bridge would be a two-lane, high-level, fixed-span bridge with a 65-foot vertical clearance over the waterway. A number of bridge types, including post and beam continuous span structure, Delta-frame structure, and prestressed concrete drop-in structure, will be considered. Preliminary investigations indicate that an alignment could be located on either the north or south side of the existing bridge and that the total length of new road, approach, and bridge could vary between 4,500 feet and 6,600 feet. Various alignments will be investigated and a selection will be made based on economic, engineering, environmental, and social considerations.

2. The only alternative to the proposed project being considered, other than the various alignments and bridge designs, will be the no-action alternative.

3. The scoping process will consist of public notification to explain and describe the proposed action, early identification of resources that should be considered during the bridge alignment study, and public review periods. Coordination with the public and other agencies will be carried out through public announcements, letters, report review periods, telephone conversations, and meetings.

a. All private interests and Federal, State, and local agencies having an interest in the project are hereby notified of project authorization and are invited to comment at this time. A scoping letter requesting input to the study will be sent to all known interested parties in August 1990.

b. The significant issues to be addressed in the DEIS are the impacts of the project on wetlands, fish and wildlife habitat, and the social and economic conditions of the project area. Also to be considered will be the effect of the project on traffic patterns and safe vehicle operation.

c. The lead agency for this project is the U.S. Army Engineer District, Wilmington. Cooperating agency status has not been assigned to, nor requested by, any other agency.

d. The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the project's relationship to all other applicable Federal and State laws and Executive Orders.

4. No formal scoping meetings are planned at this time, but based on the responses received, scoping meetings may be held with specific agencies or individuals as required.

5. The DEIS is currently scheduled for distribution to the public in April 1991 and the Final EIS is scheduled for distribution in December 1991.

Dated: July 24, 1990.

Thomas C. Suermann,

Lieutenant Colonel, Corps of Engineers, District Engineer.

[FR Doc. 90-18882 Filed 8-10-90; 8:45 am]

BILLING CODE 3710-GH-M

Defense Logistics Agency

Privacy Act of 1974; Amendment of record system

AGENCY: Defense Logistics Agency (DLA), DOD.

ACTION: Amend one record system subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

SUMMARY: The Defense Logistics Agency proposes to amend one existing record system notice to its inventory of record system notices subject to the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

DATES: The proposed action will be effective without further notice on September 12, 1990, unless comments are received which would result in a contrary determination.

ADDRESSES: Ms. Susan Salus, DLA-XAM, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304-6100. Telephone (202) 274-6234 or Autovon 284-6234.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

50 FR 22897, May 29, 1985 (DoD Compilation, changes follow)
50 FR 51898, Dec. 20, 1985
51 FR 27443, Jul. 31, 1986
51 FR 30104, Aug. 22, 1986
52 FR 35304, Sep. 18, 1987
52 FR 37495, Oct. 7, 1987
53 FR 04442, Feb. 16, 1988
53 FR 09965, Mar. 28, 1988
53 FR 21511, Jun. 8, 1988
53 FR 26105, Jul. 11, 1988
53 FR 32091, Aug. 23, 1988
53 FR 39129, Oct. 5, 1988
53 FR 44937, Nov. 7, 1988
53 FR 48708, Dec. 2, 1988
54 FR 11997, Mar. 23, 1989
55 FR 21918, May, 1990 (DLA Address Directory)

The specific changes to the record system being amended are set forth below, followed by the system notice, as amended, in its entirety. The amended notice is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) which requires the submission of an altered system report.

Dated: August 7, 1990.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S160.50 DLA-I

System name:

Criminal Incidents/Investigations File (53 FR 48709, December 2, 1988).

Changes:

* * * * *

Purpose(s):

Delete entire entry and substitute with "Information is maintained for the purpose of monitoring the progress of investigations, identifying crime conducive conditions, preventing crime and loss, and preparing statistical data and reports required by higher authority. Information in this system is used by DLA Security and General Counsel personnel to monitor progress of cases and to develop nonpersonal statistical data on crime and crime investigative support for the future.

DLA General Counsel also uses the data to review cases, determine proper legal action, coordinate on all available remedies. DLA managers use the information in this systen to determine actions required to correct the causes of losses and to take appropriate action against DLA personnel in cases of their involvement."

* * * * *

Retrievability:

Delete entire entry and substitute with "Hard copy records are filed chronologically by DLA case number and cross-indexed to individual or firm name. Automated records are retrieved by name of the individual or firm, DLA case number, PLFA number or activity code."

* * * * *

RETENTION AND DISPOSAL:

Change "5 years" in the first sentence to "1 year."

* * * * *

S160.50 DLA-I

SYSTEM NAME:

Criminal Incidents/Investigations File.

SYSTEM LOCATION:

Primary System—Command Security Office and Office of General Counsel, Headquarters, Defense Logistics Agency (HQ DLA), Cameron Station, Alexandria, VA 22304-6100 for case files on all incidents of known or suspected criminal activity or other serious incidents.

Decentralized Segments—DLA Primary Level Field Activities (PLFA) for above described files and files of a minor nature. Official mailing addresses are published as an appendix to the agency's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military personnel of DLA, contractor employees, and other persons who committed or are suspected of having committed a felony or misdemeanor on DLA controlled activities or facilities; or outside of those

areas in cases where DLA is or may be a party of interest.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of investigation, messages, statements of witnesses, subjects and victims, photographs, laboratory reports, data collection reports, and other related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 21, Internal Security Act of 1950 (Pub. L. 831, 81st Congress); DoD Directive 5105.22, "Defense Logistics Agency"; DoD Instruction 5240.4, "Reporting of Counterintelligence and Criminal Violations", DoD Directive 5105.42, "Defense Investigative Service"; and DoD Instruction 5505.2, "Criminal Investigations of Fraud Offenses".

PURPOSE(S):

Information is maintained for the purpose of monitoring the progress of investigations, identifying crime conducive conditions, preventing crime and loss, and preparing statistical data and reports required by higher authority. Information in this system is used by DLA Security and General Counsel personnel to monitor progress of cases and to develop non-personal statistical data on crime and crime investigative support for the future.

DLA General Counsel also uses the data to review cases, determine proper legal action, and coordinate on all available remedies. DLA managers use the information in this system to determine actions required to correct the causes of losses and to take appropriate action against DLA personnel in cases of their involvement.

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

The Defense Logistics Agency "Blanket Routine Uses" published at the beginning of DLA's compilation of record system notices apply to this record system.

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

STORAGE:

Combination of paper and automated files.

RETRIEVABILITY:

Hard copy records are filed chronologically by DLA case number and cross-indexed to individual or firm name. Automated records are retrieved by name of the individual or firm, DLA case number, PLFA number or activity code.

SAFEGUARDS:

Records, as well as computer terminals, are maintained in areas accessible only to DLA Security and Office of General Counsel personnel. In addition, access to computerized files is limited to authorized users and is password protected.

RETENTION AND DISPOSAL:

Paper records from external law enforcement and investigative organizations are destroyed 1 year after the receipt of a final report in each case, or when no longer needed, whichever is later.

Criminal investigative reports generated by DLA investigators/detectives are retained for 25 years, either in hard copy or microfiche, as recommended by the Defense Investigative Service, Defense Central Investigation Index (DCII).

Automated records are retained for 10 years in the on-line mode and then transferred to magnetic tape with retention of 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Office of Command Security, HQ DLA, Cameron Station, Alexandria, VA 22304–6100 and all DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to the agency's compilation of record system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Staff Director, Command Security Office, HQ DLA, Cameron Station, Alexandria, VA 22304–6100, or to the DLA PLFA where employed. Official mailing addresses are published as an appendix to the agency's compilation of record system notices.

Individual must provide full name, current address, and telephone numbers.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Staff Director, Command Security Office, HQ DLA, Cameron Station, Alexandria, VA 22304–6100, or to the DLA Primary Level Field Activity where employed. Official mailing addresses are published as an appendix to the agency's compilation of record system notices.

Individual must provide full name, current address, and telephone numbers.

CONTESTING RECORD PROCEDURES:

DLA rules for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, "Personal Privacy and Rights of Individuals Regarding Their Personal Records"; 32 CFR part 1286; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Reports of investigations by DLA investigators and Security Officers and Federal, state, and local enforcement or investigative agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt under 5 U.S.C. 552a(k)(2).

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and is published in DLA Regulation 5400.21 and the Code of Federal Regulations at 32 CFR part 1286.

[FR Doc. 90–18900 Filed 8–10–90; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy (Marine Corps)

Privacy Act of 1974; Amendent of Systems of Records

AGENCY: Department of the Navy (U.S. Marine Corps), DOD.

ACTION: Amend four record systems.

SUMMARY: The U.S. Marine Corps proposes to amend four record systems in its inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The proposed actions will be effective without further notice on or before September 12, 1990, unless comments are received which result in a contrary determination.

ADDRESSES: Send any comments to Mrs. B. L. Thompson, Head, FOIA/PA Section, MI–3, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001 Telephone (202) 694–4008 or Autovon 224–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps record system notices for records systems sujbect to the Privacy Act of 1974, as amended, (5 U.S.C. 552a) were published in the **Federal Register** as follows:

50 FR 22674 May 19, 1985 (DOD Compilation, changes follow)
51 FR 35548 Oct. 6, 1986
51 FR 45932 Dec. 23, 1986
52 FR 22670 Jun. 15, 1987
53 FR 49588 Dec. 8, 1988
54 FR 14377 Apr. 11, 1989

The specific changes to the record systems being amended are set forth below, followed by the system notices,

as amended, published in their entirety. The proposed amendments are not within the purview of the provisions of the Privacy Act of 1974, as amended, 5 U.S.C. 552a(r) which requires the submission of altered systems reports.

Dated: August 7, 1990.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MAA00001

System name:

Flight Readiness Evaluation Data System (FREDS) (50 FR 22675, May 29, 1985).

Changes:

* * * * *

System location:

Delete the entire entry and substitute with "Headquarters, U.S. Marine Corps (Code A), Washington, DC 20380–0001 and Marine Corps aviation units. U.S. Marine Corps official mailing addresses are incorporated into Department of the Navy's mailing addresses, published as an appendix to the Navy's compilation of record system notices."

* * * * *

Authority for maintenance of the system:

Delete the entire entry and substitute with "5 U.S.C. 301; 10 U.S.C. 5013; and Executive Order 9397.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete paragraphs 2, 3, and 4 in their entirety.

* * * * *

Record access procedure:

Delete the entire entry and substitute with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commanding Officer of the aviation unit to which they are assigned for duty. U.S. Marine Corps official mailing addresses are incorporated into Department of the Navy's mailing addresses, published as an appendix to the Navy's compilation of record system notices.

Personnel not permanently assigned to an aviation command may request information from the system manager.

Written requests for information should contain the full name, grade, and Social Security Number of the individual.

For personal visits the individual should be able to provide personal identification, such as valid military identification card, driver's license, etc."

* * * * *

Record source categories:

Delete the entire entry and substitute with "The primary source is the individual. The individual's commanding officer or the commanding officer's designated individual may provide certain information."

* * * * *

MAA00001

SYSTEM NAME:

Flight Readiness Evaluation Data System (FREDS).

SYSTEM LOCATION:

Headquarters, U.S. Marine Corps (Code A), Washington, DC 20380–0001 and Marine Corps aviation units. U.S. Marine Corps official mailing addresses are incorporated into Department of the Navy's mailing addresses, published as an appendix to the Navy's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active Marine Corps Air Crewmembers (Naval Aviators/Naval Flight Officers and Enlisted Crewmembers).

CATEGORIES OR RECORDS IN THE SYSTEM:

Files contain personal identifying information such as name, rank, Social Security Number, organization, etc., and specific information with regard to aviation qualifications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5013; and Executive Order 9397.

PURPOSE(S):

To maintain records on all Marine Corps air crewmembers to enable officials and employees of the Marine Corps to administer and manage air crewmember assets.

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

The Marine Corps "Blanket Routine Uses" that appear at the beginning of the agency's compilation of record system notices apply to this system.

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

Stored on magnetic tape.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Tapes are stored in limited access areas and handled by personnel that are properly trained in working with personal information.

RETENTION AND DISPOSAL:

File is maintained on individual as long as he/she is in an active flight status. Once individual is removed from active flight status, data is erased from tape.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps (Code A), Headquarters, U.S. Marine Corps, Washington, DC 20380–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this record system contains information about themselves should address written inquiries to the commanding officer of the aviation unit to which they are assigned. U.S. Marine Corps official mailing addresses are incorporated into Department of the Navy's mailing addresses, published as an appendix to the Navy's compilation of record system notices.

Written requests should contain full name, grade, and Social Security Number of the individual.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the commanding officer of the aviation unit to which they are assigned. U.S. Marine Corps official mailing addresses are incorporated into Department of the Navy's mailing addresses, published as an appendix to the Navy's compilation of record system notices.

Personnel not permanently assigned to an aviation command may request information from the system manager.

Written requests should include full name, grade, and Social Security Number of the individual.

For personal visits the individual should be able to provide personal identification, such as valid military identification card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for contesting contents and appealing initial agency determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or

may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The primary source is the individual. The individual's commanding officer or the commanding officer's designated individual may provide certain information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00018

System name:

Performance File (50 FR 22702, May 29, 1985).

Changes:

* * * * *

Categories of individuals covered by the system:

Delete the entire entry and substitute with "The file pertains to all members and former members of the Marine Corps, who, while on active duty or in a reserve status, become the subject of investigation, indictment, or criminal proceedings by military or civilian authorities, whether or not such investigation, indictment or proceedings result in a final adjudication of guilt or innocence."

Categories of records in the system:

Delete the entire entry and substitute with "The file contains information pertaining to civilian and military criminal matters including investigative reports, documents indicating court proceedings have begun and/or in progress, and post trial or investigative matters, as well as records of any resultant administrative action or proceedings."

* * * * *

Purpose(s):

Delete the entire entry and substitute with "To provide a record on individuals from the initiation of investigation or indictment until the procedure is final, whether by conviction, acquittal, dismissal or by the matter being dropped, and any resultant administrative action or proceedings, for use in determining assignments, whether an individual selected for promotion should be promoted while the matter is pending."

* * * * *

Retrievability:

Add "* * * by name." at the end of the entry.

* * * * *

Retention and disposal:

Delete the entire entry and substitute with "Files are maintained for 50 years and then destroyed. Files maintained in Judge Advocate Division at Headquarters are transferred to Federal Records Center, Suitland, MD after three years."

* * * * *

Notification procedure:

Delete the entire entry and substitute with "Individuals seeking to determine whether this record system contains information about themselves should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JA), Washington, DC 20380–0001.

Written requests for information should contain the full name and grade of the individual."

Record access procedure:

Delete the entire entry and substitute with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JA), Washington, DC 20380–0001.

Written requests for information should contain the full name and grade of the individual."

Contesting record procedures:

Delete the entire entry and substitute with "The Department of the Navy rules for contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager."

Record source categories:

Delete the entire entry and substitute with "Investigative records of arrest from civilian law enforcement sources; records of indictment of conviction from civilian law enforcement or judicial agencies; records of appellate and other post trial procedures received from civilian law enforcement and judicial agencies.

Records indicating apprehension or investigation by military authorities received from individual's command or other military agencies, law enforcement or command.

Records of nonjudicial punishment, courts-martial, pre courts-martial and post courts-martial activities relating to the individual received from the individual's command.

Records of administrative eliminative processes conducted by military authorities received from the individual's command."

* * * * *

MJA00018

SYSTEM NAME:

Performance File.

SYSTEM LOCATION:

Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JA), Washington, DC 20380–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The file pertains to all members and former members of the Marine Corps, who, while on active duty or in a reserve status, become the subject of investigation, indictment, or criminal proceedings by military or civilian authorities, whether or not such investigation, indictment or proceedings result in a final adjudication of guilt or innocence.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains information pertaining to civilian and military criminal matters including investigative reports, documents indicating court proceedings have begun and/or in progress, and post trial or investigative matters, as well as records of any resultant administrative action or proceedings.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 10 U.S.C. 5013.

PURPOSE(S):

To provide a record on individuals from the initiation of investigation or indictment until the procedure is final, whether by conviction, acquittal, dismissal or by the matter being dropped, and any resultant administrative action or proceedings, or use in determining assignments, whether an individual selected for promotion should be promoted while the matter is pending.

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

The Marine Corps "Blanket Routine Uses" that appear at the beginning of the agency's compilation of record system notices apply to this system.

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

STORAGE:

Stored in file folders.

RETRIEVABILITY:

Retrieved alphabetically by name.

SAFEGUARDS:

Access is limited to those individuals with a need to know. The file folders are stored in file cabinets which are located in a locked room during nonbusiness hours.

RETENTION AND DISPOSAL:

Files are maintained for 50 years and then destroyed. Files maintained in Judge Advocate Division at Headquarters are transferred to Federal Records Center, Suitland, MD after three years.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this record system contains information about themselves should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JA), Washington, DC 20380–0001.

Written requests for information should contain the full name and grade of the individual.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JA), Washington, DC 20380–0001.

Written requests for information should contain the full name and grade of the individual.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for contesting contents and appealing initial agency determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Investigative records of arrest from civilian law enforcement sources; records of indictment of conviction from civilian law enforcement or judicial agencies; records of appellate and other post trial procedures received from civilian law enforcment and judicial agencies.

Records indicating apprehension or investigation by military authorities received from individual's command or other military agencies, law enforcement or command.

Records of nonjudicial punishment, courts-martial, pre courts-martial and post courts-martial activities relating to the individual received from the individual's command.

Records of administrative eliminative processes conducted by military authorities received from the individual's command.

EXEMPTIONS CLAIMED OR THE SYSTEM:

None.

MMN00006

System name:

Marine Corps Military Personnel Records (OQR/SRB) (51 FR 45932, December 23, 1986).

Changes:

* * * * *

System location:

Delete the entire entry and substitute with "Primary system—Headquarters, U.S. Marine Corps (Code MMRB), Quantico, VA 22134–0001.

Decentralized segments—Commanding Officer of the organization to which the Marine officer or enlisted individual is assigned for duty and who has responsibility for the Officer Qualification Records/Service Record Books (OQR/SRB)."

Authority for maintenance of the system:

Delete the entire entry and substitute with "5 U.S.C. 301; 10 U.S.C. 5013; and Executive Order 9397."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete paragraph 1 in its entirety and add the following paragraph "The Marine Corps "Blanket Routine Uses" that appear at the beginning of the agency's compilation of record sysem notices apply to this system."

Delete paragraphs 7 and 10 and substitute with a new paragraph 8 "To officials and employees of the Veterans Administration in the performance of their official duties relating to approved research projects."

* * * * *

System manager(s) and address:

At the end of the entry, delete the phrase "Washington, DC 20380" and substitute with "Quantico, VA 22134–0001."

Notification procedure:

Delete the entire entry and substitute with "Individuals seeking to determine whether this record system contains information about themselves should address written inquiries to the Commandant of the Marine Corps, Code MMRB, Headquarters, U.S. Marine Corps, Quantico, VA 22134–0001 (for active duty members); or to the Director, National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100 (for separated members).

Individuals seeking to determine information about their OQR/SRB records maintained by their respective commanding officer should address written inquiries to the command concerned. U.S. Marine Corps official mailing addresses are incorporated into Department of the Navy's mailing addresses, published as an appendix to the Navy's compilation of record system notices.

Written requests should include the full name, Social Security Number, and signature of the requester."

Record access procedures:

Delete the entire entry and substitute with "Individuals seeking access to records about themselves contained in this record system should address written requests to the Commandant of the Marine Corps (Code MMRB), Headquarters, U.S. Marine Corps, Quantico, VA 22134–0001 (for active duty members); to the respective commanding officer of the command concerned for OQR's/SRB's; or to the Director, National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100 (for separated members).

Written requests should include the full name, Social Security Number, and signature of the requester.

The individual may visit any of the above activities for review of records. Proof of identification may consist of an individual's active, reserve or retired identification card, Armed Forces Report of Transfer or Discharge (DD Form 214), discharge certificate, driver's license or other data sufficient to insure that the individual is the subject of the record."

Contesting record procedures:

Delete the entire entry and substitute with "The Department of the Navy rules for contesting contents and appealing initial determinations by the individual concerned are published in the Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager."

* * * * *

MMN00006

SYSTEM NAME:

Marine Corps Military Personnel Records (OQR/SRB).

SYSTEM LOCATION:

Primary system—Headquarters, U.S. Marine Corps (Code MMRB), Quantico, VA 22134–0001.

Decentralized segments—Commanding officer of the organization to which the Marine officer or enlisted individual is assigned for duty and has responsibility for the Officer Qualification Records/Service Record Books (OQR/SRB).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Marine Corps military personnel (enlisted/officer): Reserve, retired and discharged or otherwise separated.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the Official Military Personnel File, SRB and OQR.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5013; and Executive Order 9397.

PURPOSE:

To provide a record on all Marine Corps military personnel for use in management of resources, screening and selection for promotion, training and educational programs, administration of appeals, grievances, discipline, litigations and adjudication of claims and determination of benefits and entitlements.

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

To officials and employees of the Coast Guard and National Guard in the performance of their official duties relating to screening members who have expressed a positive interest in an interservice transfer, enlistment, appointment or acceptance.

To agents of the Secret Service in connection with matters under the jurisdiction of that agency upon presentation of credentials.

To private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

To officials and employees of the American Red Cross and Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

To officials and employees of the Sergeant at Arms of the U.S. House of Representatives in the performance of official duties related to the verification of Marine Corps service of Members of Congress. Access will be limited to those portions of the member's record required to verify service time, active and reserve.

To state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

To officials and employees of the Veterans Administration, Department of Health and Human Services, and Selective Service Administration in the performance of their official duties related to eligibility, notification, and assistance in obtaining benefits by members and former members of the Marine Corps.

To officials and employees of the Veterans Administration in the performance of their official duties relating to approved research projects.

To officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in performance of their official duties related to the management, supervision, and administration of members and former members of the Marine Corps.

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

STORAGE:

Records are stored on paper in file folders and on microfiche.

RETRIEVABILITY:

The records at Headquarters, U.S. Marine Corps (all active and reserve officer records, all temporary disability retired records, all active and organized reserve and Fleet Marine Corps Reserve enlisted records of personnel joined/transferred to these components subsequent to June 30, 1974, all former Commandants, all living retired officers (who served in General Officer grade, records of all personnel separated/retired four months or less) are retrieved by full name and Social Security Number. Except for OQR's and SRB's of participating members, all other categories of Marine Corps military personnel records are maintained at the National Personnel Records Center, St. Louis, MO. Those retired to St. Louis prior to January 1, 1964 and/or those with military service numbers (MSN) below 1800000 are retrieved by MSN and full name. All other Marine Corps records retired to St. Louis, Missouri are accessed by MSN and/or Social Security Number and are retrieved by an assigned registry number.

SAFEGUARDS:

Restricted access to building and all areas where data is maintained. Records are maintained in areas accessible only by authorized personnel who have been properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Records are permanent. Records maintained at Headquarters, U.S. Marine Corps are transferred to the National Pesonnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100, for months after separation, placement on the Permanent Disability Retired List, retirement, retirement from Fleet Marine Corps Reserve, death of an officer who served in Geneal Officer grade and former Marines no longer considered of newsworthy status.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps (Code MMRB), Headquarters, U.S. Marine Corps, Quantico, VA 22134–0001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commandant of the Marine Corps (Code MMRB), Headquarters, U.S. Marine Corps, Quantico, VA 22134–0001 (for active duty members); or to the Director, National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100 (for separated members).

Individuals seeking to determine information about their OQR/SRB records maintained by their respective commanding officer should address written inquiries to the command concerned. U.S. Marine Corps official mailing addresses are incorporated into Department of the Navy's mailing addresses, published as an appendix to the Navy's compilation of record sysem notices.

Written requests should contain the full name, Social Security Number, and signature of the requester.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written requests to the Commandant of the Marine Corps (Code MMRB), Headquarters, U.S. Marine Corps, Quantico, VA 22134–0001 (for active duty personnel); to the respective commanding officer of the command concerned for OQR/SRB; or to the

Director, National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100 (for separated members).

Written requests should include the full name, Social Security Number, and signature of the requester.

The individual may visit any of the above activities for review of records. Proof of identification may consist of an individual's active, reserve or retired identification card, Armed Forces Report of Transfer or Discharge (DD Form 214), discharge certificate, driver's license, or other data sufficient to insure that the individual is the subject of the record.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Staff agencies and subdivisions of Headquarters, U.S. Marine Corps; Marine Corps commands and organizations; other agencies of federal, state, and local government; medical reports; correspondence from financial and other commercial enterprises; correspondence and records of educational institutions; correspondence of private citizens addressed directly to the Marine Corps or via the U.S. Congress and other agencies; investigations to determine suitability for enlistment, security clearances, and special assignments; investigations related to disciplinary proceedings; and, the individual of the record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMN00045

System name:

Automated Systematic Recruiting Support System (ASRSS) (50 FR 22729, May 29, 1985).

Changes:

System name:

Delete the entire entry and substitute with "Automated Recruit Management System (ARMS)."

System location:

Delete the entire entry and substitute with "Primary System—Headquarters, U.S. Marine Corps, (Code M&RA), Washington, DC 20380–0001.

Decentralized System—Each Recruiting Station, District Headquarters, Marine Corps Recruit Depot and School of Infantry within the Marine Corps. U.S. Marine Corps official mailing addresses are incorporated into Department of the Navy's mailing addresses, published as an appendix to the Navy's compilation of record system notices.

* * * * *

Authority for maintenance of the system:

Delete the entire entry and substitute with "5 U.S.C. 301; 10 U.S.C. 5013; and Executive Order 9397."

Purpose(s):

Delete the entire entry and substitute with "To provide a record on all Marine Corps recruits for use in tracking from entry through Marine combat training."

* * * * *

System manager(s) and address:

Delete the entire entry and substitute with "Commandant of the Marine Corps (M&RA), Headquarters, U.S. Marine Corps, Washington, DC 20380–0001."

Notification procedure:

Delete the entire entry and substitute with "Individuals seeking to determine whether this system of records contains information about their ARMS records should address written inquiries to the Commandant of the Marine Corps (Code MI), Headquarters, U.S. Marine Corps, Washington, DC 20380–0001. Written requests should contain the full name and Social Security Number of the individual."

Record access procedure:

Delete the entire entry and substitute with "Individuals seeking access to records about themselves contained in this system of records should address written inquires to the Commanding Officer of the activity to which they were assigned. U.S. Marine Corps official mailing addresses are incorporated into Department of the Navy's mailing addresses, published as an appendix to the Navy's compilation of record system notices.

The requester may also visit any Marine Corps Recruiting Station, District Headquarters, Marine Corps Recruit Depot, or Marine Corps School of Infantry, to determine whether ARMS contains records pertaining to him/her. In order to personally visit a Recruiting Station, District Headquarters, Marine Corps Recruit Depot, or Marine Corps School of Infantry, and obtain information, individuals must present proper identification such as driver's license, or some other suitable proof of identity."

RECORD SOURCE CATEGORIES:

Delete the entire entry and substitute with "The Recruiting Station, Marine Corps Recruit Depot, School of Infantry and directly from the individual recruit."

* * * * *

MMN00045

SYSTEM NAME:

Automated Recruit Management System (ARMS).

SYSTEM LOCATION:

Primary System—Headquarters Marine Corps (Code M&RA), Washington, DC 20380–0001.

Decentralized System—Each Recruiting Station, District Headquarters, Marine Corps Recruit Depot and School of Infantry within the Marine Corps. U.S. Marine Corps official mailing addresses are incorporated into Department of the Navy's mailing addresses, published as an appendix to the Navy's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Marine Corps Regular and Reserve recruits.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains information voluntarily provided by recruits as contained on the Application for Enlistment—Armed Forces of the United States.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 5013; and Executive Order 9397.

PURPOSE(S):

To provide a record on all Marine Corps recruits for use in tracking from entry through Marine combat training.

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

The Marine Corps "Blanket Routine Uses" that appear at the beginning of the agency's compilating of systems notices apply to this system.

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

STORAGE:

The file will be stored via on-line disk with backup on magnetic disk with backup on magnetic tape. Backup audit trail record will be available at the point-of-entry.

RETRIEVABILITY:

Standard reports and ad hoc retrievals are generated from remote

terminals using a data base management system. Additionally, updates and record browsing may be accomplished in the interactive mode through keying Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel that are properly screened, cleared, and trained. "Hard copy" or paper output from the system is stored in locked containers. System software contains user passwords to lock out unathorized access. System software contains partitions to limit access to appropriate organizational level.

RETENTION AND DISPOSAL:

On-line magnetic records will be maintained for one year after completion of recruit training. Records are then retired to a "history file" where they will be retained for a period of four years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps (M&RA), Headquarters, U.S. Marine Corps, Washington, DC 20380–0001.

NOTIFICATION PROCEDURE:

Individual seeking to determine whether this system of records contains information about their ARMS records should be addressed to the Commandant of the Marine Corps (M&RA), Headquarters, U.S. Marine Corps, Washington, DC 20380–0001.

Written requests for information should contain the full name and Social Security Number of the individual.

The requester may also visit any Marine Corps Recruiting Station to determine whether ARMS contains records pertaining to him/her. In order to personally visit a Recruiting Station and obtain information, individuals must present proper identification such as driver's license, or some other suitable proof of identity.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commanding Officer of the activity to which they were assigned.

The requester may also visit any Marine Corps Recruiting Station, District Headquarters, Marine Corps Recruit Depot or Marine Corps School of Infantry, to determine whether ARMS contains records pertaining to him/her. In order to personally visit a Recruiting Station, District Headquarters, Marine Corps Recruit Depot or Marine Corps School of Infantry, and obtain information, individuals must present proper identification such as military identification, if a service member, driver's license, or some other suitable proof of indentity.

CONTESTING RECORD PROCEDURES:

The Department of the Navy rules for contesting contents and appealing initial determinations by the individual concerned are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The Recruiting Station, Marine Corps Recruit Depot, School of Infantry and directly from the individual recruit.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 18899 Filed 8–10–90; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.019, 84.022]

Grants and Cooperative Agreements; Availability etc.; Fulbright-Hays Faculty Research Abroad and Doctoral Dissertation Research

AGENCY: Department of Education.

ACTION: Combined notice inviting applications under Fulbright-Hays Training Grant Programs: Faculty Research Abroad and Doctoral Dissertation Research Abroad for fiscal year 1991 new awards.

Purpose of Programs: Applications are invited for new awards under Fulbright-Hays Training Grant Programs for Fiscal Year 1991. The Fulbright-Hays Training Grant Programs include the Faculty Research Abroad and Doctoral Dissertation Research Abroad Programs. Authority for these programs is contained in the Mutual Education and Cultural Exchange Act of 1961 (22 U.S.C. 2452(b)(6)).

The Faculty Research Abroad Program offers opportunities to faculty members of institutions of higher education for research and study abroad in modern foreign languages and area studies.

The Doctoral Dissertation Research Abroad Program provides opportunities for graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

Deadline for Transmittal of Faculty Research Abroad and Doctoral Dissertation Research Abroad Applications: October 29, 1990.

Applications Available: August 27, 1990.

Eligible Applicants: For the Faculty Research Abroad and Doctoral Dissertation Research Abroad Programs, eligible applicants are institutions of higher education.

FULBRIGHT-HAYS TRAINING GRANT PROGRAMS

Title and CFDA number	Available funds	Estimated range of awards	Estimated size of awards	Estimated number of awards	Project period in months
Faculty Research Abroad (84.019)	$690,000	$8,000 to 60,000	$28,000	25	3 to 12
Doctoral Dissertation Research Abroad (84.022)	Rs. [1] 784,550 1,487,832 [1] 1,365,450	4,000 to 50,000	17,500	85	6 to 12

[1] Rupee allocation from the U.S.—India Fund.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: Regulations applicable to these programs include the following:

(a) Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 81, 82 and 85; and

(b) Regulations governing the Higher Education Programs in Modern Foreign Language Training and Area Studies, 34 CFR parts 662 and 663.

Priorities: The regulations governing the Faculty Research Abroad Program (34 CFR 663,32(c)) and the Doctoral

Dissertation Research Abroad (34 CFR 662.32(c)) authorize the Secretary to establish priorities for the selection of applications. Pursuant to 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to Faculty Research Abroad and Doctoral Dissertation Research Abroad applications that meet the following priority:

Research projects which focus on Africa; East Asia; Eastern Europe and U.S.S.R.; Near East; South Asia; Southeast Asia and the Pacific; or the Western Hemisphere. Applications that propose projects focusing on Western Europe will not be funded.

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet this absolute priority.

In accordance with 34 CFR 75.105(c)(2), the Secretary also gives a competitive preference to Faculty Research Abroad and Doctoral Disseration Research Abroad applications that meet the following competitive priority:

Projects which focus upon the Caribbean Basin, including one or more of the following countries: Mexico, Belize, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, Colombia, Venezuela, and the island nations of the Caribbean Sea, and which emphasize the following disciplines or types of activity: Research projects in the fields of economics, geography, history (except Mexico), political science, sociology, and languages not commonly taught in institutions of higher education in the United States.

The Secretary also gives a competitive preference to Faculty Research Abroad applications that meet the following competitive priority:

Research projects that focus upon Southern Africa, including one or more of the following countries: the Republic of South Africa, Botswana, Namibia, Swaziland, Lesotho, Angola, Mozambique, Malawi, Zambia and Zimbabwe.

As authorized under 34 CFR 75.105(c)(2)(i), the Secretary may award 5 selection points to an application that meets these competitive priorities in a particularly effective way, in addition to any points awarded to the application under the selection criteria of the Faculty Research Abroad and Doctoral Dissertation Research Abroad Programs.

For Applications or Information Contact: Mrs. Merion Kane (Faculty Research Abroad Program), Telephone (202) 708–8763, Ms. Vida Moattar (Doctoral Dissertation Research Abroad Program), Telephone (202) 708–9291, Department of Education, Center for International Education, 400 Maryland Avenue SW., Washington, DC 20202–5331.

Program Authority: 22 U.S.C. 2452(b)(6).

Dated: August 2, 1990.

Leonard L. Haynes III,

Assistant Secretary for Postsecondary Education.

[FR Doc. 90–18904 Filed 8–10–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award Intent to Award Grant to IDL/INC

AGENCY: Department of Energy.

ACTION: Notice of Unsolicited Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award under Grant Number DE–FG01–90CE15498 to IDL/INC to complete development of a new fieldworthy system of analyzing the mud of oil wells as they are drilled.

SCOPE: The grant will provide funding to IDL/INC for an estimated cost of $79,756 for Daniel E. Boone's system of logging of mud that comes up out of oil wells as they are drilled. "Mud logging" consists of analysis of the mud to gain information and data to assist drilling. The purpose of the project is to develop a complete fieldworthy system; to test it in wells being drilled; and to get the system into the market. IDL/INC, a well-established oil-well servicing company with 7 employees, is committed to finishing the project. Twenty independent operators are interested in utilizing the new invention in their logging services and testing it at the inventor's expense in the process of performing their usual business. This invention minimizes the possibilities of near misses of hydrocarbon deposits, since it uses real time to provide more accurate data at a lower cost. It should locate oil and gas-well deposits that would otherwise be missed.

ELIGIBILITY: Based on the acceptance of an unsolicited application, eligibility for this award is limited to IDL/INC, a small business. Daniel E. Boone, the inventor owns the patent rights. The new adanced system of mud logging which analyzes more data at less cost is being built in accordance with the drawings and specifications provided by Mr. Boone. In accordance with 10 CFR 600.14(e)(1), it has been determined that this project represents a unique idea that is not eligible for financial assistance under a recent, current, or planned solicitation. The funding program, Energy-Related Inventions Program (ERIP), has been structured since it beginning in 1975 to operate without competitive solicitations because the legislation directs ERIP to provide support for worthy ideas submitted by the public. The proposed project and technology have a strong potential of adding to the national energy resources.

The term of the grant shall be eighteen months for the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Rose Mason, PR–542, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90–18976 Filed 8–10–90; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award Intent to Award Grant to S–CAL Research Corporation

AGENCY: Department of Energy.

ACTION: Notice of unsolicited financial assistance award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award under Grant Number DE–FG01–90CE15459 to S–CAL Research Corporation to build a laboratory apparatus and operate it to provide design data for a large-scale natural gas conversion process.

SCOPE: The grant will provide funding to S–CAL Research Corporation for the estimated cost of $79,500 for building and operating a laboratory scale apparatus for converting methane to gasoline. The proposed project will reduce loss of methane which is wasted because it is not economically feasible to transport it in pipelines. Converting the gaseous fuel into a liquid fuel will prevent waste.

ELIGIBILITY: Based on the acceptance of an unsolicited application, eligibility for this award is limited to S–CAL Research Corporation, a small business. The firm's president, Michael Gondouin, has formed the company, holds two patents, and has the necessary contacts and background to successfully develop the invention. In accordance with 10 CFR 600.14(e)(1), it has been determined that this project represents a unique idea that is not eligible for financial assistance under a recent, current, or planned solicitation. The funding

Program (ERIP), has been structured since its beginning in 1975 to operate without competitive solicitations because the legislation directs ERIP to provide support for public. The proposed project and technology have a strong potential of adding to the national energy resources.

The term of the grant shall be twenty-four months from the effective date of the award.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Rose Mason, PR–542, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 90–18977 Filed 8–10–90; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. QF88–295–003]

Electric rate, Small Power Production, and Interlocking Directorate Filings; Tenaska III Texas Partners et al.

Take notice that the following filings have been made with the Commission:

1. Tenaska III Texas Partners

[Docket No. QF88–295–003]

July 30, 1990.

On July 20, 1990, Tenaska III Texas Partners, of 407 North 117th Street, Omaha, Nebraska 68154, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is located in Paris, Texas. The facility consists of two combustion turbine-generators, two waste heat recovery steam boilers, and an extraction/condensing steam turbine-generator. Thermal energy recovered from the facility is used for the food preparation operations of Campbell Soup (Texas) Inc. The combined maximum net electric power production capacity is 250 MW. The primary energy source is natural gas.

Certification of the original application was issued on June 1, 1988 (43 FERC ¶ 62,247 (1988)). A recertification was issued on January 31, 1989 (46 FERC ¶ 62,118 (1989)). The instant recertification is requested due to the restructuring of the ownership of Tenaska III Partners, Ltd. (TLP), which is a general partner in the facility with a 40 percent equity interest. Charter Oak (Paris) Inc., which has become a partner of TLP, is indirectly owned by a subsidiary of Northeast Utilities, an electric utility holding company, and thus will have a 10 percent interest in the facility. This interest combined with the 28 percent interest indicated in the earlier recertification will make a total of 38 percent equity interest to be held by an electric utility and electric utility holding companies.

Comemnt date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. U.S. Department of Energy, Bonneville Power Administration

[Docket No. EF90–2061–000]

August 1, 1990.

Take notice that on July 26, 1990, Bonneville Power Administration (BPA), United States Department of Energy, tendered for filing a proposed Pacific Power & Light Capacity Contract Formula rate (PPL–90 Formula Rate). BPA requests final confirmation and approval of this rate schedule pursuant to section 7(a)(2) of the Pacific Northwest Power Planning and Conservation Act (Northwest Power Act), 16 U.S.C. 839e(a)(2), and the Commission's regulations for the confirmation and approval of rates for Federal Power Marketing agencies, 18 CFR 300.

BPA does not request interim approval of the PPL–90 Formula rate. BPA requests that the Commission grant final approval of the PPL–90 Formula rate for an effective date of September 1, 1991, and that this formula rate be given Commission approval for a 20-year period ending August 31, 2011.

The PPL–90 Formula rate is available to the Pacific Power & Light Company (Pacific) for the purchase of electric capacity under a proposed 20-year sale negotiated between BPA and Pacific. The PPL–90 Formula rate begins at an initial level of $4.92 per kilowatt-month of contract demand, and will increase at the rate of increase in BPA's average system cost (BASC) as determined in each successive BPA general rate case after September 1, 1991. BASC is determined in each BPA general rate case by dividing BPA's total system cost by total system load. BPA's current BASC is 23.2 mills per kilowatthour. The rate of increase in BASC will be determined in BPA's next general rate proceeding by dividing the newly determined BASC by 23.2 mills per kilowatthour. This ratio will then be applied to the initial rate level of $4.92 per kilowatt-month to increase the level of the PPL–90 Formula rate. The use of the BASC escalator will continue to increase the level of the PPL–90 Formula rate throughout the proposed 20-year rate period.

Comment date: August 17, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. Montaup Electric Company

[Docket No. ER90–247–001]

August 1, 1990.

Take notice that on July 13, 1990 Montaup Electric Company filed a rate schedule to extend the Purchased Capacity Adjustment Clause (PCAC) from December 31, 1990 through December 31, 1995.

Comment date: August 15, 1990, in accordance with Standard Paragraph E at the end of this notice.

4. Dayton Power and Light Company

[Docket No. ER90–464–000]

August 1, 1990.

Take notice that on July 11, 1990 Dayton Power and Light Company (DP&L) tendered for filing corrected versions of the proposed Rate Schedules previously filed in the above mentioned docket involving the modification of the Interconnection Agreement between DP&L and the Ohio Edison Company.

Comment date: August 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

5. Utah Power & Light Company

[Docket Nos. ER84–571–009, ER85–486–004, and ER86–300–004]

August 1, 1990.

Take notice that on July 24, 1990 Utah Power & Light Company tendered for filing its Refund Report pursuant to the Commission's Letter order dated June 13, 1990 in the above referenced dockets.

Comment date: August 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

6. Lithium Corporation of America

[Docket No. QF86–94–001]

August 1, 1990.

On July 23, 1990, Lithium Corpoation of America, of 449 North Cox Road, Gastonia, North Carolina 28053, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The certification for the original application was issued on January 8, 1986 (34 FERC ¶ 62,206). The instant recertification is requested due to a

change in the facility's net electric power production capacity from 5.5 MW to 10.0 MW.

The topping-cycle cogeneration facility will be located at the Bessemer City Manufacturing Plant, Bessemer City, North Carolina. The facility will contain one stoker-fired boiler, a condensing steam turbine genertor and a back pressure steam turbine generator. Thermal energy recovered from the facility, in the form of steam, will be used for process purposes. The net electric power production capacity of the facility will now be 10.0 MW. The primary source of energy will be coal. Operation of the facility is scheduled to begin in the fourth quarter of 1990.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

7. Kansas City Power & Light Company

[Docket No. FA87–37–000]

August 1, 1990.

Take notice that on July 24, 1990, Kansas City Power & Light Company tendered for filing its Refund report pursuant to FERC Opinion No. 348, dated June 7, 1990.

Comment date: August 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

8. Florida Power & Light Company

[Docket No. ER90–510–000]

August 1, 1990.

Take notice that on July 25, 1990, Florida Power & Light Company (FP&L) tendered for filing an Agreement To Provide Specified Transmission Service between FP&L and Reedy Creek Improvement District (Agreement).

The rate schedule provides for specified Transmission Service by FPL for Reedy Creek. This rate schedule is an established rate which is similar to existing rate schedules FPL has in place with other utilities.

Comment date: August 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

9. Dayton Power and Light Company

[Docket No. ER90–465–000]

August 1, 1990.

Take notice that on July 11, 1990 Dayton Power and Light Company (DP&L) tendered for filing corrected versions of the proposed Rate Schedules previously filed in the above mentioned docket involving the modification of the Interconnection Agreement between DP&L and the Ohio Power Company.

Comment date: August 16, 1990, in accordance with Standard Paragraph E at the end of this notice.

10. American Electric Power Service Corp.

[Docket No. ER90–513–000]

August 1, 1990.

Take notice that American Electric Power Service Corporation (AEP) on July 27, 1990, tendered for filing on behalf of Indiana Michigan Power Company (I&M), a contract change on I&M's Interconnection Agreement with Northern Indiana Public Service Company (NIPSCO).

This contract change terminates "Service Schedule I—Power Transfer and Reactive Supply Service", as of May 1, 1990.

Copies of this filing were served upon the Indiana Utility Regulatory Commission, Michigan Public Service Commission, and Northern Indiana Public Service Company.

Comment date: August 16, 1990, in accordance with standard Paragraph E end of this notice.

11. Oklahoma Municipal Power Authority v. Public Service Company of Oklahoma

[Docket No. EL90–43–000]

August 2, 1990.

Take notice that on July 27, 1990, Oklahoma Municipal Power Authority (OMPA) tendered for filing a complaint against the Public Service Company of Oklahoma (PSO). OMPA seeks an order from the Commission: (1) requiring PSO to provide firm transmission service to OMPA, as required by the OMPA/PSO Interconnection and Power Supply Agreement and its related service schedules ("Interconnection Agreement"), for the life of the Interconnection Agreement; (2) initiating hearing procedures and setting a refund effective date in this proceeding at the earliest possible date, *i.e.*, sixty days from the filing date hereof; (3) requiring PSO to reduce its rates for firm transmission service being provided under the Interconnection Agreement and current Service Schedule OK–TS and for services provided under Service Schedules SCE and OR, to just and reasonable rates, and to provide such refunds as may be appropriate, consistent with section 206(b) of the Federal Power Act; and (4) approving new and modified service schedules under the Interconnection Agreement in accordance with the commitments and obligations assumed by PSO and establishing just and reasonable rates for the services to be furnished prospectively thereunder.

Comment date: September 4, 1990, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company

[Docket No. ER90–511–000]

August 2, 1990.

Take notice that on July 25, 1990, Commonwealth Edison Company (Edison) tendered for filing Amendment No. 1, dated June 15, 1990, to the electric Coordination Agreement, December 31, 1988, between Edison and the City of Rochelle, Illinois (City). Amendment No. 1 provides the City the option of purchasing Limited Term Power from Edison.

Edison requests expedited consideration of the filing and an effective date of June 18, 1990. Accordingly, Edison requests a waiver of the Commission's notice requirements to the extent necessary.

Copies of this filing were served upon the City and the Illinois Commerce Commission.

Comment date: August 17, 1990, in accordance with Standard Paragraph E end of this notice.

13. Allegheny Hydro No. 8, L.P.

[Docket No. QF90–193–000]

August 2, 1990.

On July 26, 1990, Allegheny Hydro No. 8, L.P., c/o Sithe Energies U.S.A., Inc., 135 East 57 St., 23rd Floor, New York, N.Y. 10022, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed 13 MW hydroelectric facility will be located at Allegheny Lock and Dam No. 8 on the allegheny River in Armstrong County, Pennsylvania. The proposed facility includes a 39 mile transmission line.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp Electric Operations

[Docket No. ER90–512–000]

August 2, 1990.

Take notice that PacifiCorp Electric Operations (PacifiCorp) on July 26, 1990 tendered for filing, in accordance with § 35.12 of the Commission's Regulations, an Electric Supply Agreement (Agreement) between PacifiCorp and Utah Municipal Power Agency (UMPA) dated September 7, 1989.

PacifiCorp requests, pursuant to § 35.12 of the Commission's Regulations, that a waiver of prior notice be granted and that the rate schedule become effective on July 1, 1990 corresponding to the Effective date of the Agreement.

Copies of the filing were supplied to the Oregon Public Utilities Commission, Utah Public Service Commission, and UMPA.

Comment date: August 17, 1990, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Hydro No. 9, L.P.

[Docket No. QF90–192–000]

August 2, 1990.

On July 26, 1990, Allegheny Hydro No. 9, L.P., c/o Sithe Energies U.S.A., Inc., 135 East 57 St., 23rd Floor, New York, N.Y. 10022, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to a § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed 18 MW hydroelectric facility will be located at Allegheny Lock and Dam No. 9 on the Allegheny River in Armstrong County, Pennsylvania. The proposed facility includes a 39 mile transmission line.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

16. Las Vegas Congeneration, Inc.

[Docket No. QF89–251–001]

August 2, 1990.

On July 20, 1990, Las Vegas Cogeneration, Inc. (Applicant), of P.O. Box 557, Springville, Utah 84663, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Clark County, Nevada. The facility wil consist of a combustion turbine generating unit, a heat recovery boiler and a steam turbine generating unit. Thermal energy recovered from the facility will be used to heat an approximately 16-acre greenhouse. The net electric power production capacity of the facility will be 38 MW. The primary energy source will be natural gas. Installation will begin about March 1991.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with the Standard Paragraph E at the end of this notice.

17. Pacific Gas and Electric Company

[Docket No. ER90–515–000]

August 2, 1990.

Take notice that on July 30, 1990, Pacific Gas and Electric Company (PG&E) tendered for filing proposed changes to certain rates, terms, and conditions concerning those services rendered by PG&E under the Rate Settlement Agreement between PG&E and Lassen Municipal Utility District (LMUD) pursuant to Rate Schedule FERC No. 117. Specifically, PG&E proposes to a) adjust rates effective January 1, 1990 in accordance with California Public Utilities Commission (CPUC) Decision No. 89–12–057, and b) enter into a new rate settlement agreement effective May 10, 1990 for a three-year period which includes adoption of a new Diablo Canyon Nuclear Power Plant rate treatment based on a CPUC performance based pricing rate mechanism and methodology.

Copies of this filing were served upon LMUD and the CPUC.

Comment date: August 17, 1990, in accordance with Standard Paragraph E at the end of this notice.

18. Ohio Power Company, Complainant v. American Municipal Power Company—Ohio et al., Respondents

[Docket No. EL90–42–000]

August 2, 1990.

Take notice that on July 20, 1990, Ohio Power Company, pursuant to section 206 of the Federal Power Act and Rules 206 and 207 of the Commission's Rules of Practice and Procedure tendered for filing a complaint against American Municipal Power Company—Ohio ("AMP-Ohio") and the Ohio cities of Dover, Orrville, St. Mary's, and Shelby. In its complaint, Ohio Power Company asserts that the cities have failed to provide sufficient generating capacity in keeping with the terms of the 1974 agreement between Ohio Power Company and AMP-Ohio and that inadverent power receipts by the cities occurred as a result. Ohio Power Company asks that the Commission issue an order finding and declaring that the 1974 agreement means what Ohio Power Company says that it means; that AMP-Ohio has wrongfully refused to pay Ohio Power Company contrary to what the 1974 agreement requires; and that AMP-Ohio owes Ohio Power Company the sum of $238,114.00 plus interest.

Comment date: September 4, 1990, in accordance with Standard Paragraph E at the end of this notice.

19. Metropolitan Edison Company

[Docket No. ER90–522–000]

August 3, 1990.

Take notice that on July 27, 1990, Metropolitan Edison Company (Met-Ed) refiled rate sheets effecting an increase on the rate for supplemental service and a decrease in the rate for transmission service to Allegheny Electric Cooperative, Inc. Met-Ed requests waiver of the prior notice provisions and an effective date of July 24, 1990.

Comment date: August 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

20. New England Power Company

[Docket No. ER90–525–000]

August 3, 1990.

Take notice that on August 1, 1990, New England Power Company (NEP) tendered for filing amendments to its FERC Electric Tariff, Original Volume No. 1, Primary Service for Resale, constituting a new rate, referred to as the W–12 rate. NEP states that the new rate would increase base rates by approximately $119.4 million. NEP proposes an effective date of October 1, 1990 and a three-month suspension of the W–12 rate to January 1, 1991. NEP also proposes an alternative, referred to as the W–12(a) rate. Under this alternative, NEP would increase base rates by approximately $58.1 million, with an effective date of October 1, 1990, to be suspended until January 1, 1991, together with separate step increases associated with projects from which NEP purchases power or pays transmission support charges under rate schedules approved by the Commission.

NEP also proposes a second alternative, referred to as the W–12(b) rate, that moderates the effect of the W–12(a) increase by collecting the same revenue requirement over fifteen months, beginning on October 1, 1990. NEP states that the W–12(b) rate is its preferred proposal.

NEP states that it seeks a waiver of the Commission's fuel adjustment clause regulations to the extent necessary (1) to excuse NEP from the requirement that it flow through to customers on a current basis its total fuel transportation costs, and permit it instead to defer 50% of its pipeline demand charges to be charged to the cost of a generation repowering project; and (2) to allow NEP to recover through its adjustment clause the demand charges associated with the pipeline capacity that may be assigned to others to credit customers through the adjustment clause with revenues received from such transactions.

Comment date: August 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

21. Alabama Power Company

[Docket No. ER90–518–000]

August 3, 1990.

Take notice that on July 30, 1990, Alabama Power Company (APCO) tendered for filing certain revised Delivery Point Specification Sheets under the Agreement for Partial Requirements Service and Complementary Services (PR Agreement) between Alabama Power Company and the Alabama Municipal Electric Authority (AMEA). The effect of the filing is to update the delivery points for the Cities of Alexander City, Dothan and Opelika that receives service under the PR Agreement. The revised Delivery Point Specification Sheets are executed by APCO, AMEA and the affected member municipalities.

Comment date: August 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

22. Consolidated Edison Company of New York, Inc.

[Docket No. ER90–521–000]

August 3, 1990.

Take notice that on July 31, 1990, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing Supplements to its Rate Schedules FERC Nos. 60 and 66, agreements to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplements provide for an increase in the monthly transmission charge from $1.14 to $1.15 per kilowatt for transmission of power and energy sold by the Authority to Brookhaven National Laboratory and Grumman Corporation thus increasing annual revenues under the Rate Schedules by a total of $4,665. Con Edison has requested waiver of notice requirements so that the increase can be made effective as of July 1, 1990.

Con Edison states that a copy of this filing has been served by mail upon the Authority.

Comment date: August 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

23. Alabama Power Company

[Docket No. ER90–517–000]

August 3, 1990.

Take notice that on July 30, 1990, Alabama Power Company (APCO) tendered for filing Amendment No. 3 to the Interconnection Agreement dated May 5, 1980 between APCO and Alabama Electric Cooperative, Inc. The effect of this Amendment is to add two interconnection points to those existing and planned interconnection points presently listed in the agreement. These additions will not have any effect on the rates reflected in the Interconnection Agreement, as amended.

Comment date: August 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

24. Pacific Gas and Electric Company

[Docket No. ER90–355–000]

August 3, 1990.

Take notice that on July 31, 1990, Pacific Gas and Electric Company (PG&E) filed cost support data, its case-in-chief, and an amendment to its filing in FERC Docket ER90–355–00 proposing changes to Rate Schedule FERC No. 84 pursuant to Section 205(c) of the Federal Power Act and § 35.13 of the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR § 35.13).

By letter dated May 3, 1990, to the Commission, PG&E proposed revising Appendix A to the Interconnection Agreement Between Pacific Gas and Electric Company and Northern California Power Agency. PG&E proposing modifying the transmission rate methodology by 1) basing the Northern California Power Agency's (NCPA) rates for transmission service on aggregated transmission system costs and 2) implementing a new method for calculating the billing deaterminats upon which PG&E's transmission system costs will be allocated to NCPA.

In response to the Commission's June 13, 1990 letter advising PG&E that its filing was deficient, PG&E has submitted cost support data, revenue comparisons, a case-in-chief, testimony and work papers required by § 35.13 of the Commission's regulations. Additionally, PG&E proposes to substitute for the transmission rate initially proposed, a transmission rate developed and supported by its cost support data.

Copies of this filing were served upon the California Public Utilities Commission, NCPA, and the remainder of the service list in Docket No. ER90–355–000.

Comment date: August 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

25. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER90–523–000]

August 3, 1990.

Take notice that on August 1, 1990, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) jointly tendered for filing an updated Transmission and Distribution Electric Loss Study dated June 1990.

The updated loss study reduces the Northern States Power Company overall transmission losses from 4.1% to 3.5%.

The filing companies request an effecative date of January 1, 1991.

Copies of the filing have been served upon the wholesale and transmission wheeling customers of the filing customers and upon the state commissions of Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.

Comment date: August 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

26. Northeast Utilities Service Company

[Docket No. ER90–516–000]

August 3, 1990.

Take notice that on July 26, 1990 Northeast Utilities Service Company (NUSCO) tendered for filing revised pages to the Transmission Service Agreement between NUSCO and the Massachusetts Municipal Wholesale Electric Company.

NUSCO requests that the Commission waive its filing and notice requirements to the extent necessary to make the agreement effective in accordance with its terms.

Comment date: August 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

27. Consolidated Edison Company of New York, Inc.

[Docket No. ER90–519–000]

August 3, 1990.

Take notice that on July 30, 1990, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing proposed supplements to its Rate Schedule FERC No. 96.

The proposed supplements include a revision to the tariff implementing the delivery service agreement. The revision addresses the calculation and billing of revenue and similar rate and local taxes. The other proposed supplement is a planning agreement between Con Edison and NYPA providing in part that Con Edison and NYPA will make certain sales of supplemental and economy energy.

A copy of this filing has been served on NYPA and the New York State Public Service Commission.

Comment date: August 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

28. New England Power Co.

[Docket No. ER90–526–000]

August 3, 1990.

Take notice that on August 1, 1990 New England Power Company (NEP) tendered for filing a proposed change in its Service Agreement for Primary Service for Resale with the Narragansett Electric Company (Narragansett). According to NEP, the proposed change would increase the fixed credits allowed Narragansett on its purchase power billing by NEP in the amount of $3,652,900 annually based on the 12-month period ending December 31, 1990, but that the credit be allowed to become effective coincident with the effective date of its Rate W–12 filed simultaneously with the G&T credit filing.

NEP states that copies of the filing were served upon Narragansett and the Rhode Island Public Utilities Commission.

Comment date: August 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

29. Consolidated Edison Co.

[Docket No. ER90–514–000]

August 3, 1990.

Take notice that on July 27, 1990, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC No. 51, an agreement to provide transmission service for the Power Authority of the State of New York (the Authority). The Supplement provides for a decrease in the monthly transmission charge from $2.55 to $2.53 per kilowatt for transmission of power and energy sold by the Authority to the Long Island Villages of Freeport, Greenport and Rockville Centre (the Villages), thus decreasing annual revenues under the Rate schedule by a total of $14,245.68. Con Edison has requested waiver of notice requirements so that the decrease can be made effective as of July 1, 1990.

Con Edison states that a copy of this filing has been served by mail upon the Authority and the Villages.

Comment date: August 17, 1990, in accordance with Standard Paragraph E at the end of this notice.

30. Carolina Power & Light Co.

[Docket No. ER89–203–002]

August 3, 1990.

Take notice that on July 30, 1990, Carolina Power & Light Company tendered for filing its Compliance Refund Report in Docket No. ER89–203–000 pursuant to the Commission's Letter Order issued on June 29, 1990.

Comment date: August 20, 1990, in accordance with Standard Paragraph E at the end of this notice.

31. Chicago Energy Exchange of Chicago, Inc.

[Docket No. ER90–225–001]

August 3, 1990.

Take notice that on July 30, 1990, Chicago Energy Exchange of Chicago, Inc. filed certain information as required by Ordering Paragraph (N) of the Commission's April 19, 1990 order in this proceeding. 51 ¶ 61,0054 (1990). Copies of Chicago's informational filing are on file with the Commission and are available for public inspection.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–18905 Filed 8–10–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER90–504–000]

Central Maine Power Co.; Notice of Filing

July 23, 1990.

Take notice that on July 16, 1990, Central Maine Power Company (CMP) tendered for filing the following Notices of Termination:

1. Notice of Termination of CMP Rate Schedule FERC No. 85 (Transmission Service Effective November 1, 1989 between CMP and UNITIL Power Corp.), effective as of May 31, 1990, in accordance with the terms of said rate schedule.

2. Notice of Termination of CMP Rate Schedule FERC No. 86 (Transmission Service Agreement Effective November 1, 1989 between CMP and Public Service Company of New Hampshire), effective as of April 30, 1990, in accordance with the terms of said rate schedule.

3. Notice of Termination of CMP Rate Schedule FERC No. 87 (Rate Schedule for Transmission Service Effective as of June 1, 1988), effective October 31, 1988, in accordance with the terms of said rate schedule.

4. Notice of Termination of CMP Rate Schedule FERC No. 88 (Rate Schedule for Transmission Service Effective as of November 1, 1988), effective as of November 30, 1989, in accordance with the terms of said rate schedule.

CMP states that copies of the filing have been served on the affected customers and the Maine Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 14, 1990. 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,

Secretary.

[FR Doc. 90–18906 Filed 8–10–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP90-1762-000]

Colorado Interstate Gas Co.; Notice of Application

July 23, 1990.

Take notice that on July 18, 1990, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado, Springs, Colorado 80944, filed in Docket No. CP90-1762-000, a request pursuant to section 7(b) of the Commission's Regulations under the Natural Gas Act, as amended, for authorization to abandon part of sales service for the City of Colorado Springs, Colorado (City). CIG proposes to abandon 14,000 Mcf of General Daily Entitlements, 2,800 Mcf of Peaking Service Entitlements, and 2,691 MMcf of Total Annual Entitlements pursuant to a new service agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG does not propose to abandon any facilities with the service.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 13, 1990, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are 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 Southern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 90-18907 Filed 8-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL90-41-000]

City of Dowagiac, Michigan v. Indiana Michigan Power Co., Notice of Filing

August 6, 1990.

Take notice that on July 19, 1990, the City of Dowagiac, Michigan (Dowagiac) tendered for filing a Complaint against Indiana Michigan Power Company (I&M). Dowagiac submits that I&M is charging rates in excess of its filed fuel adjustment clause.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 5, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties 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. Answers to the complaint are also due on or before September 5, 1990.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-18908 Filed 8-10-90; 8:45 am]

BILLING CODE 6717-01-M

El Paso Natural Gas Co.; Informal Settlement Conference

August 6, 1990.

In the matter of: Docket Nos. RP88-44-000, RP85-58-017, RP88-185-000, RP88-202-000, RP88-184-000, RP89-132-000, RP90-81-000, RP87-16-000, CP88-334-000, CP88-433-000, CP88-434-000, CP88-333-000, CP88-332-000, CP88-203-000, CP88-605-000, CP88-700-000, CP87-553-000, CI87-290-000, CP89-488-000, CP89-1722-000, CP90-1034-000, CP90-1084-000, CP89-1540-000, CP89-896-000, CP89-1909-000, CP87-44-000, TM89-1-33-000, TM90-3-33-000, TQ89-1-33-000, TA88-1-33-000, TA88-3-33-000, TA89-1-33-000, TA85-1-33-000, *et al.* and CP88-244-000.

Take notice that an informal conference will be convened in this proceeding on August 9, 1990, at 1:30 p.m. and on August 10, 1990, at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC., 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Hollis J. Alpert at (202) 208-1093, or Cynthia A. Govan at (202) 208-0745.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-18909 Filed 8-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-503-000]

Florida Power & Light Co.; Notice of Filing

July 23, 1990.

Take notice that Florida Power & Light Company (FPL) on July 17, 1990, tendered for filing a Special Short Term Agreement To Provide Capacity and Scheduled Incremental Energy By Florida Power & Light Company To Utility Board of the City of Key West, Florida (Special Short Term Agreement) and Cost Support Schedules C, D, E, F, and G (together with Cost Support Schedule F Supplements) which support the rates for sales under this Special Short Term Agreement.

The new rate schedule provides for the sale of capacity and energy from FPL to the Utility Board of the City of Key West, Florida (City) for a specified term commencing on July 17, 1990 and ending the earlier of: September 30, 1990 or until the return of City's Stock Island Steam Unit. FPL respectfully requests that the proposed Special Short Term Agreement and Cost Support Schedules C, D, E, F and G (together with Cost Support Schedule F Supplements) be made effective on July 17, 1990. A copy of this filing was served upon City and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 14,

1990. 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,

Secretary.

[FR Doc. 90–18910 Filed 8–10–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ90–13–51–000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

July 23, 1990.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on July 19, 1990, tendered for filing First Revised Twenty-Eighth Revised Sheet Nos. 57(i) and 57(ii) and First Revised Fourteenth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

The above tariff sheets reflected revised current PGA rates for the month of July, 1990. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective July 1, 1990, in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

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 petitions or protests should be filed on or before August 13, 1990. 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. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 90–18911 Filed 8–10–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR 90–11–000]

Gulf States Pipeline Corp.; Petition for Rate Approval

August 6, 1990.

Take notice that on July 26, 1990, Gulf States Pipeline Corporation, filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum firm reservation charge of $5.37 per MMBtu per month and a firm commodity charge of $0.1549 per MMBtu and a maximum interruptible rate of $0.3316 per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978.

Gulf States' petition states that it is an intrastate pipeline within the meaning of section 2(16) of the NGPA and operates solely within the state of Louisiana. Gulf States previous maximum interruptible transportation rate for section 311(a)(2) service was approved by the Commission June 21, 1989 in Docket Nos. ST88–4888–000, et al.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments. Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before August 27, 1990. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–18912 Filed 8–10–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP90–146–000]

Illinois Power Co. v. Natural Gas Pipeline Co. of America; Complaint and Request for Relief

August 6, 1990.

Take notice that on July 18, 1990, Illinois Power Company (Illinois Power) filed a complaint and request for relief against Natural Gas Pipeline Company of America (Natural) pursuant to section 5 of the Natural Gas Act and Rule 206 of the Commission's Rules of Practice and Procedure. Illinois Power requests that the Commission issue an order that the take-or-pay costs allocated to and being collected from Illinois Power by Natural be reduced to reflect the fact that on June 12, 1990, Natural commenced direct service to an industrial customer that was previously a retail customer of Illinois Power. Illinois Power states that in the absence of such a reduction in Natural's take-or-pay charges to Illinois Power, Natural's rates and charges will be unjust and unreasonable, unduly discriminatory, and anticompetitive.

Illinois Power states that by letter dated June 8, 1990, Natural notified Illinois Power that it would commence providing transportation service to LTV Steel Company (LTV) on June 12, 1990, pursuant to subpart B of part 284 of the Commission's regulations, thereby bypassing Illinois Power's distribution system. Illinois Power understands that the transportation service to LTV will be provided by means of pipeline facilities recently constructed by Natural purportedly under the authority of section 311 of the Natural Gas Policy Act (NGPA).

Illinois Power also states that as a result of this action by Natural, Illinois Power will be unable to collect from LTV its appropriate share of the take-or-pay charges incurred as a customer on Illinois Power's distribution system. Prior to receiving direct service from Natural, LTV was contributing its share of take-or-pay costs through a volumetric surcharge payable to Illinois Power. Illinois Power states that Natural's bypass to directly serve LTV prevents Illinois Power from collecting LTV's appropriate share of its take-or-pay payments.

Illinois Power states that unless the Commission grants the relief requested, the LTV-related take-or-pay costs will result in rates that are: (1) Anticompetitive, since Illinois Power would be disadvantaged with additional costs as it attempts to compete with Natural for the future business of LTV and other retail industrial customers; (2) unduly discriminatory, since LTV's

share of the take-or-pay costs will not be collected through the new direct contractual arrangement between LTV and Natural, but rather from Illinois Power, which no longer has the ability to collect such costs from LTV; and (3) unjust and reasonable, since the decision by Natural to provide service directly to LTV without a corresponding reduction in the take-or-pay costs allocated to Illinois Power causes Natural's rates to be unjust and unreasonable. Illinois Power claim that burdening it with such LTV-related take-or-pay costs will unfairly shift these costs onto its remaining retail customers.

Illinois Power requests that the Commission reduce the amount of take-or-pay costs allocated to it on an expedited basis, to reflect the fact that LTV is no longer a customer or Illinois Power and is now a direct customer of Natural. Illinois Power states that since Natural gas has acquired LTV as a customer, Natural should be required to assume the obligation for the take-or-pay costs that are associated with that customer. Natural would then be in a position to recover from LTV these take-or-pay costs without an adverse affect on the consumers of Illinois Power.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before September 5, 1990. 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. Answers to this complaint shall be due on or before September 5, 1990.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–18913 Filed 8–10–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90–154–000]

Inter-City Minnesota Pipelines Ltd., Inc.; Request for Waiver of Annual PGA

August 6, 1990.

Take notice that on July 27, 1990, Inter-City Minnesota Pipelines Ltd., Inc., (Minnesota Pipelines) requests that the Commission defer § 154.304(c) of the Commission's regulations, 18 CFR 154.304(c), which requires that Minnesota Pipelines file its annual PGA to be effective November 1, 1990, and permit Minnesota Pipelines to file in place of the annual PGA a further quarterly PGA filing pending Commission action in Docket No. CP90–973–000.

Minnesota Pipelines states that it has only two sales customers, Northern Minnesota Utilities (NMU) and the City of Warroad (Warroad), Minnesota. Minnesota Pipelines also states that on March 13, 1990, Minnesota Pipelines filed in Docket No. CP90–073–000 an application for authority to abandon its existing sales service and replace it with transportation service under new FT tariffs. The application was unopposed and is fully consistent with similar unbundling applications involving other pipelines that have been approved by the Commission.

Minnesota states that it will cease to be a seller of gas and its PGA accounts will be terminated upon Commission approal of the unbundling application. Minnesota Pipelines expects that it will not be a seller of gas as of the date for filing of its annual PGA.

Minnesota Pipelines states that to require Minnesota Pipelines to prepare and file its annual PGA in light of the pending unbundling application will cause undue hardship to the pipeline. Minnesota Pipelines states that at the present, Minnesota Pipelines lacks staff with the necessary computer qualifications and expertise to prepare the annual PGA in the Commission's required format.

Minnesota Pipelines requests that it be permitted to file a quarterly PGA filing effective November 1, 1990 in place of its annual filing pending Commission action on the unbundling application. The quarterly filing requirements are less onerous and allow the pipeline until October 1, 1990 to prepare the filing while ensuring sufficient protection for Minnesota Pipelines' customers and Commission oversight of its purchased gas costs.

If the Commission determines that Minnesota Pipelines must file its annual PGA effective November 1, 1990, Minnesota Pipelines requests that the Commission waive the requirement that the filing be made in electronic format.

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 August 13, 1990. 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 in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90–18914 Filed 8–10–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90–500–000]

Kansas Power and Light Co.; Notice of Filing

July 23, 1990.

Take notice that on July 16, 1990, the Kansas Power and Light Company (KPL) tendered for filing Temporary Exhibit 4A to the Transmission Agreement with Kansas Gas and Electric Company. KPL states that this revised exhibit reflects updated loss amounts associated with the transmission services rendered under various load conditions during the period of time that such service is being rendered using alternate transmission facilities pursuant to section 2(d) of the Transmission Agreement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 14, 1990. 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,

Secretary.

[FR Doc. 90–18915 Filed 8–10–90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER90-389-000, ER90-390-000, and EL90-39-000]

Northeast Utilities Service Co. et al.; Initiation of Proceeding and Refund Effective Date

August 6, 1990.

In the matter of: Northeast Utilities Service Co., Connecticut Light and Power Company and Western Massachusetts Electric Company.

Take notice that on July 23, 1990, the Commission issued an order in this proceeding initiating a proceeding under section 206 of the Federal Power Act, as amended by the Regulatory Fairness Act of 1988.

Refund effective date in Docket No. EL90-39-000: 60 days after publication of this notice in the Federal Register.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-18816 Filed 8-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ90-4-28-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

August 6, 1990.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on August 1, 1990, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Seventy-Ninth Revised Sheet No. 3-A
Fifty-Sixth Revised Sheet No. 3-B
Third Revised Sheet No. 3-B.1

The proposed effective date of these revised tariff sheets is September 1, 1990.

Panhandle states that these revised tariff sheets filed herewith reflect a non-gas commodity rate increase of 1.50¢ per Dt pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism).

Panhandle further states that these revised tariff sheets filed herewith reflect the following changes to Panhandle's D1 and D2 demand rates:

(1) A decrease of ($0.89) for D1 pursuant to section 22 of the General Terms and Conditions of Panhandle's tariff (ANGTS tracking mechanism); and

(2) A decrease of ($0.17) for D1 and no change for D2 pursuant to section 18.4 of the General Terms and Conditions of Panhandle's tariff (pipeline suppliers' demand costs).

Panhandle states that the above-referenced tariff sheets are being filed in accordance with § 154.308 (Quarterly PGA filing) of the Commission's Regulations and pursuant to sections 18.1 and 18.4 (Purchased Gas Demand Rate Adjustments by Pipeline Suppliers) and section 22 (ANGTS tracking mechanism) of Panhandle's FERC Gas Tariff, Original Volume No. 1 to reflect the changes in Panhandle's jurisdictional sales rates effective September 1, 1990.

Panhandle states that it should be noted that by Order dated June 30, 1989, issued in Docket No. RP89-185-000, the Commission accepted for filing section 25 (Seasonal Sales Program) of Panhandle's FERC Gas Tariff, Original Volume No. 1. Pursuant to section 25.31 thereof, sections, 18.2, 18.3, 18.5, 18.6, 18.7 and 18.8 are suspended until re-established in accordance with section 25.32. Accordingly, Panhandle is reflecting as a current adjustment only the changes in its D1 and D2 demand rates mentioned above.

Panhandle states that copies of its filing have been served on all jurisdictional customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or 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 August 13, 1990. 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 in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-18917 Filed 8-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP90-1763-000]

Southern Natural Gas Co.; Notice of Request Under Blanket Authorization

July 23, 1990.

Take notice that on July 18, 1990, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP90-1763-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct, install and operate a sales tap, metering and appurtenant facilities and to transport gas through such facilities for Ergon Refining, Inc. (Ergon), an end user, under Southern's blanket certificates issued in Docket Nos. CP82-406-000 and CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to construct and operate a meter station, appurtenant tie-in piping and auxiliary facilities in order to provide firm transportation and interruptible transportation, as necessary, for Ergon for use at its oil processing plant located in Warren County, Mississippi. Southern states that it would install the facilities near Mile Post 23 on its 6-inch Onward-Vicksburg Line and loop line in Warren County, Mississippi, at an estimated construction and installation cost of $146,972. Southern states further that the installation of the proposed facilities would have no adverse impact on its peak day capabilities.

Southern, it is said, would perform the proposed firm transportation service pursuant to a service agreement dated May 4, 1990, under its Rate Schedule FT, and the proposed interruptible transportation service pursuant to a service agreement May 4, 1990 under its Rate Schedule IT. It is stated that the peak day, average day and annual volumes for the firm transportation service would be 1,500 Mcf, 1,500 Mcf and 547,500 Mcf respectively. It is further stated that the peak day, average day and annual volumes for the interruptible transportation service would be 8,000 MMBtu, 5,000 MMBtu and 1,825,000 MMBtu respectively.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-18918 Filed 8-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-159-000]

Tennessee Gas Pipeline Co., Notice of Tariff Change

August 6, 1990.

Take notice that on August 2, 1990, Tennessee Gas Transmission Company (Tennessee) filed Second Revised Sheet Nos. 66 and 72 to its FERC Gas Tariff, to be effective September 3, 1990.

Tennessee states that the purpose of this revision is to modify the daily injection limits under Rate Schedules SS-E and SS-NE to allow for excess injections under specified circumstances.

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers on its system and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before August 13, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previsouly filed a petition to intervene in this proceeding is not required to file a further petition. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-18919 Filed 8-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-505-000]

Washington Water Power Co.; Notice of Filing

July 23, 1990.

Take notice that on July 18, 1990, the Washington Water Power Company filed an annual adjustment to the contract rate effective April 1, 1990 for the 15-Year Agreement for Purchase and Sale of Firm Capacity and Energy between the Washington Water Power Company and Puget Sound Power & Light Company. The Washington Water Power Company requests that the Commission waive its notice requirements for this filing and that the Commission a .cept the rate adjustment for the Contract Year beginning April 1, 1990.

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 August 14, 1990. 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,

Secretary.

[FR Doc. 90-18920 Filed 8-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER90-498-000]

Washington Water Power Co.; Notice of Filing

July 23, 1990.

Take notice that on July 12, 1990, the Washington Water Power Company (Washington Power) tendered for filing three agreements which have terminated according to the terms of the individual agreements.

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 August 14, 1990. 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,

Secretary.

[FR Doc. 90-18921 Filed 8-10-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA91-1-35-000]

West Texas Gas, Inc.; Notice of Filing

August 6, 1990.

Take notice that on August 1, 1990, West Texas Gas, Inc. (WTG) filed Twenty-First Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective October 1, 1990. Twenty-First Revised Sheet No. 3a and the accompanying explanatory schedules constitute WTG's annual PGA filing submitted in accordance with the Commission's purchased gas adjustment regulations.

West Texas states that copies of the filing were served upon WTG's customers and interested State 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 (18 CFR 385.211 and 385.214 (1989)). All such motions or protests should be filed on or before August 27, 1990. 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 90-18922 Filed 8-10-90; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

DOE/NSF Nuclear Science Advisory Committee; Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: DOE/NSF Nuclear Science Advisory Committee.

Date & Time: Friday, September 7, 1990 from 9 a.m. to 5:30 p.m.

Place: Room 1E-245, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC.

Date & Time: Saturday, September 8, 1990 from 8:30 a.m. to 2 p.m.

Place: Holiday Inn, Apollo room, 550 C Street SW., Washington, DC.

Contact: Cathy Hanlin, Division of Nuclear Physics, U.S. Department of Energy, Washington, DC 20585, (301) 353-3613.

Purpose of Committee: To advise the Department of Energy and the National Science Foundation on the scientific priorities within the field of basic nuclear science research.

Tentative Agenda:

- Consideration of the NSAC Subcommittee Report on 3 Heavy Ion Facilities
- Public comment
- Other business

Public Participation: The meeting is open to the public. The Chairperson of the Committee 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 make oral statements pertaining to agenda items should contact Cathy Hanlin 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.

Minutes: Available for public review and copying at the Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on August, 8, 1990.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 90–18978 Filed 8–10–90; 8:45 am]

BILLING CODE 6450–01–M

Southeastern Power Administration

Proposed Rate Adjustment, Rate Extension, Public Hearing, and Opportunities for Public Review and Comment

AGENCY: Southeastern Power Administration (Southeastern), DOE.

ACTION: Notice of proposed rate adjustment and rate extension for the Jim Woodruff Project, notice of public hearing and opportunities for review and comment.

SUMMARY: Southeastern proposes a new Wholesale Power Rate Schedule JW–1–C to replace the existing Rate Schedule JW–1–B. The new rate schedule will be applicable to Southeastern power sold to existing preference customers in the Florida Power Corporation service area. Southeastern also proposes to extend Wholesale Power Rate Schedule JW–2–B, which is applicable to Southeastern power sold to Florida Power Corporation.

Opportunities will be available for interested persons to review the present rates, the proposed new rate, and the supporting studies, to participate in a hearing and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before November 16, 1990. A public information and public comment forum will be held in Tallahassee, Florida, on September 13, 1990. Persons desiring to speak at the forum must notify Southeastern at least 7 days before the forum is scheduled so that a list of forum participants can be prepared. Others present may speak if time permits. Persons desiring to attend the forum should notify Southeastern at least 7 days before the forum is scheduled. If Southeastern has not been notified by close of business on September 6, 1990, that at least one person intends to be present at the forum, the forum will be automatically canceled with no further notice.

ADDRESSES: Five copies of written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. The public comment forum will begin at 10 a.m. on September 13, 1990, in the Leon Room of the Tallahassee Hilton, 101 South Adams Street, Tallahassee, Florida 32101.

FOR FURTHER INFORMATION CONTACT: Leon Jurolmon, Jr., Director, Power Marketing Division, Southeastern Power Adminstration, Deparment of Energy, Samuel Elbert Building, Elberton, Georgia 30635, (404) 283–9911.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by order issued September 11, 1987, in Docket No. EF87–3031–000, confirmed and approved Wholesale Power Rate Schedules JW–1–B and JW–2–B applicable to Jim Woodruff Project's power for a period ending August 19, 1992.

Discussion

Existing rate schedules are supported by a March 1987 repayment study and other supporting data all of which are contained in FERC Docket EF87–3031–000. A repayment study prepared in August of 1990 shows that the existing rates are not adequate to recover the costs of the project within the repayment period. Additionally, a revised repayment study with a $2,627,000 revenue increase in each future year demonstrates that all costs are paid within their repayment life. Contract provisions permit Southeastern to adjust rates "* * * on August 19, 1987, or such subsequent date as may be selected by the Adminstrator." While existing rates do not expire until 1992, Department of Energy directives require rates to be adjusted when the repayment study shows that revenues will not meet the recovery criteria. Therefore, Southeastern is proposing to adjust rates at this time. The increase in required revenues is primarily caused by increased O&M expenses at the Corps of Engineers and successive poor water years where revenues have not been as much as expected and costs have been greater than expected. Southeastern is proposing to raise the rates to the preference customers to a level which will recover the additional $2,627,000.

In the proposed Rate Schedule JW–1–C, the capacity charge has been increased from $2.70 per kilowatt per month to $5.40 per kilowatt of monthly billing demand, and the energy charge has been increased from 8.0 mills per kilowatt-hour to 16.0 mills per kilowatt-hour. The rate to the Florida Power Corporation was not increased because Rate Schedule JW–2–B includes rates which are tied to Florida Power Corporation cost of power. Southeastern proposes that this new rate and the extended rate remain in effect from February 20, 1991, through September 19, 1994.

In developing the rate adjustment, Southeastern considered revenue requirements as determined by the August 1990 system repayment studies. The studies are available for examination at the Samuel Elbert Building, Elberton, George 30635, as is the 1987 repayment study and the proposed Rate Schedule.

Issued in Elberton, Georgia, August 3, 1990.

John A. McAllister, Jr.,

Administrator.

[FR Doc. 90–18979 Filed 8–10–90; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1824]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

August 8, 1990.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202–857–3800). Oppositions to these petitions must be filed August 29, 1990. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an

opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of the Commission's Rules Relative to Allocation of the 849–51/894–96 MHz Bands. (General Docket No. 88–96) Number of Petitions Received: 2

Subject: Amendment of § 73.202(b) Table of Allotments FM Broadcast Stations. (Golconda and Murphysboro, Illinois and Lutesville, Missouri) (MM Docket No. 89–526 RM's 6974 7014) Number of Petitions Received: 1

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–18935 Filed 8–10–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Revocations

Notice is hereby given that the following ocean fright forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License number: 3255
Name: International Freight Forwarders of Tampa, Inc.
Address: 333 Falkenburg Rd., Suite A116, Tampa, FL 33619
Date revoked: June 4, 1990
Reason: Failed to maintain a valid surety bond

License number: 920
Name: Latin American Shipping Co., Inc.
Address: 7001 NW 25th St., Suite 600, Miami, FL 33122
Date revoked: July 3, 1990
Reason: Failed to maintain a valid surety bond

License number: 3086
Name: Trans Am-Asia Corporation
Address: 3030 West 6th St., Suite 211, Los Angeles, CA 90020
Date revoked: July 11, 1990
Reason: Surrendered license voluntarily

License number: 1914
Name: World Airmarine, Inc.
Address: 290 East Grand Ave. So. San Francisco, CA 94080
Date revoked: July 13, 1990
Reason: Failed to maintain a valid surety bond

License number: 2657
Name: Max Gruenhut International, Inc.
Address: 3333 Quebec St., Suite 4040, Denver, CO 80207
Date revoked: July 14, 1990
Reason: Surrendered license voluntarily

License number: 2631
Name: Max Gurenhut International, Inc.
Address: 2050 North Loop West, Suite 200, Houston, TX 77018
Date revoked: July 14, 1990
Reason: Surrendered license voluntarily

License number: 1515
Name: Max Gruenhut International, Inc.
Address: 365 Chelsea Street, East Boston, MA 02128
Date revoked: July 14, 1990
Reason: Surrendered license voluntarily

License number: 1515
Name: Max Gruenhut International, Inc.
Address: 9100 S. Sepulveda, Suite 117, Los Angeles, CA 90045
Date revoked: July 14, 1990
Reason: Surrendered license voluntarily.

Bryant L. VanBrakle,

Acting Director, Bureau of Domestic Regulation.

[FR Doc. 90–18874 Filed 8–10–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Amcore Financial, Inc., et al.; Acquisition 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 August 27, 1990.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Amcore Financial, Inc.*, Rockford, Illinois; to acquire Illinois Budget Corporation, Woodstock, Ilinois, and thereby engage in consumer finance activities pursuant to section 225.25(b)(1) of the Board's Regulation Y.

2. *Amsterdam-Rotterdam Bank*, The Netherlands; Stichting-Amro, Amsterdam, The Netherlands; Stichting Prioriteit ABN-Amro Holding; Stichting Adminsitratiekantoor ANB Amro Holding; and ANB Amro Holding N.V.; to acquire NSR Asset Management Corporation, New York, New York, and thereby engage in providing investment or financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 7, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–18949 Filed 8–10–90; 8:45 am]

BILLING CODE 6210–01–M

Edith Jones Palmer, et al., 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 notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in

writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 24, 1990.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Edith Jones Palmer,* Zwolle, Louisiana, to acquire 6.7 percent; Henry Cook Taylor, Natchitoches, Louisiana, to acquire 31.70 percent; Charles Arnold Richey, Many, Louisiana, to acquire 6.7 percent; and James Robert Cole, Many, Louisiana, to 10.4 percent of the voting shares of Sabine Bancshares, Inc., Many, Louisiana, and thereby indirectly acquire Sabine State Bank & Trust, Many, Louisiana.

Board of Governors of the Federal Reserve System, August 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–18927 Filed 8–10–90; 8:45 am]

BILLING CODE 6210–01–M

First Florida Banks, Inc., et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) of (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 31, 1990.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW, Atlanta, Georgia 30303:

1. *First Florida Banks, Inc.,* Tampa, Florida, and 7L Corporation, Tampa, Florida; to acquire Mid-State Federal Savings Bank, Ocala, Florida, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. These activities will be conducted throughout the State of Florida.

Board of Governors of the Federal Reserve System, August 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–18926 Filed 8–10–90; 8:45 am]

BILLING CODE 6210–01–M

Thomas Michael Jenkins; 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 notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 27, 1990.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Thomas Michael Jenkins,* Seminole, Texas; to acquire 6.3 percent of the voting shares of Gaines Bancshares, Inc., Seminole, Texas, and thereby indirectly acquire First National Bank in Seminole, Seminole, Texas.

Board of Governors of the Federal Reserve System, August 7, 1990.

William W. Wiles,

Secretary of the Board.

[FR Doc. 90–18950 Filed 8–10–90; 8:45 am]

BILLING CODE 6210–01–M

Pitcairn Bancorp, Inc., et al.; Formations of Acquisitions by and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under § 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 August 31, 1990.

A. **Federal Reserve Bank of Philidelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Pitcairn Bancorp, Inc.,* Jenkintown, Pennsylvnia; to become a bank holding company by acquiring 100 percent of the voting shares of Pitcairn Private Bank, Philadelphia, Pennsylvania.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Mechanicsville Trust & Savings Bank,* Trustee of Mechanicsville Trust & Savings Bank Employee Stock Ownership Plan & Trust, Mechanicsville, Iowa; to become a bank holding

company by Bancshares, Inc., Mechanicsville, Iowa, and thereby indirectly acquire Mechanicsville Trust & Savings Bank, Mechancsvile, Iowa.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *New South Capital Corporation,* Batesville, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of New South Bank for Savings, F.S.B., Batesville, Mississippi.

2. *SBC Financial Corporation,* Como, Mississippi; to merge with New South Capital Corporation, Batesville, Mississippi, and thereby indirectly acquire New South Bank, Batesville, Mississippi.

Board of Governors of the Federal Reserve System, August 6, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-18928 Filed 8-10-90; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of Waiting Period Under Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 072390 AND 080390

Name of acquring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
The Coastal Corporation, Total Compagnie Francaise des Petroles, Total Minatome Corporation	90-1814	07/23/90
Holderbank Financiere Glaris, Ltd., Texas Industries, Inc., United Cement Company	90-1810	07/24/90
Nestle S.A., Lloyds Bank PLC, Holdings of Nashville, Inc	90-1830	07/24/90
H. Dean Pape, NACCO Industries, Inc., Hyster Company	90-1827	07/25/90
American International Group, Inc., International Lease Finance Corporation, International Lease Finance Corporation	90-1860	07/25/90
Leslie L. Gonda, American International Group, Inc., American International Group, Inc	90-1861	07/25/90
General Electric Company, Otzar Hityashvuth Hayehudim B.M., Bank Leumi Trust Co. of New York	90-1856	07/26/90
Fawzi M. Al-Saleh, The First Republic Corporation of America, Towle Manufacturing Company	90-1875	07/26/90
Cameron Enterprises, A Limited Partnership, Cimarron Investment Company, Inc., Cimarron Investment Company, Inc	90-1871	07/27/90
Code, Hennessy & Simmons Limited Partnership, Irwin and Ruth Ferdinand, Hirsh Company	90-1874	07/27/90
Hellman & Friedman Capital Partners, Equity Holdings, Limited, Great American Management and Investment, Inc	90-1884	07/27/90
Camellia Food Stores, Inc., Bonnie Be-Lo Markets, Inc., Bonnie Be-Lo Markets, Inc	90-1890	07/27/90
United Asset Management Corporation, Provident Mutual Life Insurance Co. of Philadelphia, Newbold's Asset Management, Inc	90-1794	07/30/90
Mr. Edward Ralston, c/o D&W Carpet and Rug Co., Inc., Coronet Carpets, Inc., Coronet Carpets, Inc	90-1867	07/30/90
Carl M. Bouckaert and Marie T. Bouckaert, Coronet Carpets, Inc., Coronet Carpets, Inc	90-1868	07/30/90
Kerr-McGee Corporation, Nancy Clark McGee, Cornell Production Company	90-1870	07/30/90
ASEA AB, Ferro Corporation, Ferro Corporation (Composite and CompositAir Divisions)	90-1823	07/31/90
Mitsubishi Metal Corporation, Tom S. Murphree, Cox Creek Refining Company	90-1859	07/31/90
Liz Claiborne, Inc., The United States Shoes Corporation, Liz Claiborne Division	90-1879	07/31/90
Norsky Hydro a.s., Wasserstein, Perella Partners, L.P., Wickes Products, Inc. (Bohn Aluminum & Brass Division)	90-1829	08/01/90
Norsk Hydro a.s., Blackstone Capital Partners, L.P., Wickes Products Inc., (Bohn Aluminum & Brass Division)	90-1831	08/01/90
Unocal Corporation, Amoco Corporation, certain assets of Amoco Production Company	90-1858	08/01/90
Thyssen AG, F.S. Payne Co., F.S. Payne Co	90-1877	08/01/90
Livio Borghese, The Bear Stearns Companies, Inc., Curtis Industries, Inc	90-1888	08/02/90
Warburg Pincus Capital Company, L.P., Ralph Ingersoll II, Community Newspapers, Inc., Ingersoll Newspapers, Inc	90-1909	08/02/90
National Intergroup, Inc., Periman Partners, L.P., Permian Partners, L.P	90-1811	08/03/90
Matra S.A., Wang Laboratories, Inc., InteCom Inc	90-1844	08/03/90
Estate of Roy Richards, American Telephone and Telegraph Co., AT&T Nassau Metals Corporation	90-1885	08/03/90
Hinonori Shimotsu, Yoshiaki Kubodera, Yoshiaki Kubodera	90-1892	08/03/90
Charles M. Campbell, Stoneridge Resources, Inc., Orange-co of Florida, Inc	90-1902	08/03/90
Dr. Reto E. Meier, Milton Friedman, Emglo Products Corporation	90-1916	08/03/90
Dr. Reto E. Meier, Daniel Glosser, Emglo Products Corporation	90-1917	08/03/90

FOR FURTHER INFORMATIN CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 90-18953 Filed 8-10-90; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90N-0258]

Panray Corp. et al.; Withdrawal of Approval of New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) withdraws approval of 16 new drug applications (NDA's) based on the applicants' failure to submit the required annual reports.

EFFECTIVE DATE: September 12, 1990.

FOR FURTHER INFORMATION CONTACT: Ron Lyles, Center for Drug Evaluation and Research, Document Management and Reporting Branch (HFD-53), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4320.

SUPPLEMENTARY INFORMATION: An applicant is required to report periodically to FDA concerning each of its approved NDA's in accordance with 21 CFR 314.81. Although exemptions from these reporting requirements have been granted in the past, all such exemptions have been rescinded (43 FR 20556; May 12, 1978).

The holders of the NDA's listed below have not submitted certain annual reports and have not responded to the agency's request by certified mail for submission of the reports. Accordingly, in notices published in the **Federal Register** of September 12, 1986 (51 FR 32539), and January 25, 1988 (53 FR 1942), FDA proposed to withdraw approval of the NDA's and offered an opportunity for a hearing on the proposals. None of the holders of the NDA's listed below requested a hearing. Failure to file a written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the applicants not to make use of the opportunity for a hearing concerning the drug products and a waiver of any contentions about the legal status of the drug products.

NDA	Drug name	Applicant's name and address
6-811	Sodium Aminosalicylate tablets and capsules.	Panray Corp., Subsidiary of Ormont Drug and Chemical Co., Inc., 520 South Dean St., Englewood, NJ 07631.
8-428	Isoniazid tablets..	Do.
9-436	Acylanid tablets...	Sandoz Pharmaceutical Corp., Division of Sandoz Inc., 59 Route 10, East Hanover, NJ 07936.
9-464	Rauwolfia Serpentina tablets.	American Pharmaceutical Co., Subsidiary of Burr Corp., 120 Bruckner Blvd., Bronx, NY 10454.
9-477	Rauwolfia Serpentina tablets.	C.M. Bundy Co., 2055 Reading Rd., Cincinnati, OH 45205.
9-481	Hyserp tablets.....	Moore Kirk Labs., Division of the Zummer Co., 231 Hulton Rd., Oakmont, PA 15139.
9-577	Rauja tablets.....	Bell Pharmacal Corp., Box 1968, Greenville, SC 29602.
9-663	Reserpine tablets.	C.M. Bundy Co.
9-667	Reserpine tablets.	ICN Pharmaceuticals Inc., 3300 Hyland Ave., Costa Mesa, CA 92626.
9-668	Rauwolfia Serpentina tablets, 50 and 100 mg.	Do.
9-678	Isoniazid tablets..	Vitamix Pharmaceuticals, Inc., 5051 Lancaster Ave., Philadelphia, PA 19131.
10-441	Reserpine tablets.	Everylife, 2021 15th Ave. West, Seattle, WA 98119.
12-686	CONTAC CR-Cap.	Smith Kline Consumer Products, Division of Smith Kline & French Labs, 680 Allendale Rd., Kng of Prussia, PA 19406.
13-234	Nitrofurantoin tablets.	Arlin Chemicals, Inc., P.O. Box 137, Carlstadt, NJ 07072.
13-473	PAS-C.....	Hellwig Pharmaceuticals, 5836 W. 117th Pl., Worth, IL 60482.
17-130	Sodium Heparin Injection.	Chamberlin Parenteral Corp., 6-10 Nassau Ave., Inwood, NY 11609.

The Director of the Center for Drug Evaluation and Research, under the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) and under authority delegated him (21 CFR 5.82), finds that the holders of the applications listed above have repeatedly failed to submit reports required by 21 CFR 314.81. Therefore, pursuant to section 505(e) of the act and 21 CFR 314.150(b)(1), approval of the NDA's listed above is hereby withdrawn, effective September 12, 1990.

NDA 5-939, Bal in Oil Injection (Becton Dickinson Microbiology Systems, 250 Schilling Circle, Cockeysville, MD 21030), was erroneously listed in the September 12, 1986 **Federal Register** notice (51 FR 32539). Annual reports for NDA 5-939 were received prior to publication of the September 1986 **Federal Register** notice, satisfying annual report requirements. Therefore, the Director of the Center for Drug Evaluation and Research hereby rescinds the proposal to withdraw approval of NDA 5-939.

Dated: August 3, 1990.

Carl C. Peck,

Director, Center for Drug Evaluation and Research.

[FR Doc. 90-18946 Filed 8-12-90; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Glycidol

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on Toxicology and carcinogenesis studies of glycidol, primarily used as a stablizer in the manufacture of vinyl polymers. It is also used as an intermediate in the production of pharmaceuticals, as an additive for oil and synthetic hydraulic fluids, and as a diluent in some epoxy resins.

Two year toxicology and carcinogenesis studies were conducted by administering doses of 0, 37.5, or 75 mg/kg glycidol in distilled water by gavage to groups of 50 rats of each sex 5 days per week for 103 weeks. Groups of 50 mice of each sex were administered 0, 25, or 50 mg/kg according to the same schedule.

Under the conditions of these 2-year gavage studies, there was clear evidence of carcinogenic activity [1] of glycidol for male F344/N rats, based on increased incidences of mesotheliomas of the tunica vaginalis; fibroadenomas of the mammary gland; gliomas of the brain; and neoplasms of the forestomach, intestine, skin, Zymbal gland, and thyroid gland. There was clear evidence of carcinogenic activity for female F344/N rats, based on increased incidences of fibroadenomas and adenocarcinomas of the mammary gland; gliomas of the brain; neoplasms of the oral mucosa, forestomach, clitoral gland, and thyroid gland; and leukemia. There was clear evidence of carcinogenic activity for male B6C3F1 mice, based on increased incidences of neoplasms of the harderian gland, for stomach, skin, liver, and lung. There was clear evidence of carcinogenic activity for female B6C3F1 mice, based on increased incidences of neoplasms of the harderian gland, mammary gland, uterus, subcutaneous tissue, and skin. Other neoplasms that may have been related to the administration of glycidol were fibrosarcomas of the glandular stomach in female rats and carcinomas of the urinary bladder and sarcomas of the epididymis in male mice.

The study scientist for these studies is Dr. Richard Irwin. Questions or comments about this Technical Report should be directed to Dr. Irwin at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3340.

Copies of Toxicology and Carcinogenesis Studies of Glycidol in

[1] The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of the evidence observed in each experiment: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); one category for experiments that because of major flaws cannot be evaluated ("inadequate study").

F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR 374) are available without charge from the NTP Public Information Office, MD B2–04, P.O. Box 12233, Research Triangle Park, NC 27709.

Dated: August 7, 1990.

David P. Ral,

Director.

[FR Doc. 90–18954 Filed 8–10–90; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–90–3125; FR–2850–N–01]

Closing of the Topeka, KS HUD Office

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development is closing its office in Topeka, Kansas which is responsible for limited single-family insured housing functions. This notice includes cost-benefit information required to be published in the Federal Register under section 7(p) of the Department of Housing and Urban Development Act.

DATES: Effective Date: November 13, 1990.

FOR FURTHER INFORMATION CONTACT: Edwin I. Gardner, Deputy Under Secretary for Field Coordination, Department of Housing and Urban Development, Washington, DC 20410, 202–708–2426 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: In accordance with section 7(p) of the Department of Housing and Urban Development Act, 42 United States Code 3525(p), the Department of Housing and Urban Development is hereby publishing a proposed plan to close the Topeka Office and related cost-benefit information.

A. Introduction and Background

The Department of Housing and Urban Development proposes to close the Topeka Office. The purpose of this change is to allow more effective use of the staff and space resources now assigned to this limited operation.

B. Description of Proposed Changes

The Topeka, Kansas Office, which has been responsible for limited program activities, will be closed and the workload transferred to the Kansas City Regional Office.

Consolidation of the Topeka Office's workload with the Kansas City Office will not affect client relations.

Reduction-in-force procedures will not be used to implement the office closure. Staff will be offered vacant positions in the Kansas City Office.

Cost-Benefit Information

Personnel and Travel

There are currently two staff members assigned to the Topeka Office. Staff required to perform the functions as part of the Kansas City Regional Office will be reduced to one. It is expected that the staff member will elect retirement. Responsibility for the programs operated by the Topeka Office will be assumed by the Kansas City Regional Office which will be approximately 60 miles away. A modest cost of $500 is estimated to take care of necessary travel for on-site activities in Topeka. Savings are anticipated in terms of salary of approximately $48,000.

Other Administrative Costs

Other areas reviewed for impact were telecommunications and space. HUD currently leases approximately 525 square feet of space at a cost of $7,000, annually. Communications and automatic data processing services currently cost $1,200, annually and will be saved when the office is closed. It is assumed that the savings associated with this change will accrue within approximately 1 month of the office's closing.

Impact on Local Economy

The proposed reorganization will have no measurable impact on the local economy. As a result of the reogranization, Topeka will lose two Federal jobs. Thus, the reduction will have an insignificant impact on housing, the tax base, public service, or employment.

Impact on Quality of Service

The impact of this closing on the level and quality of service to the Department's clients will be minimial. Programs operated by the Topeka staff will be operated by the Regional Office staff in Kansas City, Kansas, less than 60 miles away. Site inspections handled by staff in Topeka will continue from Kansas City.

Authority: Section 7(p) of the Department of Housing and Urban Development Act, 42 United States Code 3535(p).

Dated: July 30, 1990.

Jack Kemp,

Secretary.

[FR Doc. 90–18671 Filed 8–10–90; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Availability of a Draft Environmental Impact Statement for Two Proposed Leases for Mixed Residential, Commercial and Recreational Development Projects; Fort Mojave Indian Reservation, Clark County, NV, and San Bernardino, CA

AGENCY: Department of the Interior: Bureau of Indian Affairs (BIA).

ACTION: Notice of availability and public hearing dates.

SUMMARY: This notice advises the public that a DEIS for a proposed lease of approximately 2,200 acres of the Fort Mojave Indian Reservation for mixed residential, commercial and recreational development projects in Clark County, Nevada and San Bernardino County, California, is available for public review. This notice is furnished as required by the National Environmental Policy Act (NEPA) Regulations (49 CFR 1503) to obtain comments from government agencies and the public on the DEIS.

DATES: Written comments should be received on or before October 13, 1990. The public hearings to solicit comments from the public on the DEIS will be held on Tuesday, September 11, 1990, at 7 p.m. at the Fort Mojave Indian Tribal Chambers, 500 Merriman, Needles, California; on Wednesday, September 12, 1990, at 7 p.m. at the Mojave High School Auditorium, 1414 Handcock Road, Riveria Arizona, and on Thursday, September 13, 1990, at 7 p.m. at the Shadow Mountain High School (Cafeteria), 2902 East Shea Boulevard, Phoenix, Arizona. Comments and participation at the public hearings are solicited and should be directed to the BIA at the address provided below or to Carter Associates, Inc., Attention: Ms. Karen E. Watkins, 5080 North 40th Street, Suite 300, Phoenix, Arizona 85018. The telephone number is (602) 955–0900.

ADDRESSES: Comments should be addressed to Mr. Wilson Barber, Jr., Area Director, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, Arizona 85001.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Heuslein, Area Environmental Protection Specialist, Bureau of Indian Affairs, Pnoenix Area Office. P.O. Box 10, Phoenix, Arizona. The telephone number is (602) 379–6781 or FTS 261–6781.

Individuals wishing copies of this DEIS for review should immediately

contact the above individual or Carter Associates, Inc., at the telephone listed above. Copies of the DEIS have been sent to all agencies and individuals who participated in the scoping process and to all others who have already requested copies of the document.

SUPPLEMENTARY INFORMATION: The BIA, Department of the Interior, in cooperation with the Fort Mojave Indian Tribe, has prepared a DEIS on the proposal to lease approximately 2,200 acres of the Fort Mojave Indian Reservation in Clark County, Nevada and San Bernardino County, California. The Fort Mojave Tribe has developed a master plan for a planned community on their reservation lands in Nevada and a portion in Califorinia. The DEIS describes the proposed actions, affected environment and evaluates the anticipated impacts of two proposed lease sites with each area to be leased to separate developers.

The Movada Group proposes to leave approximately 1,000 acres of Indian trust land for a period of 75 years under the terms and conditions of a lease agreement. The proposed action is to development of a portion of the planned community to include three hotel/casinos, 2,007 residential units, 30 acres of RV spaces, two golf courses, a 75-acre lake, mixed office/retail uses, public facilities, a school, neighborhood park and other open spaces.

The American Land Development Corporation proposes to lease approximately 1,200 acres of Indian trust land for a period of 90 years under terms and conditions of a lease agreement. The proposed action for this lease site is the construction of a residential development adjacent to the Movada Group's proposal. The development would include 10,280 residential units, an 18-hole golf course, a community park with open-air amphitheater, neighborhood parks, mixed office/retail use and a school.

Both actions are designed to provide additional lease income for the Fort Mojave Indian Tribe and to provide employment opportunities for Tribal members. The current goals of the Fort Mojave Tribal Council include enhancement of economic development on the reservation, an increase in tribal revenues, and employment and training opportunities.

The principal alternatives for each proposed lease site under consideration have been analyzed and evaluated in the draft document. The alternatives for the Movada Group 1,000 acre lease site are based on the following: (1) A traditional or standard hotel/motel strip design. This alternative would include the addition of one more hotel/casino and increasing the RV resort concept. The alternative would eliminate the golf course, reduce the acreage of the lake and open space. (2) Another alternative proposed for the Movada Group would be for the community acreage to be oriented towards seasonal visitors. There would be no hotels/casinos, lake or golf course. The alternative is a proposed 1,000 acre planned RV resort and residential community with commercial/office support development.

The alternatives for the American Land Development Corporation 1,200 acreage lease site include the following: (1) Reducing the overall total residential dwelling units by 3,150 units. This alternative would result in a more dispersed and reduced population; (2) The second alternative would involve decreasing the overall total residential dwelling units by 5,252 (over 50% reduction). The total acreage would be reduced while increasing the open space. This alternative would create a less dense community and population.

Other Government Agencies and members of the public have contributed to the planning and evaluation of the proposals and to the preparation of this DEIS. The scoping process for the Spirit Mountain Environmental Impact Statement (EIS) involved two separate scoping phases. The first phase involved the publication of Notice of Intent (NOI) in the December 29, 1988 **Federal Register** for the Movada Group's 1,000 acre lease site proposal. An agency scoping meeting was held on January 10, 1989 is Las Vegas, Nevada to obtain input from interested Federal and State Agencies, while two open public scoping meetings were held on January 10 and 11, 1989 in Bullhead City, Arizona and Needles, California, respectively. In September 1989, a decision was made by the BIA to combine the Movada Group proposal and American Land Development Corporation's 1,200 acre lease proposal into the same EIS document. A second NOI was published in the October 10, 1989, **Federal Register** referring to add the additional lease site proposal. Another scoping meeting was held in Bullhead City, Arizona on October 23, 1989, to solicit comments.

Agencies and individuals are urged to provide comments on this DEIS as soon as possible. All comments received by the dates given above will be considered in preparation of the final EIS for this proposed action.

This notice is published pursuant to section 1503.1 of the Council of Environmental Quality Regulations (40 CFR, parts 1500 through 1508) implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C. 437 et seq.) Department of the Interior Manual (516 DM 1–6) and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: July 31, 1990.

Walt R. Mills,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 90–18870 Filed 8–10–90; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AZ–010–90–4212–21; AZA–24631]

Arizona; Realty Action Lease of Public Lands for Airport Purposes and Reconveyed Land Opened to Airport Leases, Airport Grants, and Rights-of-Way

The following described lands in Mohave County, Arizona, were reconveyed to the United States by the State of Arizona and title was accepted March 11, 1988. The lands have been determined suitable to be opened for airport purposes and rights-of-way:

Gila and Salt River Meridian

T. 41 N., R. 7 W.,
Sec. 13, NW¼, N½SW¼, SW¼SW¼.
Containing approximately 280 acres.

The following public lands in Mohave County, Arizona, have been found suitable for lease to the Town of Colorado City for airport purposes under the Act of May 24, 1928, as amended:

Gila and Salt River Meridian

T. 41 N., R. 7 W.,
Secs. 13 & 14.
Containing approximately 119.69 acres.

A complete metes and bounds of legal description can be obtained from the Vermillion Resource Area. Lease of the lands is consistent with applicable Federal and county land use plans and will help meet the needs of Mohave County residents for air transportation. Persons wishing to obtain detailed information on the action including the terms and conditions of the lease may write the Vermillion Resource Area Manager, 225 North Bluff, St. George, Utah 84770, or call (801) 628–4491.

This notice segregates the public lands described by the above mentioned metes and bounds description from operation of the public land laws, including the mining laws. The segregative effect will end upon issuance of the lease or one (1) year from the date of this publication, whichever occurs first.

For a period of 45 days from the date of this publication in the **Federal**

Register, interested parties may submit comments to the District Manager, Bureau of Land Management, 390 N. 3050 E., St. George, Utah 84770. In the absence of any objections, the decision to approve this realty action will become the final determination of the Department of the Interior.

Robert D. Roudabush,

Vermillion Resource Area Manager.

[FR Doc. 90–18876 Filed 8–10–90; 8:45 am]

BILLING CODE 4310-32-M

Minerals Management Service

Information Collection Requirements for Form MMS–124, Sundry Notices and Reports on Wells

AGENCY: Minerals Management Service, Interior.

ACTION: Request for comments on the information collection requirements for Form MMS–124, Sundry Notices and Reports on Wells.

SUMMARY: The Minerals Management Service (MMS), as part of its continuing effort to reduce the paperwork and respondent burden required by the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*), provides the general public, industry, State, and other Federal Agencies an opportunity to comment on current and proposed information collection requirements. The MMS will evaluate all comments and will revise reporting and recordkeeping requirements, as appropriate, to minimize respondent burdens. This notice specifically requests comments regarding the information collection burdens imposed by MMS regulations on lessees who submit Form MMS–124, Sundry Notices and Reports on Wells. This form is submitted to MMS's District Supervisors for evaluation to be approved or disapproved based upon the adequacy of the equipment, materials, and/or procedures which the lessee plans to use during the conduct of drilling production, well-completion, and well-worker operations, including deepening and plugging back and well-abandonment operations including temporary abandonments where the wellbore will be re-entered and completed or permanently abandoned.

This notice also addresses the proposed deletion of Form MMS–332, Notice of Intent/Report of Well Abandonment, in subpart G, § 250.111. The information submitted on Form MMS-332 would be reported on Form MMS–124. The language for § 250.111 would be revised accordingly in a rulemaking.

The information provided on this form is necessary to enable MMS to ensure safety of operations; protection of the human, marine, and coastal environments; conservation of the natural resources in the Outer Continental Shelf (OCS); prevention of waste; and protection of correlative rights with respect to oil and gas and sulphur operations in the OCSA. Comments will be used in the preparation of an information collection application to be submitted to the Office of Management and Budget (OMB) for approval of information collection and recordkeeping requirements.

DATES: Comments may be submitted on or before September 12, 1990.

ADDRESSES: Comments and suggestions on this information collection requirement should be submitted to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 4700; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070–4817, with copies to the Bureau Clearance Officer; Mail Stop 2300; Parkway Atrium; 381 Elden Street; Herndon, Virginia 22070–4817, and to the Office of Management and Budget; Paperwork Reduction Project (1010–0045); Washington, DC 20503, telephone number (202) 395–7340.

FOR FURTHER INFORMATION CONTACT: Copies of the current and proposed information collection requirements and supporting material may be obtained by contacting Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; telephone (703) 787–1600 or (FTS) 393–1600.

SUPPLEMENTARY INFORMATION:

I. Background

The information collected under subpart D, Drilling Operations, § 250.65(a) through (d) and § 250.66(b) and (e); subpart E, Well-Completion Operations, § 250.83(a) and (b); subpart F, Well-Workover Operations, § 250.103(a) through (d); subpart G, Abandonment of Wells, § 250.111(a) and (b); and proposed subpart P, Sulphur Operations, § 250.273(a) through (c), § 250.274(b), and § 250.282(a), (b), and (c)(2), is used by MMS to ascertain the conditions of a drilling site for the purpose of mitigating hazards inherent in drilling operations and to determine whether the drilling operation is being conducted in a safe and environmentally sound manner. The public had an opportunity to comment on the present information collection and reporting requirements for subparts D, E, F, and G during the restructuring and consolidation of the offshore operating regulations under 30 CFR part 250 (51 FR 9316, March 18, 1986). The comments received concerning Form MMS–331 contained in subparts D and F were addressed in MMS's November 1987 request to OMB for approval of the information collection requirements. Comments received concerning Form MMS–331 contained in subpart E were addressed in MMS's October 1987 request to OMB for approval. Comments received concerning Form MMS–332 were addressed in MMS's November 1987 request to OMB for approval. Information collection and reporting requirements for proposed subpart P were published for public comment on June 19, 1989 (54 FR 25758). The comments received concerning Form MMS–331 contained in proposed subpart P were addressed in MMS's May 1989 request to OMB for approval of the information collection requirements. The information collection request for Form MMS–331 (OMB No. 1010–0045) was approved by OMB through April 30, 1991. The information collection request for Form MMS–332 (OMB No. 1010–0077) was approved by OMB through April 30, 1991.

II. Current Actions

After consultation with MMS field personnel and industry representatives, MMS has decided there is a need to update and modernize the current OMB approved reporting forms used for collecting information related to oil and gas and sulphur drilling and production in the OCS. Therefore, MMS proposes to replace the currently approved Form MMS–331, Sundry Notices and Reports on Wells, with a new form, Form MMS–124, Sundry Notices and Reports on Wells. (See Figure 1 at the end of this document for a copy of Form MMS–124.) Further, Form MMS–332, Notice of Intent/Report of Well Abandonment, will be eliminated and that information will be collected on Form MMS–124. Each data element was analyzed on Forms MMS–331 and MMS–332 to determine its use and function. As a result of this analysis, Form MMS–332 and 42 percent of the data elements on Form MMS–331 were eliminated and a new form, Form MMS–124 was developed. However, the reduction in data elements on Form MMS–331 does not decrease the time to complete the new form by 42 percent.

The burden hours for Forms MMS–331 and MMS–332 are currently 2,783 and 825, respectively, which equals 3,608 hours. The new Form MMS–124 is comprised of the 2,783 burden hours from Form MMS–331 plus 825 hours from Form MMS–332. Therefore, the

total burden hours to complete Form MMS–124 is estimated to be 3,608. Further reductions in the number of burden hours are anticipated once the necessary preparatory actions are completed and electronic data transfer initiated.

III. Request for Comments

The sections of subparts D, E, F, G, and proposed P that contain information collection requirements associated with proposed Form MMS–124 are listed below, along with MMS's estimates the number of annual responses for the average lessee, completion time per response, recordkeeping hours per lessee, and total burden hours for each requirement. The total burden hours have been calculated by multiplying the completion time and recordkeeping hours by the number of different lessees (74) operating in all OCS Regions. The MMS requests comments from the oil and gas and sulphur industries and other interested parties on this information collection requirement, including comments regarding the clarity of the information requirements, availability of required information, and frequency of collection.

1. Subpart D, "Section 250.65 Sundry Notices and Reports on Wells

(a) Notices of the lessee's intention to change plans, make changes in major drilling equipment, deepen or plug back a well, or engage in similar activities and subsequent reports pertaining to such operations shall be submitted to the District Supervisor on Form MMS–124, Sundry Notices and Reports on Wells. . . .

(b) The Form MMS–124 submitted shall contain a detailed statement of the proposed work that will materially change from the approved work described in the APD. Information submitted shall include the present status of the well, including the production string or last string of casing, the well depth, the present production zones and productive capability, and all other information specified on Form MMS–124. Within 30 days after completion of the work, a subsequent detailed report of all the work done and the results obtained shall be submitted.

(c) A Form MMS–124 with a plat, certified by a registered land surveyor, shall be filed as soon as the well's final surveyed surface location, water depth, and the rotary kelly bushing elevation have been determined.

(d) Public information copies of Sundry Notices and Reports on Wells shall be submitted in accordance with § 250.17 of this part."

2. Subpart D, "Section 250.66 Well Records

(b) When drilling operations are suspended, or temporarily prohibited * * * the lessee shall, within 30 days after termination of the suspension or temporary prohibition or within 30 days after the completion of any activities related to the suspension or prohibition, transmit to the District Supervisor duplicate copies of the records of all activities related to and conducted during the suspension or temporary prohibition on, or attached to, Form MMS–125, Well Summary Report, or Form MMS–124, as appropriate.

(e) If the drilling unit moves from the wellbore prior to completing the well, the lessee shall submit to the District Supervisor copies of the well records with completed Form MMS–124, within 30 days after moving from the wellbore."

3. Subpart E, "Section 205.83 Approval and Reporting of Well-Completion Operations

(a) No well-completion operation shall begin until the lessee receives written approval from the District Supervisor * * *. If the completion has not been approved or if the completion objective or plans have significantly changed, approval for such operations shall be requested on Form MMS–124, Sundry Notices and Reports on Wells.

(b) The following information shall be submitted with Form MMS–124 (or with Form MMS–123):

(1) A brief description of the well-completion procedures to be followed, a statement of the expected surface pressure, and type and weight of completion fluids;

(2) A schematic drawing of the well showing the proposed producing zone(s) and the subsurface well-completion equipment to be used;

(3) For multiple completions, a partial electric log showing the zones proposed for completion, if logs have not been previously submitted; and

(4) When the well-completion is in a zone known to contain H_2S or a zone where the presence of H_2S is unknown, information pursuant to § 250.67 of this part."

4. Subpart F, "Section 250.103 Approval and reporting for well-workover operations.

(a) No well-workover operation except routine ones, * * * shall begin until the lessee receives written approval from the District Supervisor. Approval for such operations shall be requested on Form MMS–124, Sundry Notices and Reports on Wells.

(b) The following information shall be submitted with Form MMS–124:

(1) A brief description of the well-workover procedures to be followed, a statement of the expected surface pressure, and type and weight of workover fluids;

(2) When changes in existing subsurface equipment are proposed, a schematic drawing of the well showing the zone proposed for workover and the workover equipment to be used; and

(3) Where the well-workover is in a zone known to contain H_2S or a zone where the presence of H_2S is unknown, information pursuant to § 250.67 of this part.

(c) The following additional information shall be submitted with Form MMS–124 if completing to a new zone is proposed:

(1) Reason for abandonment of present producing zone including supportive well test data, and

(2) A statment of anticipated or known pressure data for the new zone.

(d) Within 30 days after completing the well-workover operation, * * * Form MMS–124, Sundry Notices and Reports on Wells, shall be submitted to the District Supervisor, showing the work as performed. * * * "

5. Proposed Subpart G, "Section 250.111 Approvals

The lessee shall not commence abandonment operations without prior approval of the District Supervisor. The lessee shall submit a request on Form MMS–124, Sundry Notices and Reports on Wells, for approval to abandon a well and a subsequent report of abandonment within 30 days from completion of the work in accordance with the following:

(a) Notice of Intent to Abandon Well. A request for approval to abandon a well shall contain the reason for abandonment including supportive well logs and test data, a description and schematic of proposed work including depths, type, location, length of plugs, the plans for mudding, cementing, shooting, testing, casing removal, and other pertinent information.

(b) Subsequent report of abandonment. The subsequent report of abandonment shall include a description of the manner in which the abandonment or plugging work was accomplished, including the nature and quantities of materials used in the plugging, and all information listed in paragraph (a) of this section with a revised schematic * * *."

6. Proposed Subpart P, "Section 250.273 Sundry Notices and Reports on Wells

(a) Notices of the lessee's intention to change plans, make changes in major

drilling equipment, deepen or plug back a well, or engage in similar activities and subsequent reports pertaining to such operations shall be submitted to the District Supervisor on Form MMS–124, Sundry Notices and Reports on Wells * * *.

(b) The Form MMS–124 submittal shall contain a detailed statement of the proposed work that will materially change the approved APD. Information submitted shall include the present state of the well including the production liner and last string of casing, the well depth and production zone, and the well's capability to produce. Within 30 days after completion of the work a subsequent detailed report of all the work done and the results obtained shall be submitted.

(c) Public information copies of Form MMS–124 shall be submitted in accordance with § 250.17 of this part."

7. Proposed Subpart P, "Section 250.274 Well Records

(b) When drilling operations are suspended, or temporarily prohibited, * * * the lessee shall, within 30 days after termination of the suspension or temporary prohibition or within 30 days after the completion of any activities related to the suspension or prohibition, transmit to the District Supervisor duplicate copies of the records of all activities related to and conducted during the suspension or temporary prohibition on, or attached to, Form MMS–125, Well Summary Report, or Form MMS–124, Sundry Notices and Reports on Wells, as appropriate."

8. Proposed Subpart P, "Section 250.282 Approvals and reporting of well-completion and well-workover operations.

(a) No well-completion or well-workover operation shall begin until the lessee receives written approval from the District Superivsor. Approval for such operations shall be requested on Form MMS–124 * * *.

(b) The following information shall be submitted with Form MMS–124 (or with Form MMS–123):

(1) A brief description of the well-completion or well-workover procedures to be followed;

(2) When changes in existing subsurface equipment are proposed, a well schematic drawing showing the equipment; and

(3) Where the well is in zones known to contain H_2S or zones where the presence of H_2S is unknown, a description of the safety precautions to be implemented.

(c)(2) Within 30 days after completing the well-workover operation, * * * Form MMS–124 shall be submitted to the District Supervisor and shall include the results of any well tests and a new schematic if any subsurface equipment has been changed."

Public reporting burden for this collection is estimated to average .60 hour per response. How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate it will require you to complete and submit the required form? The estimated number of responses per respondent is 97.5. There are no recordkeeping hours. Therefore, the estimated total annual information collection burden on lessees for Form MMS–124 is 3,608. (74 respondents × 47.5 responses per respondent = 7,215 annual responses × .5 hours per response = 3,608 total burden hours)

Comments submitted in response to this notice will be summarized and/or included in the information collection application submitted to OMB for approval of this information collection. These comments will also become a matter of public record.

Authority: Sec. 204, Pub. L. 95–372, 92 Stat 629 (43 U.S.C. 1334)

Dated: June 25, 1990.

Ed Cassidy,

Deputy Director, Minerals Management Service.

[FR Doc. 90–18957 Filed 8–10–90; 8:45 am]
BILLING CODE 4310–MR–M

MINERALS MANAGEMENT SERVICE
SUNDRY NOTICES AND REPORTS ON WELL

1. ORIGINAL ___ CORRECTION ___	2. API WELL NUMBER	3. WELL NO.	4. MMS LEASE NUMBER	5. AREA NAME	6. BLOCK NUMBER
7. OPD NO.	8. FIELD NAME		11. OPERATOR NAME AND ADDRESS (SUBMITTING OFFICE)		
9. UNIT NUMBERS	10. MMS OPERATOR NUMBER				

33. ACTIVITY	34. PROPOSED OR COMPLETED WORK			
REQUEST APPROVAL ___	FRACTURE ___	SIDETRACK ___	PLUG BACK ___	CHANGE ZONE ___
SUBSEQUENT REPORT ___	ACIDIZE ___	ARTIFICIAL LIFT ___	PERFORATE ___	OTHER ___
	PULL CASING ___	REPAIR WELL ___	TEMP ABD ___	___
	ALTER CASING ___	DEEPEN ___	PERMANENT ABN ___	___

35. COMPLETION STATUS CODE	18. SURVEYED WATER DEPTH	19. SURVEYED ELEV AT KB	20. RIG NAME	21. RIG TYPE

36. DESCRIBE PROPOSED OR COMPLETED OPERATIONS

WARNING:

27. CONTACT NAME	28. PHONE
29. AUTHORIZING OFFICIAL	30. TITLE
31. AUTHORIZING SIGNATURE	32. DATE

THIS SPACE FOR MMS USE ONLY

APPROVED BY _____ TITLE _____

DATE _____

PAPERWORK REDUCTION ACT STATEMENT

Form MMS-124 (August 1990) (Supersedes Forms MMS-331 and MMS-332 which will not be used)

Figure 1

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[FR Doc. 90–18957 Filed 8–10–90; 8:45 am]
BILLING CODE 4310–MR–C

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency For International Development

DEPARTMENT OF ENERGY

Office of Fossil Energy

U.S. Federal International Energy Trade and Development Opportunities Program

AGENCY: U.S. Agency for International Development; U.S. Trade and Development Program; Office of Fossil Energy of the Department of Energy.

ACTION: Notice of Program Interest.

SUMMARY: The U.S. Agency for International Development (A.I.D.), the U.S. Trade and Development Program (TDP), and the Department of Energy (DOE), through its Office of Fossil Energy, (collectively referred to as "the Agencies") are collaborating in the U.S. Federal International Energy Trade and Development Opportunities Program (FIETOP), designed to (1) foster the development of international energy-related trade opportunities for U.S. industry and (2) support economic development in foreign countries. The Agencies are intersted in receiving applications for funding of feasibility and planning studies concerning specific projects that could result in the applicants' export of substantial amounts of U.S. goods and/or services. Export projects proposed for study must further the purposes of the FIETOP Agencies' programs identified in the **SUPPLEMENTARY INFORMATION** section, below. Applications will be subject to joint evaluation as they are received, and studies may be funded by one or more of the FIETOP Agencies, as appropriate. DOE will act as the administrative coordinator for this joint effort.

DATES: This notice shall be effective August 13, 1990. Proposals submitted at any time prior to the effective date of a notice of cancellation will be considered for funding.

ADDRESSES: An original and one copy of a study proposal may be forwarded to: Sue Ellen Walbridge (FE–4), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The proposal and the outside of the transmittal envelope should be marked "Unsolicited Proposal: FIETOP".

FOR FURTHER INFORMATION CONTACT: Sue Ellen Walbridge (FE–4), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7735.

A publication, "The Guide for Submission of Unsolicited Proposals," containing the format for unsolicited proposals is available from: Cynthia Yee (PR–33), Unsolicited Proposal Coordinator, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–1140.

SUPPLEMENTARY INFORMATION: To reduce duplication, the Agencies, through FIETOP, are combining their efforts to identify and encourage the development of international energy-related trade opportunities for U.S. Industry and support foreign economic development within their spheres of program interest. FIETOP will be administratively coordinated by DOE. To be considered for FIETOP funding, applicants are encouraged to submit, at the above address, unsolicited proposals to study the feasibility of and plan for projects that could potentially result in their export of significant amounts of U.S. goods and services. For the purposes of FIETOP, "goods and services" includes advanced technologies and domestically-produced energy resources, such as coal. The requirements of the individual Agency programs participating in FIETOP are set out below. Proposals that meet the individual or combined requirements of these programs will be eligible for individual or joint Agency funding. Proposals will be jointly reviewed and evaluated by the Agencies as they are received. The Departments of State and Commerce will act as consultants during the review process.

Proposal Evaluation

In evaluating proposals, attention will be given to all relevant technical, economic, political, and financial factors bearing upon the proposed study and the export project that it explores. Proposals must, therefore, include:

—A description of the applicant
* Company name and address
* Identity of ownership
* Nature of applicant's normal course of business
* Annual volume of total domestic and international sales
* A description of applicant's experience with the product
* A summary of applicant's experience in U.S. export trade
* A summary of applicant's experience in exports to the host country

—A description of the proposed study
* Scope of study
* Cost, including applicant and Agency shares
* Schedule, indicating dates for commencement and completion

—A description of the potential export project
* Financial information
* Capital requirements
* Proposed debt and equity structure
* Source of equity financing
* Identification of sources of debt financing
* Content of project equipment and services manufactured or produced in the U.S. or provided by U.S. firms
* Evidence of host country (government and private) interest in potential project
* Identification of the product or service, together with a statement of its current commercial availability, or, if a technology, the current status of its development
* A description of the Export Plan the applicant proposes to develop as part of the proposed study

Following initial review, the submission of additional information may be requested, as deemed necessary by the Agencies, for the making of an informed decision concerning the Agencies, for the making of an informed decision concerning the eligibility or suitability of a proposal to receive FIETOP funding.

Criteria for Eligibility Within Specific Agency Programs Participating in FIETOP

A.I.D.

Under authority of the Foreign Assistance Act of 1961, as implemented by 22 CFR part 200 and 48 FAR 700, A.I.D. may provide funding for studies that propose—

(a) To be costshared with the Agency;

(b) To explore and develop a plan for a project:
* To export U.S. goods and services in connection with the generation, transmission, and/or distribution of energy or power; the operation or maintenance of energy/power facilities; or related activities located in an A.I.D.-assisted country,
* The implementation of which would provide net, additional energy or power for environmentally sustainable economic and social development in the host country, and
* For which the potential for implementation can be demonstrated by the accompaniment of a letter of intent or similar documentation from interested parties.

Within these criteria, special consideration will be given to proposals involving projects that are, in A.I.D.'s determination (1) innovative; (2) involve electric power; and (3) have the potential for contributing to policy and institutional changes favorable to environmental improvement and/or the development of private power or privatization.

T.D.P.

Under the authority of the Foreign Assistance Act of 1961, TDP may provide funding through its Investor Assistance Program for studies that—

(a) Are proposed to be conducted by a U.S. company of demonstrated financial ability for its own expansion project in which it is prepared to invest equity, and

(b) Would involve a project that holds the potential for export of a significant amount of U.S. goods and/or services.

Prior to the commencement of any study selected for funding, applicants will be given TDP's commitment to reimburse 50% of the costs upon completion. The funding is provided on a no-interest loan basis, and the applicant would be expected to repay the loan in a lump sum four years from date of completion of the study.

DOE

Under authority of the Federal Nonnuclear Energy Research and Development Act, implemented by 10 CFR part 600, DOE, through its Coal and Technology Export Assistance Program, may fund proposed coal-related export studies that would—

(a) Be costshared with the Agency, dollar for dollar;

(b) Explore the potential export of an advanced coal technology, with or without the accompanying coal resource;

(c) Be acceptable to the host country;

(d) Have a high probability of achieving demonstration or commercialization of an advanced coal technology, as determined by DOE, based upon the nature of the facilities or techniques proposed for use and the qualifications of the proposed project directors or other critical personnel; and

(e) Involve unique or innovative ideas, methods, or approaches not eligible for DOE funding under any pending or planned solicitation or not appropriate, in DOE's determination, as the subject of a competitive solicitation.

Dated: August 7, 1990.

Robert H. Gentile,

Assistant Secretary, Fossil Energy, U.S. Department of Energy.

James B. Sullivan,

Director, Office of Energy, Bureau for Science and Technology, U.S. Agency for International Development.

Priscilla Rabb-Ayres,

Director, U.S. Trade and Development Program.

[FR Doc. 90–18975 Filed 8–10–90; 8:45 am]

BILLING CODE 6450–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–183 (Sub-No. 2X)]

Exemption; Union Railroad Co., Abandonment Exemption; in Allegheny County, PA

Applicant has filed a notice of expiration under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon its 2.2-mile line of railroad, the Braddock Branch, extending northwestward from the conneection with its yard track within the Edgar Thompson Works of the USS Division of USX Corporation, in Braddock, to its termination point, in Rankin, Allegheny County, PA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commisison or with any U.S. District Court or has been decided in favor of the compalinant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on September 12, 1990 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an offer of financial assistance uner 49 CFR 1152.276(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by August 23, 1990.[3] Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by September 4, 1990, with:

Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commision should be sent to applicant's representative:

Robert N. Gentile, Bessemer and Lake Erie Railroad Company, 135 Jamison Lane, Pittsburgh, PA 15146.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by August 17, 1990. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275–7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: July 31, 1990.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 90–18547 Filed 8–10–90; 8:45 am]

BILLING CODE 7035–01–M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on enviromental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C. 2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C. 2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; Associates Four

In accordance with Departmental policy, set out in 28 CFR 50.7, notice is hereby given that on July 24, 1990, a proposed consent decree in settlement of *United States* v. *Associates Four,* Civil Action No. 90–565–DAE, was lodged with the United States District Court for the District of Hawaii. The Complaint sought penalties and injunctive relief against Associates Four for violations of the asbestos NESHAPS regulations regarding notification, handling and disposal of friable asbestos-containing material during the renovation of a facility at Sea Life Park, Waimanalo, Hawaii. The proposed settlement imposes a civil penalty of $25,168.00 for the violations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and National Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to *United States* v. *Associates Four*, D.J. Ref. No. 90–5–2–1–1401.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Hawaii, Room C–242, PJKK Federal Building, 300 Ala Moana Blvd., Honolulu, HI 96850, at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20044, and at the offices of the Environmental Protection Agency, Region 9, 1235 Mission Street, San Francisco, CA. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and National Resources Division of the Departement of Justice.

In requesting a copy, please enclose a check in the amount of $2.20 (10 cents per page reproduction cost) payable to the "Treasurer of the United States."

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 90–18880 Filed 8–10–90; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Degree; Burrows, et al.

In accordance with Department policy notice is hereby given that on July 25, 1990, a proposed consent decree in *United States* v. *Burrows, et al.,* Civil Action No. K 88–128–CA8, was lodged with the United States District Court for the Western District of Michigan. The proposed consent decree resolves the judicial enforcement action brought by the United States against five of the eight defendants pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"). The settling defendants are Du-Wel Products, Inc., Du-Wel Hartford, Inc., Whirlpool Corporation, Duane Funk and Evelyn Funk.

The proposed consent decree relates to the cleanup of a the Burrows Sanitary Landfill (the "Burrows Site") located in Hartford, Michigan. The proposed consent decree requires the settling defendants to pay $1,300,000 to the EPA Hazardous Substance Superfund for past costs incurred by the United States at the Burrows Site. The proposed consent decree also requires Du-Wel Products, Inc. and Du-Wel Hartford, Inc. to complete the selected remedy for the Burrows Site by designing and constructing a ground water extraction and treatment system at the Burrows Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Burrows, et al.,* D.J. Ref. 90–11–2–223.

The proposed consent decree may be examined at the office of the United States Attorney, 399 Federal Building, Grand Rapids, Michigan 49503 and at the Office of Regional Counsel, United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois.

Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice, room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Environment and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $4.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Richard B. Stewart,

Assistant Attorney General, Environmental and Natural Resources Division.

[FR Doc. 90–18879 Filed 8–10–90; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree; Rhone-Poulenc Basic Chemicals Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 1, 1990 a proposed Consent Decree in *United States* v. *Rhone-Poulenc Basic Chemicals, Inc.,* Civil Action No. CV–89–17–BU (D. Mont.) was lodged with the United States District Court for the District of Montana. The Consent Decree concerns alleged violations of the Clean Air Act (hereinafter, the "Act"), 42 U.S.C. 7413(b), for injunctive relief and civil penalties for violations by the defendant, Rhone-Poulenc Chemicals Co. ("Rhone-Poulenc"), of the requirements of the Montana State Implementation Plan promulgated under section 110(a) of the Act, 42 U.S.C. 7410(a). The violations concerned emissions from two electric arc furnaces at Rhone-Poulenc's elemental phosphorous production plant in Silver Bow County, Montana.

The Consent Decree requires Rhone-Poulenc to pay a civil penalty of $100,000.00 and to make modifications to the plant in order to bring the plant into compliance with the Act. Specifically, the Consent Decree requires Rhone-Poulenc to install two new scrubbers to control emissions, and to install two new continuous emission monitoring systems. In addition, Rhone-Poulenc has agreed to implement an employee training program and an operation and maintenance plan. The Consent Decree provides a detailed schedule for completion of these projects, and provides for stipulated penalties for non-compliance.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Rhone-Poulenc Basic Chemicals, Inc.* (DOJ No. 90–5–2–1–1321).

The proposed Consent Decree may be examined at the office of the United States Attorney for the District of

Montana, 167 Federal Building, 400 N. Main, Butte, Montana 59701 and the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405. The Decree may also be examined at the Environmental Enforcement Section Document Center, 1333 F Street, NW., suite 600, Washington, DC 20004, 202–347–7829. A copy of the proposed consent decree may be obtained in person or by mail from the Document Center. In requesting a copy of the proposed consent decree, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to Consent Decree Library.

Richard B. Stewart,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 90–18878 Filed 8–10–90; 8:45 am]

BILLING CODE 4410–01–M

National Institute of Corrections

Announcement of Grants, Services, and Training

The National Institute of Corrections, U.S. Department of Justice, has just released two documents that announce its programming for the coming fiscal year, which begins October 1, 1990. The Institute's *Annual Program Plan for Fiscal Year 1991* describes the services, activities, and programs that will be funded. The *Schedule of Training and Services for Fiscal Year 1991* describes the seminars and other activities to be conducted by the Institute's National Academy of Corrections and contains application forms and procedures.

To obtain copies of these documents, contact the National Institute of Corrections, 320 First Street NW., Washington, DC 20534 or the NIC National Academy of Corrections, 1790 30th Street, Suite 430, Boulder, CO 80301.

M. Wayne Huggins,

Director.

[FR Doc. 90–18941 Filed 8–10–90; 8:45 am]

BILLING CODE 4410–36–M

Office of Juvenile Justice and Delinquency Prevention

Boot Camps for Juvenile Offenders; Constructive Intervention and Early Support

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of change in the submission date for applications and establishment of the date for the pre-application workshop.

This notice is published to extend the date for submission of applications under the "Boot Camps for Juvenile Offenders; Constructive Intervention and Early Support" published in the **Federal Register** on July 12, 1990 (55 FR 28718), and to notify all potential applicants of the date for the pre-application workshop.

The application submission date is extended to October 30, 1990.

The pre-application workshop will be held on August 15, 1990, in Washington, DC. All interested parties should call Douglas C. Dodge on (202) 307–5914 to obtain the time and place.

James C. Howell,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 90–18972 Filed 8–10–90; 8:45 am]

BILLING CODE 4410–19–M

National Institute of Justice

Boot Camps for Juvenile Offenders; Change in Application Date and Workshop Date for Constructive Intervention and Early Support Implementation Evaluation Solicitation

AGENCY: Office of Justice Programs, National Institute of Justice.

ACTION: Notice of change in the submission date for applications and establishment of the date for the preapplication workshop.

This notice is published to extend the date for submission of applications under the "Boot Camps for Juvenile Offenders: Constructive Intervention and Early Support" Implementation Evaluation Solicitation published in the **Federal Register** on July 12, 1990 (55 FR 28724), and to notify all potential applicants of the date for the preapplication workshop.

The application submission date is extended to October 30, 1990.

The pre-application workshop will be held on August 15, 1990, in Washington, DC. All interested parties should call Douglas C. Dodge at (202) 307–5914 to obtain the time and place.

Paul Cascarano,

Acting Director, National Institute of Justice.

[FR Doc. 90–18973 Filed 8–10–90; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (90–64)]

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, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Ad Hoc Review Team on High Temperature Materials and Structures.

DATES: September 18, 1990, 8 a.m. to 5 p.m.; and September 19, 1990, 8 a.m. to 2 p.m. (to be held at Langley Research Center); and September 20, 1990, 8 a.m. to 5 p.m. (to be held at Lewis Research Center).

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Building 1229, Room 124, Hampton, VA 23665; and National Aeronautics and Space Administration, Lewis Research Center, Building 49, Room 111, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Venneri, Office of Aeronautics, Exploration and Technology, National Aeronautics and Space Administration, Washington, DC 20546, 202/453–2760.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee (ACC) was established to provide overall guidance to the Office of Aeronautics, Exploration and Technology (OAET) on aeronautics research and technology activities. Special ad hoc review teams are formed to address specific topics. The Ad Hoc Review Team on High Temperature Materials and Structures, chaired by Professor Edgar A. Starke, Jr., is composed of nine members.

The meeting will be open to the public up to the seating capacity of the room (approximately 20 persons including the team members and other participants).

TYPE OF MEETING: Open.

AGENDA

September 18, 1990

8 a.m.—Welcome.

8:15 a.m.—Opening Remarks.

9 a.m.—High Temperature Materials and Structures Overview.

10 a.m.—Review of High Temperature Airframe Materials Research.

1 p.m.—Review of High Temperature Airframe Structures Research.
3:30 p.m.—Group Discussion.
5 p.m.—Adjourn.
September 19, 1990
8 a.m.—Review of interdisciplinary Research.
9 a.m.—Facility Tour and Demonstration.
1 p.m.—Group Discussion.
2 p.m.—Adjourn.
September 20, 1990
8 a.m.—Welcome.
8:30 a.m.—Review of High Temperature Propulsion Materials Research.
10:30 a.m.—Review of High Temperature Propulsion Structures Research.
1:30 p.m.—Facility Tour and Demonstration.
3 p.m.—Group Discussion.
5 p.m.—Adjourn.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90–18943 Filed 8–10–90; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting; Dance Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Dance Advisory Panel (General Services to the Field Section) to the National Council on the Arts will be held on August 28, 1990, from 9 a.m.–9 p.m. and August 29 from 9 a.m.–6 p.m. in room M07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 29 from 4 p.m.–6 p.m. The topic will be policy discussion.

The remaining portion of this meeting on August 28 from 9 a.m.–9 p.m. and August 29 from 9 a.m.–4 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of August 7, 1990, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending a meeting will be permitted to participate in the panel's discussion at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting in compliance with the order.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–18929 Filed 8–10–90; 8:45 am]

BILLING CODE 7537–01–M

Meeting; Inter-Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Presenting Organizations Section) to the National Council on the Arts will be held on August 20, 1990, from 9 a.m.–7 p.m., August 21 from 9 a.m.–8 p.m., August 22–24 from 9 a.m.–7 p.m., and on August 25 from 9 a.m.–5 p.m. in room M07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on August 25 from 9 a.m.–1 p.m. The topic will be policy issues.

The remaining portion of this meeting on August 20 from 9 a.m.–7 p.m., on August 21 from 9 a.m.–8 p.m., on August 22–24 from 9 a.m.–7 p.m., and on August 25 from 1 p.m.–5 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965. In accordance with the determination of the Chairman of August 7, 1990, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending a meeting will be permitted to participate in the panel's discussion at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting in compliance with the order.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: August 7, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–18930 Filed 8–10–90; 8:45 am]

BILLING CODE 7537–01–M

Meeting; Music Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music advisory Panel (Multi-Music Presenters Section) to the National Council on the Arts will be held on August 22–23, 1990, from 9 a.m.–5:30 p.m. and on August 24 from 9 a.m.–5 p.m. in room M14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW, Washignton, DC 20506.

A portion of this meeting will be open to the public on August 24 from 3 p.m.–5 p.m. The topic will be guidelines revision and policy discussion.

The remaining portions of this meeting on August 22–23 from 9 a.m.–5:30 p.m. and on August 24 from 9 a.m.–3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on application for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of

August 7, 1990, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending a meeting will be permitted to participate in the panel's discussion at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting in compliance with the order.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: August 7, 1990.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90–18931 Filed 8–10–90; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: General Assignment.

3. The form number if applicable: NRC Form 450.

4. How often the collection is required: Once during the closeout process.

5. Who will be required or asked to report: Contractors, Grantees, and Cooperators.

6. An estimate of the number of responses: 120.

7. An estimate of the total number of hours needed to complete the requirement or request: 240 hours (2 hours per response)

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstact: During the contract closeout process, the NRC requires the contractor to execute a General Assignment that gives the government all rights, titles, and interest to refunds arising out of the contract performance.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer:

Ronald Minsk, Paperwork Reduction Project (3150–0114), Office of Information and Regulatory Affairs, NEOB–3019, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Office is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland this 2d day of August 1990.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Designated Senior Official For Information Resources Management.

[FR Doc. 90–18961 Filed 810–90; 8:45 am]

BILLING CODE 7590–01–M

Abnormal Occurrence Report (Section 208 Report), Submittal to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG–0090, Vol. 13, No. 1).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and by-product material are abnormal occurrences.

The report to Congress is for the first calendar quarter of 1990. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described.

For this reporting period, there were 10 abnormal occurrences. One involved the loss of vital ac power with a subsequent reactor coolant system heat-up at the Vogtle Unit 1 nuclear power plant during shutdown. The event was investigated by an NRC Incident Investigation Team (IIT). The other nine abnormal occurrences involved nuclear material licenses and are described in detail under other NRC-issued licenses: eight of these involved medical therapy misadministrations; the other involved the receipt of an unshielded radioactive source at Amersham Corporation in Burlington, Massachusetts. The latter event was also investigated by an NR IIT. No abnormal occurrences were reported by the Agreement States.

The report also contains information that updates a previously reported abnormal occurrence.

A copy of the report is available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG–0090, Vol. 13, No. 1 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082. A year's subscription to the NUREG–0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, Springfield, VA 22161.

Dated at Rockville, MD this 7th day of August 1990.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 90–18960 Filed 8–10–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50-213]

Connecticut Yankee Atomic Power Co.; Notice of 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-61 issued to Connecticut Yankee Atomic Power Company (CYAPCO, the licensee) for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would reword Technical Specifications (TS) section 3.4.6.2.f to better define which sections of piping need to be included under surveillance 4.4.6.2.1.g. Surveillance requirement 4.4.6.2.1.g has been changed to remove the surveillance requirement for portions of the high pressure injection safety injection (HPSI) system, charging and residual heat removal (RHR) suction piping. In addition, TS 4.0.4 has been determined to be not applicable for entry into Mode 4 for this surveillance requirement. As a clarification, the note at the end of surveillance requirement 4.4.6.2.1.h has been modified to explicitly state that it is only applicable to surveillance item "h." The Bases section for "Low Temperature Overpressurization Protection Systems" would be changed to describe the requirement to lock out one centrifugal charging pump and both HPSI pumps in Mode 4, 5, and 6 with the reactor vessel head installed.

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 request for amendment 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; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In accordance with 10 CFR 50.92, CYAPCO has reviewed the proposed Technical Specification and concluded that they do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed change to section 3.4.6.2.f is a rewording of the specification to better define which sections of piping need to be included under Surveillance 4.4.6.2.1.g. The proposed changes would remove the requirement to perform a monthly pressure test on portions of HPSI, Charging and RHR suction piping which would be used for or pressurized during containment recirculation. Performance of this test during normal operation for certain sections of piping, is either not possible due to physical or operational constraints (Charging and RHR suction piping) or would the removal of both trains of safety related equipment from service during testing (HPSI suction piping). The proposed change would be in keeping with safety and the desire to maintain high ECCS availability. These sections of piping will be tested pursuant to Technical Specification 4.0.5 and the Haddam Neck Inservice Test (IST) program. In addition, Technical Specifications require that this piping be monitored for leakage at least once per twelve hours, and provides assurance that there is no gross leakage associated with this piping between pressure tests. Therefore, there are no failure modes associated with the proposed change nor any design basis accidents impacted by the change.

The change to Section 4.4.6.2.1.g also permits entry into Mode 4 prior to performing the leakage surveillance. Specification 4.0.4 requires that all applicable surveillances be performed prior to entry into the plant mode for which and LCO is applicable (i.e., in this case, Mode 4). However, Specification 3.5.2.a requires that both HPSI pumps be inoperable whenever LTOP is required (Mode 4 with RCS temperature less than or equal to 315 °F and Modes 5 or 6 with the RCS not vented, per Specification 3.4.9.3). Because of these conflicting requirements, the plant would be required to be placed in Mode 5 with the RCS vented to perform the HSPI discharge piping leakage surveillance prior to the startup from a shutdown (Modes 4, 5, or 6) if Surveillance 4.4.6.2.1.g has not been performed in the previous 31 days. This change provides a window at the upper end of Mode 4 (RCS temperature between 315 °F and 350 °F) to perform HPSI discharge piping leakage testing. There are no technical specification requirements for HPSI pump operability or inoperability while operating in this temperature band.

The note at the end of Surveillance 4.4.6.2.1.h, which permits transition into Modes 3 and 4 prior to completion of surveillances, has also been modified to state that this note applies to item h only and not the entire specification. The applicability of this note has resulted in some confusion. This change has no negative safety significance since it is editorial and eliminates the potential misapplication of a specification.

The change to Section 3/4.4.9—Low Temperature Overpressurization Protection System Bases has no safety impact since it is being made to be consistent with Technical Specification 3.5.2.a which requires that one centrifugal charging and no HPSI pumps shall be operable whenever the LTOP system is required.

For these reasons, the proposed changes to not increase the probability or consequences of any accident previously analyzed.

2. Create the possibility of a new or different kind of accident from that previously analyzed.

The rewording of Section 3.4.6.2.f allows it to be consistent with surveillance 4.4.6.2.1.g by better defining the portions of piping tested.

The exception to Specification 4.0.4 in surveillance 4.4.6.2.1.g alleviates a conflict with specification 3.5.2.a.

The change to the note in surveillance 4.4.6.2.1.h clarifies that the note only pertains to item h. This will mitigate the confusion over application of the exception.

The requirement to lock out one centrifugal charging pump and both HPSI pumps is being made for the purpose of making the discussion in Bases 3/4.4.9 consistent with Technical Specification 3.5.2.

There are no changes in the way the plant is operated or in the operation of equipment credited in the design basis accidents. Therefore, the potential for an unanalyzed accident is not created.

3. Involve a significant reduction in the margin of safety.

The intent of the Technical Specifications for all changes remains unchanged. The change to Section 4.4.6.2.1.g prevents the removal of portions of the ECCS during plant operation. This proposed change maintains high ECCS availability. The change to Specification 4.4.6.2.1.g and permits entry into MODE 4 prior to performing the leakage surveillance. This prevents the plant from going to MODE 5 to perform the surveillance. The changes to he Bases are editorial in nature. The proposed changes will not impact any protective boundary and do not affect the consequences of any

accident previously analyzed. Therefore, there is no reduction in the margin of safety.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

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 Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 12, 1990, 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. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. 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 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. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. 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 request for amendment 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 a 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, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L 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 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz (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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 5, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the Local Public Document Room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 3rd day of August, 1990.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–18962 Filed 8–10–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–423]

Northeast Nuclear Energy Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, and issued to Northeast Nuclear Energy Company, et al (the licensee), for operation of the Millstone Nuclear Power Station, Unit 3, located at the licensee's site in New London County, Connecticut.

The proposed amendment would modify Technical Specification (TS) 3/4.8.1, "A.C. Sources", to include provisions to eliminate the fast, cold, repetitive starting of the diesel generators. Additional changes in TS 3/4.8.1 and its Bases have been proposed regarding instrumentation and test standards. In addition, TS 3/4.8.2, "D.C. Sources" would be changed to clarify the remedial measure for inoperability of the required full capacity battery chargers.

Prior to 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.

By September 12, 1990, 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 request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. 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. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with resepct 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.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. Washington, DC 20555, 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 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to

John F. Stolz: 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, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Harford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amendment 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 the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 28, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room, the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 6th day of August, 1990.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–18963 Filed 8–10–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–311]

Public Service Electric and Gas Co.; Correction

55 FR 31919 published on August 6, 1990, contained a Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing" related to the Salem Generating Station, Unit 2. This notice corrects the date for requesting a hearing from August 21, 1990, published in the **Federal Register** on August 6, 1990 (55 FR 31919), to September 5, 1990.

Dated at Rockville, Maryland, this 7th day of August 1990.

For the Nuclear Regulatory Commission.

Richard J. Clark,

Acting Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–18964 Filed 8–10–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–280]

Virginia Electric and Power Co (Surry Power Station, Unit 1); Exemption

I

The Virginia Electric and Power Company (VEPCO, the licensee) is the holder of Operating License No. DPR–32, which authorizes operation of Surry Power Station Unit 1. The operating license provides, among other things, that the Surry Power Station, Unit 1 is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized water reactor at the licensee's site in Surry County, Virginia.

II

The Code of Federal Regulations, 10 CFR 50.54(o), specifies that primary reactor containments for water-cooled power reactors shall comply with appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors." Section III.A.6(b) of appendix J of 10 CFR part 50 states the following:

> If two consecutive periodic Type A tests fail to meet the applicable acceptance criteria in III.A.5(b), notwithstanding the periodic retest schedule of III.D., a Type A test shall be performed at each plant shutdown for refueling or approximately every 18 months, whichever occurs first, until two consecutive type A tests meet the acceptance criteria in III.A.5(b), after which time the retest schedule specified in III.D. may be resumed.

In 1983 and 1986, the licensee conducted Type A tests at Surry Unit 1. These tests were considered to be failures due to leakage penalty additions from type C (local leakage rate testing of containment isolation valves) testing. In each case the leakage was associated with penetrations/valves in systems that are normally filled with water under post-accident conditions and/or the containment sump isolation valves. The licensee indicated that the containment sump isolation valves have been replaced and they are no longer a continuing source of containment leakage, and that the last two Type A tests have demonstrated that containment integrity has not significantly degraded over the operating cycle. By letter dated April 5, 1990, the licensee requested a one-time exemption from the schedular requirements of paragraph III.A.6(b) so that the normal retest schedule can be resumed in accordance with section III.D.

III

Surry Unit 1 failed the "as found" Type A tests that were conducted in 1983 and 1986, due to leakage rate additions from Type C testing. In each case the leakage was associated with either the normal containment sump isolation valves (TV–DA–100 A&B), or with valves in systems that are normally filled with water and operating under post-accident conditions. If these leakage additions had not been necessary, the plant would not have required an accelerated test schedule delineated in section III.A.6(b). In order to avoid addition of a leakage penalty and an accelerated test schedule, the licensee elected to demonstrate to the staff's satisfaction that:

1. The corrective actions taken for the normal containment sump isolation valves for Unit 1 have eliminated the chronic leakage problem, and

2. For Surry Units 1 and 2, the design of the water-filled penetrations is such that it precludes leakage of containment atmosphere through the penetrations during an accident, thus making it unnecessary to add the associated Type C leakage rates to Type A leakage rates.

The licensee addressed the normal containment sump isolation valves in its letter dated April 5, 1990. The issue of water-filled penetrations was addressed in submittals dated February 29, 1988, and August 15, 1988, pertaining to an exemption for Surry Unit 2. Section 6.2.2.2. of the Surry Updated Final Safety Analysis Report also contains pertinent information. The staff reviewed these submittals and concluded that the subject water-filled containment penetrations are sealed with water to the extent that they need not be vented or drained during Type A tests, and the associated Type C leakage rates need not be added to type A leakage rate. The staff further concluded that the original leakage path of concern that caused the recent Type A "as found" failures (the normal containment sump isolation valves) has been corrected since these valves no longer exhibit excessive leakage. The staff's detailed evaluation of the containment sump isolation

valves for Unit 1 is contained in a Safety Evaluation dated August 7, 1990. The staff's detailed evaluation of the water-filled penetration issue is provided in a Safety Evaluation dated November 21, 1988.

Therefore, on the basis of the licensee's corrective actions to reduce the "as found" containment leakage, the staff concludes that a return to the normal Type A test schedule of section III.D. of appendix J to 10 CFR part 50 is justified.

By letter dated April 5, 1990, the licensee also submitted information to identify the special circumstances for granting this exemption for Surry Unit 1 pursuant to 10 CFR 50.12. The licensee stated that the purpose of Type A testing is to measure and ensure that the leakage through the primary reactor containment does not exceed the maximum allowable leakage. It also provides assurance that periodic surveillance, maintenance and repairs are made to systems or components penetrating the containment. The licensee has replaced the valves which were a continuing source of containment leakage. The licensee also stated that it has met the intent of the regulations in establishing containment integrity, and maintaining that integrity over the operating cycle. Therefore, the licensee believes that this exemption should be granted pursuant to 10 CFR 50.12(a)(2)(ii) and (v), in that application of the regulation in this particular instance is not necessary to achieve the underlying purpose of the rule, which is to measure and ensure that leakage through the primary containment does not exceed the allowable leakage rate at any time during the operating cycle; and, that the exemption would provide only temporary relief from the applicable requirement and the licensee has made a good faith effort to comply with the regulation. This one-time exemption will enable Surry Unit 1 to resume the retest schedule specified in section III.D. of 10 CFR part 50, appendix J and therefore, prevent unnecessary pressurization of the containment to design basis pressure. The staff agrees that the source of leakage which caused the prior failures has been corrected and an additional Type A test at this time is not required to achieve the underlying purpose of the rule.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission has further determined that special circumstances, as set forth in 10 CFR 50.12(a)(2)(ii) and (v) are present, justifying the exemption; namely that application of the regulation in this particular circumstance is not necessary to achieve the underlying purpose of the rule and the exemption is for a one-time relief only. Accordingly, the Commission hereby grants an exemption to section III.A.6(b) of appendix J to 10 CFR part 50 to allow the licensee to resume the Type A retest schedule of section III.D. of appendix J for Surry Unit 1. This exemption does not apply if the next test is deemed a failure by the NRC acceptance criteria. Such a failure would constitute to consecutive failures and section III.A.6(b) would again apply.

Pursuant to 10 CFR 51.32, the staff has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (55 FR 31911, August 6, 1990.).

A copy of the licensee's request for exemption dated April 5, 1990 is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 7th day of Aug. 1990.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 90–18765 Filed 8–10–90; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended August 3, 1990

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47106
Date filed: August 2, 1990
Parties: Members of the International Air Transport Association
Subject: TC2 Resolutions R–1 to R–14
Proposed Effective Date: October 1, 1990.

Phyllis T. Kaylor,

Chief, Division of Documentary Services.

[FR Doc. 90–18951 Filed 8–10–90; 8:45 am]

BILLING CODE 4910–62–M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During Week Ended August 3, 1990

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47102
Date filed: August 1, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 29, 1990
Description: Application of General Air Cargo, G.A.C., C.A., pursuant to Section 402 of the Act and subpart Q of the Regulations, requests a foreign air carrier permit to engage in Non-Scheduled foreign air transportation of property from a point or points in Venezuela, on the one hand, to Miami, Florida, on the other.

Docket Number: 47109
Date filed: August 3, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 31, 1990
Description: Application of Caraven, S.A., pursuant to Section 402 of the Act and subpart Q of the Regulations applies for issuance of a foreign air carrier permit authorizing it to perform non-scheduled and charter all-cargo service between points in Venezuela and points in the United States.

Docket Number: 42997
Date filed: September 25, 1986
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 17, 1990
Description: Amendment No. 1 to the application of Florida West Gateway, Inc. d/b/a Florida West Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations to request authority to serve the following additional countries; Paraguay, Grenada, Barbados, Chile, Brazil, Bolivia, Netherlands Antilles, Uruguay, Surinam, Guyana, Guiana and Argentina.

Docket Number: 42997

Date filed: February 28, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 17, 1990
Description: Amendment No. 4 to the application of Florida West Gateway, Inc. d/b/a Florida West Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations requests authority to serve Nicaragua. Requested authority to serve Venezuela, Brazil, Guiana, and Argentina withdrawn by Amendment No. 2, previously noticed.

Docket Number: 42997
Date filed: April 10, 1990
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 17, 1990
Description: Amendment No. 5 to application of Florida West Gateway, Inc. d/b/a Florida West Airlines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations requests authority to serve Antigua, St. Kitts, Dominica, St. Lucia, French Guiana, and Peru.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 90-18952 Filed 8-10-90; 8:45 am]
BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

[Docket No. 90-01-VE-NO2]

Notice of Final Determination That Certain Vehicles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Final determinations that certain vehicles are eligible for importation.

SUMMARY: This notice sets forth final determinations by the National Highway Traffic Safety Administration (NHTSA) that certain motor vehicles that are certified as complying with the Canadian Motor Vehicle Safety Standards but which do not comply with the Federal Motor Vehicle Safety Standards are nevertheless eligible for importation into the United States because they are:

(1) Substantially similar to motor vehicles which were originally manufactured to conform to the Federal standards and to be imported into and sold in the United States, and

(2) Capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

DATES: The final determinations are effective August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(A)(i) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) (the Act), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined, either pursuant to a petition or on its own initiative, that the motor vehicle

> is substantially similar to a motor vehicle originally manufactured for importation and sale into the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

(section 108(c)(3)(A)(i)(I) or that,

> where there is no substantially similar United States motor vehicle, the agency has determined that the "safety features of the motor vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary determines to be adequate * * *

(section 108(c)(3)(A)(i)(II).

As NHTSA noted in the preamble to the final rule (54 FR 49003; September 29, 1989) establishing 49 CFR part 593, regarding determinations that a vehicle not originally manufactured to conform to the Federal motor vehicle safety standards is eligible for importation, the phrases "substantially similar" and "capable of being readily modified" are not defined by the 1988 amendments to the Act. For a full discussion of NHTSA's interpretations of the quoted phrases, the reader is referred to the agency's notice of tentative determinations of vehicle eligibility, published on April 25, 1990 (55 FR 17518).

The notice of tentative determinations of eligibility covered two categories of motor vehicles that have not been certified by their original manufacturers under section 114 of the Act. The first of these categories was comprised of passenger cars of 1989 and earlier model years, and all other vehicle types, that were certified by their original manufacturers as complying with all applicable Canadian motor vehicle safety standards, but not all applicable Federal motor vehicle safety standards, and that are substantially similar to vehicles that, having been originally manufactured for sale in the United States, are certified as complying with all Federal safety standards. The second category was comprised of certain nonconforming passenger cars manufactured in Great Britain, Germany, Italy, and Japan, which are substantially similar to conforming counterparts manufactured for sale in the United States and which have been the subject of sufficient demonstrations of conformance since 1987 to justify release of the performance bond under which they entered the United States.

There were six commenters. Substantive questions were raised with respect to the second category of vehicles which the agency is presently considering. However, none of the commenters specifically addressed the tentative determinations regarding Canadian vehicles. There being no issues regarding these vehicles, in an effort to expedite commerce between the United States and Canada, the agency deems it in the public interest to proceed to a final determination on Canadian motor vehicles at this time, instead of deferring a determination until the issues raised by the commenters affecting the second category of vehicles is resolved.

Substantially Similar Vehicles Certified as Meeting Canadian Standards

Because of the comparatively recent enactment of the eligibility legislation, and of the importance of educating the public to its terms, the agency here repeats the salient points of its discussion of Canadian vehicles that appeared in the notice of tentative determination.

Two commenters during the course of rulemaking to issue regulations (Part 593) to implement the legislation under which eligibility determinations are made advanced their views that vehicles manufactured in Canada and certified to conform with the Canadian Motor Vehicle Safety Standards (CMVSS) deserved to be treated differently than vehicles manufactured to conform to European or Japanese standards, alleging that the CMVSS and Federal motor vehicle safety standards (FMVSS) are virtually identical.

NHTSA replied that the 1988 amendments to the Act appeared to require identical treatment for the importation of all vehicles that were not certified by their original manufacturers as meeting all applicable Federal motor vehicle safety standards. However, it promised to examine the question of whether the path to importation might be smoothed for Canadian-certified

vehicles by a determination on the agency's own initiative, allowing importation of Canadian-certified vehicles without the necessity for some person to petition the agency for such a determination.

NHTSA examined the CMVSS and found that, in most essential respects, they are identical to the FMVSS. To be sure, there are certain differences. Two examples will suffice. Under CMVSS No. 101, *Controls and Displays*, speedometers/odometers must be marked in kilometers, whereas those complying with FMVSS No. 101, *Controls and Displays*, need only to be marked in miles per hour. Headlamps meeting ECE requirements are permissible under CMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment*, but they are not permissible under FMVSS No. 108. As NHTSA noted earlier, where a vehicle already conforms to a safety standard, the question of its capability of modification is not reached. Further, because of the near identicality of the Canadian and U.S. standards, such modifications as may be required are comparatively minor in nature, and hence such vehicles are capable of being readily modified.

There is, however, one important exception. CMVSS No. 208, *Occupant Restraint Systems*, does not require a motor vehicle to be equipped with an automatic restraint, although it allows it to be. Therefore, this Canadian standard lacks the mandatory requirements that became effective for a percentage of passenger cars manufactured on or after September 1, 1986, and increased in each of the three subsequent years, culminating in the requirement for installation of automatic restraints in all passenger manufactured on and after September 1, 1989. Heretofore, NHTSA has not required any individual importer of only a single 1987–89 Canadian car to equip it with an automatic restraint system. With respect to the two importers of Canadian cars for resale during this period, it has required them, as "manufacturers" under the National Traffic and Motor Vehicle Safety Act, to equip a percentage of their vehicles with automatic restraints.

NHTSA has not compared the similarities and differences between 1989 and 1990 automatic restraint systems in U.S.-certified models. Since the agency does not know whether replacement systems could be installed in 1990 model Canadian cars, it is not able to present to make a determination of ready capability of modification. However, in the absence of a determination by NHTSA on its own initiative, a manufacturer or Registered Importer may nevertheless petition NHTSA for a determination. Since the notice of tentative determination, NHTSA has learned that some 1990 model Mercedes-Benz passenger cars certified for sale in Canada have as standard equipment automatic restraint systems. It is unclear at this point whether the automatic restraint systems are intended to comply with the requirements of FMVSS No. 208. As it is not NHTSA's intent to exclude a Canadian vehicle manufactured on or after September 1, 1989, which is equipped with an automatic restraint system as original equipment that complies with the requirements of FMVSS No. 208, such a passenger car so equipped has been added to the list of motor vehicles eligible for entry under this present final determination.

The agency's tentative determination regarding motor vehicles manufactured or sold in Canada covered two types of vehicles:

—Those substantially similar to vehicles originally manufactured for importation and sale in the United States (such as Canadian-manufactured Volvos with U.S.-certified counterparts), and

—Those substantially similar to vehicles manufactured in the United States for sale in the United States (such as makes and models manufactured in both the U.S. and Canada by Ford, General Motors, and Chrysler)

The second group of Canadian vehicles posed a classification problem for the agency. The statute specifies that, in order for the agency to permit the importation of a noncomplying motor vehicle, it must have determined either that the noncomplying motor vehicle is substantially similar to a motor vehicle "originally manufactured for importation into and sale in the United States, certified under section 114", or "where there is no substantially similar United States motor vehicle," that the "safety features of the motor vehicle comply with or are capable of being modified to comply with all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as the Secretary determines to be adequate * * *"

A number of the models manufactured in Canada for sale there appear to be substantially similar to motor vehicles manufactured in Canada and imported into the United States for sale. Last year, according to the 1989 Automative News Data Book, these included the Eagle Premier, Ford Tempo and Crown Victoria, Mercury Topaz and Grand Marquis, Chevrolet Lumina and Celebrity, Oldsmobile Cutlass Ciera, Buick Regal, Honda Civic, Toyota Corolla, and Volvo 740.

However, NHTSA is also aware that there are other Canadian vehicles not sold in the U.S. whose "substantially similar" counterpart is manufactured in the U.S. (and hence not manufactured for importation into the U.S.), such as the Canadian Pontiac Tempest and the corresponding Chevrolet Corsica. These vehicles do not readily fall into either the section 108(c)(3)(A)(i)(I) category of vehicles or the section 108(c)(3)(A)(i)(II) category of vehicles. These Canadian vehicles are not substantially similar to vehicles manufactured in compliance with the Federal safety standards and *imported* into the U.S. because the versions sold in the U.S. are *manufactured* in the U.S. At the same time, the premise of section 108(c)(3)(A)(i)(II), i.e., that there are no substantially similar United States motor vehicles, is not true, at least in the broad sense of there being vehicles, regardless of their place of manufacture, which are substantially similar to those Canadian vehicles and which do comply with the Federal safety standards.

The agency believes that it is most suitable to regard these Canadian vehicles as falling within the section 108(c)(3)(A)(i)(I) category of vehicles. These Canadian vehicles are no less similar to complying vehicles for sale in the United States than the Canadian produced Volvos are to the Volvos produced in Sweden for sale in the United States. The agency sees no policy reason for applying the language of section 108(c)(3)(A)(i) so strictly as to exclude those Canadian vehicles lacking a complying imported counterpart. There is no compelling safety reason to do so; vehicles certified as meeting the CMVSS are in almost all respects identical to those certified under section 114.

Fees

Section 108(c)(3)(A)(iii) requires registered importers to pay such fees as NHTSA reasonably establishes to cover its cost in making determinations under subsection (i)(I) on its own initiative that motor vehicles are eligible for importation. In implementation of this requirement, NHTSA has specified $1,560 as the fee payable by a registered importer for a determination on the agency's own initiative that a motor vehicle is substantially similar and readily capable of conformance (49 CFR 594.8(a)). Such a fee is payable by the first person importing a vehicle under the determination (594.8(b)).

One commenter to the docket, Import Trade Services U.S.A., Inc., was under the impression that this fee would be required for the importaion of each Canadian vehicle covered by the determination, and that the total accumulation of fees might approach $750,000, far exceeding the costs of the agency in making such a determination. The agency wishes to clarify that the fee of $1,560 is intended to be inclusive of the determination regarding all Canadian cars, and will be payable only once, and only by the first importer of any Canadian vehicle covered by this determination.

Final Determination

Accordingly, in consideration of thea above, the National Highway Traffic Safety Administration hereby determines that all passenger cars which were manufactured between January 1, 1968, and August 31, 1989, and which bear as a model year designation any year from 1968 through 1989, all passenger cars manufactured on or after September 1, 1989, which are equipped with an automatic restraint system by its original manufacturer which complies with FMVSS No. 208, and all other types of motor vehicles manufactured from January 1, 1968 on, which are certified by their original manufacturer as complying with all applicable Canadian motor vehicle safety standards, and which are of the same make, model, and model year of any passenger car, multipurpose passenger vehicle, truck, bus, trailer, and motorcycle that was originally manufactured for importation into and sale in the United States, or originally manufactured in the United States for sale there, and that bore a certification of compliance with all applicable Federal motor vehicle safety standards, are substantially similar to those vehicles originally manufactured in compliance with the FMVSS and are capable of being readily modified to conform to all applicable FMVSS.

The Office of Vehicle Safety Compliance requests that a registered importer use the eligibility code VSA–1 on NHTSA importation form HS–7 when entering any motor vehicle that is covered by this determination.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and 1397 (c)(3)(C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 6, 1990.

Jeffrey R. Miller,

Deputy Administrator.

[FR Doc. 90–18888 Filed 8–7–90; 4:16 pm]

BILLING CODE 4910–59–M

Urban Mass Transportation Administration

UMTA Sections 3 and 9 Grant Obligations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice.

SUMMARY: The Department of Transportation and Related Agencies Appropriations Act, 1990, Public Law 101–164, signed into law by President George Bush on November 21, 1989, contained a provision requiring the Urban Mass Transportation Administration to publish an announcement in the **Federal Register** every 30 days of grants obligated pursuant to section 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: Janet Lynn Sahaj, Chief, Resource Management Division, Office of Capital and Formula Assistance, Department of Transportation, Urban Mass Transportation Administration, Office of Grants Management, 400 Seventh Street SW., room 9301, Washington, DC 20590, (202) 366–2053.

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 the statute UMTA reports the following grant information:

Transit property	Grant No.	Grant amount	Obligation date
Santa Clara County Transit District, Santa Clara, CA	CA–03–0256–00	$404,652	07/13/90
Orange-Seminole-Osceola Transportation Authority, Orlando, FL	FL–03–0104–00	1,950,000	07/10/90
Pioneer Valley Transit Authority, Springfield-Chic-Holy, MA–CT	MA–03–0158–00	439,998	06/05/90
Montachusett Regional Transit Authority, Fitchburg-Leominster, MA	MA–03–0161–00	406,248	06/05/90
Maine Department of Transportation, Augusta, ME	ME–03–0026–00	999,999	07/19/90
City of Osage Beach, Osage Beach, MO	MO–03–0030–00	165,000	06/04/90
Niagara Frontier Transportation Authority, Buffalo, NY	NY–03–0219–00	1,999,998	07/23/90
Niagara Frontier Transportation Authority, Buffalo, NY	NY–03–0236–01	7,999,998	07/23/90
New York Metropolitan Transportation Authority, New York, NY-Northeastern NJ	NY–03–0237–00	67,837,401	06/04/90
New York Metropolitan Transportation Authority, New York, NY-Northeastern NJ	NY–03–0260–00	108,742,800	06/04/90
Dutchess County, Poughkeepsie, NY	NY–03–0258–00	4,900,500	07/23/90
Capital District Transportation Authority, Albany, NY	NY–03–0255–00	375,000	07/23/90
County of Chemung, Elmira, NY	NY–03–0252–00	492,801	07/23/90
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH–03–0104–00	19,614,756	07/12/90
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH–03–0105–00	8,400,000	07/12/90
Tri-County Metropolitan Transportation District of Oregon, Portland, OR–WA	OR–03–0037–00	2,499,999	06/06/90
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA–NJ	PA–03–0209–01	52,500,000	06/22/90
State Department of Highways and Public Transportation, Bastrop County, TX	TX–03–0133–00	363,507	06/27/90
Greater Roanoke Transit Company, Roanoke, VA	VA–03–0044–00	373,023	07/03/90
West Virginia Department of Transportation, WV	WV–03–0020–00	8,574,012	07/03/90
Birmingham-Jefferson County Transit Authority, Birmingham, AL	AL–90–X031–02	40,000	06/29/90
Mobile Transit Authority, Mobile, AL	AL–90–X041–01	17,956	06/29/90
City of Gadsen, Gadsen, AL	AL–90–X045–01	54,400	06/29/90
Sunline Transit Agency, Palm Springs, CA	CA–90–X361–00	665,453	06/29/90
Stockton Metropolitan Transit District, Stockton, CA	CA–90–X364–00	830,200	07/06/90

Transit property	Grant No.	Grant amount	Obligation date
Alameda-Contra Costa Transit District, San Francisco-Oakland, CA	CA-90-X369-00	14,677,483	06/29/90
Southern California Rapid Transit District, Los Angeles-Long Beach, CA	CA-90-X377-00	53,101,860	06/29/90
City of Vallejo, San Francisco-Oakland, CA	CA-90-X380-00	325,892	06/29/90
Orange County Transit District, Los Angeles-Long Beach, CA	CA-90-X384-00	19,064,609	06/29/90
City of Gardena, Los Angeles-Long Beach, CA	CA-90-X386-00	533,440	06/01/90
Golden Empire Transit District, Bakersfield, CA	CA-90-X390-00	1,289,978	06/29/90
Kern County Council of Governments, Bakersfield, CA	CA-90-X393-00	120,300	06/28/90
City of Montebello, Los Angeles-Long Beach, CA	CA-90-X394-00	1,650,200	06/29/90
City of Merced Merced, CA	CA-90-X395-00	348,979	07/06/90
North San Diego County Transit Development Board, San Diego, CA	CA-90-X397-00	2,291,510	07/05/90
City of Torrence, Los Angeles-Long Beach, CA	CA-90-X398-00	496,000	06/29/90
Santa Cruz Metropolitan Transit District, Santa Cruz, CA	CA-90-X399-00	654,186	07/05/90
City of Chico—Chico Area Transit, Chico, CA	CA-90-X400-00	241,644	06/29/90
County of Los Angeles, Department of Public Works, Los Angeles, CA	CA-90-X402-00	599,176	06/29/90
City of La Mirada, Los Angeles-Long Beach, CA	CA-90-X403-00	98,000	06/29/90
City of Greeley, Greeley, CO	CO-90-X054-00	496,637	06/29/90
City of Fort Collins, Fort Collins, CO	CO-90-X055-00	716,695	06/29/90
Greater Hartford Transit District, Hartford, CT	CT-90-X156-01	379,188	06/29/90
Greater Waterbury Transit District, Waterbury, CT	CT-90-X166-00	214,000	06/29/90
Greater New Haven Transit District, New Haven, CT	CT-90-X167-00	1,084,464	06/29/90
Southwestern Regional Planning Commission, Norwalk, CT	CT-90-X168-00	52,500	06/29/90
Washington Metropolitan Area Transit Authority, Washington, DC—MD—VA	DC-90-X014-01	29,120,000	06/29/90
City of Gainesville, Gainesville, FL	FL-90-X113-01	42,124	06/29/90
Okaloosa County Board of County Commissioners, Fort Walton Beach, FL	FL-90-X136-01	9,209	06/29/90
Space Coast Area Transit, Melbourne-Cocoa, FL	FL-90-X147-00	1,354,694	06/29/90
Lee County Transit System, Fort Myers, FL	FL-90-X149-00	918,295	06/29/90
Palm Beach Co Transit Authority, West Palm Beach, FL	FL-90-X150-00	2,300,420	06/29/90
Escambia Co. Bd of Commissioners, Pensacola, FL	FL-90-X151-00	1,536,759	06/29/90
Tri-County Commuter Rail Authority, West Palm Beach, FL	FL-90-X152-00	100,000	06/29/90
City of Augusta, Augusta, GA-SC	GA-90-X056-00	1,054,568	06/29/90
Consolidated Government of Columbus, Columbus, GA-AL	GA-90-X057-00	3,235,137	06/29/90
City and County of Honolulu, Honolulu, HI	HI-90-X007-00	5,567,829	06/29/90
Keyline Bus System, Dubuque, IA-IL	IA-90-X112-00	54,300	06/29/90
Cedar Rapids Transit Department, Cedar Rapids, IA	IA-90-X113-00	771,587	06/29/90
Sioux City Transit System, Sioux City, IA-NE-SD	IA-90-X114-00	639,316	06/29/90
City of Bettendorf, Davenport-Rock Isl-MO IA-IL	IA-90-X115-00	157,663	06/29/90
Des Moines Metropolitan Transit Authority, Des Moines, IA	IA-90-X116-00	115,440	06/29/90
Chicago Transit Authority, Chicago, IL-Northwestern IN	IL-90-X140-00	15,587,599	06/29/90
Suburban Bus Division—Regional Transportation Authority, Chicago, IL-Northwestern IN	IL-90-X162-00	15,132,147	06/29/90
Greater Peoria Mass Transit District, Peoria, IL	IL-90-X163-00	2,881,575	06/29/90
Northwestern Indiana Regional Planning Commission, Northwestern IN	IN-90-X137-00	1,041,500	06/29/90
Northern Indiana Commuter Transportation District, Northwestern IN	IN-90-X139-00	3,656,986	06/29/90
Topeka Metropolitan Transit Authority, Topeka, KS	KS-90-X044-00	1,223,150	06/29/90
Wichita-Sedgwick County Metro Area Planning Department, Topeka, KS	KS-90-X045-00	96,144	06/29/90
City of Henderson, Evansville, IN-KY	KY-90-X048-00	167,130	06/29/90
City of Owensboro, Owensboro, KY	KY-90-X049-00	789,624	06/29/90
Regional Transit Authority, New Orleans, LA	LA-90-X103-00	6,989,793	06/29/90
City of Monroe, Monroe, LA	LA-90-X105-00	875,295	06/29/90
Rapides Area Planning Commission, Alexandria, LA	LA-90-X106-00	48,000	06/29/90
City of Lake Charles, Lake Charles, LA	LA-90-X109-00	1,043,200	06/29/90
Worcester Regional Transit Authority, Worcester, MA	MA-90-X101-00	175,000	06/29/90
Merrimack Valley Regional Transit Authority, Lawrence-Haverhill, MA-NH	MA-90-X105-01	876,000	06/29/90
Greater Attleboror-Taunton Regional Transit Authority, Providence-Paw-War, MA-RI	MA-90-X108-01	220,000	06/29/90
State Railroad Administration, Baltimore, MD	MD-90-X042-00	7,036,955	06/28/90
Maine Department of Transportation, ME	ME-90-X048-02	67,244	06/29/90
Ann Arbor Transportation Authority, Ann Arbor, MI	MI-90-X120-00	3,309,937	06/29/90
Muskegon Area Transit System, Muskegon, MI	MI-90-X131-00	628,994	06/29/90
City of Niles, South Bend, IN-MI	MI-90-X132-00	216,860	06/29/90
Flint Mass Transportation Authority, Flint, MI	MI-90-X133-00	1,953,851	06/29/90
City of Saginaw, Saginaw, MI	MI-90-X134-00	1,012,554	06/29/90
City of Rochester, Rochester, MN	MN-90-X048-00	541,975	06/29/90
Kansas City Area Transportation Authority, Kansas City, MO-KS	MO-90-X062-01	76,640	06/27/90
Kansas City Area Transportation Authority, Kansas City, MO-KS	MO-90-X068-00	585,204	06/29/90
Mid-America Regional Council, Kansas City, MO-KS	MO-90-X069-00	135,000	06/29/90
Mississippi Coast Transportation Authority, Biloxi-Gulfport, MS	MS-90-X033-00	1,100,000	06/29/90
Great Falls Transit District, Great Falls, MT	MT-90-X027-00	470,899	06/29/90
City of Asheville, Asheville, NC	NC-90-X102-01	41,500	06/28/90
City of High Point, High Point, NC	NC-90-X110-00	442,062	06/28/90
City of Hickory, Hickory, NC	NC-90-X112-00	234,106	06/28/90
Manchester Transit Authority, Manchester, NH	NH-90-X022-00	619,456	06/29/90
New Jersey Transit Corporation, Northeastern NJ	NJ-90-X029-01	70,788,183	06/27/90
City of Las Cruces, Las Cruces, NM	NM-90-X027-00	375,310	06/29/90

Transit property	Grant No.	Grant amount	Obligation date
City of Santa Fe, Santa Fe, NM	NM-90-X028-00	281,702	06/29/90
Regional Transportation Commission of Clark County, Las Vegas, NV	NV-90-X014-00	1,668,550	06/29/90
New York City Department of Transportation, New York, NY-Northeastern NJ	NY-90-X180-00	16,698,678	06/29/90
Putnam County, New York, NY-Northeastern NJ	NY-90-X181-00	142,831	06/29/90
Chemung County, Elmira, NY	NY-90-X182-00	404,432	06/29/90
Central New York Regional Transportation Authority, Syracuse, NY	NY-90-X183-00	3,240,035	06/29/90
Onondaga County Civic Center, Syracuse, NY	NY-90-X184-00	186,430	06/29/90
Dutchess County, Poughkeepsie, NY	NY-90-X186-00	450,000	06/29/90
Westchester County Department of Transportation, New York, NY-Northeastern, NJ	NY-90-X187-00	3,008,390	06/29/90
Western Reserve Transit Authority, Youngstown-Warren, OH	OH-90-X131-00	1,900,605	06/08/90
Central Ohio Transit Authority, Columbus, OH	OH-90-X133-00	672,000	06/29/90
Greater Cleveland Regional Transit Authority, Cleveland, OH	OH-90-X134-00	16,021,621	06/29/90
Central Oklahoma Transportation and Parking Authority, Oklahoma City, OK	OK-90-X034-00	5,232,441	06/29/90
City of Williamsport, Bureau of Transportation, Williamsport, PA	PA-90-X186-00	368,301	06/28/90
Beaver County Transit Authority, Pittsburgh, PA	PA-90-X187-00	262,000	06/28/90
Berks Area Reading Transportation Authority, Reading, PA	PA-90-X188-00	1,283,208	06/28/90
Lehigh and Northampton Transportation Authority, Allentown-Beth-East, PA-NJ	PA-90-X189-00	2,644,440	06/29/90
Transportation and Motor Buses for Public Use Authority, Altoona., PA	PA-90-X190-00	795,535	06/28/90
Southeastern Pennsylvania Transportation Authority, Philadelphia, PA-NJ	PA-90-X191-00	31,123,264	06/29/90
Red Rose Transit Authority, Lancaster, PA	PA-90-X192-00	960,682	06/29/90
City of Sharon, Sharon, OH-PA	PA-90-X193-00	292,024	06/28/90
Mid Mon Valley Transit Authority, Monessen, PA	PA-90-X194-00	329,916	06/28/90
Erie Metropolitan Transit Authority, Erie, PA	PA-90-X195-00	758,644	06/29/90
Municipality of Caguas, Caguas, PR	PR-90-X043-00	464,000	06/29/90
Rhode Island Department of Transportation, Providence-Paw-War, MA-RI	RI-90-X014-02	19,020	06/29/90
Greenville Transit Authority, Greenville, SC	SC-90-X021-05	229,500	06/29/90
Pee Dee Regional Transit Authority, Florence, SC	SC-90-X033-00	272,928	06/29/90
Greenville Transit Authority, Greenville, SC	SC-90-X035-00	1,348,528	06/29/90
Aiken County, Augusta, GA-SC	SC-90-X036-00	119,550	06/29/90
Central Midlands Regional Planning Council, Columbia, SC	SC-90-X037-00	1,200,631	06/29/90
City of Sioux Falls (Transit), Sioux Falls, SD	SD-90-X016-01	343,308	06/29/90
Jackson Transit Authority, Jackson, TN	TN-90-X078-01	42,220	06/28/90
City of Clarksville, Clarksville, TN-KY	TN-90-X083-01	340,000	06/28/90
City of Johnson City, Johnson City, TN	TN-90-X084-00	332,000	06/28/90
Jackson Transit Authority, Jackson, TN	TN-90-X085-00	285,500	06/29/90
Corpus Christi Regional Transit Authority, Corpus Christi, TX	TX-90-X171-00	1,203,450	06/29/90
City of Wichita Falls, Wichita Falls, TX	TX-90-X179-00	175,999	06/29/90
City of Amarillo, Amarillo, TX	TX-90-X182-00	1,196,800	06/29/90
City of Galveston, Galveston, TX	TX-90-X186-00	3,110,990	06/29/90
City of Mesquite, Dallas-Ft. Worth, TX	TX-90-X187-00	12,000	06/29/90
City of Grand Prairie, Dallas-Ft. Worth, TX	TX-90-X188-00	61,327	06/29/90
City of San Angelo, San Angelo, TX	TX-90-X190-00	1,148,815	06/29/90
Utah Transit Authority, Salt Lake City, UT	UT-90-X014-01	1,249,772	06/29/90
Peninsula Transportation District Commission, Newport News-Hampton, VA	VA-90-X075-00	450,329	06/29/90
Jaunt, Inc., Charlottesville, VA	VA-90-X076-00	94,220	06/28/90
Municipality of Metropolitan Seattle, Seattle-Everett, WA	WA-90-X107-00	18,975,311	07/11/90
City of Beloit, Beloit, WI-IL	WI-90-X125-00	374,480	06/29/90
City of Waukesha, Milwaukee, WI	WI-90-X126-00	224,175	06/29/90
City of Kenosha, Kenosha, WI	WI-90-X127-00	934,994	06/29/90
City of Sheboygan, Sheboygan, WI	WI-90-X126-00	526,831	06/29/90
Milwaukee County Transit System, Milwaukee, WI	WI-90-X129-00	6,686,191	06/29/90
Waukesha County, Milwaukee, WI	WI-90-X130-00	289,117	06/29/90
City of Chippewa Falls, Eau Claire, WI	WI-90-X131-00	72,881	06/29/90
City of Wausau, Wausau, WI	WI-90-X132-00	1,178,107	06/29/90
Mid-Ohio Valley Transit Authority, Parkersburg, OH-VW	WV-90-X037-00	415,012	06/28/90

Date issued: August 1, 1990.

Brian W. Clymer,

Administrator.

[FR Doc. 90-18891 Filed 8-10-90; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

August 3, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0159.

Form Number: CF 343.

Type of Review: Extension.

Title: Application for Transfer of Federally Seized Property.

Description: The information collection is necessary when a state or local law enforcement agency, which participated in a law enforcement action leading to a seizure or forfeiture of a tangible asset, wants to

obtain possession of the seized property; or where a participating law enforcement agency petitions for a share of potentially forfeitable property.
Respondent: State or local governments, Federal agencies or employees.
Estimated Number of Respondents: 400.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 400 hours.
Clearance Officer: Dennis Dore (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 12301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports, Management Officer.

[FR Doc. 90–18889 Filed 8–10–90; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

August 6, 1990.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB Reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB number: 1515–0163.
Form number: None.
Type of review: Reinstatement.
Title: Country of Origin Marking Requirements for Containers or Holders.
Description: Holders of containers imported into the United States destined for an ultimate purchaser must be marked with the English name of the country of origin at the time of the importation into Customs territory.
Respondents: Businesses or other for-profit.
Estimated number of respondents: 250.
Estimated burden hours per response: 2 minutes.
Frequency of response: On occasion.
Estimated total reporting burden: 41 hours.
Clearance Officer: Dennis Dore (202) 535–9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–18872 Filed 8–10–90; 8:45 am]

BILLING CODE 4820–02–M

Public Information Collection Requirements Submitted to OMB for Review

August 6, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Evaluation of Secure Card.
Description: The data collected will be used to evaluate the electronic benefit tranfer program under development by the Department of the Treasury and the perceptions and preferences of this system as compared to paper checks for benefit recipients and the Federal Government.
Respondents: Individuals or households, Non-profit institutions.
Estimated Number of Respondents: 72.
Estimated burden hours per response: 11 minutes.
Frequency of responses: Other (One-time only).
Estimated total reporting burden: 14 hours.
Clearance Officer: Jacqueline R. Perry, (301) 436–6453, Financial Management Service, room B–101, 3700 East West Highway, Hyattsville, MD 20782.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–18873 Filed 8–10–90; 8:45 am]

BILLING CODE 4810–35–M

Public Information Collection Requirements Submitted to OMB for Review

Date: August 7, 1990.

The Department of Treasury has submitted the following public information collection requirment(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Publication 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Comptroller of the Currency

OMB number: 1557–0095.
Form number: MSD, MSDW, MSD–4, and MSD–5.
Type of review: Extension.
Title. Registration and Withdrawal of Municipal Bond Securities Brokers, Dealers and Associated Individuals.
Description: The Government Securities Act of 1986 requires all financial institutions that act as municipal securities brokers and dealers and associated individuals, to notify designated Federal regulatory agencies of their broker/dealer activities.
Respondents: Businesses or other for-profit.
Estimated number of response: 10,300.
Estimated burden hours per respondent: 44 minutes.
Frequency of response: On occasion.
Estimated total recordkeeping burden: 3,273 hours.
OMB number: 1557–0184.
Form number: G–Fin, G–Fin–W, G–Fin–4, G–Fin–5.
Type of review: Extension.
Title: Registration and Withdrawal of Government Securities Brokers and Dealers.
Description: The Government Securities Act of 1986 requires all financial institutions that act as government securities brokers and dealers to

notify designated Federal regulatory agencies of their broker/dealer activities, unless exempted from the notice requirements by Treasury Department regulations. These forms are developed to meet the requirements of the act.

Respondents: Businesses of other for-profit.

Estimated number of responses: 250.

Estimated burden hours per respondents: 1 hour.

Frequency of response: on occasion.

Estimated total recordkeeping burden: 250 hours.

Clearance Officer: John Ference (202) 447–1177, Comptroller of the Currency 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 90–18944 Filed 8–10–90; 8:45 am]

BILLING CODE 4810–33–M

Public Information Collection Requirements Submitted to OMB for Review

August 7, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3137 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: 1545–0119.

Form number: IRS Form 1099–R.

Type of review: Revision.

Title: Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

Description: Form 1099–R is used to report distributions from pensions, annuities, profit-sharing or retirement plans, IRAs, and the surrender of insurance contracts. This information is used by IRS to verify that income has been properly reported by the recipient.

Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.

Estimated number of respondents: 24,000.

Estimated burden hours per respondent: 20 minutes.

Frequency of response: Annually.

Estimated total reporting burden: 15,180,000 hours.

OMB number: 1545–0140.

Form number: IRS Forms 2210 and 2210F.

Type of review: Revisions.

Title: Underpayment of Estimated Tax by Individuals and Fiduciaries (Short Method and Regular Method) (2210); and Underpayment of Estimated Tax by Farmers and Fisherman (2210F).

Description: Internal Revenue Code section 6654 imposes a penalty for failure to pay estimated tax. This form is used by taxpayers to determine whether they are subject to the penalty and to compute the penalty if it applies. The Service uses this information to determine whether the taxpayer is subject to the penalty, and to verify the penalty amount.

Respondents: Individuals or households, Farms, Businesses or other for-profit.

Estimated number of respondents/recordkeepers: 900,000.

Estimated burden hours per respondent/recordkeeper:

	Short method form 2210	Regular method form 2210	Form 2210F
Recordkeeping.	7 min.	13 min.	33 min.
Learning about the law or the form.	4 min.	34 min.	5 min.
Preparing the form.	28 min.	1 hr; 26 min..	18 min.
Copying, assembling, and sending the form to IRS.	20 min.	31 min.	14 min.

Frequency of responses: Annually.

Estimated total reporting/recordkeeping burden: 1,854,000 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 90–18945 Filed 8–10–90; 8:45 am]

BILLING CODE 4830–01–M

Office of Thrift Supervision

Amigo Federal Savings and Loan Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Amigo Federal Savings and Loan Association, Brownsville, Texas, on August 3, 1990.

Dated: August 7, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–18862 Filed 8–10–90; 8:45 am]

BILLING CODE 6720–01–M

Appointment of Conservator; Hometown Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Hometown Federal Savings Association, Winfield, Illinois, on August 3, 1990.

Dated: August 7, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–18863 Filed 8–10–90; 8:45 am]

BILLING CODE 6720–01–M

Appointment of Conservator; Tennessee Federal Savings Bank

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Tennessee Federal Savings Bank, Cookeville, Tennessee, on August 3, 1990.

Dated: August 7, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–18864 Filed 8–10–90; 8:45 am]

BILLING CODE 6720–01–M

Amigo Savings and Loan Association; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Amigo Savings and Loan Association, Brownsville, Texas, Docket No. 7648, on August 3, 1990.

Dated: August 7, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–18865 Filed 8–8–90; 8:45 am]

BILLING CODE 6720–01–M

Notice of Appointment of Receiver; Hometown Savings and Loan Association, F.A.

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Hometown Savings and Loan Association, F.A., Winfield, Illinois, on August 3, 1990.

Dated: August 7, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–18866 Filed 8–10–90; 8:45 am]

BILLING CODE 6720–01–M

Notice of Appointment of Receiver; The Tennessee Savings Bank

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(C) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for The Tennessee Savings Bank, Cookeville, Tennessee, on Agust 3, 1990.

Dated: August 7, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90–18867 Filed 8–10–90; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 156
Monday, August 13, 1990

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).

BOARD FOR INTERNATIONAL BROADCASTING

TIME AND DATE: 9 a.m., September 17, 1990.

PLACE: RFE/RL Inc., Oettingenstrasse 67, Am Englishchen Garten, 800 Munich 22, Germany.

STATUS: Closed, pursuant to 5 U.S.C. 552b(c) (1) and (9) and 22 CFR 1302.4 (a) and (h).

MATTERS TO BE CONSIDERED: Matters concerning the broad foreign policy objectives of the United States Government as they relate to international shortwave radio broadcasting into Eastern Europe and the Soviet Union.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Mark G. Pomar, Deputy Executive Director, Board for International Broadcasting, Suite 400, 1201 Connecticut Avenue NW., Washington, DC 20036. (Telephone 202–254–8040)

Mark G. Pomar,
Deputy Executive Director.
[FR Doc. 90–19017 Filed 8–9–90; 9:53 am]
BILLING CODE 6155–01–M

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Commission Meeting, Thursday, August 16, 1990, 10:00 a.m.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

MATTERS TO BE CONSIDERED:

Open to the Public

1. *PPPA Protocol Revisions.*—The Commission will consider a draft proposal to amend the current Poison Prevention Packaging Act protocol for testing child-resistant packaging with children and adults.

2. *Crib Toy Petition, HP 89–1.*—The Commission will consider petition HP 89–1 from the Consumer Federation of America and the Attorney General of New York which requests that the Commission issue a rule banning certain crib gyms, crib mobiles, and crib toys.

Part Open/Part Closed

3. *Sleepwear Enforcement Status.*—The staff will brief the Commission on the compliance enforcement program for children's sleepwear. The briefing will highlight the continuing problem of distinguishing between children's sleepwear and other garments such as daywear, beachwear, and underwear.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,
Deputy Secretary.
[FR Doc. 90–19104 Filed 8–9–90; 2:29 pm]
BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:13 p.m. on Wednesday, August 8, 1990, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider (1) matters relating to the probable failure of an insured bank; and (2) personnel matters.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), Vice Chairperson Andrew C. Hove, Jr., and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street NW., Washington, DC.

Dated: August 9, 1990.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 90–19105 Filed 8–9–90; 2:43 pm]
BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Possible Change in the Subject Matter of a Previously Announced Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that, at its open meeting scheduled for 2:00 p.m. on Tuesday, August 14, 1990, the Board of Directors of the Federal Deposit Insurance Corporation may consider, in addition to the items already scheduled for consideration at that meeting, (1) the issue of whether the assessment to be paid by Bank Insurance Fund ("BIF") members during calendar year 1991 should be increased and, if so, at what rate, and (2) the assessment rates to be paid by Savings Association Insurance Fund ("SAIF") members in 1991 and later years.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: August 9, 1990.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 90–19106 Filed 8–9–90; 2:43 pm]
BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Friday, August 17, 1990.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments,

and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 9, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90–19116 Filed 8–9–90; 3:13 pm]

BILLING CODE 6219–01–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Board of Directors of the Resolution Trust Corporation will meet in open session on Tuesday, August 14, 1990 following the Federal Deposit Insurance Corporation open session beginning at 2 p.m. to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors request that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Discussion Agenda:

A. *Memorandum re:* Proposed revisions to Resolution Trust Corporation Statement of Policy regarding Representations and Warranties Offered in Mortgage Loan and Servicing Rights Sales.

B. *Memorandum re:* Proposed Amendments to the Bylaws of the Resolution Trust Corporation.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Resolution Trust Corporation, at (202) 416–7282.

Dated: August 8, 1990.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 90–19018 Filed 8–9–90; 9:54 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of August 13, 1990.

A closed meeting will be held on Tuesday, August 14, 1990, at 2:30 p.m. An open meeting will be held on Wednesday, August 15, 1990, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeing.

Commissioner Lochner, as duty officer voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 14, 1990, at 2:30 p.m., will be:

Institution of injunctive actions.
Formal orders of investigation.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Wednesday, August 15, 1990, at 10:00 a.m., will be:

Consideration of whether to propose for public comment amendments to Rule 6c–9 under the Investment Company Act of 1940. The amendments would extend the rule's exemption from registration under that Act to foreign banks and their finance subsidiaries offering or selling their equity securities, and to foreign insurance companies and their finance subsidiaries and certain foreign bank and insurance holding companies offering or selling their securities generally, and would make certain other changes in Rule 6c–9 and Form N–6C9, the form for appointment of a United States agent for service of process by entities relying on Rule 6c–9. Consideration will also be given to the statement of an interpretive position concerning the status of United States branches and agencies of foreign banks under the Investment Company Act of 1940. For further information, please contact Ann M. Glickman at (202) 272–3042.

At times, changes in commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jonathan Gottlieb at (202) 272–2300.

Jonathan G. Katz,

Secretary.

August 8, 1990.

[FR Doc. 90–19121 Field 8–9–90; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [55 FR 32559 August 9, 1990].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Monday, August 6, 1990.

CHANGE IN THE MEETING: Addition meeting.

The following item will be considered at a closed meeting on Wednesday, August 8, 1990, at 3:00 p.m.:

Settlement of injunctive action.

Commissioner Lochner, as duty officer, voted to consider the item listed for the closed meeting in closed sesssion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Steve Young at (202) 272–2300.

Jonathan G. Katz,

Secretary.

August 8, 1990.

[FR Doc. 90–19120 Filed 8–9–90; 3:53 pm]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1432]

TIME AND DATE: 10 a.m. (EDT), August 15, 1990.

PLACE: TVA Chattanooga Office Complex Auditorium, 1101 Market Street, Chattanooga, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on July 18, 1990.

Action Items

Old Business

1. Final Rate Review

New Business

A—Budget and Financing

A1. Payments to the U.S. Treasury from Net Power Proceeds.

A2. Purchase of Certain TVA Bonds Issued to the Public.

B—Purchase Awards

B1. Modifications to Arrangements with Peabody Coal Company for Coal Produced at the Camp Breckinridge Complex for Cumberland Power Plant (Contract No. 69P–87–T1).

B2. Coal Purchase for Kingston Power Plant (Requisition 23).

B3. Negotiated Purchase Contract with General Electric Company for Combustion Turbine Renovation and Maintenance for Allen, Colbert, and Johnsonville, Power Plants (Negotiation BJ–79024B).

E—Real Property Transactions

E1. Sale of Noncommercial, Nonexclusive Permanent Easemant Affecting 0.05 Acre of Tellico Reservoir Shoreland in Loudon County, Tennessee.

E2. Sale of Permanent Easement Affecting Approximately 0.2 Acre of Norris Reservoir Land in Campbell County, Tennessee.

E3. License Agreements with Gatliff Coal Company and AMCA Coal Leasing, Inc., to Permit Mining in Campbell County, Tennessee, and Clay County, Kentucky.

E4. Sale of Britton Branch Lease (Upper Seams) for Underground Mining of Red Bird Coal Reserves in Leslie County, Kentucky.

F—Unclassified

F1. Authorization to Obtain Additonal Services from Bishop, Cook, Purcell & Reynolds.

F2. Filing of Condemnation Cases.

E3. Contract No. TV–82466V with Ebasco Services Incorporated for Engineering and Technical Support Services for Watts Bar Nuclear Plant.

Information Items

1. Revision of TVA Code IV Disposal.

2. Certification to the Nuclear Regulatory Commission Regarding Financial Assurance for Decommissioning.

3. Personnel Services Contract No. TV–82416V with Institute for Resource Management, Inc., and Contract No. TV–82417V with Applied Radiological Control, Inc.

4. Contract for Coal for Colbert Power Plant (Requisition 85).

5. Agreement with Westinghouse Electric Corporation for Steam Generator Services at Sequoyah Nuclear Plant (Request for Proposal LA–85078B).

6. Purchase Contract with ABB Power T&D Company for Transformers for Sequoyah Nuclear Plant (Request for Proposal LB–7478B).

CONTRACT PERSON FOR MORE INFORMATION: Alan Carmichael, Manager, Media Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479–4412.

Dated: August 8, 1990.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 90–19036 Filed 8–9–90; 11:12 am]

BILLING CODE 8120–01–M

Corrections

Federal Register
Vol. 55, No. 156
Monday, August 13, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 90-137]

Medfly Cooperative Eradication Program Environmental Impact Statement

Correction

In notice document 90-17537 beginning on page 30730 in the issue of Friday, July 27, 1990, make the following correction:

On page 30730 in the third column, after the third full paragraph add the following text:

Public Meeting Procedures

An APHIS representative will preside at the meetings, where comment will be heard concerning any issue that would be relevant in the development of the EIS. Any interested person may appear and be heard in person, by attorney, or other representative. Each meeting will be held in two sessions. The first session will begin at 9 a.m. and end at 12 noon, local time. The second session will begin at 6 p.m. and end at 9 p.m., local time. The meetings may end earlier if all persons desiring to speak have been heard.

Persons who wish to speak should register at the desk located at the meeting entrance. Pre-meeting registration will be conducted for 1 hour preceding the beginning of each meeting session. Registered persons will be heard in the order of registration. Unregistered persons who wish to speak will be afforded the opportunity after the registered persons have been heard. If the number of registered speakers and other participants at the hearing warrants it, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER90-197-000, et al.]

Montana Power Co., et al; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Correction

In notice document 90-17835 appearing on page 31211, in the issue of Wednesday, August 1, 1990, in the second column, the docket number should appear as set forth above.

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 580, and 581

[Docket No. 90-23]

Automated Tariff Filing and Information System (ATFI); Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce; Inquiry

Correction

In proposed rule document 90-17857 beginning on page 31199 in the issue of Wednesday, August 1, 1990, make the following corrections:

1. On page 31201, in the first column, in paragraph A.14.(b), in the last line "each" should read "ease".

2. On the same page, in the third column, under *24. EDIFACT Standard*, in the 10th line, "Economic" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. 26305; Notice No. 90-18]

RIN 2120-AA09

Objects Affecting Navigable Airspace

Correction

In proposed rule document 90-18050 beginning on page 31722, in the issue of Friday, August 3, 1990, make the following correction:

On page 31722, in the first column, under **DATES:**, in the last line, "December 31, 1991." should read "December 31, 1990."

BILLING CODE 1505-01-D

federal register

Monday
August 13, 1990

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 2, et al.

Transportation and Construction of Facilities Under Section 311 of the Natural Gas Policy Act and Replacement of Facilities; Interim Rules and Proposed Rules

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM90-13-000]

Interim Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates

August 2, 1990.

AGENCY: Federal Energy Regulatory Commission (Commission), DOE.

ACTION: Interim rule.

SUMMARY: The Commission is adopting a revised interpretation of the "on behalf of" standard in section 311 of the Natural Gas Policy Act of 1978 (NGPA) for transportation services by interstate pipelines under § 284.102 of the Commission's regulations (18 CFR 284.102). The revised definition requires that the "on behalf of" entity in such transactions (1) have physical custody of and transport the natural gas at some point during the transaction; or (2) hold title to the natural gas at some point during the transaction for a purpose related to its status and functions as an intrastate pipeline or local distribution company, as applicable.

The Commission also is issuing a notice of proposed rulemaking in Docket No. RM90-7-000, *et al.*, which proposes to revise the Commission's interpretation of the "on behalf of" standard. The interim rule's interpretation will remain in effect until the effective date of any final rule issued in Docket No. RM90-7-000, *et al.*

The interim rule also adopts procedures for interstate pipelines to convert to blanket certificate authorization certain ongoing transportation services that do not qualify for NGPA section 311 service under the interim rule's revised "on behalf of" interpretation.

EFFECTIVE DATE: August 2, 1990.

ADDRESSES: Requests for rehearing should refer to Docket No. RM90-13-000 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: Jack O. Kendall, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 208-1265.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this interim rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC.

[Order No. 526]

Interim Rule on Transportation Under Section 311 of the Natural Gas Policy Act of 1978

Issued August 2, 1990.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler, and Jerry J. Langdon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is adopting an interim rule revising its regulations governing transportation by interstate pipelines under section 311 of the Natural Gas Policy Act of 1978 (NGPA).[1] The interim rule also adopts procedures that will allow interstate pipelines to convert certain existing transportation services under section 311 of the NGPA to transportation services under their blanket certificates issued pursuant to § 284.221 (18 CFR 284.221) of the Commission's regulations.

The purpose of this order is to respond on an interim basis to the opinion issued on April 6, 1990, by the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors* v. *FERC (AGD-Hadson).*[2] *In AGD-Hadson*, the Court reviewed orders issued in three Commission proceedings: Hadson Gas Systems, Inc. (Hadson),[3] in which the Commission clarified its interpretation of the "on behalf of" standard in section 311 of the NGPA; *Cascade Natural Gas Corporation* v. *Northwest Pipeline Corporation, et al. (Cascade)* [4] and *Texas Eastern Transmission Corporation (Texas Eastern),*[5] two orders in which the Commission applied its *Hadson* interpretation of the "on behalf of" standard.

In *AGD-Hadson* the Court held that the Commission's interpretation of the "on behalf of" standard is inconsistent with the NGPA and therefore invalid. The Court vacated all three of the Commission's orders to the extent they rely on the impermissible interpretation of the "on behalf of" standard and remanded *Hadson* and *Texas Eastern* for further proceedings consistent with the Court's opinion.[6]

This interim rule is necessary to avoid substantial hardships for natural gas producers, suppliers, and end-users as the result of uncertainties created by the Court's decision as to whether existing gas transportation services under section 311 may continue and whether needed new services may commence. The Commission also is issuing a notice of proposed rulemaking in Docket No. RM90-7-000 to seek public comment and suggestions which the Commission will consider prior to issuing a final rule responding to the Court's decision in *AGD-Hadson.*[7]

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[1] 15 U.S.C. 3301-3432 (1988).

[2] 899 F.2d 1250 (D.C. Cir. 1990), *reh'g denied*, No. 88-1856 (D.C. Cir. June 4, 1990). The mandate of the Court issued on June 18, 1990.

[3] 44 FERC ¶ 61,082 (1988), *reh'g denied*, 45 FERC ¶ 61,286 (1988).

[4] 44 FERC ¶ 61,081 (1988), *reh'g denied in relevant part*, 45 FERC ¶ 61,287 (1988).

[5] 44 FERC ¶ 61,080 (1988), *reh'g denied*, 45 FERC ¶ 61,285 (1988).

[6] Since the NGPA section 311 transportation at issue in *Cascade* had ceased, the Court found that the material issue in that proceeding is moot. Therefore, while the Court vacated the *Cascade* order to the extent it relied on an impermissible interpretation of the "on behalf of" standard, the Court did not remand *Cascade* for further proceedings.

[7] In addition, the Commission is issuing an interim rule and NOPR in Docket Nos. RM90-1-000 and RM90-14-000, respectively, which address issues relating, *inter alia*, to the construction of pipeline facilities to be used for section 311 transportation.

The interim rules and NOPRs in these proceedings provide for issues relating to section 311 transportation authority to be addressed separately from issues relating to section 311 construction authority. However, the Commission recognizes the interrelationship of these issues.

The interim construction rule adopts an immediately effective requirement that section 311 construction activities be reported at least 30 days prior to commencement to the Commission. However, the interim construction rule does not implement immediately any other regulatory changes affecting pipelines' ability to commence

Continued

While the Commission intends to issue a final rule in Docket No. RM90–7–000 at the earliest possible time, the Commission believes this interim rule is needed now to ensure a timely response to the Court's concerns regarding the Commission's interpretation of the "on behalf of" standard in section 311 of the NGPA. The Commission also believes that this order meets the standards for an interim rule without notice and comment set out in the Court's opinion in *Mid-Tex Electric Cooperative, Inc.* v. *FERC.*[8]

In *Mid-Tex*, the Court reviewed the Commission's interim rule repromulgating the construction-work-in-progress (CWIP) rule for electric utilities that had previously been vacated and remanded by the Court. Despite objections that the repromulgation of the CWIP rule in an interim rule violated the Court's prior mandate, the Court upheld the interim rule because of three factors. First, although the prior CWIP rule had been vacated, the Court had recognized that the Commission could repromulgate the rule if certain problems were addressed. Second, because the Commission took steps in the interim rule to guard against the potential harm identified by the Court while the Commission developed a permanent solution, the Court found that the Commission had been faithful to the letter and spirit of the Court's prior decision. Third, there was a need for an interim rule to provide regulatory guidance to avoid confusion and irreparable financial consequences to the regulated companies.

The Commission believes this interim rule is needed to comply in a timely manner with the Court's decision and to avoid irreparable harm to interstate pipelines, producers, and endusers due to the current uncertainties in the gas market surrounding the Court's decision in *AGD-Hadson.*

First, rather than repromulgating the "on behalf of" interpretation invalidated by the Court, the interim rule implements an interpretation which the Court found to be unquestionably consistent with Congress' intent in enacting section 311.[9] Specifically, the interim rule revises the Commission's interpretation, effective upon the date of issuance of this order, to require that the "on behalf of" entity in a section 311 transportation transaction either (1) have physical custody and transport the gas at some point during the transaction or (2) hold title to the gas at some point during the transaction for a purpose related to its identity as a local distribution company (LDC), intrastate pipeline, or interstate pipeline.

Second, as of the date of issuance of this interim rule, an interstate pipeline is not authorized to commence any new transportation service that does not satisfy the interim rule's "on behalf of" test.

To prevent market disruption and irreparable harm to gas producers, suppliers, and end-users, the interim rule includes procedures for the conversion of existing, non-qualifying section 311 transportation services to blanket certificate authorization. However, to assure accord with the spirit of the Court's decision, the interim rule limits the time that non-qualifying transactions may continue unless they are converted to blanket certificate authorization. Specifically, if a transaction does not qualify for section 311 authorization under the interim rule, the transaction must be terminated by October 1, 1990, unless it has been converted to blanket certificate authorization by that date.

In view of these considerations, the Commission believes the interim rule satisfies all of the Court's standards in *Mid-Tex.* In addition to avoiding the hardships that might be caused by supply disruptions, the conversion procedures are responsive to the Court's concern that Congress did not intend section 311 to operate as a far-reaching exception to the certification requirements of the Natural Gas Act (NGA).[10]

The Court explicitly recognized that the Commission may be able to fashion a permissible interpretation of the "on behalf of" standard that is broader than the one in this interim rule.[11] However, the Commission is adopting the interim rule's "safe harbor" interpretation until it is able to ascertain, after reviewing the comments in response to the companion NOPR in this proceeding, additional types of transactions that would satisfy the Court's concerns. The Commission believes that its response in this interim rule and companion rulemaking will ensure that the Commission's actions are faithful to both the letter and the spirit of the court's opinion in *AGD-Hadson.*[12]

This order will codify the interim rule's "on behalf of" interpretation and section 311/blanket certificate conversion procedures by adding new

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construction of section 311 facilities. Further, while the final rule on construction may adopt additional conditions on section 311 construction, the Commission intends to make such conditions effective prospectively only from the effective date of the final rule.

The Commission recognizes that the interim rule and NOPR on qualifying section 311 transportation services will be considered by pipeline companies in determining whether to proceed with planned section 311 construction. However, since the interim rules and any final rules on both section 311 transportation and section 311 construction will be prospective only, they will not prejudice a pipeline if issues arise regarding whether the pipeline had proper authorization for commencing section 311 construction prior to the issuance of the interim rules and NOPRs. Any questions relating to whether past section 311 construction activities were properly authorized will be addressed by the Commission in view of its section 311 policies and regulations that were in effect at the time.

However, if an interstate pipeline has constructed facilities under section 311 authority and the services rendered through those facilities do not qualify under the Commission's new interpretation of the "on behalf of" standard, the interstate pipeline will have to terminate the services unless they are converted to blanket certificate authorization. If the services are converted to blanket certificate authorization, and the facilities have never been certificated under the GA, it may be necessary, after we issue a final rule in Docket No. RM90–7–000, for the interstate pipeline to seek to obtain, within a reasonable period of time to be prescribed in the final rule in Docket No. RM90–7–000, an NGA certificate authorizing use of the facilities for the converted services. During the period the interim rule is in effect, the converted services may continue through use of those facilities. The Commission is here exercising its authority pursuant to section 7(c) of the Natural Gas Act to "exempt from the requirements of [section 7] temporary acts or operations for which the issuance of a certificate will not be required in the public interest." We conclude that such action is appropriate so as not to interrupt existing, authorized transactions until such time as we issue a final interpretation of "on behalf of" and then determine how best to deal with any remaining facilities questions.

Also, if a pipeline has commenced construction of section 311 facilities but not initiated service prior to issuance of the interim rule on transportation, it will not be able to use the facilities for section 311 transportation services unless the services qualify under the interim rule on transportation or, as of the effective date of the final rule, under the final rule.

Because of the interrelationship of these two Notices of Proposed Rulemakings, the Commission intends to consider them at the same time.

Again, however, the Commission emphasizes that it does not view the inability of particular transportation services to satisfy any new interpretation of the "on behalf of" standard as dispositive of whether a pipeline was properly authorized to commence construction of facilities under section 311 to provide those services. Construction authorization is dependent on the Commission's policies and regulations in effect at the time.

[8] 822 F.2d 1123 (D.C. Cir. 1987).

[9] AGD-Hadson, 889 F.2d at 1263. As noted below, the Court recognized expressly that this was not the only permissible interpretation of the statute. *Id.* at 1264.

[10] 15 U.S.C. 717–717w (1988). See *AGD-Hadson,* 889 F.2d. at 1261.

[11] *Id.* at 1263.

[12] Recently, the Commission received correspondence from the New York Mercantile Exchange and Sabine Pipeline Company in which concerns were raised about the impact that an interim rule responding to the *AGD-Hadson* decision might have on the futures market. In light of the safe harbor provisions of this interim rule, including the conversion procedures, we do not believe that the futures market will be affected by the interim rule. To the extent the safe harbor provisions do not apply to intrastate pipelines, such pipelines may seek limited jurisdiction certificates.

regulatory provisions to subparts B and G of part 284 of the regulations, which govern interstate pipelines' transportation services under section 311 of the NGPA and blanket certificates, respectively. The interim rule also makes necessary conforming amendments to the regulations effective immediately.[13]

II. Public Reporting Burden

This interim rule's procedures for interstate pipelines' conversion of section 311 transactions to blanket certificate services are voluntary. If an interstate pipeline elects to exercise the conversion procedures, it must file a report on termination of section 311 service, as currently required by § 284.106(d) of the regulations, for each section 311 transportation service that is converted to blanket service. In addition, an interstate pipeline would be required to file an initial report on new blanket certificate service, as currently required by § 284.223(f) of the regulations, for each converted transaction. The only new reporting requirement would be that the initial report under § 284.223(f) for a service newly converted to blanket certificate authority identify the docket number in which reports on the transaction were previously reported pursuant to § 284.106(d) of the section 311 regulations.

The Commission estimates that an interstate pipeline's choice to avail itself of the interim rule's voluntary conversion procedures would result in a public reporting burden averaging 2.7 hours per response under form "FERC-549, Gas Pipeline Rates: NGPA, Title III Transactions." This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Interested persons may send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (attention: Michael Miller, Office of Information Resources Management) (phone: (202) 208-1415) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

III. Background

A. Section 311 of the NGPA

The NGA gives the Commission regulatory jurisdiction over the transportation and sale of gas for resale in interstate commerce. Section 7 of the NGA [14] prohibits any natural gas company from engaging in the transportation or sale of gas subject to the Commission's jurisdiction unless the Commission has issued a certificate of public convenience and necessity authorizing the activity.

The NGA does not give the Commission jurisdiction over the transportation and sale of gas in intrastate commerce. However, if gas crosses a state line at any time from its production at the wellhead to its consumption at the burner tip, that gas generally is deemed to be "interstate commerce" throughout the entire journey.[15] Thus, historically, an intrastate pipeline or local distribution company could become subject to the Commission's jurisdiction by engaging in a gas transaction that involved an interstate pipeline. Consequently, over the years following enactment of the NGA, largely separate interstate and intrastate markets developed. Further, a large amount of gas was locked within the intrastate market where the price of gas, not being subject to the Commission's regulation, was higher than the price charged in the regulated interstate market.

Congress responded to this situation in 1978 with enactment of the NGPA. Section 311 of the NGPA gives the Commission the authority to authorize, by rule or order, any interstate pipeline to transport gas on behalf of any intrastate pipeline or LDC, and to authorize any intrastate pipeline to transport gas on behalf of any interstate pipeline or LDC served by an interstate pipeline.[16] Pursuant to section 601(a)(2)(A)(ii) ofthe NGPA, transportation services authorized by the Commission under section 311 are exempt from the NGA and the Commision's jurisdiction under the NGA.[17] Section 601(a)(2)(B) further provides that no person shall become subject to the Commission's NGA jurisdiction by reason of engaging in transportation services authorized by the Commission under section 311 of the NGPA.

B. The Commission's Implementation of Section 311

Prior to Order No. 436,[18] the Commission's regulations implementing

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[13] The Court noted that section 311 also enables the Commission to authorize intrastate pipelines to transport gas on behalf of interstate pipelines and LDCs served by interstate pipelines. *AGD-Hadson*, 889 F.2d at 1261, n. 8. However, the Court limited its review to the transportation by interstate pipelines under section 311 because transportation by intrastate pipelines was not involved in the issues raised on appeal. Therefore, the Commission is taking no action in this interim rule with respect to section 311 transportation by intrastate pipelines. However, the deficiencies found by the Court regarding the Commission's interpretation of the "on behalf of" requirement presumably would apply as well to section 311 transportation by intrastate pipelines. Therefore, the companion NOPR to this interim rule proposes to also apply any "on behalf of" interpretation adopted by the final rule to intrastate pipelines' transportation activities.

[14] 15 U.S.C. 717f (1988).

[15] California v. Lo-Vaca Gathering Company, 379 U.S. 366, 369 (1965).

[16] Section 311(a) of the NGPA reads, in part:

(a) Commission approval of transportation—

(1) Interstate Pipelines—

(A) In General. The Commision may, by rule or order, authorize any interstate pipeline to transport natural gas *on behalf of*—

(i) any intrastate pipeline; and

(ii) any local distribution company.

(2) Intrastate Pipelines.

(B) In General. The Commission may, by rule or order, authorize any intrastate pipeline to transport natural gas *on behalf of*—

(i) any interstate pipeline; and

(ii) any local distribution company served by any interstate pipeline. (Emphasis added.)

[17] Section 601(a)(2) of the NGPA reads, in relevant part:

(2) Transportation.—

(A) Jurisdiction of the Commission.—For purposes of section 1(b) of the Natural Gas Act the provisions of such Act and jurisdiction of the Commission under such Act shall not apply to any transportation in interstate commerce of natural gas if such transportation is . . . (ii) authorized by the Commission under section 311(a) of this Act.

(B) Natural Gas Company.—For purposes of the Natural Gas Act, the term "natural gas company" (as defined in section 2(6) of such Act) shall not include any person by reason of, or with respect to, any transportation of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission under the Natural Gas Act do not apply to such transportation by reason of subparagraph (A) of this paragraph.

[18] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Order No. 436), FERC Stats. & Regs., Regulations Preambles 1982-1985, ¶ 30,665 (1985), *modified*, Order No. 436-A, FERC Stats. & Regs., Regulations Preambles 1982-1985 ¶ 30,675 (1985), *modified further*, Order No. 436-B, FERC Stats. & Regs. ¶ 30,688 (1986), *reh'g denied*, Order No. 436-C, 34 FERC ¶61,404 (1986), *reh'g denied*, Order No. 436-D, 34 FERC ¶61,405 (1986), *reconsideration denied*, Order No. 436-E, 34 FERC ¶ 61,403 (1986), *vacated and remanded*, Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied sub nom.* Southern California Gas Co. v. FERC, 485 U.S. 1006, 108 S.Ct. 1468 (1986), *readopted on an interim basis*, Order No. 500, FERC Stats. & Regs., ¶ 30,761 (1987), *extension granted*, Order No. 500-A, FERC Stats. & Regs. ¶ 30,770, *modified*, Order No. 500-B, FERC Stats. & Regs. ¶ 30,772, *modified further*, Order No. 500-C, FERC Stats. & Regs. ¶ 30,786 (1987), *modified further*, Order No. 500-D, FERC Stats. & Regs. ¶ 30,800, *reh'g denied*, Order No. 500-E, 43 FERC ¶ 61,234, *modified further*, Order No. 500-F, FERC Stats. & Regs. ¶ 30,841 (1988), *reh'g denied*, Order No. 500-G, 46 FERC ¶ 61,148 (1989), *remanded*, American Gas Association v. FERC, 888 F.2d 136 (D.C. Cir. 1989), *readopted*, Order No. 500-H, FERC Stats. & Regs. ¶ 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500-I, FERC Stats. & Regs. ¶ 30,880 (1990).

section 311 of the NGPA authorized an interstate pipeline to transport gas only if the gas was delivered directly to an intrastate pipeline or LDC which received the gas for its system supply for resale. Similarly, an intrastate pipeline was authorized to transport under the Commission's section 311 regulations if the gas was delivered directly into the system supply of an interstate pipeline or LDC served by an interstate pipeline. This system supply test ensured an extremely close nexus between an interstate or intrastate pipeline's section 311 transportation and the "on behalf of" entity.

In Order No. 436, the Commission eliminated the system supply test but noted that section 311 transportation still must satisfy the "on behalf of" test.[19] The Commission explained that—

> * * * this test is a legal test, not a physical test, and only requires some nexus between the transporter and the intrastate pipeline or local distribution company. Thus, the intrastate pipeline or local distribution company need not physically receive the gas, but need only have the gas transported for its account.[20]

Following Order No. 436's elimination of the system supply test and recognition of agency relationships for purposes of satisfying the "on behalf of" requirement, issues were raised in several Commission proceedings, including those in which the Commission issued the orders under review in *AGD-Hadson*, regarding the extent to which the "on behalf of" requirement may be satisfied by an intrastate pipeline or LDC acting as an agent for a shipper.

C. The Remanded Commission Orders

In *Hadson* the Commission determined that an interstate pipeline is transporting natural gas "on behalf of" an intrastate pipeline or LDC whenever the intrastate pipeline or LDC receives "some economic benefit" from the transportation.[21] In support of this interpretation, the Commission stated that "a restrictive view of the 'on behalf of' test would have the effect of denying producers, transporters, and end-users access to markets and transportation and would be inconsistent with the Commission's policy of establishing a competitive market." [22] The Commission also clarified that the party on whose behalf gas is transported may derive its economic benefit from an agency relationship with the party requesting transportation service from an interstate pipeline.

In *Cascade*, Cascade Natural Gas Corporation, an LDC, protested section 311 transportation service by Northwest Pipeline Corporation for Chevron Chemical Company, an end-user located in Cascade's service territory in Washington State. Northwest claimed that its section 311 transportation services for Chevron had been on behalf of several different intrastate pipelines and LDCs. None of the "on behalf of" entities operated in Washington State. However, each had received a fee for acting as Chevron's gas purchasing agent.

By the time the Commission acted on Cascade's complaint, Northwest had accepted a blanket transportation certificate issued under section 7 of the Natural Gas Act (NGA), and was transporting gas for Chevron under the blanket certificate, rather than under section 311 of the NGPA. Therefore, the Commission dismissed Cascade's complaint as moot.[23] However, the Commission's order reiterated its determination in *Hadson* that an agency agreement can provide the necessary nexus between transportation service and the party on whose behalf the transportation takes place, provided that the "on behalf of" party receives "some economic benefit" from the transaction.

In *Texas Eastern*, the Tejas Power Corporation, a gas marketer, complained that Texas Eastern Transmission Corporation, an interstate pipeline, had refused to provide it with transportation service under section 311. Tejas had designated an affiliated intrastate pipeline as the "on behalf of" entity. Tejas stated that the affiliated intrastate pipeline would act as Tejas' agent in gas purchases and sales. Texas Eastern asserted that the requested transportation service did not qualify under section 311 because the intrastate pipeline designated as the "on behalf of" entity would neither (1) transport the gas at some point during its movement, nor (2) hold title to the gas at any time while it was being transported by Texas Eastern.

The Commission determined that Tejas' purported "on behalf of" entities had satisfied *Hadson*'s economic benefit test by acting as gas purchasing agents for Tejas. Further, the Commission required Texas Eastern to file revised tariff sheets to incorporate the version of the economic benefits test approved in *Hadson*.[24]

D. The Court's Decision in AGD-Hadson

1. *The Courts findings.* In *AGD-Hadson* the Court found that—

> * * * the Commission's interpretation of section 311 allows any transportation of gas by any interstate pipeline anywhere in the country to qualify as transportation 'on behalf of' an intrastate pipeline or LDC, provided only that the shipper can find such an entity, anywhere, that is willing to accept a fee in return for lending its name to the transaction.[25]

The Court concluded that the Commission's interpretation of the "on behalf of" standard would permit virtually any gas transportation arrangement to be structured so as to take place outside the Commission's jurisdiction under section 7 of the NGA.[26] Since the Court found that Congress intended section 311 as a "limited exception to the requirements of § 7," the Court held that the Commission's interpretation is unreasonably broad.[27]

The Court cited the NGPA's legislative history for its conclusion that the Commission may not interpret section 311 in a manner that potentially exempts all transportation from section 7 certification requirements. Specifically, the Court noted that the legislative history states that section 311 transportation should not be permitted if it would interfere with an interstate pipeline's jurisdictional services under NGA section 7.[28]

While acknowledging that "on behalf of" is not a precise term, the Court concluded, based on "common usage" of the phrase, that Congress included the "on behalf of" standard to ensure that a relationship exists between a particular transportation service and the purported "on behalf of" entity.[29] As support for the conclusion that this relationship must exist, the Court cited examples in the NGPA's legislative history regarding the types of transactions that would qualify under section 311.[30] In light of

[19] Order No. 436, *supra* n. 18, at 31,552.

[20] *Id.*

[21] 44 FERC at 61,250.

[22] *Id.* at 61,252–53.

[23] 44 FERC at 61,246.

[24] 44 FERC at 61,242.

[25] 899 F.2d at 1260. The Court noted that section 311 also enables the Commission to authorize intrastate pipelines to transport gas on behalf of interstate pipelines and LDCs served by interstate pipelines. *Id.* at 1261, n. 8. The Court limited its review to the transportation by interstate pipelines under section 311 because transportation by intrastate pipelines was not involved in the issues raised on appeal. However, the deficiencies found by the Court regarding the Commission's interpretation of the "on behalf of" requirement presumably would apply as well to section 311 transportation by intrastate pipelines.

[26] *Id.* at 1260.

[27] *Id.* at 1261.

[28] *Id.* at 1262.

[29] *Id.* at 1261.

[30] The House Report generally notes section 311's potential for avoiding the wasteful construction of

Continued

these examples, the Court concluded that Congress intended a closer nexus between section 311 transportation and the "on behalf of" party than the mere receipt of money payment by that party.[31]

The Court also concluded that the Commission's interpretation of section 311 does not bear any relationship to the section's purpose of integrating the interstate and intrastate gas markets.[32] The court rejected the argument that the section's purpose is best served by an interpretation allowing the most transactions to take place.[33]

The Court held that section 311 must be implemented by the Commission in a manner that distinguishes those transportation services which are related to the purpose of integrating the interstate and intrastate gas markets.[34] The Court found that the payment of a fee to an intrastate pipeline or LDC must serve some function in the transaction that is related to the fact that it is an intrastate pipeline or an LDC.[35]

2. *The Court's guidance to the Commission.* The court found that the Commission could require that the purported "on behalf of" entity must transport the gas at some point or own the gas for some part of the transportation. However, the Court specifically declined to hold that these are the only transactions which can satisfy section 311. The Court stated that the Commission "could permissibly read the statute to allow other transactions, so long as the 'on behalf of' entity in the transaction is related to the transportation of gas by an interstate pipeline in a way that reflects its status as an intrastate pipeline or LDC."[36]

As noted above, the Court vacated *Hadson, Cascade,* and *Texas Eastern,* to the extent they rely on the impermissible interpretation of the "on behalf of" standard, and remanded *Hadson* and *Texas Eastern* to the Commission to permit it to revise its interpretation of the "on behalf of" standard in a fashion "within reason and consistent with the purposes of the statute."[37]

IV. The Interim Rule

A. Interpretation of the "On Behalf Of" Standard

In view of the uncertainties in the marketplace since issuance of the Court's decision in *AGD-Hadson,* and the uncertainty that would continue absent Commission action, the Commission is implementing a new interpretation of the "on behalf of" standard which will apply to transportation services by interstate pipelines under section 311 of the NGPA.[38] This new interpretation will be effective as of the date of issuance of this interim rule. Accordingly, an interstate pipeline may not commence a new transportation service under section 311 unless it satisfies the interim rule's interpretation of the "on behalf of" standard. Further, if a section 311 transaction currently in effect as of the date of issuance of this interim rule does not qualify under its interpretation, the service must be terminated by October 1, 1990, unless it has been converted to blanket certificate authorization under the conversion procedures adopted by this interim rule, as discussed below.

In *AGD-Hadson* the Court stated that the Commission may choose to limit section 311 authority to transactions in which the "on behalf of" entity either "transported the gas at some point during its journey or owned it for some part of the transportation in question."[39] However, the Court stated that the Commission may permissibly read the NGPA to allow other transactions, "so long as the 'on behalf of' entity in the transaction is related to the transportation of gas by an interstate pipeline in a way that reflects its status as an intrastate pipeline or LDC."[40]

In view of the need to eliminate the existing uncertainties in gas markets, the Commission is relying on the Court's guidance to promulgate an interim rule which adopts a "safe harbor" interpretation which is set out in the Court's decision. Therefore, the Commission is adopting, on an interim basis, an interpretation of section 311 which requires that the "on behalf of" entity (an intrastate pipeline or LDC) in a section 311 transaction under subpart B of the regulations either (1) have physical custody of and transport the gas at some point during the transaction or (2) hold title to the gas at some point during the transaction. Further, under this interpretation, if the purported "on behalf of" entity holds title but does not have physical custody of and transport the gas, it will qualify as the "on behalf of" entity only if it holds title to the gas for a purpose related to its status as an LDC or intrastate pipeline.

In the companion NOPR to this interim rule, the Commission is inviting comments on how this interpretation of the "on behalf of" standard may be expanded to include additional transactions, while ensuring that an "on behalf of" entity's relationship to any section 311 transportation, under either subpart B or subpart C of the regulations, is based on functions that reflect its status as an LDC, intrastate pipeline, or interstate pipeline. As discussed above, this criterion was the Court's primary caveat limiting the Commission ability to adopt a broader definition of the "on behalf of" standard.

Moreover, the Commission does not want to prevent an LDC, intrastate pipeline, or interstate pipeline from qualifying as the "on behalf of" entity in any transaction where it would be fulfilling a function related to its traditional service obligations. Such a result would be inconsistent with the NGPA's purpose of integrating the intrastate and interstate gas markets.

The Commission's implementation of this interim rule's restrictive interpretation is based on the recognition that adopting a broader

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duplicative facilities. The *AGD-Hadson* Court found that this discussion in the legislative history suggested the following scenario: An interstate pipeline would like to purchase gas from a particular wellhead, but has no line to that wellhead. However, the interstate pipeline is connected to an intrastate pipeline which has a line to the wellhead. Section 311 would allow the intrastate to transport gas from the wellhead to the interstate pipeline without subjecting the intrastate's pipeline's other operations to the Commission's jurisdiction. *AGD-Hadson,* 899 F.2d at 1261. The Court also cited testimony in the *Congressional Record* in which Senator Domenici gave the following example of section 311's intended operation: Producers in a given state would like to sell their gas to LDCs in the same state, but it is not economic to construct intrastate pipeline facilities to move gas from the wells to the LDCs. Nearby interstate pipeline facilities would make movement of the gas economically feasible. However, in the absence of section 311, the producers will be reluctant to use the interstate facilities, since use of the interstate facilities would cause the Commission's jurisdiction to attach to their gas sales, even though the LDC purchasers are in the same state as the gas wells. *Id.* at 1262. The Court concluded in *AGD-Hadson* that Congress' intention in section 311 was to approve a limited set of transactions, particularly those in which wasteful, duplicative construction could be avoided by allowing one pipeline to transport gas on behalf of another pipeline or LDC. *Id.*

[31] *Id.* at 1262.

[32] *Id.* at 1262–1263.

[33] *Id.*

[34] *Id.* at 1263.

[35] *Id.* According to the Court, when the purported "on behalf of" entity's participation is unrelated to the fact that is an intrastate pipeline or LDC, "[a]ll it does is receive money, and anyone could do that." *Id.*

[36] *Id.* at 1264.

[37] *Id.* at 1264–65.

[38] Since the Court's opinion only addressed section 311 transportation by interstate pipelines, see *AGD-Hadson,* 899 F.2d at 1261, n. 8., the interpretation adopted by this interim rule will not apply to section 311 transportation services by intrastate pipelines. However, as discussed herein, the Commission is also issuing a companion NOPR, and any new interpretation adopted in the final rule in that proceeding will apply equally to transactions in which intrastate pipelines are transporting gas in interstate commerce under section 311.

[39] *AGD-Hadson,* 899 F.2d 1264.

[40] *Id.*

interpretation at this time might create new uncertainties, rather than eliminate the confusion that already exists. After reviewing the comments in response to the companion NOPR to this interim rule, the Commission intends to adopt an interpretation of the "on behalf of" standard which encompasses any additional transactions that satisfy the Court's decision.

The interim rule codifies the interim rule's interpretation of the "on behalf of" standard in a new paragraph (d) to § 284.102 of subpart B, which authorizes section 311 transportation services by interstate pipelines. The interim rule also amends paragraph (a) of § 284.102 to reflect the addition of new paragraph (d).

B. Procedures for Conversion of Section 311 Services

1. *The need for conversion procedures.* The Commission recognizes that some ongoing transportation services may not qualify for section 311 authorization under the Court's decision or the interim rule's interpretation of the "on behalf of" standard.[41] Significant hardship could be inflicted upon gas producers, suppliers, transporters, and end-users by the abrupt termination of these services. Therefore, this interim rule also amends the regulations to implement procedures, effective as of the date of issuance of this order, to facilitate interstate pipelines' conversion, to blanket certificate services, of those ongoing services that may not qualify under section 311.

The interim rule amends § 284.223 of the blanket transportation regulations by adding a new subparagraph (h) setting forth the conditions under which interstate pipelines that hold part 284 blanket certificates are authorized to convert to blanket certificate authorization existing transportation services under section 311 service agreements in effect on the date of issuance of this interim rule. In converting section 311 transactions to blanket certificate authorization, interstate pipelines will be subject to the non-discriminatory access conditions of §§ 284.8(b) and 284.9(b) that apply to Part 284 firm transportation services and interruptible transportation services, respectively.

2. *Waiver of prior notice and protest procedures.* The interim rule amends paragraph (b) of § 284.223 to prevent application of the blanket regulations' prior notice and protest procedures to blanket certificate services authorized under the conversion procedures of new paragraph (h) to § 284.223. Since converted transactions will not be new transactions, the Commission does not believe that it is necessary to subject these transactions to the prior notice and protest procedures of the blanket certificate regulations. Further, the current operation of the blanket regulations' notice and procedures could encourage frivolous protests and result in the interruption of long-standing services, since § 157.205(g) of the regulations operates to convert a blanket service filing to a case-specific application if any protest is filed and not withdrawn.

3. *Shippers to retain places in queues.* Since shippers entered into currently ongoing section 311 transactions in reliance on the Commission's interpretation of the "on behalf of" standard, it would not be equitable for interstate pipelines to convert those transactions to blanket services unless shippers are assured that they will in fact be able to obtain blanket transportation services without any loss of priority in pipelines' transportation queues. Therefore, new § 284.223(h) conditions pipelines' conversion authority on shippers' retaining their queue positions. Further, § 284.223(h) provides for waiver of an interstate pipeline's currently effective FERC tariff provisions to the extent necessary to prevent conversions under the interim rule from being treated as requests for new services, which would place them at the end of the pipeline's first-come, first-served transportation queues for firm and interruptible transportation services.[42]

This waiver will prevent shippers from being penalized for having relied on the Commission's past decisions. Further, conversion to blanket authorization will simply permit shippers to retain capacity currently being used by them for section 311 services. Taking away that capacity and relegating existing shippers to the end of the line would result in a windfall to shippers presently waiting in pipelines' transportation queues for service.

4. *Reporting requirements.* Interstate pipelines exercising the conversion option will be required, pursuant to § 284.106(d), to file a section 311 termination report for each converted transaction. Interstate pipelines also will be required, pursuant to § 284.223(f), to file the initial report for new blanket certificate services for each converted transaction. The interim rule amends § 284.223(f) to require, if applicable, that the initial report for a new blanket certificate service include the docket number in which section 311 reports were previously filed regarding a converted transaction. This additional reporting requirement will serve as notice to the Commission that an interstate pipeline has exercised its conversion authority and permit the Commission to monitor the conversion process. In view of pipelines' and shippers' reliance on the Commission's past decisions in commencing section 311 transportation services, the interim rule revises § 284.223(d) of the regulations to prevent converted transactions from being subject to the blanket regulations' requirement that initial reports on new blanket transportation services be accompanied by a fee.

C. Effect on Non-Qualifying Existing and New Transactions

1. *Ongoing transactions that are not converted.* The Commission believes, in view of the reliance on its past decisions by suppliers, transporters, end-users, and other parties to existing section 311 transactions, that shippers should be allowed, if necessary to prevent disruption, to convert to blanket service with the same transportation priority. The Commission recognizes, however, that a relatively small number of

[41] On April 20, 1990, the Commission sent a data inquiry to 62 interstate pipeline companies requesting information regarding their ongoing transportation activities under section 311. A July 3, 1990 staff report including a summary of the data submitted by interstate pipelines has been placed in the Commission's public files for Docket Nos. RM90-7-000 and RM90-13-000 in the Public Reference Room at 941 North Capitol Street NE., Washington, DC.

The data indicates that approximately 11,000 contracts currently are in effect for section 311 transportation services by interstate pipelines. These 11,000 transactions accounted for approximately 74 percent of the total gas volumes delivered by interstate pipelines in 1989 under transportation contracts. These transactions also represented approximately 55 percent of interstate pipelines' total throughput, including sales and transportation volumes, in 1989. The Commission's preliminary analysis indicates that approximately one third of these ongoing transactions may not qualify under the new interpretation of the "on behalf of" standard adopted by this interim rule.

[42] Since a shipper's transportation priority would not be affected by conversion, the date of conversion also would not affect the shipper's transportation priority. Therefore, for example, if one section 311 shipper has priority over another section 311 shipper, based on the dates their services commenced, their relative priorities will not be changed by conversion, regardless of whether their services are effected at the same time.

In waiving the blanket regulations' prior notice provisions and tariff provisions as necessary to permit conversion without loss of transportation priority, the interim rule is consistent with the Commission's order in Southern Natural Gas Company, 44 FERC ¶ 61,079 (1988). In that order, the Commission granted such waivers to facilitate conversion of section 311 services commenced by Southern Natural prior to being issued a part 284 blanket transportation certificate.

interstate pipelines do not hold blanket transportation certificates. In the interests of these pipelines' shippers that may need to take advantage of the conversion procedures, the Commission also will expedite the processing of any blanket certificate applications filed by these pipelines. Expedition, of course, should be feasible because a pipeline which is transporting under section 311 already has part 284 rates, terms and conditions for that transportation in its tariff. Hence, the Commission expects that it should be able to process quickly a timely filed part 284 blanket certificate application, which would involve the same rates, terms and conditions as transportation under section 311.[43] However, the Commission will fail to satisfy the Court's mandate if nonqualifying transactions are allowed to continue under color of section 311 authority indefinitely.

Accordingly, if section 311 transactions currently in effect as of the date of issuance of this interim rule do not qualify under its "on behalf of" test, the interim rule requires termination of those services by October 1, 1990, unless they have been converted by that date to blanket services under the interim rule's conversion procedures.

2. *New transportation services.* The Commission anticipates that any "on behalf of" standard adopted by the final rule in this proceeding will be at least as broad as the test adopted by this interim rule. In any event, any transaction commenced on or after the date of issuance of this interim rule will be authorized under section 311 for its full term and provisions, if the "on behalf of" entity satisfies the interim rule's revised interpretation of the "on behalf of" standard. Thus, the "on behalf of" standard adopted by this interim rule affords a "safe harbor" within which new transactions may be commenced.

D. Non-retroactive aspects of the interim rule. The Commission recognizes that the interim rule limits the retroactive effect of the Court's decision in *AGD-Hadson* by permitting conversion of non-qualifying section 311 transactions without loss of transportation priority status and by providing short-term authority for the continuation of unconverted, non-qualifying transactions to prevent the abrupt termination of those services. However, the Commission believes that limiting the retroactive application of *AGD-Hadson* in these instances is justified under the three-pronged test in *Cnevron Oil Co.* v. *Huson*, 404 U.S. 97 (1971), for determining whether a decision should be given retroactive effect on civil cases, *id.* at 106–07:

(1) Whether the judicial decision establishes a new principle of law, whether by overruling clear past precedent upon which litigants have relied, or by deciding an issue of first impression whose resolution was not clearly foreshadowed;

(2) Whether retroactive application would further or retard the purposes of the rule in question; and

(3) Whether retroactive application of the new rule would be inequitable.

It is clear that *AGD-Hadson*—which struck down the Commission's interpretation of the "on behalf of" standard on which the orders under review relied—is a case of first impression whose resolution was not clearly foreshadowed. *AGD-Hadson* plainly overruled past precedents established by this agency. Under the circumstances, it was reasonable for pipelines, shippers, and other parties to natural gas transactions to rely on the Commission's interpretation prior to the *AGD-Hadson* decision. Until the Court spoke in *AGD-Hadson*, no one could know with any degree of certainty how a court would resolve this difficult issue. Therefore, viewed in terms of the first element of the *Chevron* test, the *AGD-Hadson* decision decided an issue of first impression whose resolution was not clearly foreshadowed. (*Chevron*, 404 U.S. at 106–07.)

Further, parties designed their gas transactions to satisfy the requirements of the Commission's interpretation of the "on behalf of" standard. Gas is still moving under many of those arrangements.[44] There is no reason to unsettle that course of events at this late date, particularly since retroactive application of a new rule that would cut off no-longer qualifying transactions, causing extreme disruptions in natural gas markets.

Based on information submitted in response to the Commission's April 20, 1990 data request, approximately one third of the approximately 11,000 ongoing section 311 transactions may not qualify under this interim rule's new interpretation of the "on behalf of" standard adopted by the Commission in response to the court's decision in *AGD-Hadson*. These 11,000 transactions accounted for approximately 74 percent of the total gas volumes delivered by interstate pipelines in 1989 under transportation contracts. These transactions also represented approximately 55 percent of interstate pipelines' total throughput, including sales and transportation volumes, in 1989.

The Commission believes the interim rule's limitations on the retroactive application of the *AGD-Hadson* decision also are supported by the remaining *Chevron* criteria, *i.e.*, the history, purpose, and effect of the new rule, as well as the inequity that would be imposed by its retroactive application. (*Chevron*, 404 U.S. at 107.)

In *AGD-Hadson* the Court found that Congress' purpose in enacting section 311 of the NGPA was to integrate the intrastate and interstate gas markets. The Court found further that the Commission's current interpretation of the "on behalf of" standard in section 311 does not serve that purpose, since an economic benefit to an "on behalf of" entity does not serve to integrate markets in the absence of the entity's fulfilling some function related to its status as an LDC or intrastate pipeline. However, applying the *AGD-Hadson* decision in a fully retroactive manner, to require immediate interruption of ongoing transactions without the opportunity for conversion, is not needed to meet Congress' purpose of integrating gas markets.

Indeed, while a purported "on behalf of" entity may not have an appropriate nexus to a particular ongoing transaction, nevertheless, termination of that transaction could result in gas being locked into, or excluded from, a particular market area. In addition, shippers and end-users may be relying on these transactions to meet their fuel needs.[45] Further, a particular non-qualifying transaction may have been commenced under section 311 authority simply because the interstate pipeline had not yet been issued a part 284 blanket certificate. Since the transaction could have commenced under blanket certificate authority, if the interstate pipeline had held a blanket certificate at the time, no one will be prejudiced by converting such transactions to blanket certificate authorization. Although the

[43] See subparts A, B and G of part 284 of the Commission's regulations.

[44] See *supra* note 41.

[45] For example, an end user that has contracted to purchase gas supplies directly from a producer may have arranged for delivery of that gas by an interstate pipeline under section 311. If the Commission required termination of that service, because the purported "on behalf of" LDC did not qualify as such under a revised interpretation, the interstate pipeline presumably would seek authority under section 7 of the NGA to resume deliveries to the end user. However, because service by the interstate pipeline under ther NGA would be, in effect, new service, it would be subject to protest. Even an unmeritorious protest could result in delayed service, resulting in at least a temporary exclusion of the gas from the end user, and, potentially, a shut in of the gas in the intrastate market where it is produced.

time constraints of the blanket regulations' prior notice and protest procedures are being waived for converted transactions, any person may still protest a converted transaction, just as it had the opportunity to contest the transaction while it was being rendered under section 311 authority. The Commission will act as promptly as feasible on any protests that are filed.[46]

Since the Commission believes that Congress' intent to promote integration of the intrastate and interstate gas markets will be promoted, not thwarted, by providing for the short-term continuation or conversion of non-qualifying section 311 transactions, the Commission finds that the second factor of *Chevron* also points to nonretroactive application in these instances.

The third test of *Chevron*—whether retroactive application would be unfair and inequitable—is an even more compelling argument against retroactivity. Many end-users and other parties have contracted to purchase gas supplies from producers and marketers in reliance on being able to secure section 311 transportation service under the Commission's current interpretation of the "on behalf of" standard. In many instances, facilities have been installed by pipelines, often at end-users' expense, for the purpose of receiving or delivering supplies under section 311. Therefore, untempered retroactive application of *AGD-Hadson* could result in the non-delivery of gas supplies necessary to maintain end-users' operations and payrolls, inability to sell gas or obligations to pay for gas that cannot be delivered, and lost recovery of costs incurred to construct section 311 facilities.

On the face of it, it would be inequitable to require termination of these transactions and not provide for conversion simply because the parties relied on the Commission's interpretation of the "on behalf of" standard. This also is true for parties to transactions that were commenced after appeals were taken from the Commission's orders under review in *AGD-Hadson*. Further, since the *AGD-Hadson* petitioners chose not to seek a judicial stay of the Commission's interpretation enunciated in *Hadson*, they should not now be permitted to assert that they will be prejudiced or that Congressional purpose will be contravened by transactions that commenced while they were challenging the Commission's interpretation of the "on behalf of" standard. It would be unfair and inequitable to abrogate parties' contractual supply arrangements that were entered into in good faith in compliance and in reliance on the Commission's interpretation, thereby depriving them of their anticipated benefits and potentially subjecting them to unanticipated obligations.

When lower courts have applied *Chevron* in the civil context, they have focused on the equities of each case, balancing the competing interests of different parties.[47] The Commission recognizes that its balancing of interests on the retroactivity of *AGD-Hadson* may grant a benefit to certain industry classes at the expense of other parties.

Parties to ongoing transportation transactions presumably will favor the measures taken in this interim rule to prevent interruption of their transactions. Others may favor application of the *AGD-Hadson* decision in a manner that would terminate all non-qualifying transactions so as free up capacity on pipelines that might become available to them or because it would create opportunities for them to sell or transport gas to customers whose supplies would be cut off by strict retroactive application.

However, on balance, the Commission believes that the *Chevron* factors counsel against fully retroactive application of *AGD-Hadson* that would unfairly penalize parties for relying on the Commission's past actions. Further, as discussed above, based on the responses to the Commission's data inquiry following issuance of the *AGD-Hadson* decision, strict retroactive application of the interim rule's new "on behalf of" interpretation could result in the abrupt cessation of nearly one-third of all ongoing section 311 transportation transactions.[48] Thus, the interim rule's limits on the retroactive application of *AGD-Hadson* are necessary to prevent extreme dislocations, confusion, and uncertainty in natural gas markets.

V. Environmental Review

Commission regulations require that an Environmental Assessment or an Environmental Impact Statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.[49] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[50] The procedures for conversion of section 311 transportation services to blanket certificate transportation authorization are encompassed by the categorical exclusion for transportation of natural gas under section 7 of the NGA that requires no construction of facilities.[51] The interim rule's adoption of a new interpretation of section 311's "on behalf of" standard is encompassed by the categorical exclusion for the promulgation of corrective rules,[52] since the reinterpretation corrects the Commission's prior interpretation in compliance with the court's mandate in *AGD-Hadson*.[53] In view of these considerations, an environmental assessment is unnecessary and will not be prepared in this rulemaking.

VI. Administrative Findings and Effective Date

The Commission is adopting this interim rule prior to providing notice and obtaining written comment, as generally required by the Administrative Procedure Act (APA), 5 U.S.C. 553 (b) and (c) (1988), for any rulemaking proceeding. The Commission is invoking exceptions to this requirement for the particular reasons related to the immediate necessity for this interim rulemaking. This interim rule is necessary to both respond in a timely manner to the Court's decision in *AGD-Hadson* invalidating the Commission's current interpretation of the "on behalf of" standard in section 311 of the NGPA and to avoid significant dislocations in gas markets and hardships that may otherwise result from the confusion surrounding the Court's *AGD-Hadson* decision.

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[46] However, if a party protests a converted transaction that was previously protested by the same party when the transaction was being rendered under section 311, the Commission emphasizes that the party must raise new, material issues. (*Cf.* Panhandle Eastern Pipe Line Company, Order Denying Rehearing, 50 FERC ¶ 61,414 (1990), at pp. 62,277–78.)

[47] See, *e.g.*, Atlantic Richfield Co. v. FEA, 463 F.Supp. 1079 (N.D. Cal. 1979); Marino v. Bowers, 657 F.2d 1363 (3rd Cir. 1981); RCA Global Communications, Inc. v. Western Union Telegraph Co., 521 F.Supp. 998 (S.D.N.Y. 1981).

[48] The information submitted in response to the Commission's April 20, 1990 data request, see *supra* note 40, indicates that designated "on behalf of" entities either transport or hold title to gas in approximately two-thirds of all ongoing section 311 transportation transactions. However, a higher percentage of "on behalf of" entities may transport or hold title, since some interstate pipelines only require that "on behalf of" entities certify that they meet the eocnomic benefit test in *Hadson*. Many of these entities may also be performing functions related to their status as LDCs and intrastate pipelines.

[49] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47,897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987), *codified at* 18 CFR part 380.

[50] 18 CFR 380.4 (1990).

[51] 18 CFR 380.4(a)(27) (1990).

[52] 18 CFR 380.4(a)(2)(ii) (1990).

[53] See 18 CFR 380.4(a) (2)(ii) and (a)(27) (1990).

The rule adopted here is intended to be in effect for an interim period while the Commission studies the issues related to the "on behalf of" standard which formed the basis for the Court's remand in the *AGD-Hadson* decision. The Commission is requesting comments from the public in the companion NOPR to this interim rule so it may evaluate the effectiveness of the interim measures established here, their adequacy in addressing the issues highlighted by the Court, and whether the Commission needs to take additional measures in the final rule to prevent supply disruptions and otherwise reinstate stability in the gas market.

For the above reasons, the Commission finds good cause to issue this rule without additional prior notice and comment. The public interest is best served in this instance by the immediate promulgation of an interim rule consistent with the Court's concerns about the Commission's regulations governing transportation under section 311 of the NGPA, while at the same time avoiding disruption of gas supply arrangements required by the public interest. It therefore would be impracticable, and contrary to the public interest, to delay promulgation of this interim rule until after completion of all notice and comment procedures.[54] For the same reasons, the Commission finds good cause to make this rule effective immediately upon issuance without a thirty-day delay following publication in the **Federal Register**, as generally required by the APA.[55] This interim rule, therefore, is effective August 2, 1990.

VIII. Regulatory Flexibility Act Certification

When the Commission is required by section 553 of the Administrative Procedure Act [56] to publish a notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (FRA) [57] to prepare and make available for public comment an initial regulatory flexibility analysis, unless the Commission certifies, pursuant to the RFA, that the proposed rule would not have a "significant economic impact on a substantial number of small entities." [58] The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm to or burdens on small entities.

The Commission is adopting this interim rule without notice and comment procedures. However, the Commission does not believe that this rule will have a significant economic impact, within the meaning of the RFA, on a substantial number of small entities. The interim rule's interpretation of the "on behalf of" standard is require to comply with the judicial determination that the Commission's current interpretation is statutorily invalid. Further, while the interim rule would required one additional item of information to be reported pursuant to § 284.223(f), if an interstate pipeline elects to exercise the voluntary conversion option, this reporting requirement applies only to interstate pipelines, which would be the only respondents and none of which qualify as small entities. Therefore, the Commission concludes there will not be a significant economic impact on a substantial number of small entities.

VIII. Information Collection Requirements

If all interstate pipelines currently providing section 311 services elect to convert non-qualifying services to blanket services, the Commission estimates that interstate pipelines will file approximately 3,000 reports on the termination of the section 311 services and 3,000 initial reports on the converted blanket certificate services. However, this interim rule does not require interstate pipeline's to convert non-qualifying section 311 transactions; the interim rule's conversion procedures are voluntary. Further, if an interstate pipeline elects to convert non-qualifying section 311 services to blanket certificate services, the interim rule's only additional reporting requirement would require the interstate pipelines to report the docket numbers under which reports were previously filed for the converted transactions under the section 311 regulations. In view of these considerations, we do not believe that this interim rule's reporting requirements will significantly increase burdens on any persons.

The regulations of the Office of Management and Budget (OMB) require that OMB approve certain information collection requirements imposed by agency rules.[59]

Pursuant to OMB's regulations,[60] the Commission is providing the following information:

(1) The title of the collection of information in this NOPR is "FERC–549, Gas Pipeline Rates: NGPA, Title III Transactions."

(2) The Commission needs to collect this information to adequately and timely respond to the Court's April 6, 1990 opinion in *AGD-Hadson*. In this interim rule, the Commission adopts a new interpretation of the "on behalf of" test, as referred to in section 311 of the NGPA, along with certain procedures to convert non-qualifying section 311 transactions to blanket transportation authorization. The interim rule is required to avoid supply disruptions as the result of the Court's *AGD-Hadson* decision.

(3) Respondents that would provide the needed information will be for-profit businesses that transport natural gas.

(4) Interstate pipelines would make periodic filings of the needed information. The Commission estimates that the public reporting and recordkeeping burden in filing this information will be 8,100 hours annualy. The Commission estimates that for the collection of information:

(a) The public reporting burden would average 2.7 hours per response;

(b) The initial one-time filing requirements involve approximately 3,000 filings, with an estimated 10.2 responses per respondent; and

(c) The total number of likely respondents is 294.

Interested persons may send comments regarding this burden estimate, obtain information or submit comments on any other aspect of these information collection provisions, or submit suggestions for reducing burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 (Attention: Michael Miller, Officer of Information Resources Management) (phone: (202) 208–1415). Comments on the information collection provisions also may be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Office for the Federal Energy Regulatory Commission).

IX. Requests for Rehearing and Comments

Requests for rehearing of this interim rule should be filed in Docket No. RM90–13–000. However, this interim rule's interpretation of the "on behalf of" standard is also proposed by the NOPR in Docket No. RM90–7–000 for adoption in the final rule in that docket. The NOPR in Docket No. RM90–7–000 requests comments on whether the interim rule's interpretation of the "on

[54] 5 U.S.C. 553(b) (1988).
[55] *Id.*
[56] 5 U.S.C. 553 (1988).
[57] 5 U.S.C. 601–612 (1988).
[58] 5 U.S.C. 605(b) (1988).
[59] 5 CFR 1320.13 (1989).
[60] 5 CFR 1320.15(a) (1989).

behalf of" standard is appropriate or should be modified in the final rule in that docket. All comments addressing the interpetation of the "on behalf of" standard should be filed in Docket No. RM90–7–000 in accordance with the comment procedures set forth in the NOPR issued in that docket on the same day as this interim rule.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 284, chapter I, title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Lois D. Cashell,

Secretary.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331–1356, as amended; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 284.102 paragraph (a) introductory text is revised and new paragraphs (d) and (e) are added to read as follows:

§ 284.102 Transportation by interstate pipelines.

(a) Subject to paragraphs (d) and (e) of this section, other provisions of this subpart, and the conditions of subpart A of this part, any interstate pipeline is authorized without prior Commission approval, to transport natural gas on behalf of:

* * * * *

(d) Transportation of natural gas is not on behalf of an intrastate pipeline or local distribution company or authorized under this section unless the intrastate pipeline or local distribution company:

(1) Has physical custody of and transports the natural gas at some point during the transaction; or

(2) Holds title to the natural gas at some point during the transaction, which may occur prior to, during, or after the time that the gas is being transported by the interstate pipeline, for a purpose related to its status and functions as an intrastate pipeline or its status and functions as a local distribution company.

(e) If the transportation service commenced prior to August 2, 1990, and the requirements of paragraph (d) of this section are not satisfied, transportation service is not authorized under this section after October 1, 1990.

3. In § 284.223, paragraphs (b), (d), and (f) are revised and a new paragraph (h) is added to read as follows:

§ 284.223 Transportation by interstate pipelines on behalf of shippers other than interstate pipelines.

* * * * *

(b)(1) *Prior notice.* Subject to the prior notice requirements of § 157.205 of this chapter, an interstate pipeline issued a certificate under § 284.221 may transport any natural gas for any shipper for any end-use for any duration by that shipper or any other person.

(2) Transportation authorized by paragraph (h) of this section is not subject to the prior notice requirements of § 157.205 of this chapter.

* * * * *

(d) *Fees.* When filed with the Commission, each initial report required by paragraph (f)(1) of this section, other than an initial report on a transaction authorized pursuant to paragraph (h) of this section, must be accompanied by the fee set forth in § 381.404 of this chapter, or a petition for waiver pursuant to § 381.106 of this chapter.

* * * * *

(f) *Reporting requirements*—(1) *Initial full report.* Within thirty days after commencing transportation authorized by paragraph (a) or (h) of this section, an interstate must file with the Commission an initial full report, signed under oath by a senior official of the company, consisting of an original and five conformed copies containing a description of the transportation service, including:

(i) The identities of the parties;

(ii) The dates of commencement and projected termination of the service;

(iii) The estimated total and maximum daily quantities of natural gas to be transported by the interstate pipeline;

(iv) The points between which the natural gas is to be transported by the interstate pipeline;

(v) The location (*i.e.*, state) of the original source and the location (*i.e.*, state) of the ultimate delivery point of the gas; and

(vi) If the transportation is authorized pursuant to paragraph (h) of this section, the docket number under which reports were previously filed regarding the transaction pursuant to § 284.106 of subpart B of this part.

* * * * *

(h)(1) An interstate pipeline issued a certificate under § 284.221 may transport gas under this section for any shipper in accordance with the terms and provisions of service agreements in effect on August 2, 1990 for transportation service under § 284.102 of subpart B of this part, subject to the following conditions:

(i) Shippers whose transportation services are converted under this section shall retain their same respective places in the pipeline's transportation queues following conversion; and

(ii) Conversions under this section must be made prior to October 1, 1990.

(2) An interstate pipeline's FERC tariff provisions are waived to the extent they would prevent shippers from retaining their same respective places in the pipeline's transportation queues following conversion under this section.

[FR Doc. 90–18512 Filed 8–10–90; 8:45 am]

BILLING CODE 6717–01–M

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18 CFR Parts 2 and 284

[Docket No. RM90–14–000]

Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities

August 2, 1990.

AGENCY: Federal Energy Regulatory Commission (Commission), DOE.

ACTION: Interim rule.

SUMMARY: The interim rule requires interstate pipelines to provide notification to the Commission of construction of facilities, pursuant to section 311 of the Natural Gas Policy Act, or the planned replacement of certain facilities, pursuant to § 2.55(b) of the Commission's regulations, at least 30 days prior to commencement of any construction or replacement activity commenced after the issuance of this interim rule. The purpose for this notification is to give the Commission the opportunity to review projects and take action, where necessary, to ensure compliance with environmental requirements. This notification would not necessarily alter a pipeline's construction plans, but would merely require notification to the Commission prior to commencement of construction.

EFFECTIVE DATE: August 2, 1990.

ADDRESSES: All requests for rehearing should refer to Docket No. RM90–14–000 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: Connie Caldwell Feuchtenberger, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 208–1022.

SUPPLEMENTARY INFORMATION: In addition to publishing the full test of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full test of this interim rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

[Order No. 525]

Interim Rule

Issued August 2, 1990.

Before Commissioners: Martin L. Allday, Chairman; Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is promulgating interim regulations concerning authorization to construct natural gas pipeline facilities pursuant to section 311 of the Natural Gas Policy Act of 1978 (NGPA) as well as the replacement of natural gas pipeline facilities. Briefly stated, this interim rule requires pipelines to provide notification to the Commission of construction of facilities pursuant to section 311 or the planned replacement of certain facilities at least 30 days prior to commencement of any construction or replacement activity begun after August 2, 1990.

Concurrently, the Commission is issuing a notice of proposed rulemaking (NOPR) in Docket No. RM90–1–000.[1] In that rulemaking, the Commission intends to review its current regulations governing the entire range of its authorizations for natural gas pipeline construction. The NOPR addresses, *inter alia*, the regulations modified by this interim rule and requests comments on the procedures promulgated in this interim rule. Any final rule in Docket No. RM90–1–000 will consider the appropriateness of adopting these interim procedures, as well as any other proposed procedures, as part of the final rule.

This interim rule is effective immediately and will continue to be effective until final action in Docket No. RM90–1–000. Effectiveness of the interim rule will terminate on the effective date of any final rule in Docket No. RM90–1–000.[2]

The Commission believes that this interim rule meets that standards for an interim rule without notice and comment as set out in *Mid-Tex Electric Cooperative, Inc* v. *FERC (Mid-Tex)*.[3] In *Mid-Tex*, the Court reviewed the Commission's interim rule repromulgating a rule that had previously been vacated and remanded by the Court.[4] The opinion provides a discussion of the requirements which must be met in order to adopt an interim rule without public notice and comment.

In *Mid-Tex*, the Court notes that the Administrative Procedure Act permits rulemaking without public notice and comment when an agency "for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to public interest." [5] The Court goes on to state that the interim status of an interim rule is a significant factor.[6] Further, while the "limited nature of the rule cannot in itself justify a failure to follow notice and comment procedures," [7] "public notice and comment, * * *, gain in importance 'the more expansive the regulatory reach of the rules'." [8]

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[1] Revisions to Regulations Governing Certifications for Construction, Docket No. RM90–1–000.

[2] In addition, the Commission is issuing an interim rule and NOPR in Docket Nos. RM90–7–000 and RM90–13–000, respectively, which address issues relating, *inter alia*, to section 311 transportation.

The interim rules and NOPRs in these proceedings provide for issues relating to section 311 transportation authority to be addressed separately from issues relating to section 311 construction authority. However, the Commission recognizes the interrelationship of these issues.

The interim construction rule adopts an immediately effective requirement that section 311 construction activities be reported at least 30 days prior to commencement to the Commission. However the interm construction rule does not implement any other regulatory changes immediately affecting a pipeline's ability to commence construction of section 311 facilities. Further, while the final rule on construction may adopt additional conditions on section 311 construction, the Commission intends to make such conditions effective prospectively from the effective date of the final rule.

The Commission recognizes that the interim rule and NOPR on qualifying section 311 transportation services will be considered by pipeline companies in determining whether to proceed with planned section 311 construction. However, since the interim rules and any final rules on both section 311 transportation and section 311 construction will be prospective only, they will not prejudice a pipeline if issues arise regarding whether the pipeline had proper authorization for commencing section 311 construction prior to the issuance of the interim rules and NOPRs. Any questions relating to whether past section 311 construction activities were properly authorized will be addressed by the Commission in view of its section 311 policies and regulations that were in effect at the time.

However, if an interstate pipeline has constructed facilities under section 311 authority and the services rendered through those facilities do not qualify under the Commission's new interpretation on the "on behalf of" standard, the interstate pipeline will have to terminate the services unless they are converted to blanket certificate authorization. If the services are converted to blanket certificate authorization, and the facilities have never been certificated under the NGA, it may be necessary, after we issue a final rule in Docket No. RM90–7–000, for the interstate pipeline to seek to obtain an NGA certificate authorizing use of the facilities, within a reasonable period of time to be prescribed in the final rule in Docket No. RM90–7, for the converted services. During the period the interim rule is in effect, the converted services may continue through use of those facilities. The Commission is here exercising its authority pursuant to section 7(c) of the Natural Gas Act to "exempt from the requirements of [section 7] temporary acts or operations for which the issuance of a certificate will not be required in the public interest." We conclude that such action is appropriate so as not to interrupt existing, authorized transactions until such time as we issue a final interpretation of "on behalf of" and then determine how best to deal with any remaining facilities questions.

Also, if a pipeline has commenced construction of section 311 facilities but not initiated service prior to issuance of the interim rule on transportation, it will not be able to use the facilities for section 311 transportation services unless the services qualify under the interim rule on transportation or, as of the effective date of the final rule, under the final rule.

Again, however, the Commission emphasizes that it does not view the inability of particular transportation services to satisfy any new interpretation of the "on behalf of" standard as dispositive of whether a pipeline was properly authorized to commence construction of facilities under section 311 to provide those services. Construction authorization is dependent on the Commission's policies and regulations in effect at the time.

Because of the interrelationship of these two Notices of Proposed Rulemakings, the Commission intends to consider them at the same time.

[3] 822 F.2d 1123 (D.C. Cir. 1987).

[4] Mid-Tex Electric Cooperative, Inc. v. FERC, 773 F.2d 327 (D.C. Cir. 1985).

[5] 5 U.S.C. 553(b)(3)(B) (1982).

[6] *Id.*

[7] Council of Southern Mountains, Inc. v. Donovan, 653 F.2d 573 582 (D.C. 1981).

[8] American Federation of Government Employees v. Block 655 F.2d 1153, 1156 (D.C. Cir 1981)

Therefore, "a rule's temporary limited scope is among the key considerations in evaluating an agency's 'good cause'." [9] Also, in support of a claim of "good cause," it is important for an agency to act expeditiously to adopt a final rule in the related proceeding.[10]

This interim rule is intended to temporarily offer a procedure by which the Commission is given the opportunity to review and take appropriate action where it appears that a significant environmental impact, or other detriment to the public interest, may occur as a result of construction projects which, under the current regulations, may occur without notification to the Commission. Further, we emphasize that the interim rule is effective only until a final rule is issued in Docket No. RM90–1–000 and that we fully intend to adopt a final rule in that docket expeditiously. However, we believe that the public interest would not be served if we did not provide some means of Commission oversight during the period commencing with the issuance of the NOPR and ending with the adoption of any final rule.

Further, the notification requirements set forth in this interim rule are not overly burdensome. Therefore, we believe that the notification requirements serve the public interest by allowing the Commission the opportunity to review and take appropriate action, where warranted, with minimal burden on the pertinent pipelines. Therefore, this interim rule would fairly accommodate the interests of all affected parties while the Commission considers a permanent resolution of the issues identified in the NOPR.

II. Reporting Requirements

The public reporting burden for this collection of information is estimated to average approximately 4 hours per response with respect to environmental filing requirements, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Mr. Mike Miller, Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Energy Regulatory Commission, Washington, DC 20503.

III. Background

Section 2.55 of the Commission's regulations provides that certain facilities may be installed without prior authorization pursuant to section 7(c) of the Natural Gas Act (NGA). The activities encompassed by § 2.55 include the replacement of existing facilities (§ 2.55(b)), as well as auxiliary installations (§ 2.55(a)) and installation of certain types of taps (§ 2.55(c)). Auxiliary installations and taps generally involve minor facilities; however, replacement of facilities may involve the removal and replacement of extensive mainline facilities.

Section 284.3(c) of the Commission's regulations allows automatic authorization for construction of facilities to be used solely for NGPA section 311 transportation transactions. Based on the Environmental Assessment prepared in conjunction with Order No. 436, the Commission concluded that any adverse impacts of section 311 construction would be sufficiently mitigated by incorporating environmental conditions into its regulations authorizing the self-implementing transactions. Therefore, § 284.11 subjects any authorization under section 311 to the terms and conditions of § 157.206(d). Section 157.206(d) sets out the statutes and policies that a pipeline must satisfy prior to commencing construction.

IV. Discussion

As more fully discussed in the NOPR, we are mandated by the National Environmental Policy Act of 1969 (NEPA), as well as other statutes,[11] to carefully weigh the potential environmental impact of our decisions. The current environmental requirements for construction under section 311, embodied in § 157.206(d), are sufficient to meet our obligations under the various statutes, even where extensive construction activity is involved. However, in light of the ever-expanding scope of construction activities under section 311, we believe the Commission should have an opportunity to ascertain whether further Commission action is warranted to ensure compliance with environmental requirements. If we were provided some form of notification prior to the commencement of construction activities, the Commission would have an opportunity to review and take appropriate action, if necessary, to ensure compliance with these requirements before actual harm to the environment could occur.

The replacement of facilities under § 2.55(b) is very similar to construction under section 311 in that extensive construction activities may occur without Commission review. Generally, Commission review is unnecessary, since most replacements involve minor facilities or facilities where no impact to the environment will occur. However, it is possible that a pipeline which needs replacing was originally constructed in a rural area which is now densely populated, or that the construction activities necessary for replacement of extensive facilities would have an adverse impact on the environment.

With this in mind, we are reviewing certain construction certificate regulations. Simultaneously, we are considering ways to expedite construction certificate procedures. Accordingly, we formulated the proposed changes to our regulations contained in Docket No. RM90–1–000. The proposed changes, and any subsequent final rule in that proceeding, would be effective prospectively. However, we recognize that the lapse of time between issuance of the NOPR and adoption of a final rule must be addressed. We also recognize that to interrupt ongoing or planned construction activities would be counterproductive to our goal to encourage and expedite the construction of needed facilities.

Therefore, we are issuing this interim rule which requires notification to the Commission 30 days prior to the commencement of any construction activity pursuant to § 284.3(c) of the regulations or replacement of any facilities pursuant to § 2.55(b), which is begun after August 2, 1990. The notification required by this interim rule for any construction activity pursuant to § 284.3(c) must include the following:

(1) A brief description of the facilities to be constructed or replaced (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(2) Evidence of having complied with each of the environmental terms and conditions contained in § 157.206(d);

[9] 822 F.2d at 1132.

[10] *Id.*

[11] These statutes include, *inter alia*, the National Historic Preservation Act, as amended, 16 U.S.C. 470 (1988); the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531–1544 (1988); the Toxic Substances Control Act, 15 U.S.C. 2601–2671 (1988); the Clean Air Act, as amended, 42 U.S.C. 7401–7642 (1982); the Clean Water Act, as amended, 33 U.S.C. 1251–1387 (1988); the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1451–1464 (1988); the Wild and Scenic Rivers Act, as amended, 16 U.S.C. 1271–1287 (1988); the Wilderness Act, 16 U.S.C. 1131–1136 (1988); and the National Parks and Recreation Act of 1978, as amended, 16 U.S.C. 1–460zz (1988).

(3) U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities; and

(4) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

The notification required by this interim rule for any replacement activity pursuant to § 2.55(b) must include the information described in (1), (3), and (4) above.

The requirements to supply a description of the planned facilities and a geological map should not be burdensome. Further, the requirement to supply a description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings merely requires a report of the procedures the pipeline intends to use in a particular project.

The current regulations require a pipeline constructing facilities pursuant to § 284.3(c) to comply with the requirements of § 157.206(d). Therefore, filing evidence of such compliance is not a substantial additional requirement. However, § 2.55 does not currently require compliance with § 157.206(d). Accordingly, evidence of compliance with § 157.206(d) will not be required in the notification for replacement activities.

The interim rule preserves the existing provisions of § 2.55(b), thus maintaining the automatic authorization, and adds the notification requirement. Such notification will give the Commission and its staff before-the-fact monitoring information without hindering the pipeline's flexibility under § 2.55(b). It should be noted here that this interim rule does not preclude replacement of facilities pursuant to the authorizations contained in subparts A, E, and F of part 157, if the activity would otherwise qualify for authorization under those subparts.[12]

Receipt of the required notification will provide the Commission with an opportunity to review planned activities prior to commencement and to intervene where warranted. We do not believe that imposition of this notification requirement will be unduly burdensome or interfere with activities pursued under the current regulations.

[12] We believe that, with the various available authorizations, planned replacement of facilities will not be interrupted. However, we are aware that there may be certain limited instances where such is not the case. Such instances should be brought to the Commission's attention. Nevertheless, we caution pipelines that the Commission will take action in such an instance only if the pipeline cannot proceed under any available authorization.

V. Administrative Findings and Effective Date

The Commission is adopting a rule prior to providing notice and obtaining written comment, as generally required by the Administative Procedure Act (APA) [13] for any rulemaking proceeding. The Commission is invoking exceptions to this requirement for the particular reasons related to the immediate necessity for this interim rulemaking. In addition, the Commission finds good cause to make this rule effective immediately upon issuance without the thirty-day delay following publication in the **Federal Register** generally required by the APA.[14]

As discussed above and in Docket No. RM90–1–000, replacement of facilities and construction pursuant to section 311 occur without any notification to the Commission or affected landowners. The NOPR also discusses in detail the requirements of NEPA and other pertinent statutes and our obligations under those statutes. We are concerned that construction activities may take place during the period of time between issuance of the NOPR and adoption of a final rule without the opportunity for Commisson intervention. Once the NOPR is issued, pipelines may respond to the proposed changes in the regulations by commencing construction in order to avoid either the inherent uncertainty associated with proposed changes to existing regulations or application of the proposed changes, if adopted, to a particular project. In order to ensure that our intentions to establish a vehicle offering the opportunity for preconstruction review of potentially environmentally detrimental construction activities are not circumvented, it is imperative that the opportunity for some form of oversight on an interim basis be provided immediately. Accordingly, we are issuing this interim rule.

The rule adopted here is intended to be in effect for an interim period while the Commission determines the appropriate procedures to be adopted as final regulations. The Commission is requesting comments in the NOPR being issued concurrently with this interim rule so that it may evaluate the adequacy of the changes to the regulations contained therein and determine the workability of those proposed changes.

We believe that the notification requirements of the interim rule are not unreasonable nor are they overly burdensome. By receiving notification of these activities, the Commission is assured that it may review projects prior to commencement which take place prior to adoption of any final rule without imposing unduly burdensome requirements upon pipeline companies.

[13] 5 U.S.C. 553 (b) and (c) (1988).

[14] 5 U.S.C. 553 (b) (1988).

VI. Environmental Analysis

Commission regulations require that an Environmental Assessment or an Environmental Impact Statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.[15] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[16] This interim rule would require submission of notification to the Commission prior to the commencement of certain construction related activities. However, the nature of the activities themselves and the impact upon the human environment would not be altered by this interim rule. In view of these considerations, an environmental assessment is unnecessary and will not be prepared in this rulemaking.

VII. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA) [17] generally requires a description and analysis of rules that will have significant economic impact on a substantial number of small entities.[18] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities, and that, even if the rule were to have a significant impact on a substantial number of small entities, it would be to their benefit. The Commission believes that most of the entities affected by the proposed rule do not fall within RFA's definition of "small entity." Even if the proposed rule would have a significant effect on a substantial number of small entities, however, the requirements proposed are appropriate or necessary for the Commission to authorize natural gas pipeline construction.

[15] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47,897 (1987), FERC Stats. & Regs. ¶ 30,783 (1987), *codified at* 18 CFR part 380.

[16] 18 CFR 380.4 (1990).

[17] 5 U.S.C. 601–612 (1988).

[18] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1988).

VIII. Information Collection Requirements

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rules.[19]

The information collection form that would be affected by the proposed rule is FERC–577, Gas Pipeline Certificates: Environmental Impact Statement. This information collection is required in order for the Commission to carry out its legislative mandate under the NGA, NGPA, and NEPA. The information required by this interim rule, as previously discussed herein, would allow the Commission the opportunity to review and take action, where necessary, prior to certain construction and replacement activities.

An estimated 55 respondents would be affected by the interim rule. The respondents would consist mostly of large interstate pipeline companies (approximately 50), with a few (approximately 5) medium to large intrastate pipeline companies. The public reporting burden with respect to environmental filing requirements (FERC–577) is estimated to average approximately 4 burden hours per response.

IX. Requests for Rehearing and Comments

Requests for rehearing of this interim rule should be filed in Docket No. RM90–14–000. However, the NOPR issued concurrently with this interim rule in Docket No. RM90–1–000 encompasses the changes in procedure required by this interim rule. Further, the NOPR invites comment on these matters. Therefore, comments addressing the appropriateness of the procedures required by the interim rule should be filed in the proceeding in Docket No. RM90–1–000 in accordance with the comment procedures set forth in the NOPR issued in that docket.

Lists of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends parts 2 and 284 of chapter I, title 18, *Code of Federal Regulations,* as set forth below.

By the Commission. Commissioner Moler dissented with a separate statement attached.

Lois D. Cashell,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 is revised to as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142; Federal Power Act, 16 U.S.C. 792–825r as amended by Electric Consumers Protection Act of 1986, 100 Stat. 1243; Natural Gas Act, 15 U.S.C. 717–717w; Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645; and National Environmental Policy Act, 42 U.S.C. 4321–4361.

2. In § 2.55, paragraph (b) is revised to read as follows:

§ 2.55 Definition of term used in section 7(c).

* * * * *

(b) *Replacement of facilities.* Facilities which constitute the replacement of existing facilities which have or will soon become physically deteriorated or obsolete to the extent that replacement is deemed advisable: Provided, That such replacement will not result in a reduction or abandonment of service rendered by means of such facilities: Provided further, That such replacement shall have substantially equivalent designated delivery capacity as the particular facilities being replaced. At least 30 days prior to the commencement of any related construction or replacement activity which begins after August 2, 1990, the company must file notification of such activity. The notification must include the following information:

(1) A brief description of the facilities to be replaced (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(2) U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities to be replaced; and

(3) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossing.

* * * * *

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATIONAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. The authority citation for part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–71w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331–1356, as amended; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

4. Section 284.11 is revised to read as follows:

§ 284.11 Environmental compliance.

(a) Any authorization granted under subparts B and C of this Part that involves construction or abandonment with removal of facilities is subject to the terms and conditions of § 157.206(d) of this chapter.

(b) At least 30 days prior to commencement of any construction or abandonment with removal of facilities, as authorized under subparts B and C of this Part and described in paragraph (a) above, which begins after August 2, 1990, the company must file notification of such activity. The notification must include the following information:

(1) A brief description of the facilities to be constructed or abandoned with removal of facilites (including pipeline size and length, compression horsepower, design capacity, and cost of construction);

(2) Evidence of having complied with each provision of § 157.206(d);

(3) U.S. Geological Survey 7.5-minute series topographic maps showing the location of the facilities; and

(4) A description of the procedures to be used for erosion control, revegetation and maintenance, and stream and wetland crossings.

[Docket No. RM90–14–000]

Interim Revisions to Regulations Governing Construction of Facilities Pursuant to NGPA Section 311 and Replacement of Facilities

Issued August 2, 1990.

MOLER, Commissioner, *dissenting*:

This order concludes, in part, that:

[19] 5 CFR 1320.13 (1980).

The current environmental requirement for construction under section 311, embodied in § 157.206(d), are sufficient to meet our obligations under the various statutes, even where extensive construction activity is involved. (*Slip op.* at 8.)

As explained in detail in my partial dissent to the companion Notice of Proposed Rulemaking, I do not believe that our regulations comply with the requirements of the National Environmental Policy Act of 1969. This interim rule suffers from the same defect. Therefore, I dissent.

Elizabeth Anne Moler,

Commissioner.

[FR Doc. 90–18513 Filed 8–10–90; 8:45 am]

BILLING 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 157 and 284

[Docket No. RM90-7-00, et al.]

Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates

August 2, 1990.

AGENCY: Federal Energy Regulatory Commission (Commission), DOE.

ACTION: Notice of proposed rulemaking (NOPR).

SUMMARY: The Commission is proposing a revised interpretation of the "on behalf of" standard in section 311 of the Natural Gas Policy Act of 1978 (NGPA) for transportation services by interstate pipelines and intrastate pipelines under the Commission's regulations (18 CFR 284.102 and 284.122). The proposed definition would require that the "on behalf of" entity in any section 311 transportation transaction (1) have physical custody of and transport the natural gas at some point during the transaction; or (2) hold title to the natural gas at some point during the transaction for a purpose related to its status and functions as an intrastate pipeline, local distribution company, or interstate pipeline, as applicable.

The proposed interpretation of the "on behalf of" standard is the same as the interpretation adopted by the Commission's interim rule issued in Docket No. RM90-13-000. This NOPR requests comments, however, on how the interpetation should be expanded or revised in the final rule in this proceeding.

The Commission also is proposing to amend its blanket certificate regulations' prior notice and protest procedures to eliminate any preference created by those regulations for interstate pipelines to rely on NGPA section 311 transportation authority rather than blanket certificate transportation authority.

DATES: Comments are due on or before October 31, 1990. Reply comments are due on or before November 30, 1990.

ADDRESSES: All filings should refer to Docket No. RM90-7-000, *et al.*, 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: Jack O. Kendall, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (202) 208-1265.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this notice of proposed rulemaking will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC.

Notice of Proposed Rulemaking and Notice of Intent to Issue Order on Remand

August 2, 1990.

In the matter of Hadson Gas Systems, Inc. (Docket No. GP88-11-002), Cascade Natural Gas Corp. v. Northwest Pipeline Corporation, *et al.* (Docket No. CP88-286-004) and Texas Eastern Transmission Corporation (Docket No. RP88-81-014, Docket No. RP88-67-033, Docket No. RP88-175-002).

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations governing transportation by intrastate pipelines and interstate pipelines under section 311 of the Natural Gas Policy Act of 1978 (NGPA) [1] and transportation by interstate pipelines under blanket certificates issued pursuant to § 284.221 (18 CFR 284.221) of the Commisson's regulations.

The Commission's proposals are in response to the opinion issued on April 6, 1989, by the United States Court of Appeals for the District of Columbia Circuit in *Associated Gas Distributors* v. *FERC (AGD-Hadson)* [2] In *AGD-Hadson* the Court reviewed orders issued in three Commission proceedings: *Hadson Gas Systems, Inc. (Hadson)*,[3] in which the Commission clarified its interpretation of the "on behalf of" standard in section 311 of the NGPA; *Cascade Natural Gas Corporation* v. *Northwest Pipeline Corporation, et al. (Cascade)* [4] and *Texas Eastern Transmission Corporation (Texas Eastern)*, [5] two orders in which the Commission applied its *Hadson* interpretation of the "on behalf of" standard.

In *AGD-Hadson* the Court held that the Commission's interpretation of the "on behalf of" standard is inconsistent with the NGPA and therefore invalid. The Court vacated all three of the Commission's orders to the extent they rely on the impermissible interpretation of the "on behalf of" standard and remanded *Hadson* and *Texas Eastern* for further proceedings consistent with the Court's opinion.[6]

In view of the current uncertainty in gas markets surrounding the Court's *AGD-Hadson*, the potential threat of supply interruptions, and the need for a timely response to the Court's decision, the Commission also is issuing an interim rule in Docket No. RM90-13-000. The interim rule adopts a revised interpretation of the "on behalf of" standard for purposes section 311 transportation by interstate pipelines under subpart B of part 284 of the Commission's regulations.

The interim rule, which is being issued on the same day as this notice of proposed rulemaking (NOPR), is being made effective immediately and will remain in effect until the effective date of the final rule that will be issued in this docket after the Commission has considered the comments and reply comments in response to this NOPR.

The interpretation implemented by the interim rule requires that the "on behalf of" entity in a section 311 transportation transaction either (1) have physical custody and transport the gas at some

[1] 15 U.S.C. 3301-3432 (1988).

[2] 899 F.2d 1250 (D.C. Cir. April 6, 1990), *reh'g denied*, No. 88-1856 (D.C. Cir. June 4, 1990).

[3] 44 FERC ¶ 61,062 (1988), *reh'g denied*, 45 FERC ¶ 61,286 (1988).

[4] 44 FERC ¶ 61,061 (1988), *reh'g denied in relevant part*, 45 FERC ¶ 61,287 (1988).

[5] 44 FERC ¶ 61,060 (1988), *reh'd denied*, 45 FERC ¶ 61,285 (1988).

[6] Since the NGPA section 311 transportation at issue in *Cascade* had ceased, the Court found that the material issue in that proceeding is moot. Therefore, while the Court vacated the *Cascade* order to the extent it relied on an impermissible interpretation of the "on behalf of" standard, the Court did not remand *Cascade* for further proceedings.

point during the transaction or (2) hold title to the gas at some point during the transaction for a purpose related to its identity as a local distribution company (LDC), intrastate pipeline, or interstate pipeline. In this NOPR, the Commission is inviting comment on whether this interpretation of the "on behalf of" standard should be promulgated in a final rule. The Commission is also seeking comments on whether this interpretation can be expanded to authorize additional transactions under section 311, while still satisfying the Court's decision.[7]

The Commission is proposing to codify any interpretation adopted in the final rule in subparts B and C of part 284 of the regulations, which govern transportation services under section 311 of the NGPA by interstate pipelines and intrastate pipelines, respectively.

The order adopting the final order in this proceeding also will take any actions in the *Hadson, Texas Eastern,* and *Cascade* proceedings that are appropriate in view of the Court's order remanding and/or vacating those particular proceedings.

The Commission also is proposing additional regulatory amendments in response to the court's conclusion in *AGD-Hadson* that Congress did not intend NGPA section 311 to operate as a far-reaching exception to the certification requirements of section 7 of the NGA. These proposals would amend the regulations' notice and protest provisions as they apply to interstate pipelines' transportation activities under their part 284 blanket certificates. The proposed amendments would (1) eliminate the 120-day limitation on blanket transportation services commenced under the automatic provisions of § 284.223(a) of the regulations, (2) eliminate the requirement for prior notice in the **Federal Register** of blanket transportation services, and (3) amend the regulations to eliminate the necessity for Commission action by a date certain to prevent protests from resulting in the unwarranted interruption of blanket transportation services required by the public convenience and necessity.

These proposed amendments would remove the incentive created by the blanket certificate regulations' current notice and protest provisions for interstate pipelines to rely on NGPA section 311 transportation authority rather than their blanket certificate transportation authority. Thus, the Commission believes the proposed amendments would respond appropriately to concerns raised by the Court in *AGD-Hadson.*

II. Public Reporting Burden

The proposed reduction in notice and related reporting requirements would affect two existing information collections: "FERC–537, Gas Pipeline Certificates: Construction, Acquisition, and Abandonment," and "FERC–549, Gas Pipeline Rates: NGPA, Title III Transactions." The total annual reporting burden for data collection under FERC–537 would be reduced by an estimated 40,080 hours annually, due to the decrease in the number of filings required. For FERC–549, the total annual reporting burden would be increased by an estimated 434 hours (with an average of 2.7 hours per response), as the result of the additional filings expected. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information.

Interested persons may send comments regarding these burden estimates, or any other aspect of these collections of information, including suggestions for reducing burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 (attention: Michael Miller, Office of Information Resources Management) (phone: (202) 208–1415) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (attention: Desk Officer for the Federal Energy Regulatory Commission).

III. Background

A. Section 311 of the NGPA

The Natural Gas Act (NGA) [8] gives the Commission regulatory jurisdiction over the transportation and sale of gas for resale in interstate commerce. Section 7 of the NGA [9] prohibits any natural gas company from engaging in the transportation or sale of gas subject to the Commission's jurisdiction unless the Commission has issued a certificate of public convenience and necessity authorizing the activity.

The NGA does not give the Commission jurisdiction over the transportation and sale of gas in

[7] In addition, the Commission is issuing an interim rule and NOPR in Docket Nos. RM90–1–000 and RM90–14–000, respectively, which address issues relating, *inter alia,* to the construction of pipeline facilities to be used for section 311 transportation.

The interim rules and NOPRs in these proceedings provide for issues relating to section 311 transportation authority to be addressed separately from issues relating to section 311 construction authority. However, the Commission recognizes the interrelationship of these issues.

The interim construction rule adopts an immediately effective requirement that section 311 construction activities be reported at least 30 days prior to commencement to the Commission. However the interim construction rule does not implement immediately any other regulatory changes affecting pipelines' ability to commence construction of section 311 facilities. Further, while the final rule on construction may adopt additional conditions on section 311 construction, the Commission intends to make such conditions effective prospectively only from the effective date of the final rule.

The Commission recognizes that the interim rule and NOPR on qualifying section 311 transportation services will be considered by pipeline companies in determining whether to proceed with planned section 311 construction. However, since the interim rules and any final rules on both section 311 transportation and section 311 construction will be prospective only, they will not prejudice a pipeline if issues arise regarding whether the pipeline had proper authorization for commencing section 311 construction prior to the issuance of the interim rules and NOPRs. Any questions relating to whether past section 311 construction activities were properly authorized will be addressed by the Commission in view of its section 311 policies and regulations that were in effect at the time.

However, if an interstate pipeline has constructed facilities under section 311 authority and the services rendered through those facilities do not qualify under the Commission's new interpretation of the "on behalf of" standard, the interstate pipeline will have to terminate the services unless they are converted to blanket certificate authorization. If the services are converted to blanket certificate authorization, and the facilities have never been certificated under the NGA, it may be necessary, after we issue a final rule in Docket No. RM90–7–000, for the interstate pipeline to seek to obtain, within a reasonable period of time to be prescribed in the final rule in this docket (RM90–7–000), an NGA certificate authorizing use of the facilities for the converted services. During the period the interim rule is in effect, the converted services may continue through use of those facilities. The Commission is here exercising its authority pursuant to section 7(c) of the Natural Gas Act to "exempt from the requirements of [section 7] temporary acts or operations for which the issuance of a certificate will not be required in the public interest." We conclude that such action is appropriate so as not to interrupt existing, authorized transactions until such time as we issue a final interpretation of "on behalf of" and then determine how best to deal with any remaining facilities questions.

Also, if a pipeline has commenced construction of section 311 facilities but not initiated service prior to issuance of the interim rule on transportation, it will not be able to use the facilities for section 311 transportation services unless the services qualify under the interim rule on transportation or, as of the effective date of the final rule, under the final rule.

Again, however, the Commission emphasizes that the inability of particular transportation services to satisfy any new interpretation of the "on behalf of" standard is not dispositive of whether a pipeline was properly authorized to commence construction of facilities under section 311 to provide those services. Construction authorization is dependent on the Commission's policies and regulations in effect at the time.

Because of the interrelationship of these two Notices of Proposed Rulemakings, the Commission intends to consider them at the same time.

[8] 15 U.S.C. 717–717w (1988).

[9] 15 U.S.C. 717f (1988).

intrastate commerce. However, if gas crosses a state line at any time from its production at the wellhead to its consumption at the burner tip, that gas generally is deemed to be "in interstate commerce" throughout the entire journey.[10] Thus, historically, an intrastate pipeline or local distribution company could become subject to the Commission's jurisdiction by engaging in a gas transaction that involved an interstate pipeline. Consequently, over the years following enactment of the NGA, largely separate interstate and intrastate markets developed. Further, a large amount of gas was locked within the intrastate market where the price of gas, not being subject to the Commission's regulation, was higher than the price charge in the regulated interstate market.

Congress responded to this situation in 1978 with enactment of the NGPA. Section 311 of the NGPA gives the Commission the authority to authorize, by rule or order, any interstate pipeline to transport gas on behalf of any intrastate pipeline or LDC, and to authorize any intrastate pipeline to transport gas on behalf of any interstate pipeline or LDC served by an interstate pipeline.[11] Pursuant to section 601(a)(2)(A)(ii) of the NGPA, transportation services authorized by the Commission under section 311 are exempt from the NGA and the Commission's jurisdiction under the NGA.[12] Section 601(a)(2)(B) further provides that no person shall become subject to the Commission's NGA jurisdiction by reason of engaging in transportation services authorized by the Commission under section 311 of the NGPA.

B. The Commission's Implementation of Section 311

Prior to Order No. 436,[13] the Commission's regulations implementing section 311 of the NGPA authorized an interstate pipeline to transport gas only if the gas was delivered directly to an intrastate pipeline or local distribution company (LDC) which received the gas for its system supply for resale. Similarly, an intrastate pipeline was authorized to transport under the Commission's section 311 regulations if the gas was delivered directly into the system supply of an interstate pipeline or LDC served by an interstate pipeline. This system supply test ensured an extremely close nexus between an interstate or intrastate pipeline's section 311 transportation and the "on behalf of" entity.

In Order No. 436, the Commission eliminated the system supply test but noted that section 311 transportation still must satisfy the "on behalf of" test.[14] The Commission explained that

this test is a legal test, not a physical test, and only requires some nexus between the transporter and the intrastate pipeline or local distribution company. Thus, the intrastate pipeline or local distribution company need not physically receive the gas, but need only have the gas transported for its account.[15]

Following Order No. 436's elimination of the system supply test and recognition of agency relationships for purposes of satisfying the "on behalf of" requirement, issues were raised in several Commission proceedings, including those in which the Commission issued the orders under review in *AGD-Hadson*, regarding the extent to which the "on behalf of" requirement may be satisfied by an intrastate pipeline or LDC acting as an agent for a shipper.

C. The Remanded Commission Orders

In *Hadson* the Commission determined that an interstate pipeline is transporting natural gas "on behalf of" an intrastate pipeline or LDC whenever the intrastate pipeline or LDC receives "some economic benefit" from the transportation.[16] In support of this interpretation, the Commission stated that "a restrictive view of the 'on behalf of' test would have the effect of denying producers, transporters, and end-users access to markets and transportation and would be inconsistent with the Commission's policy of establishing a competitive market."[17] The Commission also clarified that the party on whose behalf gas is transported may derive its economic benefit from an agency relationship with the party requesting transportation service from an interstate pipeline.

In *Cascade*, Cascade Natural Gas Corporation, an LDC, protested section 311 transportation service by Northwest Pipeline Corporation for Chevron Chemical Company, an end-user located in Cascade's service territory in Washington State. Northwest claimed that its section 311 transportation services for Chevron had been on behalf of several different intrastate pipelines and LDCs. None of the "on behalf of" entities operated in Washington State. However, each had received a fee for acting as Chevron's gas purchasing agent.

By the time the Commission acted on Cascade's complaint, Northwest had accepted a blanket transportation certificate issued under section 7 of the Natural Gas Act (NGA), and was transporting gas for Chevron under the blanket certificate, rather than under section 311 of the NGPA. Therefore, the Commission dismissed Cascade's complaint as moot.[18] However, the

[10] California v. Lo-Vaca Gatehring Company, 379 U.S. 366, 369 (1965).

[11] Section 311(a) of the NGPA reads, in part:

(a) Commission approval of Transportation

(1) Interstate Pipelines

(A) In General. The Commission may, by rule or order, authorize any intrastate pipeline to transport natural gas *on behalf of*—

(i) any intrastate pipeline; and

(ii) any local distribution company.

(2) Intrastate Pipelines

(A) In General. The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas *on behalf of*—

(i) any interstate pipeline; and

(ii) any local distribution company served by any interstate pipeline.

(Emphasis added.)

[12] Section 601(a)(2) of the NGPA reads, in relevant part:

(2) Transportation.—

(A) Jurisdiction of the Commission.—For purposes of section 1(b) of the Natural Gas Act the provisions of such Act and jurisdiction of the Commission under such Act shall not apply to any transportation in interstate commerce of natural gas if such transportation is (ii) authorized by the Commission under section 311(a) of this Act.

(B) Natural Gas Company.—For purposes of the Natural Gas Act, the term "natural gas company" (as defined in section 2(6) of such Act) shall not include any person by reason of, or with respect to, any transportation of natural gas if the provisions of the Natural Gas Act and the jurisdiction of the Commission under the Natural Gas Act do not apply to such transportation by reason of subparagraph (A) of this paragraph.

[13] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol (Order No. 436), FERC Stats. & Regs., Regulations Preambles 1982–1985, ¶ 30,665 (1985), *modified*, Order No. 436–A, FERC Stats. & Regs., Regulations Preambles 1982–1985 ¶ 30,675 (1985), *modified further*, Order No. 436–B, FERC Stats. & Regs. ¶ 30,688 (1986), *reh'g denied*, Order No. 436–C, 34 FERC ¶ 61,404 (1986), *reh'g denied*, Order No. 436–D, 34 FERC ¶ 61,405 (1986), *reconsideration denied*, Order No. 436–E, 34 FERC ¶ 61,403 (1986), *vacated and remanded*, Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C. Cir. 1987), *cert. denied sub nom.* Southern California Gas Co. v. FERC, 485 U.S. 1006, 108 S.Ct. 1468 (1986), *readopted on an interim basis*, Order No. 500, FERC Stats. & Regs., ¶ 30,761 (1987), *extension granted*, Order No. 500–A, FERC Stats. & Regs. ¶ 30,770, *modified*, Order No. 500–B, FERC Stats. & Regs. ¶ 30,772, *modified further*, Order No. 500–C, FERC Stats. & Regs. ¶ 30,786 (1987), *modified further*, Order No. 500–D, FERC Stats. & Regs. ¶ 30,800, *reh'g denied*, Order No. 500–E, 43 FERC ¶ 61,234, *modified further*, Order No. 500–F, FERC Stats. & Regs. ¶ 30,841 (1988), *reh'g denied*, Order No. 500–G, 46 FERC ¶ 61,148 (1989), *remanded*, American Gas Association v. FERC, 888 F.2d 136 (D.C. Cir. 1989), *readopted*, Order No. 500–H, FERC Stats. & Regs. ¶ 30,867 (1989), *reh'g granted in part and denied in part*, Order No. 500–I, FERC Stats. & Regs. ¶ 30,880 (1990).

[14] Order No. 436, *supra* n. 13, at 31,552.

[15] *Id.*

[16] 44 FERC at 61,250.

[17] *Id.* at 61,252–53.

[18] 44 FERC at 61,246.

Commission's order reiterated its determination in *Hadson* that an agency agreement can provide the necessary nexus between transportation service and the party on whose behalf the transportation takes place, provided that the "on behalf of" party receives "some economic benefit" from the transaction.

In *Texas Eastern*, the Tejas Power Corporation, a gas marketer, complained that Texas Eastern Transmission Corporation, an interstate pipeline, had refused to provide it with transportation service under section 311. Tejas had designated an affiliated intrastate pipeline as the "on behalf of" entity. Tejas stated that the affiliated intrastate pipeline would act as Tejas' agent in gas purchases and sales. Texas Eastern asserted that the requested transportation service did not qualify under section 311 because the intrastate pipeline designated as the "on behalf of" entity would neither (1) transport the gas at some point during its movement, nor (2) hold title to the gas at any time while it was being transported by Texas Eastern.

The Commission determined that Tejas' purported "on behalf of" entities had satisfied *Hadson's* economic benefit test by acting as gas purchasing agents for Tejas. Further, the Commission required Texas Eastern to file revised tariff sheets to incorporate the version of the economic benefits test approved in *Hadson*.[19]

D. The Court's Decision in AGD-Hadson

1. The Court's findings. In *AGD-Hadson* the Court found that:

> the Commission's interpretation of section 311 allows any transportation of gas by any interstate pipeline anywhere in the country to qualify as transportation "on behalf of" an intrastate pipeline or LDC, provided only that the shipper can find such an entity, anywhere, that is willing to accept a fee in return for lending its name to the transaction.[20]

The Court concluded that the Commission's interpretation of the "on behalf of" standard would permit virtually any gas transportation arrangement to be structured so as to take place outside the Commission's jurisdiction under section 7 of the NGA.[21] Since the Court found that Congress intended section 311 as a "limited exception to the requirements of section 7," the Court held that the Commission's interpretation is unreasonably broad.[22]

The Court cited the NGPA's legislative history for its conclusion that the Commission may not interpret section 311 in a manner that potentially exempts all transportation from section 7 certification requirements. Specifically, the Court noted that the legislative history states that section 311 transportation should not be permitted if it would interfere with an interstate pipeline's jurisidictional services under NGA section 7.[23]

While acknowledging that "on behalf of" is not a precise term, the Court concluded, based on "common usage" of the phrase, that Congress included the "on behalf of" standard to ensure that a relationship exists between a particular transportation service and the purported "on behalf of" entity.[24] As support for the conclusion that this relationship must exist, the Court cited examples in the NGPA's legislative history regarding the types of transactions that would qualify under section 311.[25] In light of these examples, the Court concluded that Congress intended a closer nexus between section 311 transportation and the "on behalf of" party than the mere receipt of money payment by that party.[26]

The Court also concluded that the Commission's interpretation of section 311 does not bear any relationship to the section's purpose of integrating the interstate and intrastate gas markets.[27] The Court rejected the argument that the section's purpose is best served by an interpretation allowing the most transactions to take place.[28]

The Court held that section 311 must be implemented by the Commission in a manner that distinguishes those transportation services which are related to the purpose of integrating the interstate and intrastate gas markets.[29] The Court found that the payment of a fee to an intrastate pipeline or LDC does not, in itself, serve the purpose of integrating interstate and intrastate markets. The intrastate pipeline or LDC must serve some function in the transaction that is related to the fact that it is an intrastate pipeline or an LDC.[30]

2. *The Court's guidance to the Commission.* The Court found that the Commission could require that the purported "on behalf of" entity must transport the gas at some point or own the gas for some part of the transportation. However, the Court specifically declined to hold that these are the only transactions which can satisfy section 311. The Court stated that the Commission "could permissibly read the statute to allow other transactions, so long as the 'on behalf of' entity in the transaction is related to the transportation of gas by an interstate pipeline in a way that reflects its status as an intrastate pipeline or LDC."[31]

As noted above, the Court vacated *Hadson, Cascade,* and *Texas Eastern,* to the extent they rely on the impermissible interpretation of the "on behalf of" standard, and remanded *Hadson* and *Texas Eastern* to the Commission to permit it to revise its interpretation of the "on behalf of" standard in a fashion "within reason and consistent with the purposes of the statute."[32]

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[19] 44 FERC at 61,242.

[20] 899 F.2d at 1260. The Court noted that section 311 also enables the Commission to authorize intrastate pipelines to transport gas on behalf of interstate pipelines and LDCs served by interstate pipelines. *Id.* at 1261, n. 8. The Court limited its review to the transportation by interstate pipelines under section 311 because transportation by intrastate pipelines was not involved in the issues raised on appeal. However, the deficiences found by the Court regarding the Commission's interpretation of the "on behalf of" requirement presumably would apply as well to section 311 transportation by intrastate pipelines.

[21] *Id.* at 1260.

[22] *Id.* at 1261.

[23] *Id.* at 1262.

[24] *Id.* at 1261.

[25] The House Report generally notes section 311's potential for avoiding the wasteful construction of duplicative facilities. The *AGD-Hadson* Court found that this discussion in the legislative history suggested the following scenario: An interstate pipeline would like to purchase gas from a particular wellhead, but has no line to that wellhead. However, the interstate pipeline is connected to an intrastate pipeline which has a line to the wellhead. Section 311 would allow the intrastate to transport gas from the wellhead to the interstate pipeline without subjecting the intrastate pipeline's other operations to the Commission's jurisdiction. *AGD-Hadson,* 899 F.2d at 1261.

The Court also cited testimony in the *Congressional Record* in which Senator Domenici gave the following example of section 311's intended operation: Producers in a given state would like to sell their gas to LDCs in the same state, but it is not economic to construct intrastate pipeline facilities to move gas from the wells to the LDCs. Nearby interstate pipeline facilities would make movement of the gas economically feasible. However, in the absence of section 311, the producers will be reluctant to use the interstate facilities, since use of the interstate facilities would cause the Commission's jurisdiction to attach to their gas sales, even though the LDC purchasers are in the same state as the gas wells. *Id.* at 1262.

The Court concluded in *AGD-Hadson* that Congress' intention in section 311 was to approve a limited set of transactions, particularly those in which wasteful, duplicative construction could be saved by allowing one pipeline to transport gas on behalf of another pipeline of LDC. *Id.*

[26] *Id.* at 1262.

[27] *Id.* at 1262–1263.

[28] *Id.*

[29] *Id.* at 1263.

[30] *Id.* According to the Court, when the purported "on behalf of" entity's participation is unrelated to the fact that is an intrastate pipeline or LDC, "[a]ll it does is receive money, and anyone could do that." *Id.*

[31] *Id.* at 1264.

[32] *Id.* at 1264–65.

IV. The Commission's Proposals

A. Interpretation of the "On Behalf Of" Standard

In response to the Court's decision in *AGD-Hadson*, the Commission is reconsidering its interpretation of the "on behalf of" standard in section 311 of the NGPA. The Commission is proposing to revise its interpretation of section 311 to require that an "on behalf of" entity (LDC, intrastate pipeline, or interstate pipeline) either (1) have physical custody of and transport the gas at some point during the transaction or (2) hold title to the gas at some point during the transaction. Further, under this interpretation, if the purported "on behalf of" entity holds title but does not have physical custody of and transport the gas, it would qualify as the "on behalf of" entity only if it holds title to the gas for a purpose that is related to its status as an LDC, intrastate pipeline, or interstate pipeline.[33]

This proposed interpretation is the same as the "on behalf of" test adopted by the immediately effective interim rule being issued in Docket No. RM90–13–000 on the same day as this NOPR. The interim rule, however, supplies only to section 311 transportation services by intrastate pipelines under subpart B of part 284 of the regulations, whereas the interpretation adopted in the final rule in this proceeding will apply equally to transactions in which intrastate pipelines are transporting gas in intrastate commerce under section 311.[34]

The interpretation adopted by the interim rule was explicitly endorsed by the Court in *AGD-Hadson*.[35] Thus, the Commission determined that adopting the interpretation on an interim basis would eliminate the current uncertainty in gas markets, whereas promulgation of a broader interpretation at this time might create additional uncertainties.

However, the Court stated explicitly that the Commission may permissibly read the NGPA to allow other transactions, "so long as the 'on behalf of' entity in the transaction is related to the transportation of gas by an interstate pipeline in a way that reflects its status as an intrastate pipeline or LDC."[36] Further, while this NOPR proposes the same "on behalf of" test as the interim rule, the Commission does not want to prevent any LDC, intrastate pipeline, or interstate pipeline from qualifying as the "on behalf of" entity in any transaction where it would be fulfilling a function related to its traditional service obligations. Such a result would be inconsistent with the NGPA's purpose of integrating the intrastate and interstate gas markets.

In view of these considerations, the Commission invites comments that will aid it in determining whether the interim rule's interpretation is unnecessarily restrictive or appropriate. The Commission particularly requests suggestions on how the proposed interpretation of the "on behalf of" standard may be expanded, to authorize additional transactions under section 311, while satisfying the Court's decision.[37]

For example, the Commission requests comments on whether it would be appropriate to expand the proposed interpretation to encompass transactions in which a shipper causes transaction volumes to be delivered to an interstate pipeline, and an LDC or intrastate pipeline takes receipt or is contractually entitled to take receipt of some portion of the gas volumes from the interstate pipeline. Since supply arrangements for the LDC or intrastate pipeline might not have been economically feasible, but for the shipper's ability to aggregate the LDC's or intrastate pipeline's gas with supplies destined for other customers, would it be appropriate to authorize section 311 transportation service for the entire gas package?

Also, would it be appropriate for the Commission to authorize section 311 transportation service by an interstate pipeline for any customer of an LDC or intrastate pipeline, so long as the LDC or intrastate pipeline does not oppose the service? Would such an interpretation be appropriate because it would give recognition to the fact that, while section 311 of NGPA provides that service must be "on behalf of" an intrastate pipeline or LDC, Congress' intent in section 311 was to benefit gas consumers not on the LDC's system in the intrastate and interstate gas markets, not the companies that move gas? If so, a non-protesting LDC or intrastate pipeline would qualify as the "on behalf of" entity even though it has no active involvement in the transaction.

Would it be appropriate to authorize transportation by an interstate pipeline under section 311, so long as an intrastate pipeline or LDC derives any significant direct or indirect benefit, including an economic benefit other than an agent's fee, from the transaction? For example, if an LDC and interstate pipeline negotiate a reduction in the pipeline's firm sales level to the LDC, does transportation of the released gas volumes by that interstate pipeline—or another interstate pipeline—benefit the LDC in such a way that section 311 transportation authority for the interstate pipeline is appropriate? Similarly, should section 311 authority be available when an interstate pipeline's transportation would facilitate

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[33] The Commission believes that LDCs and intrastate pipelines generally are not willing to take and transfer title to gas solely for the purpose of being a nominal "on behalf of" entity for a transaction, if such activities would have the potential for subjecting the LDC or intrastate pipeline to the Commission's jurisdiction. Taking and passing title to gas that will be resold constitutes a sale of gas for resale in interstate commerce, even if no profit is made on the sale, and is subject to the Commission's jurisdiction pursuant to section 1(b) of the NGA.

An LDC's or intrastate pipeline's sale of gas to an end user would not have the potential for subjecting the LDC or intrastate pipeline to the Commission's jurisdiction. However, when an LDC sells gas to an end user that is not in the LDC's franchised or traditional local distribution service area, the sale is not a function related to the LDC's status as an LDC. Similarly, if gas sold by an intrastate pipeline to an end user was not produced in an area of the country where the intrastate pipeline operates, the intrastate pipeline's sale of the gas is not related to its status as an intrastate pipeline. Rather, the sales are marketing activities which may be performed just as well by entities other than LDCs and intrastate pipelines and not activities peculiarly related to having LDC status or intrastate pipeline status. Therefore, holding title and passing title for such purposes would not qualify a non-transporting LDC or intrastate pipeline as the "on behalf of" entity under the proposed revised interpretation.

The same reasoning applies when a non-transporting intrastate pipeline sells gas to an interstate pipeline or LDC pursuant to NGPA section 311(b) under Subpart D of the Commission's regulations: If the gas was not produced in an area of the country in which the intrastate pipeline operates, the non-transporting intrastate pipeline would not qualify as the on behalf of entity for purposes of transportation service performed by an interstate pipeline as part of the arrangement.

[34] The Court's opinion focused on section 311 transportation by interstate pipelines, since that was the principal issue in each of the Commission orders under review. See AGD-Hadson, 899 F.2d at 1261, n. 8. However, the deficiencies found by the Court regarding the Commission's interpretation of the "on behalf of" standard presumable would apply as well to section 311 transportation by intrastate pipelines.

Based on reports filed with the Commission by intrastate pipelines, intrastate pipelines transported gas pursuant to NGPA section 311 under subpart C of the regulations in approximately 1,600 transactions during calendar year 1989. Over 1.5 Tcf of gas was transported by intrastate pipelines in these transactions.

[35] *AGD-Hadson*, 899 F.2d at 1264.

[36] *Id.*

[37] On April 20, 1990, the Commission sent a data inquiry to 62 interstate pipeline companies requesting information regarding their ongoing transportation activities under section 311. A July 3, 1990 staff report summarizing the data submitted by these interstate pipelines has been placed in the Commission's public files for Docket Nos. RM90–7–00 and RM90–13–000 in the Public Reference Room at 941 North Capitol Street NE., Washington, DC. The data indicates that approximately 11,000 contracts currently are in effect for section 311 transportation services by interstate pipelines and that the designated "on behalf of" entities either transport or hold title to the gas in approximately two thirds of these transactions.

an intrastate pipeline's release of gas with respect to which it has take-or-pay obligations? Would this approach to interpreting the "on behalf of" standard justify authorizing section 311 transportation by an interstate pipeline whenever the transportation would increase the pipeline's throughput and thereby benefit all of its customers, including LDCs, by spreading service costs over more units of service in future rate cases?

The Commission requests comment on whether these or other possible interpretations of the "on behalf of" standard would satisfy the Court's holding that an "on behalf of" entity's relationship to a section 311 transaction must reflect its status as an LDC or intrastate pipeline.

The final rule will codify the "on behalf of" test adopted in this proceeding in paragraph (d) to § 284.102 of subpart B,[38] which authorizes section 311 transportation services by interstate pipelines, and in a new subparagraph (d) to § 284.122 of subpart C, which authorizes section 311 transportation services by intrastate pipelines. The Commission also is proposing conforming amendments to paragraph (a) of both §§ 284.102 and 284.122.

B. Proposed Amendments to Blanket Certificate Regulations

1. *Reasons for modifying the notice and protest procedures.* As discussed above, the court in *AGD-Hadson* found that Congress did not intend section 311 of the NGPA to operate as a far-reaching exception to the certification requirements of the NGA. In view of that concern, the Commission believes that its current regulations may be creating an incentive for interstate pipelines to provide services under section 311 when authority also is available to provide the same services under their blanket transportation certificates. This preference for section 311 may arise because section 311 transportation services may be self-implemented by interstate pipelines under procedures that are generally less burdensome than the current prior notice and protest procedures which limit any blanket certificate transportation service by an interstate pipeline to 120 days if any protest to the service is not withdrawn.

As explained below, the Commission also believes that the current application of the blanket regulations' notice and protest procedures to transportation is creating unnecessary administrative burdens for the Commission, pipelines and shippers. This conclusion is supported by the fact that protests have been filed in response to less than one percent of the 3,270 prior notice transportation filings since 1985.

Further, the Commission also believes that the current procedures are impeding the efforts of producers, marketers, and end users to make arrangements for gas transportation service with the expedition necessary to achieve the full benefits of the current competition at the wellhead. Finally, the Commission can ascertain no reason why the notice and protest procedures for blanket certificate transportation should differ from those for interstate pipelines' transportation services pursuant to NGPA section 311 authority under subpart B of the regulations.

In view of these considerations, as discussed further below, the Commission is proposing to amend the blanket regulations' notice and protest procedures as they apply to transportation. The amendments would (1) modify the automatic authorization provisions of § 284.223(a) to eliminate the 120-day transportation limitation and (2) change the **Federal Register** prior notice requirement of § 284.223(b) to a requirement for prior notice only to any LDC in the service area and its state regulatory commissions. The proposed amendments also would modify the regulations to eliminate the need for Commission action by a date certain to prevent interruption of a protested blanket certificate transportation service; thus, a protested blanket transportation service would be allowed to continue without interruption, up to the full term of the transportation service agreement, unless the Commission issued an order granting the protest to the service and requiring that the transportation cease.

Adoption of these proposed amendments would conform the notice and protest provisions for interstate pipelines' blanket transportation services to those for transportation services pursuant to NGPA section 311 under subpart B of the regulations.

2. *Current notice and protest procedures.* Section 284.223(a) of the regulations authorizes any interstate pipeline that has accepted a blanket certificate issued under § 284.221 to transport any natural gas for any shipper for any end-use for 120 days without prior notice to the Commission or to any other person. Section 284.223(b) of the regulations provides for a pipeline to transport a shipper's gas for any duration, subject to the prior notice requirements of § 157.205 of the regulations.

When a shipper desires service for a period longer than 120 days, it and the transporting pipeline may agree to delay commencement of the service until the prior notice requirements have been fulfilled so that the service may be rendered for its entire term under authority of § 284.223(b) without concern that a protest raised after commencement of service will result in interruption of service. However, since § 284.223(a) contains no prior notice requirement, a pipeline and shipper have the option of immediately commencing transportation service under the 120-day authority of that section while the pipeline complies with the prior notice requirements of § 284.223(b) for authority covering the full service term.

When a pipeline commences 120-day service under § 284.223(a) and files promptly thereafter under the prior notice procedures for full-term transportation authority under § 284.223(b), the 45-day notice period for the filing of protests and the following 30-day period for negotiation and withdrawal of protests will end before the pipeline's 120-day transportation authority expires. If no protests are filed during the notice period, or any protests are withdrawn during the negotiation period, the pipeline is able to continue transportation service begun under § 284.223(a) beyond 120 days without interruption.[39]

When a pipeline delays in making its prior notice filing, its 120-day transportation authority may expire before the end of either the 45-day notice period or before the end of the following 30-day protest withdrawal period. If a pipeline's 120-day

[38] The interim rule in Docket No. RM90-13-000 adds a new paragraph (d) to § 284.102 to codify the "on behalf of" standard adopted by the interim rule. Paragraph (d) will be revised if the final rule in this proceeding changes the interim rule's interpretation.

[39] The effect of a timely protest is governed by § 157.205(g) of the Commission's regulations, which states:

"(g) *Effect of protest.* If a protest is filed in accordance with paragraph (e) of this section, then the certificate holder, the person who filed the protest, any intervenors, and staff shall have 30 days from the deadline determined in accordance with paragraph (d) of this section, to resolve the protest, and to file a withdrawal of the protest pursuant to paragraph (g) of this section. Informal settlement conferences may be convened by the Director of the Office of Pipeline and Producer Regulation or his designee. If a protest is not withdrawn pursuant to paragraph (g) of this section, the activity shall not be deemed authorized by the blanket certificate. Instead, the request filed by the certificate holder shall be treated as an application for section 7 authorization for the particular activity. The **Federal Register** notice of the request shall be deemed to be notice of the section 7 application sufficient to fulfill the notice requirement of §§ 157.9 and 157.10"

transportation authority does expire before the end of the notice period, the transportation service must be interrupted, whether or not a protest has been filed, unless the Commission acts to extend the pipeline's transportation authority under § 284.223(a) to beyond 120 days. When a protest has been filed, transportation service also must be interrupted if the 120-day transportation authority expires while a portion of the 30-day protest negotiation period remains, unless the Commission acts to extend the 120-day authority.

Prompt filing of a prior notice request does not ensure noninterruption of a transportation service commenced under § 284.223(a), even if the Commission ultimately determines that the transportation service is required by the public convenience and necessity. When a protest to a prior notice filing is not withdrawn, § 157.205(f) requires that the prior notice filing be treated as an application for section 7 authorization.[40] Therefore, the transportation service must be interrupted after 120 days, unless by that time the Commission has acted on the prior notice filing as a section 7 application and granted the pipeline authority to continue the transportation service.

3. *Discussion of notice and protest procedures.* In Order No. 436, which broadened the scope of transportation services that interstate pipelines may provide under blanket certificate authority, the Commission determined to retain the existing prior notice and protest procedures for blanket transportation services exceeding 120 days. Since protests to such transactions were infrequent prior to issuance of Order No. 436, the Commission determined that retention of the prior notice and protest procedures would provide an appropriate means of ensuring these transportation services were required by the public convenience and necessity without impeding the Commission's goal of promoting an open-access market.[41]

The Commission decided that prior notice and protest procedures were appropriate for blanket certificate transportation activities, but not necessary for transportation services under section 311 of the NGPA, based on its conclusion that the statutory requirement that NGPA section 311 service by an interstate pipeline be on behalf of an intrastate pipeline or LDC generally would ensure that such transportation services would not raise bypass concerns.[42] However, the Commission stated in Order No. 436 that it would modify or eliminate the prior notice and protest procedures if experience under the new transportation rules of Order No. 436 demonstrated that the procedures served no useful function.[43]

Since issuance of Order No. 436 adopting the part 284 blanket transportation regulations in 1985, 3,259 prior notice filings have been made for transportation authority under § 284.223(b) of the regulations. Further, as the number of interstate pipelines accepting part 284 blanket certificates has increased, the Commission has received increasing numbers of requests by pipelines for waivers to permit transportation under § 284.223(a) beyond 120 days until the end of the 45-day notice period on their prior notice filings for full-term transportation authority under § 284.223(b). The Commission has issued approximately 100 orders granting such requests. Without these waivers, the pipelines would have been required, although no protests had yet been filed, to interrupt their transportation services after 120 days. Further, even if no protests are filed during the remainder of the 45-day notice period, the pipelines would not have been permitted to resume transportation services until the notice period ended. Thus, in each case, there was a significant likelihood that unprotested transportation services would have to be interrupted due solely to the pipeline's delay in making its prior notice filing for full-term transportation authority. In most cases, pipelines have cited internal administrative problems in preparing prior notice filings as the reason for delay in making the filing.[44] Under the circumstances, the Commission determined that the potential hardship outweighed the potential benefit of strict adherence to the 120-day limitation in § 284.223(a). Since additional waiver requests are being filed almost every day, it will be necessary for the Commission to continue devoting significant resources to reviewing and responding to these requests.

Prior notice filings have been protested in only a few instances. Further, the Commission has never granted a protest to a prior notice filing. However, the filing of the protests necessitated prompt Commission actions to prevent the potential interruption, or to permit the prompt resumption, of the blanket transportation services.

Panhandle Eastern Pipe Line Company[45] and *Northwest Pipeline Company*,[46] for example, involved prior notices filed by Panhandle and Northwest so that they would be able to continue ongoing 120-day transportation service for several shippers that were selling the gas to industrial end users. Each pipeline's prior notice filings were protested by a local distribution company which argued that the pipeline should not be permitted to continue the blanket certificate transportation because the services enabled the industrial end users to bypass gas service from the distribution company.

In the *Panhandle* and *Northwest* prior notice proceedings, Commission action was necessary to permit continuation of ongoing transportation services by the pipelines even though the disputed services were merely continuations of services begun by the pipelines under other authority prior to accepting their part 284 blanket certificates.[47] More importantly, in both prior notice proceedings, all material issues raised in the protests had been addressed previously by the Commission in orders denying the same distributors' earlier protests to the services when they were being rendered by the pipelines under other authority.

The current prior notice procedures were designed with the intention of allowing the quick movement of gas to a ready market while providing interested parties an opportunity to protest.[48] By including the 30-day negotiation and protest withdrawal period in § 157.205(g), the Commission gave parties the opportunity to resolve differences in good faith in a timely manner, if possible, and thereby avoid unnecessary delays in services that fit into a class of transactions presumed to

[40] *Id.*

[41] Order No. 436, *supra* n. 13, at 31,554.

[42] *Id.*

[43] *Id.*

[44] *See, e.g.*, Colorado Interstate Gas Company, 46 FERC ¶ 61,303 (1989) (delay in filing due to difficulty in finalizing transportation agreement and internal administrative problems); Southern Natural Gas Company, 46 FERC ¶ 61,271 (1989) (delay in filing due to internal administrative delay in coordinating the processing of initial reports and prior notice requests); Northwest Pipeline Corporation, 46 FERC ¶ 61,269 (1989) (delay in filing due to administrative problems in obtaining commencement of service data); Panhandle Eastern Pipe Line Company, 46 FERC ¶ 61,258 (1989) (delay in filing due to administrative oversight in coordinating the processing of initial reports and prior notice requests).

[45] 46 FERC ¶ 61,076 (1989), *reh'g denied*, 48 FERC ¶ 61,233 (1989).

[46] 46 FERC ¶ 61,078 (1989), *reh'g pending*.

[47] Panhandle had previously provided its protested service under a case-specific NGA section 7 certificate. Northwest's protested service previously had been rendered under NGPA section 311 authority.

[48] Order No. 436, *supra* note 13, at 31,554.

be in the public convenience and necessity.

Currently, however, the Commission believes that in many instances the blanket protest procedures' influence may be limited to causing pipelines to rely on NGPA section 311 authority, if they can satisfy the "on behalf of" test, in order to render transportation service that they might otherwise provide under their blanket certificates. However, this influence impedes the goal of moving gas as quickly as possible to a ready market, since it necessitates locating and involving the additional "on behalf of" party.[49]

It is not appropriate that the notice and protest procedures should influence pipelines and shippers to rely on NGPA section 311 transportation authority rather than blanket certificate authority. This conclusion is reinforced by the court's finding in *AGD-Hadson* that Congress did not intend section 311 to operate as a far-reaching exception to the certification requirements of the NGA.[50] Such a market distortion also is inappropriate since the Commission's policy regarding interstate pipeline services that bypass service by LDCs is the same in all types of proceedings—*i.e.*, regardless of whether the bypass results from a pipeline's transportation under blanket certificate, a traditional case—specific certificate, or NGPA section 311, our focus is to determine whether the bypass is the product of a fairly competitive market or the result of unfair competition or undue discrimination.[51]

[49] As noted above, the Commission determined in Order No. 436 that bypass concerns were likely to arise when an interstate pipeline transports under NGPA section 311 authority because of the requirement that the service be "on behalf of" an LDC or an intrastate pipeline. However, in view of the complexity of many gas marketing arrangements in recent years—fostered largely by the Commission's current interpretation of the on behalf of standard in NGPA section 311—the Commission recognizes that it is likely that an arrangement will involve an LDC other than the LDC in the service area where the ultimate gas recipient is located. Since these other LDCs generally have received economic benefits from the transactions and thereby have qualified under the Commission's current interpretation of the on the behalf standard, these section 311 transactions are not dependent on obtaining cooperation from the LDCs whose service areas include the gas recipients. This marketing development has increased the overlap (already greatly increased by Order No. 436's elimination of the section 311 system-supply and 2-year limitations) in the types of transactions that may be performed by interstate pipelines under either NGPA section 311 authority or blanket certificate.

[50] *AGD-Hadson*, 899 F.2d at 1261.

[51] *See Cascade Natural Gas Corporation* v. *Northwest Pipeline Company, et al.* 46 FERC ¶ 61,077 (1989), *reh'g denied*, 48 FERC ¶ 61,234 (1989).

In view of all the above considerations, the Commission is proposing the following amendments to its notice and protest procedures for blanket certificate transportation services.[52]

4. *Proposed amendments to notice and protest procedures.* The Commission is proposing to modify the provisions of § 284.223 of the regulations which currently limit interestate pipelines' blanket certificate transportation services to 120-days, if the service is protested by any party. If the proposed amendments are adopted, the blanket certificate transportation regulations would operate similarly to the regulations in subpart B of part 311 authority. Accordingly, a pipeline would be permitted to continue a protested blanket transportation service without interruption unless the Commission issued an order service cease.

The current requirement that notice of the blanket transportation service be published in the **Federal Register** would be eliminated and replaced with a notice requirement like that in subpart B for service under NGPA section 311. Under this revised notice provision, a pipeline that would be providing transportation service to a customer located in a LDC's service area would be required to give prior written notice only to the LDC and its regulatory agency.

Although these proposed amendments would remove the need for Commission action by a date certain to prevent the interruption of ongoing blanket transportation services, the proposed amendments would not prevent LDCs and other parties from protesting any blanket transportation service. Further, the Commission generally would be able to act on any protest to either blanket transportation services or section 311 transportation service within 60 days thereby ensuring that the protestor's concerns and allegations would be addressed in a timely manner.

[52] The Commission recognizes that the current regulations' influence on pipelines in some instances to use NGPA section 311 transportation authority instead of blanket certificate authority could be eliminated by making NGPA section 311 service subject to blanket certificate notice and protest procedures. However, such action would only increase the Commission's and industry's administrative problems and permit inappropriate use of the procedures to interrupt or delay transactions. Moreover, the Commission does not believe that changes in the regulations governing NGPA section 311 services are necessary or appropriate, since experience indicates that those regulations operate as intended by providing for the quick movement of gas supplies while providing for protest and timely intervation, if necessary, by the Commission. Significantly, the Commission has found in only one proceeding involving protested section 311 services that the interstate piepeline was engaging in unduly discriminatroy or unfair competitive practices requiring remedial action by the Commission. See Panhandle Eastern Pipe Line Company, Opinion No. 275, 39 FERC ¶ 61,274 (1987) (finding that Panhandle had engaged in undue discrimination by providing advance notice to its marketing affiliate and certain on-system customers of the pipeline's plans to initiate interim section 311 transportation).

5. *Conforming and technical changes.* In order to eliminate the current 120-day limitation on protested blanket certificate transportation transactions, the Commission is proposing to remove the 120-day limitation in § 284.223(a) and to eliminate § 284.223(b), which contains the operative condition making longer blanket certificate transportation services subject to the prior notice and protest requirements of § 157.205. Section 284.223(c) would be eliminated, since the above revisions would eliminate the need for pipelines to make prior notice filings in order to obtain transportation authority exceeding 120-days. A revised § 284.223(d) would set forth the new notice requirement, which would only apply when a pipeline planned to commence transportation service to a customer located in an LDC's service area. Additional conforming and technical amendments would be made to other regulatory provisions to remove references to eliminated provisions and renumber section paragraphs in appropriate numerical sequence.

V. Environmental Review

Commission regulations require that an Environmental Assessment or an Environmental Impact Statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.[53] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[54] The Commission's proposed reinterpretation of section 311 of the NGPA is required to satisfy the court's mandate in *AGD-Hadson*. The proposed amendments to the blanket certificate regulations would modify notice and protest procedures and also are necessary to respond to the court's decision in *AGD-Hadson*.[55] In view of these considerations, an environmental assessment is unnecessary and will not be prepared in this rulemaking.

[53] Order No. 486, Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs ¶ 30,783 (Dec. 10, 1987), *codified at* 18 CFR part 380.

[54] 18 CFR 380.4 (1990).

[55] *See* 18 CFR 380.4 (a)(2)(ii) and (a)(27) (1990).

VI. Regulatory Flexibility Act Certification

When the Commission is required by section 553 of the Administrative Procedure Act [56] to publish a notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA) [57] to prepare and make available for public comment an initial regulatory flexibility analysis, unless the Commission certifies, pursuant to the RFA, that the proposed rule would not have a "significant economic impact on a substantial number of small entities." [58] The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm to or burdens on small entities.

The Commission does not believe that this rule would have a significant economic impact, within the meaning of the RFA, on a substantial number of small entities. The proposed interpretation of the "on behalf of" standard is required to comply with the judicial determination that the Commission's current interpretation is statutorily invalid. The rule's proposed changes to the prior notice and protest procedures of the blanket certificate regulations would have a beneficial effect on first sellers of natural gas and end users of gas that qualify as small entities by eliminating regulatory conditions that impede the efficient marketing of economical gas supplies. Further, the proposed notice requirements apply to interstate pipelines, which would be the only respondents and none of which qualify as small entities. Therefore, the Commission concludes there will not be a significant economic impact on a substantial number of small entities.

VII. Information Collection Requirements

This notice of proposed rulemaking, if adopted, would eliminate the requirement that interstate pipelines commencing blanket certificate transportation service make prior notice filings including the information and submission specified in §§ 157.205(b) and 284.223(c) of the regulations. The proposed rule's only additional reporting requirement would pertain to the proposed limited notice requirement that would replace the current public notice requirement. Under the revised procedures, an interstate pipeline planning to commence blanket certificate transportation service would be required to give prior written notice only to (1) any local distribution company (LDC) whose service area included the ultimate end user of the gas and (2) the regulatory agency having jurisdiction over the LDC. The interstate pipeline would be required to report such notification to the Commission in the initial report currently required to be filed pursuant to § 284.223(f) of the regulations.

The proposed amendments would result in a substantial net reduction in the reporting requirements applicable to interstate pipelines providing blanket certificate transportation services. The reduced notice requirement would be the same as that for interstate pipelines' transportation activities pursuant to NGPA section 311 under § 284.106(a)(4) of subpart B of the Commission's regulations.[59] We do not believe that the proposed regulations would significantly increase burdens on any persons. The proposed regulations are necessary to comply with Court's determinations in *AGD-Hadson* and remand of proceedings to the Commission for appropriate action.

The Commission would collect information under two existing information collections: FERC–537 and FERC–549. The regulations of the Office of Management and Budget (OMB) require that OMB approve certain information collection requirements imposed by agency rules.[60]

Pursuant to OMB's regulations,[61] the Commission is providing the following information:

(1) One of the two collections of information affected by this NOPR is titled "FERC–537, Gas Pipeline Certificate: Construction, Acquisition, and Abandonment."

(2) The Commission needs to collect this information to grant interstate pipelines authorization which is required under section 7 of the Natural Gas Act to engage in the transportation of natural gas in interstate commerce that is subject to the Commission's Natural Gas Act jurisdiction and to abandon such transportation.

(3) Respondents that would provide the needed information will be for-profit businesses that transport natural gas.

(4) Interstate pipelines would make periodic filings of the needed information. The Commission estimates that the total public reporting and recordkeeping burden in filing this FERC–537 information collection would be 158,782 hours annually—a reduction from current levels. The Commission estimates that for the FERC–537 collection of information:

(a) The public reporting burden would average 252 hours per response;

(b) The frequency of responses would be 630 per year (a reduction from current levels), with an estimated 12.6 responses annually per respondents; and

(c) The total annual number of likely respondents would be 50.

(5) The title of the other information collection under this NOPR is "FERC–549, Gas Pipeline Rates: NGPA, Title III Transactions."

(6) The Commission needs to collect this information to adequately and timely respond to the Court's April 6, 1990 opinion in *AGD-Hadson*. In this NOPR, the Commission proposes an interpretation of the "on behalf of" standard in section 311 of the NGPA, along with other proposals which would eliminate certain limiting provisions and prior notice requirements related to pipeline transportation services. Such proposed amendments to the Commission's regulations would respond appropriately to the Court's mandate and concerns in *AGD-Hadson*.

(7) Respondents that would provide the needed FERC–549 information will be for-profit businesses that transport natural gas.

(8) Interstate pipelines would make periodic filings of the needed FERC–549 information. The Commission estimates that the total public reporting and recordkeeping burden in filing this information collection would be 405 hours annually—reflecting a slight increase from current levels. The Commission also estimates that for the FERC–549 collection of information:

(a) The public reporting burden would average 2.7 hours per response (unchanged from the current level);

(b) The frequency of responses would be approximately 150 per year (an increase from current levels), with an

[56] 5 U.S.C. 553 (1988).

[57] 5 U.S.C. 601–612 (1988).

[58] 5 U.S.C. 605(b) (1988).

[59] In response to the court's decision in *AGD-Hadson*, some interstate and intrastate pipelines currently may be terminating existing section 311 services for shippers and, in the case of interstate pipelines, commencing new services for those shippers under their blanket certificates. We note that, in such instances, the transporters are subject to the current reporting requirements applicable to the termination and commencement of new services.

[60] 5 CFR 1320.13 (1989).

[61] 5 CFR 1320.15(a) (1989).

estimated average of 0.5 responses annually per respondent; and

(c) The total annual number of likely respondents would be 294.

Interested persons may send comments regarding this burden estimate, obtain information or submit comments on any other aspect of these information collection provisions, or submit suggestions for reducing burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington, DC 20426 (attention: Michael Miller, Office of Information Resources Management) (phone: (202) 208–1415). Comments on the information collection provisions also may 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).

VIII. Comment Procedures

The Commission invites interested persons to submit written comments on the matters proposed in this notice, including any related matters or alternative proposals that commentors may wish to discuss. An original and 14 copies of the written comments must be filed with the Commission no later than October 31, 1990 for comments, and November 30, 1990 for reply comments. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should refer to Docket No. RM90–7–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capitol Street NE., Washington, DC 20426, during regular business hours.

List of Subjects

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend parts 157 and 284, chapter I, title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Lois D. Cashell,
Secretary.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATIONAL GAS ACT

1. The authority citation for part 157 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w, as amended; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

§ 157.205 [Amended]

2. In § 157.205, paragraph (a) introductory text, the words "or § 254.223(b)" and "or by part 284" are deleted, and the word "or" is inserted before the word "157.216(b)".

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

3. The authority citation for part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331–1356, as amended; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

4. In § 284.102. paragraph (a) introductory text is revised and new paragraph (d) is added to read as follows:

§ 284.102 Transportation by interstate pipelines.

(a) Subject to paragraph (d) of this section, other provisions of this subpart, and the conditions of subpart A of this part, any interstate pipeline is authorized without prior Commission approval, to transport natural gas on behalf of:

* * * * *

(d) Transportation of natural gas is not on behalf of an intrastate pipeline or local distribution company or authorized under this section unless the intrastate pipeline or local distribution company:

(1) Has physical custody of and transports the natural gas at some point during the transaction; or

(2) Holds title to the natural gas at some point during the transaction, which may occur prior to, during, or after the time that the gas is being transported by the interstate pipeline, for a purpose related to its status and functions as an intrastate pipeline or its status and functions as a local distribution company.

5. In § 284.122, paragraph (a) introductory text is revised and new paragraph (d) is added to read as follows:

§ 284.122 Transportation by intrastate pipelines.

(a) Subject to paragraph (d) of this section, other provisions of this subpart, and the applicable conditions of subpart A of this part, any intrastate pipeline may, without prior Commission approval, transport natural gas on behalf of:

* * * * *

(d) Transportation of natural gas is not on behalf of an interstate pipeline or local distribution company served by an interstate pipeline or authorized under this section unless the interstate pipeline or local distribution company:

(1) Has physical custody of and transports the natural gas at some point during the transaction; or

(2) Holds title to the natural gas at some point during the transaction, which may occur prior to, during, or after the time that the gas is being transported by the intrastate pipeline, for a purpose related to its status and functions as an interstate pipeline or its status and functions as a local distribution company.

6. In § 284.223, paragraph (a) is revised, paragraphs (b) and (c) are removed, paragraphs (d), (e), (f), and (g) are redesignated as paragraphs (b), (c), (d), and (e), and redesignated paragraphs (d)(1)(vi), (d)(3) introductory text, and (d)(4) introductory text are revised to read as follows:

§ 284.223 Transportation by interstate pipelines on behalf of shippers other than interstate pipelines.

(a) Subject to the provisions of this subpart and the conditions of subpart A of this part, any interstate pipeline issued a certificate under § 284.221 is authorized, without prior notice to or approval by the Commission, to transport natural gas for any duration for any shipper for any end-use by that shipper or any other person.

* * * * *

(d) *Reporting requirements*—(1) *Initial full report.* * * *

(vi) If such transportation is provided to a customer that is located in the service area of a local distribution company, a statement that the interstate pipeline notified the local distribution company and the local distribution company's appropriate regulatory

agency in writing of the proposed transportation prior to commencement.

* * * * *

(3) *Annual report.* Not later than May 1 of each year, each interstate pipeline must file with the Commission an annual report that contains, for each docketed transportation service provided during the preceding calendar year under authority of this section, the following information:

* * * * *

(4) *Notification of termination.* Not later than 30 days after the termination of any transportation arrangement under this section, the interstate pipeline company must file with the Commission an original and five conformed copies of a statement including the following information:

* * * * *

[FR Doc. 90–18514 Filed 8–10–90; 8:45 am]
BILLING CODE 6717–01–M

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18 CFR Parts 2, 157, 284, 375, and 380

[Docket No. RM90–1–000]

Revisions to Regulations Governing Certificates for Construction

August 2, 1990.

AGENCY: Federal Energy Regulatory Commission (Commission).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing changes to its regulations in order to expedite review of pipeline certificate applications. The proposals would reduce the number of projects that will require the filing of an application by increasing the dollar ceilings on projects under the blanket certificate regulations. The proposals also would implement new accelerated project filing procedures for mainline and most other types of pipeline projects. In addition, the proposal would codify certain procedures and requirements applicable for optional certificate applications.

The proposed rule also (1) would codify and clarify the filing requirements for environmental reports and would eliminate two of the current environmental exhibit requirements; (2) requests comments concerning revising its regulations governing authorization of construction pursuant to section 311 of the Natural Gas Policy Act; (3) remove the exemption for replacement facilities found in § 2.55(b) of the regulations.

DATES: Comments are due on or before October 31, 1990. Reply comments are due on or before November 30, 1990.

ADDRESSES: An original and 14 copies of the written comments on this proposed rule must be filed in Docket No. RM90–14–000. All filings should refer to Docket No. RM90–14–000 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: Connie Caldwell Feuchtenberger, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–1022.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 3308, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this interim rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 3308, 941 North Capitol Street NE., Washington, DC 20426.

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I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to revise its regulations governing certificate and exemption authority to construct natural gas pipeline facilities.

One of the major objectives of this proposed rule is to expedite the Commission's review of pipeline certificate applications. We are proposing to do this in four ways. First, we are proposing to reduce the number of projects that will require the filing of an application by substantially increasing the dollar ceilings on projects which may be done under our blanket certificate regulations. Second, we are proposing to provide another type of accelerated project filing similar to the prior notice blanket currently available, but which, unlike the current prior notice blanket, will be available for most types of pipeline projects. Third, we are proposing to clarify the filing requirements for projects which must include an environmental report. This clarification would provide companies with a better idea of what must be filed for a specific type of project. Fourth, we are proposing to eliminate two of the current environmental exhibit requirements.

Next, the Commission is requesting comments concerning revising its

regulations governing authorization of construction pursuant to section 311 of the Natural Gas Policy Act in such a manner as to ensure adequate environmental review prior to construction. In order to ensure environmental review of construction-related activities associated with the replacement of facilities, we are proposing to remove the exemption for replacement facilities found in § 2.55(b) of the regulations.[1]

In addition, having acquired a certain level of experience with optional certificates, the Commission is proposing to codify the procedures and requirements which have been developed through that experience. The resulting regulations would reflect the decisions of this Commission and the courts regarding optional certificates.

Finally, we propose in this rulemaking to update and codify the Commission's current environmental review procedures, particularly with respect to the data provided by applicants. The environmental data requirements are already applicable, but have been implemented in an informal fashion over a period of years, through a combination of regulatory requirements and routine staff data requests. Our purpose is to codify these various requirements so as to provide a central and comprehensive set of requirements for applicants to follow. By clearly stating what the Commission will expect each applicant to file with its application, we hope to eliminate confusion and thus expedite the processing of applications for construction authority. We believe that these proposed regulations would not increase the burden on applicants for traditional pipeline construction projects under section 7(c) of the Natural Gas Act. Rather, they are intended to provide a central and comprehensive notice of the environmental data requirements that, by and large, are currently in effect. We also do not believe that these regulations would significantly increase the burden on other applicants.

The Commission is vitally interested in other ideas about how we can expedite our processing of applications for construction authority. We invite comments including ideas other than those outlined herein on how we can streamline our processes; such comments will be given every consideration during this rulemaking.

II. Reporting Requirements

The total annual reporting burden for these collections of information (FERC–537, Gas Pipeline Certificates: Construction, Requisition, and Abandonment, and FERC–577, Gas Pipeline Certificates: Environmental Impact Statement) would not change significantly from current levels. However, the estimated average burden per response with respect to environmental impact statements (FERC–577) would be reduced from approximately 321 hours per response to 240.8 hours per response, because of the increased number of filings required and decreased number of estimated hours per response. No change is expected in the estimated hours per response with respect to other certificate related matters (FERC–537). The average estimated reporting burden per response includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The estimated total annual reporting burden would not change from current levels because of offsetting decreases in hours required per response and increases in the number of responses and respondents in each information collection. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to Mr. Mike Miller, Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Energy Regulatory Commission, Washington, DC 20503.

III. Background

A. Traditional Construction Certificates

Before constructing and operating any interstate natural gas transportation facility, a pipeline company must receive from the Commission a certificate of public convenience and necessity under section 7(c) of the Natural Gas Act (NGA).[2] Most natural gas pipeline facility construction is currently authorized under the traditional case-by-case certificate review process embodied in subpart A of part 157 of the Commission's regulations.[3]

[1] In addition, the Commission is issuing an interim rule and NOPR in Docket Nos. RM90–7–000 and RM90–13–000, respectively, which address issues relating, *inter alia*, to section 311 transportation.

The interim rules and NOPRs in these proceedings provide for issues relating to section 311 transportation authority to be addressed separately from issues relating to section 311 construction authority. However, the Commission recognizes the interrelationship of these issues.

The interim construction rule adopts an immediately effective requirement that section 311 construction activities be reported at least 30 days prior to commencement to the Commission. However, the interim construction rule does not implement any other regulatory changes immediately affecting a pipeline's ability to commence construction of section 311 facilities. Further, while the final rule on construction may adopt additional conditions on section 311 construction, the Commission intends to make such conditions effective prospectively from the effective date of the final rule.

The Commission recognizes that the interim rule and NOPR on qualifying section 311 transportation services will be considered by pipeline companies in determining whether to proceed with planned section 311 construction. However, since the interim rules and any final rules on both section 311 transportation and section 311 construction will be prospective only, they will not prejudice a pipeline if issues arise regarding whether the pipeline had proper authorization for commencing section 311 construction prior to the issuance of the interim rules and NOPRs. Any questions relating to whether past section 311 construction activities were properly authorized will be addressed by the Commission in view of its section 311 policies and regulations that were in effect at the time.

However, if an interstate pipeline has constructed facilities under section 311 authority and the services rendered through those facilities do not qualify under the Commission's new interpretation of the "on behalf of" standard, the interstate pipeline will have to terminate the services unless they are converted to blanket certificate authorization. If the services are converted to blanket certificate authorization, and the facilities have never been certificated under the NGA, it may be necessary, after we issue a final rule in Docket No. RM90–7, for the interstate pipeline to seek to obtain an NCA certificate authorizing use of the facilities, within a reasonable period of time to be prescribed in the final rule in Docket No. RM90–7, for the converted services. During the period interim the rule is in effect, the converted services may continue through use of those facilities. The Commission is here exercising its authority pursuant to section 7(c) of the Natural Gas Act to "exempt from the requirements of [section 7] temporary acts or operations for which the issuance of a certificate will not be required in the public interest." We conclude that such action is appropriate so as not to interrupt existing, authorized transactions until such time as we issue a final interpretation of "on behalf of" and then determine how best to deal with any remaining facilities questions.

Also, if a pipeline has commenced construction of section 311 facilities but not initiated service prior to issuance of the interim rule on transportation, it will not be able to use the facilities for section 311 transportation services unless the services qualify under that interim rule or, as of the effective date of the final rule, under the final rule.

Again, however, the Commission emphasizes that it does not view the inability of particular transportation services to satisfy any new interpretation of the "on behalf of" standard as dispositive of whether a pipeline was properly authorized to commence construction of facilities under section 311 to provide those services. Construction authorization is dependent on the Commission's policies and regulations in effect at the time.

Because of the interrelationship of these two Notices of Proposed Rulemakings, the Commission intends to consider them at the same time.

[2] Natural Gas Act, Pub. L. No. 75–688, 52 Stat. 821, *codified at* 15 U.S.C. 717w (1988).

[3] 18 CFR part 157, subpart A (1990).

In one of the earliest Commission proceedings concerning an application for a certificate, the Commission determined that the public convenience and necessity involved certain minimum requirements upon which the applicant must make a favorable showing. Specifically, under the criteria established in *Kansas Pipe Line*, applicants must show that: (1) They possess a supply of natural gas adequate to meet those demands which it is reasonable to assume will be made upon them; (2) there exist in the territory proposed to be served customers who can reasonably be expected to use such natural gas service; (3) the facilities for which they seek a certificate are adequate; (4) the costs of construction of the facilities which they propose are both adequate and reasonable; (5) the anticipated fixed charges or the amount of such fixed charges are reasonable; and (6) the rates proposed to be charged are reasonable.[4] In Order No. 436, the Commission acknowledged that these factors are still relevant, although the analysis concerning each specific factor has changed as conditions in the industry have changed.[5]

Initial rates for a new service related to facilities construction are set by the Commission when it approves a certificate application. When the pipeline company files its next NGA section 4 rate case it may request to include the construction costs of new facilities in its rate base (so-called "rolled-in" rate treatment) or treat the facilities on an incremental basis. How the costs of new facilities are recovered in a pipeline company's rates and the specific treatment those costs are afforded are issues in the rate case. Traditionally, on most pipeline systems, the Commission requires new facility costs to be rolled into the company's rates. Assuming this occurs, the future risk that new facilities may be underutilized is shifted, to an extent, to all of a pipeline's ratepayers.

Part 157 of the Commission's regulations contains the filing requirements and basic standards required of applications for certificate authorization.[6] Traditional certificate applications are filed pursuant to the requirements of subpart A of part 157. These regulations apply the traditional Kansas Pipe Line standards. Notice of the application is published in the **Federal Register**, and interested persons may file protests or interventions. If material issues of fact are in dispute which cannot be resolved on the basis of the written record, the application may be set for an evidentiary hearing before an administrative law judge.[7]

An option under the traditional certificate procedures is the abbreviated application, which allows an applicant to omit exhibits unnecessary for the full understanding of its proposal.[8] Further, in uncontested cases, where the applicant has requested consideration under the "shortened procedure" offered under § 157.11(b) of the Commission's regulations,[9] the Commission can render a decision (in the equivalent of a summary judgment process) pursuant to § 385.802 of the regulations.[10] Even in relatively simple, noncontroversial, uncontested cases, however, there is a significant regulatory delay inherent in the preparation and consideration of a case specific order issuing the certificate. Thus, we wish to consider in this proposed rulemaking how to streamline our procedures to expedite this process.

B. Blanket Construction Certificates

Interstate pipeline companies that already have a certificate and rates accepted by the Commission can obtain a blanket construction certificate pursuant to part 157, subpart F to construct, acquire, and operate certain types of "eligible" facilities (and rearrange miscellaneous facilities) without being subjected to the extensive review process inherent in the traditional certificate application procedures in part 157, subpart A of the regulations.[11] Section 157.202(b)(2) defines an "eligible facility" as any jurisdictional facility necessary to provide service within existing certificated volumes, or any gas supply facility (including connecting facilities required to receive gas from a supplier and connections between holders of part 284 blanket transportation certificates). Eligible facilities specifically exclude main line transmission facilities (including looping, extensions, and compression that alters capacity), storage testing facilities, sales taps, certain liquefied natural gas (LNG) and synthetic natural gas (SNG) facilities, and facilities crossing state lines for the primary purpose of transporting natural gas by intrastate pipelines under section 311 of the Natural Gas Policy Act of 1978 (NGPA).[12]

Depending on the cost of the "eligible facility" project, the blanket certificate holder may qualify for either (a) automatic authorization or (b) prior notice authorization. Facilities automatically authorized do not require specific Commission review. Facilities subject to prior notice requirements must be filed with the Commission and are authorized only if not protested within a mandated 45-day notice period. If a protest is filed and not resolved (withdrawn), the facility is reviewed under traditional NGA section 7(c) certificate application procedures. Section 157.208(d) establishes the cost limits to determine whether a facility qualifies for automatic or prior notice authorization. Facilities costing less than $5,800,000 qualify for automatic authorization. Facilities costing in excess of $5,800,000, but less than $16,600,000, qualify for prior notice authorization.[13] These limits are adjusted annually to account for inflation.[14]

For facilities to be authorized under either automatic or prior notice authorization, the blanket construction certificate holder must comply with certain standard conditions in § 157.206 and reporting requirements in § 157.207 of the Commission's regulations. Included in the standard conditions are the environmental compliance criteria specified in § 157.206(d). Under the reporting requirements, the certificate holder must provide annual reports on the nature and cost of each facility constructed during the previous calendar year.

C. Optional Construction Certificates

Optional construction certificates were introduced as part of a package of open access transmission regulatory

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[4] *Kansas Pipe Line & Gas Company, et al.*, 2 FPC 29 (1939). The Commission defined "public convenience and necessity" as meaning "a public need or benefit without which the public is inconvenienced to the extent of being handicapped in the pursuit of business or comfort or both—without which the public generally in the area involved is denied to its detriment that which is enjoyed by the public of other areas similarly situated."

[5] Order No. 436, 50 FR 42408 (Oct. 18, 1985); FERC Stats. & Regs. [Regulations Preambles 1982–1985] § 30,665 at 31,582 (Oct. 9, 1985). See also interim rule and statement of policy in Order No. 500, 52 FR 30334 (Aug. 14, 1987), III FERC Stats & Regs § 30,761 (Aug. 7, 1987); and final rule in Order No. 500–H, 54 FR 52344 (Dec. 21, 1989); III FERC Stats. & Regs. § 30,867 (Dec. 1989).

[6] 18 CFR part 157 (1989).

[7] Disputes over material facts that cannot be resolved on the written record are comparatively rare in construction certificate cases.

[8] 18 CFR 157.7 (1990).

[9] 18 CFR 157.11(b) (1990).

[10] 18 CFR 385.802 (1990).

[11] See 18 CFR 157.204 and 157.208 (1990).

[12] 15 U.S.C. 3371 (1988).

[13] 18 CFR 157.208 (1990).

[14] Another provision of the subpart F blanket certificate regulations authorizes facilities for testing or developing underground storage reservoirs within certain volume limits up to a calendar year maximum for 1990 of $3,600,000. See 18 CFR 157.215 (1990).

reforms in Order No. 436.[15] The purpose of Order No. 436 was "to assure that commodity and transmission prices for natural gas between the wellhead and burner-tip are clear and accurate and consistent with the requirement of [the NGA] that rates and practices be just and reasonable and not unduly discriminatory, or preferential."[16] To promote competition among pipelines, the Commission wanted to ease market entry and exit restrictions caused by potentially lengthy regulatory proceedings.[17] In the Commission's own words:

> The rule is designed to provide consumers with greater options in the array of gas services available by giving pipelines the ability to offer new service and construct facilities on a timely basis. To this end, the rule removes certification as a barrier to entry where certain conditions are met, and thus helps ensure that pipelines propose the most efficient scale for new facilities. (Suboptimally sized facilities will have higher costs at design volumes and will be vulnerable to entry by more correctly-sized facilities.)[18]

Optional certificate applications are required to meet certain substantive filing requirements, but applicants are not required to demonstrate markets or gas supply to the extent required for traditional construction certificate applications. Rather, the applicant must show that it is willing to bear the risk of under-utilization of the proposed project. A pipeline is eligible for an optional certificate if it agrees to provide nondiscriminatory, open access transportation pursuant to a part 284 blanket transportation certificate, and if the proposed rates for the service are designed so that no inappropriate costs are borne by the pipeline's existing customers. As the Commission stated in Order No. 436,

> If an application by any person for the issuance of a certificate under Subpart E fully complies with the requirements of §§ 157.102 and 157.103, thereby demonstrating the applicant's willingness to assume all economic risks of the proposed activities, the Commission will presume, subject to rebuttal, that the provisions of section 7(e) of the Natural Gas Act have been satisfied and that the proposed new service is required by the present or future public convenience and necessity. Section 157.105 provides that a certificate requested under this Subpart E will be issued if the applicant complies with these requirements unless the presumption established by § 157.104 is rebutted.[19]

Thus, the basic premise of the optional certificate regulations is that a facility can be presumed to be required by the public convenience and necessity if the applicant is willing to assume the full risk of the project. The rate conditions and the filing requirements are all tied to that premise.

As discussed below, the Commission has now had five years' experience in considering and issuing certificates under the optional procedures, and the court of appeals has had occasion to review the regulations in that context. Thus, in this rulemaking we propose to review the optional certificate regulations in light of actual experience and to make whatever changes are appropriate to conform the regulations to the Commission's present policy and practice as it has evolved since the regulations were originally promulgated.

D. Construction Pursuant to Exemption from NGA Section 7

The Commission's regulations (under § 2.55 of the Commission's general policy and interpretations) presently define certain replacement construction, maintenance, and emergency-related facilities that do not require prior Commission certificate approval. However, such construction may result in environmental impacts requiring Commission evaluation even though the Commission has determined that such construction does not otherwise fall under NGA section 7 jurisdiction.

Under § 2.55, certain facilities may be installed without any NGA section 7(c) authority. Specifically, § 2.55 exempts auxiliary installations, replacement facilities, and certain types of taps from section 7(c) certificate requirements by excluding them from the NGA definition of "facilities".

Auxiliary installations, as defined in § 2.55(a), include facilities such as buildings, valves, drips, and electrical and communications equipment, etc., which are designed to improve the operating efficiency of existing transmission facilities and are strictly incidental in nature. Replacement facilities, as defined in § 2.55(b), are facilities installed to replace deteriorated or obsolete existing pipeline (or compression) facilities, provided that no material changes in existing pipeline services or capacity result. Taps, as defined in § 2.55(c), are exempt only if installed on an existing transmission line and only if used exclusively to take delivery of gas from an independent producer.

While § 2.55 auxiliary installations and taps typically involve minor facilities, replacement facilities may be on a large scale. For instance, a pipeline replacement project can involve removal and replacement of hundreds of miles of large diameter pipeline at a cost of tens of millions of dollars.

The reason for exempting replacement facilities from the certificate requirements of NGA section 7 is that, if the new facilities do not increase or decrease the capacity of the pipeline, there is no economic regulatory significance to the replacement—it is the same pipeline that was already there, but with new, reliable facilities instead of old, worn out, potentially dangerous facilities. There can, however, be serious environmental consequences to replacement, specifically related to the process by which facilities are removed and disposed of. Also, if the facilities were originally constructed in farm land that has since become an urban or residential area, construction of new facilities in a different right-of-way might be environmentally preferable to replacement of the facilities in the existing right-of-way.

The exemption of replacement facilities from NGA section 7 certificate requirements leaves interstate pipelines free to replace facilities without providing notice to affected landowners or to the Commission itself—*i.e.*, notice and a meaningful opportunity to evaluate the potential environmental impact of the replacement before construction commences. Thus, we believe the exemption for replacement facilities merits fresh review.

Section 284.261 of the regulations exempts "emergency natural gas transactions" (which includes the sale, transportation, or exchange of natural gas) from the certificate requirements of NGA section 7.[20] Section 284.262(d) permits the construction and operation of any facilities required to implement an emergency natural gas transaction, provided the transaction is necessary to alleviate an emergency and the emergency lasts no more than 60 days.

An emergency is defined as covering:

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[15] Order No. 436:

> Establishes optional certificate procedures providing expedited treatment of applications for new service under section 7 of the NGA. A certificate and pre-granted abandonment are available under these procedures to allow any applicant to institute new jurisdictional service and to construct and operate facilities for such services. To qualify, the applicant must agree to comply with the specific terms and conditions under which the certificate is offered. Most important, the applicant must accept the full risk of the proposed venture. These procedures are completely voluntary. The alternative of applying for a certificate under conventional procedures remains available, with the conventional assignment of risks.

FERC Stats. & Regs. ¶ 30,665 at 31,569.

[16] *Id.*, at 31,470.

[17] *Id.*, at 31,491.

[18] *Id.*, at 31,569.

[19] Id. at 31,581.

[20] 18 CFR 284.261 through 284.271 (1990).

(a) Curtailments (due to actual or anticipated gas supply shortages) of projected service levels to any existing customer(s) of interstate pipelines, intrastate pipelines, local distribution companies, or Hinshaw pipelines;

(b) Sudden unanticipated increases in gas demand or unanticipated losses of gas supply; or

(c) Situations requiring immediate action to protect life, health, or physical property.

No precise limits are imposed on the "emergency" facilities permitted by § 284.262(d). However, facilities actually constructed under this provision have historically been minor—predominantly taps and short pipeline connecting facilities. Rate base treatment of such facilities is available only after a certificate is issued.

Section 284.3(a) of the regulations, among other things, exempts from jurisdiction under the NGA any transportation in interstate commerce authorized under section 311 of the NGPA.[21] Section 284.3(c) provides that the NGA does not apply to facilities used solely for transportation authorized under NGPA section 311(a).

Thus, with one exception, an interstate pipeline seeking to perform transportation under NGPA section 311(a) may, without case specific Commission review or authorization, construct and/or operate virtually any facilities required to implement the transaction, as long as the facilities are used exclusively for the NGPA section 311 transaction. To comply with environmental regulations, § 284.11 now requires that all authorizations under subparts B and C of part 284 that involve construction of facilities, or abandonment and removal of facilities, are subject to the environmental compliance terms and conditions of § 157.206(d) of the regulations.

The magnitude of NGPA section 311 facilities that have been constructed nationwide raises environmental issues comparable to those involved in the replacement exemptions and optional certificates, both discussed above. For comparable reasons, we believe that the NGPA section 311 exemption merits a fresh look.

[21] Section 311 of the NGPA authorizes Commission approval for certain transportation services by interstate pipeline companies on behalf of intrastate and local distribution companies as long as the rates and charges are just and reasonable, and by intrastate pipelines on behalf of interstate pipelines and local distribution companies served by any interstate pipeline as long as the rates and charges represent a maximum fair and equitable price. See 15 U.S.C. 3371 (1988).

E. Environmental Requirements

Review of certificate applications requires compliance with the National Environmental Policy Act of 1969 (NEPA). NEPA requires federal agencies to carefully weigh the potential environmental impact of all their decisions and to consult with federal and state agencies and the public on serious environmental questions:

> [A]ll agencies of the Federal Government shall—
>
> * * * * *
>
> (C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—
>
> (i) the environmental impact of the proposed action,
>
> (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
>
> (iii) alternatives to the proposed action,
>
> (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
>
> (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.
>
> Prior to making any statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of Title 5, and shall accompany the proposal through the existing agency review processes; * * *.[22]

The Commission's standards of NEPA review are set forth in part 380.[23] Certificate applications fall under one of three categories: (1) Categorical exclusion (presumption of no impact); (2) an environmental assessment (EA), which is an analysis of whether a proposal would result in a "major Federal action significantly affecting the quality of the human environment" or a "finding of no significant impact" (FONSI); or (3) an environmental impact statement (EIS), which includes an analysis of the environmental impacts and proposed mitigation measures—including alternatives—of a major Federal action significantly affecting the quality of the human environment. While certain types of certificate filings are categorized in the regulations as fitting within one of these three categories, the Commission's staff reviews all applications, and may modify the status of a particular filing to a different category if circumstances warrant such action.

[22] 42 U.S.C. 4332 (1982).

[23] 18 CFR part 380 (1990).

Other statutes require the Commission to consider environmental factors in its decision-making process. These statutes include, *inter alia*, the National Historic Preservation Act, as amended,[24] the Endangered Species Act of 1973, as amended,[25] the Toxic Substances Control Act,[26] the Clean Air Act, as amended,[27] the Clean Water Act, as amended,[28] the Coastal Zone Management Act of 1972, as amended,[29] the Wild and Scenic Rivers Act, as amended,[30] the Wilderness Act,[31] and the National Parks and Recreation Act of 1978, as amended.[32] With respect to certificate authorization of natural gas pipeline facilities, the Commission implements the mandates of these various statutes in the following manner.

Section 106 of the National Historic Preservation Act of 1966, as amended, requires that final approval of a project cannot be given until the Commission has taken into account the effect of a proposed project on any district, site, building structure, or object that is on or eligible for inclusion on the National Register of Historic Places. Related nonjurisdictional facilities must be included when determining the effect of a project.[33] The Commission must also allow the Advisory Council on Historic Preservation (ACHP) the opportunity to comment before construction on the effects of such a project if a potential for an effect exists. The Commission makes sure that the ACHP is afforded such an opportunity prior to the construction of any certificated project.[34]

In accordance with section 7 of the Endangered Species Act of 1973, as amended, the Commission must determine if any federally listed or proposed threatened or endangered

[24] 16 U.S.C. 470 (1988).

[25] 16 U.S.C. 1531–1544 (1988).

[26] 15 U.S.C. 2601–2671 (1988).

[27] 42 U.S.C. 7401–7642 (1982).

[28] 33 U.S.C. 1251–1387 (1988).

[29] 16 U.S.C. 1451–1464 (1988).

[30] 16 U.S.C. 1271–1287 (1988).

[31] 16 U.S.C. 1131–1136 (1988).

[32] 16 U.S.C. 1—460zz–11 (1988).

[33] See 36 CFR part 800 (1989).

[34] The Archeological and Historic Preservation Act of 1974 does not place any direct requirements on the Commission's activities under the Natural Gas Act. It applies to federal land managing agencies. However, when certificated projects involve federal land, the proponent needs to follow the appropriate land manager's procedures under this Act.

species or their critical habitat could be affected by any proposed construction or abandonment project, including related nonjurisdictional facilities. The Commission consults informally and, if necessary, formally with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service to determine if there could be any effects and, if there could be, what measures should be taken to eliminate or reduce them to acceptable levels.

Pursuant to the Toxic Substances Control Act, the Commission determines if a proposed project could involve materials contaminated with PCBs or other toxic substances and, if such is the case, coordinates with the U.S. Environmental Protection Agency to ensure applicant compliance with the Act.

Certain permits are required of applicants under the Clean Air Act and the Clean Water Act prior to construction. As part of the Commission's environmental analysis under NEPA, the Commission staff analyzes the project's likely effects on air and water quality. The applicant must obtain the requisite permits from the state or Federal agency administering the regulations under these acts.

Under the Coastal Zone Management Act of 1972, as amended, the Commission cannot give final approval to any project in a state with an approved coastal zone management plan until that state agency certifies that the project, including related nonjurisdictional facilities, will be consistent with the state's plan. The Commission makes sure that project construction cannot begin until such certification is received.

As part of the Commission's current environmental analysis under NEPA, the Commission staff determines if any wild and scenic rivers (national or state), wilderness areas, or national parks are in the vicinity and what potential effects could result from the project. The appropriate federal land managing agency is consulted for its views. The primary objective is to avoid these resources.

F. Eminent Domain

Section 7(h) of the NGA [35] grants federal eminent domain powers to certificate holders.[36] Construction absent a certificate (for example, construction pursuant to an NGPA section 311 exemption from NGA section 7) does not involve federal eminent domain powers.

IV. Discussion

A. Purpose and Objectives

In this rulemaking proceeding, the Commission intends to undertake a comprehensive review of its regulations governing authorization for natural gas pipeline construction. Such authorization may occur either through issuance of certificates pursuant to section 7 of the NGA, or by exemption from the requirements of section 7. The certificate authority to be considered includes both generic authorization (conferred either by the regulations themselves or through the issuance of blanket certificates to individual pipelines) and individually issued certificates.

To the extent that the Commission's optional certificate regulations do not accurately reflect current Commission policy and practice as it has evolved over the last five years in processing individual certificate applications under the optional procedures, the Commission proposes to conform the regulations to that experience.

To the maximum extent consistent with applicable statutory requirements, the Commission would like to streamline and simplify its procedural requirements for seeking and obtaining construction certificate authority. For instance, when proposed pipeline construction projects are uncontested, do not involve potentially significant environmental impact, will utilize the pipeline's existing system-wide rates and will afford open access transportation to all potential customers, we want to expedite the construction approval process as much as we can by utilizing a notice and protest procedure.

Clarification of the existing certificate application regulations may also expedite the regulatory review process by enabling the Commission's staff to determine at an earlier stage in that process which applications are complete and ready for disposition and which are so patently deficient as to justify dismissal. This would enable the staff to focus more of its resources on the applications that are complete, and to expedite the processing of those applications.

The Commission takes very seriously its statutory responsibility to consider the potential environmental impact of pipeline construction, and is determined to ensure that it has adequate notice of, and opportunity to review, all such construction that falls within its jurisdiction, and to do so before such facilities are constructed. Thus, in this rulemaking proceeding, the Commission intends to carefully review its notice and environmental review procedures for authorization of pipeline construction. The automatic authorizations inherent in the replacement facilities and NGPA section 311 exemptions require particular scrutiny.

In undertaking this review, however, the Commission does not wish to disrupt any ongoing certificate proceedings or pipeline construction projects. We believe that would be potentially more detrimental to environmental values and counterproductive to our purpose of streamlining and expediting our procedures to facilitate market entry.

B. Updating of Optional Certificate Regulations

The Commission is proposing to revise part 157, subpart E to the extent necessary and appropriate to conform it to past Commission precedent and current Commission policy. The U.S. Court of Appeals for the District of Columbia Circuit has upheld the optional certificate regulations generically in *AGD* v. *FERC*, [37] and case specifically in *California* v. *FERC*.[38] The proposed rule would revise the optional certificate regulations in a manner consistent with those appellate decisions.

1. Non-Exclusivity of Certificates

The proposed rule would revise § 157.103(a) to preclude an applicant from seeking certificate authorization under subpart E, and, at the same time, seeking authorization under any other subpart, for substantially the same project. Since the adoption of the

[35] 15 U.S.C. § 717(f) (1988).

[36] NGA Section 7(h) provides as follows:

(h) When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That the United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000.

[37] Associated Gas Distributors v. FERC, 824 F.2d 981 (D.C.Cir.1987).

[38] Public Utilities Commission of the State of California v. FERC, *et al.*, 90 F.2d 269 (D.C.Cir.1990).

optional certificate regulations, several applicants have filed applications under both subpart E and subpart A, for substantially the same project.[39] Consequently, the Commission must process both the optional certificate application and the traditional application, even though it is apparent that the applicant only requires one certificate authorization to go forward with the project. Such duplicative filings drain Commission resources, and, therefore, are inconsistent with the Commission's efforts to streamline its certification process.

An applicant might proceed initially by seeking authorization under one subpart, such as under subpart A for a traditional certificate. It might later seek to proceed under another subpart, such as subpart E for an optional certificate. If it chose to do so, the initial certificate application would be deemed withdrawn and would be dismissed as superseded and thus moot.

2. Risk Allocation and Reservation Fee

The existing optional certificate regulations provide that the applicant must bear the risk of the project. This requirement is reflected in existing § 157.103(d)(3), which provides that, except for a reservation charge, the rate for firm transportation service cannot include a demand charge, a minimum bill, or minimum take provision, or any other provision that has the effect of guaranteeing revenue. In addition, the applicant must comply with § 157.103(d)(8), which prohibits cost shifting.

In *California* v. *FERC*, the U.S. Court of Appeals for the D. C. Circuit addressed the issue of risk allocation and upheld the existing regulations.[40] The court's view was that an applicant could satisfy the assumption of risk criteria if it "bears an adequate share of the risk of the proposed pipeline"[41] and if the "pipeline did not escape risk by 'rolling' the cost in with charges to customers of other services."[42]

Nevertheless, Commission experience indicates that there has been uncertainty in the industry as to the type and level of reservation charge that is permissible under subpart E in order to evidence the applicant's willingness to assume project risk. To eliminate this uncertainty, the proposed rule would revise § 157.103(d)(3) to codify Commission precedent. The rule would require that the reservation fee conform to new § 157.103(d)(9), in addition to §§ 284.8(d) and 157.103(d)(3).

Proposed new § 157.103(d)(9) would establish conditions that would be applicable to reservation fees charged for firm transportation service on facilities certificated under subpart E. The rule would allow a reservation fee only if the fee were the result of arms-length negotiations between the certificate holder and the customer. The certificate holder and the customer would be free to negotiate any level of risk sharing, within the bounds of §§ 284.8(d) and 157.103(d)(3).

The proposed rule would require that the certificate holder make the lowest reservation fee that is negotiated with any shipper available to all shippers on a nondiscriminatory basis. The Commission views this requirement as a necessary corollary to the requirement that service be provided on a nondiscriminatory basis.[43] However, the applicant would not be required to build the facilities if it determined that the aggregate reservation fees negotiated were insufficient to support construction of the project. In such case, the applicant could renegotiate the reservation fees with individual customers. The Commission specifically seeks comments on whether this iterative process grants undue market power to the certificate holder.

Even though the lowest reservation fee agreed upon with any one customer must be made available to all customers, individual customers could agree to pay a higher reservation fee in order to induce the applicant to go forward with the project. Customers agreeing to pay a higher reservation fee would pay a correspondingly lower usage fee, since costs not included in the negotiated reservation fee would be assigned to the usage fee. Thus, the negotiation process might result in different shippers paying different reservation fees and correspondingly different usage fees.

A customer might also agree to pay a higher reservation fee to secure a higher priority in the initial queue for firm transportation service. If the certificate holder has proposed to allocate firm transportation capacity on the basis of the present value of the reservation fee per Mcf, as discussed below, and a shipper accepts a lower reservation fee prior to the commencement of service, then the rule would require the certificate holder to redetermine the shipper's place in the queue.

The proposed rule would require that once the facilities are operational, the certificate holder must make all remaining firm transportation capacity available at the lowest negotiated reservation fee. The proposed rule would also provide that once the facilities are operational, the initial queue for firm transportation service would become "locked in." Consequently, the proposed rule would not allow subsequent shippers to "bump" existing shippers by agreeing to a higher reservation fee after the facilities are operational. This requirement would codify Commission precedent.[44]

3. Initial Allocation of Firm Transportation Capacity

The proposed rule would require that the application include a proposed methodology for determining the initial allocation of firm transportation capacity. The rule would add a new § 157.103(k) to the regulations, which would establish criteria for ensuring that firm transportation capacity on the optional certificate facilities is allocated in a nondiscriminatory manner.

The proposed rule would provide that firm transportation capacity must be allocated initially according to one of the following three methodologies:

(1) First-come, first-served,

(2) Present value of the reservation charge per Mcf, which is determined by the following formula for an ordinary annuity,

$$\text{monthly reservation fee per Mcf} \times \frac{1-(1+i)^{-n}}{i} = \text{present value per Mcf.}$$

where:

i = overall approved rate of return, per month

n = term of the agreement, in months

(3) Any other nondiscriminatory method, which the Commission would examine on a case-by-case basis.

The first two methodologies would codify Commission precedent,[45] while

[39] *E.g.*, Kern River Gas Transmission Company, Mojave Pipeline Company, Iroquois Gas Transmission System, Altamont Gas Transportation Project, and others have filed both optional and traditional section 7(c) applications for substantially the same project.

[40] California v. FERC, *supra*, slip op. at 8, 18–22.

[41] *Id.*, at 8.

[42] *Id.*, at 21.

[43] *Id.*, Wyoming California Pipeline Co., 45 FERC ¶ 234 (1988) at 61,677.

[44] See Wyoming-California Pipeline Company, 45 FERC ¶ 61,234 (1988); Mojave Pipeline Company, 47 FERC ¶ 61,200 (1989); Kern River Pipeline Company, *et al.*, 50 FERC ¶ 61,069 (1990); Wyoming-California Pipeline Company, 50 FERC ¶ 61,070 (1990).

[45] See Wyoming-California Pipeline Company, 50 FERC ¶ 61,070 (1990); Kern River Gas Transmission Company, *et al.* 50 FERC ¶ 61,069 (1990). Kern River and Mojave allocate capacity on a first-come, first-served basis, while WyCal allocates capacity according to the present value of the reservation fee, per unit.

the third methodology would allow the applicant to devise and propose his own nondiscriminatory allocation methodology.

As discussed above, if the applicant proposed to allocate capacity according to the present value of the reservation charge per Mcf, to the extent that shippers accepted lower reservation fees as a result of the requirement that the applicant offer the lowest negotiated reservation fee to all shippers, the applicant would have to redetermine the queue for service based on the lower reservation fee.

4. Open Season for Firm Transportation Service

The proposed rule would require that the application include proposed procedures for the establishment of an open season for the initial allocation of firm transportation capacity. The proposed rule would codify Commission precedent regarding the initial allocation of firm transportation capacity on facilities constructed pursuant to the optional certificate procedures.[46]

The proposed rule would add a new § 157.103(1) to the regulations, which would require that the certificate holder conduct an open season, for a period of no less than 30 days, for the purpose of receiving initial requests for firm transportation service. The rule would provide that firm transportation capacity may only be allocated during the open season, or thereafter. Further, the certificate holder would be required to provide sufficient public notice of the starting date and closing date of the open season.

5. Environmental Compliance

Section 157.103(i) of the current optional certificate regulations provides that the applicant is subject to the terms and conditions of § 157.206(d), which sets forth environmental compliance criteria for activities authorized under a part 157, subpart F blanket certificate. Section 157.206(d)(4) states that any transaction authorized under a blanket certificate shall not have a significant adverse impact on a sensitive environmental area. Section 157.206(d)(4) was promulgated primarily to ensure compliance with NEPA for projects under the blanket certificate program.

The Commission has waived § 157.206(d)(4) on a few occasions in optional certificate proceedings in which NEPA had been satisfied through the preparation of an Environmental Impact Statement.[47] There, the Commission determined that, through the environmental review process, the Commission gave full consideration to the environmental effect of its action, and that waiver of § 157.206(d)(4) would not impair the Commission's ability to ensure compliance with NEPA.

The proposed rule would delete § 157.103(i) to eliminate the requirement that the applicant comply with § 157.206(d) and consequently (d)(4). This revision should not compromise the Commission's NEPA responsibilities because the Commission would in any event conduct an environmental review of any application that had a significant adverse impact on a sensitive environmental area, and would consider and adopt appropriate mitigative conditions to ameliorate the project's impact. Consequently, the rule would allow the Commission to issue optional certificates, as it may currently authorize traditional NGA section 7(c) projects, without the need for a waiver.

6. Sales Service Requirements

To date, the Commission has had nominal experience with the operation of § 157.103(e) of its regulations, regarding sales service on facilities certificated under the optional certificate procedures. However, it appears that some of the above issues which have caused the Commission to propose revisions on the transportation side are also applicable to sales service. Further, the Commission's policy regarding sales service has evolved somewhat since the adoption of the optional certificate regulations in 1985. Accordingly, the proposed rule would revise § 157.103(e) in a fashion designed to parallel the regulations that apply to transportation service on facilities certificated under subpart E, and to codify Commission precedent regarding sales service.

The proposed rule recognizes that the applicant would not be required to provide sales service. Therefore, the rule would apply only if sales service were offered voluntarily by the applicant. The rule would require that transportation service associated with sales service be unbundled. Further, sales would have to take place at the mainline receipt points and not at the city gate. These revisions would (1) provide a clear separation between sales service and transportation service, (2) avoid tying arrangements, and (3) provide a bright line standard for comparable nondiscriminatory service operation. These revisions would codify Commission precedent.[48]

The rule would require that the certificate holder conduct an open season for firm sales service, in accordance with the open season requirements that otherwise apply to firm transportation service. The rule also would require that firm and interruptible sales capacity be allocated in a nondiscriminatory manner. These revisions parallel the proposed revisions that apply to firm transportation service.

Alternatively, since several pipelines are shedding their merchant function, the Commission is considering revising subpart E of part 157 to eliminate the provisions which allow an eligible applicant to obtain optional certificate authorization for the sale of natural gas. The Commission has received only one such application, which was dismissed.[49] The Commission invites comment on both the proposed rule, and on the alternative of eliminating the sales provisions from subpart E.

7. Capacity Assignment

The Commission has on several occasions required that the optional certificate holder provide for a capacity assignment program.[50] While the Commission has not imposed this requirement in every instance,[51] we believe it may be appropriate to revise the regulations to require that shippers be given the right to assign their firm and interruptible capacity rights on facilities constructed under optional certificates.

Since reassignment rights create price competition between pipeline operators and shippers, they reduce the likelihood that capacity will lie idle because usage charges have not adjusted to reflect the current market value of the capacity.[52]

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[46] See Wyoming-California Pipeline Company, 50 FERC ¶ 61,070 (1990); Mojave Pipeline Company, 47 FERC ¶ 61,200 (1989); Kern River Pipeline Company, *et al.*, 50 FERC ¶ 61,069 (1990).

[47] See, *e.g.*, Wyoming-California Pipeline, 44 FERC ¶ 61,001 (1988), *vacated in part*, 44 FERC ¶ 61,210 (1988), *reh'g*, 45 FERC ¶ 61,234 (1988); Wyoming-California Pipeline Company, 50 FERC ¶ 61,070 (1990), *reh'g*, 51 FERC ¶ 61,195 (1990); Kern River Gas Transmission Company, *et al.* 50 FERC ¶ 61,069 (1990), *reh'g*, 51 FERC ¶ 61,195 (1990).

[48] See Northern Natural Gas Co., 42 FERC ¶ 61,303 (1988); Transcontinental Gas Pipe Line Corp., 46 FERC ¶ 61,351 (1989); Transcontinental Gas Pipe Line Corp., 48 FERC ¶ 61,399 (1989).

[49] See Tennessee Gas Pipeline Company, 36 FERC ¶ 61,353 (1986), *reh'g denied*, 38 FERC ¶ 61,209 (1987).

[50] See, *e.g.*, Wyoming-California Pipeline, 45 FERC ¶ 61,234 (1988); Mojave Pipeline Company, 47 FERC ¶ 61,200 (1989); Kern River Pipeline Company, *et al.*, 50 FERC ¶ 61,069 (1990); Wyoming-California Pipeline Company, 50 FERC ¶ 61,070 (1990).

[51] See, *e.g.*, Moraine Pipeline Company, 42 FERC ¶ 61,144 (1988); Green Canyon Pipe Line Company, 47 FERC ¶ 61,310 (1989).

[52] *Cf.* 45 FERC ¶ 61,234 at 61,682.

This increased competition also ensures the maintenance of a degree of economic risk for optional certificate holders that is consistent with the optional procedures. For the same reasons, reassignment rights further enhance the intended operation of the optional regulations by creating additional incentive for applicants to optimally size facilities, since they will be subject to competition from their own shippers if they overbuild.

In view of these considerations, the Commission invites comment on whether subpart E should be revised to require optional certificate holders to provide for a capacity assignment program, as a condition to certificate authorization.

C. Consolidation and Expansion of Generic Construction Authorization

1. Replacement Facilities

When § 2.55(b) of the Commission's regulations was promulgated in 1949, the regulatory emphasis centered on the economic impact of regulated activities. There was little concern over protection of the environment, endangered species, wildlife, or archeological and historic artifacts, for example. Since there was no actual economic regulatory impact which resulted from the replacement of pipeline facilities, the replacement of facilities (with certain restrictions) was defined to be exempt from the definition of the word "facilities" for the purposes of section 7(c) of the Natural Gas Act. However, due to the increased awareness of the relation between human activity and the environment, the regulatory emphasis today is considerably broader. It is with this in mind that we are reviewing the exemption for replacement facilities in § 2.55(b).

Under the present rule, pipeline facilities may be replaced without public notice or review by this Commission. Consequently, replacement of facilities occurs without evaluation of whether the construction activity associated with such replacement comports with the requirements of the various environmental statutes enacted after the promulgation of § 2.55(b).[53] Since the replacement of facilities is, in essence, construction of facilities, environmental impact may occur as a result of such replacement. Therefore, such activities should be reviewed in conformance with applicable environmental statutes.

For example, because replacement of pipeline facilities involves the same construction-type activities used to install the facilities initially, it is easily conceivable that replacement of a pipeline may seriously disturb certain endangered species or delicate wildlife. Consequently, replacement of facilities along a more environmentally desirable route may be required or new mitigation conditions imposed. Additionally, as previously stated, the facilities may have been originally constructed in a rural area which has since become heavily populated; given the change in circumstances, replacement of facilities along a different route may be preferable or mitigation conditions may need to be imposed.

In view of the above considerations, the proposed regulations, if adopted, would eliminate the replacement of facilities from the definition of the exemptions set forth in § 2.55(b), prospectively from the effective date of any final rule. The proposed rule would not affect the exemption under § 2.55(b) for replacement projects that commenced prior to the effective date of any final rule. However, simultaneously with this Notice of Proposed Rulemaking, we are issuing an Interim Rule which is effective immediately. The Interim Rule requires a pipeline to provide notification to the Commission of any replacement of facilities at least 30 days prior to commencement of such activities. As discussed above, disruption of ongoing replacement projects would be counterproductive to the purposes of this rulemaking. Nevertheless, in light of the discussion above, we believe it is necessary, at a minimum, to receive notification of such projects in order to allow us the opportunity to review and take action, if appropriate.

We believe that the proposed rule, taken as a whole, will not impede replacement activities, even though authorization for such replacements would be drawn from different regulations. Any replacement activities for which the project cost would be less than $10,000,000 (and which would not involve removal of facilities which may be contaminated with toxic substances or occur within 50 feet of an existing permanent residence) could be performed under the automatic authorization pursuant to § 157.208(a). Any replacement activity for which the project cost would be more than $10,000,000 could be performed under the prior notice procedures pursuant to §§ 157.208 (b) and (c), the accelerated procedures set forth in proposed § 157.219, the optional expedited certificate procedures pursuant to subpart E, or the traditional certificate procedures pursuant to subpart A. Of course, for replacement projects with a cost less than $10,000,000, a pipeline could proceed pursuant to the authorizations contained in subparts A or E, instead of using the blanket certificate authorizations found in subpart F. However, we invite comment on whether the proposed changes to the regulations would cause delay in the replacement of facilities or discourage pipelines from maintaining safe and reliable facilities.

The proposed regulations would not alter or modify the exemptions in §§ 2.55 (a) and (d) for auxiliary facilities or taps, or the exemption for emergency construction pursuant to subpart I of part 284.

2. Part 157

a. *Accelerated construction authorization.* As stated previously, the impetus behind the proposed revision of part 157 lies, in part, in our desire to accelerate the procedure for obtaining traditional NGA section 7(c) certificate authority for the construction of certain unopposed projects. We believe that it is good public policy to process applications as efficiently and expeditiously as possible. To the extent projects are needed, timely processing of applications allows consumers to receive gas supplies quickly and benefits the workings of a competitive market. Therefore, we are proposing to amend subpart F of part 157 by adding a construction authorization procedure which we believe would expedite certain construction projects. The Commission invites comment on this proposal, and on any other proposals that commenters wish to suggest to expedite authorization of new pipeline construction.

In essence, under the proposed procedure, if a pipeline satisfies certain criteria, it could proceed to construct facilities much more quickly than if its proposal were subjected to the longer period of time necessary for processing an application filed under subpart A. The proposed procedure is similar to the existing procedures under subpart F in that it would allow unprotested construction projects to move forward without the delay associated with subpart A construction proposals. However, the new procedure would greatly expand the type of construction which could be implemented under a prior notice procedure. For example, the construction of mainline or other

[53] The National Environmental Policy Act, the National Historic Preservation Act, the Archeological and Historic Preservation Act, the Endangered Species Act, the Toxic Substances Control Act, the Clean Air Act, the Clean Water Act, the Coastal Zone Management Act, the Wild and Scenic Rivers Act, the Wilderness Act, and the National Parks and Recreation Act.

extensive facilities could be implemented pursuant to this procedure. Upon meeting the requirements set forth here, the pipeline would be authorized, by operation of the rule, to construct the proposed facilities without further Commission action.

Under the proposed rule, any construction of facilities would be determined to be required by the public convenience and necessity if the following standards were met:

(1) *Open access transportation.* The pipeline facilities would be constructed by an interstate pipeline that holds both a blanket certificate issued under part 157, subpart F and a blanket transportation certificate issued under part 284. By definition, such a pipeline would have part 284 rates in effect. Further, this requirement would not operate to impede construction projects under this procedure, since every major pipeline already has a blanket certificate issued under subpart F of part 157.

(2) *Uncontested proposal.* Notice of the pipeline facilities to be constructed would be published in the Federal Register, with 45 days to file protests if the project cost is $25,000,000 or less, or 90 days to file protests if the project cost is $50,000,000 or less. If no protest is filed, by Commission staff or others, or if a protest is filed and later withdrawn or otherwise resolved, the certificate would be issued automatically, by operation of the rule. There would be no need for issuance of a Commission order.

(3) *No significant environmental impact.* During the initial protest period, the Commission's environmental staff would prepare an environmental assessment (EA). If the staff needs an extension of time to complete the EA, the staff would file a document extending the protest period for an additional period of time not exceeding 45 days. If the EA concludes with a Finding of No Significant Impact (FONSI), then this condition would have been met. If the EA cannot be completed within the above time frame or concludes with a finding that there is a potential for significant environmental impact, then the staff would file a protest.

(4) *Rates.* The pipeline facilities would be constructed by an existing interstate pipeline, as an addition to its system. The pipeline would charge its existing part 284 system rate for service on the new facilities. Therefore, existing customers' rates would not be affected. There would be no incremental rates; therefore, revenue would be derived by transporting gas to new customers at the existing system rates. In a subsequent rate case, the pipeline could seek to include the cost of construction in its rate base, or to establish incremental rates for the facilities. In effect, interstate pipelines would be authorized to construct new facilities to provide transportation to new customers, on an expedited basis, if they are willing to assume the risk that the revenues from service to those new customers (at existing rates) will recover the cost of the construction.[54]

The proposed rule would require that the request filed under this procedure provide sufficient information to establish: (1) That the pipeline holds a part 284 blanket transportation certificate, (2) that the proposed facilities would be operated as open access facilities, (3) that the pipeline has conducted an open season to allocate the capacity in the proposed pipeline facilities (so that all potential users of that capacity will have had an equal opportunity to obtain such capacity), and (4) that the pipeline would charge its existing rate for use of the facilities. Further, the proposed rule would include the notice procedure, standard conditions, and general reporting requirements of §§ 157.205, 157.206, and 157.207, respectively, as part of this procedure.

The proposed rule would place a project cost limitation, as is imposed under §§ 157.208 (a) and (b), upon facilities constructed under this section. However, proposed § 157.219 would not limit the types of facilities which are "eligible" for construction under this procedure. We propose $25,000,000 as the maximum project cost for construction of facilities under this section with a protest period of 45 days, and $50,000,000 as the maximum project cost for construction of facilities under this section with a protest period of 90 days. We wish to avoid advancing a procedure intended to expedite and streamline construction authorization which would, in practice, be no more expeditious than certification under part 157, subpart A. It should be noted here that if an applicant's environmental report is not complete, with accurate information, the application would be rejected or, in the alternative, the environmental review would not be finished within the protest period, resulting in a protest to the application by staff. We invite comment on this issue.

The significant limitations on the existing prior notice construction under § 157.208 ensured that, with the application of the environmental conditions of § 157.206(d), there would be very little potential for significant environmental impact from such projects. Therefore, we have not required a complete environmental report as is required for traditional part 157, subpart A applications. However, since mainline and other extensive facilities could be constructed under a prior notice procedure, the proposed rule would require submission of a complete environmental report, pursuant to § 380.3 and proposed § 380.12, discussed below, so that the staff would have all the information necessary at the beginning of the protest period. This would allow the staff to either complete an environmental assessment quickly or determine the need to convert the project to a traditional part 157, subpart A project because of the potential for significant environmental impact.

The proposed rule would also require that any project sponsor(s) of a construction proposal which is purportedly mutually exclusive of a proposal noticed under the requirements for construction authority under this section must, in order to receive contemporaneous consideration, file within the initial protest period a notice of intent to file a competitive proposal.[55] A notice of intent to file a competitive proposal would be considered a protest, thereby resulting in the project pursued under this section being processed as a certificate application under subpart A of part 157. Further, the purportedly mutually exclusive application would have to be filed within 30 days from the end of the initial protest period.[56] A complete application would be required; deficient applications would be dismissed. This requirement is intended to mitigate any delay associated with proposed construction projects for which there may be competitive projects. Therefore, unless the notice of intent or subsequent application were withdrawn, dismissed, or otherwise resolved, both proposals would be processed as other

[54] See, *e.g.*, Natural Gas Pipeline Company of America, 48 FERC ¶ 61,311 (1989); Transcontinental Gas Pipe Line Corporation, 45 FERC ¶ 61,403 (1988); Transcontinental Gas Pipe Line Corporation, 44 FERC ¶ 61,403 (1988); Transcontinental Gas Pipe Line Corporation, 44 FERC ¶ 61,400 (1988); and Transcontinental Gas Pipe Line Corporation, 44 FERC ¶ 61,174 (1988).

[55] See Maxcell Telecom Plus, Inc. v. Federal Communications Commission, 815 F.2d 1551 (D.C. Cir. 1987).

[56] For example, if the protest period for Proposal A expired on August 27, a notice of intent to file Proposal B would have to be filed on or before August 27. Additionally, the application for Proposal B would have to be filed by September 26 to receive contemporaneous consideration.

applications under subpart A of part 157.

Finally, as noted above, the Commission invites commenters to propose any other changes or additions to the regulations that they believe would serve to expedite the Commission's pipeline construction authorization processes. Particularly, we invite comment on whether the requirements to qualify for this type of authorization are too restrictive. Further, we request comments on the proposed approach to competitive projects. We are interested in eliciting ideas for other approaches which may be preferable in attaining our goal to streamline the certificate process. We are also interested in responses to a final rule which would apply this approach to all construction procedures.

b. *Changes to Existing Construction Authorizations*—(i) *Project Cost Limits for Blanket Construction Certificates.* Under the present regulations contained in subpart F of part 157, specifically §§ 157.203(b) and 157.208(a), a certificate holder is automatically authorized (1) to make miscellaneous rearrangements of any facility, or (2) to acquire, construct, or operate any eligible facility without Commission review, if the project cost does not exceed $5,800,000. If the project cost is greater than $5,800,000, but less than $16,000,000, under §§ 157.203 (c) and 157.208 (b) the certificate holder may (1) make miscellaneous rearrangements of any facility, or (2) acquire, construct, or operate any eligible facility, after following the prescribed prior notice procedure.

In light of our goal to expedite the certification process, we are proposing to increase the project cost limits to $10,000,000 for activities under §§ 157.203(b) and 157.208(a), and to $25,000,000 for activities under §§ 157.203(c) and 157.208(b). Both project cost limits would continue to be adjusted annually to account for inflation. We invite comment on the appropriateness of these proposed project cost limits.

(ii) *Exemption from Automatic Authorization.* The proposed rule would also preclude use of the automatic procedure set forth in §§ 157.203(b) and 157.208(a) for any construction, regardless of size or cost, which involves the removal of existing facilities or construction of facilities in urban or residential areas. This requirement would be adopted in order to ensure that these types of construction would not occur without notice and an environmental review prior to the commencement of any construction-related activities. Pipelines would not be barred from such construction, but could receive authorization through other part 157 procedures.

The question which then arises is: What authorization could a pipeline pursue for a project that is not eligible for automatic authorization because of proximity to existing residences, for example, but the project cost is less than the minimum project cost amount for the prior notice procedures under § 157.208(b)? The proposed rule would amend § 157.203(c) such that projects excluded from automatic authorization, due to proximity to residences, or removal of facilities which may be contaminated with toxic substances, could be authorized under § 157.208(b), even if the project cost would be less than the minimum project cost amount in column 1 of Table I as set forth in § 157.208(d). Therefore, while the automatic authorization would not be a viable option for this type of project, a certificate holder could proceed under the prior notice procedures of § 157.208(b), or any other part 157 procedure.

(iii) *Notice to Landowners.* We are proposing to amend the environmental compliance section of the regulations by adding proposed §§ 157.206(d)(10) and 380.12(c)(1)(ix), which would require that notification of proposed construction must be published once in a daily or weekly newspaper of general circulation in each county in which the project will be located. Such publication should take place at least six weeks prior to the beginning of any activity authorized under the automatic procedures of § 157.208(a). Further, within five days after filing a request or application under § 157.208(b), proposed § 157.219, or subpart A of part 157, the certificate holder would be required to provide certification to the Commission that such publication had occurred. The purpose behind this proposed requirement is to ensure that property owners and local governments are notified of the proposed construction in a timely manner.

Under existing procedures, property owners or local governments that would be affected by the proposed construction too often do not become aware of the proposal until well into the administrative process. This results in late filings of protests and motions to intervene which, in turn, result in delaying the certification process. The proposed publication requirement would reduce the potential for this unnecessary delay.

(iv) *Additional Information for Certain Filings.* For many filings under §§ 157.211, 157.212, and 157.216, the current regulations do not require the filing of adequate material relevant to the facilities involved. This has resulted in the need to ask applicants for information and wait for a response before the Commission can conclude that there are no significant environmental concerns with the proposal. Generally, we have been able to process filings well within the 45 day protest period. In some instances, however, it has been necessary for the staff to protest a prior notice filing only to withdraw the protest after certain information could be provided and reviewed. Therefore, we are proposing to amend §§ 157.211(b), 157.212(b), and 156.216(c) to require the filing of limited additional information which would eliminate the need to request additional information in most cases.

Under revised §§ 157.211(b) and 157.212(b), where the volume of gas to be delivered is more than 3,000 Mcf/d or the cost of the associated facilities is more than $100,000, the proposed rule would require submission of topographic map(s), a brief description of nonjurisdictional facilities, and a description of how the requirements of § 157.206(d) have or would be met.

We are proposing to add a paragraph to § 157.216 which would require that the producer must have filed a report with the Department of the Interior Minerals Management Service or a state commission which shows that the affected well has been plugged, provided that the producer is given 15 days notice of the certificate holder's intention to remove the wellhead facilities. Further, if a pipeline wanted to abandon any lateral lines under § 157.216, it would be required to submit topographic map(s), a description of how the requirements of § 157.206(d) have or would be met, the accounting treatment of the facilities abandoned, the date the facilities were abandoned, and a copy of any relevant plugging reports under revised § 157.216. This would enable processing of the majority of these filings within a 25-day protest period.

(v) *Identification of Affiliates.* Additionally, the proposed rule would add a new § 157.205(b)(7) to the notice procedures in § 157.205. The proposed regulation would require a certificate holder to include, as part of its request, a statement identifying all affiliates who would be involved in the construction, operation, or use of the proposed pipeline facilities. The purpose behind this addition is to assist this Commission in discovering and determining the potential for unduly

discriminatory practices among affiliates.

(vi) *Protest periods.* Section 157.205(e) allows for a protest period of 45 days for all filings under subpart F that are subject to the prior notice procedures. However, frequently, 45 days is more time than is required for the Commission's staff to perform its responsibilities under this subpart. Therefore, the proposed rule would decrease the protest period for all prior notice filings under subpart F, except filings under § 157.208(b) and proposed § 157.219, to 25 days. Since activities under § 157.208 and proposed § 157.219 (described above) tend to be more extensive, maintaining a longer protest period in these instances is reasonable.

c. *Delegation to the Director.* The proposed rule would increase the cost limits for proposals to construct, acquire, or operate facilities which are subject to the authority delegated to the Director of the Office of Pipeline and Producer Regulation (Director) pursuant to § 375.307(a)(1) of the regulations. The current cost limit of $5,000,000 has not been increased since 1981. The Commission proposes to increase the threshold cost limit to $25,000,000 so that additional uncontested projects may be processed under the delegation procedure. Under the revisions proposed in § 375.307(e), the limit would be adjusted each calendar year to reflect the "GNP implicit price deflator" published by the Department of Commerce for the previous calendar year.

To further streamline the certificate process, the Commission proposes to expand the existing delegation authority to authorize the Director to act on all uncontested pipeline and producer applications for abandonment of service or facilities. We have determined that the existing authority under § 375.307 (a)(3) and (a)(4) is too restrictive, requiring the Commission to act on uncontested cases involving facilities or customer service which could be handled more expeditiously by the Director.

In 1978, 1979 and 1981, when the existing delegation provisions for abandonment were promulgated, the objective was to identify the specific types of proposals that experience had shown would be routine and non-controversial. These types were identified as gas supply facilities (worth less than $1,000,000) [57] where the producer had obtained abandonment authorization or did not need abandonment authorization because of NGPA section 601, and pipeline and producer facilities or services used to serve particular customers where such customers had agreed to the abandonment.

As with any new program, the Commission exercised caution. It sought to ensure that it retained appropriate regulatory oversight over certain proposals. The requirement that the pertinent producer obtain abandonment was imposed so that a pipeline could not remove facilities and leave the producer stranded. However, subsequently § 157.216(a) brought these same fact situations under automatic approval as part of the subpart F blanket certificate.

Although these abandonment provisions have remained unchanged since 1981, both policy, operational, and competitive developments have shown that the existing regulations are too restrictive. For example, with respect to gas supply facilities, Order No. 490 authorizes abandonment for both the pipeline purchaser and the first seller, but does not address facilities. Also, in situations where wells are plugged and abandoned, the producer has no incentive to file for section 7(b) abandonment authority, but the pipeline may be able to present the state plugging report as evidence of abandonment by the producer. Further, diminished production may obviate the need for certain facilities, such as compressors, but the producer need not file for section 7(b) abandonment authority until production ceases completely. Additionally, as deregulation occurs, less and less gas is subject to section 7(b) abandonment requirements.

While the original objective to identify routine proposals is still valid, the number of routine, administrative abandonments is quickly increasing. Moreover, parties would still have the opportunity to protest applications, thereby precluding action by the Director and ensuring full review by the Commission. Also, actions by the Director could be appealed to the Commission. Therefore, existing § 375.307 (a)(3) and (a)(4) would be replaced by a new § 375.307(a)(4), which would authorize the Director to act on all uncontested pipeline and producer abandonment applications.

d. *Construction under NGPA section 311.* The question of whether the construction of facilities by an interstate pipeline to implement section 311 activities would require certificate authority under section 7 of the NGA initially arose as a result of comments to the proposed rules implementing the NGPA. In Order No. 46, the Commission concluded that, "while the NGPA is silent on the jurisdictional consequences" of such construction, "[i]t is our view that a facility is not subject to NGA jurisdiction if it is used exclusively for transportation authorized under section 311(a); thus, no certificate is required by section 7 of the NGA." [58]

The regulations promulgated in Order No. 46 limited self-implementing transportation authority to system supply, a period not to exceed two years, and best efforts service. However, the regulations subsequently promulgated in Order No. 436 contained none of these restrictions. Nevertheless, the preamble to Order No. 436 indicates that the Commission anticipated that construction by interstate pipelines associated with section 311 would involve only minor facilities, such as taps and interconnections. The preamble further concluded that section 311 transactions would largely utilize existing interstate pipeline facilities.

Based on the Environmental Assessment prepared in conjunction with Order No. 436, the Commission concluded that any adverse impacts of section 311 construction could be sufficiently mitigated by incorporating environmental conditions into its regulations authorizing the self-implementing transactions. Accordingly, § 284.11 subjects any authorization under section 311 to the terms and conditions of § 157.206(d). Section 157.206(d) sets out the statutes (NEPA, etc.) and policies that a pipeline must consider and satisfy prior to commencing construction.

The conclusion that these conditions were sufficient to meet our obligations under the various statutes listed above was based on the assumption that only minor facilities would be constructed under section 311 authorization. However, as section 311 transactions have grown and multiplied in recent years, interstate pipelines have used this authorization for the construction of extensive facilities. In many cases, the current requirements may be sufficient even for more extensive facilities. However, the question has arisen whether these requirements are, in fact, sufficient where extensive pipeline

[57] Facilities up to $100,000 were authorized in 1978; the dollar amount for that authorization was increased to $1,000,000 in 1981.

[58] Sales and Transportation of Natural Gas, 44 FR 52,179 (Sept. 7, 1979), FERC Stats. & Regs. [Regulations Preambles 1977–1981] ¶ 30,081 (Aug. 30, 1979), *reh'g*, 44 FR 66,789 (Nov. 21, 1979), FERC Stats. & Regs. [Regulations Preambles 1977–1981] ¶ 30,104 (Nov. 14, 1979).

projects are involved. While the Commission has the authority to halt the construction of section 311 facilities and impose penalties for non-compliance,[59] this authority does not offer the pre-construction case specific review that may be necessary in view of the ever expanding scope of NGPA section 311 construction activities. Therefore, we are requesting comments which would address these concerns as well as whether our current procedures regarding section 311 construction should be modified at all.

Presently, we are considering whether alternatives should be considered, and ultimately, adopted which would provide the Commission with some measure of oversight of section 311 construction. The threshold question to be determined is whether our current procedures are, in fact, adequate for expansive pipeline projects. If so, no change to the current regulations is necessary. However, if not, the questions which follow are: (1) Why not? and (2) What changes to the regulations are needed? If changes to the regulations are necessary, the options discussed below, as well as any options suggested in the comments to this rulemaking, would be considered for adoptions.

One option would modify § 284.3(c) to rescind the automatic construction authority under section 311. Interstate pipelines would then use the procedures set forth in part 157 for construction authorization of facilities to be used for section 311 transactions. Another option would simply require notification to the Commission, similar to that required by the Interim Rule, prior to the commencement of any section 311 construction. A further option would parallel the blanket construction authorizations; in other words, project cost limits and/or limits on the types of construction which could be done under section 311 would be imposed. The option adopted in the final rule must serve to satisfy our obligations under the various statutes. The stringency of the requirements adopted in the final rule will depend on a determination of the standards which must be met by this Commission. We invite comments and suggestions on this matter.

It should be noted here that, if the Commission adopts its proposals to amend § 157.208 of the blanket construction certificate regulations and to add a new § 157.219 setting forth accelerated construction procedures, many facilities for section 311 service could be constructed under those sections. Therefore, as an option to filing a subpart A application, an interstate pipeline would be able to seek authorization for the construction of section 311 facilities under the blanket construction certificate regulations or under the accelerated procedures of proposed § 157.219.

Section 284.11 subjects any authorization under subpart C of part 284 to the terms and conditions of § 157.206(d). Subpart C applies to the transportation of natural gas by any intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline. The proposed rule would revise paragraph (a) and add a new paragraph (b) to § 284.11, which would require that pipelines file evidence of compliance with § 157.206(d) at least 45 days prior to commencing construction or abandonment of the pertinent facilities. Construction or abandonment of section 311 facilities by an intrastate pipeline would fall under these requirements of § 284.11. Therefore, intrastate pipelines would be required to provide notice to the Commission of proposed construction of facilities to be used for section 311 transactions before beginning construction. This would enable the Commission to conduct an environmental review before any irreparable environmental impact had occurred.

However, we must emphasize that intrastate pipelines would not become subject to the full panoply of this Commission's jurisdiction merely by virtue of filing the information required by § 284.11(b) or as a result of having their proposed construction reviewed by this Commission for compliance with § 157.206(d). The intent behind section 311 was to involve intrastate pipelines in interstate commerce without attaching NGA jurisdiction. Nevertheless, it is imperative that we provide the protection mandated under the various environmental statutes described herein. Therefore, any authorization granted by this Commission, whether to an interstate or intrastate pipeline, for construction of facilities for use under section 311 must be subject to review for compliance with these acts. In order to avoid confusion or misunderstanding, we are proposing to add a new § 157.220, which would specifically state that, except for the requirements of § 157.206(d), subpart F is not applicable to intrastate pipelines. Again, we invite comment on this matter. In view of our responsibilities to effectuate the purposes of environmental protection statutes in view of the changing nature of section 311 construction activity, we are issuing an Interim Rule, effective immediately. The Interim Rule requires a pipeline to provide notification to the Commission of any section 311 construction within 30 days prior to the commencement of construction. As with the replacement of facilities, this will allow the Commission the opportunity to review and take action, if warranted.

D. Categorical Exclusions from Environmental Assessment

Subsequent to the Commission's issuance of its environmental regulations in Order No. 486,[60] we have identified additional actions which we believe have little potential for significant environmental impact. Therefore we are proposing to add these actions to the list of those categorically excluded from the need for an environmental assessment.

We note in this regard, however, that, pursuant to the exceptions to categorical exclusions in § 380.4(b), the Commission would continue to independently evaluate environmental information supplied in an application and in comments by the public. Where circumstances indicate that an action may be a major federal action significantly affecting the quality of the human environment, the Commission would continue to require an environmental report or other additional information, and prepare an environmental assessment or impact statement as appropriate.

The actions that we propose to add to the list of categorical exclusions include natural gas storage service where no facility construction is involved, acquisition of facilities, abandonment of facilities by sale, or abandonment of any service that does not involve abandonment of facilities other than by sale, and Commission action on complaints not raising environmental issues, declaratory orders disclaiming jurisdiction, and Presidential Permits not involving construction of facilities.

The Commission requests comments on these proposed additions and welcomes suggestions for other potential actions which may be categorically excluded from the need for an environmental assessment. Commenters should keep in mind that construction-type projects must be demonstrably noncontroversial and of no significant impact to qualify for categorical exclusion under the regulations implementing NEPA. Therefore, any suggestions that such projects be

[59] 15 U.S.C. 3411 and 3414 (1988).

[60] 52 FR 47,897 (Dec. 17, 1987), III FERC Stats & Regs. § 30783 (Dec. 10, 1987).

categorically excluded should be accompanied by a detailed rationale for exclusion.

E. Environmental Requirements

Several changes are proposed to update the Commission's environmental regulations and to ensure appropriate public involvement in all projects. We wish to emphasize that, in most instances, these are not new requirements. These requirements are generally imposed by the Commission and our staff in the course of processing certificate applications. Our purpose here is to refine our existing regulations, and to summarize the existing informal practices, to subject them to public scrutiny through this notice and comment rulemaking, to expedite and improve the environmental review processes where possible, and to codify them so that they will be applied in a consistent, predictable fashion.

For example, there is currently no requirement for applicants to notify the Commission of all the landowners who would be affected by a proposed project, nor to notify those same landowners when an application is filed. Accordingly, we are proposing to amend the regulations by adding § 380.12(c)(1)(ix), as discussed above, which would require that an applicant provide, within 5 days of filing its application, certification that notice of the proposed construction has been published once in a daily or weekly newspaper of general circulation in each county in which the project will be located. An example of the format for this notification is available from the Office of Public Information.

There has been confusion in the industry about the appropriate exhibit designation of the applicant's Environmental Report (ER). Therefore, we are proposing to amend the regulations to clarify that the applicant's ER for NGA section 7(c) construction applications would now be Exhibit No. F–I. The present Exhibit Nos. F–I through F–IV would be deleted or absorbed into other parts of the regulations to avoid redundancy.[61]

The current environmental report requirement in appendix A of part 380 was adopted when NEPA was enacted. It needs to be updated in light of the Commission's experience in implementing NEPA during the past eighteen years.

Because appendix A is currently identified as a "guideline," there is a lack of uniformity in the reports filed with the Commission, and data is frequently omitted or not provided in detail adequate to support the staff's analysis. The result is numerous, extensive, time consuming data requests by the Commission's staff. On the other hand, the industry is not given detailed enough guidance on what material is important or what information may be needed only for certain types of facility applications.

To solve some of these problems in a specific area where expeditious processing was required, the Commission, on July 27, 1988, issued its "Order Establishing Guidelines for the Submission of Required Data" for the Northeast U.S. Pipeline Projects proceeding.[62] Subsequently, the Commission included very similar requirements when it issued Order No. 493 on the electronic filing of material.[63] For the electronic filing process the Commission indicated that this format was a preferred option to the format identified in appendix A of part 380, but was not mandatory.

In light of all of the above, we are proposing to revise appendix A to part 380 by replacing the present text with a report format, and by making it mandatory instead of advisory by giving it a specific place in the regulations at proposed new § 380.12. While the description of the reports is longer than the current guidelines, that is primarily to provide a clearer explanation of what is required. As is currently the case, the applicant's environmental report would be tailored to the project's potential for environmental impact. Therefore, the required reports would not be extensive for minor projects. In addition, the proposed regulations indicate when certain reports would not be required at all.

In this regard, certain types of projects were not part of the Northeast projects or were not significantly involved, and therefore are not represented in the current versions of the report format. These types of projects include underground storage projects and liquefied natural gas (LNG) projects. Therefore, we propose to add to the new § 380.12 requirements specific to these two unique types of projects.[64]

We are also proposing to revise proposed § 380.12(c)(13) to require compliance with the resource report on engineering and design material for the recommissioning of existing LNG facilities. There are two existing LNG terminal facilities which are not currently in use.[65] An LNG facility located at Cove Point, Maryland, is owned by Columbia LNG Corporation, an affiliate of Columbia Gas Transmission Corporation. Southern Energy Company, an affiliate of Southern Natural Gas Company, owns an LNG facility located at Elba Island, Georgia.

These terminals originally commenced service in 1978, receiving shiploads of LNG from Algeria. However, as a result of a pricing dispute, deliveries of LNG stopped in the spring of 1980. Neither terminal has been in operation since exhausting the inventory from those last shipments. Since about 1982, when the remaining LNG inventories were exhausted, the plants have been inoperative and billing has been limited to minimum bills, which exclude recovery of equity-related expenses. Recognizing that these LNG facilities have been inoperative since 1981–82, significant new investment may be necessary to bring them up to a safe operational status. Therefore, in order to recommission existing LNG facilities, under proposed § 380.12(c)(13), a company would be required to comply with the engineering and design criteria set forth and currently required for the construction of new LNG facilities.

We are proposing to discontinue the use of the environmental factors spreadsheets which are currently in the electronic data filing requirement. These spreadsheets were created to facilitate the analysis of the Northeast U.S. Pipeline Projects by providing the data required by the resource reports in a format which would allow easy comparison of projects. While we are not proposing to require the spreadsheets, applicants should be aware that many of the specific items identified in the spreadsheets are very important to the analysis of pipeline projects. Therefore some of this data should still be obtainable from the resource reports.

As discussed previously, the Endangered Species Act and the National Historic Preservation Act require consideration of the effects of

[61] Certain other changes, such as modification of § 2.69 of the regulations, would result from our proposed changes to the ER format in appendix A to part 380. Since appendix A is proposed to be modified to the resource report format and redesignated as § 380.12, these changes are needed to eliminate redundancy.

[62] 44 FERC ¶ 61,149 (1988).

[63] 53 FR 15,023 (Apr. 27, 1988); III FERC Stats. & Regs. ¶ 30,808 (Apr. 5, 1988).

[64] The requirement for identification of nonjurisdictional facilities is part of the report format which we are proposing to make mandatory by this rule.

[65] There are four LNG terminals located in the United States. Two are currently operating: An LNG terminal operated by Distrigas of Massachusetts Corporation is located near Boston, Massachusetts; Trunkline LNG Corporation operates an LNG terminal located at Lake Charles in Louisiana.

the complete project on these resources. Therefore, the Commission is proposing to include a requirement that related nonjurisdictional facilities be identified in the application, if there is one, or treated as part of the project in cases of automatic authorization. See proposed §§ 380.12, 157.221, and 157.222.

With regard to the requirements to identify related nonjurisdictional facilities in proposed §§ 157.221, 157.222, and 380.12, we note here that there is authority for the proposition that an agency which undertakes a NEPA review of a project subject to its substantive jurisdiction must include in its review the nonjurisdictional facilities that can reasonably be expected to be constructed in conjunction with that project.[66] We have held that such review is necessary where the nonjurisdictional facilities are "inextricably related to and completely dependent upon" certification of the related jurisdictional facilities.[67]

The requirements to identify related nonjurisdictional facilities are proposed here in order to expedite the environmental review for certification to construct facilities. These requirements are merely intended to give notification to the Commission of any facilities that may be subject to environmental review due to their relationship with proposed jurisdictional facilities. By providing this notification with a request or application for authorization, the delay which results from staff preparing and sending data requests relating to this type of information and, subsequently, awaiting a response could be eliminated. We invite comments on the advisability of adopting these requirements as regulations and whether such regulations would be overly burdensome.

With respect to Endangered Species Act compliance as required in the present appendix I to subpart F of part 157 (proposed new § 157.221), companies have obtained "blanket" clearances from some offices of the U.S. Fish and Wildlife Service (FWS), but have not obtained project-specific clearance. The Commission is concerned about the validity of this practice under the Endangered Species Act. Therefore, we have proposed a modification at § 157.221(d)(1) which requires project-specific consultation.

Further, some blanket clearances were issued by the FWS in the early 1980s at the beginning of the blanket construction certificate program. However, additional species could have been listed as endangered since that time. Therefore, in order to avoid any confusion or concern over the certificate holders' ability to proceed based on a blanket clearance from the FWS, we have proposed to modify § 157.211(d)(1) further by requiring any certificate holder, than is proceeding on a project under a blanket clearance which is more that two years old, to first consult with FWS to determine whether any additional species have been listed and that the blanket clearance is still valid.

National Historic Preservation Act compliance as required in appendix II to subpart F of part 157 (proposed new § 157.222) does not allow effects on "eligible" cultural resources. However, some companies have constructed through portions of sites where there would be no effect to the aspects of the site which made the site eligible. This was not the intent of the existing regulation, and we are proposing to clarify this in § 157.222(c)(6)(i) for any construction project subject to § 157.206(d). This restriction was in the regulations and the preamble to Order 234. However, in practice, the Commission has worked with companies and State Historic Preservation Officers to develop case-specific procedures that allow completion of the project, while meeting our obligations under section 106 of the National Historic Preservation Act by allowing the Advisory Council on Historic Preservation an opportunity to comment. Accordingly, we are proposing to add a procedure to § 157.222 in order to ensure that the Commission's regulations in § 157.206(d) include procedures for compliance with the requirements of section 106 of the National Historic Preservation Act in instances where eligible sites cannot be avoided. Such a procedure would involve consultations between the staff, the company, the appropriate State Historic Preservation Officer(s), and the Advisory Council on Historic Preservation.

Further, because questions may be raised by State Historic Preservation Officers and companies over the impact of temporary visual or noise effects, we are proposing in § 157.222(c)(6)(ii) that purely visual or noise effects which do not last beyond the actual construction phase would not constitute effects that eliminate a project's eligibility to be authorized under the blanket program. Just because construction can be seen or heard for a few days from a cultural resources site would not, in our estimation, constitute an effect under the National Historic Preservation Act, if there were no visual evidence or noise detectable from the site after construction had ended.

We are proposing to update § 157.206(d) of the regulations to add residential areas in close proximity to construction activities as sensitive environmental areas for purposes of the blanket construction certificate program. We are also proposing to add a reference to the Toxic Substances Control Act, to ensure that PCB contamination from gas pipeline facilities does not become a problem.

F. Generic Erosion Control and Stream and Wetland Procedures

For pipeline construction projects, two of the most significant and ubiguitous concerns for impact to the natural environment involve soil erosion and streams and wetlands. In fact, national concern for the protection of both soil and wetlands has a long history.

As explained below, the Commission has begun to use and is hereby proposing to formalize a set of procedures for the industry to use. We believe there are advantages to such an approach for both the industry and the Commission.

The industry would know what the Commission expects without the need to check with the staff, and would be able to plan projects and issue construction contracts with provisions which it could be confident would be acceptable to the Commission. Because the industry would be using uniform procedures, we anticipate that the processing of applications would be accelerated, both here at the Commission as well as at other agencies which have permitting authority over stream and wetland construction. Currently, these issues take up significant staff and applicant time in preparation and review of applications and extensive data requests.

The main effort for applicants under the proposal would be a one-time incorporation of these plans into their construction contracting procedures. From that time forward, the amount of material required in applications to deal with these topics would be minimal and would deal with the specific resource on a site-specific basis. No information on generic construction procedures would be required for dealing with these issues, and the applicants and staff could concentrate on site-specific significant concerns.

With respect to both the soil erosion and stream and wetland crossing procedures, we are proposing that

[66] See Henry v. FPC, 513 F.2d 395 (D.C. Cir. 1975); Hudson River Sloop Clearwater, Inc. v. Department of Navy, 836 F.2d 760 (2d Cir. 1988); and Sierra Club v. Froehlke, 534 F.2d 1289 (8th Cir. 1976).

[67] See East Tennessee Natural Gas Company, 39 FERC ¶ 61,275 (1987).

applicants be required to use these procedures for projects which undergo no review or accelerated review, such as those requiring only prior notice. Use of these proposed procedures would allow the staff to focus on other issues for those projects requiring a quick review, confident that minimum requirements would be met. For traditional projects that are processed under part 157, subpart A, that are subject to staff review in the normal time frame, applicants would have to identify any concerns they have with the use of these procedures, and the staff would take those concerns into account in its review.[68]

We propose to codify these procedures in the regulations at §§ 380.13 and 380.14. The staff may recommend that the Commission make project-specific changes to the procedures, if necessary. This would enable the Commission to further refine and update the procedures more easily as we and the industry gain more experience in how well they work.

1. Erosion Control, Revegetation and Maintenance Plan

One of the most widespread environmental concerns with pipeline construction is the potential for soil erosion if proper procedures are not followed. Although each applicant has plans which it uses under certain circumstances, the industry has no standards for erosion control and revegetation for areas disturbed by construction. As a result, the Commission staff must spend a significant amount of time reviewing each erosion control and revegetation plan submitted by each applicant. In many cases no such plans are provided even when the Commission's regulations and the Commission's staff request them. Consequently, the Commission has begun to condition certificateson compliance with its own set of minimum standards. These procedures are described in the proposed new § 380.13.

2. Stream and Wetland Construction and Mitigation Procedures

The construction of natural gas pipelines across stream and wetland ecosystems has the potential for adverse impact on significant fisheries, wildlife habitat, potable water supplies, and other recreational uses if proper construction, erosion and sediment control procedures are not implemented. Various federal and state agencies, including the U.S. Army Corps of Engineers (COE), the U.S. Environmental Protection Agency (EPA), and the U.S. Fish and Wildlife Service, as well as members of the public, have raised these concerns when providing us with comments on previous pipeline projects, and have requested us to address and mitigate these impacts for future pipeline projects.

To address these concerns, we have developed a common set of Stream and Wetland Construction and Mitigation Procedures which we are requiring project sponsors to implement during the construction of their proposed projects, in order to ensure that these valuable ecosystems are protected to the maximum extent practicable. These procedures were developed in cooperation with the federal agencies mentioned above, state agencies, and numerous interstate natural gas pipeline companies. Earlier versions of these procedures have also been included in several certificates of public convenience and necessity issued by the Commission. While these procedures were originally designed for use in the Northeastern United States, the procedures proposed herein have been modified to be applicable for use throughout the entire United States.

Explicit in these procedures is the requirement that proposed pipeline projects should be routed in a manner that minimizes the crossing and disturbance of stream and wetland ecosystems to the maximum extent practicable, as required by the Clean Water Act.[69] "The term 'practicable' means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes."[70] Our intent is that the implementation of these procedures (after streams and wetland crossings have been minimized) would eliminate or significantly minimize the majority of potential adverse impacts on the functional values of these ecosystems, and ensure that no stream or wetland areas are permanently affected or destroyed.

As part of the federal permitting process, applicants must obtain permits from the COE for crossings of navigable waterways (section 10 of the Rivers and Harbors Act) and for the discharge of dredged or fill material into waters of the United States (section 404 of the Clean Water Act). Under the Clean Water Act, the EPA has review and veto authority over section 404 permits. We believe that a secondary benefit of these procedures is that they may help reduce regulatory delays before these and other permitting agencies.

As mentioned above, the concept of reduction of adverse impact "to the maximum extent practicable" is central to the Clean Water Act regulations which regulate construction across streams and wetlands, as well as to Executive Order No. 11990, "Protection of Wetlands," [71] and has been incorporated into these proposed procedures. Therefore, we are specifically seeking comment regarding constraints that may make a specific procedure technically infeasible to implement (and therefore not practicable), as well as suggestions regarding practicable alternative provisions that would provide an equal or greater level of protection to stream and wetland ecosystems. These procedures are described in proposed new § 380.14.

G. Commission Policy on Phasing of the Certificate Process, Incomplete Applications, and Competitive Proposals

Given the importance attached to NEPA scrutiny of federal agency decisionmaking, certificate applications which are not categorically excluded from environmental scrutiny under § 380.4 of the regulations invariably encounter substantial delays associated with the environmental review process. The repercussions of prolonged agency review can potentially be far-reaching to the individual applicant and to the natural gas market as a whole. In many instances, the Commission is still preparing its environmental analysis of a proposed project after its review of all other aspects of the certificate application has been completed. Moreover, in such cases, preliminary findings may support the ultimate issuance of the requested certificate, subject only to the environmental determination.

Accordingly, we are announcing our intention to use a different but not unprecedented procedural approach to consideration of certificate applications under section 7 of the NGA. Where appropriate, the Commission will process applications for section 7 certificates in phases. Pending

[68] Because we are proposing to add specific procedures dealing with erosion control and construction across streams and wetland areas, we are proposing to delete several parts of our guidelines for planning, locating, clearing and maintenance of rights-of-way and the construction of aboveground facilities, all of which have become outdated. We are also proposing appropriate cross references in the regulations to deal with the issues previously identified in § 2.69.

[69] See 33 CFR 320.4 and 330.6 (1989), and 40 CFR 230.10 (1989).

[70] See part 230 of the Environmental Protection Agency's Regulations under the Clean Water Act at 40 CFR 230.3(q).

[71] 3 CFR 1978 Comp., p. 121.

completion of the environmental review of an application, we will issue an initial order containing preliminary findings with respect to all non-environmental issues. This order will be subject to rehearing. After completion of the environmental analysis, we will then issue a final order resolving all aspects of an application. This final order will also be subject to rehearing.

Phasing of section 7 certificate applications by separating the environmental and non-environmental aspects of certificate review satisfies NEPA's requirements while at the same time furthering its own intended purpose. By subjecting preliminary findings on non-environmental issues to a final certificate order based upon a complete evaluation of all relevant factors, the Commission is analyzing environmental impacts fully at a meaningful time in the review process before actually authorizing pipeline construction. Therefore, the integrity, procedural safeguards and thoroughness of the review process are preserved and the Commission's obligations under its own regulations and NEPA are fulfilled.

Phasing also can provide for more efficient and effective decisionmaking by presumably expediting construction as a result of providing greater regulatory certainty and stability to pending projects. Certificate applicants with non-environmental approval could, for example, arrange for financing and initiate contract negotiations at an earlier date. In this regard, the issuance of preliminary findings may serve our goal of increasing competition by enhancing pipelines' ability to gain access into new or expanded markets. More generally, it attests to the importance of timeliness in the decisionmaking process. Phasing also can render Commission decisionmaking with respect to certificate applications more effective by allowing the Commission to take expeditious and timely action on proposals where timeliness is an important ingredient for success.

The concept of streamlining the resolution of non-environmental regulatory issues is not new. We have, in two previous instances, issued preliminary determinations as to public convenience and necessity based on non-environmental issues.[72] Further, we intend to rely on such phasing in the future. In this regard, we note that on July 3, 1990, we issued our preliminary findings on the non-environmental aspects of Delta Pipeline Company's optional certificate application in CP89–1223–000 and Colorado Interstate Gas Company's traditional NGA section 7(c) certificate application in CP89–89–2064.

We emphasize that, while preliminary findings may support ultimate approval of a project, these findings and issuance of a certificate are subject to completion of the environmental review. Any preliminary approval would be transitory and would not translate into certificate authorization until a final order is issued based upon the complete record.

Phasing of applications is one of the many vehicles offered in this proposed rule to expedited the certificate process. We are also codifying many of our standard procedures so that our requirements for a complete application are clearly stated. This should assist pipelines in determining the information required for a complete application. Therefore, we take this opportunity to emphasize that all filed applications must be complete to be accepted for consideration.[73]

We are underscoring this requirement in order to avoid the delay in processing caused by the filing of incomplete applications. If an incomplete application is filed, it is then necessary for staff to evaluate the inadequacies of the application, prepare and send out data requests outlining the deficiencies, then wait for responses before beginning an environmental review. Routinely, the environmental review of a proposal is the most time-consuming aspect of the certificate process. Therefore, if the application is not complete when filed, unnecessary delay in final certification results, as well as the inefficient use of staff's time. Accordingly, in order to continue our efforts to expedite the certificate process, we will reject any application filed with the Commission which is not complete.

As discussed above with regard to proposed § 157.219, we are seeking to mitigate any delay associated with construction proposals for which there may be competitive proposals. It is our goal not only to address this problem as it affects proposals under proposed § 157.219, but to address its affect on all section 7(c) construction proposals.

Under Ashbacker,[74] when mutually exclusive, *bona fide* applications are filed, the grant of one without a comparative hearing deprives the loser of the opportunity for the hearing required by Congress. While Ashbacker does not create a right to a comparative hearing, it does require an administrative agency to use the same set of procedures to process all similarly situated applications.[75] Ashbacker does not give an applicant the absolute right in all cases to consideration with other mutually exclusive applications in a comparative hearing, however. The courts have approved procedural schemes which permit an agency to reject what would otherwise be a mutually exclusive application if the application is filed after a cut-off date.[76] The Commission has implemented such a cut-off procedure in two fairly recent proceedings.[77] As with other administrative agencies, the Commission has interpreted the requirements of Ashbacker in its decisionmaking.[78]

The question of whether multiple optional certificate applications for the same market can be mutually exclusive with each other and whether optional certificate applications can be mutually exclusive with section 7(c) applications for the same market has been resolved in the Kern River-Mojave-WyCal cases. The Commission held that the competing optional certificate applications and section 7(c) applications were not mutually exclusive and Ashbacker did not apply.[79] On appeal, the Court held that, since the optional procedures are on a different regulatory track than the traditional section 7(c) procedures, the Commission is not required to conduct comparative hearings for optional certificate applications that potentially compete with traditional 7(c) applications.[80]

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[72] See Transwestern Pipeline Company, *et al.*, 54 FFC 2418 (1975), *affirmed*, Silentman v. Federal Power Commission, 566 F.2d 237 (D.C. Cir. 1977); Wyoming-California Pipeline Company, 45 FERC ¶ 61,353 (1988), *affirmed*. Public Utilities Commission of the State of California v. FERC, *et al.*, 90 F.2d 269 (D.C. Cir. 1990).

[73] See, *e.g.*, Altamont Gas Transmission Company, 51 FERC ¶ 61,365 (1990) and Southcoast Transmission Corporation, 49 FERC ¶ 61,161 (1990).

[74] Ashbacker Radio Corp. v. F.C.C., 326 U.S. 327 (1945).

[75] See Multi-State Communications, Inc. v. F.C.C., 728 F.2d 1519 (D.C. Cir. 1984).

[76] See Radio Athens, Inc. v. FCC, 401 F.2d 398, 400–401 (D.C. Cir. 1968); Maxcell Telecom Plus, Inc. v. FCC, 815 F.2d 1551 (D.C. Cir. 1987).

[77] Northeast U.S. Pipeline Projects, 40 FERC ¶ 1,087 (1987), *reh'g granted*, 40 FERC ¶ 61,310 (1987); Mobile Bay Pipeline Projects, 53 FR 29519 (August 15, 1988), *notice clarified and reh'g denied*, 45 FERC ¶ 61,024 (1988).

[78] See, *e.g.*, Transwestern Pipeline Company, 21 FPC 594 (1959); Midwestern Gas Transportation Company v. F.P.C., 258 F.2d 660 (D.C. Cir. 1958); Northern Natural Gas Company, 48 FERC ¶ 61,232 (1989); and Mississippi River Transmission Corp., 50 FERC ¶ 61,043 (1990).

[79] 47 FERC ¶ 61,200 (1989) at p. 61, 702.

[80] Public Utilities Commission of the State of California v. FERC, 90 F.2d 269 (D.C. Cir. 1990).

In another recent case, Transcontinental Gas Pipe Line Corporation (Transco) filed an application to construct facilities to provide additional service to certain customers. Southern Natural Gas Company (Southern) then filed an application to construct facilities to provide essentially the same service to the same customers. Southern requested consolidation and comparative hearings on the two proposals. The Commission declined to grant Southern's requests, and in fact dismissed Southern's application, citing as the primary basis for its decision the fact that the Southern proposal, as set forth in its application, was not a stand alone project. Instead, for Southern to provide service through its proposed facilities, it would first be necessary for Transco to construct at least part of its proposed facilities. The Commission stated in its order,

> In effect, Southern has, unilaterally, filed a joint application on behalf of itself and Transco, but without Transco as a willing participant. * * * Nor should the Commission require Transco, without reason and evidence, to construct facilities in a configuration which it has not proposed.[81]

Since the Ashbacker decision, the case's requirements have been refined by the courts and the administrative agencies, including this Commission. However, the courts have given agencies wide latitude in implementing Ashbacker. For instance, to assist in defining mutually exclusive applications, the Commission could establish regulatory cut-off dates for certificate proceedings. How those cut-off dates would be developed might vary, as long as whatever period or method chosen gave a potentially competitive applicant a meaningful opportunity to file competing applications.

Another possible way to limit the impact of Ashbacker is to reinterpret the economic standards an agency uses to determine what constitutes mutually exclusive applications. The Delta case which articulated the traditional economic test, *i.e.*, that the public interest requires that only one license be granted if the market can support only one licensee, assumes that an agency's definition of the public interest requires an analysis of need. But, that is not necessarily the case. Clearly, the Commission has, over recent years, changed its view as to the analysis needed to determine the public interest. Currently, the emphasis is on competition and market forces as the determinants that ensure adequate supplies to consumers at the lowest reasonable price.

We think a similar argument is plausible with respect to the public interest inquiry in general, i.e., that the context of that inquiry has changed significantly, and as a result of that change, the scope of what constitutes "mutually exclusive" proposals is smaller than it used to be. Therefore, we invite comment on requirements, which could be imposed through the Commission's regulations, that would define the Ashbacker doctrine in a manner that would be compatible with the current state of the industry and with the Commission's approach of streamlining the certificate process.

V. Environmental Analysis

An environmental assessment of the proposed rulemaking is beinq prepared by the Commission's environmental staff. This assessment will identify the significance of any potential environmental impact which might result from transactions which would be authorized under the new construction authority proposed herein to be added to the Commission's existing regulations. The environmental assessment will provide the basis for determining the need to prepare an environmental impact statement (EIS) prior to the issuance of the final rule.

Full consideration will be given to the type of projects and actions allowed under the new self-implementing and prior notice procedure authorizations and to the proposed new standard environmental compliance conditions and environmental reporting requirements proposed in the rulemaking. The assessment will evaluate direct environmental effects that may occur from authorizing construction of facilities proposed in the amendments to part 157.

The Commission requests comments on the scope of this environmental assessment. Any person who wishes to submit comments on environmental issues should provide a detailed explanation which addresses each specific environmental concern and the reason each concern is felt to be a significant issue. This information will be helpful to the staff in developing an environmental record in this rulemaking.

VI. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[82] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[83] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities, and that, even if the rule were to have a significant impact on a substantial number of small entities, it would be to their benefit. The Commission believes that most of the entities affected by the proposed rule do not fall within RFA's definition of "small entity." Even if the proposed rule would have a significant effect on a substantial number of small entities, however, the requirements proposed are appropriate or necessary for the Commission to authorize natural gas pipeline construction. Pipelines may benefit substantially by obtaining the authorizations.

VII. Information Collection Requirements

The Office of Management and Budget's (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rules.[84]

The information collection forms that would be affected by the proposed rule are (1) FERC–537, Gas Pipeline Certificates: Construction, Acquisition, and Abandonment; and (2) FERC–577, Gas Pipeline Certificates: Environmental Impact Statement. Both information collections are required in order for the Commission to carry out its legislative mandate under the NGA, NGPA, and NEPA. The certificate and environmental information, as previously discussed and proposed herein, would be used to expedite the Commission's review of pipeline certificates.

An estimated 55 respondents would be affected by the proposed rule. The respondents would consist mostly of large interstate pipeline companies (approximately 50), with a few (approximately five) medium to large intrastate pipeline companies. As

[81] Transcontinental Gas Pipe Line Corporation, *et al.*, 51 FERC ¶ 61,173 (1990). See also Texas Eastern Transmission Corporation, *et al.*, 52 FERC ¶ 61,001 (1990); East Tennessee Natural Gas Company, 51 FERC ¶ 61,247 (1990); and Natural Gas Pipeline Company, 48 FERC ¶ 61,311 (1989).

[82] 5 U.S.C. 601–612 (1988).

[83] Section 601(3) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1988).

[84] 5 CFR § 1320.13 (1989).

previously mentioned, the estimated total annual public reporting burden for the two information collections affected by the instant proposed rule, FERC–537 and FERC–577, would not differ significantly from their respective current burden levels. The estimated total annual reporting burden would not change from current levels because of offsetting decreases in hours required per response and increases in the number of responses and respondents. The Commission will carefully evaluate comments concerning the reporting burden and make any required adjustments or program changes before the issuance of any final rule.

VIII. Comment Procedures

The Commission invites interested persons to submit written comments on the matters proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. An original and 14 copies of the written comments must be filed with the Commission no later than October 31, 1990 for comments and November 30, 1990 for reply comments. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, and should refer to Docket No. RM90–1000.

Written comments will be placed in the public files of the Commission and will be available for inspection at the Commission's Public Reference Room, 941 North Capitol St., NE., Washington, DC 20426, during regular business hours.

Lists of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 380

Environment, National Environmental Policy Act, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend parts 2, 157, 284, 375, and 380 of chapter I, title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission.

Commissioner Moler dissented in part with a separate statement attached.

Lois D. Cashell,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142; Federal power Act, 16 U.S.C. 792–825r as amended by Electric Consumers Protection Act of 1986, 100 Stat. 1243; Natural Gas Act, 15 U.S.C. 717–717w; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645; and National Environmental Policy Act, 42 U.S.C. 4321–4361.

2. In § 2.55, paragraphs (b) and (c) are removed, and paragraph (d) is redesignated as paragraph (b).

3. Section 2.69 is revised to read as follows:

§ 2.69 Guidelines to be followed by natural gas pipeline companies in the planning, locating, clearing and maintenance of rights-of-way and the construction of aboveground facilities.

(a) *General statement.* (1) In the interest of preserving scenic, historic, wildlife and recreational values, the construction and maintenance of facilities authorized by certificates granted under section 7(c) of the Natural Gas Act should be undertaken in a manner that will minimize adverse effects on these values to the maximum extent practicable. Accordingly, the Commission believes that the planning, locating, clearing and maintenance of rights-of-way and the construction of aboveground facilities should, as a general practice, conform to the guidelines provided in paragraph (b) of this section.

(2) The National Environmental Policy Act of 1969 (Public Law 91–190, 83 Stat. 852, title I, section 102) directs Federal government agencies to utilize a systematic, interdisciplinary approach which will insure integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on man's environment. Congress has declared as a national policy the critical importance of restoring and maintaining environmental quality and has directed that all practicable means be used to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social and economic requirements of present and future generations of Americans.

(3) There is increasing need to fit the construction of pipeline facilities into an overall plan for land development and use in Federal, state, and regional land use planning and development. While these guidelines require advance planning, it is clear that this planning and filing will generally result in minimizing the time delay caused by considering location as part of an overall plan for land development and use.

(4) To the extent landowners may have special interests concerning the planning, locating, clearing and maintenance of rights-of-way and the construction of aboveground facilities on their property, those desires may be taken into account by natural gas companies so long as the result is consistent with local laws relating to land use and the Commission's certificate.

(5) Because of public and governmental concern over erosion control and stream and wetlands impacts, the Commission's regulations in part 157, subparts A, E, and F of this chapter contain requirements for the use of specific procedures to protect these resources.

(b) *Guidelines.* The following guidelines do not affect an applicant's obligation to comply with the applicable safety regulations of the Department of Transportation, pursuant to the Natural Gas Pipeline Safety Act of 1968.

(1) *Pipeline construction.* (i) In locating proposed facilities, consideration should be given to the utilization, enlargement or extension of existing rights-of-way belonging to either applicant or others, such as pipelines, electric powerlines, highways, and railroads.

(ii) Rights-of-way should avoid the national historic places listed in the National Register of Historic Places and natural landmarks listed in the National Register of Natural Landmarks maintained by the Secretary of the Interior, and parks, scenic, wildlife, recreational lands, and wetlands, officially designated by duly constituted public authorities. If rights-of-way must be routed through historic places, or through natural landmarks, parks, scenic, wildlife, recreational or wetland areas, they should be located in areas or placed in a manner so as to be least visible from areas of public view and in

so far as possible in a manner designed to preserve the character and existing environment of the area.

(iii) Rights-of-way should avoid heavily timbered areas and steep slopes, where practical.

(iv) Right-of-way clearings should be kept to the minimum necessary width to prevent interference of trees or other vegetation with the construction of proposed transmission facilities.

(v) The method of clearing rights-of-way should take into account matters of soil stability, protection of natural vegetation and the protection of adjacent resources.

(vi) Trees and other vegetation cleared from rights-of-way in areas of public view should be disposed of without undue delay as required by applicable law and regulations. Tree stumps adjacent to roads and other areas of public view should be cut close to the ground or removed.

(vii) Trees and shrubs which are not cleared should not be unnecessarily damaged during construction.

(viii) In wooded areas, long views of cleared rights-of-way, visible from highways and other areas of public view, should be avoided. The rights-of-way alignment of these locations should be deflected before entering and leaving highways and areas of public of public view where the deflection is consistent with safe and sound engineering practice and accomplishes the desired results.

(ix) Where practical, rights-of-way should not cross hills and other high points at the crests, particularly where the crossing is in forested areas and clearly visible from highways and other areas of public view. When they must do so the alignment should be deflected near the crests where the deflection is consistent with safe and sound engineering practice and accomplishes the desired result of eliminating the notch in the tree line at the crests.

(x) Where rights-of-way enter dense timber from a meadow or other clearing and where the entrance is visible from highways and other areas of public view, screen planting should be employed.

(xi) Temporary roads used for construction should be designed for proper drainage and built to minimize soil erosion. Upon abandonment, the roads should be stabilized without undue delay.

(2) *Right-of-way maintenance.* (i) Once a cover of vegetation has been established on a right-of-way, it should be properly maintained.

(ii) Access roads and service roads should be maintained with proper cover, water bars and the proper slope in order to minimize soil erosion. They should be jointly used with other utilities and land management agencies where practical.

(iii) Chemicals must not be used for weed control.

(3) *Construction of aboveground appurtenant facilities.* (i) Unobstrusive sites should be selected where practical for the location of aboveground facilities.

(ii) Potential noise should be considered when the location for compressor stations is being determined. Noise levels attributable to compressor operations must not exceed an L_{dn} of 55 dBA at any noise sensitive area.

(iii) The size and extent of above ground facilities should be kept to the minimum feasible.

(iv) The exterior of compressor stations and other aboveground facilities should be harmonious with the surroundings and other buildings in the area.

(v) In areas adjacent to aboveground facilities, trees and shrubs should be planted, or other appropriate landscaping installed, in order to enhance the appearance of the facilities, consistent with operating needs.

(vi) Storage tanks should be placed below ground where technology and economics make it feasible.

(vii) Yards and surrounding areas should be kept clean and free of unused or discarded materials.

(viii) The design and operation of aboveground facilities should conform to applicable air, noise and water quality standards.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

4. The authority citation for part 157 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

5. In § 157.14, paragraphs (a)(6), and (a)(6–a) are revised, paragraph (a)(6–b) is removed, paragraph (a)(6–c) is redesignated as paragraph (a)(6–b) and revised, and paragraph (a)(6–d) is removed to read as follows:

§ 157.14 Exhibits.

* * * * *

(a) *To be attached to each application.* * * *

(6) *Exhibit F—Location of facilities.* Unless shown on Exhibit G or elsewhere, a geographical map of suitable scale (1:24,000 or greater) and detail showing, and appropriately differentiating between all of the facilities proposed to be constructed, acquired or abandoned and existing facilities of applicant, the operation or capacity of which will be directly affected by the proposed facilities or the facilities proposed to be abandoned. This map, or an additional map, must clearly show the relationship of the new facilities to the applicant's overall system and must include:

(i) Location, length, and size of pipelines.

(ii) Location and size (rated horsepower) of compressor stations.

(iii) Location and designation of each point of connection of existing and proposed facilities with:

(A) Main-line industrial customers, gas pipeline or distribution systems, showing towns and communities served and to be served at wholesale and retail, and

(B) Gas-producing and storage fields, or other sources of gas supply.

(iv) Applicant is required to submit revisions to exhibit F and F–I if requested by the Commission, or if the location of any proposed facilities is changed. The revisions only need to cover the facilities to be relocated.

(6–a) *Exhibit F–I—Environmental report.* Applicant must submit the environmental report described in § 380.12 of this chapter.

(6–b) *Exhibit F–II—Statement on adoption of guidelines concerning right-of-way and construction activities.* A statement indicating that the guidelines provided in § 2.69 of this chapter have been adopted by the applicant and that the relevant portions of the guidelines have been or will be issued to the applicant's construction personnel, and listing the appropriate instructions issued to contractors and others involved in implementing the guidelines.

* * * * *

6. In § 157.102, paragraphs (b)(1)(vii) and (b)(1)(viii) are added to read as follows:

§ 157.102 Contents of applications and other pleadings.

* * * * *

(b) * * *

(vii) A statement of proposed methodology for determining the allocation of capacity. The proposed methodology must conform with § 157.103(k).

(viii) A statement of proposed procedures for the establishment of an

open season for the initial allocation of firm capacity on proposed facilities. The open season procedures must conform with § 157.103(1).

* * * * *

7. In § 157.103, paragraphs (a) and (d)(3) are revised, new paragraph (d)(9) is added, paragraph (e) is revised, paragraph (i) is removed, paragraph (j) is redesignated as paragraph (i), and new paragraphs (j) and (k) are added, to read as follows:

§ 157.103 Terms and conditions; other requirements.

(a) *Nonexclusivity of certificates issued under this subpart.* A certificate issued under this subpart must be non-exclusive and must provide that it in no way prejudices any application for any other certificate under the Natural Gas Act or for authorization under the Natural Gas Policy Act. An applicant is precluded from seeking authorization under this subpart, and, at the same time, authorization under any other subpart, for substantially the same proposal. If an applicant initially seeks certificate authorization under one subpart, and later seeks certificate authorization under another subpart, for substantially the same proposal, the initial certificate application will be deemed withdrawn and will be dismissed as superseded and moot.

* * * * *

(d) *Rates.* * * *

(3) *Volumetric rates.* Except for a reservation charge for firm transportation service consistent with the conditions in § 284.8(d) of this chapter and § 157.103(d)(9), any rate filed for new service must be a one-part rate that recovers the costs allocated to the new service to the extent that the projected units of that service are actually purchased and may not include a demand charge, a minimum bill or minimum take provision or any other provision that has the effect of guaranteeing revenue.

* * * * *

(9) *Reservation fee conditions.*—(i) *General.* Where the customer purchases firm transportation service on facilities certificated pursuant to this subpart, the certificate holder may negotiate with the customer for a reservation fee as a condition for providing the service.

(ii) *Negotiated reservation fee.* A reservation fee for firm transportation service provided on facilities certificated pursuant to this subpart can only be charged if it results from arms-length negotiations between the certificate holder and the customer.

(iii) *Nondiscriminatory.* Prior to the commencement of service, the certificate holder must offer to renegotiate the reservation fee with all of the shippers. During renegotiations, the certificate holder must make the lowest reservation fee that is negotiated with any shipper available to all shippers on a nondiscriminatory basis.

(iv) *Once facilities are operational.* Once the facilities are operational, the certificate holder must make all remaining firm transportation capacity available at the lowest negotiated reservation fee.

(e) *Sales service.* In the event that sales service is provided by the certificate holder pursuant to this subpart, the following conditions apply:

(1) *No revenue guarantees for new sales service.* No demand charge, reservation fee, minimum bill provision, minimum take provision, or any other provision that has the effect of guaranteeing revenue may be imposed for firm or interruptible sales service provided under this subpart.

(2) *Unbundled.* The transportation service associated with the sales service must be unbundled. Sales must take place at the mainline receipt points and not the city gate.

(3) *Open season.* The certificate holder must conduct an open season for firm sales service, in accordance with the open season requirements provided in § 157.103(1).

(4) *Allocation of sales capacity.* Firm and interruptible sales capacity must be allocated in a nondiscriminatory manner.

* * * * *

(j) Initial allocation of firm transportation capacity. A certificate holder authorized to transport gas pursuant to this subpart must initially allocate firm transportation capacity in accordance with one of the methodologies listed below. The certificate holder must establish a queue for firm transportation capacity, based on the selected allocation methodology. Capacity must be allocated on a nondiscriminatory basis. The certificate holder may not discriminate on the basis of the volumes of service requested. The methodologies are:

(1) First-come, first-served; and

(2) Present value of the reservation fee per Mcf, calculated using the formula below for the present value of an ordinary annuity. If, as a result of renegotiation, a shipper accepts a lower (or higher) reservation fee prior to the commencement of service, the certificate holder must redetermine the shipper's place in the queue, based on the lower (or higher) reservation fee. Once the facilities are operational, the certificate holder will no longer be required, or permitted, to redetermine the queue for firm transportation service based on the reservation fees offered by subsequent shippers.

$$\text{Monthly reservation fee per Mcf} \times \frac{1-(1+i)^{-n}}{i} = \text{present value per Mcf}$$

where:

i=overall approved rate of return, per month

n=term of the agreement, in months

(3) Any other nondiscriminatory allocation methodology which the applicant chooses to propose, which the Commission will examine on a case-by-case basis.

(k) *Open season for firm transportation service.* The certificate holder must conduct an open season, for a period of no less than 30 days, for the purpose of receiving initial requests for service. Capacity may only be allocated during the open season, or thereafter. The certificate holder must provide sufficient public notice of the starting date and closing date of the open season.

8. In § 157.201, paragraph (a) is revised to read as follows:

§ 157.201 Applicability.

(a) *Scope.* This subpart establishes a procedure whereby an interstate pipeline may obtain a blanket certificate authorizing certain construction and operation of facilities, sales arrangements and certain certificate amendments and abandonment under section 7 of the Natural Gas Act. This subpart also provides a procedure for authorizing certain construction and operation of any facility by an interstate pipeline that holds both a certificate issued under this section and a certificate issued under part 284 of this chapter.

* * * * *

9. In § 157.202, paragraph (b)(2)(ii)(F) is removed, paragraph (b)(2)(ii)(G) is

redesignated as paragraph (b)(2)(ii)(F), paragraph (b)(11)(i) is revised, and a new paragraph (b)(11)(viii) is added, to read as follows:

§ 157.202 Definitions.

* * * * *

(b) *Subpart F definitions.* * * *

(11) * * *

(i) Suitable habitat for species which are listed or proposed for listing as endangered or threatened under the Endangered Species Act (Pub. L. 93–205, as amended);

* * * * *

(viii) Residential areas where the existing or proposed construction right-of-way is within 50 feet of an existing permanent residence.

* * * * *

10. Section 157.203 revised to read as follows:

§ 157.203 Blanket certification.

(a) *Effect.* A blanket certificate issued pursuant to this subpart authorizes the certificate holder, in accordance with the provisions of this subpart, to engage in any of the activities specified in §§ 157.208 through 157.219 (as may be amended from time to time).

(b) *Automatic authorization.* (1) Except as provided in paragraph (b)(2), a blanket certificate issued pursuant to this subpart authorizes the certificate holder to engage in transactions described in §§ 157.208(a), 157.211(a), 157.213(a), 157.215, 157.216(a), 157.217, or § 157.218 without further Commission approval.

(2) Activities identified in paragraph (b)(1) are not authorized by this section if the facilities may be contaminated by toxic substances, or are located within residential areas where the existing or proposed construction right-of-way is within 50 feet of an existing permanent residence.

(c) *Prior notice required.* A blanket certificate issued pursuant to this subpart authorizes the certificate holder to engage in activities described in §§ 157.208(b), 157.210, 157.211(b), 157.212, 157.213(b), 157.214, 157.216(b), 157.219 or activities excluded from automatic authorization by operation of § 157.203(b)(2), if the requirements of § 157.205 are fulfilled.

11. In § 157.205, paragraph (a) introductory text is revised, paragraph (b)(7) is added, and paragraph (e) is revised to read as follows:

§ 157.205 Notice procedure.

(a) *Applicability.* No activity described in §§ 157.208(b), 157.210, 157.211(a)(2), 157.212, 157.213(b), 157.214, 157.216(b), 157.219, or § 284.223(b) is authorized by a blanket certificate granted under this subpart or by part 284, unless, prior to undertaking such activity:

* * * * *

(b) *Contents.* * * *

(7) Identities of any affiliate(s) that will be involved in the construction, operation, or use of the proposed facilities, and a description of each affiliate's contemplated involvement in the activities.

* * * * *

(e) *Publication of notice of request.* (1) Unless the request is rejected pursuant to paragraph (d) of this section, the Secretary of the Commission will publish a notice of the request in the **Federal Register** as soon as it is practicable.

(2) The notice will designate a deadline for filing protests or interventions to the request.

(i) Except as provided in paragraphs (e)(2) (ii) and (iii), the deadline for filing protests or motions to intervene for requests under this subpart will be 25 days after the date of issuance of the notice of the request.

(ii) The deadline for filing protests or motions to intervene for requests pursuant to § 157.208 will be 45 days after the date of issuance of the notice of the request.

(iii) The deadline for filing protests or motions to intervene for requests pursuant to § 157.219 will be 45 days after the date of issuance of the notice of the request for any project with a maximum project cost of $25,000,000, or 90 days after the date of issuance of the notice of the request for any project with a project cost greater than $25,000,000 but no more than $50,000,000.

* * * * *

12. In § 157.206, paragraphs (d)(1) and (d)(2) introductory text and (d)(2)(xi) are revised, paragraph (d)(2)(xii) is added, paragraphs (d)(3) through (d)(5) are revised, and paragraphs (d)(8) through (d)(11) are added, to read as follows:

§ 157.206 Standard conditions.

* * * * *

(d) *Environmental compliance.* (1) The certificate holder must adopt the guidelines provided in § 2.69 of this chapter for all activities authorized by the blanket certificate or which require compliance with this paragraph and must issue the relevant portions of the guidelines to construction personnel, with instructions to use these guidelines.

(2) All activities subject to this paragraph must be consistent with all applicable law including the provisions of the following statutes and regulations or compliance plans developed to implement these statutes:

* * * * *

(xi) National Parks and Recreation Act of 1978 (16 U.S.C. 1 and 230 *et seq.*); and

(xii) Toxic Substances Control Act (16 U.S.C. 2601–2671).

* * * * *

(3) The certificate holder will be deemed in compliance with:

(i) Paragraph (d)(2)(vi) of this section only if it adheres to the procedures in § 157.221, in which case the Commission finds that endangered species and their critical habitat are protected in accordance with 16 U.S.C. 1536.

(ii) Paragraph (d)(2)(iii) of this section only if it adheres to the procedures in § 157.222, in which case the Commission finds that there is no effect on any property protected by 16 U.S.C. 470f;

(iii) Paragraph (d)(2)(v) of this section only if the appropriate state agency designated to administer the state's coastal zone management plan, prior to construction of the project (including any integrally-related nonjurisdictional facilities), waives its right of review or determines that the project complies with the state's coastal zone management plan.

(4) Any transaction authorized under a blanket certificate or subject to this paragraph must not have a significant adverse impact on a sensitive environmental area.

(5) The noise attributable to any compressor facility installed pursuant to the blanket certificate or subject to this paragraph must not exceed a day-night sound level (L_{dn}) of 55 dB(A) at any noise sensitive area unless the noise sensitive areas (such as schools, hospitals, or residences) are established after facility construction.

* * * * *

(8) The certificate holder must adopt the requirements of the Commission's "Erosion Control, Revegetation and Maintenance Plan," and "Stream and Wetland Construction and Mitigation Procedures" contained in §§ 380.13 and 380.14 of this chapter.

(9) Facilities which may be contaminated with polychlorinated biphenyls (PCBs), or other toxic substances, may not be removed or replaced under the blanket certificate unless the removal or replacement complies with the U.S. Environmental Protection Agency's (EPA) regulations or is covered by an alternative disposal permit issued by the EPA pursuant to the Toxic Substances Control Act.

(10) The certificate holder must publish notice of the proposed

construction once in a daily or weekly newspaper of general circulation in each county in which construction would occur, provided that:

(i) The notice must be published at least six weeks prior to the beginning of any activity authorized under § 157.208(a); or

(ii) Within five days after filing a request or application under § 157.208(b), § 157.219, or subpart A of part 157, the certificate holder must provide certification of publication of the notice.

(11) For any project subject to the conditions in this section that is automatically authorized pursuant to § 157.203(b) or that does not require an application to the Commission, no physical construction, installation, or abandonment may begin for any part of the project until all required permits have been obtained.

* * * * *

13. In § 157.207, paragraph (a) is revised to read as follows:

§ 157.207 General reporting requirements.

* * * * *

(a) For each new facility authorized under § 157.208 or § 157.219, the information specified in § 157.208(e);

* * * * *

14. In § 157.208, paragraphs (a), (b), (c)(11), and (d) are revised to read as follows:

§ 157.208 Construction, acquisition, operation, and miscellaneous rearrangement of facilities.

(a) *Automatic authorization.* (1) Except as provided in paragraph (a)(2), if the project cost does not exceed the cost limitations specified in column 1 of Table I, under paragraph (d) of this section, the certificate holder is authorized to:

(i) Make miscellaneous rearrangements of any facility,

(ii) Replace existing facilities that have or will soon become physically deteriorated to the extent that replacement is deemed advisable, provided that there will be no reduction of service and the design delivery capacity remains substantially equivalent, or

(iii) Acquire, construct, or operate any eligible facility.

(2) Paragraph (a)(1) does not authorize any activity which would occur in a residential area, as defined in § 157.202(b)(11)(viii), or which would involve the removal of facilities which may be contaminated with toxic substances.

(b) *Prior Notice.* If the project cost is greater than the amount specified in column 1 of Table I, but less than the amount specified in column 2 of Table I, or if the project is excluded from automatic authorization by operation of § 157.208(a)(2) and the project cost is less than the amount specified in column 2 of Table I, the certificate holder is authorized to:

(1) Make miscellaneous rearrangements of any facility,

(2) Replace existing facilities that have or will soon become physically deteriorated to the extent that replacement is deemed advisable, provided that there will be no reduction of service and the design delivery capacity remains substantially equivalent, or

(3) Acquire, construct, or operate any eligible facility.

* * * * *

(c) *Contents of request.* * * *

(11) A concise analysis discussing the relevant issues outlined in § 380.12 of this chapter. The analysis must identify the existing environmental conditions and the expected significant impacts that the proposed action, including proposed mitigation measures, will cause to the quality of the human environment, including impact expected to occur to sensitive environmental areas. When compressor facilities are proposed, the analysis must also describe how the proposed action will be made to comply with applicable State Implementation Plans developed under the Clear Air Act. The analysis must also include a description of the contacts made, reports produced, and results of consultations which took place to ensure compliance with the Endangered Species Act, the National Historic Preservation Act and the Coastal Zone Management Act.

(d) *Limits and inflation adjustment.* The limits specified in Tables I and II will be adjusted each calendar year to reflect the "GNP implicit price deflator" published by the Department of Commerce for the previous calendar year. The Director of the Office of Pipeline and Producer Regulation is authorized to compute and publish limits for future calendar years as a part of Tables I and II, pursuant to § 375.307(e)(1) of this chapter.

TABLE I

Year	Limit	
	Automatic project cost limit	Prior notice project cost limit
	Column 1	Column 2
1982	$4,200,000	$12,000,000
1983	4,500,000	12,800,000
1984	4,700,000	13,300,000
1985	4,900,000	13,800,000
1986	5,100,000	14,300,000
1987	5,200,000	14,700,000
1988	5,400,000	15,100,000
1989	5,600,000	15,600,000
1990	5,800,000	16,000,000
1991	10,000,000	25,000,000

* * * * *

15. In § 157.211, a new paragraph (b)(6) is added to read as follows:

§ 157.211 Sales taps.

* * * * *

(b) *Contents of request.* * * *

(6) Where the volume of gas to be delivered is more than 3,000 Mcf/d or the cost of the associated facilities is more than $100,000, the request must also contain:

(i) U.S.G.S. 7 ½-minute series topographic map(s) showing the location of the proposed sales tap(s) and any integrally related nonjurisdictional facilities;

(ii) A brief description of the nonjurisdictional facilities, including, as appropriate, pipeline length, size and method of construction, and the proposed end use; and

(iii) A description of how the certificate holder and the company responsible for the construction of the nonjurisdictional facilities have or will ensure compliance with the requirements of § 157.206(d).

* * * * *

16. In § 157.212, a new paragraph (b)(5) is added to read as follows:

§ 157.212 Changes in delivery points.

* * * * *

(b) *Contents of request.* * * *

(5) Where the volume of gas to be delivered is more than 3,000 Mcf/d or the cost of the associated facilities is more than $100,000, the request must also contain:

(i) U.S.G.S. 7 ½-minute series topographic map(s) showing the location of the proposed delivery point(s) and appurtenant facilities and any integrally related nonjurisdictional facilities;

(ii) A brief description of the appurtenant and nonjurisdictional facilities, including, as appropriate, pipeline length, size and method of construction, and the proposed end use; and

(iii) A description of how the certificate holder and the company responsible for the construction of the

nonjurisdictional facilities have or will ensure compliance with the requirements of § 157.206(d).

17. In § 157.216, new paragraphs (a)(3) and (c)(5) are added, paragraphs (d)(3) and (d)(4) are revised, and a new paragraph (d)(5) is added, to read as follows:

§ 157.216 Abandonment.

(a) *Automatic authorization.* * * *

(3) The producer has filed a report with the Department of the Interior Minerals Management Service or a state commission which shows that the affected well has been plugged, provided that the producer is given 15 days notice of the certificate holder's intention to remove the wellhead facilities.

* * * * *

(c) *Contents of request.* * * *

(5) If any lateral lines are to be abandoned, the request must contain:

(i) U.S.G.S. 7 ½-minute series topographic map(s) showing the location of the facilities proposed to be abandoned; and

(ii) A description of how the certificate holder has or will ensure compliance with the requirements of § 157.206(d).

(d) *Reporting requirements.* * * *

(3) The accounting treatment of the facilities abandoned;

(4) The date the facilities were actually abandoned; and

(5) A copy of the plugging report for each facility abandoned pursuant to paragraph (a)(3) of this section.

18. Sections 157.219 and 157.220 are added to read as follows:

§ 157.219 Construction, acquisition, and operation of facilities by blanket certificate holders.

(a) *Authorization.* A holder of a blanket certificate issued under this subpart that also is a holder of a blanket certificate issued under part 284 may acquire, construct, and operate any facility (except a liquefied natural gas facility) with a maximum project cost of $50,000,000, provided that the requirements of paragraph (b) of this section have been met and that an Environmental Assessment has been prepared by staff and that such Environmental Assessment concluded with a Finding of No Significant Impact.

(b) *Contents of request.* Requests for authorization must contain:

(1) All the information described in § 157.208(c), except the information described in paragraphs (c)(6) and (c)(11);

(2) The information required under § 380.12 of this chapter;

(3) A description of how the certificate holder and the company responsible for the construction of any integrally related nonjurisdictional facilities will ensure compliance with the requirements of § 157.206(d);

(4) Verification that the requirements of §§ 157.205, 157.206, and 157.207 have been met;

(5) Verification that the pipeline has conducted an open season to allocate capacity on the proposed facilities and includes verification of the open season in its request; and

(6) Verification that the pipeline will charge its existing part 284 blanket certificate rates for service on the facilities.

(c) *Competing applications.* In order to receive contemporaneous consideration, a notice of intent to file a competing application must be filed in the appropriate docket within the initial protest period. Further, the competing application must be filed within 30 days after the expiration of the notice period.

§ 157.220 Exception.

Except for the environmental compliance requirements in § 157.206(d), this subpart is not applicable to intrastate pipelines.

19. In part 157, subpart F, appendices I and II are redesignated as §§ 157.221 and 157.222 and revised to read as follows:

§ 157.221 Procedures for compliance with the Endangered Species Act of 1973.

(a) *Applicability.* The procedures in this section apply to:

(1) Any certificate holder undertaking a project authorized under a blanket certificate issued pursuant to subpart F of this part, and

(2) Any other activity subject to the standard conditions in § 157.206(d).

(b) *Consultation with other Federal agencies.* Pursuant to § 157.206(d)(7), the certificate holder will be designated as the Commission's non-Federal representative for purposes of informal consultations with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS).

(c) *Definitions.* For purposes of this section:

(1) "Listed species" and "critical habitat" will have the same meaning as provided in 50 CFR 402.02.

(2) "Project area" means any area subject to construction activities required to install the facilities and to install any integrally-related, dependent nonjurisdictional facilities.

(d) *Procedures.* (1) Pursuant to 50 CFR 402.01, the certificate holder must contact the appropriate regional office of either, or if appropriate both, the FWS or the NMFS to initiate informal consultations for each specific project. If the certificate holder is proceeding on a project pursuant to a blanket clearance issued by the FWS which is more than 2 years old, the certificate holder must consult with the FWS to determine whether any additional species have been listed in the area, and whether the blanket clearance is still valid.

(2) *Finding of no impact.* The certificate holder is in compliance with § 157.206(d)(2)(vi) if, pursuant to the informal consultations, the consulted agency initially determines that no listed species or its critical habitat, and that no species proposed to be listed under 16 U.S.C. 1533 or its critical habitat, occurs in the project area.

(3) *Potential impact to proposed species.* (i) If the consulted agency, pursuant to informal consultations, initially determines that any species proposed to be listed under 16 U.S.C. 1533 or its critical habitat occur in the project area, the certificate holder must confer with the consulted agency on how to avoid or reduce the potential impact.

(ii) The certificate holder is in compliance with § 157.206(d)(2)(vi) when the certificate holder completes the conference and implements any mitigating measures the certificate holder elects to implement, and complies with paragraph (d)(4) of this section, if applicable.

(4) *Continued informal consultations for listed species.* (i) If the consulted agency initially determines, pursuant to the informal consultations, that a listed species or its critical habitat. may occur in the project area, the certificate holder must continue informal consultations with the consulted agency to determine if the proposed project may affect the species or habitat. These continued informal consultations may include discussions with experts (including experts provided by the consulted agency), field surveys, biological assessments, and formulation of mitigation measures.

(ii) If the consulted agency agrees with the certificate holder's determination resulting from the continued informal consultations, that the proposed project will not affect the listed species or its critical habitat, the certificate holder is in compliance with § 157.206(d)(2)(vi).

(iii) The certificate holder may not proceed with the proposed project under the blanket certificate if the consulted agency does not agree with the certificate holder's determination, or if the certificate holder concludes that the

proposed project may affect listed species or the species' critical habitat.

§ 157.222 Procedures for compliance with the National Historic Preservation Act of 1966.

(a) *Applicability.* (1) The procedures in this section apply to state and private lands, and Federal lands for which there are no other Federal procedures.

(2)(i) Except as provided in paragraph (2)(ii), the procedures in this section apply to any certificate holder undertaking a project pursuant to subpart F of this part, and any other activity subject to the standard conditions in § 157.206(d).

(ii)(A) If Federally administered land will be directly affected by the project, then the procedures used by the appropriate Federal land managing agency to comply with section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. 470f, will take precedence over these procedures.

(B) If there is no SHPO or if the SHPO declines to consult with the certificate holder, the certificate holder must inform the Commission's Office of Pipeline and Producer Regulation, and must not proceed with these procedures or the project until an alternative consultant is designated.

(b) *Definitions.* For purposes of this section:

(1) *Listed property* means any district, site, building, structure or object that is listed on the National Register of Historic Places, or in the **Federal Register** as a property determined to be eligible for inclusion on the National Register.

(2) *SHPO* means the State Historic Preservation Officer or any alternative person duly designated to advise on cultural resource matters.

(3) *Unlisted property* means any district, site, building, structure or object that is not a listed property.

(4) *Area of the project's potential environmental impact* means any area subject to construction activities required to install the facilities or to install any integrally related, dependent nonjurisdictional facilities.

(c) *Procedures.* (1) It will be the certificate holder's responsibility to identify or cause to be identified listed properties and unlisted properties that satisfy the National Register Criteria for Evaluation (36 CFR 60.4), that are located within the area of the project's potential environmental impact, and that may be affected by the undertaking.

(2) The certificate holder must:

(i) Check the National Register of Historic Places and consult with the SHPO to identify all listed properties within the area of the project's potential environmental impact;

(ii) Consult with the SHPO, and to the extent deemed appropriate by the SHPO, check the public records and consult with other individuals and organizations with historical and cultural expertise, as well as potentially affected Native Americans or Indian tribes, to determine whether unlisted properties that satisfy the National Register Criteria for Evaluation are known or likely to occur within the area of the project's potential environmental impact; and

(iii) Consult with the SHPO to determine the need for surveys to identify any unknown unlisted properties. The certificate holder must evaluate the eligibility of any known unlisted properties located within the area of the project's potential environmental impact according to the National Register Criteria for Evaluation.

(3) The certificate holder is in compliance with § 157.206(d)(2)(iii) of the Commission's regulations if the SHPO agrees with the certificate holder that no survey is required, and that no listed properties or unlisted properties that satisfy the National Register Criteria for Evaluation occur in the area of the project's potential environmental impact.

(4) If the SHPO determines that surveys are required to ensure that no listed properties, or unlisted properties that satisfy the National Register Criteria for Evaluation, occur within the area of the project's potential environmental impact, the certificate holder must perform surveys deemed by the SHPO to be of sufficient scope and intensity to identify and evaluate the properties. The certificate holder must submit the results of the surveys, including a statement as to which unlisted properties satisfy the National Register Criteria for Evaluation, to the SHPO and solicit comments on the surveys and the conclusions.

(5) The certificate holder is in compliance with § 157.206(d)(2)(iii) of this chapter if, upon conclusion of the surveys, the certificate holder and the SHPO agree that no listed properties, and no unlisted properties which satisfy the National Register Criteria for Evaluation, occur in the area of the project's potential environmental impact.

(6) For each listed property, and each unlisted property which satisfies the National Register Criteria for Evaluation, which is located within the area of the project's potential environmental impact, the certificate holder, in consultation with the SHPO, must apply the Criteria of Effect in 36 CFR 800.9 to determine whether the project will have an effect upon the historical, architectural, archeological, or cultural characteristics of the property that qualified it to meet National Register Criteria for Evaluation. The certificate holder is in compliance with § 157.206(d)(2)(iii) of this chapter if the certificate holder and the SHPO agree that the project will not affect these characteristics except that:

(i) No construction activities are allowed in any portion of a listed or eligible archeological or historical site; and

(ii) Visual and auditory impact to the surroundings of an eligible property are not considered effects if they only occur during the construction or installation period.

(7) If either the certificate holder or the SHPO finds that the project may affect a listed property or an unlisted property which satisfies the National Register Criteria for Evaluation, located within the area of the project's potential environmental impact, then the project will not be authorized unless the properties can be avoided by relocation of the project to an area where the SHPO agrees that no listed property or unlisted property that satisfy the National Register Criteria for Evaluation occur; Provided that, if the SHPO and Director of OPPR agree with the certificate holder that avoidance of the property is not possible, the certificate holder may submit to the SHPO and Director of OPPR a mitigation plan in accordance with 36 CFR 800.8 and 800.9 for approval by the Director of OPPR. The Director of OPPR will notify the Advisory Council on Historic Preservation of the mitigation plan and provide it an opportunity to comment in accordance with 36 CFR 800.5. The certificate holder is in compliance with § 157.206(d)(2)(iii) of this chapter only if the project is relocated, as described above, or the certificate holder receives notice from the Director of OPPR that the mitigation plan is approved and that unaffected segments of the project may proceed. Construction at any affected property may not proceed until after implementation of the approved mitigation plan.

(8) If the certificate holder and the SHPO are unable to agree on the need for a survey, the adequacy of a survey, or the results of application of the Criteria for Evaluation to an unlisted property, the project will not be authorized under the blanket certificate.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

20. The authority citation for part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432; Outer Continental Shelf Lands Act of 1953, 43 U.S.C. 1331–1356, as amended; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. 12009, 3 CFR 1978 Comp., p. 142.

21. Section 284.11 is revised to read as follows:

§ 284.11 Environmental compliance.

(a) Any authorization granted under subparts B and C of this part that involves construction or removal of facilities is subject to the terms and conditions of § 157.206(d) of this chapter. The pipeline responsible for the construction or abandonment will comply with § 157.206(d) of this chapter as if it were a certificate holder as defined in that section.

(b) At least 45 days prior to commencing construction or abandonment of facilities covered by paragraph (a), the pipeline constructing or abandoning the facilities must file evidence of having complied with § 157.206(d) of this chapter.

PART 375—THE COMMISSION

22. The authority citation for part 375 is revised to read as follows:

Authority: Omnibus Budget Reconciliation Act of 1986, 42 U.S.C. 7178; Electric Consumers Protection Act of 1986, 16 U.S.C. 791a note; Department of Energy Organization Act, 42 U.S.C. 7101–7532, E.O. 12009, 3 CFR 1978 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 551–557; Federal Power Act, 16 U.S.C. 791–828c, as amended; Natural Gas Act, 15 U.S.C. 717–717w, as amended; Natural Gas Policy Act 1978, 15 U.S.C. 3301–3432; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 et seq., as amended.

23. In § 375.307, paragraph (a)(1) is revised, paragraph (a)(3) is removed and reserved, and paragraphs (a)(4), (a)(5), and (e)(1) are revised to read as follows:

§ 375.307 Delegations to the Director of the Office of Pipeline and Producer Regulation.

* * * * *

(a) * * *

(1) Applications or amendments requesting authorization for the construction and operation or acquisition of facilities that have a construction or acquisition cost of less than $25,000,000;

* * * * *

(4) Applications to abandon pipeline or producer facilities or services;

(5) Applications for temporary and permanent certificates (and for amendments thereto) for the transportation, exchange or storage of natural gas, provided that the estimated cost of construction of the certificate applicant's related facility is less than $25,000,000;

* * * * *

(e) * * *

(1) Adjust the project limits specified in Table I of § 157.208(d) and Table II of § 157.215(a) of this chapter and the dollar amounts in paragraphs §§ 375.307(a) (1) and (a)(5), including adjustments for inflation, each calendar year, to reflect the "GNP implicit price deflator" published by the Department of Commerce for the previous calendar year, and publish the limits and dollar amounts in the **Federal Register**;

* * * * *

PART 380—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

24. The authority citation for part 380 is revised to read as follows:

Authority: National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370a; Department of Energy Organization Act, 42 U.S.C. 7101–7352; E.O. No. 12009, 3 CFR 1978 Comp., p. 142.

25. In § 380.3, paragraph (c)(2)(i) is revised to read as follows:

§ 380.3 Environmental information to be supplied by an applicant.

* * * * *

(c) *Content of an applicant's environmental report for specific proposals.*

* * * * *

(2) *Natural gas projects.* (i) For any application filed under the Natural Gas Act for any proposed action identified in § 380.5 or 380.6, except prior notice filings under § 157.208 of this chapter and described in § 380.5(b), the environmental reports identified in § 380.12.

* * * * *

26. In § 380.4, paragraph (a)(27) is revised, and new paragraphs (a)(32) through (a)(37) are added, to read as follows:

§ 380.4 Projects or actions categorically excluded.

(a) *General rule.* * * *

(27) Sale, exchange, storage, and transportation of natural gas under sections 4, 5 and 7 of the Natural Gas Act that requires no construction of facilities;

* * * * *

(32) Abandonment of natural gas facilities by sale where natural gas service would be continued;

(33) Presidential Permits to operate facilities at the national border of the United States that do not involve the construction of new facilities;

(34) Complaints that do not raise environmental issues;

(35) Declaratory orders disclaiming jurisdiction;

(36) Abandonment of any natural gas service (such as transportation, sale or storage) that does not involve abandonment of natural gas facilities; and

(37) Acquisition of facilities.

* * * * *

27. In § 380.5, paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 380.5 Actions that require an environmental assessment.

* * * * *

(b) * * *

(2) Prior notice filings under §§ 157.208 and 157.219 of this chapter for the rearrangement, replacement, acquisition, construction, or operation of any facility specified in § 157.202 (b)(2) and (b)(3) of this chapter.

(3) Abandonment or reduction of natural gas service under section 7 of the Natural Gas Act categorically excluded under § 380.4 (a)(21), (a)(28), (a)(29) or (a)(36);

* * * * *

Appendix A [Removed]

28. Appendix A to part 380 is removed and new §§ 380.12, 380.13, and 380.14 are added to read as follows:

§ 380.12 Requirements for preparing environmental reports for certificate applications under the Natural Gas Act.

(a)(1) This section identifies the environmental data required for an application that proposes the construction, operation or abandonment of any facilities as identified in § 380.3(c)(2)(i). Environmental reports for certificate applications consist of thirteen resource reports that describe specific environmental resource areas and specific topics that must be addressed.

(2) The descriptions of the resource reports have been prepared to cover a wide range of transactions. The detail of each resource report should be commensurate with the complexity of the transaction and its potential for environmental impact. Applicants should check the description of each resource report for specific assistance on which reports or what information may be deleted depending on the type of

facilities proposed. However, all topics specified in the 13 resource reports must be addressed or their omission must be justified unless the description of the report states that the data is not required for the type of project involved. If material required for one resource report is provided in another resource report or in another exhibit, it may be referenced.

(b) The resource reports must:

(1) Address existing conditions or resources which might be affected directly or indirectly by the proposed project. Direct and indirect effects are those effects which can be discerned as occurring primarily because the proposed action would occur. Examples include but are not limited to:

(i) The impact of a borrow pit would be evaluated to the extent that it would be developed or expanded as a result of the proposed project but the manufacture of conventional trucks to work the pit would not; and

(ii) The impact of construction workers moving into the project area would be evaluated but not the impact of their leaving present homes. However, the impact of their subsequently leaving the construction area must be considered;

(2) Identify all expected significant short-term and long-term environmental effects expected to occur should the project be approved;

(3) Identify effects of construction, operation (including maintenance and malfunctions) and termination of the project, as well as cumulative effects occurring because of other projects;

(4) Identify all measures proposed to enhance the environment or to avoid, mitigate, or compensate for adverse aspects of the project, including engineering and design, contract specifications, construction techniques, monitoring and restoration; and

(5) Show evidence of consultation with any Federal land managing agencies whose land might be affected by the project.

(c) The thirteen resource reports are:

(1) *General project description.* This introductory report describes facilities, special construction and operation procedures, construction timetable, future plans, compliance with regulations and codes, and permits which must be obtained. To the extent not covered in the body of the application or in other exhibits, this resource report must contain:

(i) A description and location maps of all facilities (including auxiliary facilities) to be constructed or removed, including related construction and operational support activities and areas such as maintenance bases, staging areas, communications towers, powerlines, and new access roads. This description should include the length and size of all pipeline(s) and, for aboveground facility sites, the land requirements and the type(s) of facilities that would be installed. If any facilities would be removed or replaced, they should also be identified;

(ii) Rights-of-way, access roads, other linear construction areas, and pipe storage areas should be located on current U.S. Geological Survey (USGS) 7.5-minute-series topographic maps or other maps of equivalent detail. Nonlinear construction areas should be shown on maps at a scale of 1:3,600 or larger keyed to the right-of-way maps. Provide current, original aerial photographs, with a scale of 1:6,000 or larger, showing the proposed pipeline routes and major aboveground facility locations. Maps and aerial photographs should identify pipeline mileposts. Similar information should be supplied for any alternative locations seriously considered before selection of the proposed locations;

(iii) When new or additional compression is proposed, include large scale (1:3,600 or greater) plot plans of each compressor station, referenced to a readily identifiable point on the USGS maps required above. The topographic map should identify the location of noise-sensitive areas (residences, schools, hospitals, etc.) nearest the compressor station. Noise-sensitive areas within the plot plan area should be shown. Although the applicant should be prepared to provide additional copies of maps (seven copies required by § 157.6(a) of the Commission's regulations), only three original sets of USGS topographic maps and aerial photographs should be filed. Two sets should be sent directly to the Commission's Office of Pipeline and Producer Regulation (OPPR). Consult OPPR for the appropriate format for aerial photography;

(iv) A description of methods of construction (including restoration) to be used in special areas such as rugged topography, crossings of bodies of water, wetlands, areas where the pipeline would be located longitudinally under roads, and areas where explosives must be used, and an identification of where each type of construction would be used;

(v) A description of current or reasonably foreseeable plans for future expansion of facilities, including additional land requirements and the compatibility of those plans with the current proposal;

(vi) Identification of all necessary Federal, regional, state, and local permits, licenses and certificates needed before the proposed action can be completed. Describe the status of attempts to secure these permits. Provide a copy of any permit applications that have been prepared and a copy of any permits which have been issued;

(vii) A description of all nonjurisdictional facilities which would be constructed in association with the proposed project. This description should be equivalent to the discussion in paragraph (a) above, and the facilities should be shown on the same maps and photographs specified in paragraphs (a) and (b) or on additional maps or photographs;

(viii) A summary of the Federal, state, and local review processes for the nonjurisdictional facilities. Identify what authorization or approvals have been obtained. Identify the issuing authority, date of issuance, and authorization or permit number; and

(ix) Within five days after filing a request or application, the certificate holder must provide certification that it has published notice of the proposed construction once in a daily or weekly newspaper of general circulation in each county in which construction would occur.

(2) *Resource report on water use and quality.* This resource report is required for all applications except those only involving facilities at an existing compressor station. It discusses water quality and availability and contains data sufficient to determine the impact to be expected from the project and the effectiveness of any mitigative, enhancement, or protective measures proposed. The resource report must contain:

(i) A description by milepost of all perennial waterbodies to be crossed. For each crossing, characterize the seasonal flow rates, the state water quality classifications, any known potential pollutants in the sediments, and any potable water intake sources within 3 miles downstream of any proposed stream crossing;

(ii) A description of the construction techniques and mitigation measures, including directional drilling, push-pull, dry flume pipe, and wet trench, which would be used at each individual stream and wetland area. Also, indicate the type of temporary bridge which would be used to ensure that repeated crossing of streams by construction equipment would not adversely affect the streams;

(iii) A description of each staging area which would be required at each stream or wetland crossing. Describe the circumstances under which the clearing

for these staging areas would not be located a minimum of 50 feet from the edge of the stream or wetland to allow for a buffer zone;

(iv) A description by milepost of all wetland crossings, as listed on National Wetland Inventory (NWI) maps or state wetland regulation maps. For each crossing identify the wetland classification specified by the U.S. Fish and Wildlife Service and the state, and the length of the crossing. Provide copies of NWI maps clearly showing the proposed route. Where NWI maps are not available, provide the appropriate state wetland maps. See Report 1(ii) for the required number of copies;

(v) A description of aquifers within excavation depth in the project area, identifying the depth, current and proposed use, water quality, and any known or suspected contamination problems;

(vi) A description of the impact of the proposed action on offshore waters, floodplains, wetlands, perennial watercourses, and groundwater, including discussion of the effects on both water movement and quality. This discussion should identify the specific locations and method and rate of withdrawal and discharge of hydrostatic test water, the quantity required, its quality, and the season of withdrawal. Any chemical or physical treatment of the test water before, during, or after use and all suspended or dissolved material likely to be picked up by the water should be described, particularly if any existing pipelines are being retested. Also describe any chemical or physical treatment of the pipeline for drying, cleaning, or any other purpose before or after installation in the trench, and discuss waste product generated and disposal methods to be used for them;

(vii) A description of detailed mitigation measures proposed to reduce the potential for adverse impact to surface water or groundwater quality, including procedures for handling and disposal of contaminated soils and groundwater, locations for storage of fuels and lubricants, and disposal of all construction waste material such as dredge spoil, slash, construction material, hydrostatic test water, and drilling fluids. Identify disposal sites for disposal of dredged material that cannot be used as backfill. Describe measures to be used for avoiding groundwater diversion, and wetland drainage, and measures to mitigate impact to well water. The applicant must adopt the Commission's "Stream and Wetland Construction and Mitigation Procedures" described in § 380.14 or provide its own alternative plan. An applicant's alternative plan must identify which portions of the Commission's procedures it does not adopt, explain why, and propose substitute measures to provide equal or greater protection to the resource;

(viii) A description of the location of all known groundwater supplies, including residential water wells, that would be within 150 feet of the proposed pipeline. Provide detailed monitoring and mitigation measures that would be implemented to ensure that the water supply is not affected; and

(ix) A list of all publications, reports, and other literature or communications which were cited or relied upon to prepare the report.

(3) Resource report on vegetation and wildlife. This resource report is required for all applications except those only involving facilities at an existing compressor station. It describes the vegetation and wildlife in the vicinity of the proposed project; expected impacts of the project on these resources; and proposed mitigation, enhancement or protection measures. The resource report must contain:

(i) A description of the ecosystems, including wetlands, and typical species that might be affected by the proposed action, specifying all species of commercial, recreational, and aesthetic value, and identification of warm water, cold water, and saltwater fisheries (commercial and recreational) in the affected area and any associated spawning or rearing areas. If data are not available for the area to be affected, data for the nearest comparable area may be used;

(ii) A description of all perennial streams, ponds, or lakes, at the proposed crossing(s), including a description of the banks, bottom composition, and type of aquatic and riparian vegetation;

(iii) A description of unique ecosystems or communities, Federal or state listed or proposed threatened or endangered species, including significant or critical habitat and other areas of critical environmental concern, such as wetlands, virgin prairie, and estuaries, in the area of the proposed action. Summarize the findings and the recommendations of any studies conducted thereon;

(iv) A description of the impact of construction and operation on the terrestrial and aquatic species and habitats in the area, including a discussion of the possibility of a major alteration to ecosystems and any potential impact on threatened or endangered species. Provide an assessment of any cumulative effects of the proposed action and retained alternatives in combination with other existing or proposed projects. Provide a detailed discussion of the impact of maintenance, clearing and/or treatment of the project area on vegetation and wildlife. If non-jurisdictional facilities would be constructed as a result of the project, the applicant should work with the nonjurisdictional company and the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service to determine if threatened or endangered species may be affected by these facilities. Documentation of the determination should be filed with the Commission when it is available and should reference the docket number associated with the jurisdictional facilities;

(v) A description of detailed mitigation measures to mitigate impact to vegetation and wildlife such as: scheduling and routing to construct water crossings during low flow period or to avoid migration of fish and spawning or nursery areas of sensitive fish species, and to minimize impact to reproduction, wintering, and migration of wildlife; construction methods which would minimize disturbance of riparian and bottomland vegetation, wetlands, shellfish beds, cold water fisheries, and other important habitat; revegetation measures designed to improve wildlife habitat; and planning of routine maintenance to minimize disruption to wildlife in the project area;

(vi) A list of recommendations, and the applicant's response to each recommendation, from appropriate Federal and state fish and wildlife agencies to avoid or limit impact to wildlife and fisheries, including any measures needed to protect threatened or endangered species; and

(vii) A list of all publications, reports, and other literature or communications which were cited or relied upon to prepare the report.

(4) *Resource report on cultural resources.* The NEPA Report described below must be filed with the application. The National Historic Preservation Act (NHPA) reports must be filed as supplementary information for review and approval by the Director, Office of Pipeline and Producer Regulation (OPPR), prior to construction of any facilities. The NHPA reports, to be provided in phases as necessary, are required for all applications.

(i) *The NEPA Report.* For the area of the project's potential effect and all the alternatives seriously considered:

(A) Describe in detail each cultural resource identified through the assessment described below;

(B) Make reliable predictions of the location of areas of high, medium and

low cultural resource sensitivity based on surveys associated with this filing or previous surveys;

(C) Locate on a map (scale 1:6,000 or greater) by milepost (MP) all cultural resources within 0.5 mile of the right-of-way identified from review of existing data, or identified by sample field surveys of the area of potential effect, and on the same or another map (scale 1:24,000 or greater), areas of high, medium and low cultural resources sensitivity;

(D) Rank areas of high, medium and low cultural resource density and predicted sensitivity to make a qualified assessment of the project's impact on cultural resources and compare that impact to the impact of alternatives identified in resource report 10;

(E) Conduct sample cultural resources field surveys, performed by a qualified professional, on all areas of potential effect where there is no existing or reliable data to determine cultural resource sensitivity. Areas of potential effect include those of direct and indirect impact, including jurisdictional pipeline facilities, integrally related nonjurisdictional pipeline facilities, and associated access, pipe yards, staging and storage areas. The applicant may substitute a complete NHPA Phase 1 report (see below) for its preferred route;

(F) Clearly identify those cultural resources that are on or eligible for the National Register of Historic Places (NRHP) or that are National Historic Landmarks (NHL). Address sensitivity for prehistoric and historic resources separately. Sensitivity should be based on both environmental and cultural data. An exhaustive assessment should be performed and all references and repositories of information cited, even if the results were negative. To the greatest practical extent, include in this assessment information from the State Historic Preservation Office (SHPO), professionals, informants, interested persons, Native Americans and tribal leaders when appropriate. Consult standards developed in the OPPR guidelines for Phase 1 reports and in existing State plans for references.

(ii) *The NHPA Reports.* To comply with the National Historic Preservation Act, the reports and information identified in paragraphs (c)(4)(iii) and (c)(4)(iv) of this section should be filed before certification to avoid delay of projects. The denial of access to property by landowners is the only acceptable reason for delaying completion and filing of Phase 1 and 2 reports after certification. Inaccessible areas of the project will be subject to appropriate Phase 1, 2 and 3 studies, as necessary, after certification. Each phase must be prepared in consultation with the appropriate SHPO, and any appropriate Federal land managing agencies and Indian tribes. At the request of the applicant, the staff will also review proposals for Phase 1 or Phase 2 surveys. Other parties likely to be knowledgeable about cultural resources should also be consulted. If nonjurisdictional facilities would be constructed as a result of the project, the applicant should work with the nonjurisdictional company to determine the effect of those facilities on cultural resources.

(iii) Information identified by the following procedures should be filed with the Commission and should reference the docket number associated with the jurisdictional facilities. For the proposed project area, the Phase 1 report establishes the cultural resources context(s), examines the potential for locating cultural resources, and identifies the presence, or absence, of cultural resources that are listed on, or may possibly meet the criteria for, listing on the NRHP. Generally, the steps leading to the Phase 1 report will have to be staged or carried out sequentially in order to apply the most appropriate and effective strategies. The Phase 2 report provides precise information on the results from supplementary documentary research and intensive survey analysis and assessment of cultural resources identified in the Phase 1 report to support recommendations on each cultural resource's eligibility for the NRHP. The Phase 3 report includes proposed measures to mitigate effects on cultural resources on or determined eligible for the NRHP by the Commission and the SHPO.

(iv) The reports must contain the following:

(A) The Phase 1 report identifies the presence of cultural resources. This report should include the appropriate SHPO's recommendation regarding the need for field surveys. Any information supplied to the SHPO to make such a recommendation must also be included. The report should include a complete background assessment and literature search, an environmental synthesis, including paleoenvironmental data, a project-specific overview of the prehistoric and historic settlement within the region, and a reconnaissance level survey where recommended by the SHPO, with subsurface testing, when appropriate, to document the presence or absence of cultural resources;

(B) The Phase 2 report demonstrates the eligibility of cultural resources for the NRHP. For prehistoric resources summarize the results of previous investigations including Phase 1 studies; define the site in relationship to the regional or local settlement patterns; identify the stratigraphic context of the site; and summarize the types of archeological data anticipated at the site in consideration of data from similar studies. For historic resources, provide an in-depth understanding of the project area including the history of property ownership, occupation, land-use and development from primary documents not previously consulted at the Phase 1 level. Documentation of significant persons and events will need to be addressed. Perform field testing as follows: define the boundaries of sites, if not previously defined by Phase 1 studies; demonstrate the nature of archeological features and any artifact patterning, if discernible; date the components of the site; and identify botanical and faunal information. The above information and analysis will assist the applicant, the Commission's staff, and the SHPO in evaluating cultural resources for the NRHP and guiding research designs for Phase 3 mitigation proposals. Include the applicant's position regarding the eligibility of all cultural resources identified in the project area, based on NRHP criteria at 36 CFR 60.4, along with the SHPO's opinion as to each property's eligibility;

(C) The Phase 3 report provides detailed treatment plans for eligible cultural resources designed to eliminate or reduce any adverse effects on them. Include the applicant's position regarding the proposed project's effect on each cultural resource on or potentially eligible for listing on the NRHP, and any measures proposed to avoid or mitigate those effects. The SHPO's recommendations on the effects of the proposal must also be included;

(D) All cultural resource information, including the SHPO's comments, must be filed with the Commission, with the original document provided directly to OPPR, as each becomes available. Details concerning cultural resource site locations must be marked *"Privileged—Do Not Release"* when filed with the Commission.

(v) For guidance on identification and reporting of cultural resources and on professional qualifications relating to information and reports identified in paragraphs (c)(4)(i) and (c)(4)(ii) of this section, the applicant should consult standards developed in existing state plans, the U.S. Department of the Interior's *Archeology and Historic Preservation; Secretary of the Interior's Standards and Guidelines* (48 FR 44,716 (1983)) and OPPR guidelines. The applicant should note that intensive

surveys to assess cultural resource eligibility for the NRHP (Phase 2 report) and implementation of the plan for mitigation of effects on cultural resources on or eligible for the NRHP as proposed in the Phase 3 report cannot proceed until the Commission's staff has reviewed and approved the preceding steps, the SHPO's comments, and the comments of the Advisory Council on Historic Preservation, and OPPR has specifically instructed the applicant to proceed.

(5) *Resource report on socio-economics.* This resource report is only needed if significant aboveground facilities, such as conditioning plants or liquefied natural gas (LNG) plants (jurisdictional or nonjurisdictional) are associated with the proposed action. It identifies and quantifies the impacts of constructing and operating the proposed project on employment, population, housing, per capita income, local governmental services, local tax revenues and other factors within the towns and counties in the vicinity of the proposed project. The resource report must include:

(i) A description of the socioeconomic impact area;

(ii) An evaluation of the impact of any substantial inmigration of people on the impact area's governmental facilities and services, such as police, fire, health and education facilities and programs;

(iii) On-site manpower requirements and payroll during and after project construction, including a projection of total on-site employment and construction payroll for each facility;

(iv) Numbers of project construction personnel who:

(A) Currently reside within the impact area;

(B) Would commute daily to the construction site from places situated outside the impact area; and

(C) Would relocate on a temporary basis within the impact area;

(v) A determination of whether the existing supply of available housing within the impact area is sufficient to meet the needs of the additional population;

(vi) Numbers and types of residences and business establishments that would be displaced by the proposed project, procedures to be utilized to acquire these properties, and types and amounts of relocation assistance payments that would be paid to the affected property owners and businesses;

(vii) A fiscal impact analysis evaluating the incremental local government expenditures in relation to the incremental local government revenues that would result from the construction of the proposed project. Incremental expenditures may include, but are not limited to, school operating costs, road maintenance and repair, public safety, and public utility costs; and

(viii) A list of all publications, reports, and other literature or communications which were cited or relied upon to prepare the report.

(6) *Resource report on geological resources.* This resource report is required for all applications except those only involving facilities within the boundaries of existing aboveground facilities, such as meter stations and compressor stations. It describes geological resources and hazards in the proposed project area that would be directly or indirectly affected by the proposed action or place the facilities at risk, the potential effects on the facility, and methods proposed to reduce the effects or risks. The resource report must include:

(i) A description of mineral resources currently exploited or potentially exploitable from the immediate project area;

(ii) A description of the location of existing and potential geological hazards and areas of nonroutine geotechnical concern, such as earthquakes, active faults, areas susceptible to soil liquefaction, planned, active and abandoned mines, and areas of potential ground failure, such as subsidence, slumping, and landsliding. The hazards posed to the facility from each one must be discussed;

(iii) A description of how the proposed project would be located or designed to avoid or minimize adverse effects to the resources or risk to itself, including all geotechnical investigations and monitoring which would be conducted before, during, and after construction. The applicant must direct particular attention to the potential for blasting to affect water wells, springs, wetlands, and structures;

(iv) If surface mines are to be crossed, a description of the owner or operator's input on routing. The applicant must specify methods to be used to prevent acidic runoff along the right-of-way and the potential for the project to hinder mine reclamation efforts;

(v) If the application involves a liquefied natural gas (LNG) facility which would be at a site in zones 2, 3, or 4 of the Uniform Building Code's Seismic Risk Map of the United States, or where there is the potential for surface faulting or liquefaction, a report on Earthquake Hazards and Engineering in conformance with the guidelines contained in "Data Requirements for the Seismic Review of LNG Facilities," NBSIR 84–2833. This working document may be obtained from the Commission's Office of Pipeline and Producer Regulation.

(vi) When the application is for underground storage facilities, a description of how the applicant would control and monitor the drilling activity of others within the boundaries of the field and buffer zone. Also, describe how the applicant would monitor potential effects of the operation of any adjacent storage or production facilities on the proposed facility. Describe the measures taken to locate and determine the condition of all old wells within the field and buffer zone and how the applicant would reduce risk from failure of known, as well as undiscovered, wells. Safety and environmental safeguards required by state and federal drilling regulations should also be specifically identified and discussed.

(vii) A list of all publications, reports, and other literature or communications which were cited or relied upon to prepare the report.

(7) *Resource report on soils.* This resource report is required for all applications except those only involving facilities at an existing compressor station. It describes the soils that would be affected by the proposed project, the effect on those soils, and measures proposed to minimize or avoid impact. The resource report must include:

(i) A list by milepost of the soil associations crossed by the proposed facilities. Where sites for aboveground facilities of greater than 5 acres would be acquired, the report should list the soil series, percentage of the property comprised of each series, and which series are classified as prime or unique farmland by the U.S. Department of Agriculture;

(ii) A description of the anticipated erosion and other impact to soils as a result of the project;

(iii) A description of where and how topsoil segregation would be performed, how rutting and compaction would be avoided or mitigated in cropland, how agricultural drainage tiles would be located, repaired, and protected from settlement of the trench fill, and how the potential for future installation of drainage tile would be considered in the determination of pipeline depth;

(iv) An erosion control and revegetation plan. The applicant must adopt the requirements of the Commission's "Erosion Control, Revegetation and Maintenance Plan" described in § 380.13 or provide its own alternative plan. An applicant's alternative plan must describe in detail how erosion would be controlled and how and by whom the right-of-way

would be revegetated. The plan should be suitable for contract use and should identify:

(A) Sediment control at stream crossings during construction, such as installation of runoff diversions, sediment filters for right-of-way and trench spoil de-watering, temporary use of trench breakers to isolate the stream from the on-land trench, and gravel pads and/or temporary tramways or bridges to prevent disturbance to the stream bottom or turbidity from wheels, tracks, and cleats;

(B) Use of timber mats and other temporary pads to support construction vehicles where wetlands must be crossed;

(C) The number of days to be allowed between backfilling of the pipeline trench and permanent seeding;

(D) Any special provisions, such as prohibiting equipment washing in streams, use of topsoil as padding, refueling in wetlands, etc.;

(E) Criteria and specifications for use of temporary seeding for erosion control if construction is to be completed outside of specified seeding dates for perennial vegetation, or if construction is delayed due to weather or contractor problems;

(F) Specifications for outslope, compaction, and spacing intervals for runoff diversions on slopes;

(G) Specifications for fertilizer, lime, seed, and mulch to be applied in the event that landowners or land managing agencies do not specify seeding requirements. Identify how materials and seed would be applied and the milepost boundaries of any and all uncultivated areas that would be allowed to revegetate naturally. Provide specifications for stabilization of steep slopes, generally in excess of 50 percent grade, and for use of netting or erosion control fabrics for slopes adjacent to streams and roads. Identify all stream crossings where rip-rap would be used;

(H) Plans for arranging grazing deferment, where applicable;

(I) Specifications for sediment control structures to be located at hydrostatic test water discharge locations. These include, but are not limited to, the use of splash pads, hay bales, sediment filters, discharge on to well vegetated upland areas, and construction of settling ponds;

(J) Plans for controlling off-road vehicles; and

(K) Criteria for determining when corrective measures would be used in the event that revegetation is unsuccessful; and

(v) A list of all publications, reports, and other literature or communications which were cited or relied upon to prepare the report.

(8) *Resource report on land use, recreation and aesthetics.* This resource report is required for all applications except those only involving facilities at an existing compressor station. It describes the existing uses of the lands in the vicinity of the proposed project, and changes to those land uses which would occur if the proposed project is approved. The report may reference the discussions of land uses in other sections of this exhibit. It includes measures proposed to mitigate adverse effects including protection and enhancement of existing land use. The resource report must include:

(i) A description of the land requirements indicating the length, width, and location of all existing, joint, or new construction and permanent rights-of-way required by the proposed action, and identify the acreage required for each proposed plant and/or operational site, including wells. Where some existing right-of-way (any kind) would be used, specify the overlap and how much additional width would be required for both construction and operation. The description must identify the amount of land to be purchased or leased for each aboveground facility and the amount that would not be used during project operation, and identify the size and location of all staging and material (excess rock, timber, debris) disposal areas. (For example, those needed for stream crossings, pipe storage yards, and other expanded work areas.);

(ii) A description of existing land use (including recreational use) in the proposed project area by milepost and facility sites, including identification of wetlands, floodplains (aboveground facilities only), orchards and nurseries, landfills, state wild and scenic rivers, nature preserves, remnant prairies, designated natural, recreational or scenic areas, or registered natural landmarks, Native American religious sites and reservations, lands identified under the Special Area Management Plan of the Office of Coastal Zone Management, National Oceanic Atmospheric Administration, and lands owned or controlled by government agencies or private preservation groups. This description should identify the percentage of land within the vicinity of the project area presently used for commerce, industry, recreation, residence, agriculture, forest, wildlife habitat, and open space, etc., including the potential for development. Planned development, if known, should be described, the timeframe for development should be identified, and proposed coordination to minimize impact should be identified. Identify electric transmission facilities on or near the lands affected by the proposed action and their placement (underground, surface, or overhead); identify operating mines near the proposed right-of-way; identify existing natural gas storage or hydrocarbon production fields crossed; and identify the number and location by milepost and distance to the right-of-way of residences or business establishments within 50 feet of the proposed permanent right-of-way. Provide survey drawings, if available, to illustrate the location of the facilities in relation to the buildings;

(iii) A description of any areas within or in the vicinity of the proposed project that are included in, or are designated for study for inclusion in:

(A) The National Wild and Scenic Rivers System (16 U.S.C. 1271);

(B) The National Trails System (16 U.S.C. 1241); or

(C) A wilderness area designated under the Wilderness Act (16 U.S.C. 1132);

(iv) A description of the impact of the project on present use of the affected area, including commercial use, mineral resources, recreational areas, public health and safety, and the aesthetic value of the land and its features. Describe any temporary or permanent restrictions on land use resulting from the project. Include, but do not limit the description to, restrictions on placement on residential properties of ornamental trees and shrubs, patios, swimming pools, sheds, and other improvements; mining and restoration of abandoned mines; and agricultural uses of unused portions of land for aboveground facilities such as compressor stations and communications towers. Describe how private property would be restored (fences, driveways, stone walls, sidewalks, and septic systems, etc.). Describe compensation plans for temporary and permanent rights-of-way and the eminent domain process for the affected areas;

(v) A description of measures to mitigate the aesthetic impact of the facilities; and

(vi) A list of all publications, reports, and other literature or communications which were cited or relied upon to prepare the report.

(9) *Resource report on air and noise quality.* This resource report is required for applications involving new compressor facilities (at new or existing stations), or new liquified natural gas facilities. It identifies the effects of the project on the existing air quality and

noise environment and describes any proposed measures to mitigate the effects. The noise attributable to any proposed compressor facility must not exceed a day-night sound level (L_{dn}) of 55 dB(A) at any noisesensitive area identified in resource report l. The resource report must include:

(i) A description of the existing air quality, including background levels of nitrogen dioxide and any other criteria pollutants which may be produced by the project;

(ii) A quantitative description of the existing noise levels at the noise-sensitive areas identified in resource report 1. Existing noise levels must be reported as the Leq (day), Leq (night) and Ldn and include the basis for the data or estimates. For existing stations, include a sound level survey of the site property line and nearby noise-sensitive areas while the compressors are being operated at full load. Include a plot plan identifying the noise measurement locations and identify the time of day, duration, weather conditions, windspeed and direction, and other noise sources present for each measurement;

(iii) An estimate of the impact of the proposed project on air quality, including how regulatory standards in effect for the area would be met. Provide the emission rate of nitrogen oxides from the existing and proposed facilities, expressed in pounds per hour and tons per year for maximum operating conditions, including supporting calculations, emission factors, fuel consumption rates, and annual hours of operation. For major sources (as defined by the U.S. Environmental Protection Agency), provide copies of any applications to the Environmental Protection Agency (or the designated state air pollution control agency) for permits to construct or applicability determinations under regulations for the prevention of significant air quality deterioration and subsequent determinations, when available. If such applications have not been made, provide the height, diameter, and location on the site of each exhaust stack and the exit velocity and temperature of the exhaust gases;

(iv) A quantitative estimate of the impact of the proposed project on the noise levels at the noise-sensitive areas identified in resource report 1. The estimate should include supporting calculations, far-field sound level data for maximum facility operation, and the source of the data. Show that the proposed project complies with applicable noise regulations;

(v) A description of measures proposed to mitigate impact to air and noise quality, such as control of operating parameters, installation of filters, silencers, or insulation of buildings, and orientation of equipment away from noise-sensitive areas (manufacturer's specifications should be provided for all mitigation equipment or insulation); and

(vi) A list of all publications, reports, and other literature or communications which were cited or relied upon to prepare the report.

(10) *Resource report on alternatives.* This resource report is required for all applications. It describes serious alternatives to the project which were considered but rejected and a comparison of their environmental impacts to those of the proposal. The report should discuss the systematic procedure used to arrive at the proposed action, starting with the broadest feasible objectives of the action and progressively narrowing the alternatives to a specific action at a specific site or right-of-way. This systematic procedure should include the decision criteria used, the information weighed, and an explanation of the conclusion at each decision point. The decision criteria must show how environmental benefits and costs, even if not quantifiable, are weighed against economic benefits and costs and technological and procedural constraints. All realistic alternatives must be discussed even though they may not be within the jurisdiction of the Commission or the responsibilities and capabilities of the applicant. Modification of the proposed action may be among the alternatives. Describe the timeliness and the environmental consequences of each alternative discussed. The resource report must contain:

(i) A description of all alternative locations or routes seriously considered for each facility, including a description of the environmental characteristics of each route or site and the environmental, technical, or economic reasons for rejecting it. Provide the location of any alternatives seriously considered on the maps required in resource report 1;

(ii) A discussion of the potential for accomplishing the proposed objectives through use of other systems, energy conservation and the potential for using realistic energy alternatives, such as artificial gas, oil, coal, and electric energy. Provide an analysis of relative environmental benefits and costs;

(iii) A discussion of the "no action alternative," that is, the consequences of denying the certificate application; and

(iv) A list of all publications, reports, and other literature or communications which were cited or relied upon to prepare the report.

(11) *Resource report on reliability and safety.* This resource report is required for all applications. It addresses the potential hazard to the public from failure of project components resulting from accidents or natural catastrophes, how these events would affect reliability, and what procedures and design features have been used to avoid undue hazards or effects. The resource report must contain the information required by paragraphs (c)(11)(i) and (c)(11)(vi) as defined below. For applications involving liquefied natural gas facilities, the report must also contain the information required by paragraphs (c)(11)(ii) through (c)(11)(v) of this section.

(i) A description of measures, including equipment, training, and liaison with local authorities, to be used to protect the public from failure of the proposed facilities due to accidents or natural catastrophes;

(ii) A discussion of hazards, environmental impact, and service interruptions which could reasonably ensue from failure of the proposed facilities resulting from accidents or natural catastrophes;

(iii) A discussion of design and operational measures to avoid or reduce risk associated with accidents or natural hazards such as violent storms, floods, landslides, and earthquakes;

(iv) A discussion of contingency plans for maintaining service or reducing downtime from shutdowns resulting from accidents or natural catastrophes;

(v) A description of measures to exclude the public from hazardous areas. Discuss measures to be undertaken to minimize problems arising from malfunctions and accidents (with estimates of probability of occurrence). Identify standard procedures for protecting services and public safety during maintenance and breakdowns; and

(vi) A list of all publications, reports, and other literature or communications which were cited or relied upon to prepare the report.

(12) *Resource report on PCB contamination.* This resource report is required for applications involving the replacement, abandonment by removal, or abandonment in place, of pipeline facilities determined to have polychlorinated biphenyls (PCBs) in excess of 50 ppm in pipeline liquids.

(i) If disposal of pipeline segments would meet the requirements of 40 CFR 761.60(b)(5)(i), the report must provide a description of the specific procedures for activities identified in paragraphs

(c)(12)(ii)(A) through (c)(12)(ii)(K) of this section.

(ii) If an alternative method(s) of pipeline disposal is proposed under 40 CFR 761.60(e), the resource report must provide a detailed pipeline removal and disposal plan that includes specific procedures for all the following activities, as appropriate:

(A) Pre-removal pipeline pigging, cleaning, drying, blowdown, purging and removal of liquid accumulations.

(B) Pre-removal inspections, x-raying, testing, and monitoring of liquids.

(C) Measures for exclusion and removal of water seepage into all excavations.

(D) Sealing or capping of all cut surfaces and measures for containing leaks or spills.

(E) Removal of pipe from trench.

(F) Spill prevention, control, containment and cleanup pursuant to 40 CFR part 761, subpart G.

(G) Transportation of removed pipe segments to a storage yard.

(H) Location(s), construction, containment, and monitoring of storage yards for removed pipeline segments, pursuant to 40 CFR 761.65(b).

(I) Valve draining, removal, capping, transportation, storage, and disposal.

(J) Disposal of the removed pipeline segments and related equipment.

(K) Identity of the companies, and specific personnel and their position in the organization, that are responsible for collection, transportation, cleanup and disposal of all PCB-contaminated liquids and solids.

(L) Statistically valid sampling for PCBs on interior pipeline surfaces and in liquid condensates to determine concentration for Toxic Substances Control Act regulatory purposes.

(M) Chemical analysis methods for analyzing samples.

(N) Pre-disposal decontamination, testing, and monitoring of removed pipeline segments, and related equipment.

(O) Discussion of potential risk during normal cleanup operations and for the most likely accidents.

(P) Corrective actions in the event of the most likely accidents.

(13) *Resource report on engineering and design material.* This resource report is required if construction of new liquefied natural gas (LNG) facilities, or the recommissioning of existing facilities, is proposed. It contains detailed engineering and design material, including:

(i) A detailed layout of the plant showing the location of all major components to be installed within the plant site, such as facilities for compression, purification, dehydration, liquefaction, storage, transfer and loading, and truck loading; vents and pumps; vaporization; and any auxiliary or appurtenant service facilities.

(ii) A detailed layout of the fire protection system for the plant showing the location of all pumps, piping, hydrants, hose reels, fixed nozzle dry chemical systems, high expansion foam systems, and any auxiliary or appurtenant service facilities.

(iii) A detailed layout of the hazard detection system for the plant showing the location of all combustible gas detectors, fire detectors, heat detectors, smoke or products of combustion detectors, and low temperature detectors.

(iv) A detailed layout of the spill containment system for the plant showing the location of all impoundments, sumps, subdikes, and channels.

(v) Manufacturer specifications, drawings, and literature on the fail-safe shut-off valve for each loading area at marine terminal (if applicable).

(vi) A detailed layout of the natural gas fuel system for the plant showing all interconnections with the piping in the liquefaction trains, boil-off collection systems, purification systems, refrigeration systems, and vaporization systems.

(vii) Copies of all company, engineering firm or consultant studies of a conceptual nature that show the engineering planning or design approach to the construction of the plant, and all safety provisions incorporated in the plant design, including automatic and manually activated emergency shutdown (ESD) systems.

(viii) Detailed engineering specifications and construction drawings for all of the components included in items (c)(13)(i) through (c)(13)(vi) of this section.

(ix) Detailed specifications and drawings of manufacturer's equipment and materials to be utilized in the manufacture of individual major components included in items (i)(c)(13) through (c)(13)(vi) of this section, including but not limited to storage tanks, pressure vessels, pumps, heat transfer equipment, vaporizers, insulation, cryogenic piping, valves and fittings.

(x) Up-to-date detailed plot plans, and piping and instrumentation diagrams, for the facility. Include a description of the instrumentation philosophy, type of instrumentation (pneumatic, electronic), use of computer technology, and control room display and operation. Also, provide an overall schematic diagram of the entire process flow system.

(xi) Detailed engineering specifications for the plant's electrical power generation and distribution system.

(xii) Identification of all codes and standards under which the plant (and marine terminal, if applicable) will be designed and any special considerations of safety provisions that were applied to the design of plant components.

(xiii) A list of all permits or approvals from local, state, Federal, or Indian agencies required prior to and during the construction of the plant, and the status of each, including the date filed, the date issued, and any obstacles to approval. Include a description of data records required for submission to such agencies for their consideration, and transcripts of any public hearings by such agencies. Also, provide copies of any correspondence relating to the actions by all, or any, of these agencies regarding all required approvals.

(xiv) Identification of how each requirement of part 193 of the U.S. Department of Transportation's LNG Federal Safety Standards (49 CFR part 193) will be complied with and, in particular, how the siting requirements in 49 CFR part 193, subpart B will be met. If applicable, vapor dispersion calculations from LNG spills over water should also be presented to ensure compliance with the U.S. Coast Guard's LNG regulations in 33 CFR part 127.

§ 380.13 Erosion control, revegetation, and maintenance plan.

(a) *Supervision and inspection.* (1) The plan embodied in paragraphs (b) through (g) requires that some judgment be applied in the field and must be implemented under the supervision of the applicant's Environmental Inspector or other qualified professional with knowledge of soil conditions and conservation plantings in the project area. Problems with contractor compliance must be reported to the Environmental Inspector for remedial action. All uncultivated and nonwetland areas and residential turfs disturbed by construction must be treated in accordance with this plan except for areas where landowners specify other seeding requirements. Deviations from this plan that involve less protective measures will only be permitted as certificated by the Commission or by the written approval of the Director, Office of Pipeline and Producer Regulation, upon an appropriate showing of need.

(2) Environmental Inspectors will have the direct responsibility to represent the applicant and to enforce these requirements. They will have peer status with all other activity inspectors.

A chief inspector will be responsible for enforcing stop-work authority. The Environmental Inspector's duties include monitoring and/or supervision of the following:

(i) Compliance with requirements of erosion and sedimentation control plans, stream and wetland construction and mitigation procedures, conditions of the Commission's certificate, and other environmental permits and approvals;

(ii) Marking of surface and subsurface drainage system locations identified by landowners and/or soil conservation authorities;

(iii) Identification of stabilization needs in all areas;

(iv) Performance of appropriate tests of subsoil and topsoil to determine the extent of compaction across the project right-of-way;

(v) Restoration of soil profile as requested or required;

(vi) Approval of imported soils used as fill and/or additional cover material;

(vii) Documentation of the temporary and permanent revegetation programs;

(viii) Monitoring of crop productivity for not less than two years for purposes of additional restoration, in case of inadequate restorative practices, and preparation of weekly activity reports documenting problems and solutions; and

(ix) Documentation of all public and private roadway crossings and access points to ensure safe and accessible conditions relative to pre-construction conditions.

(3) All requirements of § 380.13 for reporting to the Commission apply only to projects subject to a project-specific certificate. Within 30 days of the in-service date for the facilities, a summary must be filed with the Commission detailing the following:

(i) The quantity and type of fertilizer for each pipeline segment;

(ii) Lime, seed, mulch, and equipment used to implement the plan;

(iii) The acreage treated;

(iv) The dates of backfilling and seeding;

(v) The number of landowners specifying other seeding requirements and a description of the requirements; and

(vi) If the in-service date precedes the seeding season, the materials, equipment, dates for future seeding and the temporary stabilization measures.

(b) *Preconstruction planning.* (1) Locate all drainage tiles prior to construction by contacting landowners and local soil conservation authorities.

(2) Undertake an assessment of vegetation requirements for screening and landscaping of new compression and metering facilities. A report must be submitted to Commission for review and approval prior to construction.

(3) Locate all roadway crossings and access points to document and ensure safe and accessible conditions throughout the construction phase. Use 50-foot-long crushed stone access pads, sweeping, culvert installation, matting and other forms of rutting protection depending on local permit conditions. If crushed stone access pads are used, place stone on a synthetic fabric in active agricultural areas.

(c) *Clearing and installation.* (1) Prevent the mixing of topsoil with subsoil by using topsoil segregation construction methods in annually cultivated or rotated crop lands and in residential areas. In all actively cultivated agricultural lands, including permanent or rotated cropland and hayfields, topsoil must be stripped either from the full work area, with the construction right-of-way, including topsoil storage area, not to exceed 100 feet in width, or from the ditch plus spoilside only. The area of topsoil storage must not exceed a width equal to 33 percent of the proposed work area. Topsoil will be segregated from beneath the subsoil storage area and the ditchline in all other improved and residential areas, and in other areas at the landowner's request. The construction right-of-way for the ditch plus spoilside method must be limited to 75 feet. For deep soils (such as floodplains and stream terraces), 12 inches of topsoil must be segregated. Where soils are shallow to bedrock or have a stony subsoil, eight inches of topsoil segregation is recommended. Remove stones greater than four inches in any shape or dimension from the segregated topsoils.

(2) Probe all drainage systems with a sewer rod or pipe snake to determine if damage has occurred. All tiles damaged during construction must be flagged by the trench inspector, then repaired to their original or better condition. Filter-covered drain tiles should only be used after consultation with the local soil conservation authorities. Qualified specialists must be used to ensure proper repairs and adequate probing and testing of the repaired drainage systems. Detailed records of drainage system repairs must be kept and given to the landowner for future reference.

(3) Contact landowners and local soil conservation authorities to determine future drain tile locations. Increase depth of cover over the pipeline to four feet or more, if needed, so that the pipeline is below the anticipated depth of drain tile installations.

(4) Construct and maintain temporary slope breakers at the following spacing:

Slope (%)	Spacing (ft)
5–15	300
>15–30	200

Temporary slope breakers must be repaired at the end of each working day.

(5) Use temporary sediment barriers, such as silt fences and/or staked hay/straw bales, at the base of slopes adjacent to road crossings where vegetation is disturbed within the following distances from the road:

Slope (%)	Vegetation strip required (ft)
<5	25
5–15	50
>15–30	75
>25	100

These temporary sediment barriers should remain in place until permanent revegetation measures are judged successful by the Environmental Inspector.

(6) Use temporary sediment barriers, such as silt fences and/or staked hay/straw bales, at the base of slopes at all stream crossings, as recommended in the stream and wetland construction and mitigation procedures described in § 380.14. These temporary sediment barriers should remain in place until permanent revegetation measures are judged successful by the Environmental Inspector.

(7) Construct trench breakers so that the bottom of one breaker is at the same elevation as the top of the next breaker down slope. The use of topsoil in trench breakers must be prohibited.

(d) *Cleanup.* (1) Final clean-up and permanent erosion control measures, as appropriate, must be completed within ten days after the trench is backfilled, weather and soil conditions permitting.

(2) Blast rock must not be used as backfill in rotated or permanent cropland. It may be used to backfill the trench to the top of the existing bedrock profile in hayfields and pastures. Excess loose rock generated by blasting must be removed from at least the top 12 inches of topsoil in all rotated and permanent cropland and hayfields as well as in residential areas, pastures, and other areas at the landowner's request.

(3) Test for soil compaction across the project right-of-way in agricultural areas. Devices such as COE-style cone penetrometers or other appropriate devices may be utilized to test for compaction. Tests must be done on the same soil type under the same moisture

conditions and include the following areas:

(i) Soil from undisturbed areas,

(ii) Soil stockpile areas,

(iii) The trenched zone,

(iv) The work area, and

(v) Any traffic areas related to the project.

(4) Plow severely rutted areas with a paraplow (or similar "winged" plow) or arrange with the landowner to plant and plow under a "green manure" crop, such as alfalfa, to decrease soil bulk density and to improve soil structure. If plowing is employed, the stripped construction right-of-way will be plowed first followed by replacement of the segregated topsoil. Where necessary, additional plowing of the topsoil must be undertaken to prevent subsurface compaction. If subsequent construction and cleanup activities result in further compaction, additional tilling must be undertaken.

(5) Remove construction debris from the right-of-way and grade the right-of-way to leave the soil in the proper condition for planting, taking care to remove all construction debris and woody material. On slopes, divert concentrations of surface flow to a stabilized outlet using runoff diversions with a two percent outslope directed toward appropriate energy-dissipating devices.

(6) Permanent slope breakers must be constructed and maintained utilizing the recommendations obtained from the local Soil Conservation Service (SCS) office(s) or other soil conservation authority.

(7) Restore all turf, ornamental shrubs, and other landscaping in accordance with the landowner's requests or compensate the landowner the amount equal to replacement of said landscaping. The restoration work must be performed by a landscaping contractor familiar with local horticultural and turf establishment practices.

(8) Ensure public and private roadway crossings and access points are restored to safe and acceptable conditions relative to pre-construction status.

(e) *Revegetation*—(1) *General requirements.* (i) Apply finely ground agricultural or dolomitic limestone to obtain a soil pH of at least 6.0. Lime temporarily seeded sites to a pH of 6.0 to ensure optimum growing conditions with regard to pH.

(ii) Fertilize permanent grass and/or legume plantings using recommendations obtained from the local SCS office(s) or other soil conservation authority. If manure is also applied, reduce the addition of nitrogen by half for each 10 tons of manure applied. Where possible, incorporate lime and fertilizer into the top two inches of soil.

(iii) Prepare the seedbed to depth of three to four inches using appropriate equipment to provide a firm, smooth seedbed, free of debris. If hydroseeding is to be done, scarify the seedbed to ensure sites for seeds to lodge and germinate.

(iv) Seed the project area in accordance with the recommendations on seed mix and seeding dates obtained from the local SCS office(s) or other soil conservation authority. Any soil disturbance occurring outside of the recommended permanent seeding season, or any bare soil left unstabilized by vegetation, must be treated as a winter construction problem and mulched. (See paragraphs (e)(2) and (e)(4).) Except in lawns, all seeding of permanent cover must be done within the recommended dates. If seeding cannot be done within the recommended seeding dates, temporary erosion control must be used and seeding of permanent cover must be done at the beginning of the next seeding season.

(v) Seed slopes steeper than 3:1 immediately after final grading, weather permitting, subject to the limitations addressed in paragraph (e)(1)(iv).

(vi) Seed rights-of-way within six working days of final grading, weather permitting, subject to the limitations addressed in paragraph (e)(1)(iv).

(2) *Temporary erosion control.* (i) When construction is completed more than 30 days before the seeding season for perennial vegetation, all areas adjacent to perennial and intermittent streams must be mulched with three tons per acre of hay or straw, or its equivalent, for a minimum of 100 feet on either side of the waterway. The mulch must be anchored with a mulch anchoring tool, described in paragraph (e)(4).

(ii) Fertilize temporary plantings in accordance with the recommendations of the local SCS office(s) or other soil conservation authority. Where possible, incorporate lime and fertilizer into the top two inches of soil.

(3) *Seed specifications.* (i) Purchase seed in accordance with the Pure Live Seed (PLS) specifications for seed mixes.

(ii) Use seed within 12 months of testing.

(iii) Treat legume seed with an inoculant specific to the species. For conventional seeding, use four times the manufacturer's recommended rate of inoculant, and 10 times the recommended rate if hydroseeding methods are being used.

(iv) Uniformly apply the seed over the area and cover the seed 0.5 to 1 inch deep, depending on seed size. A seed drill equipped with a cultipacker is preferred, but broadcast or hydroseeding can be used at double the recommended seeding rates. Where broadcasted, firm the seedbed with a cultipacker or roller. Other alternative seed mixes specifically requested by the landowner or land-managing agency may be used.

(4) *Mulch specifications.* (i) Mulch all dry sandy sites and all slopes greater than eight percent with two tons per acre of straw or hay or its equivalent. Spread mulch uniformly over the area so that 75 percent of the ground surface is covered. If a mulch blower is used, the strands must be shredded not less than eight inches in length to allow anchoring.

(ii) Anchor mulch immediately after placing to minimize loss by wind and water. Use a mulch anchoring tool, which is a series of straight notched disks specifically designed for the purpose, to crimp the mulch to a depth of two to three inches. To maintain proper seed depth, a regular farm disc should not be used.

(iii) Mulch may be anchored using a liquid mulch binder. Cutback asphalt (rapid or medium curing), or emulsified asphalt applied at 200 gallons/acre may be used. A variety of synthetic binders are also available, which should be used at rates recommended by the manufacturer for mulch anchoring. Use caution in residential areas or areas of pedestrian traffic, because asphaltic and some synthetic binders can damage shoes, clothing, and automobile paint.

(iv) Use jute thatching or bonded fiber blankets (instead of straw or hay) on streambanks to stabilize seeded areas. Anchor the thatching with pegs or staples.

(v) Up to one ton per acre of wood chips may be added as mulch if areas so mulched are top-dressed with 11 lbs per acre available nitrogen or a similar quantity of 50 percent slow-release fertilizer.

(f) *Off-road vehicle control.* For each owner and manager of forest lands, offer to install and maintain, based on state and local regulations, the following off-road vehicle control measures and install one or more of them, as requested, at the completion of clean-up and reseeding:

(1) Install a locking, heavy steel gate with fencing extending a reasonable distance to prevent bypassing the gate, and post appropriate signs.

(2) Plant conifers across the right-of-way. The spacing of trees and length of

right-of-way planted should be sufficient to limit access and to screen the right-of-way from view.

(3) Install a slash and timber barrier, a pipe barrier, or a line of boulders across the right-of-way to restrict vehicle access.

(4) Post signs at all points of access and along the right-of-way at intervals not to exceed 2,000 feet, stating "This Area Seeded for Wildlife Benefits and Erosion Control."

(g) *Maintenance.* (1) Follow-up inspections must occur after the first and second growing season, normally three to six months and 12 to 15 months after planting, respectively, to determine the success of revegetation. Revegetation is successful if perennial vegetation contacts 70 percent or more of each square yard of the right-of-way, based on representative random sampling in the field. If vegetation cover is less, the judgment of a professional agronomist must be used to determine the need for fertilizing or reseeding based on site conditions, and those actions must be undertaken at the beginning of the next growing season.

(2) Right-of-way vegetation maintenance clearing must not be done more frequently than every three years, and not before August 1 of any year.

(3) Efforts to control off-road vehicle use, in cooperation with the landowner, must continue throughout the life of the project. Signs, gates, and vehicle trails must be maintained as necessary.

(4) Monitor and correct drainage problems in active agricultural areas that result from pipeline construction.

§ 380.14 Stream and wetland construction and mitigation procedures.

(a) These procedures require proposed pipeline projects to be routed in a manner that minimizes crossing and disturbing stream and wetland ecosystems to the maximum extent practicable. If an applicant considers a specific part of these procedures to be technically infeasible to implement due to site-specific engineering constraints, the applicant must identify in the application the alternative provision(s) that it would implement on a site-specific basis which would provide an equal or greater level of protection to stream and wetland ecosystems. The Commission's staff will review these alternative provision(s) during the environmental analysis process, and will forward recommendations to the Commission for consideration during the certification process. These procedures also apply to projects performed under part 157, subpart F of this chapter, except for the requirements for filing material with the Commission. Alternative provisions are not permitted for projects conducted under part 157, subpart F.

(1) The procedures in paragraphs (b) through (d) of this section require that some judgment be applied in the field and must be implemented under the supervision of the applicant's Environmental Inspector or other qualified professional with knowledge of stream and wetland conditions in the project area. Problems with contractor compliance must be reported to the Environmental Inspector for remedial action. Deviations from these procedures involving less protective measures will only be permitted as certificated by the Commission or by the written approval of the Director, Office of Pipeline and Producer Regulation, upon an appropriate showing of need.

(2) Environmental Inspectors will have the direct responsibility to represent the applicant and to enforce these requirements. They will have peer status with all other activity inspectors. A chief inspector will be responsible for enforcing stop-work authority. The Environmental Inspector's duties are listed in § 380.13(a).

(b) *Perennial stream crossings*—(1) *Staging areas and additional right-of-way (ROW).* (i) Locate at least 50 feet away from streambank, where topographic conditions permit.

(ii) Limit size to minimum needed for prefabrication of pipe segment for stream crossing.

(iii) Do not store hazardous materials, chemicals, fuels, and lubricating oils; refuel construction equipment; or perform concrete coating activities within 100 feet of streambanks or within any municipal watershed area.

(2) *Spoil pile placement and control.* (i) Trench spoil must be placed at least 10 feet away from streambanks at all minor and major stream crossings.

(ii) Spoil piles located above streambanks must be protected with silt fence and/or haybales.

(iii) Prevent flow of spoil off of ROW.

(3) *Time-window for construction.* (i) June 1 through September 30 unless expressly permitted or further restricted by appropriate state agency on a site-specific basis.

(ii) Notify authorities responsible for potable water supplies located within three miles downstream at least one week prior to commencement of instream work.

(4) *Crossing procedures.* (i) Provide notification to the U.S. Army Corps of Engineers (COE) concerning the proposed construction activities, and submit to the Commission's staff a copy of the COE's determination regarding the need for individual section 404 and/or section 10 permits.

(ii) Comply with nationwide section 404 permit nos. 12 and 14 conditions (33 CFR part 330) at a minimum.

(iii) Apply for state-issued stream crossing permits and obtain section 401 water quality certification or waiver.

(iv) Construct crossings as perpendicular to axis of stream channel as engineering and routing conditions permit.

(v) Utilize clean gravel for upper one foot of fill over backfilled trench in all minor and major streams which contain coldwater fisheries.

(vi) Maintain downstream flow rates at all times.

(vii) *Minor Streams* (ten feet wide or less and two feet or less average depth)

(A) For crossings of all coldwater and warmwater fisheries, construction equipment must cross the stream on a bridge consisting of one of the following:

(*1*) Equipment pads and culvert(s).

(*2*) Clean rockfill and culvert(s).

(*3*) Flexi-float or portable bridge.

(B) For crossings of all coldwater fisheries, and warmwater fisheries considered significant by the state fish management agency, route stream across trench using flume pipe, and install pipeline using "dry-ditch" techniques as follows:

(*1*) Install flume after blasting, but prior to trenching.

(*2*) Use sand bag or plastic dam structure.

(*3*) Properly align flume pipe.

(*4*) Do not remove flume during trenching or pipe-laying activities.

(*5*) Dewater trench, as required, to prevent discharge of silt laden water into stream during construction and backfilling operations.

(*6*) Remove all flumes and dams upon completion of construction.

(C) For all other minor perennial stream crossings, complete instream construction within 24 hours.

(viii) *Major Streams* (more than ten feet wide or greater than two feet average depth, but no more than 100 feet wide).

(A) Construction equipment must cross on bridge consisting of one of the following:

(*1*) Equipment pads and culvert(s).

(*2*) Clean rockfill and culvert(s).

(*3*) Flexi-float or portable bridge.

(B) Limit in-stream equipment to that needed to construct crossing.

(C) Notify state authorities at least 48 hours prior to commencement of in-stream trenching or blasting.

(D) Attempt to complete in-stream trenching and backfill work (not

including blasting) within 48 hours; maximum of 72 hours is allowed.

(ix) *Rivers* (more than 100 feet wide).

(A) Projects performed under part 157, subpart F of this chapter must implement the procedures contained in (b)(4)(viii) to the maximum extent practicable.

(B) Submit site-specific construction procedures to the Commission's staff for review and approval prior to construction.

(5) *Temporary erosion and sediment control.* (i) Perform daily inspection, and repair as needed.

(ii) Install and maintain sediment filter devices at all streambanks.

(iii) Use trench plugs at major stream and river crossings to prevent diversion of streamflow into upland portions of pipeline trench during construction.

(6) *Bank stabilization and revegetation.*(i) All riprap activities must comply with nationwide section 404 permit No. 13 conditions at a minimum.

(ii) Limit use of riprap to areas where flow conditions preempt vegetative stabilization, unless otherwise specifically required by state permit.

(iii) Restore topsoil to original horizon and revegetate with conservation grasses and legumes.

(iv) Allow 10-foot-wide riparian strip above streambank to permanently revegetate with native woody plant species across the entire ROW.

(v) Maintain sediment filter devices at base of all slopes located adjacent to streams until ROW revegetation is complete.

(vi) Install permanent slope breakers at base of all slopes adjacent to streams.

(7) *Trench dewatering.* Dewater trench into upland area in such a manner that no silt laden water flows into any perennial stream or river.

(c) *Federally delineated wetland crossing.* These procedures must be utilized when crossing any wetland which satisfies the delineation requirements contained in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands. The applicant must delineate all wetlands using the methodology contained in the Manual prior to construction.

(1) *Staging areas.* (i) Locate at least 50 feet away from wetland edge, where topographic conditions permit.

(ii) Limit size to minimum needed for prefabrication of pipe segment for wetland crossing.

(iii) Do not store hazardous materials, chemicals, fuels, and lubricating oils; refuel construction equipment; or perform concrete coating activities, within 100 feet of wetland boundary.

(iv) Do not construct aboveground facilities in any federally delineated wetland.

(2) *Spoil pile placement and control.* Utilize sediment filter devices to prevent flow of spoil off of ROW.

(3) *Crossing procedures.* (i) Provide notification to the Corps of Engineers (COE) concerning the proposed construction activities, and submit to the Commission's staff a copy of the COE's determination regarding the need for individual section 404 permits prior to construction.

(ii) Comply with nationwide section 404 permit conditions (33 CFR part 330) at a minimum.

(iii) Apply for state-issued wetland crossing permit and obtain section 401 water quality certification or waiver.

(iv) Route pipeline to avoid wetland areas to the maximum extent practicable. If wetland cannot be avoided, or crossed by following an existing ROW, route new pipeline in a manner that minimizes disturbance to wetland. Where looping an existing pipeline, locate line no more than 25 feet away from existing pipeline.

(v) Minimize width of construction ROW to 75 feet or less.

(vi) Cut vegetation off only at ground level, leaving existing root systems intact, and remove from wetland for disposal.

(vii) Limit pulling of tree stumps and grading activities to directly over the trench. Do not remove stumps or root systems from the rest of the ROW in wetlands. Where construction constraints require removal from under the workpad, applicants must implement a plan to actively reestablish native woody vegetation and submit this plan to the Commission's staff for review and approval prior to construction.

(viii) Segregate the top one foot of topsoil from the area disturbed by trenching, and then return it to its original position over the backfilled trench, except in areas with standing water or saturated soils.

(ix) Limit construction equipment operating in wetland to that needed to dig trench, install pipe, backfill trench, and restore ROW.

(x) Do not use dirt, rockfill, tree stumps, or brush riprap to stabilize ROW.

(xi) Utilize wide-track or balloon-tire construction equipment, or operate normal equipment off of timber pads, prefabricated equipment pads, or geotextile fabric overlain with gravel fill, if standing water or saturated soils are present.

(xii) Do not cut trees located outside of ROW to obtain timber for equipment pads, and do not utilize more than two layers of timber or equipment pads to stabilize the ROW.

(xiii) Remove all timber pads, prefabricated equipment pads, and geotextile fabric overlain with gravel fill upon completion of construction.

(xiv) Assemble pipeline in upland area and utilize "push-pull" or "float" technique to place pipe in trench whenever water and other site conditions allow.

(4) *Temporary erosion and sediment control.* (i) Perform daily inspection, and repair as needed.

(ii) Install and maintain sediment filter devices at edge of all wetlands until ROW revegetation is complete.

(iii) Install permanent slope breakers at base of all slopes adjacent to wetlands.

(5) *Revegetation techniques.* (i) Do not use fertilizer or lime, unless required by appropriate state permitting agency.

(ii) Restore topsoil to original horizon and temporarily revegetate disturbed areas with annual ryegrass at a rate of 40 lbs per acre, unless standing water is present.

(iii) Ensure that all disturbed areas permanently revegetate with native herbaceous and woody plant species.

(iv) Develop specific procedures, in coordination with the appropriate state agency, to prevent the invasion or spread of undesirable exotic vegetation (*e.g.*, purple loosestrife and phragmites).

(6) *Trench dewatering.* Dewater trench in such a manner that no silt laden water flows into wetland areas off of construction ROW.

(7) *ROW maintenance practices.* Mowing (and other vegetation maintenance practices) of the permanent ROW is prohibited, except for the selective cutting of trees that are located within 15 feet of the pipeline and are greater than 15 feet in height.

(d) *Hydrostatic testing*—(1) *Timing.* (i) Hydrotest pipeline section prior to installation under stream or wetland.

(2) *Intake source and rate.* (i) Screen intake hose to prevent entrainment of fish.

(ii) Do not utilize state designated exceptional value waters, or streams designated as public water supplies, unless appropriate state and/or local permitting agencies grant permission.

(iii) Notify state water quality and fishery management agencies of intent to use specific sources at least 48 hours prior to testing activities.

(iv) Adequate flow rates must be maintained to protect aquatic life, provide for all in-stream uses, and provide for downstream withdrawals of water by existing users.

(v) Apply for state-issued withdrawal permit, as required.

(3) *Discharge location, method and rate.* (i) Regulate discharge rate and utilize energy dissipation device(s) in order to prevent erosion of upland areas, streambottom scour, suspension of sediments, or excessive stream flow.

(ii) Discharge test water from existing pipelines, using velocity dispersion device, into haybale or silt fence containment structure.

(iii) Obtain National Pollutant Discharge Elimination System (NPDES) or state-issued discharge permit, as required.

(iv) Sample test water during discharge in accordance with any NPDES or state-issued discharge permit requirements. Provide a copy of the results to the Commission.

Revisions to Regulations Governing Certificates for Construction

[Docket No. RM90–1–000]

Issued August 2, 1990.

MOLER, Commissioner, *dissenting in part:*

I am pleased to have been a part of the Commission's review of its regulations authorizing the construction of natural gas pipeline facilities. This review began when former Chairman Hesse asked me to head a Task Force to review the regulations governing optional certificates. It soon became obvious to me, and to the staff members on the Task Force, that it made little sense to limit our review of the certificate regulations to those pertaining solely to optional certificates. Thus, with the blessing of Chairman Allday, we embarked on a comprehensive review of all of the regulations governing construction.

As noted in the introduction, one of the major objectives of this proposed rule is to expedite the Commission's examination of applications. I sincerely hope—and believe—that the Notice of Proposed Rulemaking (NOPR) represents a "good start" in that direction. We have put what we believe are our best, most practical, ideas on paper and are looking forward to the comments and additional suggestions of those who must operate under our rules.

Nonetheless, I must dissent in part on the issuance of the NOPR because I do not believe it deals adequately with our obligations under the National Environmenta1 Policy Act of 1969 (NEPA) to assess the environmental impact of constructing pipeline facilities under section 311 of the Natural Gas Policy Act of 1978 (NGPA) before that construction begins.

The NOPR simply requests comments on the current approach, which effectively exempts construction of pipeline facilities undertaken pursuant to section 311 of the NGPA from the requirements of NEPA. In short, I believe that approach: (1) is a violation of NEPA; (2) is inconsistent with the Court's holding in *Associated Gas Distributors* v. *FERC* (*AGD-Hadson*); [1] and (3) is simply bad public policy. In what follows, I offer my reasons for these conclusions to provoke what I hope will be constructive comments on the legal and policy issues involved.

The Requirements of NEPA [2]

NEPA is essentially a procedural statute that sets out substantive goals for the country.[3] The requirements of NEPA apply whenever any agency of the Federal Government proposes legislation or other major Federal action significantly affecting the quality of the human environment. The Council on Environmental Quality (CEQ) is the agency charged with ensuring compliance with NEPA. The CEQ has adopted regulations [4] implementing NEPA which are binding on all federal agencies, including the Commission.[5]

The heart of NEPA is section 102(2)(C) which requires that the Commission examine the impact of, and alternatives to, its proposed actions.[6] It is important to stress that the requirement applies when there is a "Federal action significantly affecting the quality of the human environment". In such cases, the environmental impacts of the action, and alternatives thereto, must be examined by the responsible Federal official before the agency acts and before there is any impact on the environment. Under the CEQ regulations, the agency is required to prepare an environmental assessment (EA) which shall, in turn, be used in determining whether to prepare an environmental impact statement.[7] If, on the basis of the EA, the agency determines not to prepare an environmental impact statement (EIS) it must prepare a finding of no significant impact (FONSI).[8] Both the EA and the FONSI must be published (preferably 30 days in advance of the agency's action on the proposed application) before the proposed action may proceed. If the agency determines that a proposed action will not have a significant impact, the agency must publish its FONSI. If there is a significant impact, a detailed statement (an EIS) must be prepared by the responsible official.[9]

According to the statement of purpose and policy in the CEQ regulations, the basic purpose of these procedures is to "insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken." [10] It is a fundamental policy to NEPA that agencies identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." [11]

Does NEPA Apply to Section Sec. 311?

Section 311 of the NGPA provides authority for the Commission to issue, bu rule or order, an authorization for (1) any interstate pipeline to transport natural gas on behalf of any intrastate pipeline and any local distribution company at just and reasonable rates, and (2) any intrastate pipeline to transport natural gas on behalf of any interstate pipeline, and any local distribution company served by any interstate pipeline at fair and equitable rates. Subsection (c) gives the Commission authority to prescribe terms and conditions for section 311 transactions.[12]

Some in the pipeline industry contend that the provisions of NEPA do not apply to section 311 construction. They contend that facilities constructed under section 311 are not jurisdictional facilities under section 7 of the NGA and therefore are not subject to NEPA. The argument appears to be that section 311 construction is not a Federal action since the Commission does not certificate or otherwise act on section 311 projects either before or after construction. I disagree.

First, one should not confuse the issue of whether a section 7 NGA certificate is required with whether actions taken under section 311 are major Federal actions and thus subject to NEPA. Second, this argument rests on an overly-restrictive view of what constitutes Federal action that cannot be supported.

Construction under section 311 is a "major Federal action" as defined in the CEQ regulations:

" 'Major Federal action' includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. * * *

* * * * * *

(b) Federal actions tend to fall within one of the following categories:

* * * * * *

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities." [13]

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[1] 899 F.2d 1250 (D.C. Cir. 1990), *reh'g denied*, No. 88–1856 (D.C. Cir. June 4, 1990).

[2] This discussion is necessarily terse. In the interest of time I review here only the most rudimentary requirements for agency decisionmaking under NEPA and the critical elements of compliance that are ignored in the Commission's current interpretation of its section 322 requirements.

[3] Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 558 (1978).

[4] 40 CFR chapter V (1989).

[5] The Commission's NEPA regulations are set forth in 18 CFR part 380 (1990).

[6] See appendix A for the pertinent part of the text.

[7] 40 CFR 1501.3–4 (1989).

[8] Id. at §§ 1501.4, 1508.13.

[9] *Id.* at §§ 1501.4, 1508.25.

[10] *Id.* at § 1500.1(b).

[11] *Id.* at § 1500.2(e).

[12] See appendix A for the pertinent part of the text.

[13] 40 CFR at § 1508.18 (1989).

The initial section 311 transportation program under Order No. 46 was limited in scope.[14] The Commission then removed the restrictions on the scope of the program in Order No. 436.[15] The EA prepared in conjunction with Order No. 436 revising the section 311 transportation program of Order No. 46 acknowledged that it was a "major Federal action". The analysis of the EA resulted in issuance of a FONSI in Order No. 436 for the section 311 construction program. The FONSI was premised on two factors and explained in the preamble. The Commission believed that section 311 transactions would largely utilize existing interstate pipeline facilities; it also anticipated section 311 construction would involve only minor facilities, such as taps and interconnections. The Commission concluded that any adverse impacts of section 311 construction could be mitigated by incorporating conditions into the regulations. Accordingly, § 284.11 of the Commission's regulations subjects any authorization under section 311 of the NGPA to the terms and conditions of § 157.206(d) of the Commission's regulations.[16]

In Order No. 436–A the Commission elaborated on the purpose of section 284.11 saying:

"The Commission has a statutory obligation under the National Environmental Policy Act to assess the reasonably foreseeable impacts of its action on the environment. In order to ensure that this rule is not a major Federal action significantly affecting the quality of the human environment by authorizing unrestricted gas transportation arrangements, the Commission determined that all transactions under Part 284 must be made responsive to the mandates of NEPA and other environmental laws."[17]

Having then, correctly, recognized that section 311 is subject to NEPA, the Commission should not now find differently. More to the point, practical reality precludes such a result.

The Commission's prediction that only minor facilities would be constructed under section 311 was, quite simply, wrong. Assuming, *arguendo*, that the EA was adequate then, and that the FONSI was legitimate at the time, the Commission must now admit that its premise was false.

On April 20, 1990, the Commission sent a data inquiry to 62 interstate pipeline companies requesting information regarding their ongoing transportation activities under section 311.[18] The reports submitted by the companies showed 37 maior projects constructed or under construction by pipelines under section 311.[19] In all 14 companies reported construction costs totaling $788.2 million.

Particularly significant undertakings[20] include ANR Pipeline Company's 98.5 mile 30" project, costing $67.3 million under construction in Indiana and Ohio; Arkla Energy Resources 225 mile project costing $240.7 million under construction in Oklahoma and Arkansas; Natural Gas Pipeline Company of America's two planned projects, one 107 miles of 24" pipeline costing $51.2 million, in Oklahoma, and the other 147 miles of 30" pipeline, costing $76 million, in Iowa; Transcontinental Gas Pipeline Line Corporation's 123 mile 30" pipeline and 15.75 mile 42" pipeline, costing $89.2 million, in Alabama; and Trunkline Gas Company's 52 miles of 30" pipeline and 761 miles of 36" pipeline, costing $70 million under construction in Indiana and Ohio.

I cannot conceive how the Commission can contend that section 311 construction, such as that listed above, was adequately addressed by a FONSI issued in conjunction with an EA that projected no major pipeline construction. By any reasonable standard, these section 311 projects are "major Federal actions."

Section 157.206(d) Compliance Is Not Enough

The approach taken in § 157.206(d) is to require those who undertake section 311 construction to certify that they will comply with a wide variety of statutes. That approach must fail. This Commission cannot delegate its responsibility to insure that NEPA is complied with. Rather, NEPA requires this Commission to evaluate independently the environmental impact of section 311 construction, and alternatives to that construction, before the construction occurs.

The Commission has been instructed in very clear language that it, and it alone, bears that responsibility. See *Greene County Planning Board* v. *FPC*, 455 F.2d 412, 420 (2nd Cir.), *cert. denied*, 409 U.S. 849 (1972); *see also Sierra Club* v. *United States Army Corps of Engineers*, 701 F.2d 1011, 1038–1039 (2nd Cir. 1983) (collecting cases). This is the only way that the Commission can assure itself that it has taken the required "hard look" at the potential environmental impacts of its actions. This responsibility cannot be delegated to another, least of all to the one who would gain by the Commission's decision to permit regulated action. "The danger of this procedure, and one obvious shortcoming, is the potential, if not likelihood, that the applicant's statement will be based upon self-serving assumptions." *Greene County Planning Board, supra* 455 F.2d at 420. The majority appears to forget this 18-year-old lesson.

Section 311 Construction Policy Is Inconsistent With the Court's Holding in AGD-Hadson

The court struck down the Commission's "on behalf of" test in *AGD-Hadson*. It did so because:

"The difficulty with the FERC's interpretation of § 311 is its potential wholly to undermine the regime created by § 7 of the NGA. We think that all the indications—§ 311's language, its history and its purpose—show that the section is a limited exception to the requirements of § 7, and was never intended to work a sweeping change in the requirement that gas transportation be authorized by a certificate issued prior to the transportation."[21]

The section 311 construction program suffers from the same fatal flaw. It undermines the certification process contemplated by Congress under section 7 of the NGA. As the *AGD-Hadson* court observed, "the section's purpose was not to afford the Commission a means of exempting all or almost all gas transportation from the § 7 jurisdictional requirements."[22] The court went on to state:

"The language, history, and purpose of § 311 thus compel us to conclude that the FERC's interpretation of the section is too broad to survive scrutiny even under the deferential standard of review we use on an administrative agency's interpretation of an ambiguous statute. This case, moreover, has exceptional implications for the agency's potential ability to waive a fundamental statutory requirement for an entire industry * * *. It is not reasonable to suppose that Congress, by means of the obscure language of § 311, and without so much as a hint in the legislative history,

[14] Slip op. at 58. As the NOPR observes, the question of whether the construction of facilities by an interstate pipeline to implement section 311 activities would require certificate authority under section 7 of the NGA initially arose as a result of comments to the proposed rules implementing the NGPA. In Order No. 46, the Commission concluded that, "while the NGPA is silent on the jurisdictional consequences" of such construction, "[i]t is our view that a facility is not subject to NGA jurisdiction if it is used exclusively for transportation authorized under section 311(a); thus, no certificate is required by section 7 of the NGA."

[15] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42408 (November 5, 1985), FERC Stats. & Regs. [Regulations Preambles 1982–85] ¶ 30, 665 (October 9, 1985).

[16] As explained below, § 157.206(d) is not adequate, as a matter of law, to meet the NEPA requirements. Section 157.206(d) is not a mini-NEPA requirement. It simply sets out various statutes any construction must comply with, establishes noise limits for compressor facilities, and establishes limits on how close pipeline facilities can be to nuclear power plants. The list includes the Clean Water Act, as amended, the Clean Air Act, as amended, the National Historic Preservation Act of 1966, the Archeological and Historic Preservation Act of 1974, the Coastal Zone Management Act, as amended, the Endangered Species Act, as amended, Executive Order 11988 (floodplains), and Executive Order 11990 (wetlands), the Wild and Scenic Rivers Act, the National Wilderness Act (sic), and the National Parks and Recreation Act of 1978.

[17] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 52217 (December 23, 1985); FERC Stats. & Regs. [Regulations Preambles, 1982–1985] ¶ 30,675 (December 12, 1985).

[18] As noted in footnote 37 to the companion NOPR being issued simultaneously in response to the court's remand in AGD-*Hadson* (Docket No. RM90–7–000, *et al.*, Revisions to Regulations Governing Transportation under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, *et al.*) the staff report summarizing the data submitted has been placed in the Commission's public files for Docket Nos. RM90–7–000 and RM90–13–000.

[19] A "major" project is generally one where pipe diameter is greater than 12 inches, outside diameter, or involving compression facilities. A "minor" project is one where pipe diameter is less than 12 inches, or where only minor tap, pressure regulation, and metering facilities are constructed. "Minor" projects were the type the Commission contemplated would be constructed under section 311 when it did the Order No. 436 EA and FONSI; "major" projects were not expected to be constructed thereunder.

[20] The listing recounts only those projects constructed at a cost exceeding $50 million.

[21] 899 F.2d at 1261.

[22] Id. at 1262.

intended to authorize the Commission to superannuate the § 7 regulatory scheme." [23]

The Court's logic in *AGD-Hadson* is equally applicable to both transportation (which was addressed directly in the case) and construction under section 311. The present section 311 construction regulatory scheme undermines section 7 of the NGA. It also undermines the Commission's compliance with the requirements of NEPA. It cannot be sustained.

Elizabeth Anne Moler,

Commissioner.

Appendix A to Commissioner Moler's Statement

A. Sec. 102(2)(C) of NEPA, 42 U.S.C. 4332 (I982), in pertinent part, requires:

"[A]ll agencies of the Federal Government shall—

* * * * *

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, and shall accompany the proposal through the existing agency review processes * * *."

* * * * *

B. Sec. 311 of the NGPA, 15 U.S.C. 3371 (1982), in pertinent part, provides:

"Authorization of Certain Sales and Transportation.

(a) Commission Approval of Transportation.—

(1) Interstate Pipelines.—

(A) In General.—The Commission may, by rule or order, authorize any interstate pipeline to transport natural gas on behalf of—

(i) any intrastate pipeline; and

(ii) any local distribution company.

(B) Just and Reasonable Rates.—The rates and charges of any interstate pipeline with respect to any transportation authorized under subparagraph (A) shall be just and reasonable (within the meaning of the Natural Gas Act).

(2) Intrastate Pipelines.—

(A) In General.—The Commission may, by rule or order, authorize any intrastate pipeline to transport natural gas on behalf of—

(i) any interstate pipeline; and

(ii) any local distribution company served by any interstate pipeline.

(B) Rates and Charges.—

(i) Maximum Fair and Equitable Price.—The rates and charges of any intrastate pipeline with respect to any transportation authorized under subparagraph (A), including any amount computed in accordance with the rule prescribed under clause (ii), shall be fair and equitable and may not exceed an amount which is reasonably comparable to the rates and charges which interstate pipelines would be permitted to charge for providing similar services * * *."

* * * * *

(c) Terms and Conditions.—Any authorization granted under this section shall be under such terms and conditions as the Commission may prescribe.

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[23] Id. at 1263.

federal register

Monday
August 13, 1990

Part III

Department of Education

34 CFR Part 346

Technology-Related Assistance for Individuals With Disabilities: Demonstration and Innovation Projects of National Significance; Rule

DEPARTMENT OF EDUCATION

34 CFR Part 346

RIN 1820-AA87

Technology-Related Assistance for Individuals With Disabilities Demonstration and Innovation Projects of National Significance

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary issues final regulations to implement the Demonstration and Innovation Projects of National Significance under the Technology-Related Assistance for Individuals with Disabilities Program. The regulations implement Part D of Title II of the Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100-407). The regulations state the purposes of the program, the types of activities that may be supported, the priorities that the Secretary may establish under the program, application requirements, the selection criteria by which the Secretary evaluates applications, and the requirements that must be met by those applicants that receive awards under the program.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland; Telephone: (202) 732-1139; deaf or hearing-impaired persons who use telecommunication devices for the deaf (TDD) may call (202) 732-5316.

SUPPLEMENTARY INFORMATION: The Technology-Related Assistance for Individuals with Disabilities Act of 1988 (Pub. L. 100-407) was enacted on August 19, 1988. In the Act, the Congress noted that there have been major advances in technology during the past decade. The Congress found that the provision of assistive technology devices and services can enable some persons with disabilities to have greater control over their own lives, increase their participation in education, employment, family, and community activities, interact to a greater extent with individuals who do not have disabilities, and otherwise benefit from opportunities that are commonly available to individuals who do not have disabilities. On August 9, 1989, the Secretary published final regulations to implement title I of the Act, the State Grants Program for Technology-Related Assistance for Individuals with Disabilities. That program provides funds to States, on a competitive basis, to develop consumer-responsive comprehensive statewide programs of technology-related assistance for individuals of all ages who have disabilities. These final regulations implement part D of title II of the Act. The regulations were published as a Notice of Proposed Rulemaking for public comment in the Federal Register on April 16, 1990, at 55 FR 14220. The Secretary received 18 comments from the public; a summary of the comments, the Secretary's responses, and any changes made in the regulations are appended to this document. The final regulations enable the Department to support innovation and demonstration projects that enhance the provision of technology-related assistance for individuals with disabilities. They incorporate the statutory purposes of the three types of projects that may be funded under this program—model demonstration projects for delivering assistive technology devices and services, research and development projects, and income-contingent direct loan demonstration projects.

These regulations describe the types of activities that may be supported under each of the three project types and state the priorities that may be applied to each of them. From time to time, the Secretary will publish a notice in the Federal Register requesting applications for awards under this program; the notice may specify particular priorities under one or more of the project types. The Secretary will refer complete applications to one or more panels of expert peer reviewers, which will evaluate the applications according to the selection criteria in §§ 346.31, 346.32, or 346.33, as appropriate. The Secretary will seek the involvement as members of the peer review panels of individuals with disabilities, members of the families of individuals with disabilities, and others who have expertise, by reason of training or experience, in such areas as the provision of assistive technology devices or services; public administration; development and implementation of public systems; evaluation of service delivery programs; education, training, and public information; provision of services to individuals with disabilities and their families; health care and benefits administration; personal use of assistive technology; administration of direct loan programs; rehabilitation research; engineering, especially rehabilitation engineering; product testing; and other areas related to the purposes of the program.

The selection criteria for applications for model delivery projects are detailed in § 346.31 and include the extent to which the proposed project is innovative, meets an important need, and is likely to be replicable; has measurable goals to meet the identified need; has a plan of activities that indicates how the project is likely to accomplish the stated goals; has an appropriate management plan; substantively involves individuals with disabilities or their families or representatives appropriately in the activities of the project; and includes an appropriate plan for evaluation of the project.

The selection criteria for research and development projects are presented in § 346.32 and include the extent to which the proposed project is for a device or technique that is innovative, likely to meet an important need, and likely to be an improvement over currently available technology; provides a plan of activities that indicates familiarity with the state-of-the-art in technology, ensures that devices will be appropriately tested, and extensively involves individuals with disabilities in the evaluation of devices and techniques; includes an appropriate plan for managing the activities under the grant; substantively involves individuals with disabilities or their families or representatives; and has a plan for evaluating the project that will provide an assessment of the extent to which the project has met its goals.

The criteria for the evaluation of applications for income-contingent direct loan demonstration projects are stated in § 346.33(b) and include the extent to which the proposed loan program is innovative and will meet a particular need in the target population; has a plan of activities that includes measurable goals and objectives, provides for the appropriate involvement of individuals with disabilities or their families or representatives, includes appropriate loan fund operation procedures, and provides for documentation and dissemination of the project's findings; includes a management plan that indicates how the plan of activities will be carried out, with emphasis on the fiscal responsibility and accountability of the project's management; and provides for an appropriate evaluation of the extent to which the project has accomplished its goals. Applications for

income-contingent direct loan projects must include the required elements specified in § 346.33(a). The regulations clarify the obligations of a grantee with respect to information sharing.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 346

Administrative practice and procedure, Education, Educational research, Grant programs—education, Handicapped, Reporting and recordkeeping requirements.

Dated: July 27, 1990.

(Catalog of Federal Domestic Assistance Number 84.231, National Institute on Disability and Rehabilitation Research)

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends title 34 of the Code of Federal Regulations by adding a new part 346 to read as follows:

PART 346—TECHNOLOGY-RELATED ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES: DEMONSTRATION AND INNOVATION PROJECTS OF NATIONAL SIGNIFICANCE

Subpart A—General

Sec.

346.1 What is the demonstration and innovation projects program?
346.2 What are the purposes of the demonstration and innovation grants program?
346.3 Who is eligible for assistance under this program?
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346.30 How does the Secretary evaluate applications under this program?
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346.32 What selection criteria are used to evaluate applications for research and development projects under this program?
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346.40 What are the requirements that apply to a grantee for coordination and information sharing?
346.41 What is the requirement for cost-sharing under this program?

Authority: 29 U.S.C. 2201–2271, unless otherwise noted.

Subpart A—General

§ 346.1 What is the demonstration and innovation projects program?

This program provides grants or cooperative agreements to nonprofit or for-profit entities to pay all or part of the cost of establishing or operating demonstration and innovation projects related to technology-related assistance for individuals with disabilities.

(Authority: 29 U.S.C. 2261(a))

§ 346.2 What are the purposes of the demonstration and innovation grants program?

The purposes of this program are to undertake demonstration and innovation projects in areas of national significance that will promote the development of comprehensive, consumer-responsive statewide systems of technology-related assistance for individuals with disabilities, and enhance the capacity of the Federal government to provide information, models, and technical assistance to the States.

(Authority: 29 U.S.C. 2201 and 2261(a))

§ 346.3 Who is eligible for assistance under this program?

Nonprofit and for-profit entities may apply for grants or cooperative agreements under this program.

(Authority: 29 U.S.C. 2261(a))

§ 346.4 What regulations apply to this program?

The following regulations apply to the Demonstration and Innovation Projects of National Significance Program:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions That Apply to Department Regulations), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for a Drug-Free Workplace (Grants)).

(b) The regulations in this part 346.

(Authority: 29 U.S.C. 2201–2271)

§ 346.5 What definitions apply to this program?

(a) *Definitions in the Technology-Related Assistance for Individuals with Disabilities Act of 1988.* The following terms used in this part are defined in section 3 of the Act:

Assistive technology device
Assistive technology service
Individual with disabilities
Institution of higher education
Secretary
State
Technology-related assistance
Underserved group

(b) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Application
Award
Department
EDGAR
Fiscal year
Grant period
Nonprofit
Nonpublic
Private
Project
Project period
Public

(c) *Other definitions.* The following definitions also apply to this part:

Direct loan means a loan of money to an individual with disabilities, or to a family or employer on behalf of an individual with disabilities, to be used for the purchase or lease of technology-related devices or services.

Direct support services means services that are provided directly to individuals with disabilities to facilitate major life activities, such as services

provided by personal care attendants, interpreters, readers, and notetakers.

Income contingent means that eligibility for receipt of a loan, the loan amount, and the repayment schedule are based on the income and financial need of the individual with disabilities.

Model projects means projects that are designed to demonstrate new or innovative ways of developing or providing assistive technology devices or services and that can be replicated in other settings.

Orphan technology or "orphan devices" means technology or devices that are likely to be beneficial to individuals with disabilities but are not likely to be produced commercially.

Research and development projects means the systematic use of knowledge and understanding in order to create useful materials, devices, systems, or methods, including the design and development of prototypes and procedures.

(Authority: 29 U.S.C. 2201–2271)

Subpart B—What Kinds of Activities Does the Department Support Under This Program?

§ 346.10 What types of projects may be supported under this program?

Under this program, the Secretary may award grants or cooperative agreements to support the following types of projects:

(a) *Model projects for delivering assistive technology devices and services.* Projects that demonstrate improved methods to deliver technology-related assistance to individuals of all ages with disabilities functioning in various environments and carrying out various activities, that, if successful, could be replicated or made generally applicable, and that may include—

(1) The purchase, lease, or other acquisition of assistive technology devices and services or payment for the provision of these devices and services;

(2) The use of counselors, including peer counselors, to assist individuals with disabilities or their families to obtain assistive technology devices and services;

(3) Demonstrations on ways to most appropriately involve individuals with disabilities or their family members in decisions related to the provision of assistive technology devices and services;

(4) Demonstrations of improved ways to deliver services to previously underserved groups or hard-to-reach populations, including rural residents, racial or ethnic minorities, children or elderly persons, or individuals with low-prevalence disabilities; or

(5) Innovative models for the organization of service-delivery systems, including innovative models for the involvement of a wide range of private and public agencies in the delivery system.

(b) *Model research and development projects.* Applied research and development projects designed to—

(1) Increase the availability of reliable and durable assistive technology devices that address unique or low-prevalence disabilities or other disabilities with low market demand or disabilities with complex technology-related needs;

(2) Develop strategies and techniques to involve individuals with disabilities in assessing performance characteristics of technology developed for use by individuals who do not have disabilities and developing adaptations of that technology for individuals with disabilities;

(3) Facilitate the transfer of general technology to uses and adaptations appropriate for individuals with disabilities; or

(4) Facilitate effective and efficient transfer of available technology to consumers.

(c) *Income-contingent direct loan demonstration projects.* Demonstration projects to examine the feasibility of an income-contingent direct loan program that would provide loans to—

(1) Individuals with disabilities who require technology-related assistance to maintain or enhance their level of functioning in any major life activity; or

(2) Families or employers of individuals with disabilities, on behalf of those individuals, to provide technology-related assistance to maintain or enhance their level of functioning in any major life activity.

(Authority: 29 U.S.C. 2211 and 2261).

§ 346.11 What are the priorities under this program?

Each year the Secretary may establish priorities to support innovation or demonstration projects, including projects in one or more of the following areas:

(a) *Model projects for delivering assistive technology devices and services.* Priorities for model delivery projects include—

(1) Improved methods for the delivery of technology-related assistance in rural areas;

(2) Improved methods for the delivery of technology-related assistance for disabilities of low-prevalence or for individuals with the most severe disabilities;

(3) Demonstrations of the use of peers with disabilities as agents of service delivery or of consumer-operated service delivery models;

(4) Models to improve technology-related assistance for individuals in transition between various life settings or activities;

(5) Innovative models for financing technology-related assistance;

(6) Models to provide technology-related assistance for employment;

(7) Improved methods to provide technology-related assistance for infants, toddlers, and preschool children;

(8) Methods to enhance the provision of technology-related assistance for school-age children in educational and other settings;

(9) Improved models to provide technology-related assistance for older persons with disabilities;

(10) Improved models for providing technology-related assistance to previously underserved populations, including those from different racial or ethnic backgrounds and those with limited English proficiency;

(11) Improved models for the delivery of technology-related assistance to aid in the deinstitutionalization or increased independence of individuals with disabilities who reside in institutions;

(12) Model programs to increase awareness of the availability and effectiveness of technology for individuals with disabilities;

(13) Model programs to train individuals with disabilities and their families or representatives to access technology-related assistance through existing service programs;

(14) Innovative mechanisms for providing assistive devices or services that are needed for short durations;

(15) Demonstrations of the innovative use of mobile service delivery systems;

(16) Innovative models for recycling assistive devices;

(17) Evaluations of the impact of technology-related assistance on the performance of major life functions in individuals with disabilities;

(18) Cost-benefit studies of the use of technology-related devices and services by individuals with disabilities;

(19) Models for the delivery of technology-related assistance for individuals with mental illness;

(20) Models for the use of technology-related assistance in supported employment programs;

(21) Model projects using technology to facilitate access by individuals with disabilities to direct support services;

(22) Model projects to provide technology-related devices and services soon after the onset of disability;

(23) Innovative models to overcome transportation barriers to the delivery of technology-related assistance; or

(24) Demonstrations of the relative merits of various mechanisms for loans of equipment, including management by consumer-directed organizations, short-term loans, shared use of equipment needed for special activities, recycling of devices, and other innovative equipment loan programs.

(b) *Research and development projects.* Priorities for research and development projects include—

(1) The development of orphan technology;

(2) The evaluation of new devices and equipment;

(3) The adaptation of technology developed for the population without disabilities to meet the specialized needs of individuals with disabilities;

(4) The development of devices that incorporate new scientific or technological knowledge or materials;

(5) The development of improved access to computer hardware or software;

(6) The development of devices to facilitate communication;

(7) The development of devices to improve learning or cognition;

(8) The development of devices to improve control of the environment;

(9) The development of devices to improve mobility;

(10) The development of improved prosthetic or orthotic devices;

(11) The development of devices to improve hearing;

(12) The development of devices to improve vision;

(13) The development of devices to assist in toileting and self-care;

(14) The development of adaptations to housing, public buildings, or work-sites;

(15) The transfer of needed assistive technology from developmental to production stages;

(16) The development of devices to assist in the provision of direct support services to individuals with disabilities;

(17) The development of devices to improve communications for individuals with hearing impairment;

(18) The development of devices to improve communication for individuals with vision impairment; or

(19) The development of devices to enhance transportation for individuals with disabilities.

(c) *Income-contingent direct loan demonstration projects.* Priorities for income-contingent direct loan demonstration projects include—

(1) The involvement of financial institutions or other private entities in the provision of monetary loans with public guarantees;

(2) The feasibility of attracting private capital to establish loan funds;

(3) The viability of loans made for the lease or purchase of technology-related assistance for work-related purposes;

(4) The viability of loans made for adults, children, or elderly individuals with disabilities;

(5) The effectiveness of loans to employers for technology-related devices or services to promote the employment of individuals with disabilities;

(6) Methods to determine appropriate income eligibility guidelines;

(7) Methods to determine appropriate repayment schedules and mechanisms;

(8) Methods of estimating costs for the operation of loan programs of various types;

(9) Projects to test the effectiveness and viability of loans for various types of devices;

(10) Methods to determine feasible interest rates for loan programs;

(11) Methods to assess individuals with disabilities or their families or representatives as candidates for loans;

(12) Strategies to administer loans for the repair and maintenance of devices;

(13) Strategies to administer loans for obtaining technology-related services rather than equipment; or

(14) Models for the provision of loan insurance for other lenders.

(Authority: 29 U.S.C. 2261)

Subpart C—[Reserved]

Subpart D—How Does the Secretary Make a Grant Under This Program?

§ 346.30 How does the Secretary evaluate applications under this program?

(a) The Secretary evaluates each application—

(1) For a model project for delivering assistive technology devices and services according to the criteria in § 346.31;

(2) For a research and development project according to the criteria in § 346.32; and

(3) For an income-contingent direct loan demonstration project according to the criteria in § 346.33(b).

(b) The Secretary awards each application a value of zero to five (0–5) for each criterion listed in §§ 346.31, 346.32, or 346.33, respectively. These values are based on how well the application addresses each criterion, as follows: Outstanding (5); Superior (4); Satisfactory (3); Marginal (2); Poor (1); or not addressed in the application (0).

(c) The Secretary weights each criterion as indicated in §§ 346.31, 346.32, and 346.33, respectively. The value awarded to each criterion in an application is multiplied by the standard weight accorded to that criterion in § 346.32, § 346.33, or § 346.34, as appropriate.

(d) The final score for each application is determined by totaling the scores computed for each criterion.

(e) The maximum score for each application is 100 points.

(Authority: 29 U.S.C. 2261)

§ 346.31 What selection criteria are used to evaluate applications for model delivery projects for technology-related devices or services under this program?

The Secretary reviews each application for a model delivery project award to determine the following:

(a) *Importance and Innovativeness* (Weight: 4; Total Points: 20)

(1) The proposed activity addresses a significant need in the provision of technology-related assistance to individuals with disabilities;

(2) The proposed activity addresses problems not now being addressed or addresses problems in a new and different way;

(3) The proposed activity effectively responds to one or more of the announced priorities of the program, if any; and

(4) The model, if successful, is likely to be applicable to, and replicated in, other settings involving the provision of assistive technology devices or services to individuals with disabilities.

(b) *Goals and objectives* (Weight: 3; Total Points: 15) The proposed project includes goals and objectives that—

(1) Address the problem or need identified under § 346.31(a)(1); and

(2) Are clearly measurable, with both milestones of progress and indicators of success.

(c) *Plan of activities* (Weight: 4; Total Points: 20) The project includes a plan of activities that—

(1) Indicates a likelihood that the proposed activities will accomplish the goals and objectives under § 345.31(b)(2);

(2) Is based on a sound conceptual model or reasonable hypotheses;

(3) Uses appropriate sample populations;

(4) Will use appropriate methodology for measurement and the analysis of data; and

(5) Reasonably provides for the dissemination of findings and the documentation of the model for replication purposes.

(d) *Management plan* (Weight: 2; Total Points: 10) The project includes a plan for management of the activities that—

(1) Includes an adequate number of staff qualified by training and experience to implement the activities under the grant;

(2) Appropriately manages and accounts for the fiscal resources of the grant;

(3) Details internal procedures for the management of the resources under the grant, including specification of responsibilities and administrative authority and provisions for internal monitoring of progress;

(4) Includes realisitc timelines for the implementation of project activities so as to ensure accomplishment of proposed goals and objectives within the time period proposed in the application; and

(5) Allots sufficient and appropriate resources from the grant or other sources for the accomplishment of the proposed project activities.

(e) *Inclusion of individuals with disabilities and their families or representatives* (Weight: 4; Total Points: 20) The project includes substantive roles for individuals with disabilities or their families or representatives in—

(1) The development of the project, including the assessment of problems and needs;

(2) The establishment of goals and objectives for the project;

(3) The planning and implementation of the functions and activities to be carried out under the project grant;

(4) The evaluation of activities under the grant and the assessment of the demonstration model; and

(5) The dissemination of project findings and of replicable models.

(f) *Evaluation plan* (Weight: 3; Total Points: 15) The project includes a plan for evaluating the extent to which the demonstration project has achieved its goals and objectives that—

(1) Specifies adequate indicators of accomplishment for each of the goals and objectives;

(2) Specifies appropriate measures to be used and the data elements needed for these measurs;

(3) Specifies appropriate and feasible data sources and the data collection methods;

(4) Specifies appropriate methods of data analysis that are likely to yield objective and meaningful evaluation results; and

(5) Allocates sufficient resources, including personnel, funds, and administrative priority, to the evaluation.

(Approved by the Office of Management and Budget under control number 1820–0572).

(Authority: 29 U.S.C. 2211–2271).

§ 346.32 What selection criteria are used to evaluate applications for research and development projects under this program?

The Secretary reviews each application for a research and development award to determine the degree to which the project demonstrates the following:

(a) *Need and Innovativeness* (Weight: 4; Total Points: 20)

(1) The proposed device or procedure addresses a problem that will facilitate one or more life functions or enhance the quality of life for individuals with disabilities;

(2) The proposed device or technique meets needs not currently met by existing devices or techniques, applies new technologies in the development of devices or procedures, adapts technology designed for use by individuals without disabilities for use by persons with disabilities, or develops devices or procedures that are more effective, more acceptable to consumers, or more accessible to consumers than those currently available;

(3) The proposed project effectively responds to one or more of the announced program priorities, if any; and

(4) The proposed project is likely to result in new, improved, and useful devices or techniques becoming available to individuals with disabilities.

(b) *Plan of activities* (Weight: 5; Total Points: 25) The project includes a plan of activities that—

(1) Provides for an appropriate review of the literature and indicates a familarity with the state-of-the-art in technology;

(2) Is based on a sound conceptual model;

(3) Will use the most effective and appropriate technologies available in developing the new device or technique;

(4) Sets forth appropriate and measurable goals and objectives;

(5) Presents an appropriate plan for the testing and evaluation of the device or procedure;

(6) Ensures that devices or techniques will be developed and tested in appropriate environments;

(7) Extensively involves individuals with disabilities in the evaluation of devices and procedures;

(8) Adequately considers the cost-effectiveness of the device or technique to be developed in comparison to commercially available devices or techniques for the same purpose;

(9) Appropriately assesses the safety of the device or technique for individuals with disabilities or other consumers; and

(10) Indicates, with appropriate analysis and support, the potential for production and distribution of the device or procedure through either commercial or other mechanisms.

(c) *Management Plan* (Weight: 4; Total Points: 20) The project includes a plan for management of the activities that—

(1) Includes an adequate number of staff qualified by training and experience to implement the proposed activities;

(2) Appropriately manages and accounts for the fiscal resources of the project;

(3) Details internal procedures for managing the resources under the grant, including specification of responsibilities and administrative authority, and provisions for internal monitoring of progress;

(4) Includes realistic timelines for the implementation of project activities so as to ensure accomplishment of proposed goals and objectives within the time period proposed in the application; and

(5) Allots sufficient and appropriate resources from the grant or other sources for the accomplishment of the proposed project activities.

(d) *Involvement of individuals with disabilities* (Weight: 4; Total Points: 20) The project includes substantive roles for individuals with disabilities or their families or representatives in—

(1) The identification of the need for the project;

(2) Project planning;

(3) The conduct of product activities and management of the project;

(4) The evaluation of the project's accomplishments; and

(5) Dissemination of project findings.

(e) *Evaluation plan* (Weight: 3; Total Points: 15) The project includes a plan for evaluating the extent to which the project has achieved its goal and objectives that—

(1) Specifies appropriate indicators of accomplishment for each of the goals and objectives;

(2) Specifies appropriate measures to be used and the data elements needed for these measures;

(3) Specifies sources of data and feasible data collection methods to be used for each measure;

(4) Specifies appropriate methods of data analysis that are likely to yield objective and meaningful evaluation results; and

(5) Allocates sufficient resources, including personnel, funds, and administrative priority, to the evaluation.

(Approved by Office of Management and Budget under control number 1820-0572)

(Authority: 29 U.S.C. 2211-2271)

§ 346.33 What selection criteria are used to evaluate applications for income-contingent direct loan demonstration projects under this program?

(a) The Secretary reviews each application to determine that the project includes the required elements of—

(1) A method to determine an appropriate process for selecting individual loan recipients;

(2) A method to determine an interest rate, or rates, to be used in the project;

(3) A method to determine an appropriate repayment schedule;

(4) A provision for the use of interest earned on loans and on the loan fund that is consistent with the purposes of this program; and

(5) A provision for the use of grant funds, consistent with the provisions of this program, at the conclusion of the grant period.

(b) The Secretary reviews each application that includes all of the elements in paragraph (a) of this section to determine the degree to which—

(1) *Need and Innovativeness* (Weight: 4; Total Points: 20) The project—

(i) Is responsible to a documented need within a particular target population that is described in the application;

(ii) Demonstrates either a new approach to providing loans for technology-related assistance to individuals with disabilities or reaches a population of individuals with disabilities not previously served;

(iii) Effectively responds to one of the announced priorities of the program, if any; and

(iv) Is capable of being replicated and is applicable to meeting important needs in other settings.

(2) *Plan of activities* (Weight: 5; Total Points: 25) The project includes an appropriate plan of activities that—

(i) Sets forth measurable goals and objectives based on sound assumptions about the operation of loan programs;

(ii) Includes an appropriate methodology for determining program eligibility that includes an income contingency;

(iii) Includes an appropriate methodology for determining individual loan amounts, considering the individual's need and income, as well as the program's total resources;

(iv) Includes an appropriate repayment schedule, or process for determining a repayment schedule, that includes income as a factor in the repayment schedule;

(v) Includes an appropriate process for selecting specific individuals, families, or employers to be loan recipients;

(vi) Includes an appropriate method for determining the interest rate, or rates, to be used in the project;

(vii) Provides an appropriate method for ensuring that loan funds are not used for obtaining devices or services that can be obtained with funding from public programs or private insurance unless there are adequate provisions to obtain reimbursement from those sources within a reasonable period of time;

(viii) Provides an appropriate method for verifying the suitability of the device or service to be obtained with the loan funds, the reasonableness of the cost of the device or service, and the availability of appropriate warranties and technical support for the product;

(ix) Includes an appropriate method of publicizing the loan program to the target population;

(x) Includes appropriate procedures for collecting amounts due from third-party payers and from borrowers;

(xi) Provides procedures to verify that loans are used for the intended purposes;

(xii) Provides a procedure for maintaining documentation of all significant project activities;

(xiii) Provides a method for the collection of relevant data in order to evaluate the success of the model, including information about applicants, borrowers, types of devices and services obtained, financial data, repayment data, and the impact of the loan program on the lives of individuals with disabilities; and

(xiv) Provides an appropriate methodology to assess the extent to which the model is replicable.

(3) *Management plan* (Weight: 5; Total Points: 25) The project includes a plan for the management of project activities that—

(i) Includes an adequate number of staff qualified by training and experience necessary to implement the activities under the project grant;

(ii) Appropriately manages and accounts for the fiscal resources of the project;

(iii) Provides evidence of the fiscal responsibility of the applicant organization and its designated fund managers;

(iv) Provides for appropriate monitoring of the use of project resources and financial audits of the project;

(v) Details internal procedures for the management of the resources under the grant, including the specification of responsibilities and administrative authority and provisions for internal monitoring of progress;

(vi) Includes realistic timelines for the implementation of project activities so as to ensure accomplishment of proposed goals and objectives within the time period proposed in the application;

(vii) Allots sufficient and appropriate resources from the grant or other sources for the accomplishment of the proposed project activities;

(viii) Provides for the appropriate use of interest earned on loans and on the loan fund; and

(ix) Provides for the appropriate use of grant funds at the conclusion of the grant period.

(4) *Involvement of individuals with disabilities* (Weight 3; Total Points: 15) The project includes substantive roles for individuals with disabilities or their families or representatives in—

(i) The identification and assessment of the needs of the target population;

(ii) The design of the loan program;

(iii) The conduct of project activities and the management of the project;

(iv) The evaluation of project accomplishments; and

(v) The dissemination of project results.

(5) *Evaluation plan* (Weight: 3; Total Points: 15) The project includes an effective plan for evaluating the progress made toward accomplishment of the goals and objectives of the project that—

(i) Specifies adequate indicators of accomplishment for each of the goals and objectives;

(ii) Specifies appropriate measures to be used and the data elements needed for these measures that will result in an adequate evaluation;

(iii) Specifies appropriate sources of data and feasible and appropriate data collection methods to be used for each measure;

(iv) Specifies appropriate methods of data analysis that are likely to yield objective and meaningful evaluation results; and

(v) Allocates sufficient resources, including personnel, funds, and administrative priority, to the evaluation. (Approved by the Office of Management and Budget under control number 1820-0572).

(Authority: 29 U.S.C. 2211-2271)

Subpart E—What are the Additional Requirements that Apply to a Grantee?

§ 346.40 What are the requirements that apply to a grantee for coordination and information sharing?

The Secretary may require each grantee under this program to provide information, including data about program activities and results, to—

(a) Grantees under the State Grants for Technology-Related Assistance for Individuals with Disabilities program;

(b) The entity providing technical assistance to the State grants program as prescribed in section 106(b)(1) of the Act;

(c) Agencies designated by Governors to make applications under the State grants program;

(d) Entities conducting evaluations of this program for the Secretary;

(e) The Secretary directly; and

(f) Any other entity designated by the Secretary.

(Approved by Office of Management and Budget and under control number 1820–0572)

(Authority: 29 U.S.C. 2211–2271)

§ 346.41 What is the requirement for cost-sharing under this program?

(a) For model delivery projects and research and development projects, the Secretary may require cost-sharing by announcing in the application notice for the program that cost-sharing will be required.

(b) For direct loan demonstration projects, the Secretary may require that the grantee's share of the cost be at least ten percent of the cost of the project by announcing that requirement in the application notice in the **Federal Register.**

(Authority: 29 U.S.C. 2261(3)(a) and (b))

Note.—This appendix will not appear in the Code of Federal Regulations.

Appendix

Analysis of Comments and Responses

The Secretary received 18 letters commenting on the proposed regulations. Most of the comments were supportive of the regulations as proposed. Several commented on issues that are either governed by statute or through administrative decisions, and thus not relevant to regulations, while others suggested changes in the regulations as proposed. Summaries of those comments and the Secretary's responses follow.

Comment: Several commenters objected to the restriction of eligibility to private organizations, arguing that State and local government agencies should be eligible to apply. Some commenters also objected to the fact that for-profit entities could apply for projects under the statute. One commenter recommended that the regulations contain specific encouragement to small organizations to apply for funding under this program.

Discussion: The statute specifically states that the Secretary shall make grants, contracts, or cooperative agreements to nonprofit and for-profit entities. The Secretary does not have the statutory authority to make awards under this Part to other types of entities, including States, or to exclude for-profit entities from any competition. While small entities are eligible to apply under the program, the statute does not provide for special consideration for those such entities.

Change: None.

Comment: Several commenters recommended that the list of priorities be reordered, or that funding be announced for certain priorities at this time. Some of these commenters also recommended various distributions of available funds among the different types of programs.

Discussion: The priorities were listed in the proposed regulations to permit the Secretary to announce one or more priorites for a given fiscal year without going through the process of announcement for public comment. There is no significance to the order in which the priorities are listed; the Secretary may choose to select any of the priorities in any year. The Secretary may also elect not to designate priorities in some years, permitting prospective applicants to submit applications based solely on the purposes of the program and the authorized activities. The distribution of funds is an administrative decision and is not addressed in the proposed regulations.

Change: None.

Comment: One commenter suggested that the wording in § 346.32(d) and 346.33(b)(4) be revised to conform to the wording in § 346.31(e), that individuals with disabilities or their families or representatives should have substantive roles in the proposed projects.

Discussion: The Secretary agrees that there is an emphasis in this program on consumer-responsiveness, and that the wording should be clarified, consistent with § 346.31(e), to state that substantive involvement of individuals with disabilities is a selection criterion for all three types of projects.

Change: Sections 346.32(d) and 346.33(b)(4) have been reworded to state that the project includes substantive roles for individuals with disabilities or their families or representatives.

Comment: One commenter urged NIDRR to include "parents and individuals with disabilities" on all peer review panels.

Discussion: It is the general policy of NIDRR and the Office of Special Education and Rehabilitative Services (OSERS) to include individuals who have disabilities or their families in the peer review of applications.

In accordance with this policy, the Secretary intends to seek the involvement of individuals with disabilities, or a family member of an individual with a disability, in the peer review panels, and has noted this intention in the preamble to the regulations. The Secretary agrees that the involvement of individuals with disabilities in the review of the applications for this program is important.

Change: None.

Comment: Several commenters suggested changes in the weighting given to some of the selection criteria. Although there were a number of different suggestions for specific changes, there was a general consensus that more weight should be assigned to the involvement of individuals with disabilities in the evaluation of applications for model service delivery projects.

Discussion: The Secretary agrees with the sense of the comments that there should be a strong emphasis on consumer involvement and consumer-responsiveness in this program. Therefore, the Secretary has increased the weight assigned to this criterion.

Change: The weights and points assigned to two of the selection criteria have been changed. In § 346.31, the weight and points assigned to "Inclusion of individuals with disabilities and their families or representatives," (§ 346.31(e)) have been increased to Weight 4/Points 20. To accommodate this increase, the weights and points assigned to "Plan of activities", (§ 346.31(c)), have been decreased to Weight 4/Points 20.

Comment: One commenter expressed concern that the Secretary did not publish proposed regulations for Parts A, B, and C of Title II.

Discussion: Part A requires that the National Council on Disability conduct a study of financing; there is no need for the Department of Education to develop regulations for this Part. Part B requires a feasibility study for a national information and referral network. NIDRR is preparing to contract for this study; regulations are not needed for this purpose. Part C authorizes public awareness and training activities. NIDRR will develop regulations for Part C.

Change: None.

Comment: One commenter asked that there be a requirement that applicants for funds show evidence of collaboration with the State's designated lead agency under the Title I program at the time of application.

Discussion: The statute does not require evidence of collaboration with the State's designated lead agency under the Title I program, and, therefore, the regulations do not impose this requirement.

Change: None.

Comment: One commenter stated that loans to employers to facilitate the employment of individuals with disabilities should be available only to small businesses, on the grounds that larger companies can afford to make accommodations without the loans.

Discussion: There is no statutory authority to require that loans to employers be restricted to small businesses.

Change: None.

Comment: One commenter recommended that the Secretary publish an "initial regulatory section" concerned with the conceptual standards of accessibility and opportunity; the commenter apparently based this suggestion on Sections 504 and 508 of the Rehabilitation Act. The commenter also appeared to suggest that "opportunity" might be denied because the reference to qualifications of staff in the selection criteria

may result in qualifications being defined by narrow educational and training standards.

Discussion: These regulations are not intended to implement any sections of the Rehabilitation Act of 1973, as amended, and no such regulations are required to implement Part D of the Technology-Related Assistance for Individuals with Disabilities Act of 1988. The selection criteria in the proposed regulations state that personnel would be "qualified by training and experience." The Secretary intends this to mean individuals who have experience with disability as well as those who have academic training.

Change: None.

Comment: Several commenters recommended additional priorities.

Discussion: Many of the specific projects suggested by commenters are covered by one or more of the currently listed priorities. However, the Secretary does believe there is merit to some of the additional priorities that were suggested. Under this program, the Secretary has the right to propose additional priorities for public comment in any year that the Secretary believes that projects should be funded in those priority areas. The Secretary may consider proposing some of the suggested priorities for funding in future years.

Change: None.

Comment: One commenter asked whether an applicant could address more than one priority in one application for an income-contingent direct loan demonstration project.

Discussion: The Secretary recognizes that a direct loan demonstration project may include elements of several priorities. However, the purpose of priorities is to ensure that the project is focused on developing hypotheses, study samples, data collection instruments and measures, process documentation, and other information necessary to demonstrate the viability of the applicant's approach to the priority problem. Therefore, while an applicant may propose a project that bears on several of the listed priorities, the project must be evaluated according to how well it addresses the announced priority.

Change: None.

Comment: Several commenters suggested priorities for education and training projects.

Discussion: There is specific provision for training and for public awareness projects in Part C of Title II of the Act. The Secretary will propose regulations to implement Part C as needed.

Change: None.

Comment: One commenter recommended that the references to "peer counselors" be changed to "advocates," on the grounds that advocate is a more currently acceptable term.

Discussion: The statute refers to peer counselors in both Title I and Title II. The Secretary believes it is preferable to use language from the statute to avoid confusion.

Change: None.

Comment: One commenter requested that there be a priority for interstate cooperation on information-sharing.

Discussion: Under Part B of Title II, NIDRR plans to award a contract to determine the feasibility of establishing a national information and referral program. The Secretary believes that this is the appropriate mechanism to consider and make plans for information-sharing among the States.

Changes: None.

Comment: One commenter urged that the Secretary consider making awards for other activities in addition to direct loans under the income-contingent direct loan demonstration projects.

Discussion: It is not clear what alternative approaches the commenter was suggesting. However, the statute provides authority only for demonstrations of direct loans to individuals with disabilities, their family members or representatives, or their employers.

Change: None.

Comment: One commenter stated that there were too many priorities, and this would dilute the focus of the program and the competitiveness of applications.

Discussion: In those years in which the Secretary announces priorities, the Secretary is expected to select a small number of priorities reflecting areas where demonstration activity is particularly needed at that time.

Change: None.

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Part IV

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 630

Uniform System of Accounts and Records and Reporting System; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 630

[Docket No. 90-B]

RIN No. 2132-A36

Uniform System of Accounts and Records and Reporting System

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Advanced notice of proposed rulemaking.

SUMMARY: The Urban Mass Transportation Administration is evaluating the Uniform System of Accounts and Records and Reporting System (the "Section 15" program) to determine its future direction. The evaluation includes consideration of fundamental questions about the objectives of section 15, the current or potential usefulness of the data, and the overall strengths and weaknesses of the program. Based on the evaluation, UMTA will identify and implement improvements to the program. UMTA requests public comments on what direction the section 15 program should take in the future, the usefulness of the data base to all constituencies of the transit industry, the burden of reporting, and proposals to change the structure and content of the data base. UMTA encourages all comments, but in particular, those that consider trade-offs between the value of data relative to the burden of reporting. Comments can range from those addressing general issues, for example, the long-term objectives and priorities for the program, to those addressing the value of specific details, for example, whether information on capital expenses or farebox revenue should be expanded, deleted, or redefined.

DATES: Comments must be submitted by November 13, 1990.

ADDRESSES: Comments may be mailed to Office of the Chief Counsel, Legislation and Regulations Division, UCC-10, Urban Mass Transportation Administration, Department of Transportation, Room 9316, Docket 90-B, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped post card is included with comment.

FOR FURTHER INFORMATION CONTACT: Susan Brown, Urban Mass Transportation Administration, Office of Capital and Formula Assistance, [202] 366-1645, 400 Seventh Street, SW., Washington, DC 20590.

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I. Introduction

The Uniform System Accounts and Records and Reporting System were authorized in 1974 under section 15 of the Urban Mass Transportation Act of 1964, as amended, and prescribed in January, 1977, as called for in the law. The requirements and procedures necessary for compliance with these systems are set-forth at 49 CFR part 630. Section 15 requires the Secretary of Transportation to establish a uniform system of accounts and records and a reporting system to collect and disseminate public mass transportation financial and operating data. Over 500 public transit operators use the section 15 systems to record summary information in annual reports to UMTA. UMTA applies quality checks to the reported data, works with reporters to correct errors, and publicly distributes data in reports and on computer media.

Section 15 information is used for management and planning by transit systems, and policy analysis and investment decision-making at all levels of government. It provides a resource for consultants, researchers, and industry suppliers. In addition, the section 9 block grant program apportions approximately $1.5 billion in UMTA grant funds annually based on a statutory formula which in part uses section 15 data. No grant may be made under section 9 unless the applicant and any person or organization to receive benefits directly from the grant are each subjected to both the Reporting System and the Uniform Systems of Accounts and Records prescribed by section 15.

From the perspective of production of ten annual reports, UMTA is considering fundamental questions about the objectives of the program and its strengths and weaknesses, and is identifying potential improvements. In deciding whether to modify the systems, UMTA will balance the benefits of the data to a broad range of constitutent groups that currently or potentially might use the data, against the costs to operators of reporting and to UMTA of developing the annual data bases.

As part of its review to determine future directions for the section 15 program, UMTA is soliciting comments and recommendations from experts representing operators, public agencies, and other constituencies of the transit industry. UMTA has received detailed recommendations and proposals from the UMTA section 15 Reporting System Advisory Committee and the American Public Transit Association (APTA) section 15 Committee. UMTA has also received comments from other representatives of the public and private sectors and academia.

UMTA welcomes suggestions on areas where improvement is necessary. Comments could include: how useful the section 15 systems are to all elements of the transit industry; how its value might be improved; assessment of current proposals to modify the systems; and additional insights or proposals.

Based on industry comments and proposals and those in response to this Advance Notice of Proposed Rulemaking (ANPRM), UMTA will propose modifications to the program in a Notice of Proposed Rulemaking (NPRM), review comments on the NPRM, develop and publish a Final Rule, and make program changes, as required.

II. Major Issues

UMTA is particularly interested in comments on the fundamental purpose of the section 15 systems, and whether the systems should continue or be significantly modified in the future. The questions framed and issues identified in this section are intended to focus and

encourage comments, and are not exhaustive. The evaluation will consider all concerns related to the systems. Additional issues and proposals related to the specific forms referred to in this section are discussed in section III.

A. General Issues

(1) Does the Section 15 Program Satisfy Legislative Intent?

As stated in section 15 of the Act, the Uniform System of Accounts and Records and the Reporting System were to be designed to provide information on which to base planning for public transportation services and public sector investment decisions at all levels of government.

UMTA is evaluating how successfully section 15 satisfies its original objectives. Perhaps the objectives should be redefined, broadened, or clarified in forthcoming reauthorization legislation. Have the requirements of the transit industry for information and the ability of operators to provide information changed in any ways that should be reflected in changed objectives for section 15 or in how the systems are managed?

One view is that the Reporting System is best suited for national policy analysis, and unsuited for local management or planning of operations. Is this a reasonable view? Does this imply that details should be reduced? Another view is that transit managers, state Departments of Transportation, and other public agencies rely heavily on the systems, particularly their uniformity, for performance evaluation and comparison of productivity among peer groups of operators. If this view is reasonable, should these applications be encouraged, and should the original purpose be modified to be more explicit about such applications?

(2) How Successfully Does the Program Serve the Requirements of a Broad Range of Current and Potential Data Users?

How effective is section 15 at providing information for the overall transit industry, including federal, state, and regional policy-makers, local transit operators, consultants, suppliers, and academic researchers? How has section 15 been successfully applied, and when has it proved inadequate? Considering the impossibility of satisfying all needs of all data users, while limiting the costs and burden of reporting, does the current structure, format, and content represent a successful compromise among competing interests, or are changes necessary?

(3) What Should be the Future Direction of the Systems? Should They Continue?

Should broad changes be made to the structure, content, and emphasis on applications of the systems? Some proposals recommend that the future emphases of the program should be on improving data quality and encouraging successful data applications through the application of new data base technology. One comment is that UMTA could play a more proactive role in promoting local use of the section 15 systems, including through demonstrations or training. Related proposals include:

a. Provide interested reporters with software that would perform basic validation checks before the section 15 report is filed with UMTA. The report would be filed in machine-readable form.

b. Require operators to calculate and report a set of performance measures. This might improve data accuracy and make section 15 data and its applications more apparent to local managers.

c. Explore adding geographic codes that would allow section 15 data to be integrated with Census, Federal Highway, or other related data bases through geographic information systems.

B. Structural issues

This section focuses on proposals to change fundamental aspects of the structure of the section 15 systems. These proposals and related issues cut across several components of the systems or address areas identified by commenters as major weaknesses. Proposals to modify specific components of the systems, including data reported on many of the forms mentioned in this section, are elaborated upon in section III.

(1) How Many Reporting Levels Should There Be, and Should the Level of Reporting Be Voluntary or Required?

A major characteristic of the Reporting System structure is the use of different reporting formats. The required (R) level applies to all operators and specifies the minimum data that must be reported by all beneficiaries of UMTA section 9 funds. Operators have the option of reporting additional details at any of three voluntary (A, B, or C) levels. In order of detail, the A level requires the most information, followed by B, C, and R levels.

Although UMTA suggests that operators with certain fleet sizes report at specific voluntary levels, this is not a requirement. Operators that received UMTA grants for Management Information Systems are obligated to report at voluntary levels. Several of the largest operators report at R level, while some small operators report at voluntary levels.

The only difference between required and voluntary levels of reporting is in the amount of detail provided for operating expenses and revenues. All other information is required of all reporters and is filed on the same forms. Voluntary levels of expense and revenues have the same basic structures as the required level, but expand into greater detail. There is no difference in the underlying Uniform System of Accounts and Records.

Should voluntary reporting continue, considering the usefulness of a data base that provides different levels of financial details for different operators? Is a subset of the national data base with more detailed information of value for important analysis or does it encourage biased results? Is the current system unnecessarily burdensome or excessively detailed? Is the principle of a minimum required and one or more detailed voluntary levels reasonable, or should all levels be required? Is the current approach a sound compromise considering possible resistance to required reporting for all reporters, different abilities to provide accounting details, and the interest of analysts in detailed data? How many levels should there be, whether required or voluntary?

UMTA invites additional comments and proposals on reporting levels that address trade-offs between reporting burden and usefulness of details, and the usefulness of details that are reported by some but not all operators.

Proposals that recommend different combinations of voluntary and required levels are further developed in section III D.

(2) How Frequently Should Reports Be Made?

Should the requirement that section 15 reports Be filed annually be modified to require reports every second or third year? The law itself does not specify the frequency of reporting. Should reports be less frequent for certain categories of reporters; for example, those with small fleets, serving small urban areas, operating certain modes, or operating under contract, or for certain categories of data? What effect would these changes have on data quality and usefulness for different applications, including national, state, or regional policy analysis, or local management and planning? What effect would this have on reporting burden and data quality?

(3) Should Reports Be Made for the Overall Operations of a Transit System or Should Some Details Be Separated by Mode?

Multi-mode operators report expenses, operators' wages, labor years, service operated (for example, vehicle hours and miles), ridership, and other data for each mode (for example, for light rail and motor bus). Operating expenses are reported by function (operations, vehicle and non-vehicle maintenance, and administration) for each mode. Multi-mode operators, however, are not required to separate operating expenses by object class (for example, wages, contracts, and fuel) for each mode. Typically, a multi-mode operator will use residual expense categories (joint expenses) for object class expenses not allocated to specific modes. Revenues and balance sheet information are also not allocated to modes.

Should modal details be eliminated and only system-wide totals be provided by multi-mode operators? Should additional modal separation be required or should the structure be changed to add modal details that can be reported voluntarily? For example, farebox and other revenues are only provided as system-wide totals, although modal fares can be reported as a voluntary memo item. Should this approach continue, or should fares by mode be required?

It is important that UMTA understand the ability and willingness of reporters to provide these data. How difficult is it for reporters to separate currently required modal data, or to make additional separations? How useful are modal data (for example, costs, revenues, service, ridership) for different types of analysis? In addition to allocation of functional expenses by mode, one proposal would allocate object class expenses by mode. How difficult would this be, and would the additional details be of value?

(4) Should Capital Expense Reporting Be Revised or Expanded?

The Reporting System collects a limited amount of information on capital expenses relative to the detail provided on operating expenses. Some in the industry believe that the lack of capital costs encourages over-emphasis on operating costs in analyses of performance and alternative investements, and limits thorough evaluation of all expenses, revenues, and outputs. One view is that if the proportion of UMTA grants for operating assistance is reduced and for capital assistance is increased, it will become increasingly important to improve capital expense information by developing standardized procedures or adding new details.

Current capital expense information includes a balance sheet (Form 101) with basic financial information on assets, liabilities, and capital at the end of the financial year. Rolling stock, facilities, and equipment are combined into a single category. Unlike operating expenses, which are structured to allow modal separation of costs, capital accounts are not separated by modes.

In addition, a single depreciation figure for all modes combined is reported on the expense forms (300 series) with no separations to identify depreciation of vehicles or other asset categories or assets by modes. The Accounting System does not provide or recommend standardized approaches to depreciation or require reporters to identify the approaches they use. The amount and source of public assistance funds dedicated to capital are also identified for all modes combined on Form 103, with identification of governmental source (local, state, and federal government agencies), and method (for example, taxes or tolls). One proposal would clarify definitions and add depreciation details.

Although sources of capital assistance data are published in the Annual Report and are available on diskettes, depreciation and balance sheet data are only available on computer tapes.

UMTA is interested in whether the current balance sheet is of interest to analysts, whether its data should be more accessible, and whether additional information on capital costs should be required, considering the value of the information relative to the burden of reporting. Should the balance sheet be eliminated or restructured, or should different information be collected? What uses are made of current information? Are any important analyses limited because of the lack of capital expense details or inadequate definitions and standardization?

Proposals to modify current capital expense reporting include:

a. Eliminate Form 101 as inconsistent across operators and of little value to analysts. In contrast, another proposal maintains that because Form 101 is the sole source of capital costs in the Reporting System, it should be retained until an improved format is provided.

b. Retain the balance sheet but add more specific details, including purchases of new transit vehicles and facilities, use of debt finance, financial reserves, and disposition of equipment, and provide modal breakdowns for investment planning and analysis.

c. Add a new form to report sources and uses of capital funds. Is there enough standardization in the industry to allow this report without creating additional burdens? Could sources of capital be reported and reconciled against annual uses of capital without double-counting? How useful would the information be?

(5) Should Demographic Data be Revised or Expanded?

Analysts are often interested in population, land area, and population density of the area served by section 15 operators. These data, specifically density, are key environmental factors that are not subject to managerial control, but are vital to understanding the performance of transit operations and potential transit markets. UMTA is interested in whether current demographic data should be retained, redefined, or expanded to permit better matches between service outputs and ridership and population served, service area, population density, or other demographic factors.

Each reporting agency is required to submit, along with its annual section 15 report, a statement from the local Metropolitan Planning Organization (MPO) stating the square miles of the reporting agency's service area and its population (49 CFR part 630). The MPO must use "rational planning methods" to determine operational service area and describe the methods to UMTA. In addition, UMTA assigns a single Census-defined urbanized area code (UZA), with population and surface area, to each reporter. This code, which is used to apportion section 9 funds, can be an inexact measure of service area and population. For example, both the New York City Transit Authority with 8000 vehicles and the Long Beach Transit Authority with 11 vehicles are listed as serving the 15.6 million population New York City UZA.

UMTA is assessing what uses have been made or could be made of current section 15 demographic data. Are there problems with accuracy or comparability between areas because standardized methods and definitions of service area are not specified? Are applications limited by access to these data? How burdensome would standardization be? Should UMTA recommend but not require one or more approaches, requiring only that reporters provide available information, and describe the definition used? For example, reporters might provide available information on population served as defined by: Political

boundaries, contributing jurisdictions, feeders, walking distance, or residences within a specified distance from fixed route service. Would demographic data with explicit but different definitions be of use? One proposal would define service areas as all census tracts fully or partially penetrated by demand response or fixed route service or within one-third of a mile of such routes, or in the case of areas without census tracts, all counties penetrated by fixed route or demand response service.

Should any additional demographic information be added, for example automobile ownership, employment, trip purpose, employment, or other items considering reporting costs relative to the value of the data? Are analysts able to obtain reliable demographic data from the Census or other sources? Are section 15 data compatible with demographic data from these other sources? Should any changes be made to section 15 definitions to improve compatibility?

(6) Should the Current Means of Access to the Data Base be Modified?

All data submitted to UMTA by section 15 reporters are stored on magnetic tapes available for public use. A subset of the complete data base, containing some but not all required level data, is published in the Annual Report and distributed on diskettes for use in spreadsheets on IBM compatible microcomputers. For example, much of the revenue and financial details provided by voluntary level reporters is available only on tape for use with mainframe computers. Some required level details, including operators' time and fleet inventories, are also only available on tape.

Do current means of access to the data base meet the requirements of data users? How accessible are the tapes? Should the Annual Report be expanded, reduced in size, or eliminated? Proposed changes to the Annual Report include: increasing distribution of microcomputer files in generic formats as the primary means of data access, and publishing a report less frequently; replacing the percentage totals in the published tables with raw data to provide greater flexibility for analysts; and changing the performance measures that are published.

Should any specific improvements be made to the data and performance measures presented in the Annual Report? Should UMTA publish any additional reports with different emphases? Proposals include basic data summaries with performance measures for individual operators, possibly including a summary report to be provided to reporters of their own annual data; summaries or at least capabilities for users to generate state or urbanized area summaries; and a periodic report of historical national totals.

Is there enough interest in the unpublished data to justify improved access either through additional standardized reports, subsets of information for microcomputer use (for example, voluntary level expenses, fleet details, modal fares, codes and narrative descriptions of start-ups, fare changes, strikes or other unusual circumstances), or through on-line direct access to the complete data base? Expressions of interest in improved computer access will assist UMTA to evaluate investments in technology, including use of relational data base management systems. Would users be willing to pay for improved access? Should UMTA provide additional guidance or training to assist users with access to and application of the data?

III. Proposals To Change the Detailed Structure of the Section 15 Systems, With Related Issues

Section II B focused on proposals to change fundamental aspects of the systems. These aspects cut across several forms or components of the systems. In contrast, this section presents proposals to modify specific components of the systems and formulates related issues to encourage public comment.

A. Basic Information

General information about the type of service operated and type of organization providing transit service is reported primarily on Forms 001 to 006. Proposals to change the general information include the following.

Purchased Transportation Services

Forms used. Transportation service provided under contract is described on several reporting forms. Form 002 describes contractual relationships. Costs of contracts are reported as expenses on the 300-series forms. Complete reports must be filed by or for contractors providing over 50 revenue vehicles. A public agency contracting for under 50 revenue vehicles also describes contract service on separate Forms 004 and 408 for vehicles operated, 403 for transit way mileage, and 406/407 for service supplied and ridership.

Issues/proposals. Is the information on contract service accurate or complete enough to be of value? Is it accessible or understandable, and how has it been used? Should any additional or different information be provided for contract service? Are related procedures and definitions adequate?

One proposal would lower the threshold for filing complete Section 15 reports for contract service from the current 50 to 25 revenue vehicles. This proposal is intended to overcome the limitations on analysis or privatization trends when purchased service is reported as a single expense item.

Fleet Inventories

Forms used. Forms 003 and 004 contain the number and type of vehicles required and available to meet peak or maximum service requirements measured at the time of year when maximum service occurs. Forms 406 and 407 currently record the number of vehicles in operation during average daily time periods. Form 408 measures all vehicles in the total fleet, including vehicles that are active, stored, awaiting sale, and all vehicles available to operate in revenue service, measured at the end of the reporter's fiscal year. Form 408 inventories vehicles: operated directly by the reporter, purchased with federal funds, and operated under contract.

Issues/proposals. Are fleet definitions sufficiently clear, and do they produce accurate information? Taken collectively, does the Reporting System provide the current fleet data of primary interest to analysts? Should these categories be consolidated? Should different information be substituted?

Proposals to modify fleet inventories, which can be considered separately or in combination, include:

1. Substitute vehicles operated in period of maximum service for the current average weekday on Form 406/407.
2. Add a total on Form 408 for miles on active vehicles to emphasize reconciliation with vehicle miles on Form 406/407.
3. Eliminate average lifetime mileage from Form 408.
4. Eliminate standing capacity but retain seating capacity on Form 408.
5. Identify rebuilt buses and their accumulated miles since rebuilding, and numbers of vehicles with wheelchair lifts or wheelchair access.
6. Require a new form to report revenue vehicle usage by mode during the maximum season schedule. All vehicles used, including those owned and leased by the reporter, and provided under contract, would be reported.

Supplemental Information

Forms used. Reporters use Forms 005 to provide additional information not provided elsewhere in the report.

Information is provided by code and with narratives. This form is used to provide required explanations, for example, of motorbus fixed guideway directional route miles used in the Section 9 program formula. Reporters also can clarify unusual operating circumstances; for example, service start-ups, major fare changes, strikes, and other significant service interruptions. The codes and narrative information on Form 005 are not included on section 15 data tapes, diskettes, or in the Annual Report.

Issues/proposals. Does this form contain information that is critical to certain major analyses? Would publication of the information provided on this form reduce the potential for distorted comparisons? Should access be provided to the codes or narratives, and in what format? Should codes be added for any other types of information?

B. Capital Expenses

The essential background and proposals to change capital reporting were identified in Section II B.4. Capital expense information includes the balance sheet on Form 101, a single depreciation total for all asset categories for all modes combined on the 300-series forms, and sources of public assistance funds provided by public agencies on Form 103.

C. Revenues

Forms used. Section 15 uses four forms to collect information on revenues. The required level Form 201 contains information on fares, other earnings, and federal, state, and local grants, with identification of the value of grants that subsidize handicapped, senior, or student passengers. Form 202, used by all voluntary level reporters, expands the Form 201 structure into greater detail. For example, Form 202 expands the single fare total on 201 into seven categories. Forms 201 and 202 identify revenues for publicly operated but not contracted service. Multi-mode operators only provide system-wide totals on Forms 201 and 202, although they have the option of separating fares by mode.

Form 203 describes revenues by governmental source (federal, state, and local) and by means used to collect revenues (for example, sales, income, and gasoline taxes and tolls).

Form 103 is similar to Form 203, but records sources of funds dedicated to capital expenses.

Issues/proposals. UMTA has received proposals to modify revenue details and to consolidate data categories and forms. Any of the following proposals could be adopted singly or in combination.

1. Merge Forms 201, 202, and 203 into a single form. This could eliminate the expanded detail on Form 202 and some of the detail on Form 203, including tax source for state and local revenues.

2. Merge Forms 201 and 202 only, possibly preserving a distinction between full and special fares, or adding a split of pass and farebox revenue.

3. Eliminate the voluntary Form 202, but retain some Form 202 details on fares for voluntary level reporters.

4. Revise Form 103 to identify the sources of the reporting agency's own funds dedicated to capital.

To what extent would these or similar proposals reduce reporting burden? Would merging forms create complexity because reporters are familiar with the current structure and use it in internal accounts? Would any valuable data be lost? What simplifications could be accomplished without losing valuable data?

Should any revenue details be added? Should allocation of fares by mode be required? How valuable would it be to have modal fares? Would there be value in combining modal fares with other modal data for important local, state, or federal analyses? For example, modal fares could be used with operating expenses to determine farebox recovery, or with ridership to determine average fare per trip. How difficult is it to collect modal fares, considering use of transfers and multiple ride passes? To what extent are modal fares available locally? Rather than requiring modal fares, should UMTA allow reporters to describe a preferred method for allocation (for example, based on capacity or passenger miles)? Should UMTA specify alternative methods for data users interested in allocation of fares to modes?

D. Operating Expenses

Forms used. Transit systems currently use the 300-series Forms to report operating expenses in function (operations, vehicle and non-vehicle maintenance, and general administration) and object class (wages, fringe benefit, and other) categories. A reporter at the minimum or required (R) level uses the basic four functions and 14 object classes. This detail expands for operators at any of the three voluntary levels up to 44 functions and 47 object classes at the most detailed (A) level. Voluntary expense details are consolidated to the required level in the Annual Report and on the section 15 diskettes. Complete expense information is available only on computer tape.

Function and object classes can be cross-classified, allowing, for example, fringe benefits paid to vehicle operators to be identified. There is, however, limited ability to separate modal costs for multi-mode operators. Modal costs can be separated by function (for example, light rail vehicle maintenance), but usually not by object class (for example, light rail wages) or function and object class (for example, light rail operators' wages).

Issues/proposals. UMTA is interested in comments on the operating expense structure, particularly those that address the current or potential value of expense details relative to the burden of reporting. Documentation for the complex issues involved with the System of Accounts is provided in the *Reporter's Manual,* Volumes I and II of the *Uniform System of Accounts and Records and Reporting System,* and the *Data User's Guide* listed in section V. Appendix A presents expense functions for the four reporting levels.

Fundamental questions of how many reporting levels to use, and whether reporting levels should be voluntary or mandatory are addressed in section II B.1. What criteria should determine report level if there is more than one level? Should any changes be made to the detailed System of Accounts? Are there too many functions or object classes? Should there be consolidation? Should any existing account divisions be separated to provide additional details either for required or voluntary reporters?

Issues of the number of reporting levels, whether levels should be voluntary or required, definition of what level reporters use, and changes to the number and definition of expense details can be considered separately or in combination. The following are examples of proposals that UMTA has received that deal with one or more of these issues.

1. Retain the current System of Accounts. Reporters voluntarily provide the more complex accounts and typically have built their internal systems using the Uniform System of Accounts and Records. Some voluntary costs, for example, rail maintenance functions, apply only to a small number of operators, are ignored by all other operators, but are of analytical value. With ten years of historical data, retaining continuity in the basic structure and detail of the accounts is an important consideration.

2. Require two reporting levels. In one proposal the basic level would approximate the current R-level, and the second level would require fewer details

than current voluntary levels. Because fleet size would mandate report level, additional details would be required for all larger systems currently reporting at the minimum level. In addition to the four basic functions, the second required level would separate fare collection, security, and marketing/planning costs. Other current voluntary details would be eliminated. All reporters would use 17 object classes, an increase from the 14 used by current R-level reporters and a decrease from the 47 used by all voluntary reporters. Variations include:

a. Two required reporting levels; smaller operators would use the current R-level and larger reporters would use the current A-level;

b. Use the current B-level for the second level, which would be required for all motorbus operators with over 50 peak vehicles and all rail operators, and retain the current R-level for all other reporters;

c. Operators with motorbus only would report at a basic level and all other operators would report at a second more detailed level, with details to be determined.

3. Two reporting levels—one required and one voluntary. The current required level would be retained; the second more detailed level would be voluntary, and would correspond to the current A level. Variations would use current B, C, or other sets of details for the voluntary level.

4. Consolidate the number of expense forms. The observation is that there are too many forms to report very little data, most forms and cells being irrelevant to the majority of reporters. An opposing proposal would add summary forms for voluntary reporters that would allow reporters to view the roll-up of detailed expenses into the required levels used in the Annual Report.

5. Apply formal criteria to determine when to eliminate expense details. Modifications of the accounts, including elimination or realignment of details, should balance reporting burdens carefully against any losses to analysts in cost detail and historical continuity. Suggested criteria are:

a. Consolidate minor cost items (in terms of dollars and reporters providing that item;

b. Disaggregate large items;

c. Retain easy-to-collect items;

d. Avoid irrelevant or analytically meaningless items;

e. Retain items that are key decision variables;

f. Avoid realignments from one category to another.

Should any current expense items be disaggregated to provide additional details? Proposals include adding details for labor costs and identifying fringe benefit wages (sick, vacation, holiday pay); allowing a more complete accounting of all wages paid; and identifying vehicle maintenance parts and supplies expenditures to diagnose potential problems in maintenance management practices. As mentioned, functional expenses are allocated to modes for multi-mode systems, but object classes are not. Another proposal would also require allocation of joint expenses by object classes, allowing for example, identification of contract service or fringe benefit costs by mode.

Should any expense items be moved (realigned) from one basic R-level cost category to another, considering advantages of rationalization relative to disadvantages of disruption to historical contiunity? One proposal would move fare collection and security costs from the general administration to the vehicle operations function. These details would continue to be separated for large operators to preserve historical continuity of the basic four functions, but would not be separated for small operators.

E. Other Financial Data.

Operating Time Schedule

Forms Used. Form 321 provides a detailed breakdown of the hours and wages paid to revenue vehicle operators, including major categories of dollars and hours for operating and non-operating paid work.

Issues/Proposals. Do reporters have difficultury disaggregating data into the categories on Form 321? Could the catgories be simplified and still maintain enough detail to be useful? Proposals include:

1. Require this form only at the voluntary level, reducing the reporting burden for smaller operators.

2. Reduce the number of non-operating work categories. Which categories could be eliminated or consolidated?

3. Increase wage information on this or a related form by adding top hourly wages for operators and maintenance workers and indicating whether categories of employees are unionized.

Would these proposals reduce the reporting burden without affecting important data? Have these been used successfully in labor negotiations, productivity comparisons, management analysis, or other applications?

Fringe Benefit Contributions

Forms used. Form 331 collects information on the fringe benefit contributions of both employers and employees.

Issues/proposals. Are these costs difficult to provide? Should they be eliminated? Are employees' contributions to benefits of value for comparative or any other types of analyses? One proposal would have Section 15 collect employer contributions only.

Pension Plans

Forms used. Form 332 contains information on the cost components of the various pension plans that reporters provide for their employees. Pension plan data are not published.

Issues/proposals. One proposal would eliminate this form. UMTA encourages comments describing how these data have been used in transit labor, management, or other analyses, and contasting the value of pension data relative to the reporting burden.

F. Non-Financial Operating Data

The Reporting System uses several forms to collect information on a broad range of non-financial characteristics of transit service, including maintenance of vehicles, fleet inventories, infrastructure, labor resources, safety, service supplied, and ridership.

Service Periods

Forms used. Form 401 shows time periods of transit service for each mode, including am and pm peaks; and midday, and hours of service for weekdays, Saturdays, and Sundays. These data are not published in the Annual Report.

Issues/proposals. Are these data of value? Should Form 401 be revised, eliminated, or consolidated with another form? One proposal suggests that all data items be eliminated except total hours of service reported on line 12. Another proposal would merge this form with Forms 406 and 407. Is any information on this form of value?

Maintenance Performance and Energy Consumption

Forms used. Form 402 contains reliability, maintenance, and energy consumption information for transit vehicles. The form includes data on roadcalls for mechanical failure and other reasons; labor hours for inspection; maintenance facilities; and fuel consumption.

Issues/proposals. Are these data of value? Should definitions be revised to make the data more useful? Should alternative data items be substituted? Are energy consumption data difficult to report? Would additional energy consumption data would be useful? How

useful are labor hours for inspections and maintenance and facilities?

As defined in the Reporting System, roadcalls has been criticized as ambiguous and unrelated to locally collected data. As a result, a potentially valuable measure of service reliability and quality is inconsistently reported.

Related proposals include:

1. Eliminate roadcalls completely; this measure cannot be consistently reported because there are no national standards.
2. Redefine mechanical roadcalls in terms of service interruptions instead of events that require vehicles to be removed from service. Would this revision improve the ability to measure the quality of service?
3. Retain the current definition of roadcalls and encourage the industry and UMTA to design an improved approach.

Transit Way Mileage

Forms used. Form 403 collects data on all fixed route modes. Operators of rail modes report directional route miles, miles of track, number of crossings, number of stations, and average monthly directional route miles. In addition, operators of non-rail modes report routes miles by type of right-of-way.

Issues/proposals. Are the data collected appropriate, or should other more useful items be substituted? Are there other ways to improve this form?

Transit System Employee Counts

Forms used. Form 404 collects data on hours worked by function. For simplicity, these hours are divided by 2080 and reported as full-time equivalents (FTE's); there are no distinctions between labor of full- and part-time employees.

Issues/proposals. To avoid the arbitrariness of the current definition of full-time equivalent employees, one proposal would report work hours instead of FTE's. Would this ease reporting and provide a more consistent indication of labor for productivity or other analyses? Another proposal recommends clarification of whether vacation, holidays, and sick leave should be included in work hours. Should these paid non-work hours be included?

The current Form 404 does not indicate use of part-time labor in the transit industry, as required to assess the effect of part-time labor on performance, including costs, service, safety, and other factors. Are analysis interested in the extent to which federal and other regulations and union agreements either encourage or discourage managerial flexibility, including use of part-time employees?

To accommodate these interests, one proposal would only measure part-time labor for revenue vehicle operations instead of for all eight labor categories. Definition of part-time is difficult because of lack of transit industry uniformity in this area. Should part-time staff be defined using whatever definition is used locally, and should this definition be described? Should part-time labor be measured using the current annual equivalents, or should reporters submit only labor hours? One proposal would have reporters simply indicate with a check-mark whether they employ part-time labor.

Transit System Accidents

Forms used. Form 405 contains information about the nature and frequency of transit accidents involving revenue vehicles. Accidents are categorized as collision, non-collision, or station; and fatalities, injuries, and property damage are identified.

The Reporting System does not use thresholds to define how serious injuries or property damage must be before they are reported. As a result, interpretation of what constitutes an accident is not uniform across transit systems, and sensitive data are inconsistent. Because of these limitations, section 15 accident data are best viewed as gross indicators of national safety or as indicators of one system's historical safety trends.

Issues/proposals. What revisions can UMTA make to definitions or to Form 405 to improve the quality and consistency of safety data? What thresholds, if any, should UMTA use to standardize the reported data?

Service Supplied and Consumed

Forms used. Service supplied and consumed information are reported on Form 406 for non-rail modes and on Form 407 for rail modes. Information includes measures of the quantity of service supplied, including vehicle miles and hours, actual and scheduled vehicle revenue miles, and capacity miles; unlinked passenger trips and passenger miles; and the number of operating employees by job type. Most items on these forms are reported by time-of-day (for example, am and pm peaks and averages for weekdays).

Issues/proposals. Comments are invited on the usefulness of all information on these forms relative to reporting burden, and on the following proposals, which can be considered singly or in combination. Additional proposals are also encouraged.

1. Eliminate vehicle hours. This would reduce reporting burden, particularly because hours are reported in the seven time categories. How important is vehicle hours for performance evaluation, for example, to measure average speed and vehicle hours per operator, and cost prediction, considering the large role labor plays in operating cost? Would other remaining data, including vehicle revenue hours, suffice for these applications?
2. Eliminate revenue capacity miles. Because capacity is subject to local policies, the argument is that this item is inconsistently defined and invites biased comparisons. If measurement of capacity is of value, should it be measured in terms of passenger capacity miles, or are vehicle miles adequate for comparisons? Is capacity miles, for example, important for comparisons of costs, utilization, or safety of different modes, or of urban transit and other transportation modes (air, rail, highways, or inter-city bus)? Would costs of standardization be too high?

Related proposals would provide uniform definitions in terms of typical vehicle seat configuration plus a standard square foot per standee, or would establish the 40-foot standard bus as a basis and convert other transit vehicles to standard bus equivalences. An articulated bus might equal 1.5 standard buses, and an articulated light rail car might equal 2.5 standard buses. Either of these standards could be specified for reports, applied by UMTA to convert vehicle revenue miles during validation, or provided in a conversion table to assist data users in analysis.

3. Eliminate some or all time-of-day measures. One proposal would eliminate all time-of-day detail for ridership and service supplied, including vehicle and revenue vehicle miles and hours. The supporting argument is that peaking is adequately described by vehicles alone, and that section 15 does not require enough accuracy for time-of-day ridership to be accurate. Other proposals would eliminate all time-of-day ridership information but retain service supplied by time-of-day, or retain unlinked trips but eliminate passenger miles by time-of-day.

In support of the status quo, another recommendation agrees that peak-to-base counts are useful, but asserts that vehicles and supply by time-of-day only describe the response; ridership by time-of-day is necessary to measure the peaking phenomenon itself. Informed decision-making requires travel and service by time-of-day.

UMTA is interested in what, if any, time-of-day data to eliminate. How costly are these items to collect, how accurate are they, and what are actual

or possible uses of these data, for example, for national policy making, performance evaluation, and local management?

4. Eliminate passenger miles. The argument is that passenger miles is costly to collect because it is not used for local management, separate sampling or other special data collection is required, and data quality is poor. The opposing argument is that if ridership is limited to unlinked trips (boardings), comparisons of performance between modes with different average trip lengths or transfer policies or between urban transit and other transportation industries will be distorted.

Related proposals would relax the statistical accuracy standards for passenger miles for smaller operators, or extend less frequent sampling to specific categories of operators.

UMTA is interested in comments about the burden of passenger mile reporting relative to current or potential applications of this information.

5. Add linked trips. Some commenters describe linked trips (completed origin to destinations) as superior to unlinked trips or boardings as a measure of benefits of transit service. Are linked trips collected locally? Should this item be required or added as a memo item to be reported voluntarily? What specific uses would be made of it?

6. Improve service quality data. Current measures of quality are limited to actual and scheduled vehicle revenue miles and roadcalls, and may inadequately measure reliability, availability, accessibility, comfort, or cleanliness. Based on the view that quality is an important dimension of service that is inadequately measured in section 15, commenters have offered the following proposals:

a. Add passenger service interruptions, defined as the number of passengers significantly delayed beyond normal schedule time (for example, more than five minutes). Passenger miles or trips divided by the new item would provide a measure of service quality.

b. Collect profiles of users by survey on an extended cycle, such as every five years.

c. Redefine actual vehicle revenue miles as actual scheduled vehicle revenue miles to avoid inflation for unscheduled trips, which are unrelated to the quality issue of schedule adherence.

d. Measure on-time performance as part of passenger mile sampling.

7. Make no changes to ridership and service outputs. This proposal defends the current structure by cautioning that the Form 406/407 data resulted from industry compromises and asserts that changes should be made only after careful consideration of inputs from all parts of the industry.

Fleet Inventories

Form 408, which measures all vehicles in total fleet and available to operate in revenue service at the end of the reporter's fiscal year, was discussed in Section III A.

IV. Appendix A—Aggregation of Functions for Expense Classification

Level A	Level B	Level C and R
011 Transportation Administration	010 Administration of Transportation	
012 Revenue Vehicle Movement Control		
		010 Vehicle Operations.
021 Scheduling of Transportation Operations	020 Scheduling of Transportation Operation	
031 Revenue Vehicle Operation	030 Revenue Vehicle Operation	
041 Maint. Administration—Vehicles	041 Maint. Administration—Vehicles	
051 Servicing Revenue Vehicles	050 Servicing Revenue Vehicles	
061 Insp. & Maint. of Revenue Vehicles	060 Insp. & Maint. of Revenue Vehicles	
062 Accident Repairs of Revenue Vehicles	062 Accident Repairs of Revenue Vehicles	041 Vehicle Maintenace.
071 Vandalism Repairs of Revenue Vehicles	070 Vandalism Repairs of Revenue Vehicles	
081 Servicing & Fuel of Service Vehicles	080 Servicing & Fuel of Service Vehicles	
091 Insp. & Maint. of Service Vehicles	090 Insp. & Maint. of Service Vehicles	
042 Maint. Administration—Non-Vehicles	042 Maint. Administration—Non-Vehicles	
101 Maint. of Vehicle Movement Control Systems	100 Maint. of Vehicle Movement Control Systems	
111 Maint. of Fare Collection & Counting Equip.	110 Maint. of Fare Collection & Counting Equip.	
121 Maint. of Roadway & Track		
122 Maint. of Structure, Tunnels, & Subways		
123 Maint. of Passenger Station		
124 Maint. of Operating Station Bldgs, Ground & Equip.		042 Non-Vehicle Maint.
125 Maint. of Garage & Shop Bldgs, Grounds & Equip.	120 Maint. of Other Bldgs, Grounds & Equip.	
126 Maint. of Communication System		
127 Maint. of Gen. Admin. Bldgs, Grounds & Equip		
128 Accident Repairs of Bldgs, Grounds & Equip.		
131 Vandalism Repairs of Bldgs, Grounds & Equip.	130 Vandalism Repairs of Bldgs, Grounds & Equip.	
141 Operation & Maint. of Electric Power Facilities	140 Operation & Maint. of Electric Power Facilities	
145 Preliminary Transit System Development	145 Preliminary Transit System Development	
151 Ticketing & Fare Collection	150 Ticketing & Fare Collection	
161 System Security		
165 Injuries & Damages		
166 Safety		
167 Personnel Administration		
168 General Legal Services		
169 General Insurance		
170 Data Processing	160 General Administration	160 General Administration.
171 Finance & Accounting		
172 Purchasing & Stores		
173 General Engineering		
174 Real Estate Management		
175 Office Management & Services		
176 General Management		
162 Customer Services		
163 Promotion		
164 Market Research	179 Marketing	

IV. APPENDIX A—AGGREGATION OF FUNCTIONS FOR EXPENSE CLASSIFICATION—Continued

Level A	Level B	Level C and R
177 Planning 181 General Function	180 General Function	

V. Appendix B—Bibliography

Reference documents for the Uniform System of Accounts and Records and Reporting System are as follows.

"Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System"

Volume I—General Description (January 1977)

Volume II—Uniform System of Accounts and Records (January 1977)

Reporting Manual and Sample Forms (All Reporting Levels) (April 1990)

"Data User's Guide to the UMTA Section 15 Reporting System," Transportation Systems Center, June 1, 1989.

"National Urban Mass Transportation Statistics: 1988 Section 15 Annual Report" (December 1989), from U.S. Government Printing Office, (202) 783–3238, Order No. 050–000–00528–3.

UMTA Circular 2710.6, "Section 15 Accounting and Reporting Release #1," July, 1988. (Questions and answers on section 15).

UMTA Circular 2710.7, "Section 15 Accounting and Reporting Release #2," July, 1988. (Questions and answers on section 15).

"Uniform System of Accounts and Records and Reporting System; Clarification of Procedures for Addressing Noncompliance with Reporting Requirements; Final Rule. Changes to section 15; Notice (52 FR 36182) September 25, 1987 (49 CFR Part 630).

VI. Regulatory Impacts

1. Executive Order 12291

This action has been reviewed preliminarily under Executive Order 12291 and the agency has determined that it is not a major rule. If promulgated, this rule will not result in an annual effect on the economy of $100 million or more, nor will it create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises in domestic or export markets.

2. *Regulatory Evaluation*

This regulation is not significant under the Department's Regulatory Policies and Procedures. UMTA finds that the economic impact of this rule is minimal and, accordingly, a regulatory impact analysis is unnecessary. UMTA will prepare a regulatory evaluation, if it decides to go forward with a rulemaking.

3. *Regulatory Flexibility Act*

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96–354, UMTA certifies that this rule would not have a significant impact on a substantial number of small entities within the meaning of the Act.

4. *Paperwork Reduction Act*

The collection of information requirements in this rule is subject to the Paperwork Reduction Act, Public Law 96–511, 44 U.S.C. Chapter 35, UMTA specifically requests comment on the potential impact (positive or negative) that this rulemaking would have on the paperwork burden of its recipients. The current section 15 requirements are approved by the Office of Management and Budget under OMB Control #2132–WHAT.

5. *Executive Order 12612*

This rule has been reviewed under Executive Order 12612 on "Federalism" and it has been determined that it does not have implications for principles of Federalism that warrant the preparation of a Federalism Assessment. The rule would not limit policy making and administative discretion of the States, nor does it impose additional costs or burdens on the States. This rule does not affect the States' abilities to discharge traditional State governmental functions or otherwise affect any aspects of State sovereignty.

List of Subjects in 49 CFR Part 630

Mass transportation, Reporting and record keeping requirements, Uniform System of accounts.

Issued on: August 8, 1990.

Brian W. Clymer,

Administrator.

[FR Doc. 90–18966 Filed 8–8–90; 2:15 pm]

BILLING CODE 4910–57–M

federal register

Monday
August 13, 1990

Part V

The President

Executive Order 12724—Blocking Iraqi Government Property and Prohibiting Transactions With Iraq

Executive Order 12725—Blocking Kuwaiti Government Property and Prohibiting Transactions With Kuwait

Proclamation 6167—Entry as Nonimmigrants of Officers and Employees of the Nicaraguan Government

Digest

Federal Register
Vol. 55, No. 156
Monday, August 13, 1990

Presidential Documents

Title 3—

The President

Executive Order 12724 of August 9, 1990

Blocking Iraqi Government Property and Prohibiting Transactions With Iraq

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 301 of title 3 of the United States Code, and the United Nations Participation Act (22 U.S.C. 287c), in view of United Nations Security Council Resolution No. 661 of August 6, 1990, and in order to take additional steps with respect to Iraq's invasion of Kuwait and the national emergency declared in Executive Order No. 12722,

I, GEORGE BUSH, President of the United States of America, hereby order:

Section 1. Except to the extent provided in regulations that may hereafter be issued pursuant to this order, all property and interests in property of the Government of Iraq that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are hereby blocked.

Sec. 2. The following are prohibited, except to the extent provided in regulations that may hereafter be issued pursuant to this order:

(a) The importation into the United States of any goods or services of Iraqi origin, or any activity that promotes or is intended to promote such importation;

(b) The exportation to Iraq, or to any entity operated from Iraq, or owned or controlled by the Government of Iraq, directly or indirectly, of any goods, technology (including technical data or other information), or services either (i) from the United States, or (ii) requiring the issuance of a license by a Federal agency, or any activity that promotes or is intended to promote such exportation, except donations of articles intended to relieve human suffering, such as food and supplies intended strictly for medical purposes;

(c) Any dealing by a United States person related to property of Iraqi origin exported from Iraq after August 6, 1990, or property intended for exportation from Iraq to any country, or exportation to Iraq from any country, or any activity of any kind that promotes or is intended to promote such dealing;

(d) Any transaction by a United States person relating to travel by any United States citizen or permanent resident alien to Iraq, or to activities by any such person within Iraq, after the date of this order, other than transactions necessary to effect (i) such person's departure from Iraq, (ii) travel and activities for the conduct of the official business of the Federal Government or the United Nations, or (iii) travel for journalistic activity by persons regularly employed in such capacity by a news-gathering organization;

(e) Any transaction by a United States person relating to transportation to or from Iraq; the provision of transportation to or from the United States by any Iraqi person or any vessel or aircraft of Iraqi registration; or the sale in the United States by any person holding authority under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 **et seq.**), of any transportation by air that includes any stop in Iraq;

(f) The performance by any United States person of any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in Iraq;

(g) Except as otherwise authorized herein, any commitment or transfer, direct or indirect, of funds, or other financial or economic resources by any United States person to the Government of Iraq or any other person in Iraq;

(h) Any transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, any of the prohibitions set forth in this order.

Sec. 3. For purposes of this order:

(a) the term "United States person" means any United States citizen, permanent resident alien, juridical person organized under the laws of the United States (including foreign branches), or any person in the United States, and vessels of U.S. registration.

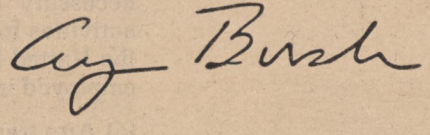
(b) the term "Government of Iraq" includes the Government of Iraq, its agencies, instrumentalities and controlled entities, and the Central Bank of Iraq.

Sec. 4. This order is effective immediately.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of this order. Such actions may include prohibiting or regulating payments or transfers of any property or any transactions involving the transfer of anything of economic value by any United States person to the Government of Iraq, or to any Iraqi national or entity owned or controlled, directly or indirectly, by the Government of Iraq or Iraqi nationals. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the Federal Government. All agencies of the Federal Government are directed to take all appropriate measures within their authority to carry out the provisions of this order, including the suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 6. Executive Order No. 12722 of August 2, 1990, is hereby revoked to the extent inconsistent with this order. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under Executive Order No. 12722 and not revoked administratively shall remain in full force and effect under this order until amended, modified, or terminated by proper authority. The revocation of any provision of Executive Order No. 12722 pursuant to this section shall not affect any violation of any rules, regulations, orders, licenses, or other forms of administrative action under that order during the period that such provision of that order was in effect.

This order shall be transmitted to the Congress and published in the **Federal Register**.



THE WHITE HOUSE,
August 9, 1990.

[FR Doc. 90-19151
Filed 8-10-90; 10:35 am]
Billing code 3195-01-m

Editorial note: For the President's message to the Congress on the blockage of Iraqi Government property, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 32).

Presidential Documents

Executive Order 12725 of August 9, 1990

Blocking Kuwaiti Government Property and Prohibiting Transactions With Kuwait

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 301 of title 3 of the United States Code, and the United Nations Participation Act (22 U.S.C. 287c), in view of United Nations Security Council Resolution No. 661 of August 6, 1990, and in order to take additional steps with respect to Iraq's invasion of Kuwait and the national emergency declared in Executive Order No. 12722,

I, GEORGE BUSH, President of the United States of America, hereby order:

Section 1. Except to the extent provided in regulations that may hereafter be issued pursuant to this order, all property and interests in property of the Government of Kuwait that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked.

Sec. 2. The following are prohibited, except to the extent provided in regulations that may hereafter be issued pursuant to this order:

(a) The importation into the United States of any goods or services of Kuwaiti origin, or any activity that promotes or is intended to promote such importation;

(b) The exportation to Kuwait, or to any entity operated from Kuwait or owned or controlled by the Government of Kuwait, directly or indirectly, of any goods, technology (including technical data or other information), or services either (i) from the United States, or (ii) requiring the issuance of a license by a Federal agency, or any activity that promotes or is intended to promote such exportation, except donations of articles intended to relieve human suffering, such as food and supplies intended strictly for medical purposes;

(c) Any dealing by a United States person related to property of Kuwaiti origin exported from Kuwait after August 6, 1990, or property intended for exportation from Kuwait to any country or exportation to Kuwait from any country, or any activity of any kind that promotes or is intended to promote such dealing;

(d) Any transaction by a United States person relating to travel by any United States citizen or permanent resident alien to Kuwait, or to activities by any such person within Kuwait, after the date of this order, other than transactions necessary to effect (i) such person's departure from Kuwait, (ii) travel and activities for the conduct of the official business of the Federal Government or the United Nations, or (iii) travel for journalistic activity by persons regularly employed in such capacity by a news-gathering organization;

(e) Any transaction by a United States person relating to transportation to or from Kuwait; the provision of transportation to or from the United States by any Kuwaiti person or any vessel or aircraft of Kuwaiti registration; or the sale in the United States by any person holding authority under the Federal Aviation Act of 1958, as amended (49 U.S.C. 1301 *et seq.*), of any transportation by air that includes any stop in Kuwait;

(f) The performance by any United States person of any contract, including a financing contract, in support of an industrial, commercial, public utility, or governmental project in Kuwait;

(g) Except as otherwise authorized herein, any commitment or transfer, direct or indirect, of funds, or other financial or economic resources by any United States person to the Government of Kuwait or any other person in Kuwait;

(h) Any transaction by any United States person that evades or avoids, or has the purpose of evading or avoiding, any of the prohibitions set forth in this order.

Sec. 3. For purposes of this order:

(a) the term "United States person" means any United States citizen, permanent resident alien, juridical person organized under the laws of the United States (including foreign branches), or any person in the United States, and vessels of U.S. registration.

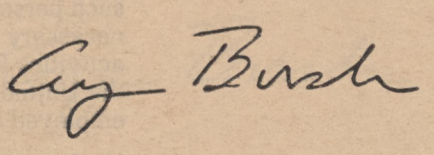
(b) the term "Government of Kuwait" includes the Government of Kuwait or any entity purporting to be the Government of Kuwait, its agencies, instrumentalities and controlled entities, and the Central Bank of Kuwait.

Sec. 4. This order is effective immediately.

Sec. 5. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes of this order. Such actions may include prohibiting or regulating payments or transfers of any property or any transactions involving the transfer of anything of economic value by any United States person to the Government of Kuwait, or to any Kuwaiti national or entity owned or controlled, directly or indirectly, by the Government of Kuwait or Kuwaiti nationals. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the Federal Government. All agencies of the Federal Government are directed to take all appropriate measures within their authority to carry out the provisions of this order, including the suspension or termination of licenses or other authorizations in effect as of the date of this order.

Sec. 6. Executive Order No. 12723 of August 2, 1990, is hereby revoked to the extent inconsistent with this order. All delegations, rules, regulations, orders, licenses, and other forms of administrative action made, issued, or otherwise taken under Executive Order No. 12723 and not revoked administratively shall remain in full force and effect under this order until amended, modified, or terminated by proper authority. The revocation of any provision of Executive Order No. 12723 pursuant to this section shall not affect any violation of any rules, regulations, orders, licenses, or other forms of administrative action under that order during the period that such provision of that order was in effect.

This order shall be transmitted to the Congress and published in the **Federal Register.**



THE WHITE HOUSE,
August 9, 1990.

[FR Doc. 90-19156
Filed 8-10-90; 10:41 am]
Billing code 3195-01-M

Editorial note: For the President's message to the Congress on the blockage of Kuwaiti Government property, see the *Weekly Compilation of Presidential Documents* (vol. 26, no. 32).

Presidential Documents

Proclamation 6167 of August 9, 1990

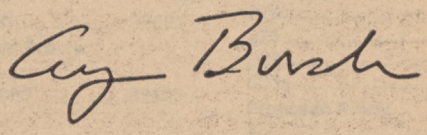
Entry as Nonimmigrants of Officers and Employees of the Nicaraguan Government

By the President of the United States of America

A Proclamation

By the authority vested in me by the Constitution and the laws of the United States, I, GEORGE BUSH, President of the United States of America, do hereby proclaim that Proclamation No. 5887 of October 22, 1988, entitled "Suspension of Entry as Nonimmigrants of Officers and Employees of the Nicaraguan Government," is hereby revoked.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of August, in the year of our Lord nineteen hundred and ninety, and of the Independence of the United States of America the two hundred and fifteenth.



[FR Doc. 90-19179
Filed 8-10-90; 11:58 am]
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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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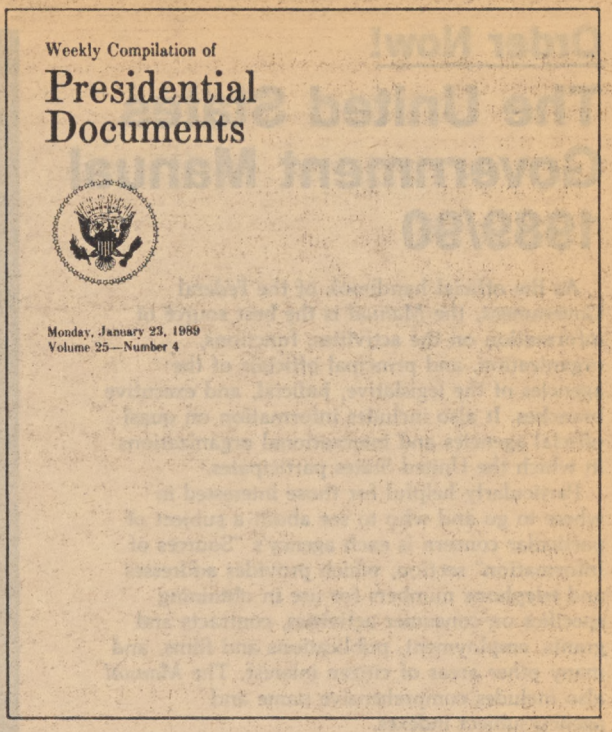

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